

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric
Company (U 39 E) for Commission
Approval under Public Utilities Code
Section 851 of a Restated License
Agreement with IP Networks, Inc. and
Level 3 Communications, LLC

Application No. 13-01-____
(filed January 2, 2013)

APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)

PUBLIC VERSION

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Dated: January 2, 2013

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Application of Pacific Gas and Electric Company (U 39 E) for Commission Approval under Public Utilities Code Section 851 of a Restated License Agreement with IP Networks, Inc. and Level 3 Communications, LLC

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PUBLIC VERSION

Pursuant to Commission Rule 3.6 and Public Utilities Code Section 851, Pacific Gas and Electric Company respectfully requests that the Commission approve an amended and restated license agreement with IP Networks, Inc., a Delaware corporation (“IPN”). A copy of the Amended and Restated Master License and IRU Agreement (the “Restated License Agreement”) is appended hereto as Attachment A. This Restated License Agreement modifies the irrevocable license agreement between PG&E and IPN for use of optical fiber, utility support structures, and equipment sites that the Commission previously approved in Decision 02-07-026.

On December 20, 2012, IPN and Level 3 Communications, LLC, a California certificated telecommunications carrier (“Level 3”), entered into a Merger Agreement (the “Merger Agreement”) pursuant to which, subject to the terms and conditions thereof, Level 3 will acquire 100% of the outstanding capital stock of IPN. The closing of the Merger Agreement is conditioned upon, among other things, the execution by PG&E and IPN of the Restated License Agreement and the Commission’s approval thereof.¹

¹ Concurrently with the filing of this Application, PG&E is filing a Motion for Leave to File Under Seal for portions of the Restated License Agreement. A redacted version of the Restated License Agreement is appended to the public version of this Application that is being e-served on interested parties, and a full, unredacted version is appended to the confidential version that is being filed in hard copy with the Commission’s Docket Office.

I. BACKGROUND AND DESCRIPTION OF THE RESTATED LICENSE AGREEMENT

In November 2000, PG&E and IPN entered into two Master License and Irrevocable Right to Use Agreements (together, the “IPN Agreements”) to permit use of utility support structures, optical fiber, and equipment sites. The IPN Agreements allow IPN to install fiber optic cable on PG&E’s towers, poles, and conduits. Bare legal title to all such cables immediately vests in PG&E, with IPN being granted a license to use a portion of the fiber strands in those cables and with PG&E retaining unrestricted use of the remaining fibers. In addition, PG&E receives monthly revenues based on IPN’s revenues from the fibers it licenses from PG&E. PG&E filed Application 01-12-033 for approval of the IPN Agreements, and the Commission granted approval in Decision 02-07-026. Subsequent to the Commission’s approval, PG&E and IPN decided to terminate one of the IPN Agreements, the Bay Area Loop Agreement, effective January 1, 2004. All of the fiber IPN has installed to date is covered by the remaining agreement, the Local Loop Agreement (the “Agreement”).

Since the Agreement was signed, IPN has installed approximately 70 miles of fiber in the San Francisco Bay area, and completed a 116-mile long project from Cottonwood to Eureka, and an 11-mile build in Eureka in December 2011. The Cottonwood-Eureka project provides broadband to previously un-served or under-served communities and was partially funded through a grant from the California Advanced Services Fund (CASF).

Level 3 is a telecommunications carrier that already has four fiber optic Indefeasible Right of Use (IRU) and dark fiber license agreements with PG&E. These include agreements from companies Level 3 has acquired including the Conduit Route License Agreement between PG&E and IXC Communications Services, Inc., the Optical Fiber Installation and IRU Agreement between PG&E and IXC Communications Services, Inc., the Master License and

IRU Agreement for Optical Fiber Installations Between PG&E and Williams Communications, Inc., and the Dark Fiber IRU Agreement Between WilTel Communications, LLC and PG&E. Level 3 has requested, and PG&E has agreed, to make certain changes to the existing IPN Agreements in order, among other things, to conform to Level 3's organizational structure and operational requirements. However, the basic arrangement agreed to by PG&E and IPN and approved by the Commission remains unchanged.

The changes to the IPN Agreements that PG&E, IPN and Level 3 have agreed to, subject to Commission approval, are as follows:

- Restructuring the payment methodology to an equivalent minimum annual fee with upward potential for revenue growth.
- Extending the term of the agreement from an initial term of 20 years (of which approximately 8 years remain) with two 5-year extensions, to a new 20-year initial term with two 10-year extensions.
- Restricting PG&E's use of its fiber in the cable to utility purposes only, other than the Cottonwood-Eureka route, in respect of which IPN will have a right of first refusal for any sales, leases or assignments proposed by PG&E. In exchange for these restrictions, Level 3 is granting PG&E a dark fiber IRU on other Level 3 fiber routes in Northern and Central California to use for utility purposes.

II. THE PROPOSED AGREEMENT IS IN THE PUBLIC INTEREST

As noted above, while the proposed Restated License Agreement contains some minor changes to the existing IPN Agreements, the basic arrangement agreed to by PG&E and IPN and

approved by the Commission remains unchanged.² In approving the IPN Agreements, the Commission found them to be in the public interest:

We find that our approval of the two agreements and PG&E's conveyance of the irrevocable licenses to IP Net would serve the public interest. IP Net's activities will not interfere with PG&E's use of its property for utility purposes or with service to PG&E customers, and IP Net will use PG&E property and facilities in a manner consistent with legal requirements. PG&E's grant of the irrevocable licenses to IP Net will also serve the public interest by enabling PG&E to improve its internal utility communications and control systems and to thereby provide enhanced service to the public. IP Net's use of the PG&E property and facilities will also increase the availability of telecommunications services to the public. In addition, in appropriate cases, the shared use of utility property by energy utilities and telecommunications providers results in both economic and environmental benefits, by encouraging energy utilities to use their property productively and reducing the need for construction of new telecommunications project sites.

(D.02-07-026, mimeo, p. 12.) These same public benefits continue to apply to the Restated License Agreement.

In addition, the public benefits of the IPN Agreements are not undermined, but are in fact enhanced by the modifications contained in the Restated License Agreement. Specifically:

- Restructuring the payment methodology to one that includes a minimum annual fee starting at a level commensurate with the fees that will have been earned by PG&E in 2012 and increases thereafter. The actual annual fee payable by IPN in respect of a given year will exceed the applicable minimum annual fee to the extent and subject to future expansion of the fiber optic cable network constructed under the Restated License Agreement.

² The public benefits of the original IPN Agreements were described at length in PG&E's Application 01-12-033, pp. 7-12. In the interest of brevity, PG&E does not reiterate those arguments here but merely incorporates them by reference.

- Extending the term of the agreement from an initial term of 20 years with two 5-year extensions, to a 20-year initial term with two 10-year extensions. The term extension also provides for a longer period of time in which to earn revenues, to build additional routes and to serve more customers.
- Restricting PG&E's use of its fiber in the cable. In exchange, Level 3 is giving PG&E a dark fiber IRU on other Level 3 fiber routes in Northern and Central California to use for utility purposes. PG&E will use the additional dark fiber to enhance communications and improve reliability without the need to incur additional operational costs. Specifically, the fiber will be used to support internal electric and gas monitoring and control systems, such as transfer trip schemes, remedial action schemes and supervisory control and data acquisition (SCADA), as well as to upgrade PG&E's internal voice and data network.

III. COMPLIANCE WITH THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE

PG&E provides the following information in compliance with the Commission's Rules of Practice and Procedure.

IV. STATUTORY AND OTHER AUTHORITY (RULE 2.1)

PG&E files this Application pursuant to Section 851 of the California Public Utilities Code; Rule 3.6 of the Commission's Rules of Practice and Procedure; prior decisions, orders and resolutions of the Commission; and other authority cited herein.

V. CATEGORIZATION, HEARINGS, ISSUES TO BE CONSIDERED, AND SCHEDULE (RULE 2.1(C))

Categorization: PG&E proposes that this Application be categorized as a "ratesetting" proceeding under Rule 7.1(e)(2).

Hearings: Because this Application does not raise materially contested issues of fact, no hearing is required, and PG&E respectfully requests that the Commission grant its request for approval on an *ex parte* basis.

PG&E has included in this Application, or incorporated by reference, all the supporting information that it believes is required to show that approval of the Restated License Agreement is not adverse to the public interest. PG&E is prepared to provide, in writing, such other information as the Commission may require. Consequently, evidentiary hearings are not needed.

Issues to be Considered: The sole issue raised in this Application is whether the Commission should approve the attached Restated License Agreement that modifies one irrevocable license agreement between PG&E and IPN for use of optical fiber, utility support structures, and equipment sites that the Commission previously approved in Decision 02-07-026.

Proposed Schedule: PG&E proposes the following procedural schedule:

January 2, 2013:	Application filed
Notice + 30 days:	Protests and responses due
+ 60 days:	Draft decision (if no protests)
+ 30 days:	Final Decision

VI. LEGAL NAME AND LOCATION OF APPLICANT (RULES 2.1(A), 2.1(B), AND 3.6(A))

Since October 10, 1905, Pacific Gas and Electric Company has been an operating public utility corporation, organized under the laws of the State of California. PG&E is engaged principally in the business of furnishing gas and electric service in California. PG&E's principal place of business is 77 Beale Street, San Francisco, CA 94105. Correspondence and service to PG&E for this Application should be addressed to:

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VII. ARTICLES OF INCORPORATION (RULE 2.2)

A certified copy of PG&E's Restated Articles of Incorporation, effective April 12, 2004, was filed with the Commission on May 3, 2004, with PG&E's Application 04-05-005. These articles are incorporated herein by reference.

VIII. DESCRIPTION OF THE PROPERTY INVOLVED IN THE AGREEMENT (RULE 3.6(B))

As described in PG&E's Application 01-12-033 (at p. 13), the description of the electric property potentially involved in the original IPN Agreements as well as the Restated License Agreement consist of:

- Land owned by PG&E in fee simple
- Electric transmission towers and facilities
- Electric distribution poles, conduits, and facilities
- Electric transmission and distribution substations
- Telecommunication conduits and shelters

As with the original IPN Agreements, no PG&E property is being sold or disposed of, and IPN will be permitted to occupy and use only a portion of PG&E's property and only to the extent such use is compatible with PG&E's use of such property for utility service.

IX. RATEMAKING TREATMENT

As consideration for the grant of the Restated License Agreement described in this application, IPN will pay a Monthly Fee that is proportionate to its utilization of PG&E infrastructure. The sum of the Monthly Fees for a given year will be compared to a designated minimum annual fee at the beginning of the following year, and a true-up will occur if the Monthly Fees fall short of the minimum annual fee for such year. For clarity, the Minimum Annual Fee covers the fees payable for the Route License Acknowledgments identified in

Exhibit A and for the Cottonwood-Eureka Cable Route. Any compensation received by PG&E from Level 3 will be credited as follows:

Electric Transmission Property

Proceeds from the license fees received for sites located on PG&E's electric transmission property are subject to Federal Energy Regulatory Commission (FERC) jurisdiction for ratemaking. All costs for PG&E's electric transmission system are now part of FERC ratemaking for transmission service in PG&E's transmission owner cases. PG&E will account for license fees related to electric transmission property pursuant to applicable FERC rules for accounting and ratemaking.

Electric Distribution Property

Site license fees for sites located on PG&E's electric distribution property will be treated as Electric Other Operating Revenue and will be used to reduce PG&E's revenue requirement consistent with conventional cost-of-service ratemaking.

The Commission approved similar ratemaking proposals in D.09-07-035, Ordering Paragraph No. 5, pp. 26-27.

X. SERVICE

A copy of this Application has been served on the service list for the original Section 851 application seeking approval of the IPN Agreements (A.01-12-033).

XI. NO CEQA REVIEW IS REQUIRED

In this instant Application, CEQA review is not required as this transaction proposes to amend several terms and conditions of the original Agreement and transfer of responsibility of the Agreement only. This transaction does not propose to install any new fiber-optic cables or

VERIFICATION

I, the undersigned, say:

I am an officer of PACIFIC GAS AND ELECTRIC COMPANY, a corporation, and am authorized to make this verification for and on behalf of said corporation, and I make this verification for that reason. I have read the foregoing **APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)** before the California Public Utilities Commission and I am informed and believe that the matters therein are true and on that ground I allege that the matters stated therein are true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California, this **2nd day of January, 2013**.

/s/

ERIC A. MONTIZAMBERT
Assistant Corporate Secretary
Pacific Gas and Electric Company