

Decision PROPOSED DECISION OF ALJ ROSCOW (Mailed 2/16/2016)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Michael Hetherington and
Janet Hetherington,

Complainants,

vs.

Pacific Gas & Electric Company
(U39E),

Defendant.

Case 10-10-010
(Filed October 13, 2010)

**DECISION GRANTING RELIEF
AND RESOLVING OUTSTANDING MOTIONS**

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DECISION GRANTING RELIEF AND RESOLVING OUTSTANDING MOTIONS**Summary**

This decision grants in part and denies in part the complaint of Michael Hetherington and Janet Hetherington against Pacific Gas and Electric Company (PG&E). Specifically, pursuant to Section G of PG&E's Electric Rule 16, "Service Extensions," the Commission finds that the facts underlying this Complaint present an "exceptional case," such that the standard application of PG&E's Rule 16 would be impractical and unjust to Complainants. For this reason, PG&E shall locate Complainants' SmartMeter on Complainants' premises by removing Complainants' existing SmartMeter from its current location and installing it instead into the existing meter socket adjacent to Complainants' house. However, Complainants' request that PG&E, at its expense, provide electric power on poles in Complainants' existing recorded above-ground utility easement is denied because that would impose a cost on ratepayers that is unnecessary to grant the primary relief sought by Complainants. Finally, PG&E is ordered to implement an ongoing usage monitoring program for Complainants.

In addition, numerous pending motions are granted or denied as specified herein. All motions not addressed herein are deemed denied. This case will remain open to address the results of a separate ruling by the assigned Administrative Law Judge (ALJ) ordering PG&E to show cause to why it should not be sanctioned by the Commission for violation of Rule 1.1 of the Commission's Rules of Practice and Procedure.

1. Overview of Complaint and Relief Sought

Complainants request that the Commission: (1) Order Pacific Gas & Electric Company (PG&E) to locate Complainants' SmartMeter "capable of

being read remotely” on Complainants’ premises, “meaning the house and curtilage pertaining thereto” in accordance with Pub. Util. Code §§ 8360, 8362(a), 8366 and PG&E’s Electric Rule 16.B; and (2) Order PG&E, at its expense, to provide electric power on poles in an existing, recorded above-ground utility easement owned by Complainants.

In its November 29, 2010 Answer to the Complaint, PG&E states that “any relocation of PG&E’s meter is governed by Electric Tariff 16.F.2.b, which requires that the Hetheringtons be financially responsible for the relocation costs.” PG&E asserts that the Complaint fails to state facts sufficient to relieve the Hetheringtons of their obligation under Rule 16.F.2.b to pay for the relocation. PG&E further asserts that to the extent the Hetheringtons seek to transfer their privately-owned service line to PG&E, it must meet PG&E’s electric construction standards. Finally, PG&E requests that this Complaint be dismissed because the Hetheringtons have failed to show that PG&E has violated any law or Commission rule or order.

This decision addresses the Complaint and three subsequent motions for summary adjudication filed by Complainants.

2. Narrative Background of this Proceeding

This Complaint derives from Complainants’ repeated requests to PG&E to locate Complainants’ SmartMeter at Complainants’ premises, and PG&E’s repeated refusal to do so unless Complainants expended what Complainants believed to be an exorbitant amount of money to meet PG&E’s conditions.

The Docket Card in this proceeding shows a large number of filings for a single-party complaint case that, in its essence, turns on the interpretation and

application of a single section of PG&E's Electric Rules.¹ To place today's decision into context, we begin with a summary of relevant events that preceded this proceeding and those events that subsequently unfolded within this proceeding. While this introduces some degree of repetition into this decision, it is necessary to avoid confusion regarding the somewhat overlapping nature of this matter.²

2.1. Description of Complainants' Home

Complainants reside in rural San Mateo County and take electrical service from PG&E. Complainants purchased their home in 1995. At that time, the home was not served by PG&E: all electricity was provided by solar power or a backup generator, and the home was heated with kerosene. In 1998, Complainants began the process of applying for PG&E service and making the necessary modifications to their property to enable delivery of that service. This process was completed in 2000 with the installation of a direct-buried service line extension, owned and paid for by Complainants.

This line extension lies at the heart of this dispute. The line originates at PG&E's transformer (PG&E's designated "service delivery point") at the end of PG&E's distribution line, which is located 1.5 miles by road from Complainants' residence. Complainants own a small utility easement at that location. The line

¹ PG&E's Electric Rules are "tariff sheets which cover the application of all rates, charges, and services, when such applicability is not set forth in and as part of the rate schedules." See PG&E Electric Rule No. 1, "Definitions," "Rules." Each of PG&E's Electric Rules is reviewed and approved by the Commission.

² In this narrative section, citations to the record are kept to a minimum; those citations are provided later in this decision as we formally address each issue before the Commission.

itself is approximately 3,000 feet long and follows another Complainant-owned utility easement across a field and up a hill to Complainants' home.

Due to the distance from PG&E's service delivery point to Complainants' home, the electricity delivered by PG&E must be "stepped up" by a Complainant-owned transformer in order to efficiently transmit the energy over the required distance. The step-up transformer is located adjacent to PG&E's transformer, and is matched by a second Complainant-owned "step-down" transformer at the end of the line, adjacent to Complainants' residence; this second transformer returns the voltage to household levels.³ Complainants' usage is metered for billing purposes by their SmartMeter located in their easement at the far-end origin of their service line, just before the step-up transformer.

2.2. The Deployment of PG&E SmartMeters

In 2009, PG&E notified Complainants that their SmartMeter would be installed soon as part of PG&E's territory-wide deployment of SmartMeters. Complainants contacted PG&E to specifically request that their SmartMeter be installed at their premises, not at the distant origin of their line extension. PG&E refused, stating that if Complainants wanted the SmartMeter located at their

³ Transformers are used to increase (or step up) voltage before transmitting electrical energy over long distances through wires. Wires have resistance which loses energy through heating at a rate corresponding to square of the current. By transforming power to a higher voltage, transformers enable economical transmission and distribution of power.

<https://en.wikipedia.org/wiki/Transformer>

A step-up transformer converts low-voltage, high-current power into high-voltage, low-current power. Conversely, a step-down transformer converts high-voltage, low-current power back into low-voltage, high-current power.

<http://www.allaboutcircuits.com/textbook/alternating-current/chpt-9/step-up-and-step-down-transformers>.

house, it would be necessary to replace the entire service line extension because, as direct-buried cable, it did not meet PG&E's construction standards.

Complainants spent the remainder of 2009 making repeated attempts to convince PG&E to reconsider its position. PG&E refused.

2.3. Complainants' First Informal Complaint to the Commission

On November 28, 2009, Complainants initiated Case #74967 with the Commission's Consumer Affairs Branch (CAB).⁴ In this "informal" complaint, Complainants stated "we want PG&E to install the SmartMeter on our premises to prevent potential power theft, not to install the meter over a mile away in a rural area." Complainants' concern about unauthorized power diversion at some point along their underground service line is a consistent theme throughout this proceeding.

PG&E responded by letter on December 28, 2009, stating that PG&E placed Complainants' meter in the original location "due to your request and PG&E's approval" and that PG&E "is willing to relocate the meter" to the Complainants' premises, but only as a "relocation of services" for which the Complainants would have to pay (pursuant to PG&E's Electric Rule 16.F.2.b) at an estimated cost of \$40,000 to \$100,000.⁵ Rule 16.F.2.b [Existing Service Facilities] states: "Any relocation or rearrangement of PG&E's existing Service Facilities at the request of Applicant (aesthetics, building additions, remodeling,

⁴ Staff in the Consumer Affairs Branch is responsible for helping consumers understand their utility services and bills, as well as assisting consumers in resolving disputes with their utility companies. Many consumer disputes are resolved through the CAB dispute resolution process. This process does not involve judicial review by the Commission, which allows disputes to be resolved more quickly than filing a formal complaint.

⁵ See January 12, 2011 Complainants' Motion for Summary Adjudication, Exhibit J, letter to Complainants from Doris A. Stephan, PG&E Customer Relations.

etc.) and agreed upon by PG&E shall be performed in accordance with Rule 16. D [New Service Extensions] except that Applicant shall pay PG&E its total estimated costs.”

2.4. Installation of Complainants’ SmartMeter by PG&E

On November 28, 2009, over Complainants’ objections PG&E’s SmartMeter contractor (Wellington) installed a SmartMeter adjacent to the PG&E transformer at the origin of the Complainants’ line extension approximately 1.5 miles from Complainants’ home. Complainants drove to Wellington’s service yard that evening to register their objection, to no avail.

On January 6, 2010, Complainants notified CAB that they wished to withdraw Case #74967, stating they would “renew when we have gathered additional evidence.”

2.5. Complainants’ Relocation of their SmartMeter

On or about March 17, 2010, Complainants hired an electrician to move their SmartMeter from the distant service delivery point in the easement, installing it instead in a meter cabinet they had installed on a service pedestal adjacent to their home. As a result, Complainants’ meter was now located beyond a locked gate that secures the road to their home, and inaccessible to PG&E.

As it is authorized to do under its Electric Rules, PG&E began actions necessary to restore their access to Complainants’ meter in order to bill

Complainants properly. Complainants interpreted PG&E's actions as a hostile act by the utility.⁶

2.6. Complainants' Second Informal Complaint to the Commission

On June 4, 2010, Complainants initiated Case #108632 with CAB. The phrasing of Complainants' request in this second CAB complaint is telling in its difference from their request in Case #74967: Complainants now requested that the Commission allow the SmartMeter to remain at their premises.⁷ The record indicates that Complainants now believed that their SmartMeter had been successfully relocated to their home, and was working properly and transmitting their usage data to PG&E. Complainants therefore concluded that this proved that relocation of the meter was feasible without the need for them to spend at least \$100,000 to replace their private line, as PG&E demanded.

On August 10, 2010, PG&E's Revenue Assurance Department, following PG&E policy, sent a letter to the Hetheringtons informing them that pursuant to PG&E Electric Rules 16 and 11 their service would be disconnected after August 24, 2010 unless they made arrangements for PG&E to access the meter.

⁶ See, for example, a June 16, 2010 communication from Complaints to CAB, entitled "Update to Case No. 108632" summarized in the next section of this decision. In the June 16, 2010 document Complainants reference "PG&E's threats to force us to dig up our power line" and state that PG&E described their line "as 'crappy,' leaking and needing to be dug up..."

⁷ Complainants also describe their suspicions that a neighbor had made an unauthorized connection to Complainants' buried service line extension.

2.7. PG&E Site Visit and Relocation of Complainants' SmartMeter

On August 24, 2010, Complainants contacted CAB in an attempt to forestall disconnection of their service. CAB personnel worked with PG&E personnel and the Complainants to reach an agreement to restore PG&E's access to the meter, so disconnection did not occur. The next day, on August 25, 2010, PG&E personnel visited the Complainants' home and with the assent of the Complainants in order to avoid being disconnected by PG&E, the SmartMeter was moved back to the distant service delivery point in the easement. CAB considered Case #108632 to be closed.

On September 2, 2010, PG&E sent a letter to Complainants in order to follow up on the August 25th visit. The letter provides responses to questions posed by Complainants during the site visit: Complainants wished to know PG&E's reasons for refusing to relocate the SmartMeter, and why PG&E could not take ownership of the customer-owned line.

2.8. Complainants File Formal Complaint C.10-10-010

On September 20, 2010, Complainants transmitted the instant complaint to the Commission (the Complaint was accepted for filing by the Commission's Docket Office on October 13, 2010).⁸ In C.10-10-010 the Complainants request that the Commission: (1) Order PG&E to locate Complainants' SmartMeter on Complainants' premises, and (2) Order PG&E, at its expense, to provide electric power on poles in Complainants' existing, recorded above-ground utility easement.

⁸ The 23-day difference between these two dates represents the period of time that CAB spent determining whether the Case could still be resolved informally.

PG&E answered the Complaint on November 29, 2010. Among other things, PG&E's Answer states that, "any relocation of PG&E's meter is governed by Electric Tariff 16.F.2.b, which requires that the Hetheringtons be financially responsible for the relocation costs."

2.9. April 8, 2011 Prehearing Conference

The initial Prehearing Conference (PHC) in this case took place on April 8, 2011. However, in the period prior to the PHC, Complainants filed three "motions for summary adjudication" as well as several procedural motions. Both the Complainants and PG&E also filed PHC statements.

At the PHC, the assigned ALJ deferred ruling on the pending motions, because Complainants and PG&E agreed to attempt to mediate their dispute through the Commission's Alternative Dispute Resolution (ADR) program. The mediation began shortly afterward.

2.10. November 3, 2011 Site Visit: Installation of "CPUC Test Meter"

During the mediation, a site visit to the Complainants' home took place.⁹ The visit was attended by a staff member of the Commission's Energy Division, Complainants, Complainants' electrical contractor, and PG&E personnel. Attendees walked a good portion of the route of Complainants' buried line extension. In addition, pursuant to an agreement reached during mediation, PG&E installed a "test meter" (CPUC test meter) in the meter pedestal adjacent

⁹ Mediations conducted as part of the Commission's ADR program are confidential. The events related here are described in public filings subsequently made in this proceeding by Complainants and/or PG&E.

to Complainants' home.¹⁰ The CPUC test meter would allow the Complainants to monitor and compare the metered usage at either end of their private line extension. Due to the nature of their solar installation, Complainants were at times entirely "off the grid" for several days and wished to verify that PG&E's meters were accurately measuring usage, or non-usage, at these periods.

2.11. Complainants' Withdrawal from Mediation

In February 2012, Complainants informed the mediator and the assigned ALJ that they wished to "suspend" mediation and proceed to discovery and hearings. Over the next six months, Complainants filed three "amended" complaints. PG&E answered the second amended complaint. During this period the assigned ALJ conducted two additional PHCs that served as "status conferences" in order to review procedural matters such as discovery disputes, the necessity for hearings, and the remaining schedule for the proceeding.

2.12. Complainants' Motion to Strike Amended Complaints

On September 9, 2013, Complainants filed a motion to strike their first, second and third amended complaints and to reinstate the original complaint.

In September, October and December 2014, Complainants filed three additional procedural motions seeking a ruling on the three Motions for Summary Adjudication that they filed in 2010.

2.13. Recent Developments in 2015: Health and Safety Concerns

Before a decision issued resolving the instant complaint on the basis of the extensive record described above, this case assumed a more urgent tone on

¹⁰ This meter is referenced in parties' pleadings and in this decision as the "CPUC test meter" in order to distinguish it from PG&E's billing meter. It is PG&E's equipment.

June 15, 2015 when Complainants filed a Motion for an Expedited Injunction, Protective Order, and to Impound PG&E Relay No. 9764 to Preserve Integrity of Evidence. Complainants alleged that PG&E was conducting electronic harassment against complainants by using a “relay” device affixed to the PG&E transformer at Complainants’ service delivery point:

That relay impresses a 60 Hz ELF [extremely low frequency] signal on complainants’ conductors and house wiring. This causes a “roaring” in the house wiring, typically at night, ringing in the ears, and inability to sleep. The interference/ELF sine wave imposed on complainants’ line by the PG&E relay is believed to have inflicted severe bodily harm on complainant, Janet Hetherington--a five-day hospital stay including 24 hours in the intensive care unit (ICU) from June 4-June 8.¹¹

Due to the alleged health and safety concerns raised by this motion and Complainants’ allegations, the assigned ALJ directed PG&E to disconnect the relay. PG&E disconnected the relay as directed on July 3, 2015.

Several days after disconnection of the relay, Complainants requested complete physical removal of the relay as well. For this reason, the ALJ scheduled a site visit that took place on July 7, 2015. During the site visit, PG&E removed the relay and the ALJ subsequently conveyed it to the Commission’s offices in San Francisco for safekeeping. The ALJ and PG&E personnel also viewed the configuration of the transformers and metering at PG&E’s service delivery point and at Complainants’ home.

¹¹ June 15, 2015 Motion at 2. As will be seen below, the relay in question is a PG&E SmartMeter relay, used to read Complainants’ billing meter and CPUC test meter as well as the SmartMeters of several of their neighbors.

The assigned ALJ scheduled a follow-up site visit for July 24, 2015. The mutually agreed-upon purpose of this visit was to test whether the relay could have caused any of the health and safety problems described in Complainants' June 15th Motion. In addition to the ALJ, this visit was attended by Complainants and their expert, and by PG&E counsel, a locally-based PG&E troubleman, and an independent expert retained by PG&E.

2.14. Complainants' Motion for Emergency Relief

At the conclusion of the second site visit, the ALJ asked the Complainants to update any analysis they had performed of any differences between the usage recorded on their billing meter and on their PG&E-installed CPUC test meter. Complainants did so, and on July 30, 2015 filed a "Second Motion for Emergency Relief."¹² Based on the analysis presented in their motion, Complainants requested that the Commission investigate what they described as "newly discovered evidence" of unauthorized connections to their service line, and to stop the resulting harmful interference in their house wiring.¹³

After a series of responses and replies regarding this motion, the assigned ALJ closed the record of this proceeding. Based on that record, this decision addresses and resolves all the allegations and disputes described above.

¹² This motion superseded a July 27, 2015 Motion for Emergency Relief because it was based on improved billing data provided to Complainants by PG&E. These motions were incorrectly captioned "emergency" motions by Complainants. Following the site visits, Complainants understood that the proposed decision in this proceeding would soon be issued for public comment. The "emergency" referenced in the motion was Complainants' wish to add to the record of the proceeding before this occurred.

¹³ July 30, 2015 Second Motion for Emergency Relief at 2.

3. Formal Procedural Background

Complainants and PG&E filed numerous documents in this proceeding. Because material from all of these filings comprises the record that is the foundation for resolution of this dispute, these filings are listed below. This decision reviews and resolves each of these pleadings.

3.1. Initial Filings: Informal Complaints and Formal Complaint

First, as described above, Complainants filed two informal complaints with the Commission's Consumer Affairs Branch: Case #74967 on November 28, 2009 and Case #108632 on June 4, 2010. We take official notice of material from these Cases as indicated throughout this decision.

Next, of course, on October 13, 2010 the Hetheringtons filed C.10-10-010 and PG&E filed its answer to the complaint on November 29, 2010.

3.2. C.10-10-010: Filings Preceding the First Prehearing Conference

After the formal complaint was filed, between the date of PG&E's Answer and the first PHC on April 8, 2011 a number of additional filings were made by Complainants and Defendant.

1. On December 28, 2010, Defendant filed a Motion to Dismiss the Complaint.
 - On January 7, 2011, Complainants filed a Motion in Opposition to this Motion.
2. On January 12, 2011 Complainants filed a Motion for Summary Adjudication including a Separate Statement of [proposed] Undisputed Material Facts.
 - On February 9, 2011, Defendants filed (1) a Response in Opposition to the Motion for Summary Adjudication; (2) a Request for Official Notice; and (3) a Response to Separate Statement of Undisputed Facts.

- On March 9, 2011, Complainants filed a Motion Requesting Official Notice of a number of documents; we address this motion below in our discussion of this motion for summary adjudication.
 - On March 24, 2011 Defendants responded with Objections to Complainants' Request for Official Notice.
3. On March 23, 2011, Complainants filed a Second Motion for Summary Adjudication, including a Second Separate Statement of [proposed] Undisputed Material Facts.
 - On March 11, 2015, with the permission of the assigned ALJ, Defendants filed a response in opposition to the Second Motion for Summary Adjudication.
 - On March 25, 2015 Complainants filed a reply to the March 11, 2015 Response.¹⁴
 4. On March 25, 2011, Complainants filed a PHC Statement.
 5. On March 29, 2011, Defendants filed a PHC Statement.
 6. On April 1, 2011, Complainants filed a Motion to Compel Discovery. A ruling on this motion was deferred at the April 8, 2011 PHC. We hereby determine this motion to be moot.
 7. On April 5, 2011, Complainants filed a Third Motion for Summary Adjudication, including Separate Statement of [proposed] Undisputed Material Facts.
 - On March 11, 2015, with the permission of the assigned ALJ, Defendants filed a response in opposition to the Third Motion for Summary Adjudication.
 - On March 25, 2015 Complainants filed a reply to the March 11, 2015 Response.¹⁵

¹⁴ As noted earlier, the assigned ALJ suspended the deadlines for responses to all pending motions at the April 8, 2011 Prehearing Conference. This explains the gap between Complainants' motion and PG&E's response.

The initial PHC in this case took place on April 8, 2011. As noted above, at the PHC the assigned ALJ deferred ruling on any of the pending motions listed above, because Complainants and Defendant agreed to attempt to mediate their dispute through the Commission's ADR program. The Commission's Chief ALJ assigned a Neutral ALJ to serve as mediator on April 18, 2011.

3.3. Filings Following the Prehearing Conference

Complainants and PG&E engaged in mediation for approximately nine months. On February 9, 2012, Complainants informed the Neutral ALJ and the assigned ALJ that they wished to "suspend" mediation and proceed to discovery and hearings. A second PHC and a third PHC were held April 5, 2012 and May 25, 2012, respectively.

The originally-filed Complaint was amended by Complainants three times, on February 13, 2012, March 29, 2012, and July 30, 2012. However, on September 9, 2013, Complainants filed a motion to strike the first, second and third amended complaints and to reinstate the original complaint filed in this case. The motion was unopposed. However, the confused and overlapping nature of the filings in this proceeding leads us to conclude that we should leave the amended complaints in the record so that the expository factual material they contain remains a part of the record. The Complaint as originally filed remains in place as well.

¹⁵ See footnote immediately above.

In addition to Complainants' motion to strike the amended complaints, the list below summarizes the Motions, Responses, and Replies to Responses filed after the first PHC in this proceeding:

1. On March 21, 2012, Complainants filed an Emergency Motion to Allow Complainants to Retain SmartMeter at their Home.
 - The assigned ALJ granted this motion on March 21, 2012.
2. On January 15, 2013, Complainants filed a Motion for an Order to Compel PG&E to Investigate PG&E-Owned Wiring (Electric Rule 17.2), for Explanation of Power Usage on Billing Meter While Off Grid with Transformers Off, and to Compel PG&E to Identify and Prosecute Those Responsible for Power Theft and Meter Tampering, and Further to Compel PG&E to Grant Reasonable Online Access to Billing Data.
 - PG&E filed a response on February 8, 2013.
 - Complainants filed a reply to PG&E's response on February 12, 2013.

The requests made in this motion have been addressed separately in this decision as we resolve other pleadings by Complainants. Therefore, we hereby determine this motion to be moot.

3. On February 15, 2013, Complainants filed a Motion for an Order to Allow Plaintiffs to Lock their Privately Owned Tesco Cabinet and related relief.
 - PG&E filed a response on March 4, 2013.
 - Complainants filed a reply to PG&E's response on March 11, 2013.

Based on statements made by Complainants in other filings in this proceeding, we determine this motion to be moot.

4. On February 26, 2013, Complainants filed a Motion for an Order to Compel PG&E to Provide Reasonable Access to Usage Data on Online PG&E Accounts and related relief.

- PG&E filed a response on March 12, 2013.
- Complainants filed a reply to PG&E's response on March 25, 2013.

Based on statements made by Complainants in other filings in this proceeding, we determine this motion to be moot.

5. On April 19, 2013, Complainants filed a Motion to Set Date for Hearing.

As discussed elsewhere in this decision, although it was preliminarily determined that there would be a need for hearings, this case presents a single tariff interpretation issue there. Accordingly, no hearing is needed. Therefore, we deny this motion.

6. On September 12, 2013 Complainants filed a Motion for Ruling on three (3) Unopposed Motions for Summary Adjudication filed January 12, 2011, March 23, 2011 and April 5, 2011.

- PG&E had in fact responded in opposition to the first Motion for Summary Adjudication on February 9, 2011.
- With the permission of the assigned ALJ, PG&E responded to the second and third Motions on March 11, 2015.
- Complainants filed replies to PG&E's responses on March 25, 2015.

We determine this motion to be moot because we rule on each of Complainants' three Motions for Summary Adjudication in this decision.

7. On September 24, 2014, Complainants filed a Motion for an Expedited Ruling on Complainants' Motion to Strike

the First, Second, and Third Amended Complaints, and to reinstate the Original Complaint in this proceeding. The motion included additional material, Exhibit A, of which the Commission may take official notice.

As noted earlier, we have denied Complainants' Motion to Strike the First, Second, and Third Amended Complaints because we wish to retain the factual material in those filings in the record in this proceeding, so we need not rule on the relief sought in this motion. Exhibit A of the September 24, 2014 Motion contains a number of documents and photographs. We determine this motion to be moot.

8. On October 24, 2014 Complainants filed an Amendment to their September 24, 2014 Motion for an Expedited Ruling. The Amendment included additional material, Exhibits A-C, of which the Commission may take official notice.

As noted above, we need not rule on Complainants' September 24, 2014 Motion for an Expedited Ruling because we previously denied Complainants' motion for underlying relief (a ruling on Complainants' motion to strike their amended Complaints). Here, Complainants have amended the September 24, 2014 Motion with three additional exhibits, comprising several documents and photographs. In the event we rely on any of this material in our decision today, they shall be identified as such.

9. On December 22, 2014, Complainants filed a Motion for a Ruling on Complainants' Motion to Strike the First, Second, and Third Amended Complaints, and to reinstate the Original Complaint in this proceeding. The motion included additional material, Exhibits A-D, of which the Commission may take official notice.

As noted earlier, we have denied Complainants' Motion to Strike the First, Second, and Third Amended Complaints because we wish to retain the

factual material in those filings in the record in this proceeding. Exhibits A-D of the December 22, 2014 Motion contain copies of earlier filings by Complainants and some non-material procedural correspondence. We determine this motion to be moot.

3.4. Motions in 2015: Motions for Expedited and Emergency Relief

We list below the two motions filed by Complainants in 2015. We rule on each motion later in this decision.

1. On June 15, 2015, Complainants filed a Motion for an Expedited Injunction, Protective Order, and to Impound PG&E Relay No. 9764 to Preserve Integrity of Evidence.
 - PG&E filed a response on August 20, 2015.
2. On July 27, 2015, Complainants filed a Motion for Emergency Relief, followed on July 30, 2015 by a Second Motion for Emergency Relief. The Second Motion superseded the July 27, 2015 Motion.
 - PG&E filed a response on August 13, 2015.
 - Complainants filed a reply to PG&E's response on August 21, 2015.
 - On September 18, 2015, Complainants filed an amended reply to PG&E's response.
 - On September 30, 2015, PG&E filed a reply to Complainants' amended reply to PG&E's August 13, 2015 response.

4. Jurisdiction

Section 1702 of the Public Utilities Code (Pub. Util. Code) provides that a "complaint may be made ... by any person... by written petition or complaint, setting forth any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of

any order or rule of the commission...". Furthermore, pursuant to Pub. Util. Code § 1709, "in all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive."

5. Recent Motions for Expedited and Emergency Relief

Due to its exigent nature, we begin our formal resolution of this Complaint by resolving Complainants' Second Emergency Motion. To do so, we must also resolve the related motion filed approximately six weeks prior to the Second Emergency Motion: Complainants' Motion for an Expedited Injunction, Protective Order, and to Impound PG&E Relay No. 9764 to Preserve Integrity of Evidence. Resolving these motions at the outset of our deliberations enables us to make certain findings of fact, and draw legal conclusions from those findings that will assist us in resolving the primary dispute before us, the proper location of Complainants' SmartMeter.

5.1. Motion for an Expedited Injunction, Protective Order, and to Impound PG&E Relay No. 9764 to Preserve Integrity of Evidence.

On June 15, 2015, Complainants filed a Motion for an Expedited Injunction, Protective Order, and to Impound PG&E Relay No. 9764 to Preserve Integrity of Evidence (Motion for Expedited Action). Complainants request that a device that they identify as "PG&E Relay No. 9764" be removed and impounded to preserve evidence, and "to prevent PG&E from inflicting further harassment and bodily harm upon Complainants."¹⁶

¹⁶ As explained above, PG&E Relay Number 9764 is a cellular communications device that is part of PG&E's SmartMeter system. The purpose of such relays is to gather usage data from the SmartMeters of individual PG&E customers in the vicinity of the relay, and pass that data along in PG&E's data collection system.

Complainants allege that PG&E was conducting electronic harassment against complainants by means of this relay, which is attached to the PG&E transformer at Complainants' service delivery point:

That relay impresses a 60 Hz ELF signal on complainants' conductors and house wiring. This causes a "roaring" in the house wiring, typically at night, ringing in the ears, and inability to sleep. The interference/ELF sine wave imposed on complainants' line by the PG&E relay is believed to have inflicted severe bodily harm on complainant, Janet Hetherington--a five-day hospital stay including 24 hours in the intensive care unit (ICU) from June 4-June 8.¹⁷

Complainants further assert that,

The primary purpose of the relay is not to communicate on the cellular band, but rather to impose a harmful extremely low frequency (ELF) sine wave on complainants' conductors.¹⁸ This makes complainants' house wiring hum and "roar" at night and [causes] their ears to ring. ... It also enables controlled excitation with a [high frequency] HF signal that has caused or can cause unlawful violence, serious bodily injury and/or credible threat of violence to

¹⁷ June 15, 2015 Motion at 2. "ELF" is an abbreviation of "extremely low frequency." See following footnote for a non-technical explanation of Complainants' assertions.

¹⁸ According to Complainants, "the relay imposes a 60 Hz ELF power signal measured on complainants' line adjacent the relay, and on complainants' line coming out of their 5000 Volt step-up transformer. The 60 Hz signal continues along complainants' line [...] all the way out to complainants' house, 1.5 miles to the west. ... At random times the walls of complainants' house hum and roar-sounding as if a generator is running. The noise from the relay-generated ELF signal causes complainants' ears to ring and prevents them from sleeping.... The relay, acting in conjunction with a conventional law enforcement handheld HF stun gun, is believed responsible for inflicting severe bodily harm. ... The Commission may take Judicial Notice of U.S. Patent No 8,600,290, issued Dec. 3, 2013 (Lockheed Martin). There, a low frequency signal such as an ELF sine wave at the target may be modulated with a high frequency signal aimed at the target. Referring to the Figures and to column 3 lines 59-67, a low frequency at the target (such as the PG&E ELF frequency) is used with a HF signal (HF stun gun) to incapacitate a target." (see Motion for Expedited Action at 6-7)

Complainants within the meaning of CCP [Code of Civil Procedure] 527.6.¹⁹

Complainants conclude that removing the relay would not create any disadvantage to legitimate PG&E service.

5.1.1. Site Visits: July 7, 2015 and July 24, 2015

Due to the alleged health and safety concerns raised by this motion, the assigned ALJ directed PG&E to disconnect the relay. PG&E disconnected the relay as directed. In addition, the assigned ALJ directed PG&E to provide documentation of the interactions between Complainants and PG&E personnel over the disputed relay.

Several days after disconnection of the relay, Complainants requested complete physical removal of the relay. For this reason, the ALJ scheduled a site visit on a date mutually acceptable to Complainants and PG&E. This visit took place on July 7, 2015 and was attended by Complainants, the ALJ, PG&E's counsel and a PG&E troubleman. During the site visit, PG&E removed the relay and the ALJ subsequently conveyed it to the Commission's offices in San Francisco for safekeeping. The ALJ and PG&E personnel also viewed the configuration of the transformers and metering at PG&E's service delivery point and at Complainants' home.

The assigned ALJ scheduled a follow-up site visit for July 24, 2015. The mutually agreed-upon purpose of this visit was to test whether the PG&E relay could have caused any of the health and safety problems described in Complainants' June 15th Motion. At the request of the assigned ALJ and in collaboration with Complainants, PG&E proposed a plan to determine whether

¹⁹ *Id.* at 4.

the 60 Hz signal detected on the Hetherington's private service line was caused by Relay 9764. In addition to the ALJ, this visit was attended by Complainants and their power line location expert, and by PG&E counsel, a PG&E troubleman, and an independent expert retained by PG&E. The assigned ALJ requested that PG&E also bring a "power quality" expert to the site visit, but PG&E declined to do so.

During the July 24th site visit, PG&E reinstalled Relay 9764 so that both experts could perform the required tests. Participants also walked the path of Complainants' underground line to the site of an underground pump that may have been connected to the line. Through mutually agreed upon testing, participants determined that this was not the case. Participants next visited Complainants' home for further testing centered around Complainants' step-down transformer and Complainants' meter cabinet (the location of the CPUC test meter).

PG&E's expert submitted a detailed report summarizing the results of the testing.²⁰ The results are summarized below:

- The field test results concluded that the 60 Hz signal present on Complainants' 4 kV service line is unaffected by PG&E's SmartMeter relay. The 60 Hz signal remained unchanged after Relay 9764 was re-installed. According to PG&E's expert, "the relay did not change the already-present 60 Hz signal on the underground 4 kV power line."

²⁰ See August 20, 2015 PG&E Opposition to Hetherington's Motion for Expedited Injunction, Protective Order, and to Impound PG&E Relay No. 9764 to Preserve Integrity of Evidence, Attachment A.

- The Report found that the 60 Hz signal on the Hetheringtons' 4 kV service line "disappeared" when the ground wire from the Hetherington house, including the solar panels, inverter, and batteries, was disconnected from the 4 kV service line's neutral wire.²¹

PG&E states that Complainant did "acknowledge that PG&E SmartMeter Relay 9764 is not the source of the 60 Hz ELF signal on his 4 kV service line: "On July 10, 2015, following removal of the relay by ALJ Roscow, but before the July 24th relay testing, Mr. Hetherington admitted that conditions described in the Motion were still present even without the relay."²²

5.1.2. Defendant's Response to Motion for Expedited Action

Following the site visits, at the direction of the assigned ALJ, PG&E formally responded to the Motion for Expedited Action on August 20, 2015. PG&E argues that the motion calling for removal of PG&E Relay 9764 should be dismissed, because the July 24, 2015 field testing confirmed that the relay does not cause harmful interference on Complainants' service line. Furthermore, based on those test results, PG&E argues that "since it has been conclusively determined that SmartMeter Relay 9764 is not the source of the 60 Hz signal on

²¹ PG&E further explains this result as follows (*Ibid.* at 5. Capitalized words in brackets added for clarity):

By [PREVIOUSLY] turning off [ONLY] the power switch at their test meter switch panel, the Hetheringtons opened the connection between the positive (+) service wires and the house. [HOWEVER] the neutral (-) remained hard-wired to the Hetherington's ground wire. Although tracing the actual source of the 60 Hz signal was beyond the scope of the SmartMeter relay testing here, this ground-to-neutral path remained even when the positive switch was opened (disconnected). Thus, when [BOTH] the service line neutral and house grounds were disconnected at the test meter switch box, the 60 Hz signal disappeared.

²² *Ibid.*

the Hetheringtons' underground 4 kV service line, it follows that the subject relay cannot be the source of the other impacts alleged by Complainants:

It is unknown whether the "roaring" sounds and the health effects the Hetheringtons complain of are the result of the 60 Hz ELF signal found on their 4 kV underground service line. However, the testing of Relay 9764 ... [has] proven that PG&E's SmartMeter relay is not the source of that 60 Hz signal on the Hetheringtons' service line. This conclusion was confirmed by the unsolicited statement of Mr. Hetherington. Therefore, since SmartMeter Relay 9764 is not the cause of the 60 Hz signal, it cannot be the cause, either singly or in combination, of the alleged health effects. This is not to discount the seriousness of these effects; it is merely to say that the reported health and other effects cannot be attributed to PG&E's relay.²³

5.1.3. Ruling on June 15, 2015 Motion for Expedited Action

We deny Complainants' Motion for an Expedited Injunction, Protective Order, and to Impound PG&E Relay No. 9764 to Preserve Integrity of Evidence. As described in detail above, field testing of the device proved that this PG&E SmartMeter relay is not the source of the 60 Hz signal previously identified on the Complainants' service line.

Although we deny Complainants' motion, certain aspects of PG&E's initial response to Complainants, between their initial contact with PG&E and the point that the assigned ALJ became directly involved, are the subject of a separate ruling by the assigned ALJ ordering PG&E to show cause to why it should not be sanctioned by the Commission for violation of Rule 1.1 of the Commission's Rules of Practice and Procedure (Rules).

²³ *Ibid.* at 6, 7.

In their Motion for Expedited Action, Complainants state that they had “advised PG&E by telephone and e-mail for over a month (May 4) about the harmful interference; including an e-mail to [PG&E’s attorney of record] and [a manager in PG&E’s Service Planning Department]. Those e-mails stated that the subject relay causes humming and roaring in the house wiring at night producing ringing in the ears and making sleep difficult if not impossible.”²⁴

As noted above, in addition to conducting two site visits to oversee the removal of the relay and its subsequent testing and re-installation, the assigned ALJ also directed PG&E to provide documentation of the interactions between Complainants and PG&E personnel over the disputed relay. On July 1, 2015 PG&E responded and produced a set of internal e-mails that established the chronology of the company’s response to Complainants’ repeated requests for assistance. As detailed in the ALJ’s ruling, this series of internal PG&E communications ended 24 days later with no direct action by PG&E and no evidence of further communication with Complainants regarding what they describe as an “intolerable” matter.²⁵

5.2. Second Emergency Motion

On July 27, 2015, Complainants filed a Motion for Emergency Relief, requesting that the Commission order PG&E to investigate what they describe as newly discovered evidence of unauthorized connections to Complainants’ electric line, and further order PG&E to stop harmful interference in

²⁴ June 15, 2015 Motion for Expedited Action at 3. Complainants’ Exhibit D, attached to the Motion, provides copies of e-mails sent by Complainants to PG&E on May 5, May 6, May 11 and June 1, 2015.

²⁵ *Id.* at 5 and Exhibit D, June 1, 2015 e-mail. sent by Complainants to PG&E.

Complainants' house wiring as a result of feedback from the unauthorized connections.²⁶ The July 27th motion was superseded by a Second Motion for Emergency Relief filed by Complainants on July 30, 2015. In the second motion, Complainants use updated billing data provided by PG&E to update the analysis they provided in the first motion. We consider the July 27th motion to be moot and address the Second Motion for Emergency Relief here.

Complainants request that the Commission order PG&E to conduct a thorough investigation pursuant to PG&E's Electric Rule 17.2.B "to investigate newly discovered evidence of unauthorized connections to Complainants' electric line that result in other persons' electric usage being applied to Complainants' PG&E bill, and further order PG&E to stop harmful interference in Complainants' house wiring as a result of feedback from the unauthorized connections."²⁷

Complainants also cite PG&E's Electric Rule 18.A, which requires separate metering of separate premises.²⁸ Here, the separate premise is the

²⁶ As noted above, the "emergency" referenced in the motion was Complainants' wish to add to the record of the proceeding before this occurred. See July 27, 2015 Motion at 2: "This motion is believed necessary to effectuate a just result and to augment the factual record with newly discovered evidence prior to the imminent release of a decision in CPUC case C.10-10-010. Therefore, complainants respectfully request that the Commission expedite this motion."

²⁷ See PG&E Electric Rule 17.2, "Adjustment of Bills for Unauthorized Use." Section A of the Rule, "Unauthorized Use Defined," lists situations that are considered unauthorized use. Section B of the Rule, "Investigation of Unauthorized Use," states "where unauthorized use is suspected by PG&E, PG&E shall promptly conduct an investigation."

²⁸ See PG&E Electric Rule 18, "Supply to Separate Premises and Submetering of Electric Energy." Section A, "Separate Metering" provides that "Separate premises, even though owned by the same customer, will not be supplied through the same meter, except as may be specifically provided for in the applicable rate schedule."

location that Complainants suspect is diverting power from their underground service line.

To prove their assertions, Complainants present their comparative analysis of a combined set of hourly usage data from their billing meter and their CPUC test meter from July 15 through July 23, 2015. During this period, Complainants were connected to PG&E 24 hours a day, and Complainants' step-up and step-down transformers were energized during this time (Complainants went "off-grid" sometime on July 22nd). An inspection of the data indicates that there is indeed a notable difference between the usage measured by each meter. Based on their analysis, Complainants conclude that the data is sufficient evidence to warrant action by the Commission, pursuant to PG&E's Rule 17.2, to compel PG&E to investigate what Complainants allege to be unauthorized power diversion to supply a structure on a neighboring plot of land.

Complainants also assert that their analysis refutes PG&E's argument throughout this proceeding that any differences between the usage data recorded simultaneously by the billing meter and the CPUC test meter are solely due to transformer-related losses. Based on their analysis, Complainants argue that some factor in addition to transformer losses must explain the observed differences, which thus provides further reason for the Commission to order PG&E to undertake an investigation. Complainants also raise the possibility that the CPUC test meter may have been "hacked" to cover up unauthorized

diversion of power from Complainants' underground service line during this period.²⁹

5.2.1. PG&E's Response to the Second Emergency Motion

PG&E responded to the Second Emergency Motion on August 13, 2015. PG&E asserts the motion should be denied for failure to meet the evidentiary burden of establishing that PG&E has violated any rule or order of the Commission. According to PG&E, the data from the billing meter and CPUC test meter does not reasonably support a claim of unauthorized diversion, because that data shows there is "consistent uniformity in the measured loss" between these two meter locations. PG&E asserts that Complainants offer only "speculation and conjecture as to the possible cause of the measured loss," while entirely discounting the operation of their two transformers.³⁰

PG&E supports its response with two sworn declarations: one from a PG&E Electric Distribution Planning Supervisor (First Transformer Declaration) and one from the Supervisor in the SmartMeter Operations Center within Information Technology Infrastructure and Operations at PG&E (Usage Data Declaration).

First, PG&E observes that the comparative metering data actually reveals a very definite usage pattern that is "nearly identical" at both the billing meter and test meter locations. PG&E notes that the data and accompanying charts

²⁹ Second Emergency Motion at 3, 8-9. Complainants suggest that the Commission take judicial notice of their Exhibit E, a ZDNet article from 2012, "Smart Meter Hacking Tool Released." According to Complainants, "this is a well-known, widely publicized, technical on line journal showing that software tools for hacking smart meter data are readily available."

³⁰ PG&E's August 13, 2015 response to Complainants' Second Motion for Emergency Relief at 6-7.

downloaded from PG&E's customer website by Complainants is charted on differing scales, depending on the level of usage charted. PG&E presents a single chart of the same data in Exhibit A of the Usage Data Declaration. PG&E suggests that the disparities between the meters alleged by Complainants disappear when the data is plotted consistently.

Second, PG&E notes that any diversion of energy would create a significant difference between the two meters, because it would register at the billing meter, but it would not register at the test meter, which is beyond the point of any possible unauthorized connection to Complainants' service line. However, according to PG&E, "the metering data does not show any such increases or "spikes" in energy usage at the billing meter alone, with no corresponding use registered at the test meter this usage pattern would be expected if, as alleged by Mr. Hetherington, the neighbor was diverting electricity from his customer-owned line at certain times of the day, such as to operate equipment or for lighting."³¹ PG&E concludes that the measured loss identified in the metering data is entirely attributable to the operation of Complainants' step-up and step-down transformers, even though Complainants do not acknowledge there is loss associated with the transformers.

PG&E addresses the concept of transformer losses in the First Transformer Declaration. After first describing and diagramming the configuration of Complainants' buried service lines and the step-up and step-down transformers, the Declaration states:³²

³¹ *Ibid.* at 3.

³² First Transformer Declaration, paragraphs 3-5.

- There will be losses experienced by this system even though [Complainants] are not consuming power at their house. The no-load losses experienced in this system will be generated in its majority by the two transformers.
- It is reasonable to expect no-load losses at minimum to be between 0.150 kWh and 0.198 kWh.

With respect to Complainants' usage data, PG&E's First Transformer Declaration concludes:³³

- The measured losses are very similar to what would be expected in a system such as Mr. Hetherington's. The most important thing to notice in these measured values is that there is very little variability in the losses whether the load is zero at the test meter or full customer load. Because the customer's load is relatively low in relationship to the capability of the transformer, the most significant portion of the losses are due to the core and iron losses, or no-load loss.

Third, PG&E asserts that Complainants' motion fails to establish any violation of Rule 17.2 that would require PG&E to investigate neighboring property to locate what Complainants allege to be an unauthorized electrical connection. Rule 17.2 requires that "where unauthorized use is suspected by PG&E, PG&E shall promptly conduct an investigation." Where, as appears to be the case here, PG&E does not reasonably suspect that unauthorized use is the cause of the measured loss, it is not required to investigate.³⁴

Finally, PG&E also notes that Complainants' allegation that the test meter may have been hacked is without any evidentiary support, other than "a

³³ *Ibid.*, paragraph 6.

³⁴ *Ibid.* at 4-5.

reference to an obscure press release about a software company marketing a product that allegedly can hack SmartMeters ... no weight should be given to this conclusory allegation.”³⁵

Based on all of the above, PG&E asserts that Complainants’ motion offers “no credible evidence of any unauthorized diversion from the customer-owned line that would support any further investigation.”³⁶

5.2.2. Complainants’ Reply to PG&E’s Response

With the permission of the assigned ALJ, on August 21, 2015 Complainants filed a reply to PG&E’s response, and amended that reply on September 18, 2015. Complainants’ amended reply provides a letter from a consultant who examined the nameplate information about their step-up and step-down transformers, as well as photographs of the wiring of the transformers taken during the July 25, 2015 site visit. The consultant addresses the issue of transformer losses, and also states that his examination of the photographs indicates that “it’s clear that there are two conductors connected to the same point as the step-up transformer. This raises the question, ‘where does the other cable go and what is it connected to?’ There’s no reason to use two conductors connected to the same point to supply a single device.”³⁷

Complainants conclude that “logic and undisputed terminal connections of the transformer demand that there must be a second illegal step-down transformer

³⁵ *Ibid.* at 6.

³⁶ *Ibid.* at 7.

³⁷ Complainants’ Amended Reply to PG&E, Exhibit E.

or constant load...,” countering PG&E’s position that no unauthorized diversion is occurring.³⁸

5.2.3. PG&E’s Reply to Complainants’ Amended Reply to PG&E’s Opposition to Second Motion for Emergency Relief

With the permission of the assigned ALJ, on September 30, 2015, PG&E filed a Reply to Complainants’ Amended Reply.³⁹ PG&E responds to two renewed assertions made by Complainants in their September 18, 2015 Amended Reply, again asserting that the metering data shows no variability in the measured loss at the billing meter and test meter and asserting that Complainants failed to submit any evidence that would account for this lack of variability in the metering data. PG&E also asserts that “the general conclusions offered by the Hetheringtons’ consultant are consistent with PG&E’s own findings that the customer-owned transformers account for the measured loss reported in the metering data.”⁴⁰ PG&E supports its reply with a second declaration from a PG&E Electric Distribution Planning Supervisor (Second Transformer Declaration) and one from a PG&E Troubleshooter (Troubleshooter Declaration).

First, PG&E again asserts that the evidence establishes there is in fact measurable “no-load loss” attributable to customer-owned transformers:

Complainants’ consultant [Mr. Huffman] acknowledges he would expect there would be some line losses from the

³⁸ *Ibid.* at 6.

³⁹ As of this filing, the assigned ALJ determined that the record in this proceeding is closed and the matter is submitted for a decision by the Commission.

⁴⁰ PG&E, September 30, 2015 Reply to Complainants’ Amended Reply at 4.

transformers. According to Mr. Huffman, transformer losses are “typically” very low, “roughly” 1% of the transformer nameplate kVa. Mr. Huffman’s statement is consistent with the projection of transformer losses [in PG&E’s First Transformer Declaration].⁴¹

PG&E also provides a short technical explanation of the types of transformer losses and clarifies the differences between Complainant’s expert and PG&E’s expert, and concludes that “the evidence submitted by PG&E shows that these measured losses in the metering data are the real losses associated with operation of Mr. Hetherington’s transformers under no-load and minimum loading conditions.”⁴²

PG&E next addresses the question of the “second cable” attached to the Hetherington’s step-up transformer and argues that Complainants fail to establish there is an unauthorized connection to their private line:

Mr. Huffman’s letter states that there is a second cable attached to the Hetherington’s step-up transformer. Mr. Huffman appears to draw this conclusion based entirely on his review of the nameplate information. Mr. Huffman does not state that he performed a site visit and inspected the Hetheringtons’ customer-owned transformers. Mr. Huffman does not state that he confirmed the presence of an unauthorized connection to the Hetherington’s system. Mr. Huffman’s letter only questions the purpose of a second line, and notes it would not be required to provide service to a single device.

PG&E’s troubleman, Mr. Robertson, observed both Mr. Hetherington’s step-up and step-down transformers which were open for inspection during the July 24, 2015 site

⁴¹ *Ibid.* at 2, citing Second Transformer Declaration, Paragraph 2.

⁴² *Id.*

visit. This inspection revealed there were two separate cables at both the step-up and step-down transformer locations. Mr. Robertson concludes that both cables provide service to the Hetheringtons.⁴³

5.2.4. Ruling on July 30, 2015 Second Emergency Motion

We deny Complainants' Second Emergency Motion because Complainants have not met the evidentiary burden of establishing that PG&E has violated any rule or order of the Commission. We have conducted our own review of the data and PG&E's analysis, and conclude that the metering data does not support Complainants' claim of diversion.

First, our examination of the data from the billing meter and the CPUC test meter confirms that there exists a consistent uniformity in the measured difference between the two locations throughout the test period: there is no significant variation in this difference between one hour and the next. This difference is logically attributable solely to transformer losses. We find that the comparative analysis of the recorded billing data proves that the observable difference in usage between Complainants' billing meter and Complainants' CPUC test meter is entirely due to no-load transformer loss.

Second, we agree with PG&E's analysis of the data with respect to possible diversion of energy. The only explanation for the exact mirroring of the usage curves measured by each meter--with an unchanging quantitative

⁴³ *Ibid.* at 3, citing Troubleman Declaration at paragraph 3: "On July 24, 2015 I participated in the site visit relating to the testing of PG&E's SmartMeter Relay No. 9764. During this site visit, I observed Mr. Hetherington's step-up and step-down transformers, both of which were opened for inspection. Mr. Hetherington's 4,000 V (4 kV) private service line contains two separate cables at both the step-up and step-down transformer locations. I conclude that both cables provide service to Mr. Hetherington."

difference between the curves--that would support a finding of diversion would be if the usage by the "diverter" exactly matched the minute-by-minute usage by Complainants, but differed from that usage by some multiple that never varied. It is simply not possible that two separate structures could exhibit such usage. Therefore, we find that the evidence does not support Complainants' claim that power diversion from their buried service line is taking place. We further find that there is no need for PG&E to further investigate such a possibility.⁴⁴

For these reasons, we deny Complainants' request that the Commission order PG&E to investigate newly discovered evidence of unauthorized connections to Complainants' electric line, and that the Commission further order PG&E to stop harmful interference in Complainants' house wiring as a result of feedback from any unauthorized connections.

5.3. Conclusion Regarding Events in 2015

We first note with approval the recent collaboration shown between Complainants and PG&E, their respective outside experts, and Commission staff in resolving these urgent matters. By working together, participants conducted an analysis that shed substantial light on Complainants' concerns. With respect to Complainants' June 15, 2015 motion and Complainants' July 30, 2015 motion, based on our analysis of Complainants' metered usage

⁴⁴ With respect to the "second cable," we make no finding of fact regarding its purpose because the Troubleman Declaration simply includes the statements of PG&E's Troubleman that "During this site visit I observed Mr. Hetherington's step-up and step-down transformers" and "I conclude that both cables provide service to Mr. Hetherington" with no basis or explanation for that conclusion. We give this conclusory statement no different evidentiary weight than the Complainants' consultant's speculation regarding "where does the other cable go and what is it connected to?"

data, PG&E's analysis of that data and the supporting sworn declarations of PG&E personnel, and the results of the field testing at Complainants' home, the evidence supports the following findings of fact:

1. PG&E's SmartMeter relay is not causing interference on Complainants' service line, so PG&E's SmartMeter relay is not causing the health and safety effects reported by Complainants in their June 15, 2015 Motion for Expedited Relief.
2. The comparative analysis of the recorded billing data supports a conclusion that the observable difference in usage between Complainants' billing meter and Complainants' CPUC test meter is entirely due to no-load or minimum-load transformer losses.
3. The evidence does not support Complainants' claim that power diversion from their buried service line is taking place.

We now turn to the primary disputed issues presented in C.10-10-010.

6. The Rule 16 Dispute

The original disputed matters presented in this Complaint require the Commission to interpret PG&E's Electric Rule 16, "Service Extensions," as it applies given the facts in this case. Having decided the matters of immediate concern presented by Complainants in their June 2015 Motion for Expedited Action and their July 2015 Second Emergency Motion, we now address and decide the remaining outstanding matters in this proceeding in the order in which they were presented to the Commission.

6.1. Summary of C.10-10-010 and PG&E's Answer

Complainants request placement of their SmartMeter at their "premises" pursuant to Electric Rule 16.B.1.b. In relevant part, Electric Rule 16.B.1.b provides:

All meters and associated metering equipment shall be located at some protected location on Applicant's Premises as approved by PG&E.⁴⁵

Complainants suggest that PG&E's ability to remotely read customers' SmartMeters supports their request that their meter be located adjacent to their home, rather than at PG&E's existing service delivery point over a mile from their home. Complainants also cite to Pub. Util. Code §§ 8360, 8362(a) and 8366 (Smart Grid Systems) to support their request.⁴⁶

In its November 29, 2010 Answer to the Complaint, PG&E characterizes the matter as a dispute "as to who should pay the costs associated with the relocation of a meter for electric service to residential property, the Hetheringtons or PG&E."⁴⁷ PG&E asserts that in September 2000, Complainants and PG&E mutually agreed on the existing meter location as part of a line extension contract. Furthermore, when in April 2009 the Complainants requested that the meter be relocated to a new location near their residence,

⁴⁵ PGE's Electric Rule No. 1, "Definitions" includes in relevant part this definition of "Premises": "All of the real property and apparatus employed in a single enterprise on an integral parcel of land undivided..."

⁴⁶ See Pub. Util. Code 8360 (emphasis added): "It is the policy of the state to modernize the state's electrical transmission and distribution system to maintain safe, reliable, efficient, and secure electrical service, with infrastructure that can meet future growth in demand and achieve [a number of goals, including improved security of the electric grid], which together characterize a smart grid..."

⁴⁷ Answer of PG&E at 1.

PG&E states that it was willing to relocate the meter, provided that Complainants paid the relocation costs as required under PG&E's Electric Rule 16.F.2.b.⁴⁸

PG&E further asserts that as part of the relocation work, Complainants proposed to transfer ownership and future maintenance responsibility of their privately-owned service line to PG&E. However, because the privately-owned service line installed by Complainants is direct buried cable, and direct buried cable is not a PG&E-approved method of construction, PG&E would not agree to assume ownership and maintenance of the private line.

PG&E concludes that the Commission should dismiss the Complaint because the Complaint fails to state facts sufficient to relieve Complainants of their obligation under Rule 16.F.2.b to pay for the relocation of the meter, and because Complainants have failed to show that PG&E has violated any law or Commission rule or order.

6.2. PG&E's Motion to Dismiss Complaint

On December 28, 2010, PG&E filed a motion to dismiss C.10-10-010 on the grounds that the Complaint fails to state a claim under Pub. Util. Code §§ 1702 and/or 1709.

Consistent with its November 29, 2010 Answer to the Complaint, PG&E asserts that the Commission lacks jurisdiction to grant the requested relief, and

⁴⁸ In relevant part, Rule 16.F.2.b provides: "Any relocation or rearrangement of PG&E's existing Service Facilities at the request of Applicant (aesthetics, building additions, remodeling, etc.) and agreed upon by PG&E shall be performed in accordance with Section D above [Responsibilities For New Service Extensions] except that Applicant shall pay PG&E its total estimated costs.

that C.10-10-010 fails to show that PG&E violated any provision of law or of any order or rule of the Commission:

The Complaint fails to allege any facts to show the meter location established as part of the Hetheringtons' line extension contract violated any rule or order of the Commission or any tariff provision.

Under the facts presented in the Complaint and the matters for which the Commission may take official notice, PG&E had the discretion [in 2000, when the Hetheringtons initiated PG&E service] to waive its normal Service Delivery Point location under Rule 16.C.5.

The Hetheringtons' request to relocate the meter [now] is governed by Electric Tariff 16.F.2.b, which requires that the Hetheringtons be financially responsible for the relocation costs. The Complaint fails to state any facts to relieve the Hetheringtons of their obligation under Rule 16.F.2.b to pay for the relocation.

Finally, the Complaint fails to show any violation of the Public Utilities Code provisions that support the use of Smart Grid Systems. The Complaint improperly seeks relief relating to the location of meters utilizing smart grid technology that cannot be granted in an individual complaint case.⁴⁹

PG&E's Electric Rule 16.C governs Service Extensions and Service Lateral Facilities; part 5 of the Rule governs "Unusual Site Conditions" as follows:

UNUSUAL SITE CONDITIONS. In cases where Applicant's building is located a considerable distance from the available Distribution Line or where there is an obstruction or other deterrent obstacle or hazard such as plowed land, ditches, or inaccessible security areas between PG&E's Distribution Line and Applicant's building or facility to be served that would

⁴⁹ PG&E Motion to Dismiss Complaint 10-10-010 at 9-10.

prevent PG&E from prudently installing, owning, and maintaining its Service Facilities, PG&E may at its discretion, waive the normal Service Delivery Point location. In such cases, the Service Delivery Point will be at such other location on Applicant's property as may be mutually agreed upon; or, alternatively, the Service Delivery Point may be located at or near Applicant's property line as close as practical to the available Distribution Line.

For the reasons listed above, PG&E asks the Commission to issue a decision finding the Complaint fails to state a claim upon which relief can be granted and on that basis denying Complainants' claims and dismissing the Complaint.

On January 7, 2011, Complainants filed a "Motion in Opposition" to PG&E's motion to dismiss the Complaint. Complainants requested that the Commission deny PG&E's motion to dismiss the Complaint on the grounds that the complaint and supporting documents did, in fact, set forth specific, valid and justiciable causes of action. These include, in relevant part:

- Unlawful acts of meter location resulting in imposition of fraudulent and therefore illegal electric bills, roughly four times what they should be as measured by the same smart meter located at plaintiffs' house for six months;
- Violations of the law relating to meter location, and in particular smart meter location under Electric Rule 16.B.1.b; and
- Violations of energy conserving and security mandates imposed by SmartMeter legislation Pub. Util. Code §§ 8360, 8362, 8363 and 8366 governing smart meter deployment.

6.2.1. Discussion

Defendant's December 28, 2010 motion to dismiss C.10-10-010 is denied. PG&E correctly identifies its Electric Rule 16.C.5 regarding its discretion to waive its normal Service Delivery Point location. PG&E then states:

As the Complaint acknowledges, the Hetheringtons were informed of the existing meter location at the time they entered into a line extension contract in 2000. The Hetheringtons concede that they agreed to the meter location...."⁵⁰

We have reviewed the sections of the Complaint cited by PG&E, and conclude that PG&E has misrepresented the plain meaning of Complainants' words in a manner that is misleading to this Commission. This was but one of several misrepresentations made by PG&E on the record.

Specifically, PG&E cites the Complaint at page 6, lines 23-25, where Complainants state:

In 2000, immediately before we were to be hooked up to power, two PG&E employees came out to our house and said, "You want the meter out there, don't you?" (Referring to the neighbor 1.5 miles away.)

This statement is hardly an "acknowledgement" by Complainants that they were informed of the existing meter location, much less a concession on their part that that they agreed to that location, as PG&E asserts in its motion. Furthermore, PG&E fails to acknowledge Complainants' characterization, of their interaction with PG&E's employees. In the very next sentence Complainants state:

There was no informed consent; no discussion of what meter location meant, no hint or suggestion that such location was permanent, no mention of pros or cons, no anticipation of a future smart meter that could be read remotely...

This is not the only time PG&E misrepresented the record.

⁵⁰ *Id.* at 3-4. PG&E cites Complaint at 6, lines 23-25, and at 11, lines 9-12 and 17-19.

For example, PG&E also cites the Complaint at page 11, lines 9-12 and 17-19. On lines 9-12, Complainants repeat their description of the 2000 visit to their home by PG&E employees. At lines 17-19, Complainants state as follows:

Our main concern was that we didn't want PG&E meter reading trucks driving at unsafe speeds on our gravel road in the winter. PG&E expressed that it did not want its trucks traveling an extra three mile round trip (1.5 miles each way) to read our meter.

PG&E fails to acknowledge the following sentences which summarize Complainants' understanding of the meaning of the events during the 2000 site visit:

Accordingly, any "negotiated agreement" was obtained by mistake, without full disclosure, and solely for reasons that benefited PG&E meter trucks.

The smart meter now obviates the need for meter reading trucks, and thus the need to locate a meter 1.5 miles away from the premises.

Complainants' statements consist primarily of factual information, as well as some legal argument based on those facts. Contrary to PG&E's representations, these statements do not support PG&E's claim that the Complainants "concede that they agreed to the meter location."

In short, PG&E's argument and supporting citations weaken rather than strengthens its motion. We disagree with PG&E regarding whether the Complaint fails to allege any facts to show the meter location established as part of the Hetheringtons' line extension contract violated any rule or order of the Commission or any tariff provision. Thus, the question of whether PG&E properly followed its Electric Rules is squarely before us. Furthermore, Complainants are not limiting their allegations to the events in 2000, although

those events are part of the overall fact pattern in this proceeding. Because events since that time inform our analysis of whether the requested relocation of the SmartMeter is warranted today, we conclude that Complainant has set forth a claim upon which relief could be granted, and that PG&E's motion to dismiss C.10-10-010 should be denied.

Having declined to dismiss the Complaint, we next turn to Complainants' motions for summary adjudication of the matter before the Commission.

6.3. Motions for Summary Adjudication

As noted above, Complainants filed three Motions for Summary Adjudication (MFSA) in this proceeding, on January 12, 2011, March 23, 2011, and April 5, 2011. In each instance, Complainants provided a proposed Separate Statement of Undisputed Material Facts, leaving room in each document for PG&E's responses. PG&E responded to these motions on February 9, 2011 (Response to First MFSA) and March 11, 2015 (Responses to Second and Third MFSA). In each instance, PG&E also responded to Complainants' proposed Separate Statement of Undisputed Material Facts. Complainants replied to each of PG&E's responses.⁵¹

A motion for summary adjudication, or "summary judgment," is appropriate where the evidence presented indicates there are no triable issues as to any material fact and that, based on the undisputed facts, the moving party is entitled to judgment as a matter of law. (California Code of Civil Procedure, § 437c (Section 437c)). While there is no express Commission rule for summary judgment motions, the Commission looks to Section 437c for the standards on

⁵¹ As noted above, on March 9, 2011 Complainants also filed a Request for Official Notice of a number of documents in support of their First MFSA. We resolve this request below.

which to decide a motion for summary judgment. In relevant part, Section 437c provides:

The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Thus, the Commission's consideration of each motion for summary judgment requires answers to two questions: (1) does the evidence presented indicate that there are no triable issues as to any material fact, and (2) based on the undisputed facts, is the moving party entitled to judgment as a matter of law? We turn to those questions for each Motion below.

6.3.1. Complainants' First Motion for Summary Adjudication

In their First Motion for Summary Adjudication, Complainants request that the Commission issue the following orders:

1. That PG&E shall locate the SmartMeter, capable of being read remotely, to Complainants' premises, meaning to the existing meter socket at the true service point at plaintiffs' house, the integral parcel of land, defined under Electric Rule 16.H, in accordance with Pub. Util. Code § 8360, 8362(a), 8366 and Electric Rule 16.B.1.b.⁵²
2. In the alternative, that PG&E shall move the SmartMeter to the existing meter socket at plaintiffs' house located on the secondary side of plaintiffs' transformers in accordance with Electric Rule 2.D.3.c.⁵³

⁵² PG&E's Electric Rule 16.H provides definitions related to Service Extensions. PG&E's Electric Rule 16.B.1.b provides that a customer's meter is to be located at some protected location on the Applicant's Premises.

⁵³ PG&E's Electric Rule 2.D.3.c is entitled "Description of Service General Load Limitations."

3. That pursuant to Electric Rule 17.2, an unbiased, non-local office of PG&E or other utility or entity subject to the jurisdiction of the Commission shall investigate and resolve the undisputed discrepancy in electric power usage between the smart meter located at plaintiffs' house and the same smart meter located 1.5 miles away on another's land. Such resolution shall include, but not be limited to severing illegal power diversions and removing illegal service equipment, such as transformers or the like.⁵⁴

6.3.1.1. Defendant's response

PG&E responded to Complainants' First Motion for Summary Adjudication and Complainants' Separate Statement of Undisputed Facts on February 9, 2011. PG&E also filed a Request for Official Notice on the same day. PG&E requests that the Commission take official notice of the following four documents, provided as Exhibits A-D: (1) a Parcel Map recorded in December 1986 in the Official Records of San Mateo County; (2) a Grant Deed recorded on November 30, 1995 as part of the Official Records of San Mateo County; (3) PG&E's Electric Tariff Rule 16; and (4) Electric Tariff Rule 2. PG&E's request is granted.

In its response, PG&E disputes many of the facts listed by Complainants in their proposed Separate Statement of Undisputed Material Facts. In general, PG&E admits to the facts that describe the circumstances of this dispute (e.g., the location of the Complainants' transformers, private line, and SmartMeter, as well as the text of certain Commission-approved PG&E Electric Rules).

⁵⁴ As described earlier in this decision, PG&E's Electric Rule 17.2 (Adjustment of Bills for Unauthorized Use) provides that "Once evidence of unauthorized energy use is detected, the investigation of unauthorized use of energy may be conducted by PG&E, in accordance with this rule regardless of ownership of the meter or provision of billing or metering services."

However, PG&E denies proposed facts such as how its Rules should be interpreted and the circumstances and timing surrounding the earlier informal complaints filed by Complainants with the Commission's Consumer Affairs Branch. PG&E also responds that the motion should be denied for the reasons below:⁵⁵

The facts revealed in the pleadings demonstrate the existing meter location was established in accordance with Rule 16.C.5 at the time the Hetheringtons entered into line extension contract in 2000.

The emphasis of the Hetheringtons' motion on the placement of the meter on the adjoining property is misplaced. Rule 16.C.5 allows PG&E the discretion to waive its normal Service Delivery Point location in circumstances presented here where the applicant's building is a considerable distance from the property boundary and the nearest available distribution line.

Although PG&E recognizes the meter is located on the adjoining parcel, there exists a utility easement over this adjoining parcel that benefits the Hetheringtons' parcel.

As it has throughout this proceeding, PG&E states that it is willing to accommodate the Hetheringtons' request to relocate the meter, provided that the relocation is performed in accordance with Rule 16.F.2.b, which requires that the applicant bear the cost associated with the relocation.⁵⁶

PG&E also responds that "there is no merit to the Hetheringtons' claim that under Rule 2.D.3.c, the meter should be relocated to the secondary side of

⁵⁵ PG&E response to First Motion for Summary Adjudication at 1.

⁵⁶ *Id.* at 2.

their customer-owned transformers [as] the undisputed facts show that the Hetheringtons do not satisfy the conditions of this rule, which requires service at transmission voltage (60 kV or above) and a customer-owned substation.”⁵⁷

Finally, PG&E responds that the Complaint fails to show any facts to support the claim that PG&E violated Rule 17.2 with respect to the alleged unauthorized diversion of electricity from the Complainants’ customer-owned line.

6.3.1.2. Complainants’ Request for Official Notice and PG&E’s Opposition to that Request

On March 9, 2011, Complainants filed a Request for Official Notice of 15 documents in support of their First MFSA, which we consider to be a reply to PG&E’s response. Complainants attach Exhibits A through Exhibit O and assert that they “are believed dispositive of the legal issues in connection with [Complainants’] motion for summary adjudication, and of the issues presented in this case.” PG&E filed Objections to Complainants’ Request for Official Notice on March 24, 2011. PG&E requests that the Request for Official Notice of Exhibits A, B and C be denied.

Complainants describe Exhibit A as “San Mateo County Assessor’s Parcel sheet 18G-annotated showing property boundaries and meter location” (Complainants also provide an Exhibit A-1, which they describe as “San Mateo County GIS map atlas, Sheet 18G - the authenticating source for Exhibit A”). PG&E objects to the drawing presented in Exhibit A on grounds that it has been altered by handwritten notes on Post-it notes: “the handwritten notes

⁵⁷ *Id.* at 2.

purporting to depict the Meter location and other features are not part of the official document and lack evidentiary foundation.”⁵⁸ PG&E further objects on grounds that Exhibit A does not show on its face that it is an official record of the Assessor’s Office, and the Request for Official Notice does not offer anything to establish its authenticity.

Complainants describe Exhibits B and C as “Approved PG&E Plan” and “Approved PG&E Plan with photo showing original easement route - changed by PG&E during construction to benefit cabin on another's land,” respectively. PG&E objects to the characterization of the drawing attached in Exhibits B and C as “Approved PG&E Plan.” PG&E correctly notes that “there is nothing that appears on this drawing to show any approval by PG&E”⁵⁹ so the characterization of Exhibits B and C as an “Approved PG&E Plan” lacks evidentiary support. PG&E also objects on grounds that the drawing is not a reliable depiction of the location of the privately-owned service line at issue in this matter: According to PG&E, “this drawing, which was apparently prepared by engineering consultants retained by Complainants, lacks foundation and is not appropriate subject of a Request for Official Notice.”⁶⁰

We deny PG&E’s request and grant Complainants’ request for official notice of Exhibits A through O of Complainants’ Request. However, we rely on Exhibits A, B and C for context and informational purposes only and accord them no evidentiary weight in support of our decision today.

⁵⁸ PG&E’s Objections To Complainants’ Request For Official Notice at 2.

⁵⁹ *Id.* at 3

⁶⁰ *Ibid.*

6.3.1.3. Discussion

We turn to the two questions that we must answer in order to rule on this motion: (1) does the evidence presented indicate that there are no triable issues as to any material fact, and (2) based on the undisputed facts, is the moving party entitled to judgment as a matter of law?

PG&E denies many of the Complainants' proposed undisputed material facts. We examine the facts not in dispute against the Complainants' request for relief under PG&E's Rule 16 and Rule 2.

With respect to Rule 16, Complainants request that the Commission order PG&E to locate Complainants' SmartMeter, capable of being read remotely, at Complainants' premises. Complainants rely on the references to "premises" in Rule 16.B.1.b to support their request. PG&E asserts instead that Rule 16.C.5 controls, such that when faced with "unusual site conditions" PG&E may establish the meter location "at such other location on Applicant's property as may be mutually agreed upon; or alternatively, at or near Applicant's property line as close as practical to the available Distribution Line."⁶¹ The dispute over the interpretation of these two specific sections of Rule 16, viewed strictly within the bounds of the first MFSA, does not include enough uncontested factual information to support a finding for the Complainant. Rule 16.B.1.b does refer specifically to "premises" but Rule 16.C.5 does create an exception for "unusual site conditions" in cases "where Applicant's building is located a considerable distance from the available Distribution Line." Complainants and PG&E dispute the facts surrounding the initial location of Complainants' meter upon

⁶¹ *Id.* at 3-5.

initiating PG&E service in 2000. Therefore, we find no undisputed factual support for either Complainant or PG&E in this instance.

With respect to Rule 2, Complainants request that the Commission order PG&E to move the SmartMeter to the existing meter socket at their house located on the secondary side of their transformers in accordance with PG&E Electric Rule 2.D. 3.c. We agree with PG&E that Rule 2 is inapposite here, because the undisputed facts show that Complainants do not take service at transmission voltage (60 kV or above) or own a substation: the voltage in Complainants' service line is 4 kV.⁶² Thus, Complainants do not fit the description of customer to which Electric Rule 2.D. 3.c applies.

Finally, with respect to Rule 17.2, because Complainants did not propose any undisputed facts to which Defendant could respond, we deny this aspect of relief requested by Complainants in the first MFSA.

In summary, we conclude that there are no undisputed facts within the first MFSA that can serve as the basis upon which the Commission can conclude that the moving party is entitled to judgment as a matter of law. Therefore, Complainants' January 12, 2011 Motion for Summary Adjudication is denied.

6.3.2. Complainants' Second Motion for Summary Adjudication

In their Second Motion for Summary Adjudication, filed March 23, 2011, Complainants request that the Commission order the following:

1. PG&E shall locate the SmartMeter to Complainants' premises - meaning to the existing meter socket at the

⁶² See PG&E, September 30, 2015 Reply to Complainants' Amended Reply, Troubleman Declaration at ¶3.

service point at plaintiffs' house pursuant to PG&E Electric Rule 18.A.⁶³

2. A new baseline for Complainants' electric usage shall be established, based on actual usage by Complainants at their premises alone pursuant to PG&E Electric Rule 18.A.
3. PG&E shall sever all illegal power diversion equipment capable of diverting electric power from Complainants' power line pursuant to PG&E Electric Rule 17.2.⁶⁴

Consistent with the latter request, Complainants assert that PG&E's location of Complainants' meter "at a neighbor's premises" 1.5 miles away from their own home in fact also enables supply of a neighbor's premises and/or an unpermitted structure, using electric power from behind Complainants' meter, for which Complainants are billed, in violation of PG&E's Electric Rule 18.A.

6.3.2.1. Defendant's response

PG&E responded to Complainants' Second Motion for Summary Adjudication and Complainants' Separate Statement of Undisputed Facts on March 11, 2015.

As with the First MFSA, PG&E denies almost all of the facts listed by Complainants in their proposed Separate Statement of Undisputed Material Facts. PG&E again admits to the facts that describe the circumstances of this dispute (e.g., the existence of the Complainants' transformers and periodic

⁶³ PG&E's Electric Rule 18 governs "Supply to Separate Premises and Submetering of Electric Energy." Section A, "Separate Metering" provides that "Separate premises, even though owned by the same customer, will not be supplied through the same meter, except as may be specifically provided for in the applicable rate schedule."

⁶⁴ As described earlier in this decision, PG&E's Electric Rule 17.2 (Adjustment of Bills for Unauthorized Use) provides that "Once evidence of unauthorized energy use is detected, the investigation of unauthorized use of energy may be conducted by PG&E, in accordance with this rule regardless of ownership of the meter or provision of billing or metering services."

changes in the location of Complainants' SmartMeter). However, PG&E denies proposed facts such as whether Complainants are served at transmission voltage, whether a neighbor is diverting electricity from Complainants' customer-owned line, and whether billing records show a variance in electric usage depending on where the Complainants' billing meter is located (e.g., at either end of Complainants' customer-owned line).

In one instance, however, PG&E neither "admits" nor "denies" Complainants' proposed undisputed fact, but "disputes" that fact.⁶⁵ Complainants propose that parties agree that "No unusual site conditions exist that bar the location of a meter at Hetheringtons' premises – only inconvenience to PG&E meter reading trucks (Complainant cites Exhibits A and D of the Second MFSA. Exhibit A is a topographic map and Exhibit D is an aerial view from Google Maps. Complainants argue that while it may have been reasonable in 2000 to locate their meter far away from their home so that PG&E's meter readers would not need to make a 3-mile round trip once a month to read their meter, with the advent of SmartMeters and their capability of being read remotely, an "unusual site condition" no longer exists and Complainants' meter can therefore now be located adjacent to their home.

PG&E responds:

Disputed. This legal conclusion is not supported by the cited evidence. Exhibit A is a topographic map and Exhibit D is an aerial view from Google maps. These exhibits merely show the approximate location of the Hetherington 40 acre parcel in rural San Mateo County. Complaint at 3. These exhibits

⁶⁵ PG&E's March 11, 2015 Response to Separate Statement of Undisputed Material Facts to Second Motion for Summary Adjudication at 5.

by themselves do not support the legal conclusion no unusual site conditions exist relating to meter location under Rule 16.

Turning to the MFSA itself, PG&E responds that the motion should be denied because the claim that two premises are being served through a single meter lacks any evidentiary support, and because the motion fails to demonstrate facts sufficient to support the claim of unauthorized diversion.

6.3.2.2. Complainants' Reply

With the permission of the assigned ALJ, Complainants replied to PGE's response on March 25, 2015. Complainants assert that the supplying of the neighbor's parcel through Complainants' meter is "undisputed." To support this assertion, Complainants cite records of the site visit by PG&E and Commission staff on November 3, 2011, as well as exhibits attached to a January 15, 2013 motion filed by Complainants in this case.⁶⁶

6.3.2.3. Discussion

With respect to the Second Motion for Summary Adjudication, we turn again to the two questions that we must answer in order to rule on this motion: (1) does the evidence presented indicate that there are no triable issues as to any material fact, and (2) based on the undisputed facts, is the moving party entitled to judgment as a matter of law?

⁶⁶ January 15, 2013, Motion for an Order to Compel PG&E to Investigate PG&E Owned Wiring (Electric Rule 17.2), for Explanation of Power Usage on Billing Meter While Off Grid with Transformers Off, and to Compel PG&E to Identify and Prosecute Those Responsible for Power Theft and Meter Tampering, and Further to Compel PG&E to Grant Reasonable Online Access to Billing Data. PG&E filed a response on February 8, 2013. Complainants filed a reply to PG&E's response on February 12, 2013. Earlier in this decision we determined this motion to be moot because the requests made in the motion have been addressed separately in this decision.

First, as noted above, PG&E denies almost all of the Complainants' proposed undisputed material facts. With respect to the facts that are not in dispute, we examine these facts against the Complainants' request for relief under PG&E's Rule 18 and Rule 17.

With respect to Rule 18, Complainants request that the Commission order PG&E to locate Complainants' SmartMeter at their premises pursuant to PG&E Electric Rule 18.A. As noted above, that Rule states, in pertinent part, "Separate premises, even though owned by the same customer, will not be supplied through the same meter...." In the dispute before us, PG&E denies that any "separate premise" is supplied by PG&E at all, so parties dispute the truth of the central fact alleged in the second MFSA. Therefore, with respect to the Rule 18, a dispute, we cannot find that based on the undisputed facts before us, Complainants are entitled to judgment as a matter of law.

With respect to Rule 17.2, earlier in this decision we found that no power diversion is taking place from Complainants' buried service line, and that the observable difference in usage between Complainants' billing meter and Complainants' CPUC test meter is entirely due to no-load or minimum-load transformer losses. Based on those findings, we deny this aspect of relief requested by Complainants.

In summary, we conclude that there are no undisputed facts within the second MFSA that can serve as the basis upon which the Commission can conclude that the moving party is entitled to judgment as a matter of law. Therefore, Complainants' March 23, 2011 Motion for Summary Adjudication is denied.

6.3.3. Complainants' Third Motion for Summary Adjudication

Complainants filed their Third Motion for Summary Adjudication on April 5, 2011. Complainants request that the Commission find pursuant to PG&E Electric Rule 16.G that an “Exceptional Case” exists such that *“when the application of [Rule 16] appears impractical or unjust to either party, or ratepayers, PG&E or Applicant may refer the matter to the Commission for a special ruling or for approval of special conditions which may be mutually agreed upon.”*⁶⁷

Specifically, Complainants make the following requests:⁶⁸

1. As a reasonable solution – at no cost to PG&E – Hetheringtons respectfully request the SmartMeter be placed in the existing meter socket at Hetheringtons' premises, and a new data baseline be established.
2. In the alternative, Hetheringtons' respectfully request that if PG&E wants to dig up the Hetherington line, the Commission should rule that PG&E first build--at its cost--a substitute power line in Hetheringtons' recorded above-ground utility easement, that includes an express right of ingress and egress for maintenance and repair. If the easement is impractical or unacceptable to PG&E, PG&E shall trade the land of the recorded easement for a substitute easement and/or obtain an easement at its cost along Langley Hill Road to Hetheringtons' service point.
3. If the foregoing request for a substitute line is approved, Hetheringtons respectfully request compensation for at least the difference between PG&E's cost of new above ground service (less expensive to install) and Hetheringtons' original out-

⁶⁷ Cal. P.U.C. Sheet No. 13775-E.

⁶⁸ April 5, 2011, Motion for Summary Adjudication at 6-7.

of-pocket cost of approximately \$115,000-\$120,000 for constructing the underground utility line. Easement relocation costs shall not be included in determining PG&E's cost of the substitute line.

4. Hetheringtons further request a new baseline of usage data for the SmartMeter -- to be located at the premises -- the new baseline to be free from errors caused by illegal power diversion or interference.

Complainants support this motion by citing PG&E Electric Rule 16.G and Pub. Util. Code §§ 451 and 701. Complainants assert that the relief requested would "effectuate a just result for Hetheringtons and PG&E" and that "PG&E's demand that Hetheringtons dig up their entire electric line at a cost of \$120,000 is unreasonable, unjust, and thus unlawful under Pub. Util. Code § 451.⁶⁹

Complainants further assert that PG&E's Electric Rule 16.G authorizes the Commission to provide a ruling in a private line extension case to prevent unjust results that include the following:

1. Keeping Hetheringtons' meter 1.5 miles away on a separate premises is an impractical, unjust result that

⁶⁹ Pub. Util. Code § 451 is central to the Commission's statutory authority to regulate public utilities such as PG&E and provides as follows:

All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.

Every public utility shall furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities, as defined in Section 54.1 of the Civil Code, as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

All rules made by public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

allows continued imposition of fraudulent PG&E bills that are four times what they should be, and leaves Hetheringtons' line open and available to criminal power diversion;

2. PG&E's demand to dig up the entire electric line is unjust, unreasonable and therefore unlawful pursuant to Pub. Util. Code § Sec. 451;
3. PG&E has engaged in an ongoing pattern and practice of inequitable conduct denying Hetheringtons' premises reasonable access to electric power – thereby making this an “exceptional case” to justify an equitable ruling under Rule 16.G; and
4. A ruling is justified under Rule 16.G that would balance the equities in this case and allow compensation to Hetheringtons, who in good faith built [their] electric line with PG&E approval under Rule 16.A.1 and have paid PG&E charges on that line for ten years.

6.3.3.1. Defendant's response

PG&E responded to Complainants' Third Motion for Summary Adjudication and Complainants' Separate Statement of Undisputed Facts on March 11, 2015. PG&E's response includes several problematic statements that we identify in our summary of PG&E's response here.

As with the First and Second MFSAs, PG&E denies most of the facts listed by Complainants in their proposed Separate Statement of Undisputed Material Facts. PG&E admits to the facts that describe the circumstances of this dispute (e.g., the existence certain correspondence written by PG&E, and periodic changes in the location of Complainants' SmartMeter). However, PG&E denies proposed facts such as Complainants' characterization of the meaning of the cited PG&E correspondence, and, as with the second MFSA, whether a neighbor is diverting electricity from Complainants' customer-owned line, and whether

billing records show a variance in electric usage depending on where the Complainants' billing meter is located (i.e., at either end of Complainants' customer-owned line).

Turning to the MFSA itself, PG&E denies that the facts alleged in the Third MFSA support a Commission finding that the Exceptional Case rule applies to the Hetheringtons' request to relocate their meter. PG&E asserts that the motion should be denied "because the moving papers and current record in this proceeding fails to establish that the application of the relocation provisions in Rule 16.F.2.b would be impractical or unjust to the Hetheringtons."

Furthermore, according to PG&E "the moving papers and the entire record fail to meet the evidentiary burden of showing there is actual diversion from the customer-owned line...."⁷⁰ PG&E again states that it is willing to relocate the meter, but only in accordance with the relocation provision in Rule 16.F.2.b:

Rule 16.F.2.b provides that any relocation of the existing Service Facilities at the request of the applicant (for example, for aesthetics, building additions or remodeling) is to be performed at the applicant's expense for the total estimated costs.

Any proposed relocation of the meter would also require installation of a new service line that meets the current standards in PG&E's Greenbook.⁷¹

⁷⁰ PG&E's Opposition to Third Motion for Summary Adjudication at 1, 2.

⁷¹ *Id.* at 3-4. PG&E's "Greenbook" is PG&E's Electric and Gas Service Requirements. According to PG&E's website (www.pge.com/greenbook), it contains the minimum utility requirements for establishing gas or electric service to new or remodeled customer installations for architects, engineers, electrical contractors, plumbing contractors, city and county officials, and electrical equipment manufacturers. The record in this proceeding is unclear when or if PG&E changed its Greenbook such that direct-buried cable was acceptable to PG&E in 2000, but not in 2009.

PG&E goes on to argue that the “transfer of a customer-owned line that does not meet PG&E’s standards is particularly inappropriate in view of the Hetheringtons’ prior refusal to apply to the Commission for approval of the line extension as an exceptional case.”

6.3.3.1.1.PG&E’s Response Relies on Factual Misstatements

PG&E’s argument here rests on a series of material factual misrepresentations to the Commission. PG&E’s actions are the subject of a separate ruling by the assigned ALJ ordering PG&E to show cause to why it should not be sanctioned by the Commission for violation of Rule 1.1 of the Commission’s Rules. They are also discussed here for the purpose of addressing Complainants’ Third MFSA.

Complainants applied for electric service from PG&E in 1998. However, in its argument in opposition to Complainants’ request here for a Commission finding of an “exceptional case” with respect to Rule 16.G, PG&E makes the following statement:⁷²

At the time **the Hetheringtons** originally applied for service **in 1990**, PG&E informed **them** that because of the disproportionate construction costs and continuing operating costs compared to the expected revenue, the proposed service extension was not economically feasible under the standard line extension provisions. Despite the uneconomic nature of the service extension, PG&E was willing to proceed and proposed that the parties enter into a special arrangement in which **the Hetheringtons** would advance the cost of the extension plus fund a part of the continuing cost of ownership. PG&E proposed that this agreement would be

⁷² *Id.* at 2, emphasis added.

presented to the Commission for its approval as an exceptional case.⁷³

This proposal would have ensured that the applicant would bear the cost of the line extension of an uneconomic nature. However, **the Hetheringtons** rejected this proposal. Instead, they elected to prepare their own electric plan, which they designed to minimize the construction cost.

PG&E's statement that Complainants applied for electric service from PG&E in 1990 is incorrect. Every reference to the Complainants in PG&E's argument above is incorrect. This is not inadvertent error. PG&E relies on this inaccurate statement of facts to impugn Complainants' suggested compromise solution, the solution that we essentially adopt in this decision:⁷⁴

Had **the Hetheringtons** agreed to PG&E's original proposal the service extension would have been constructed according to PG&E's standards. PG&E would own and maintain this line to the Service Delivery Point. If there were any diversion from this line on the neighboring property, this would occur before the energy is delivered to the Hetheringtons' Service Delivery Point, and therefore any such diversion would have no fiscal impact to the Hetheringtons. **The Hetheringtons** rejected this proposal. Under these circumstances it would not be equitable to PG&E or its ratepayers to subsidize a relocation requested by the Hetheringtons, **especially when they originally refused to bear the cost of a line extension that would meet PG&E's standards.**

PG&E incorrectly attributes to the Complainants, with equally incorrect supporting documentation, interactions between the prior property owner and

⁷³ PG&E cites, and accurately summarizes, Exhibit Q of Complainants' April 5, 2011, Motion for Summary Adjudication, Exhibit Q is a PG&E letter dated September 24, 1990 but the letter is addressed to a Mr. MacMillan, not the Hetheringtons.

⁷⁴ *Id.* at 4, emphasis added.

PG&E which took place in 1990. Complainants purchased the property in 1995 from Mr. McMillan and another individual.⁷⁵ PG&E incorrectly relies on this material to place blame on Complainants for the situation in which they now find themselves.

6.3.3.2. Complainants' Reply

With the permission of the assigned ALJ, Complainants replied to PG&E's response on March 25, 2015. Complainants provide additional historical detail regarding their ownership of their home and their allegations of unauthorized power diversion, and assert that these details demonstrate that PG&E has improperly denied Complainants' request to relocate their SmartMeter.

6.3.3.3. Discussion

For the reasons explained in detail below, Complainants' Third Motion for Summary Adjudication is granted in part, and otherwise denied: under the "exceptional case" provisions of PG&E's Electric Rule 16.G, PG&E is ordered to relocate Complainants' SmartMeter from its current location to the existing meter socket adjacent to Complainants' premises, at no cost to Complainants. PG&E's opposition to Complainants' request fails because PG&E relies on a misreading and misrepresentation of its own Electric Rules, as well as an improper misrepresentation of facts in the record in this proceeding.

To review, PG&E's Electric Rule 16 governs the installation of Service Facilities that extend from PG&E's Distribution Lines: "this rule is applicable to both (1) PG&E Service Facilities that extend from PG&E's Distribution Line facilities to the Service Delivery Point, and (2) service related equipment

⁷⁵ See February 9, 2011 PG&E Request for Official Notice, Exhibit B, Grant Deed recorded on November 30, 1995.

required of Applicant on Applicant's Premises to receive electric service.”⁷⁶ As such, Rule 16 includes eight sections, ranging from general provisions and definitions, to rules regarding metering, specific aspects of service extensions, responsibilities of the Applicant and PG&E under the Rule, and provisions for financial allowances for service extensions.

PG&E’s Rule 16 has also long included a provision for the Commission to have the ultimate say on the application of the Rule in specific situations: Section 16.G, “Exceptional Cases.” PG&E appears to disagree that the Commission has this authority. One troubling aspect of this proceeding is PG&E’s consistent arrogation to itself of the final decision-making authority under Rule 16, rather than correctly placing it with this Commission. In most of its summaries of the basic dispute between itself and Complainants, the location of Complainants’ SmartMeter, PG&E states “PG&E was willing to relocate the meter, provided the Hetheringtons paid the relocation costs as required under Electric Tariff Rule 16.F.2.b.”⁷⁷ PG&E’s repeated statement to Complainants that it would only relocate the SmartMeter if Complainants paid PG&E to do so is a misrepresentation of Rule 16, because under the Section 16.G of the Rule the ultimate decision regarding the location of the Hetherington’s SmartMeter is this Commission’s to make, not PG&E’s.

6.3.3.3.1.PG&E Misrepresented Rule 16.G to Complainants

⁷⁶ PG&E Electric Rule 16, “Applicability.”

⁷⁷ See, for example, PG&E’s November 29, 2010 Answer at 1-2; PG&E’s December 28, 2010 Motion to Dismiss Complaint at 2; or more recently PG&E’s March 11, 2015 Opposition to Third Motion for Summary Adjudication at 3-4.

PG&E's misrepresentation of Rule 16 in this matter is not limited to this formal complaint proceeding. Our review of the record of CAB Case #108632 indicates that PG&E also misrepresented Rule 16 to the Hetheringtons several months before they filed C.10-10-010. Had PG&E explained the Rule correctly to the Hetheringtons, it is reasonable to infer that this protracted and contentious proceeding would not have been necessary. PG&E's actions with respect to its interpretation of Rule 16 are the subject of a separate ruling by the assigned ALJ ordering PG&E to show cause to why it should not be sanctioned by the Commission for violation of Rule 1.1 of the Commission's Rules. However, we summarize the matter in question here in order to place into context additional remedies we impose on PG&E in our decision today.

As noted in the chronology provided at the outset of this decision, on August 25, 2010, PG&E made a site visit to Complainants' home. This visit took place while Complainants' Case #108632 was pending with CAB. In order to avoid being disconnected by PG&E, Complainants had agreed that the SmartMeter that their electrician had moved next to their home several months earlier would be moved back to PG&E's service delivery point, at the far end of Complainants' buried service line. Having facilitated a solution that kept Complainants' electricity flowing while PG&E returned the SmartMeter to its location at PG&E's service delivery point, CAB then considered Case #108632 to be closed.

A week later, on September 2, 2010, PG&E sent a letter to Complainants in order to follow up on the August 25th site visit. In that letter, PG&E states that the letter is responding to Mr. Hetherington's request during the site visit "for a letter explaining PG&E's reasons why the meter cannot be relocated to your house and why PG&E cannot take ownership of the customer-owned line."

In the response to Mr. Hetherington, PG&E first summarizes its reliance on portions of Rule 16 in order to waive the normal service delivery point location when the Hetheringtons initiated PG&E service in 2000; that waiver provided the basis for PG&E's agreement to locate the Hetherington's service delivery point on the Hetherington-owned easement over a mile from their home.⁷⁸ However, PG&E's representative then incorrectly explains the "exceptional case" provision of Rule 16 in a manner that withholds critical material information from Mr. Hetherington, who wished to know why his SmartMeter could not be relocated to his home. This text is quoted below:

At the time of this installation, if an agreement was not reached for the service delivery point, an exceptional case filing **could have been made** with the CPUC. Electric Rule 16 provides that:

16.G. EXCEPTIONAL CASES

When the application of this rule appears impractical or unjust to either party, or ratepayers, PG&E or Applicant may refer the matter to the Commission for a special ruling or for approval of special conditions which may be mutually agreed upon.

No such filing was made at the Commission.⁷⁹

In this letter, PG&E misrepresents its own Rule to Mr. Hetherington in three ways:

- Rule 16.G does not limit referrals to the Commission to "the time of installation."

⁷⁸ i.e., PG&E Electric Rule 16.C.5, "Unusual Site Conditions."

⁷⁹ CAB Case #108632, September 2, 2010 letter from PG&E to Complainants, emphasis added.

- The statement that such a filing “could have been made” equates to a statement that the option is no longer available to Mr. Hetherington.
- That statement is reinforced by the conclusion that “no such filing was made” at the Commission.

In short, the letter firmly, but inaccurately, conveys that the “exceptional case” avenue is closed to Mr. Hetherington. Having been provided with this false information, approximately two weeks after receiving this letter the Hetheringtons proceeded to file the formal Complaint that we are deciding today. In this Complaint, the Hetheringtons are seeking the same relief that they sought in CAB Case #108632: they ask the Commission to “rule that the SmartMeter is located properly at our premises as a matter of law.”

In addition to preventing the Complainants from seeking redress from the Commission, PG&E’s actions also prevented the Commission itself from learning of a significant customer issue in a timely manner. We cannot act on matters unless we have knowledge of those matters. In many instances, it is the utility itself that first learns of a dissatisfied customer (rather than, for example, CAB); how the utility responds can improperly limit the options for the relief that is eventually granted. Here, written evidence shows that PG&E misrepresented the options available to Complainants, and for that reason, Complainants did not pursue the straightforward procedural path that was open to them to seek the relief they were entitled to request of the Commission. Instead, they resorted to the only option they understood to remain available to them, a formal Complaint that created needless delays and costs for Complainants, PG&E, and this Commission.

6.3.3.3.2. The Correct Interpretation and Application of Rule 16

Again, PG&E's Electric Rule 16.G reads as follows:

Exceptional Cases: When the application of this rule appears impractical or unjust to either party, or ratepayers, PG&E or Applicant may refer the matter to the Commission for a special ruling or for approval of special conditions which may be mutually agreed upon.

As noted above, PG&E denies that the facts alleged in the Third MFSA support a Commission finding that the Exceptional Case rule applies to the Hetheringtons' request to relocate their meter. According to PG&E, "...the current record in this proceeding fails to establish that the application of the relocation provisions in Rule 16.F.2.b would be impractical or unjust to the Hetheringtons."

PG&E's response, and its position throughout this case, ignores the most salient underlying fact upon which we rest our decision: during the pendency of this case, PG&E has deployed SmartMeters throughout its Northern California service territory, replacing the analog meters that had to be visited and read each month by PG&E's meter readers. In light of the sometimes strong resistance of some customers and communities to PG&E's SmartMeter deployment, perhaps the most remarkable aspect of this dispute is the fact that the Complainants simply wish to have their SmartMeter located as close to their home as possible, and PG&E is intent on blocking their request.

Based on the factual record in this proceeding, we first consider whether the application of Rule 16 "appears ... unjust to either party, or ratepayers." In its initial Answer to the Complaint, PG&E states, "The essence of this Complaint is a dispute as to who should pay the costs associated with the relocation of a

meter for electric service to residential property, the Hetheringtons or PG&E.”⁸⁰ This characterization is incorrect: in fact, the essence of this Complaint is the Complainants’ request to locate their SmartMeter on their premises, by relocating their existing SmartMeter from its present remote location, approximately one and one-half miles away from Complainants’ premises. PG&E is “willing” to move the meter, but states that any proposed relocation of the meter would also require installation of a new service line that meets PG&E’s current standards. As we demonstrate below, we find that PG&E has created the cost dispute that it now sees as the essence of this dispute by selectively – and improperly – interpreting its own Rule 16.

Is PG&E’s solution unjust to either party, or to ratepayers? In taking its position, PG&E ignores the specific facts in this case:

- Complainants installed their existing privately-owned service line in 1998 at a cost of over \$100,000;
- Complainants rely primarily on solar power, kerosene and a generator for their electricity and lighting; and
- Complainants’ average monthly bill for usage between April and August 2013 was approximately \$60.⁸¹

⁸⁰ November 29, 2010, Answer of Pacific Gas and Electric Company at 1, emphasis added.

⁸¹ See Second MFSA, Exhibit E, which is PG&E’s bill to the Complainants for the period between March 13, 2010 and July 13, 2010. This bill spans the period when Complainants had relocated their SmartMeter to a meter cabinet adjacent to their home. The total bill for this four-month period is \$240.54, or \$60.54 per month. While it appears that the monthly usage was estimated by PG&E (average daily usage is identical for every billing period within the four months), PG&E has not indicated on the record in this proceeding that its bill is inaccurate. Complainants have also provided copies of earlier bills totaling approximately \$200 per month. See First MFSA, Exhibits M and N.

The dramatic disparity between Complainants' typical monthly bill and PG&E's insistence that Complainants pay upwards of \$100,000 before PG&E will move their SmartMeter to their home is reason enough for this Commission to rule upon whether PG&E is applying the provisions of its Rule 16 unjustly. Given PG&E's proposed solution, and what we show below to be its selective and inaccurate reliance upon its Rules to support that solution, we conclude that Commission intervention is warranted because PG&E is applying its Rule 16 in an unjust manner.

Next, we consider whether the application of Rule 16 "appears ... impractical to either party, or ratepayers." It is undisputed that the present meter location is far away from Complainants' premises. Furthermore, statements in the record describe Complainants' home as near the top of a hill, with distant sight lines in all directions.⁸² It would not be reasonable for us to conclude that a SmartMeter installed at such a location could not be read remotely by PG&E's technology. Furthermore, we addressed and resolved Complainants' allegations of energy diversion above, finding that no power diversion from the Complainants' buried service line is taking place. PG&E has argued the same point throughout this proceeding. Thus, PG&E's own reasoning and analysis suggests that PG&E should be indifferent as to whether the SmartMeter is located at one end of Complainants' line or the other. PG&E's other ratepayers would absorb the cost of any transformer-related losses, but in light of the totality of circumstances in this proceeding we conclude that amount

⁸² The location of Complainants' home is described in Complainants' March 25, 2015 Reply to PGE's response to Complainants' Third Motion for Summary Adjudication at 4. *See also* RT at 112: "They're almost up on top of a hill, and they have a 360-degree view."

is de minimus on a per-customer basis, and therefore reasonable.⁸³ On the other hand, Complainants have raised reasonable practical objections to the current location of their SmartMeter, and have correctly observed that the meter no longer need be read manually to the inconvenience of PG&E meter readers, and on that basis, seek relief from the Commission.

Is PG&E's proposed solution impractical to either party, or ratepayers? Complainants have stated that they would accept relief in the form of a Commission order to PG&E to simply locate their SmartMeter on their property, adjacent to their home. We find Complainants' proposed relocation of their SmartMeter to be a practical solution to the obvious impracticalities that would be faced by any PG&E customer whose billing meter is located at such a great distance from their home. On the contrary, PG&E's proposed solution is one that we suspect all of its other residential customers would find impractical, should they find themselves in the same geographic circumstances as Complainants. No PG&E customer should have to make a three-mile round trip by car to view the meter that determines their monthly bill if the Commission can approve a practical alternative to doing so. We conclude that PG&E's proposed solution is impractical to Complainants.

Finally, we address PG&E's assertion that Complainants' request for relief "mischaracterizes all of the consequences that follow from relocating the meter. Under this proposal, the Hetheringtons intend to transfer ownership of their

⁸³ Our review of the data provided by PG&E in the Usage Data Declaration attached to PG&E's Response to Complainants' Second Emergency Motion indicates that the hourly transformer losses during the test period average .394 kWh. On a monthly basis, the losses would equal approximately 293 kWh (.394 x 24 x 31). At PG&E's current Tier 1 residential rate (\$0.16352 per kWh), the monthly cost of these losses equals approximately \$48.00 (293 kWh x \$0.16352 per kWh).

customer-owned line to PG&E. PG&E would assume responsibility for maintaining the customer-owned line up to the new meter location.”⁸⁴

We disagree that simply moving the SmartMeter from one end of the service line to the other requires a transfer of ownership from Complainant to PG&E. PG&E’s scenario appears to depend on its Rule 16.A.4, which addresses “private lines:”⁸⁵

PRIVATE LINES. PG&E shall not be required to connect Service Facilities to or serve any Applicant from electric facilities that are not owned, operated, and maintained by PG&E.

Under the “exceptional case” remedy we adopt today, we exercise our authority to require PG&E to make an exception to its Rule 16.A.4, and serve Complainants from “electric facilities that are not owned, operated, and maintained by PG&E:” Complainants’ underground service line. However, we find this to be a fair compromise because Complainants, not PG&E, will remain responsible for maintaining the service line, because they will continue to own it, and they will continue to depend on the integrity of the line to receive electricity from PG&E. Our solution aligns with Complainants’ self-interest as consumers of electricity. Furthermore, as we explain below, in today’s decision we impose additional remedies on PG&E that will enable Commission staff,

⁸⁴ March 11, 2015, PG&E Opposition to Third Motion for Summary Adjudication at 3.

⁸⁵ PG&E Motion to Dismiss Complaint 10-10-010 at 7: “Under Rule 16.A.4, PG&E is not required to serve any customer from electric facilities that are not owned and operated by PG&E PG&E is not required to change the Service Delivery Point so that PG&E serves the Hetheringtons utilizing their customer-owned line.”

PG&E and Complainants to continue to monitor the loss-related disparity between metered usage at both ends of Complainants' service line.

For the reasons described above, we conclude that PG&E's insistence on applying the provisions of Electric Rule 16.F.2.b such that Complainants may only have a SmartMeter located at their home if Complainants replace their existing private line at a cost of over \$100,000 – even though Complainants already paid a similar amount to install the existing line – is both impractical and unjust, given that reasonable alternatives exist with far lower costs. Under the “exceptional case” provisions of PG&E's Electric Rule 16.G, PG&E shall relocate Complainants' SmartMeter from its current location to the existing meter socket adjacent to Complainants' premises, at no cost to Complainants. PG&E shall also, at no cost to Complainants, make any further modifications to its SmartMeter infrastructure in the area that are necessary to ensure that the relocated SmartMeter can be read remotely, and in doing so shall not locate any additional required equipment on Complainants' property or Complainants' existing utility easements unless Complainants provide written agreement to such acts.

We conclude our discussion by addressing Complainants' concern about the possibility of unauthorized diversion of energy from their private line. Our emphasis here is on the word private. Complainants were advised by the originally assigned ALJ at the initial PHC in April 2011 that their allegations regarding energy diversion were not a matter within the Commission's jurisdiction.⁸⁶ As PG&E has also repeatedly observed, the Commission does not

⁸⁶ See RT at 8-11.

require PG&E, under its Commission-approved tariff rules, to investigate alleged diversion from privately owned lines.

With regard to the legal basis for the Commission's jurisdiction in this matter Complainants cite Penal Code Section 591 which states, in pertinent part,

A person who unlawfully and maliciously ... disconnects [or] cuts ... any line used to conduct electricity, or any part thereof, or appurtenances or apparatus connected therewith, ..., or severs any wire thereof, or makes an unauthorized connection with any line ... used to conduct electricity, or any part thereof, or appurtenances or apparatus connected therewith, is subject to punishment by imprisonment and/or fine."⁸⁷

This section of the Penal Code does not provide this Commission with jurisdiction over Complainants' private line. A different section of the Penal Code, Section 498, addresses unlawful diversion from utility-owned electric lines. We quote relevant portions below:

498 (b) Any person who, with intent to obtain for himself or herself utility services without paying the full lawful charge therefor, or with intent to enable another person to do so, or with intent to deprive any utility of any part of the full lawful charge for utility services it provides, commits, authorizes, solicits, aids, or abets any of the following shall be guilty of a misdemeanor:

- 1) Diverts or causes to be diverted utility services, by any means.
- 2) Prevents any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function by tampering or by any other means.

⁸⁷ Second Motion for Summary Adjudication at 9.

- 3) Tamper with any property owned by or used by the utility to provide utility services.
- 4) Makes or causes to be made any connection with or reconnection with property owned or used by the utility to provide utility services without the authorization or consent of the utility.
- 5) Uses or receives the direct benefit of all or a portion of utility services with knowledge or reason to believe that the diversion, tampering, or unauthorized connection existed at the time of that use, or that the use or receipt was otherwise without the authorization or consent of the utility.

Pursuant to Pen. Code § 498 (b), if the underground line serving Complainants was owned by PG&E, then PG&E is authorized to investigate and pursue remedies pursuant to PG&E's Electric Rule 17.2, "Adjustment of Bills for Unauthorized Use." It is in PG&E's interest to pursue such investigations, and we are confident that all electric utilities under our authority do, in fact, aggressively investigate such incidents. The facts before us in this case simply do not support that role for PG&E, because the service line in question is privately owned, and thus falls within Section 591 of the Penal Code, not § 498. In short, it is and always has been within Complainants' rights to request intervention by local authorities pursuant to Section 591 of the Penal Code. Furthermore, we observe that Complainants' buried service line is undisputedly located on land that Complainants may access at any time pursuant to the appurtenant easement they own. This easement is 15 feet wide and extends from Complainants' step-up transformer at PG&E's service delivery point all the

way to its termination near Complainants' home 1.5 miles away.⁸⁸

Complainants currently have – and have always had – the legal right to dig in this easement and expose their buried line at any point where they suspect unauthorized diversion to be occurring, and to notify County authorities and provide those authorities any evidence that they uncover. With the exception of the site visit that took place during mediation, PG&E has properly refused to dig in this easement, because it is not their responsibility to do so: that right and that responsibility rest only with Complainants.

Due to the complicated and overlapping nature of Complainants' allegations and the role of the location of their SmartMeter in those charges, the assigned ALJ, Commission staff, and, in many instances PG&E have all worked within the bounds of the Commission's jurisdiction to assist Complainants in resolving their concerns. We have found no evidence of unauthorized diversion of energy. With today's decision, we are closing this proceeding and thereby ending our involvement in the investigation of this matter, as well PG&E's investigatory responsibilities. Complainants are free to pursue their own investigations, should they wish to do so.

6.3.3.4. Additional Remedies

In our consideration of Complainants' requests for relief, we also considered their suggested alternative, that we order PG&E to pay to relocate Complainants' underground service line to overhead poles on a different easement. We decline to grant this relief because, as we noted above, we can grant Complainants' request at minimal cost for PG&E and its other ratepayers.

⁸⁸ PG&E February 9, 2011 Request for Official Notice, Exhibit B.

We find that PG&E's actions and communications with Complainants have contributed to the delay in resolving this proceeding, by causing Complainant to seek procedural remedies that were improperly limited by the incorrect information provided by PG&E during the pendency of CAB Case #108632. Therefore, in addition to the principal relief granted above, the relocation of Complainants' SmartMeter, we also require the following actions of PG&E:

1. PG&E shall implement an ongoing usage monitoring program for Complainants.

In this decision, we have found that no energy diversion from Complainant's underground service line is occurring. Nevertheless, one of the consequences of the delay in resolving this proceeding due to PG&E's actions during the pendency of CAB Case #108632 is that PG&E caused Complainants to endure a lengthy period of time during which their concerns about possible unauthorized diversion from their service line remained unresolved. More information is likely to be required in order for Complainants to become comfortable with our conclusions on this matter. To provide the means for Complainants to continue to monitor the usage at either end of their line, we conclude that it is fair that we order PG&E to continue to facilitate that effort, as follows:

- a. At the same time that PG&E relocates Complainants' SmartMeter, PG&E shall install a "CPUC test meter" at the current service delivery point, the easement adjacent to PG&E's service transformer.
- b. PG&E shall provide Complainants full on-line access to the data from this meter, in a manner that is no different than if this meter were the Complainants' billing meter. In this way, Complainants may,

should they wish to do so, continue to directly monitor the variances in usage recorded by the two meters.

- c. On a monthly basis, PG&E shall compile the data from both the test meter and the Complainants' billing meter and prepare a comprehensive but customer-friendly analysis and explanation of any measured differences in recorded usage, including PG&E's analytical substantiation of these differences, and the cost of the differences in usage. PG&E shall consult with the Commission's Energy Division on the format of this report before it is finalized. PG&E shall deliver this monthly report, by U.S. Postal Mail and electronically, to Complainants at an address they designate, and to the Director of the Commission's Energy Division. PG&E shall prepare and provide these monthly reports for five years, 2016 through 2020. At that time, PG&E may petition the Commission for modification of this aspect of this decision.
- d. PG&E shall implement the program described above at no cost to Complainants or other PG&E ratepayers, and shall explain and illustrate by letter to the Director of the Commission's Energy Division the manner in which it has accounted for these costs. We impose this condition so that PG&E's shareholders may see that PG&E's actions in this proceeding have had effects that affect shareholder interests.

7. Categorization and Need for Hearing

This decision confirms the categorization of Case 10-10-010 as adjudicatory. While it was preliminarily determined that hearings might be necessary, this case presented a single tariff interpretation issue and no hearings were needed.

8. Comments on Proposed Decision

The proposed decision of ALJ Roscow in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on March 6, 2016 by Complainants and PG&E. Reply comments were filed on March 14, 2016 by PG&E.

Pursuant to Rule 14.3 (c), comments shall focus on factual, legal or technical errors in the proposed decision and in citing such errors shall make specific references to the record or applicable law. Comments which fail to do so will be accorded no weight. Comments proposing specific changes to the proposed decision shall include supporting findings of fact and conclusions of law.

Complainants request a number of changes to the PD. PG&E opposes each of the requested changes.

First, Complainants request that the PD be revised to require PG&E to cooperate with Complainants' contractors, stating that they "disagree that severing the second lead in their step-up transformer is now solely their responsibility."⁸⁹ Complainants have not cited factual, legal or technical error in the PD. First, the PD cites California Penal Code to establish that it is solely Complainants' responsibility to work on their transformers, which are located in an easement that they own. Second, Complainants cite no factual evidence or technical information that establishes that a second line supplies a second load.

Second, Complainants request that the PD be revised to include an order to prevent wrongful PG&E lockdowns of Complainants' equipment, "including

⁸⁹ Complainants' Opening Comments on PD at 6.

their step-up transformer” located adjacent to PG&E’s transformer at PG&E’s designated service delivery point at the end of PG&E’s distribution line. As noted above, the step-up transformer is located on a small utility easement, owned by Complainants, at that location. In their comments on the PD, Complainants incorrectly state that “such an Order was requested in complainants’ lock motion of March 23, 2013, now considered moot”⁹⁰ (based on conclusions in the instant decision; see Section 3.3 above). The “lock motion” referenced by Complainants was in fact dated February 15, 2013 and captioned “Motion for an Order to Allow Plaintiffs to Lock their **Privately Owned Tesco Cabinet** and related relief” (emphasis added) and concerned only the locks on Complainants’ meter cabinet, which is located approximately 10 feet from Complainants’ step-up transformer.⁹¹ The lock on the step-up transformer was not the subject of the March 23, 2013 lock motion. We see no need to order PG&E to refrain from “wrongful” acts such as placing their own locks on Complainants’ equipment, and do not modify this portion of the PD.

Third, Complainants request revision of the statement in the PD that the Commission has found “no evidence of unauthorized diversion of energy.” Instead, Complainants suggest the phrase “no evidence of unauthorized diversion of energy from Complainants’ buried electric service line” because this is consistent with Finding of Fact 4 (“No power diversion from Complainants’ buried service line is taking place”). Complainants now state that they

⁹⁰ *Id.* at 8.

⁹¹ See, February 15, 2013 Motion for an Order to Allow Plaintiffs to Lock their Privately Owned Tesco Cabinet and Related Relief, Exhibit F.

“agree that there does not appear to be a ‘tap’ or unauthorized diversion from their underground line. Instead, there is a PG&E-approved, but wrongfully authorized connection between the second high voltage lead in complainants’ step-up transformer and a second unauthorized step-down transformer...”⁹²

Based on this assertion, Complainants suggest that the term “unauthorized diversion of energy” is overly broad and improperly encompasses power diversion that they now allege is taking place through a second high voltage lead inside complainants’ own step up transformer. Thus, they believe a more accurate statement would be that the evidence shows “no unauthorized diversion of energy from Complainants buried high voltage service line”.

We decline to make the change to the PD requested by Complainants because Complainants have not cited factual, legal or technical error in the PD. Complainants have provided no factual evidence that proves the existence of a “PG&E-approved, but wrongfully authorized connection between the second high voltage lead in complainants’ step-up transformer and a second unauthorized step-down transformer.” The meter data examined in the PD do not support this assertion. Complainants also do not cite technical error. Thus, it remains true that the Commission has “found no evidence of unauthorized diversion of energy” in this proceeding.

Fourth, Complainants request that the PD be revised to remove footnote 12 and to delete the first sentence of footnote 26, stating both are in error.

Footnote 12 states, in its entirety:

⁹² Complainants’ Opening Comments on PD at 10-11.

This motion superseded a July 27, 2015 Motion for Emergency Relief because it was based on improved billing data provided to Complainants by PG&E. These motions were incorrectly captioned “emergency” motions by Complainants. Following the site visits, Complainants understood that the proposed decision in this proceeding would soon be issued for public comment. The “emergency” referenced in the motion was Complainants’ wish to add to the record of the proceeding before this occurred.

Footnote 26 states, in its entirety:

As noted above, the “emergency” referenced in the motion was Complainants’ wish to add to the record of the proceeding before this occurred. *See* July 27, 2015 Motion at 2: “This motion is believed necessary to effectuate a just result and to augment the factual record with newly discovered evidence prior to the imminent release of a decision in CPUC case C.10-10-010. Therefore, complainants respectfully request that the Commission expedite this motion.”

Complainants state that they correctly captioned their June 15 and July 27 motions as “emergency”

in the sense of a medical emergency, because of the dangerous frequency that PG&E allows to be placed on complainants’ house wiring to drive complainants out of their home. The true purpose of complainants’ two motions for emergency relief clearly was set forth in both motions.⁹³

We decline to make these changes to the PD. First, the June 15, 2015 motion is not, in fact, captioned as an “emergency” motion. Rather, it is a motion for “expedited” relief, and the assigned ALJ immediately treated it as such because of the health concerns noted in that motion. Second, the first and second motions for “emergency” relief, by Complainants’ own statements in

⁹³ *Id.* at 11.

those motions, convey only a request that new evidence be considered before a PD was issued in this proceeding. The text from Complainants' July 27, 2015 motion quoted in footnote 26 cannot be interpreted in any other way. Furthermore, because Complainants had already made a motion requesting that the Commission act in an expedited manner due to Complainants' health concerns in the June 15, 2015 motion, a second "emergency" motion seeking that relief would have been redundant, and would have been treated as such. The Commission took Complainants' health concerns seriously from June 15, 2015 onward, and this is accurately described in the PD.

Fifth, Complainants request that Finding of Fact 3 in the PD be revised.

Finding of Fact 3 states

The comparative analysis of Complainants' metered usage data from the period July 15 through July 23, 2015 **proves** that the observable difference in usage between Complainants' billing meter and Complainants' CPUC test meter is entirely due to no-load or minimum-load transformer losses (emphasis added).

Complainants request this Finding be revised as follows:

The comparative analysis of Complainants' metered usage data during the period from July 15 through July 23, 2015 **is inconclusive** as to whether the observable difference in usage between Complainants' billing meter and Complainants' CPUC test meter is entirely due to no-load or minimum transformer losses (emphasis added).

Complainants assert that the term "proves" is contradicted by the evidence, specifically "the overwhelming, undisputed evidence" provided in the Exhibits to Complainants' Motion of January 15, 2013 "Explanation of Power Usage When Off Grid." Complainants state that the PG&E billing records attached to that motion "speak for themselves" and "absolutely prove that the disparity in metered usage data is due to diversion NOT entirely due to no load

or minimum load transformer losses.” Based on that data, Complainants argue that “PG&E’s claimed excitation losses could not exist unless there is a second step-down transformer and/or large electrical load at the unpermitted cabin, drawing power from and placing an unlawful load and interference on complainants’ line.”⁹⁴

In Section 3.3 of the PD, Complainants’ January 15, 2013 motion seeking “Explanation of Power Usage When Off Grid” is determined to be moot because the requests made in this motion have been addressed separately in this decision as other pleadings by Complainants were resolved. For example, in their January 15, 2013 motion Complainants request a Commission order directing PG&E to act in accordance its Electric Rule 17.2 “to inspect and repair PG&E wiring, to document and preserve evidence in the matter, and identify and prosecute all those responsible for such apparent power theft, including PG&E personnel” and directing PG&E to provide reasonable access to Complainants’ billing data online.⁹⁵ The PD denied Complainants’ request that PG&E be ordered to investigate pursuant to Rule 17.2, and found that no power diversion from Complainants’ buried service line is taking place. In addition, Complainants now appear to have ready online access to their billing data, as evidenced by their use of this data in July, 2015 as the basis for their Second Motion for Emergency Relief. With respect to the usage data provided with the

⁹⁴ *Id.* at 11, 12.

⁹⁵ January 15, 2013 “Motion for an order to compel PG&E to investigate PG&E owned wiring (Electric Rule 17.2), for explanation of power usage on billing meter while off grid with transformers off, and to compel PG&E to identify and prosecute those responsible for power theft and meter tampering, and further to compel PG&E to grant reasonable online access to billing data” at 3.

January 2013 motion seeking “Explanation of Power Usage When Off Grid”, we note that PG&E opposed the motion, stating that it lacked sufficient evidentiary support as to the methodology used by the Complainants to perform their grid test. PG&E did, however, suggest another site visit to investigate Complainants’ allegations regarding diversion of energy.⁹⁶ These allegations were investigated as part of the July 2015 site visits attended by the ALJ.

We decline to revise Finding of Fact 3 as requested by Complainants because we agree with PG&E that the January 2013 motion lacks evidentiary support. Complainants support their allegations by providing daily printouts of charts from PG&E’s website showing the hourly metered data from both their billing meter and the CPUC test meter (Exhibits A and B of the January 2013 motion, respectively). This data covers a period between December 24, 2012 and January 5, 2013, when Complainants stated they were “off the grid” with no power. Complainants state that a comparison of the data between the two meters proves their assertion that the billing meter is measuring usage by some source of demand other than their own home. We disagree. First, the record was not further developed following the 2013 filings, including PG&E’s objection to Complainants’ test methodology. It is improper, three years later, to rely on that data for our decision today: the evidence is not “undisputed”, as Complainants claim. More recent undisputed data is in our record. We relied on that data to find that no power diversion from Complainants’ buried service line is taking place.

⁹⁶ February 8, 2013 response of PG&E to Complainants’ January 15, 2013 motion at 1.

Sixth and finally, Complainants request that the PD be revised to require PG&E to continue to address unlawful diversion of energy from Complainants' privately owned step-up transformer. Specifically, Complainants request that a new Ordering Paragraph be added to the PD:⁹⁷

During the ongoing metering period, PG&E is hereby ordered to cooperate with law enforcement officers to enable Complainants to invoke Section 591 of the California Penal Code, upon a showing of probable cause, to investigate unlawful diversion of energy from their privately owned high voltage electric lines, including at the destination of a second high voltage line originating in Complainants' step-up transformer located at 60 Langley Hill Rd.

Complainants cite Conclusion of Law 24 and submit that "this conclusion of law requires an Order from the Commission that PG&E either sever the second high voltage lead themselves, or cooperate with a private contractor to sever the high voltage lead without danger of electrocution. Conclusion of Law 24 states

Section 591 of the California Penal Code addresses unlawful diversion of energy from privately owned electric lines. The Commission has no jurisdiction under Section 591 of the Penal Code.

Complainants support their request for the new Ordering Paragraph based on the following reasoning:⁹⁸

1. The Commission has exclusive jurisdiction to correct PG&E wrongdoing.
2. Complainants have tried, but cannot invoke Section 591 of the California Penal Code without cooperation of PG&E.

⁹⁷ Complainants' Opening Comments on PD at 17.

⁹⁸ *Id.*, at 15.

3. Law enforcement requires PG&E's assent to investigate unlawful diversion of energy from privately owned electrical lines.
4. In this case, PG&E is the entity responsible for the unlawful diversion or for covering up unlawful diversion of energy from complainants' step-up transformer as explained above.

We disagree with the second and third steps of Complainants' argument. It is incorrect that Complainants cannot invoke Section 591 of the California Penal Code "without cooperation of PG&E"; the PD established this point clearly, and Conclusion of Law 24 is correct: the Commission has no jurisdiction under Section 591 of the Penal Code. It is also incorrect that "law enforcement requires PG&E's assent to investigate unlawful diversion of energy from privately owned electrical lines". While PG&E may at times assist law enforcement with such investigations, when requested by authorities to do so, PG&E's "assent" is not required for such investigations. That is a matter solely between the owner of the line (Complainants) and law enforcement authorities. Finally, Complainants have offered no factual evidence in this proceeding to substantiate their fourth point, their assertion that PG&E is the entity responsible for the unlawful diversion or for covering up unlawful diversion of energy from complainants' step-up transformer.

9. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Stephen C. Roscow is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Field testing of PG&E SmartMeter Relay No. 9764 has proven that this device is not the source of 60 Hz signal previously identified on the Complainants' service line.

2. PG&E's SmartMeter relay is not causing the health and safety effects reported by Complainants in their June 15, 2015 Motion for Expedited Relief.

3. The comparative analysis of Complainants' metered usage data from the period July 15 through July 23, 2015 proves that the observable difference in usage between Complainants' billing meter and Complainants' CPUC test meter is entirely due to no-load or minimum-load transformer losses.

4. No power diversion from Complainants' buried service line is taking place.

5. There are no undisputed facts within the First Motion for Summary Adjudication that can serve as the basis upon which the Commission can determine whether the moving party is entitled to judgment as a matter of law.

6. There are no undisputed facts within the Second Motion for Summary Adjudication that can serve as the basis upon which the Commission can determine whether the moving party is entitled to judgment as a matter of law.

7. Pursuant to Section G of PG&E's Electric Rule 16, "Service Extensions," the Commission finds that the facts underlying this Complaint present an exceptional case that merits Commission intervention. The standard application of Rule 16 ignores a lower cost, practical solution that can be implemented at no cost to PG&E or Complainants and de minimus cost to other PG&E ratepayers. The standard application of Rule 16 would require expenditures by Complainants that are unnecessary and unreasonably expensive in relationship to Complainants' monthly bills from PG&E.

8. PG&E provided false information regarding Rule 16.G to Complainants in September 2010. This misled Complainants into foregoing a timely remedy available to Complainants under PG&E's Electric Rules.

9. PG&E's discussion and application of its Electric Rule 16 in pleadings to this Commission included factual misstatements.

Conclusions of Law

1. PG&E's motion to dismiss C.10-10-010 should be denied because Complainant has put forth a factual claim upon which relief could be granted.

2. Complainants' April 1, 2011 Motion to Compel Discovery is moot.

3. Complainants' January 15, 2013 Motion for an Order to Compel PG&E to Investigate PG&E Owned Wiring (Electric Rule 17.2), for Explanation of Power Usage on Billing Meter While Off Grid with Transformers Off, and to Compel PG&E to Identify and Prosecute Those Responsible for Power Theft and Meter Tampering, and Further to Compel PG&E to Grant Reasonable Online Access to Billing Data is moot.

4. Complainants' February 15, 2013 Motion for an Order to Allow Plaintiffs to Lock their Privately-Owned Tesco Cabinet and related relief is moot.

5. Complainants' February 26, 2013 Motion for an Order to Compel PG&E to Provide Reasonable Access to Usage Data on Online PG&E Accounts and related relief is moot.

6. Hearings are not necessary because this case presents a tariff interpretation issue and only raises questions of law, rather than fact. Therefore, Complainants' April 19, 2013 Motion to Set Date for Hearing should be denied.

7. Complainants' September 9, 2013 Motion to Strike the First, Second and Third Amended Complaints and to reinstate the original complaint filed in this case should be denied.

8. Complainants' September 12, 2013 Motion for Ruling on Three Unopposed Motions for Summary Adjudication is moot.

9. Complainants' September 24, 2014 Motion for an Expedited Ruling on Complainants' Motion to Strike the First, Second and Third Amended Complaints and to reinstate the original complaint is moot.

10. Complainants' December 22, 2014 Motion for a Ruling on Complainants' Motion to Strike the First, Second, and Third Amended Complaints, and to reinstate the Original Complaint in this proceeding is moot.

11. Complainants' June 15, 2015 Motion for an Expedited Injunction, Protective Order, and to Impound PG&E Relay No. 9764 to Preserve Integrity of Evidence should be denied.

12. Complainants' July 30, 2015 Second Motion for Emergency Relief should be denied.

13. Complainants' January 12, 2011 Motion for Summary Adjudication should be denied because there are no undisputed facts presented with the Motion that can serve as the basis upon which the Commission can conclude that the moving party is entitled to judgment as a matter of law.

14. Complainants' March 23, 2011 Motion for Summary Adjudication should be denied because there are no undisputed facts presented with the Motion that can serve as the basis upon which the Commission can conclude that the moving party is entitled to judgment as a matter of law.

15. The Commission is the ultimate arbiter regarding the application of PG&E's Electric Rules.

16. PG&E's Electric Rule 16 governs the installation of Service Facilities that extend from PG&E's Distribution Lines.

17. PG&E's Electric Rule 16.G provides for "exceptional cases" under which the Commission is able to grant deviations from the standard requirements of

Rule 16 when the application of the Rule appears impractical or unjust to PG&E, an applicant for service, or ratepayers.

18. The standard application of Rule 16 would be impractical to Complainants because a lower cost solution can be implemented with no cost to PG&E or Complainants and de minimus cost to other ratepayers.

19. The standard application of Rule 16 would be unjust to Complainants because it would require expenditures by Complainants that are unnecessary and unreasonably expensive in relationship to Complainants' monthly bills from PG&E.

20. PG&E should relocate Complainants' SmartMeter from its current location to the existing meter socket adjacent to Complainants' premises, at no cost to Complainants.

21. It is fair to require PG&E to implement an ongoing usage monitoring program to enable Complainants to continue to monitor the usage at either end of their service line, because Complainants sought procedural remedies in this proceeding that were improperly limited by incorrect information provided by PG&E.

22. Section 498 of the California Penal Code addresses unlawful diversion of energy from utility-owned electric lines.

23. The evidentiary record in this proceeding provides no basis under Section 498 of the California Penal Code for the Commission to direct PG&E to investigate unlawful diversion of energy from PG&E-owned electric lines.

24. Section 591 of the California Penal Code addresses unlawful diversion of energy from privately owned electric lines. The Commission has no jurisdiction under Section 591 of the Penal Code.

25. Hearings are not necessary because this case presents a simple tariff interpretation issue.

ORDER

1. Complainants' June 15, 2015 Motion for an Expedited Injunction, Protective Order, and to Impound "PG&E Relay No. 9764" to Preserve Integrity of Evidence is denied.

2. Complainants' July 30, 2015 Second Motion for Emergency Relief is denied.

3. Pacific Gas and Electric Company's motion to dismiss Complaint 10-10-010 is denied.

4. Complainants' January 12, 2011 Motion for Summary Adjudication is denied.

5. Complainants' March 23, 2011 Motion for Summary Adjudication is denied.

6. Complainants' September 9, 2013 Motion to Strike the First, Second and Third Amended Complaints and to reinstate the original complaint filed in this case is denied.

7. Complainants' April 19, 2013 Motion to Set Date for Hearing is denied.

8. Complainants' Third Motion for Summary Adjudication is granted in part, and otherwise denied: Pacific Gas and Electric Company (PG&E) shall relocate Complainants' SmartMeter from its current location to the existing meter socket adjacent to Complainants' premises, at no cost to Complainants. PG&E shall also, at no cost to Complainants, make any further modifications necessary to ensure that the relocated SmartMeter can be read remotely, and in doing so shall not locate any equipment on Complainants' property or

Complainants' existing utility easements unless Complainants provide written agreement to such acts.

9. Pacific Gas and Electric Company shall implement an ongoing usage monitoring program to enable Complainants to continue to monitor the usage at either end of their service line.

10. All motions not specifically granted in this decision are denied.

11. Complaint 10-10-010 remains open to address the results of a separate ruling by the assigned Administrative Law Judge ordering Pacific Gas and Electric Company to show cause to why it should not be sanctioned by the Commission for violation of Rule 1.1 of the Commission's Rules of Practice and Procedure.

This order is effective today.

Dated _____, 2016, at San Francisco, California.