

Decision 16-09-061

September 29, 2016

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

<p>Michael Hetherington and Janet Hetherington,</p> <p style="text-align: right;">Complainants,</p> <p style="text-align: center;">vs.</p> <p>Pacific Gas and Electric Company (U39E),</p> <p style="text-align: right;">Defendant.</p>		<p>Case 10-10-010 (Filed October 13, 2010)</p>
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**ORDER DENYING THE APPLICATION FOR
REHEARING OF DECISION (D.) 16-03-013**

I. INTRODUCTION

In this Order, we dispose of the application for rehearing of Decision (D.) 16-03-013 (or “Decision”) filed by Michael Hetherington and Janet Hetherington (“Hetheringtons”).¹

The Decision resolved three formal complaints and multiple motions the Hetheringtons filed against Pacific Gas and Electric Company (“PG&E”).² The primary issues involved the location of the Hetheringtons’ SmartMeter and allegations

¹ Except as noted, all citations to Commission decisions are to the official pdf versions which are available on the Commission’s website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

² Complaint, dated October 13, 2010; First Amended Complaint, dated February 13, 2012; Second Amended Complaint, dated March 29, 2012; and Third Amended Complaint, dated July 30, 2012. Previously, the Hetheringtons had also initiated two informal complaints with the Commission’s Consumer Affairs Branch (“CAB”) involving similar issues and allegations. (D.16-03-013, at pp. 6-9.)

of unauthorized electricity diversion / use (“unauthorized use”) from equipment serving the Hetheringtons’ home.

A brief description of the Hetheringtons’ property and related electrical equipment is useful to understand the issues. The Hetheringtons live in rural San Mateo County. PG&E has been their electric provider since 2000. Prior to that time electricity for the property was provided by solar power or a backup generator. The home was heated by kerosene.

PG&E’s distribution line ends approximately 1.5 miles from the Hetheringtons’ home (PG&E’s designated “Service Delivery Point”). The Hetheringtons own the underground line extension that runs from the Service Delivery Point to their home. They also own the utility easement the line extension is buried in.

To properly regulate the electric current that flows from the Service Delivery Point to the Hetheringtons’ home, they own a “step-up” transformer located at the Service Delivery Point, and a “step-down” transformer adjacent to their home. For billing purposes, energy usage is measured by a SmartMeter located at the Service Delivery Point.

In 2010, the Hetheringtons filed the first of three formal complaints with the Commission. In pertinent part, the complaints sought orders directing PG&E to: (1) relocate the SmartMeter to a location adjacent to their home; (2) investigate possible unauthorized use pursuant to PG&E Electric Rule 17.2;³ and (3) install poles and electric line in the Hetheringtons’ utility easement to provide power to their home.

³ All subsequent references to rules are to PG&E’s Electric Rules unless otherwise stated. Rule 16 [Service Extensions], Section G [Exceptional Cases] provides:

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 for approval of special conditions which may be mutually agreed upon.

Neither PG&E nor the Hetheringtons contest the determination to relocate the SmartMeter, and thus this matter is not discussed further here.

We found good cause to require PG&E to relocate the SmartMeter as requested pursuant to Rule 16.G. We did not find evidence of any unauthorized use. However, our Decision directed PG&E to implement an ongoing usage monitoring program related to those concerns. Finally, we denied the request to have PG&E, at its own expense, install poles and electric line to provide power to the Hetheringtons.

The Hetheringtons contend the Decision erred by: (1) not adequately addressing alleged misrepresentations, collusion, and harassment by PG&E; (2) not finding that PG&E violated Rule 17.2; and (3) not applying Rule 16.B.1.b. as an alternative ground to order the SmartMeter relocation.⁴ A response was filed by PG&E. The Hetheringtons then filed a motion to allow a reply to PG&E's response.⁵

We have reviewed each and every issue raised by the Hetheringtons, and are of the opinion that good cause has not been established to grant rehearing. Accordingly, the application for rehearing of D.16-03-013 is denied because no legal error was shown.

II. DISCUSSION

The rehearing application does not satisfy the statutory requirement established in Public Utilities Code section 1732.⁶ Section 1732 requires that an application for rehearing specifically set forth the ground or grounds on which the applicant considers a decision to be unlawful.⁷ Absent specific and supported claims, we are unable to correct any legal error.

⁴ The Hetheringtons resubmit multiple exhibits presented during the proceeding plus one new exhibit. (Rhg. App., Exhibit ("Exh." A – I.) The resubmission of evidence in the proceeding is not necessary. However, the submission of new evidence in the form a new exhibit is improper and not permitted. Thus, we reject the submission of this new evidence after the close of the record in the proceeding.

⁵ The Commission's Rules of Practice and Procedure do not provide for replies to a response to a rehearing application, and thus, they are not typically allowed. However, in this instance there is no harm in accepting the Hetheringtons' motion and reply. The pleadings do not raise any new arguments, but merely repeat the allegations already made in the application for rehearing. Those allegations are addressed elsewhere in this order and not repeated here.

⁶ All subsequent section references are to the Public Utilities Code, unless otherwise stated.

⁷ See also Cal. Code of Regs., tit. 20, § 16.1, subd. (c).

It is not sufficient to simply identify a legal principle without explaining how and why it applies to the instant case and circumstances, or explain why a decision violates a rule of law. It is also not sufficient to merely revive and reargue the same arguments made during the proceeding. That is exactly what the instant application for rehearing does. We already considered the Hetheringtons' factual arguments and the evidence that was presented. A rehearing application is not a permissible vehicle for a party to try and relitigate the issues, resubmit the evidence, and ask the Commission to reweigh the facts.⁸

Based on this legal standard, we deny the Hetheringtons application. However, we also briefly explain below why the Hetheringtons' arguments, even if considered, do not establish legal error.

A. Alleged Misrepresentations, Collusion & Harassment

The Hetheringtons contend that PG&E misrepresented various facts throughout this proceeding. While they do not specifically allege legal error, they imply the Decision failed to adequately address PG&E's actions. (Rhg. App., at pp. 2-3, 16.) We disagree.

Our Decision expressly acknowledged concerns regarding the misleading nature of various PG&E representations. We also determined further inquiry was needed to determine whether PG&E violated Rule 1.1 ("Rule 1") of the Commission's Rules of Practice and Procedure. To thoroughly address this issue, we determined that PG&E should respond to a separate ruling ordering PG&E to show cause why it should not be sanctioned for Rule 1 violations.

The Order to Show Cause ("OSC") was issued on February 16, 2016, and this issue will be evaluated independently.⁹ Therefore, no further action or consideration was warranted in the Decision.

⁸ See, e.g., *Order Instituting Rulemaking Regarding the California Renewables Portfolio Standard Program* [D.13-02-037] (2013) at pp. 3-4 (slip op.); *Application of Cal-Ore Telephone Company for Rehearing of Resolution T-17133* [D.10-06-049] (2010) at p. 3 (slip op.).

⁹ Administrative Law Judge's Ruling Directing Pacific Gas and Electric Company to Show Cause
(continued on next page)

The Hetheringtons also contend that PG&E colluded with a neighbor to participate in and conceal the unlawful diversion of electricity from equipment intended to serve the Hetheringtons' home. The Hetheringtons claim this was done to provide a covert source of electricity for the neighbor's unlawful drug operation."¹⁰ (Rhg. App., at pp. 3-4, 14, 18, 20.)

Despite the Hetheringtons repeated allegations, we found no evidence of collusion by PG&E. The Hetheringtons conclusion was just speculation and conjecture. But that does not constitute evidence and is not an adequate basis on which to reach sound and record-based conclusions. Thus, it was appropriate to reject these allegations.

Finally, the Hetheringtons assert that PG&E engaged in electrical harassment to try and force them out of their home. This issue was first raised and addressed in connection with their June 15, 2015, motion requesting an injunction and protective order.¹¹ The Hetheringtons believed that the relay device used to transmit SmartMeter data was being used by PG&E to convey electrical feedback into the Hetherington's home, causing ear ringing, sleep deprivation, and exposure to harmful extremely low frequency electric fields. (Rhg. App., at pp. 3-4, 6.)

We properly rejected this allegation. After the motion was filed, we ordered PG&E to disconnect and remove the relay, which was then kept by the Commission for safekeeping. In addition, Commission staff participated in two site

(continued from previous page)

Why it Should Not be Sanctioned by the Commission for Violation of Rule 1.1 of the Commission's Rules of Practice and Procedure, dated February 16, 2016.

¹⁰ The Hetheringtons argue that the "obvious condition of [the] neighboring property" supports their conclusion that illicit drug production has been occurring on the property for over 20 years. They also claim the cabin has no permits and is a nuisance under San Mateo's Ordinance Code. (Rhg. App., at p. 14.) Even if these allegations are true, this Commission has no jurisdiction to provide a remedy. Our jurisdiction extends to the regulation of public utilities. (See Cal. Const., art. XII; Pub. Util. Code.) Any claims regarding the permitting status of the neighbor's cabin and /or unlawful activity occurring there are issues for appropriate local authorities.

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

visits along with PG&E and the Hetheringtons to test the relay device to determine if it could have caused the heath issues complained of, and otherwise inspect equipment at both the Service Delivery Point and the Hetheringtons' home.¹²

That testing proved the relay was not the cause of the any physical symptoms the Hetheringtons may have experienced. Nor was it or other any other identifiable equipment the cause of the conditions complained of.¹³ Despite the allegations now repeated in the rehearing application, at the time of the site visit the Hetherington's acknowledged that the relay equipment was not the cause of the problems they complained of.¹⁴

B. Alleged Unauthorized Use / Electricity Diversion

1. Purpose of the Proceeding

The Hetheringtons contend the Decision misstated the purpose of this case when it said:

...resolving the primary purpose of this dispute before us, the proper location of Complainants' SmartMeter.

(D.16-03-013, at p. 21.)

The Hetheringtons argue that the primary purpose of this proceeding was always to stop unauthorized use of their electricity supply. In their view SmartMeter relocation was just an ancillary issue. (Rhg. App., at pp. 3-4.)

We find no legal issue or error. The Hetheringtons consistently requested that we require PG&E to relocate the SmartMeter from the Service Delivery

¹² D.16-03-013, at pp. 21-27.

¹³ D.16-03-013, at pp. 24-26.

¹⁴ D.16-03-013, at p. 25.

Point to a location adjacent to their premises.¹⁵ They may have believed that was needed mainly to prevent potential unauthorized use, but relocation was still a primary issue we were called upon to resolve and doing so required separate analysis under separate PG&E Rules.¹⁶

The Hetheringtons also ignore the Decision reflected unauthorized use was a consistent theme throughout the proceeding and it devoted a significant portion of the discussion to addressing that issue.¹⁷ Therefore, we find no error in the above-quoted sentence.

2. Evidence of Unauthorized Use

a) Second 4000 Volt Line at Step-Up Transformer

The Hetheringtons contend just one 4000 volt line is needed to serve their home, but there are two 4000 volt lines attached to their step-up transformer. They argue that raises a reasonable inference the second line is being used to divert electricity. Further, they allege PG&E violated Rule 17.2 by not investigating the alleged unauthorized use and either removing or de-energizing the second line. (Rhg. App., at pp. 3-6, 13-17, citing *People v. Stanley* (1999) 72 Cal.App.4th 1547.) Rule 17.2

¹⁵ See, e.g., D.16-01-013, at pp. 6-9 [Discussing the two informal complaints and first formal complaint.]. See also Complaint, dated September 20, 2010, at pp.3-6; First Amended Complaint, dated February 13, 2012, at p. 2 ¶¶ 5-6, pp. 3-4 ¶¶ 10, 11, 13, p. 5 ¶ 16 & p. 7 ¶ 29; Second Amended Complaint, dated March 29, 2012, at pp. 9-10 ¶¶ 33, 34 & p. 12 ¶¶ 2-4; and Third Amended Complaint, dated July 30, 2012, at pp. 17-18 ¶¶ 2-6. On September 9, 2013, the Hetherington's filed a motion to strike their first, second, and third amendments and reinstate the original complaint. (See D.16-03-013, at pp. 11, 16 [We left all the Complaints in the record to have the maximum factual and evidentiary basis upon which to base a determination.])

¹⁶ Relocation of existing equipment such as a SmartMeter is governed by PG&E Electric Rule 16, Section F.2.b. Unauthorized use is governed by PG&E Electric Rule 17.2.

¹⁷ See, e.g., D.16-03-013, at pp. 6-38.

requires that when PG&E suspects any unauthorized use, it shall promptly conduct an investigation.¹⁸

Our review of the evidence in this proceeding indicated no violation of Rule 17.2. The Hetherington's theory regarding the purpose of the second line relied in large part on the opinion of a consultant who surmised that a second cable may not be necessary to serve the Hetherington's home.¹⁹ We found no evidence that the consultant ever actually inspected the transformer, the equipment serving the Hetheringtons' home, or their property.²⁰ Therefore, we were not able to rely on the consultant's opinion as sound evidence.

In addition, Commission staff participated in several actual site visits along with the Hetheringtons, their designated expert(s), and PG&E.²¹ PG&E had also independently conducted field visits to investigate the allegations of unauthorized use.²² These visits did not provide any reason believe the second line was being used to divert energy. Nor did they suggest the second line ran toward the neighbor's cabin.

Rather, it appeared that two 4000 volt lines were connected at both ends of the Hetheringtons' line extension, i.e., to both the step-up and step-down transformers.²³ That suggested that regardless of whether the second line is *necessary*

¹⁸ Rule 17.2.A. defines unauthorized use, and provides that unauthorized use includes, but is not limited to:

1. Unmetered use of electricity resulting from unauthorized connections, alterations or modifications to electric supply lines and/or electric meters.

¹⁹ Hetherington's Reply to PG&E's Response to Complainants' Second Motion for Emergency Relief, dated September 18, 2015.

²⁰ D.13-03-013, at pp. 34-36; PG&E's Reply to Complainants' Amended Reply to PG&E's Opposition to Complainants' Second Motion for Emergency Relief, dated September 30, 2015.

²¹ See, e.g., D.16-03-013, at pp. 10-11, 23-25, 35-36 [Site visits November 3, 2011, July 7, 2015, and July 24, 2015].

²² PG&E Response to Complainants' Motion for an Order to Compel PG&E to Investigate PG&E Owned Wiring (Electric Rule 17.2) and Other Relief, dated February 2, 2013, at pp. 1-2.

²³ See, e.g., D.16-03-013, at pp. 35-36.

to serve the Hetheringtons' home, both lines actually do run to the home and not to some other location. Thus, we found no basis to suspect unauthorized use or find a violation of Rule 17.2.

The Hetherington's reliance on *People v. Stanley* is also misplaced. That case involved the question of whether local law enforcement could legally attach an electric meter to monitor suspected illegal power diversion at a property where unlawful marijuana growth was suspected.²⁴ Based on *People v. Stanley* the Hetheringtons argue their neighbors had no reasonable expectation in the privacy of the electrical equipment serving their cabin and PG&E should have investigated the step-down transformer at the cabin to determine if it was receiving diverted electricity. Whatever the neighbor's privacy interests, the evidence here was insufficient to prove, or even reasonably infer, that any unlawful electricity diversion was occurring. Thus, there was no basis to find that PG&E was required to investigate the neighbor's property or equipment.

b) Line Extension

The Hetheringtons also raised concerns about electricity diversion from their underground line extension, again arguing PG&E violated Rule 17.2 by not adequately investigating their claim. (Rhg. App., at pp. 1-2.) However, the facts did not support the Hetheringtons' allegations.²⁵

The Hetheringtons submitted exhibits intended to show suspicious digging in the area to support their allegation. (See, e.g., Rhg. App., Resubmitted Exhibits F & G.) However, in both 2010 and 2015 the Hetheringtons, their expert, the Commission staff, and PG&E investigated the area by walking the length of the underground line extension.²⁶ There was no observable evidence of trenching that would be indicative of electricity diversion.

²⁴ *People v. Stanley*, *supra*, 72 Cal.App.4th at pp. 1550-1551.

²⁵ See, e.g., D.16-03-013, at pp. 73-76.

²⁶ D.16-03-013, at pp. 9-10, 23-25.

In addition, the line extension, as well as the utility easement it is located in are privately-owned by the Hetheringtons. PG&E has no legal obligation to serve privately-owned lines and equipment, or investigate claims of unauthorized use on privately-owned property.

While the Hetheringtons are free to dig in their private easement to investigate their suspicions of unauthorized use, PG&E is not required to do so. It is also not within the Commission's jurisdiction to intercede regarding issues involving a utility customer's private property or privately-owned electrical equipment.²⁷ The Commission's jurisdiction extends only to the regulation of public utilities and their operations.²⁸ Issues involving private property are for the Courts and/or the local authorities.

c) **Billing Discrepancies**

The Hetheringtons contend that billing discrepancies raised a "reasonable inference" of unauthorized use. Accordingly, they argue Finding of Fact Number 3 was wrong. (Rhg. App., at pp. 6-9.)

Finding of Fact No. 3 states:

The comparative analysis of Complainants' metered usage data from the period of 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.

(D.16-03-013, at p. 88 [Finding of Fact Number 3].)²⁹

²⁷ D.16-03-013, at pp. 74-75 [Addressing the Hetheringtons claims regarding the applicability of Penal Code Sections 591 & 498].

²⁸ Cal. Const., art XII; Cal. Pub. Util. Code.

²⁹ During a 2011 site visit, the Commission directed PG&E to install a "test meter" adjacent to the Hetherington's home that would allow them to track and compare metered usage at both ends of their line extension. (D.16-03-013, at pp. 10-11.) The "test meter" (owned by PG&E and referred to as the "CPUC test meter") was an independent device that would allow the Hetheringtons to verify whether PG&E's billing meter was properly recording electricity use.

As evidence the Hetheringtons submitted billing records between July 14 to July 23, 2010. The bills contained bar graphs depicting the Hetheringtons' general daily electricity usage.³⁰ We also reviewed evidence showing more detailed numerical breakdowns of the recorded energy usage between the test meter and PG&E's billing meter during the same time period.³¹

There was a measurable difference between the test meter and the billing meter.³² But if unauthorized use was occurring, the billing meter should have shown more disparate electricity usage indicative of energy spikes when electricity was being diverted and used at a different property. That was not the case here.

Here, the variations were small and consistent over time. That was not indicative of electricity use by two different structures. The evidence was more consistent with a conclusion that variations were attributable to normal and expected transformer losses.³³ Therefore, the evidence does not support a conclusion that Finding of Fact Number 3 erred.

C. Lock Motion

In February 2013, the Hetherington's filed a motion requesting that we (1) require PG&E to remove its lock on the meter cabinet housing the Hetheringtons' SmartMeter and; (2) allow the Hetheringtons to independently lock the cabinet to prevent any unauthorized connections to their equipment ("Lock Motion").³⁴ Our Decision found that the Lock Motion was moot.³⁵

³⁰ Motion for Emergency Relief, dated July 27, 2015, Attached Exhibit ("Exh.") A; and Second Motion for Emergency Relief, dated July 30, 2015, Attached Exh. C.

³¹ Pacific Gas and Electric Company's Opposition to Hetheringtons' Second Motion for Emergency Relief, dated August 13, 2015, Attached Declaration of Lisa Kweitniak, Exh. A.

³² D.16-03-013, at p. 29.

³³ D.16-03-013, at pp. 34-37.

³⁴ Motion for an Order to Allow Plaintiffs to Lock Their Privately Owned Tesco Cabinet with Their own Lock to Prevent Meter Tampering and Power Theft from Privately Owned Line and Equipment, dated February 15, 2013, at pp. 2-3.

³⁵ D.16-03-013, at pp. 17, 89 [Conclusion of Law Number 4].

The Hetheringtons assert they were prejudiced because we did not rule on the Lock Motion immediately when it was first filed. They argue the delay in ruling on the motion prevented them from discovering the second 4000 volt line connected to their step-up transformer, which they believe was diverting electricity to power the neighbor's illicit drug operation. (Rhg. App., at pp. 10-12.) We find no prejudice or error.

Although we generally strive to address pleadings in a timely manner, it is sometimes unnecessary, procedurally impractical, or unduly burdensome to do so immediately when they are filed. Here, for example, it was unnecessary to immediately rule on the Lock Motion, because it was duplicative of a motion the Hetheringtons had already filed requesting an order for PG&E to investigate alleged power theft from the equipment in the meter cabinet.³⁶ PG&E had already inspected the meter cabinet equipment multiple times, but no evidence of unauthorized use was discovered.³⁷

An immediate ruling would also have been procedurally impractical and burdensome. The Hetheringtons filed approximately 20 separate and often repetitive motions in this proceeding. Ruling on each motion, and each repeated allegation was not an effective use of Commission time and resources.

Finally, the Hetheringtons' fundamental premise was flawed. The motion claimed that the existence of a PG&E lock on the meter cabinet raised a presumption that PG&E had asserted illegal ownership and control of the Hetheringtons' private property.³⁸ But they ignore that the cabinet was constructed to allow them customer access to their own equipment. At the same time, it also houses

³⁶ 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, dated January 15, 2013.

³⁷ PG&E Response to Complainants' Motion for an Order to Compel PG&E to Investigate PG&E Owned Wiring (Electric Rule 17.2) and Other Relief, dated February 8, 2013.

³⁸ Lock Motion, dated February 15, 2013, at pp. 3-4.

PG&E-owned equipment, and nothing prohibits PG&E from placing locks on the cabinet to secure its own equipment.³⁹

D. SmartMeter Relocation

Our Decision ordered PG&E to relocate the Hetheringtons' SmartMeter adjacent to their home pursuant to Rule 16.G governing "Exceptional Cases."⁴⁰ The Hetheringtons agree with that outcome, but argue the Decision erred in not finding that Rule 16.B.1.b. also required relocation of the SmartMeter. Rule 16.B.1.b. provides:

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

This Rule was inapplicable. It was superseded by Rule 16.C.5., which provides:

UNUSUAL SITE CONDITIONS. In case where an 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...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.

As applied here, because PG&E's distribution line ends approximately 1.5 miles from the Hetheringtons' home, PG&E could reasonably locate the

³⁹ PG&E Response to Complainants' Motion to Allow Plaintiffs to Lock Their Privately Owned Tesco Cabinet, dated March 4, 2013.

⁴⁰ D.16-03-013, at pp. 2, 63-64, 90-91 [Conclusions of Law Numbers 17-20].

SmartMeter at that location, i.e., at the Service Delivery Point. Thus, Rule 16.1.b. did not require the relocation desired by the Hetheringtons.⁴¹

III. CONCLUSION

For the reasons stated above, the application for rehearing of D.16-03-013 is denied because no legal error was established.

THEREFORE, **IT IS ORDERED** that:

1. The application for rehearing of D.16-03-013 is denied.
2. This proceeding, Case (C.) 10-10-010 remains open.

This order is effective today.

Dated September 29, 2016, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

LIANE M. RANDOLPH

Commissioners

Commissioner Carla J. Peterman, being necessarily absent, did not participate.

⁴¹ The Hetheringtons assert that PG&E treats customers differently, because a nearby winery is also served by an underground line but its SmartMeter was placed at its premises. (Rhg. App., at pp. 20-21.) The Hetheringtons do not present enough facts to support and/or evaluate this allegation. Thus, no meaningful and reasonable comparison is possible.