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03-23-11
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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

(A) Michael Hetherington
Janet Hetherington
COMPLAINANTS

Case No. (C) 10-10-010
(Filed Sept. 20, and/or Oct. 13, 2010)

vs.

(B) PG&E (U39E)
DEFENDANT

SECOND MOTION FOR SUMMARY ADJUDICATION

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Dated: March 23, 2011

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This motion is set forth as a separate and independent foundation for the CPUC to enforce the law -PG&E Electric Rule 18A- and to order PG&E to move the smart meter to Hetheringtons' premises as a matter of law. Electric Rule 18A provides a separate and independent basis for moving the smart meter -as a matter of law- in addition to the legal grounds previously set forth in Hetheringtons' Motion for Summary Adjudication, filed Jan. 12, 2011.

PG&E'S LOCATION OF HETHERINGTONS' METER AT THE NEIGHBOR'S PREMISES 1.5 MILES AWAY FROM HETHERINGTONS' SERVICE POINT SUPPLIES THE NEIGHBOR'S PREMISES AND/OR UNPERMITTED CABIN WITH ELECTRIC POWER FROM BEHIND HETHEHRINGTONS' METER AND APPLIES THIS ILLEGAL POWER USAGE TO HETHERINGTONS' ELECTRIC BILL IN VIOLATION OF ELECTRIC RULE 18A.

PG&E Electric Rule 18A is clear: "**Separate premises...will not be supplied through the same meter...**" (Emphasis added.)

It is undisputed that PG&E has located Hetheringtons' smart meter at the neighbor's premises -1.5 miles away by car away from the service point at Hetheringtons' premises, and over 2/3 mile from Hetheringtons' property boundary line.

It is undisputed that Hetheringtons' electric line behind the distant smart meter comprises a 2/3 mile long 2,400 volt transmission/ distribution line. A 2,400 volt distribution line is part of the electric power distribution / transmission system by definition -PUC 8360, line 2- and thus part of the power grid subject to the supervening public interest set forth in PUC sections Code 8360, 8362(a) and 8366 governing smart meter location.

PG&E's smart meter location 1.5 miles away by car encourages and makes possible illegal power diversion for a distance of over one mile of the neighbor's land behind the meter, resulting in fraudulent electric bills, and theft of electric power from the power grid. See updated Hetherington Meter Readings, attached hereto as Exhibit L. Exhibit L includes the amount paid in PG&E bills. Averred to by PG&E; "the billing records speak for themselves."

Hetheringtons' PG&E bills metered at the neighbor's house 1.5 miles away are as much as four times the bills measured by the same smart meter located at the service point at Hetheringtons' house for six months. Electric usage metered at the neighbor's house is about double the usage metered at plaintiffs' house -averred to by PG&E. The meter readings summarize the PG&E bills and are billing records: "the billing records speak for themselves."

This meter location violates the law: Electric Rule 18. A, "**Separate premises...will not be supplied through the same meter...**" (Emphasis added.)

PG&E BILLING RECORDS PROVIDE AN INESCAPABLE CONCLUSION THAT INFRASTRUCTURE LOCATED ENTIRELY ON THE NEIGHBOR'S PREMISES AND UNDER HIS DOMINION AND CONTROL IS USING TWICE AS MUCH POWER AS HETHERINGTONS AND IS SUPPLIED THROUGH THE HETHERINGTONS' METER. ACCORDINGLY, RES IPSA LOQUITUR -THE THING SPEAKS FOR ITSELF- MAY BE INVOKED ON A MOTION FOR SUMMARY ADJUDICATION TO PROVE HETHERINGTONS' METER IS SUPPLYING SEPARATE PREMISES IN VIOLATION OF ELECTRIC RULE 18A.

The PG&E billing records give rise to such an inescapable conclusion that power is being diverted behind Hetherington's distant smart meter that res ipsa loquitur ("the thing speaks for itself") may be invoked on a motion for summary judgment to prove that separate premises- the unpermitted cabin and / or the neighbor's house, and the Hetherington premises are being supplied through the same meter in violation of Rule 18A. Averred to by PG&E "the billing records speak for themselves."

During construction, PG&E changed the route of Hetheringtons' underground electric utility easement to a location that would benefit a remote cabin (built without permits) -on the same premises where PG&E now insists on locating the smart meter. (See Letter of San Mateo County, Exhibit K; attached hereto and previously presented, Mot. S. A. filed 1-12-011). PG&E approved this change of location.

The original route of Hetheringtons' utility easement went south of the pond. See the dark line indicating the easement on the map attached as Exhibit C. PG&E changed the route to the north of the pond - toward the cabin. See Exhibit C. Hetheringtons were never informed of the PG&E "resolution" indicated in the letter. Hetheringtons further did not receive a copy of the San Mateo County letter until about August 2010.

At times and dates known only to PG&E, infrastructure located between Hetheringtons' house and Hetheringtons' smart meter 1.5 miles away at the neighbor's house -is using double the amount of electric power consumed by Hetheringtons. Such infrastructure is located entirely on the neighbor's land under his dominion and control. And, this results in fraudulent charges on Hetheringtons' PG&E bills, as measured by PG&E's own smart meter when located at Hetheringtons' house for six months. Averred to by PG&E; "the billing records speak for themselves".

Prior to construction of Hetheringtons' power line, the cabin on the separate premises where PG&E insists on locating Hetheringtons' meter had no PG&E power. The cabin now has electricity as evidenced by Dish Network, lights at night, at least one electric line running into the woods, and security cameras that appear to run full time on outbuildings. One of these outbuildings burned to the

ground- consistent with an illegal power connection. Obvious condition of property- progressive electrification-without PG&E or County approval- has occurred since Hetheringtons' built their electric line.

Under the established doctrine of res ipsa loquitur, (Cal. Evidence Code 646.2) "the thing speaks for itself," a legal presumption arises that local PG&E personnel, and/or others using the separate premises are jointly and severally responsible for illegally diverting electric power behind Hetheringtons' PG&E meter. Thus, Hetheringtons' meter supplies separate premises in violation of PG&E Electric Rule 18A.

Res ipsa loquitur- "the thing speaks for itself" applies to public entities under Gov. Code 830.5a, and thus applies to PG&E. Elements are met:

(1.) The instrumentality causing the harm, [pirate electric lines and step down transformer] are located entirely on the neighbor's property under his dominion and control, and thus within the exclusive knowledge and control of PG&E or others using the property- who changed the route of the Hetheringtons' utility easement to benefit the cabin.

(2.) PG&E has knowledge of dates and times of illegal power diversion through the smart meter. PG&E has rendered plaintiffs' smart meter inaccessible online and will not release usage data from the smart meter

(3.) PG&E has an ongoing duty under Electric rule 17.2, (set forth to investigate and sever illegal power diversions irrespective of meter ownership. Duty is ignored.

(4.) Hetheringtons did nothing to contribute to the wrong- illegal power diversion. Hetheringtons did not agree to change the route of the electric line, but understood from PG&E the project would not be allowed to continue unless this was done. Hetheringtons' power line is sound and not leaking to ground. On site finding by five PG&E employees when moving the smart meter to the neighbor's house on Aug. 25, 2010. Hetheringtons have paid increasing electric bills in good faith for ten years- despite reducing electric use to a minimum. Hetheringtons are entitled to rely on PG&E inspection and approval of their electric line, and that PG&E would provide legitimate, nonfraudulent electric bills. "The billing records speak for themselves."

Accordingly, separate premises- Hetheringtons, the neighbor, and/or the neighbor's unpermitted cabin- are supplied by the same meter located at the neighbor's house, 1.5 miles away from Hetheringtons' house. Such location defies PG&E Rule 18A, as well as common sense.

The PG&E smart meter location is unlawful, unjust and unreasonable- providing the essential basis for CPUC intervention under PUC section 451 - "451. 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.

...

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

PG&E's meter location in this case not only defies common sense, but blatantly violates PG&E rules and state law relating to meter location.

THEREFORE, HETHERINGTONS RESPECTFULLY REQUEST THAT THE COMMISSION ISSUE AN ORDER AS A MATTER OF LAW:

1. PG&E shall locate the Smart Meter to Hetheringtons' premises -meaning to the existing meter socket at the service point at plaintiffs' house pursuant to PG&E Electric Rule 18A.
2. A new baseline for Hetheringtons' electric usage shall be established, based on actual usage by Hetheringtons at their premises alone pursuant to PG&E Electric Rule 18A.
3. PG&E shall sever all illegal power diversion equipment capable of diverting electric power from Hetheringtons' power line pursuant to PG&E Electric Rule 17.2.

Respectfully submitted

/s/

Michael Hetherington

/s/

Janet Hetherington

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CERTIFICATE OF SERVICE

I, the undersigned, state that I am a citizen of the United States; that I am over the age of eighteen (18) years, and my business address is: 325M Sharon Park Drive, Suite 732, Menlo Park, CA 94025.

On **March 30, 2011** I served a copy of:

**SECOND MOTION FOR SUMMARY ADJUDICATION and SEPARATE STATEMENT OF
UNDISPUTED FACTS**

and supporting Exhibits A, A-1, B, C, D, E, K, L, and P on the official service list for **C.10-10-010** by electronic mail for those who have provided an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **March 30, 2011**.

/S/

Michael Hetherington

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

EMAIL SERVICE LIST

CPUC Docket No. C 10-10-010

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