

In the Matter of an Arbitration

between

**INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, LOCAL
1245,**

Complainant,

and

PACIFIC GAS & ELECTRIC,

Respondent

Involving the Arb. Case No. 212
Termination

Opinion & Decision

of

Board of Arbitration

-oOo-

San Francisco, California

BOARD OF ARBITRATION

Roger Stalcup
Ron Van Dyke
Bruce Tison
Margaret Short
Barbara Chvany

Union Board Member
Union Board Member
Company Board Member
Company Board Member
Neutral Board Member

APPEARANCES

On Behalf of the Union:

Tom Dalzell, Esq.
Staff Attorney
IBEW LOCAL 1245
P.O. Box 4790
Walnut Creek, CA 94596

On Behalf of the Employer:

Stacy A. Campos
PG&E Law Department
P.O. Box 7442
San Francisco, CA 94120-7442

INTRODUCTION

This dispute arises under the Collective Bargaining Agreement between the above-captioned Parties. Pursuant to the Agreement, a Board of Arbitration was duly constituted and an arbitration hearing was conducted on March 4, 1996, in San Francisco, California (TR 1; JX 3).¹ At the hearing, the Parties had a full opportunity to examine and cross-examine witnesses, and to present relevant evidence. A verbatim transcript of the proceedings was taken. The Parties stipulated that the prior steps of the grievance procedure have been followed or waived and the matter is properly in arbitration (TR 2-3). The case was submitted to the Board for decision on June 3, 1996, upon receipt of post-hearing briefs.

The Grievant, A was hired by the Employer on August 5, 1985. He was terminated on May 20, 1994, which was also the last day that he worked. At the time of the events at issue, he was a Lineman in General Construction, assigned to Oakhurst, California (TR 3, 69, 110-111). The discharge was for tampering with an electrical meter in order to divert energy at his residence, located at 37838 China Creek Road in Oakhurst, California, in violation of Standard Practice 735.6-1 (JX 2, p. 24; TR 69-72). The Grievant denies the charges (TR 111). The termination was grieved. The grievance was not resolved in the lower steps of the grievance procedure, leading to this arbitration. (TR 2-3; JX 2, 3).

ISSUE

Whether the Grievant, A was terminated for just cause; and, if not, what shall be the remedy? (TR 2; JX 3).

¹ References to the transcript are cited herein as (TR #); references to Joint Exhibits, Employer Exhibits and Union Exhibits are cited as (JX #), (EX #) and (UX #), respectively.

REMEDY REQUESTED

The Union seeks the Grievant's reinstatement with full seniority, back pay and benefits (TR 2; Un. Bf. 19). The Employer seeks denial of the grievance in its entirety (TR 2; Er. Bf. 24).

RELEVANT AGREEMENT PROVISIONS

TITLE 3. Continuity of Service

* * *

3.3 Employees who are members of Union shall perform loyal and efficient work and service, and shall use their influence and best efforts to protect the properties of Company and its service to the public,

* * *

TITLE 7.1 Management of Company

7.1 The management of the Company and its business and the direction of its working forces are vested exclusively in Company, and this includes, but is not limited to, the following: to direct and supervise the work of its employees, to hire, promote, demote, transfer, suspend and discipline or discharge employees for just cause; (JX 1)

PERTINENT COMPANY POLICY

Standard Practice 735.6-1

* * *

Policy

* * *

A. It is the policy of PG&E that employees shall at all times practice fundamental honesty (EX 9)

Sections D(1) and (2) of the policy enumerate "Theft of energy" and "tampering with . . . company metering" as examples of violations subject to disciplinary action (EX 9, p. 7).

BACKGROUND

Applicable Policy:

The Parties have negotiated a positive discipline agreement, pursuant to which they have agreed that diversion of gas or electricity is a major offense, amounting to theft, such that a single proven occurrence amounts to just cause for termination (TR 7, 31, 72-73). This is a type of offense which employees know or should know will lead to discharge (TR 73).

China Creek Road Residence:

In Spring 1993, the Grievant moved from 48459 Victoria Lane to 37838 China Creek Road, both in Oakhurst, California. Service was established in the Grievant's name at the China Creek Road residence on May 10, 1993, by Troublemaker N. N. had also turned off the prior occupant's service three days earlier. From the time service was established on May 10, 1993 until December 1993, the meter at the Grievant's China Creek Road residence recorded no usage of electricity (EX 8).²

The absence of recorded electrical usage after May 10 led to an investigation, begun by Electric Meter Technician R on December 9. R's job for 15 years has been to ensure the accuracy and integrity of electric meters in a particular service area. On a daily basis, he examines approximately 18 meters (TR 7-8, 27, 31).

R Examination of Meter:

On December 9, R went to 37838 China Creek Road and examined meter number 490424 (TR 8, 20-22; JX 2, p. 25). He did so as a result of a service tag he had received indicating

² All dates hereinafter are 1993, unless otherwise specified.

the meter may not be registering electrical usage (TR 9). At the time, he was not aware that a PG&E employee resided at that address (TR 27).

R entered a gate at the front of the house and proceeded to the meter, located on the front porch near the front door (TR 9). The porch light was on and he heard music from inside the house, indicating electricity was being used. R observed that the disk on the meter, which registers electrical usage, was not turning. This indicated something was wrong with the meter (TR 10). He knocked at the door, but no one responded (TR 10).

R proceeded to test the meter, which was approximately 30 years old (TR 10, 33). To test it, he had to remove it from the wall. To do so, he had to take off the meter ring, which was secured with a wire closed by a lead seal (TR 11-12). Meters are secured in this fashion to prevent tampering (TR 12-13). R broke the seal and did not retain it (TR 36). When he cut the seal off the meter and opened the wire, the meter ring and the glass meter cover fell off into his hand (TR 13, 15).

Normally, after the meter ring is removed, a meter can be removed in one unit. The glass does not commonly fall out, according to R (TR 13, 14). The glass is usually held in place by an internal seal, called a T-seal, and by the rotation of the glass into the base. The T-seal was missing from meter 490424, and the glass was not rotated into the base, causing the glass to fall into R's hand when he removed the meter ring (TR 13-15). The T-seal exists to guarantee the internal integrity of the meter (TR 13). When the glass fell off indicating the T-seal was missing, R examined the meter more closely (TR 15, 17). R testified that a Troublemaker would not leave the glass in that condition and would have no reason to loosen the glass (TR 32, 125).

R observed that the meter ring had been flared out all the way around sufficient to allow it to be removed from the meter without breaking the lead seal (TR 15-16). From the appearance of the meter ring, which was flared and scratched, it appeared to R that a screw driver had been placed between the house and the meter ring to pry the ring open (TR 16, 17, 26-27, 32, 38-39). Upon further examination, R found the set screw on the bottom of the meter was loosened, causing the magnetically suspended disk to drop down and drag on the name plate. This caused sufficient friction on the disk to prevent it from turning, so the meter was not registering any electrical usage (TR 11, 17-20, 22-24).

R concluded that the glass had been removed from the meter, and the lower bearing screw loosened, causing the disk to drag (TR 24). In R's opinion, the meter had obviously been tampered with in order to divert energy (TR 26, 32, 38-39). Factors which led him to this conclusion are: 1) the scratches on and flaring of the meter ring; 2) the missing T-seal; 3) the glass falling off in his hand; and 4) the loosened set screw which disabled the disk (TR 26-27, 33-34, 38-39). He further testified that he did not believe an installer would leave a meter in that condition, without a T-seal, with the glass unrotated, and with the meter ring so "munged up" (TR 31, 32). R had not seen this type of tampering before (TR 24-25, 30). He believed that whoever had performed this tampering had to be somewhat mechanical (TR 30).

On cross-examination, R acknowledged that the glass was not rotated into the base, which condition did not indicate knowledge of meters. R further stated that, if the intent were to divert energy, it would be preferable to slow the disk rather than disable it, because zero usage on an account may trigger an investigation (TR 37-38).

Follow-Up Investigation:

R replaced the electrical meter at China Creek Road and placed a new, security meter ring on it (TR 25). He completed a Field Investigation Form, indicating he had found "obvious tampering" (TR 26-27; JX 2, p. 25). Although he did not retain the lead seal, he took the meter and the meter ring to the Madera meter shop (TR 28, 26).

James Gibson, a Revenue Protection Representative, whom R contacted about his findings, then conducted a follow-up investigation (TR 27-28, 39, 40, 44). He obtained PG&E records for the Grievant's prior residence, and for the prior occupant at China Creek Road. Neither account indicated other than normal usage (TR 42, 55, 56; EX 7; JX 2, p.23). The records showed electrical usage was registering as of May 5 for the prior occupant (TR 51-52). From this information, Gibson concluded the meter was working properly prior to the Grievant's occupancy (TR 51-52). Gibson also obtained the records for the Grievant's account on China Creek Road (TR 40-41). As noted above, no electrical usage was registered for the period May 10 through December 9 (TR 40-41, 51-52).

Gibson was also responsible for determining the retroactive amount to bill the Grievant for the energy utilized in the May to December period when the meter was not registering. Because the Grievant was a new customer at that address, without an established usage history, Gibson determined that a five-neighbor comparison would be the fairest of the available methods for computing the amount due. (TR 45-46; EX 3, 5, 6). In March 1994, the Grievant was billed for the

retroactive amount of \$1,464.71 (EX 2, 8; TR 82). The amount was still outstanding in October 1994 (TR 49, 52; EX 4).³

When Gibson discovered that the customer at the China Creek Road residence was a PG&E employee, he contacted Michael Perry, a Corporate Security Representative and trained investigator, who then led the investigation (TR 41, 57-58, 61, 64). In the investigation, witnesses were interviewed, including the Grievant and his wife, visits were made to the China Creek Road residence, records were reviewed, and the meter was examined (TR 42-43, 58-59, 60-64; JX 2, pp. 20-22). Neighbors verified that lights were on during the pertinent time frame, establishing electricity was being used in the house even though no usage was recorded on the meter (TR 64).

The meter ring, which R had left in the Madera shop, was lost (TR 41, 52-53, 67). Gibson and Perry, therefore, did not have the opportunity to examine it (TR 66). The meter was dusted for fingerprints, but none of evidentiary value were obtained (TR 59).

In his investigatory interview, the Grievant denied he had tampered with the meter. He stated that his wife paid the bills and that she made no comment to him about the amount of the PG&E bills during the relevant period; and that his wife had made two payments to PG&E totaling \$110.15, which he assumed were for the electricity at China Creek Road (JX 2, p. 21). The Grievant's wife told the investigator that she had no way of knowing the amount for current residential usage on the monthly PG&E bill; and that she did not discuss the bills with her husband (*Id.*).

Oakhurst Troubleman N shut off service for the prior occupant on May 7, and started service for the Grievant on May 10, at China Creek Road (TR 91). N has been a

³ The Grievant's account for the China Creek Road residence was ultimately closed in April 1995. A balance due of \$2,852.93 was deemed uncollectible in October 1995 (EX 8; TR 84). Even without the retroactive amount, a significant unpaid balance was carried consistently on the account (TR 83; EX 8).

journeyman or higher for 30 years, with 4 years as a Troubleman (TR 90-91). He turns 2 to 14 meters on or off each day (TR 96). On January 5, 1995, he was interviewed as part of the investigation (TR 61; JX 2, p. 21). The investigation report indicates that N reported the meter ring was intact when he left the residence on May 10 after turning on electrical service for the Grievant. He did not notice if the disk was not moving, because the breaker was not on (JX 2, p. 21).

Grievant's Bills:

The record shows that, at his prior residence, in January the Grievant used 1019 KWH for current charges of \$99.17, and in February used 915 KWH for current charges of \$90.10 (JX 2, p. 23). At his prior residence, for the two months preceding his move to China Creek Road, the record reflects the following:

DATE	KWH	Current Charges	Prior Balance	Payments	Amount of Bill
3/25/93	870	\$85.59	\$220.14		\$305.73
4/24/95	833	\$81.59	\$305.73	\$90.10	\$297.22

(EX 7; TR 75-76, 86-87)

The Grievant moved in the month of May. The records for the account at the prior address reflect the following for May and June:

DATE	KWH	Current Charges	Prior Balance	Payments	Amount of Bill
5/25/95	494	\$44.87	\$297.22	\$85.59	\$256.50
6/26/93	5	3.98	\$256.50	\$91.59	\$168.89
6/29/93 Closing Bill	30	2.86	\$168.89	\$84.87	\$ 86.88

(EX 7; TR 77, 86-87)

The Statement of Account for the China Creek Road residence shows, in pertinent part, the following:

DATE	KWH	Current Charges	Prior Balance	Payments	Amount of Bill
5/10/93 service established					
6/22/93	0	\$7.37	0		\$7.37
7/23/93	101 erroneous reading	\$12.82	\$7.37		\$20.19
8/23/93 special billing	0	\$10.60 - \$12.82 adjustment for erroneous reading	\$20.19 \$86.88 transfd from prior residence		\$104.85
9/23/93	0	\$5.30	\$104.85		\$110.15
10/23/93	0	\$5.30	\$110.15	\$30 10/17/93	\$85.45
11/23/93	0	\$5.30	\$85.45	\$80.15 10/26/93	\$10.60

(EX 8; TR 78-82)

As the table above reflects, the Grievant was charged a minimum amount for service (\$5.30 per month) during this period, even when the meter was not recording electrical usage (TR 51; EX 8). The records also show that the \$86.88 balance due from the Grievant's account at his prior address was transferred to the China Creek Road address in August (EX 8; TR 77, 86-88). While the prior balance and past due amounts were eventually reflected on the China Creek Road bill(s), the bills clearly break down what the current monthly charges are, and what the previous balance is (TR 88-89).

In the two full months after R installed a working meter at China Creek Road, the Grievant's KWH were 2183 and 2041, respectively, for current monthly charges of \$299.76 and \$211.45 (EX 8; TR 54). For the remainder of his service at that residence, his electrical usage ranged

from a low of 1342 for \$173.96 in current charges to a high of 2303 for \$299.84 in current charges (EX 8).

The prior occupant at China Creek Road had approximately half the monthly electrical usage as compared with the Grievant. The prior customer's KWH ranged from 786 to 1058 per billing period, for bills ranging from \$76 to \$107 dollars (JX 2, p. 23; TR 54).

Decision to Terminate:

Based upon the information gathered in the investigation, as summarized above, the decision was made to terminate the Grievant's employment for meter tampering and diversion of energy in violation of Standard Practice 735.6-1 (TR 69-73; JX 2, p. 24; EX 9).

Rebuttal Evidence and Testimony:

The Grievant testified that he never touched or tampered with the meter at the China Creek Road residence (TR 111). He stated his family did not use the front door, where the meter was located; they used a side door (TR 118). He further testified that his wife paid the bills, he did not see any of them for that period in 1993, and she did not discuss the PG&E bills with him (TR 112). According to the Grievant, he was not trained in or familiar with the internal workings of meters; and, before this case, he did not know about T-seals, set screws or the magnetic suspension of the disk (TR 113-114).

The record shows the Grievant had access to meter rings and seals (TR 94-95, 103-104, 112-113). Plastic seals, which the Company began using in or around this time frame, are anonymous in that they do not identify the employee using them (unlike the lead seals) (TR 36, 112-113).

On cross-examination, the Grievant acknowledged that he personally paid two bills, one for \$30 and the second for \$80, on the account for the China Creek Road residence during the relevant

time frame (TR 117, 119-120). He testified his wife gave him the bills and the checks in an envelope on those two occasions, and that he did not look at the bills (TR 117). He believed she was paying the bills on a monthly basis (TR 116, 119).

The Grievant's wife did not testify at the arbitration hearing.

Troubleman N was called as a witness by the Union. He testified that the condition of the meter ring was "pretty rough" when he cut off service for the prior occupant on May 7 (TR 91). He did some repair work on the ring at that time (TR 91-92). However, he also testified that the amount of distortion he saw on the meter ring did not lead him to conclude tampering had occurred (TR 92). Because the meter ring was lost in December 1993, N was unable to make a comparison of its condition (TR 92-93). N was uncertain whether or not he checked if the T-seal was missing in May, although his practice is not to put a meter back in with a missing T-seal (TR 93). He also did not know whether or not the disk was functioning at that time (TR 93).

N further testified that he thumped the meter when he put it back in on May 7 and 10 (TR 94). He did not check to see if the glass was rotated in place (TR 94). When he removed the seal on the ring, the glass did not fall off in his hands. To his knowledge, he did not leave the glass in a loosened state (TR 99). He speculated that his thumping on the meter could possibly have loosened the glass, but stated this would not normally happen (TR 99).⁴ N did not recall the meter ring being flared out all the way around in May. He testified there were some "bad spots" on it, which he corrected so that the ring would hold (TR 98-99).

⁴ R testified that it was "unlikely but not impossible" that the Troubleman working on the meter in May could have jarred the set screw completely loose, if it had already been loosened (TR 34-35).

The Union also called W a shop steward who represented the Grievant in the investigation (TR 102). He and N corroborated the Grievant's testimony that linemen generally do not deal with the internal workings of meters, though they may remove or install them in their work (TR 95, 102, 107). W testified that the Grievant told him he did not know about T-seals at the time of the investigatory interview (TR 102-103). W further testified that it was not uncommon for older meters to have a missing or broken T-seal (TR 104-105, 110).⁵ The meter glass coming off in the hand is not uncommon, according to W, though it is his practice to rotate the glass to be sure it is secure (TR 106, 110).⁶

POSITIONS OF THE PARTIES

The Employer:

» The Company's decision to terminate the Grievant's employment was based on clear and convincing evidence that he tampered with his electrical meter for the purpose of stealing energy. This constitutes just cause for termination under the Collective Bargaining Agreement, the Company's Standard Practice 735.6-1 and the parties' negotiated positive discipline program.

» The discharge meets the "seven tests" of just cause. The rule in question was reasonable and the Grievant had notice of the disciplinary consequences of a violation of this type. The Company's investigation was thorough, as well as fair and objective.

⁵ R testified in the Company's rebuttal case that T-seals do not commonly break (TR 121-122). However, he acknowledged that he occasionally finds meters with the T-seal missing (TR 122-123).

⁶ N testified he never had the meter glass fall off in his hand when he removed a meter ring (TR 99-100).

» Substantial evidence of guilt was developed by the Company's investigation. The condition of the meter, according to R , demonstrated obvious tampering. R is a veteran meter technician whose opinion should be accorded great deference. R had no motive to lie, he gave straightforward and unequivocal testimony, and his account has been consistent and unrefuted.

» By contrast, N is a shop steward with a strong interest in obtaining reinstatement of a Union member. His recollection of the state of the meter ring and the glass does not indicate the same condition found by R , in December. R testimony is un rebutted that a troubleman would not leave a meter in the condition he found in December.

» The Union's contention that the glass and disk were loosened by N 's thumps on the meter is highly unlikely and unsupported by the record. There is no evidence that such thumping, which was a regular practice of N 's, has ever caused such effects in the past. Contrary to the Union's assertion, the record fails to demonstrate that the meter ring was flared out prior to May 7 and 10, when N performed his duties at China Creek Road. Reinstalling a meter with an absent T-seal would have been inconsistent with N 's general practices.

» As a lineman, the Grievant knew the meter disk had to rotate to record energy usage. He had the mechanical knowledge to tamper with the meter.

» The Grievant's testimony is not worthy of belief. He has a substantial interest in the outcome of this arbitration and his testimony should be subjected to careful scrutiny. He testimony is inconsistent with statements made in the LIC meeting, and it defies common sense.

» The Grievant's alleged ignorance that he was not charged for electrical usage from May to December because his wife paid the bills is not borne out by the record. He made two payments himself. His wife was not called to testify, and an adverse inference may be drawn in these

circumstances. The fact that a balance due from his prior account was transferred to the China Creek Road account in August does not explain why the Grievant and his wife would be unaware they were incurring no current charges for electricity for seven months.

» The Grievant's poor payment history and his uncooperative conduct after being billed for the retroactive amount due suggest he was not interested in paying the Company for his electrical usage. From May 1993 to January 1994, he made only two payments on his PG&E bill although he earned over \$60,000 a year (TR 60; EX 8).

» Speculation by the Union that the Grievant would have acted differently if he intended to divert energy is irrelevant. Gibson has investigated many cases in which meter tampering has resulted in no registration of electrical usage. The fact that "easier" methods to tamper with his meter might have been available to the Grievant does not rebut the clear and convincing evidence of the manner in which the meter was tampered with in this case.

» In energy diversion cases, the Company rarely catches anyone in the act. As in Arbitration Case 124, decided by Arbitrator Burns, the evidence here leads to the inevitable conclusion that the Grievant was the person responsible for the tampering. He had the mechanical knowledge; he stood to gain; the location of the meter made it unlikely a third party tampered with it; the physical condition of the ring and the meter establish tampering took place; his claims of ignorance at no current charges for electricity for seven months are not credible; and his payment history demonstrates a willingness not to pay the Company for energy usage.

» The penalty imposed on the Grievant for the proven offense was not discriminatory or excessive. The Company has met its burden of demonstrating just cause, and the discharge should be upheld.

The Union:

- » The record invites starkly contrasting inferences to be drawn from the facts. While it is clear that someone tampered with the meter at the China Creek Road residence, and it is unlikely it would be someone other than the resident, other evidence points away from the Grievant being responsible.
- » The person who tampered with the meter probably did not have access to PG&E meter rings, seals and a crimping device, unlike the Grievant. Otherwise they would have simply removed the ring and replaced the seal rather than pried the ring open.
- » The person who tampered with the meter was sufficiently mechanically adept to understand that adjusting the set crew on the magnet would affect the recording of electricity usage, but at the same time was inept enough not to lock the glass back into the lip.
- » The person who tampered with the meter probably monitored his PG&E bill to ensure that some usage was being recorded.
- » If the Grievant had wanted to divert energy, he could have simply broken and replaced the outer seal and monitored his bill to be sure some usage was being registered, in order to avoid detection.
- » Because the above undisputed inferences lead inescapably away from the Grievant but toward a resident at China Creek Road, one is forced to suspect that a prior customer tampered with the meter. The prior occupant did not have access to meter rings, seals and a crimping device and would have to pry the meter open. The prior occupant's electrical usage was half that of the Grievant. Also, Ne... 's observations about the condition of the ring in May suggest that it had been pried open prior to May 7. Thus, the record strongly suggests the prior occupant was

responsible for disabling the meter. N may have then knocked the set crew completely loose when he thumped the meter on the two occasions in May.

» The missing T-seal is inconclusive. N did not know if the T-seal was missing or not in May. He did not focus on the T-seal at the time, and he was not sure he checked it.

» The sophisticated nature of the tampering does not point to the Grievant who, as a lineman, had no knowledge of the internal workings of a meter.

» The fact that the glass was not locked into the lip does not tend to prove the Grievant was responsible for the tampering. This may have occurred when N . thumped the meter back into place.

» The Grievant's PG&E bills do not tend to establish his guilt. He and his wife had a steady flow of bills showing at least \$100 due, despite past payments. The Grievant's wife could simply have concluded her payment schedule was slightly out of synch. The Grievant's testimony is undisputed that he was not involved in the bill-paying function.

» It is not the role of the Union to prove another's guilt. It is the Company's burden to prove the charges against the Grievant. The great weight of the evidence debilitates the Company's argument. It has not clearly established the Grievant's guilt and, therefore, the grievance must be sustained.

DISCUSSION

Clear and convincing evidence establishes that meter 490424 and 37838 China Creek Road was tampered with in order to divert energy. The physical evidence outlined above supports this finding, as does the experienced opinion of R . Two additional factors support a conclusion

that a resident at the address was responsible for the tampering: 1) the resident stood to gain financially by slowing or disabling the meter's recording of electrical usage; and 2) access to the meter was limited. The meter was located on the front porch, near the front door, inside a gated yard. If the tampering occurred while the Grievant was a resident, the added factor of four dogs would discourage third party tampering.

The thrust of the Union's argument is that other evidence points away from the Grievant and toward a prior resident being responsible for the tampering. However, close examination of the record fails to implicate a prior resident, and points to the Grievant as the individual responsible.

First, nothing in the records of the prior occupant indicates other than normal usage up until the time he left (TR 42, 55; EX 2, p. 23). From the fact that the prior occupant's usage was approximately half that of the Grievant's household, the Union argues that it was suspiciously low (Un. Bf. 19). However, meaningful comparisons between the prior occupant's and the Grievant's usage are difficult because the various appliances owned by each are unknown, and because differences in lifestyle can account for deviations in energy usage (TR 55). Moreover, the prior occupant's usage does not appear suspiciously low when compared to the five other accounts used for comparison purposes in compiling the retroactive billing (EX 6); nor is it suspiciously low when compared to the Grievant's usage at his prior residence (JX 2, p. 23; EX 7).⁷ If anything, by comparison with these other accounts, the Grievant's usage appears on the high side for the period following installation of the new meter at China Creek Road, as opposed to the prior occupant's

⁷ The Board acknowledges that these are not scientific comparisons, in that different houses, appliances and lifestyles are involved. However, they do provide useful comparison data for purposes of determining if the amount of usage of the prior customer was unusually low.

being low (EX 8). In short, the record fails to warrant a finding that the prior occupant's electricity usage was suspiciously low.

Second, substantial evidence supports a finding that the tampering in question occurred after May 10 and not before. N's testimony about the state of the meter ring does not support a finding that it was flared out all the way around in May, as it was when R examined it in December (cf. TR 15-16, 98, 123-124). While R observed signs of obvious tampering in December (TR 26, 32, 38-39, 124), N did not observe such signs in May (TR 92). Further, N performed repairs on the "bad spots" he observed on the ring, rendering it functional (TR 98). N's description of the condition of the meter ring is simply not comparable to the state of the meter ring observed by R in December, which had been "pried . . . all the way around to be able to remove the meter from the socket without removing the lead seal from the ring" (TR 16).

Further, the glass was obviously loose in December, as shown by the fact that it fell off in R's hand when he broke the seal. That was not the case in May, when N broke the meter ring seal (TR 99). In short, careful analysis of the testimony about the physical condition of the meter supports a finding that it was tampered with after May 10.

Third, immediately upon the Grievant's residency at China Creek Road, recordation of electricity by the meter ceased. Normal usage was recorded by the meter until the residence was vacated by the prior occupant (TR 42; JX 2, p. 23). The record fails to establish any lessened registration or lack of registration of electrical usage prior to May 10. Thus, the timing of the meter's failure to record electrical usage points to the Grievant; and the Grievant was the customer who was shown to have benefited financially, not the prior occupant.

Fourth, the fact that easier or more typical ways to tamper with the meter were available to the Grievant does not overcome the proven facts as to the physical state of the meter and the timing involved. We all may speculate about why this method of tampering was chosen,⁸ but the physical evidence clearly shows that it occurred.

Fifth, the fact that energy registration on the meter went to zero does not suggest the Grievant was not responsible. While it may have been smarter to avoid zero registration, Gibson testified that he has worked many theft of energy cases in which zero recordation was involved (TR 53).

Sixth, the record fails to support a finding that the glass was loosened and the disk disabled by N [redacted]'s thumping the meter into place on May 7 and 10. This measure is one he typically performs, yet loose glass and dragging disks are uncommon, at best. Nothing more than speculation suggests N [redacted]'s actions were responsible for the condition of this meter.

Finally, the evidence about the Grievant's bills and payment history seriously undermines the assertion that he was oblivious to the fact that his household was not paying for electricity. The account history at his prior residence shows his household regularly received bills for \$80 to \$100 dollars for full months of current electrical usage (EX 7). Yet, the first bills at China Creek Road were for \$7.37 and \$12.82, respectively. These bills were received before the balance due from his prior account was transferred to the China Creek Road account. These amounts are surprisingly low for a month of electrical usage in a home. It strains credulity that the Grievant and/or his wife would not have remarked upon such unusually low electrical bills for two months in a row at their new

⁸ For example, perhaps this more unusual method was chosen rather than the more obvious or facile methods in an effort to maintain deniability.

residence. This is especially true given the fact that the Grievant was a PG&E employee at the time. Again, in November, they had a bill for nominal charges after they had paid off the prior balance.

The Union argues that they continued to receive high bills each month, which may have caused the Grievant's wife to conclude her payments were simply out of synch. This argument fails for several reasons. The fact that they continued to received high bills for the unpaid balance at their prior residence would not cause them to fail to notice these very small amounts in their current bills for the new account. Moreover, each new bill sets forth the current month's electrical usage and dollar amount. It is not believable that the Grievant or his wife would not notice, and then discuss, the fact that only nominal charges for electrical usage appeared on the PG&E bill for half a year when they were accustomed to paying \$80 to \$100 a month.

The "out of synch" argument also fails because it is not as though regular payments were being made on the China Creek Road account. Only two payments were made, both in October, totaling \$110.15, the cumulative amount of the 9/23/93 bill. In other words, the two payments made during the relevant period totaled an amount that would typically cover less than two months' usage based upon his prior account history. Therefore, it is not credible that two payments totaling that amount were regarded as sufficient payment for electrical service for half a year.

Further, while the Grievant disavowed knowledge of or involvement in the bill paying function at his home, he personally delivered the only two payments made on the China Creek Road account within the relevant period prior to December.⁹ This tends to refute his assertion that he had no role in the bill paying function.

⁹ He claims the bills and checks were in an envelope and he did not look at them (TR 117).

The fact that the Grievant's wife did not testify warrants an adverse inference and is damaging to his case. The Grievant's asserted ignorance of the amount of the bills and the payment history on the account is a critical credibility issue. Even without refuting testimony, the Grievant's testimony on this point is subject to doubt based upon plain implausibility, as discussed above. Yet, the Grievant's wife was not called to corroborate the Grievant's alleged lack of knowledge of, or involvement in, the status of their PG&E account.

Given the highly remarkable nature of the bills involving China Creek Road over a period of seven months, and the fact that the Grievant was employed by PG&E at the time, it simply is not believable that no discussion of this residential account took place. The Grievant admits he discussed with his wife and approved the amounts they paid on another PG&E account, involving a family business (TR 116). He extemporized in his testimony, ". . . I paid a couple of good-sized bills there [for the business] during the time -- I mean some good ones" (emphasis added; TR 111-112). On cross-examination he stated, "My wife said she needed some money to pay the PG&E bill [for the business in question] and she told me how much and I would say, "Okay, whatever" (TR 116). He also testified he was concerned about and sensitive to the amount of the bill for that business (TR 116). This testimony tends to refute his assertion that he had no role in bill paying. In light of this testimony, it is also highly implausible that the remarkable bills at China Creek Road would not, at a minimum, have been a subject of conversation in the seven months their meter was not registering electrical usage.

Finally, the payment history on the Grievant's account does not help his case. The fact that he did not take steps promptly, prior to his termination, to address the retroactive amount due

suggests a willingness to use energy without paying for it.¹⁰ He clearly had personal knowledge of the retroactive amount due more than two months prior to his termination.

In conclusion, the Company has proven by clear and convincing evidence that the Grievant tampered with the meter at the China Creek Road residence for purposes of diverting energy. Accordingly, the following decision is rendered:

DECISION

The Grievant, A , was terminated for just cause. The grievance is denied.

Margaret A. Short CONCUR / DISSENT 8/27/96
Company Board Member Date

Bruce A. Dixon CONCUR / DISSENT 8/28/96
Company Board Member Date

Ron Van Dyke ~~CONCUR~~ / DISSENT 8/23/96
Union Board Member Date

Roger Statrup CONCUR / DISSENT 8/16/96
Union Board Member Date

Sandra [Signature] CONCUR / DISSENT August 14, 1996
Neutral Board Member Date

¹⁰ It is noted that a payment plan was offered, the Grievant orally agreed to it, but then failed to sign the written agreement or follow the payment plan (TR 48-49; EX 2).