

Republic of the Philippines
ENERGY REGULATORY COMMISSION
San Miguel Avenue, Pasig City



ROSITA A. JADER (Deceased)
Substituted By Her Daughter,
ATTY. THELMA A. JADER-
MANALO

Complainant,

-versus-

ERC CASE NO. 2009-283 CC

MANILA ELECTRIC COMPANY
(MERALCO),

Respondent.

X-----X

D O C K E T E D
Date: JAN 30 2017
By: [Signature]

DECISION

Before this Commission for resolution is the verified complaint filed on August 10, 2009 by Rosita A. Jader against the Manila Electric Company (MERALCO) for the alleged erroneous and over billing and the imposition of differential billing in the amount of PhP138,378.40.

Statement of Facts

Complainant is a resident of No. 145 Isarog Street, Barangay Paang Bundok, La Loma, Quezon City and the end-user of electric service under Service Identification Number (SIN) 529422001 in the name of Vicente Lopez as the registered customer.

On April 1, 2008, MERALCO's field personnel conducted an inspection on the meter subject of this case that was installed at the aforesaid address.

When MERALCO personnel arrived at the said address to conduct the inspection, they sought permission from Dr. Eduardo Jader, a resident of the premises and the actual user of electricity, and informed the latter of their purpose. After seeking permission, MERALCO proceeded with the inspection of the meter. In the course of the inspection, the meter with number 33RZN64391 was removed

and replaced with a new meter. The old meter was placed in a meter plastic bag and sealed with no. B07SC0042440 for laboratory testing.

MERALCO prepared the Meter Facilities Inspection Report (MFIR) containing the results of the inspection. The said MFIR was duly acknowledged by Dr. Jader by affixing his signature.

On April 21, 2008, the Commission's representative and MERALCO conducted a joint meter test on the meters with serial nos. 33RZN64391 and 096464391 registered under the name of Vicente Lopez. The laboratory test of the subject meter revealed the following:

1. Fake cover seals 20 mm IP 1996; and
2. The 1000th, 100th and 10th dial pointers of the meter were found out of alignment.¹

Thereafter, on May 6, 2008, MERALCO issued a demand letter/notice of disconnection² to complainant which indicated the results of the laboratory tests of the subject meter. It also indicated the amount of differential billing that complainant should pay to prevent the disconnection of his electric service. MERALCO imposed a differential billing in the amount of PhP138,378.40 representing the value of electricity actually consumed by the complainant but not registered in the meter on account of its tampered condition. Hence, this complaint.

On August 11, 2009, the Commission issued an Order setting the case for initial hearing on November 5, 2009 and directing MERALCO to file its answer to the complaint. MERALCO was enjoined not to disconnect the electric service of complainant pending resolution of this case.

During the November 5, 2009, the complainant and respondent failed to appear despite due notice. In view thereof, another hearing was set on December 10, 2009.

On November 6, 2009, the Commission issued an Order directing MERALCO to file its answer and confirming the hearing set on December 10, 2009. On even date, the MERALCO filed its "Comment" to the complaint together with its "*Pre-Trial Brief*".

On December 2, 2009, the complainant filed her "*Reply (To Comment)*" and "*Pre-Trial Brief*".

¹ Annex B MERALCO Meter Verification Report; ERC Report of Electric Watthour Meter Tests

² Annex F of MERALCO's Position Paper

During the December 10, 2009 hearing of this case, only MERALCO appeared. The complainant failed to appear despite due notice. At the said hearing, MERALCO was directed to submit its position paper within thirty (30) days from the said hearing.

On December 14, 2009, the Commission issued an Order directing the parties to file their respective position papers within thirty (30) days from receipt thereof.

On January 28, 2010, complainant filed her "*Position Paper*" attaching therewith her affidavit and the affidavits of Atty. Thelma A. Jader-Manalo and Dr. Eduardo A. Jader.

On February 2, 2010, another Order was issued reiterating its directive to MERALCO.

On May 9, 2011, the Commission issued another Order directing the MERALCO anew to submit its position paper.

On May 31, 2011, the MERALCO submitted its "*Position Paper*".

On June 15, 2011, the complainant filed a "Notice of Death of Party Complainant and Substitution" informing the Commission that the complainant Rosita A. Jader died on July 4, 2010 and praying that the complainant (deceased) be substituted by Atty. Thelma A. Jader-Manalo.

On June 17, 2011, the Commission declared this case submitted for resolution. On even date, complainant filed a "*Motion to Strike Out Respondent's Position Paper*".

In the Order dated July 5, 2011, the Commission denied the said motion of complainant to strike out from the record the position paper filed by the respondent.

Issues

The following issues are pertinent for the resolution of the instant case:

1. Whether or not the discovery of a counterfeit lead cover seal of kWh meter with Service Identification Number (SIN) 529422001-1 amounts to tampered meter.

2. Whether or not there is sufficient basis for MERALCO to demand from complainant the differential billing of PhP138, 378.40.

Discussion

The counterfeit lead cover seal is not conclusive evidence that the said kWh was tampered

In the MFIR prepared by MERALCO, the inspection team indicated therein that both terminal and cover seals of the subject kWh meter were intact and that the meter registered "zero consumption".

On April 21, 2008, a subsequent kWh meter laboratory test was conducted jointly by the representatives of the Commission and MERALCO on the subject kWh meter. It was confirmed in the said laboratory test that indeed the cover seal was fake. Further, the 1000th, 100th and 10th dial pointers were misaligned appearing as though these dials were set to a desired reading. In view of these laboratory findings, MERALCO concluded that the kWh meter was tampered.

It is significant to note that the subject kWh meter is a "socket type" meter with a cover seal found at the back portion and a terminal seal which seals the terminal rim (circular metal ring) that holds the meter and the meter base. The terminal seal and rim serve as the external device to protect the sensitive and internal parts of the meter from any unwarranted removal from the meter base.

Given the foregoing physical features of a socket type meter, it is logical that before the dial pointers could be manipulated, it is necessary to cut the terminal first and disconnect the kWh meter from its meter base. Once removed, the cover seal should be cut to release and uncover/expose the dial pointers.

Since the terminal seal of the subject meter was found intact by MERALCO from the time it was inspected and removed, the results emanating from the meter laboratory test of MERALCO stating that the removed meter was tampered cannot be given full faith and credit. Such condition of the meter is not conclusive or indicative that it was manipulated by the complainant. The MFIR prepared by MERALCO proved that the terminal seal was intact and in normal

condition. As such, the illegal replacement of the cover seal and the manipulation of its dial pointers cannot be done without first breaking the terminal seal. Had the complainant tampered the cover seal and dial pointers of the subject meters, its terminal seal should have been broken or tampered also. However, such condition is not present in this case.

The Commission is inclined to rely on the undisputed claims of complainant that on several occasions her family temporarily left their residence unoccupied. Complainant was able to satisfactorily establish and prove the sudden changes in his electricity billings. It was during the 10-month period (January 2005 to September 2005) that complainant and her granddaughter, Ann Magret, temporarily moved to a different house and left the two (2) storey house unoccupied. During this period, complainant and her family may have returned and occupied the two (2) storey which is an indication of her intermittent electricity consumptions.

Complainant's monthly electricity consumptions for the 10-month period at the two (2) storey house ranged at an average of 82 kWh with the highest consumption recorded at 312 kWh. Shown below is a tabulation of monthly electrical consumption from January 2005 to September 2005:

| Billing Period | Electricity Consumption in kWh |
|-----------------------|---------------------------------------|
| October 2005 | 0 |
| September 2005 | 117 |
| August 2005 | 36 |
| July 2005 | 53 |
| June 2005 | 312 |
| May 2005 | 78 |
| April 2005 | 17 |
| March 2005 | 22 |
| February 2005 | 22 |
| January 2005 | 163 |

When complainant and her family returned to the two (2) storey house in November 2005 to December 2007 or a period of two (2) years, their average monthly electrical consumptions ranged at 205 kWh with the highest recorded consumption occurring in June 2006 at 483 kWh.

The erratic monthly electricity consumption during this period was attributed to the fact that starting December 2005 complainant was left alone in the said house while her daughter, Atty. Thelma A. Jader-Manalo and granddaughter, Ann Magret lived separately in a house in Lunas Street, Laloma, Quezon City. Complainant's son, Dr. Eduardo A. Jader and his family moved to a different house.

There were also instances that complainant's electrical consumption increased way above the average of 205kWh as her other sons and daughters based abroad would come and visit her. Shown below is a tabulation of the monthly electrical consumption of complainant from November 2005 to December 2007:

| Billing Period | Electricity Consumption (kWh) |
|-----------------------|--------------------------------------|
| 2007 | |
| December | 149 |
| November | 204 |
| October | 289 |
| September | 173 |
| August | 225 |
| July | 180 |
| June | 203 |
| May | 309 |
| April | 162 |
| March | 86 |
| February | 95 |
| January | 144 |
| 2006 | |
| December | 108 |
| November | 95 |
| October | 121 |
| September | 115 |
| August | 184 |
| July | 251 |
| June | 483 |
| May | 102 |
| April | 281 |
| March | 318 |
| February | 279 |
| January | 197 |
| 2005 | |
| December | 214 |

Yet again during the months of January 2008 to March 2008 prior to the inspection on April 1, 2008, complainant left her residence and stayed in Lucena City to visit her siblings. She stayed in Lucena City until the second week of March 2008. Her monthly electrical consumption during this period registers as follows:

| Billing Period (2008) | kWh |
|-----------------------|-----|
| April | 236 |
| March | 0 |
| February | 0 |
| January | 156 |

MERALCO is remiss of its duty to ensure that there is a reliable electric meter

Records of the case disclosed that the subject kWh meter was manufactured in the year 1991 as indicated in the said meter. Thus, it has been in service for eighteen (18) years at the time it was removed and replaced on April 1, 2008. As alleged by complainant, when Atty. Thelma A. Jader-Manalo acquired the two (2) storey house in 1998, it appears that the same kWh meter had been installed and that there is no record that would show it was replaced by the MERALCO.

Complainant contended that the said kWh meter was pre-tested, pre-calibrated and sealed a long time ago. MERALCO did not submit any documents that would show that the subject meter was calibrated and tested even once while in service in the past eighteen years (18) years. Thus, the span of eighteen years (18) years by which the kWh meter had been in the service may have rendered it susceptible to defects. This condition of the kWh meter may spawn "unusual pattern in consumption". To protect the consumers from being blamed or charged with liability, the Supreme Court formulated the "**duty to detect and correct**" principle as enunciated in the case of *Ridjo Tape and Chemical Corporation versus Court of Appeals, G.R. No. 126074, February 24, 1998*:

"In indeed an unusual electric consumption was reflected in the statements of account, considering its technical knowledge and vast experience in providing electric service, MERALCO could have easily verified any possible error. **In case of such a mistake, the electric**

meters themselves should be inspected for possible defects or breakdowns and forthwith repaired and, if necessary, replaced. The rationale behind this ruling is that public utilities should be put on notice, as a deterrent, that if they disregard their duty of keeping their electric meter in serviceable condition, they run the risk of forfeiting, by reason of their negligence, amounts originally due from their customers. We cannot sanction a situation wherein the defects in the electric meter are allowed to continue indefinitely until suddenly the public utilities demand payment for the unrecorded electricity utilized when they could have remedied the situation immediately. MERALCO's failure to do so may encourage neglect of public utilities to the detriment of the consuming public." (Underscoring supplied)

Simply put, MERALCO cannot claim liability arising from the alleged pilferage due to defective meter when MERALCO itself is remiss on its duty to detect and correct defective electric meters within reasonable period.

**Complainant is not liable to pay
the differential billing**

Since the allegation of illegal use of electricity by means of a tampered kWh meter was not duly established, complainant is not liable to pay differential billing in the amount of PhP138,378.40. Liability of differential billing cannot also be based on the terms and conditions of a contract since there was no basis in billing for unregistered electricity consumption. In the case of *Manila Electric Company (MERALCO) versus MACRO Textile Mills Corporation*, G.R. No. 126243, January 18, 2002, the Supreme Court held that:

"MERALCO insisted on the enforcement of its service contract that MACRO shall be liable for unregistered electric consumption. Unfortunately, where there was no basis for the allegation of tampering, there was likewise no basis in billing for unregistered electric consumption." (Underscoring supplied)

WHEREFORE, the foregoing premises considered, the Commission finds complainant Rosita A. Jader **NOT LIABLE** to pay the differential billing in the amount of One Hundred Thirty-Eight Thousand Three Hundred Seventy-Eight Pesos and 40/100 (PhP138,378.40).

SO ORDERED.

Pasig City, December 27, 2016.

FOR AND BY AUTHORITY
OF THE COMMISSION:


GLORIA VICTORIA C. YAP-TARUC
Commissioner ✓

We Concur:

(On leave)

JOSE VICENTE B. SALAZAR
Chairman


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


ALFREDO L. NON
Commissioner


GERONIMO D. STA. ANA
Commissioner

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