

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



MEGA ASIA BOTTLING
CORPORATION,
Complainant,

- versus-

ERC CASE NO. 2012-020 CC

SAN FERNANDO ELECTRIC
LIGHT AND POWER COMPANY
(SFELAPCO), FE BARONA and
JOSE T. LAZATIN,

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

Respondents.

X-----X

DECISION

Before this Commission for resolution is the verified complaint filed by Mega Asia Bottling Corporation (MEGA ASIA) on February 2, 2012 against the San Fernando Electric Light and Power Company, Inc. (SFELAPCO) contesting the latter's billing adjustment covering the billing period June 2011 to November 2011 amounting to Eight Million Ninety Seven Thousand Five Hundred Twenty Pesos and Seventy Nine Centavos (PhP8,097,520.79) due to the alleged erroneous multiplier.

FACTS OF THE CASE

Complainant MEGA ASIA is a duly organized and existing corporation engaged in bottling business while respondent SFELAPCO is a franchised distribution utility operating in San Fernando City, Pampanga.

On January 14, 2008, SFELAPCO installed the metering facilities of MEGA ASIA, such as the necessary transformers and kWh meter with number 74516, to record the electricity consumption in the operation of its bottling business. From the installation of

MEGA ASIA's metering facilities, SFELAPCO has been using 350 as multiplier in the monthly electricity bill of MEGA ASIA.¹

On December 5, 2011, SFELAPCO conducted a routine inspection to its primary metered customers which included MEGA ASIA. In the course of its inspection, SFELAPCO found the discrepancy in the multiplier used in the computation of MEGA ASIA's electricity bills. Thus, on December 19, 2011, SFELAPCO wrote MEGA ASIA informing the latter of the erroneous multiplier that was used in computing MEGA ASIA's monthly electric bills under Account No. 00800002. In the said letter, SFELAPCO stated that it failed to reflect the correct consumption of MEGA ASIA because it overlooked the correct ratio of the current transformer for the computation of its energy and demand registration. The correct multiplier that should have been utilized by SFELAPCO is 700 instead of 350 since the correct current transformer's (CTs) ratio is 50:5. Thus, SFELAPCO demanded from MEGA ASIA the amount of PhP8,096,281.15 representing the difference of the six (6)-month consumption (June 2011 to December 2011) and the payment made by MEGA ASIA for the said period.²

Shown below is the breakdown of the billing adjustment issued by SFELAPCO³:

Billing Date	Bill Amount (PhP)	Payment (PhP)	Difference (PhP)
June 24, 2011	3,492,463.45	1,746,335.03	1,746,128.42
July 24, 2011	2,692,804.77	1,346,505.69	1,346,299.08
Aug. 24, 2011	2,507,351.02	1,253,778.81	1,253,572.21
Sept. 24, 2011	2,277,727.22	1,138,966.91	1,138,760.31
Oct. 24, 2011	2,232,500.65	1,116,353.61	1,116,147.04
Nov. 24, 2011	2,990,954.83	1,495,580.74	1,495,374.09
TOTAL			8,096,281.15

On January 9, 2012, MEGA ASIA wrote SFELAPCO requesting to hold in abeyance the retroactive effect of its demand for payment of the billing adjustment until a proper inspection and investigation on the issue had been conducted and that MEGA ASIA will pay the amount of electric bill using the 350 multiplier pending the conduct of the investigation.⁴

¹ Answer/Comments of SFELAPCO

² Annex "B" of the Answer/Comments of SFELAPCO

³ Annex "B-1" of the Answer/Comments of SFELAPCO

⁴ Complaint (with Prayer for Status Quo Order) of the complainant, No.10

On January 18, 2012, Engr. Rainier F. Almadrigo of this Commission conducted a current transformer test ratio at the MEGA ASIA's metering facilities in the presence of the representatives of MEGA ASIA and SFELAPCO.⁵ Two (2) days thereafter, or on January 20, 2012, SFELAPCO replaced the electric meter (No. 74516) of MEGA ASIA with a new calibrated meter with No. 89648 upon the request of MEGA ASIA. The replacement of the said meter was done in the presence of Engr. Almadrigo, Engr. Onofre Jiminez of MEGA ASIA and Atty. Pedro Mendoza, Fernando Andrade, Jojo Tud, Philip Panlilio and Rechard Pareno as the representatives of SFELAPCO. The old meter was then subjected to laboratory test in the presence of the representatives of MEGA ASIA, SFELAPCO and Engr. Almadrigo. The laboratory test revealed that the old meter was accurate and within the tolerance limit set by the Commission.⁶

Thereafter, SFELAPCO served a 48-hour disconnection notice to MEGA ASIA for its failure to pay the billing adjustment. A few days after serving of the disconnection notice, the representatives of MEGA ASIA informed SFELAPCO of another CT Ratio Test which will be conducted by the Commission.⁷

On February 2, 2012, MEGA ASIA filed a verified complaint against SFELAPCO, Fe Barona and Jose T. Lazatin questioning the latter's alleged billing adjustment.

On February 6, 2012, the Commission issued an Order directing the respondents to file their answer/comment on the complaint filed by MEGA ASIA and setting this case for conference on April 17, 2012. In the same Order, SFELAPCO was enjoined from disconnecting the electric service of MEGA ASIA pending the resolution of this case.

On February 10, 2012, upon the request of MEGA ASIA, a second CT Ratio Test was conducted by Commission through its representatives Engr. Rey Wilson P. Abesamis and Engr. Almadrigo in the presence of the representatives of MEGA ASIA and SFELAPCO. The result of the transformer test, as stated in the Commission's General Report,⁸ revealed that the correct multiplier is 700.

On March 21, 2012, respondents filed their "Answer/Comments to Complaint (filed by Mega Asia Bottling Corporation)" and "Pre-Trial Brief". In the said answer, respondents admitted that they

⁵ Answer/Comments of the respondent SFELAPCO, No. 3.1

⁶ Answer/Comments of the respondent SFELAPCO, No. 3.2

⁷ Answer/Comments of the respondent SFELAPCO, No. 5.1

⁸ Annex "E to E-4" of the respondent's Answer/Comments

erroneously used the 350 as multiplier since the start of operation of MEGA ASIA instead of 700.⁹ Respondents alleged that the billing adjustment covers the billing period January 2008 to November 2011 in the amount of Forty Nine Million Four Hundred Fifty Four Thousand Eight Hundred Nine Pesos and Seventy Nine Centavos (PhP49,454,809.79). Respondents prayed, among others, that the Commission lift the Cease and Desist Order it issued on February 6, 2012 and that MEGA ASIA be directed to pay the billing adjustment amounting to PhP49,854,809.79 using the multiplier of 700.

On April 12, 2012, MEGA ASIA filed its "Pre-Trial Brief".

During the April 17, 2012 pre-trial conference of this case, both parties appeared and agreed to settle the issue on the correct multiplier. Relative to the issue of differential billing, the parties agreed to terminate the pre-trial hearing and submit the case for resolution under the Rules on Summary Procedures. The parties were then directed to submit their respective pre-trial briefs.

In its letter dated April 25, 2012, MEGA ASIA signified its intention to settle the power bill for the period December, 2011 to March 2012, without prejudice to its right to question the computation of their monthly electricity bills and to the outcome of the complaint filed with the Commission.

MEGA ASIA paid a total of Eleven Million Seven Hundred Fifty-Seven Thousand Eight Hundred Eighty-Five Pesos and Nine Centavos (PhP11,757,885.09) as payment for its electricity consumption for the period December 2011 to March 2012.

On June 1, 2012, SFELAPCO filed its "Position Paper" contending, among others, that the complainant should pay the billing adjustment representing the correction of MEGA ASIA's electricity consumption. It also argued that estoppel by laches should not be applied in this case since this would "unjustly enrich itself at the expense of SFELAPCO, which paid for said energy from its power suppliers".

On July 4, 2012, MEGA ASIA filed its "Position Paper" alleging, among others, that SFELAPCO is estopped in asserting that the recomputed bills should be paid by MEGA ASIA since the changes in billings due to errors committed by distribution utilities should start after final decision of competent court.

⁹ Respondent's Answer/Comment, No. 6.1

On January 8, 2013, another Order was issued directing the parties to submit their respective position papers in the form of a decision.

On April 15, 2014, the Commission issued an Order declaring this case submitted for resolution.

ISSUE

Whether or not MEGA ASIA is liable to pay SFELAPCO the billing adjustment amounting to Eight Million Ninety Seven Thousand Five Hundred Twenty Pesos and Seventy Nine Centavos (Php8,097,520.79).

DISCUSSION

On January 14, 2008, SFELAPCO, being the authorized electric distribution utility in San Fernando City, Pampanga, installed the metering devices and necessary appurtenances thereto to record and determine the electricity consumption of MEGA ASIA in the operation of its bottling system.¹⁰ From the time said metering facility was installed, MEGA ASIA had been billed by SFELAPCO of its monthly consumption. It is undisputed that the said metering facilities were duly identified by serial numbers and their installation was duly recorded by SFELAPCO. It was only on December 5, 2011 that SFELAPCO, in the course of its routine inspection, discovered the wrong multiplier used in billing MEGA ASIA.

In its letter dated December 19, 2011 to MEGA ASIA, SFELAPCO admitted that it has been using a wrong multiplier in computing MEGA ASIA's electricity bills since the installation of its metering facility. The pertinent portion of the said letter is hereunder quoted as follows:

“Upon verification of the aforementioned meter’s billing history, we realized that we failed to reflect the true consumption of the said account because we unintentionally overlooked the correct ratio of the current transformer should have been multiplied to the energy and demand registered monthly by the above kWh meter. The current transformer’s ratio that should have been

¹⁰ Item 1.1 of Answer/Comments to Complaint

utilized is 50:5 times 70 which is equal to 700. However, since its installation on January 14, 20089 we were erroneously using 350 only as multiplier.”

It bears stressing that as a public utility whose business is imbued with public interest, distribution utility is expected to discharge its functions with utmost care and diligence. The utmost care and diligence required of them necessitates such great degree of prudence on its part, and failure to exercise the diligence required means that it is willfully at fault in the performance of its obligations. As enunciated in the case of *MERALCO vs. Lamoy*¹¹, the Supreme Court held that:

“The utmost care and diligence required of MERALCO necessitates such great degree of prudence on its part, and failure to exercise the diligence required means that MERALCO was at fault and negligent in the performance of its obligation. In *Ridjo Tape*, the Court explained:

[B]eing a public utility vested with public interest, MERALCO is impressed with certain obligations towards its customers and any omission on its part to perform such duties would be prejudicial to its interest. For in the final analysis, the bottom line is that those who do not exercise such prudence in the discharge of their duties shall be made to bear the consequences of such oversight.”

It is not remiss to emphasize that one of an electric utility's liabilities is to provide and maintain in proper operative condition the necessary line or service connections, transformers (when the same are stipulated by the conditions of the contract between the parties), meters and other apparatus which may be required for the proper measurement of protection to its service¹².

SFELAPCO, taking into consideration the technical skills and expertise of its personnel, should have been more careful in performing its functions as a public utility. SFELAPCO is expected to ensure that the metering facilities of its consumers are properly installed and all the information/data associated with the facilities are properly documented. Unfortunately, such was not the case in the subject complaint. SFELAPCO should have employed utmost diligence necessary to warrant that the electricity consumptions of

¹¹ G.R. No. 158911, March 4, 2008

¹² 3rd paragraph, Section 45, ERB Resolution No. 95-21

MEGA ASIA were properly recorded and calculated. The erroneous billing of MEGA ASIA could have been avoided if SFELAPCO's personnel exercised due care in verifying and computing the appropriate billing multiplier.

In *Ridjo Tape and Chemical Corporation, Inc. vs. Court of Appeals*¹³, et. al. (GR No. 126074), the Supreme Court ruled that:

“The Supreme Court established the doctrine which simply states that the public utility has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction. **Its failure to discover the defects, if any, considering the length of time, amounts to inexcusable negligence.** It further elucidated that a more plausible interpretation is to apply the rule on negligence whether the defect is inherent, intentional or **unintentional**, which therefore covers tampering, mechanical defects and **mistakes in the computation of the consumer's billings.**” (Emphasis supplied)

The result of the transformer test, as stated in the Commission's General Report, revealed that the actual ratings of the CTs and PTs installed in the metering facilities of MEGA ASIA are 50:50 Amperes and 8,400:120Volts, respectively. Thus, the correct multiplier or transformer factor that should have been used by SFELAPCO is 700, as computed below:

Current Transformer	:	50/5	=	10
Potential Transformer	:	8,400/120	=	70
Factor (multiplier)	:	70 x 10	=	700

The Test Report, likewise, showed that the billing meter installed by SFELAPCO to MEGA ASIA, with company number 89648 and serial number 98562814, was tested and sealed by the Commission. Further test showed that the accuracies of the CTs and PTs were within the allowable limit set by the Commission.

¹³ SC Decision dated February 24, 1998

Since the subject metering equipment were found with intact ERC seals and without signs of tampering or any defect, the same are presumed accurate, following the principle of presumption of regularity. Failing to find fault in the system, especially if the error in consideration is significant would result into a high systems loss.

SFELAPCO is, therefore, found to be negligent in the discharge of its duty as a public utility. As such, it cannot claim the entire undercharged amount against MEGA ASIA. Records of this case clearly showed that MEGA ASIA'S monthly bills for the period June January 2008 to November 2011 contained error resulting from the use of a wrong multiplier. As stated earlier, the correct multiplier should have been 700 instead of 350. Thus, the maximum recovery period should only be limited to three (3) months prior to the date of discovery in accordance with Article III 3.5.7 (b) of the Distribution Service and Open Access Rules (DSOAR), as amended, to wit:

“ADJUSTMENT FOR BILLING

Billing errors resulting from a defective/stop meter without any evidence of tampering shall be governed by the provision of these guidelines and the Magna Carta for Residential Consumers.

In cases of other billing errors, the following principles shall apply

x x x

(b) Payments for undercharge shall be computed back to the date on which the error commenced, however, in **no case where the error or omission is due to the fault of the DU, shall a bill for undercharge be computed for a period exceeding three (3) months.**

In case of disagreement, the ERC shall resolve the same.”
(Underscoring supplied)

Based on the foregoing provision of DSOAR, MEGA ASIA should not be held liable to pay entire amount underbillings being claimed by SFELAPCO. MEGA ASIA, on the other hand, should only be liable to pay the amount Three Million Seven Hundred Fifty Thousand Two Hundred Eighty-One Pesos and Forty-Four Centavos (Php3,750,281.44) representing the billing adjustment for the immediate three (3) months prior to the discovery of the billing error.

This is consistent with the ruling of the Supreme Court in the case of *Manila Electric Company vs. Wilcon Builders Supply, Inc.*¹⁴, to wit:

"The Supreme Court stated vis, we would like to emphasize at this point that the production and distribution of electricity is a highly technical business undertaking, and in conducting its operation, it is only logical for a public utility to employ mechanical devices and equipment for the orderly pursuit of its business. Indeed it would be highly inequitable if we are to allow a public utility company to be continuously remiss in its duty and then later charge the customer exorbitant amounts for the alleged unbilled consumption or differential billing when such a situation could have been easily averted. We simply cannot sanction petitioners utter neglect of its duty over a number of years, as this would undoubtedly be detrimental to the interest of consuming public. In the final analysis, petitioner should bear the loss. ***Public Service companies which do not exercise prudence in the discharge of their duties shall be made to bear the consequences of such oversight.***" (Emphasis supplied)

Further, MEGA ASIA should pay for the energy it consumed from December 2011 onwards utilizing the correct meter registration multiplier of 700.

WHEREFORE, the foregoing premises considered, the Commission hereby finds Mega Asia Bottling Corporation (MEGA ASIA) liable to pay the San Fernando Electric Light and Power Company, Inc. (SFELAPCO) the amount of **Three Million Seven Hundred Fifty Thousand Two Hundred Eighty-One Pesos and Forty-Four Centavos (PhP3,750,281.44)** representing the billing adjustments equivalent to three (3) months prior to the discovery of the billing error.

¹⁴ G.R. No. 1717534

With respect to MEGA ASIA's subsequent electricity bills after the discovery of the error, SFELAPCO should reflect the correct multiplier as 700:5 instead of 350:5.

SO ORDERED.

Pasig City, December 28, 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

Copy Furnished:

1. **MEGA ASIA BOTTLING CORPORATION**
Brangay Calulut, City of San Fernando
Pampanga

2. **SANTOS BOOL DE PEDRO & ASSOCIATES**
Counsel for MEGA ASIA Bottling Corporation
4/F PBB Ave., cor 8th Avenue
Grace Park, Caloocan City

3. **ATTY. NORBERTO F. MANJARES, JR.**
Counsel for respondent San Fernando Electric Light
and Power Corporation, Inc. (SFELAPCO)
No. 6 Saint Anne St.
Provident Villages, Marikina City

4. **MR. JOSE T. LAZATIN**
SVP/General Manager
San Fernando Electric Light & Power Company
San Fernando, Pampanga