

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



MARLON CASTAÑEDA,
Complainant,

-versus-

ERC CASE NO. 2012-066CC

**MANILA ELECTRIC COMPANY
(MERALCO),**

Respondent.

X-----X

D O C K E T E D
Date: **FEB 24 2017**
By: _____

DECISION

Before this Commission for resolution is the complaint filed on 16 July 2012 by Marlon Castañeda against the Manila Electric Company (MERALCO) contesting the latter's alleged erroneous/high billing.

As can be gleaned from the records of the case, the instant complaint stemmed from the following relevant antecedents.

On 24 October 2011, MERALCO's inspection team went to the premises of complainant to inspect the complainant's kWh meter. The electric service, subject matter of the instant complaint, is registered under the name of Aurelio Sarmiento with Service Identification Number (SIN) 477692501 service address at No. 494 M. Diaz Street, Pineda, Pasig City.¹

In the course of the inspection, MERALCO personnel discovered that the cover and terminal seals of the said meter were missing. Hence, complainant's kWh meter was removed and replaced with a new electric meter bearing Meter No. 111BA139211. The subject meter was recommended for laboratory test at MERALCO's Meter Division in Ortigas, Pasig City. To secure the condition of the meter while in transit, MERALCO's personnel placed and sealed it in a plastic meter bag with Meter Bag Seal No. B10BT0119156. After the inspection, the MERALCO personnel prepared the Metering Facilities Inspection Report (MFIR) No.

¹ MERALCO's Draft Decision

C62462-11 dated 24 October 2011 and explained to complainant the details and result of the inspection.

Since complainant refused to affix his signature in the MFIR, he was furnished with a copy of the MFIR with an annotation thereon that he "REFUSED TO SIGN BUT RECEIVED."²

Furthermore, a Paalala/Notice³ was furnished to the complainant inviting him to witness the meter laboratory test on the date and time specified thereon. Before MERALCO's crew gave the Paalala/Notice, they informed complainant of its contents including the period within which complainant may witness the laboratory test. Complainant was asked to sign on the Paalala/Notice. Since he again refused to affix his signature, the MERALCO inspector gave him a copy of said Paalala/Notice and noted thereon "REFUSED TO SIGN BUT RECEIVED COPY."

The inspection and replacement of the meter was witnessed by a police officer, PO2 Leonardo R. Pedro ("PO2 Pedro"). PO2 Pedro affixed his signature on the Paalala/Notice and MFIR to attest to the facts stated therein.⁴

On 19 November 2011, MERALCO and the representative of the Commission, Engineer, Engr. Allan T. Guzman, conducted the laboratory test of the subject meter. The laboratory test revealed that the subject meter was defective and had an accuracy of 87.97% with the following findings:

- "1. Cover Seals were missing.
2. Accuracy of the meter was affected due to dirt between magnets (slow accuracy).

Recommended for billing adjustment."

Prior to the computation of the billing adjustment due to the aforesaid finding, MERALCO demanded from complainant the payment of his regular monthly electric bill for the period October 20, 2011 to November 20, 2011, or equivalent to 31 days, amounting to PhP5,496.75.

² Exhibit "6" of the Judicial Affidavit of Noel Aames Tirona

³ Exhibit "7" of the Judicial Affidavit of Noel Aames Tirona

⁴ Exhibit "2" Judicial Affidavit of PO2 Leonardo R. Pedro

Since the meter was removed and replaced on 24 October 2011, the new meter that was installed on even date registered only twenty seven (27) days of electric consumption (from 25 October 2011 to 20 November 2011), which registered the consumption of 386 kWh. Thus, there was no actual reading for four (4) days from 20 October 2011 to 24 October 2011. MERALCO, however, could not use the reading of the old meter from 20 October 2011 to 24 October 2011 since it was found to be defective with an accuracy of only 87.97%.

Considering the foregoing, complainant was billed by MERALCO using his average daily usage during the portion of the billing period registered by the new meter pursuant to Section 3.5.4 of the Distribution Services and Open Access Rules (DSOAR).

Section 3.5.4 of the DSOAR provides for the method to be used by a distribution utility should a meter fail to register the consumption of the customer for an entire billing period or a portion thereof, thus:

"3.5.4 ESTIMATED BILLS

(a) Except as otherwise provided, if (1) xxx,

(2) the meter fails to register the consumption of the customer for an entire billing period or a portion thereof, the DU may bill the customer based upon their estimated usage for the billing period.

(b) Any of the following methods shall be used in calculating a bill based on estimated usage, whichever is applicable and equitable to all concerned parties.

1. The average daily usage of the customer during the portion of the billing period registered by the new meter for at least seven (7) days shall be applied to the remaining portion in the billing period."

Taking into account the foregoing provision, the electric bill of complainant for the billing period of 20 October 2011 to 20 November 2011 amounted to P5,496.75, equivalent to 443kWh. Shown below is the detailed computation of the contested consumption of complainant for his November 2011 electricity bill:

November 20, 2011 Reading: 386 kWh
Less: October 24, 2011 Reading: 0 kWh

Consumption for 27 days - 386 kWh
(14.30 kWh per day)

Consumption for 31 days - 443 kWh
(14.30 kWh x 31 days)

Based on the foregoing, MERALCO demanded from the customer the payment of his regular monthly electric bill with billing period 20 October 2011 to 20 November 2011 in the amount of PhP5,496.75.

Furthermore, complainant's monthly electric bills after the apprehension are more or less the same with his November 2011 billing. Complainant's subsequent monthly electric bills are as follows:

<u>Date of Billing</u>	<u>Consumption in kWh</u>	<u>Bill Amount in PhP</u>
12/20/2011	373	4,248.75
01/20/2012	431	5,192.10
02/20/2012	415	4,994.80
03/20/2012	389	4,283.20
04/20/2012	420	5,088.10
05/20/2012	411	4,954.80

This supports and is consistent with the finding that the old meter was defective.

Since the laboratory test conducted by MERALCO and this Commission revealed that the Meter was defective with an accuracy of only 87.97%, MERALCO alleged that the previous electric bills of complainant can be adjusted pursuant to Section 3.5.7 of the DSOAR. The pertinent portion states:

"3.5.4 ADJUSTMENT FOR BILLING

xxx In the event that a meter is found to have an average error of more than the tolerance minus two (2%) without any evidence of tampering by the customer, the utility may ask for payment of a billing adjustment from its

customers of the unregistered consumption. If the said electric meter was merely found to be defective and has not completely stopped, and such effect could not be easily detected by the concerned customer, the DU may only be allowed to recover the unregistered consumption for a maximum period of six (6) months prior to the discovery of the defect. In cases where there is actual stoppage or any conspicuous defect of the said meter, the DU may only be allowed to recover the unregistered consumption for a maximum period of three (3) months prior to such discover of the stoppage. xxx”

In accordance with the above provision, the following electric bills of Complainant were adjusted, as follows:

<u>Billing Period</u>	<u>Original Billing</u>	<u>Adjustment</u>
9/20/2011 – 10/20/2011	292 kWh	39.931 kWh
8/20/2011 – 9/20/2011	264 kWh	36.102 kWh
7/20/2011 – 8/20/2011	206 kWh	28.171 kWh
6/20/2011 – 7/20/2011	243 kWh	33.231 kWh
	TOTAL	137.435 kWh or P 1,578.95

MERALCO made several demands upon complainant to pay the November 2011 electric bill in the amount of PhP5,496.75 and the billing adjustment in the amount of P1,578.95. Despite said demands, complainant failed and/or refused to pay the electric bills. Instead of paying the same, complainant filed a complaint before this Commission against MERALCO. MERALCO, on the other hand, filed its verified “Answer” to the complaint.

Since the parties failed to reach a compromise agreement, the hearings were thus conducted under Summary Procedure set forth under Section 2, Rule 17 of the ERC Rules of Practice and Procedure. Both parties were asked to submit their respective Memoranda, after which, the case was submitted for resolution. Moreover, the parties were also directed to submit their respective Draft Decisions, stating clearly and distinctly therein the facts and the law upon which it is based pursuant to Section 2.3 of Executive Order No. 26, series of 1992.

Taking the parties' respective memoranda, affidavits, evidence and arguments altogether, the issues which this Commission is called to resolve are as follows:

ISSUE

WHETHER OR NOT COMPLAINANT IS LIABLE TO PAY HIS ELECTRIC BILL IN THE AMOUNT OF PHP5,496.75 AND THE BILLING ADJUSTMENT IN THE AMOUNT OF PHP1,578.95.

DISCUSSION

Complainant argues that MERALCO cannot remove and replace his electric meter without his consent as it is violative of the due process clause of the 1987 Constitution. He argues that the removal and replacement of his electric meter is against the law, and thus, he is not liable to pay his electric bill and billing adjustment registered by the new meter.

MERALCO claims that the inspection, laboratory testing, computation and demands for the payment of the electric bills are just, lawful and proper and well within the provisions of the Terms and Conditions of Service duly approved by the Board of Energy, the DSOAR and the Magna Carta for residential Electric Consumers (MREC). Thus, complainant should be directed to pay the November 2011 electric bill in the amount of Php5,496.75 and the billing adjustment in the amount of Php1,578.95.

The Commission finds the allegations of MERALCO meritorious.

MERALCO contended that there was no need for such prior notification since under the "Terms and Conditions of Service" of their contract or the contract between MERALCO and its consumers as embodied and approved in PSC Case No. 72055, BPW Case No. 73-115 and BOE Case No. 85-121, employees and representatives of MERALCO were given permission by the customers to enter their premises without being liable to trespass to dwelling for the purposes of inspecting, installing, reading, removing, testing or otherwise disposing of its apparatus and property. The pertinent provisions of the "Terms and Conditions of Service" are hereunder quoted as follows:

“TERMS AND CONDITIONS OF SERVICE

X X X

CUSTOMER’S LIABILITY:

X X X

The employees and/or representatives of the Company are hereby given permission by the Customer to enter its premises without being liable to trespass to dwelling for the purpose of *inspecting, installing, reading, removing, testing, replacing*, or otherwise disposing of its apparatus and property and/or removing the Company’s entire property in the event of the termination of the contract for any cause.”

As we have consistently ruled in various cases, the “Terms and Condition of Service” serves as the contract between MERALCO and its consumers, setting forth the rights and responsibilities of both MERALCO and its consumers. The said “Terms and Conditions of Service”, as quoted above, was first approved by the then Public Service Commission (PSC) by virtue of its Decision dated July 12, 1955. This Decision was supplanted by subsequent Decisions of the Board of Power and Waterworks (BOPW) in Case No. 73-115 dated April 1974 and Board of Energy (BOE) in Case No. 85-121 dated February 9, 1987.

Based on the foregoing provisions of the “Terms and Conditions of Service”, employees and/or representatives of MERALCO are deemed to have been granted authority and permission by all its customers to enter the latter’s premises without risk of being held liable for trespass to dwelling for purpose of inspecting, installing, reading, removing, testing, replacing, or otherwise disposing of its apparatus and property and/or removing MERALCO’s entire property in the event of the termination of the contract for any cause. Hence, the need to give prior notice to MERALCO’s customers and to obtain their consent before entering their premises in order to conduct an inspection and replacement of defective meter is dispensed with.

Moreover, Article 29, Chapter III of the Magna Carta for Residential Electricity Consumer (MCREC) provides that:

“Article 29. Obligation to Allow Inspection, Installation and Removal of Electricity Apparatus – Customers shall allow the employees and/or representatives of the distribution utility to enter their premises for the purpose of inspecting, installing, reading, testing, repairing, maintaining, removing, replacing or otherwise disposing of its apparatus and property in the event of termination of the electricity service contract; and for disconnection of service for non-payment of bills or violation of contract (VOC).”

Provided, however, that only authorized employees and/or representatives of the distribution utility with proper identification cards shall be allowed to make any external adjustments of any meter or any internal or external adjustments of any other pieces of apparatus owned by the distribution utility.”

When MERALCO’s personnel conducted the inspection and replacement of complainant’s electric meter, it was not necessary for MERALCO to give prior notice to and obtain the consent of complainant before it could accomplish the replacement of the old meter. As discussed earlier, MERALCO’s personnel were already granted the authority and permission to enter the complainant’s premises for purposes of inspection and replacing the old meter by virtue of the “Terms and Conditions of Service” they have executed. “A contract, once perfected, has the force of law between the parties with which they are bound to comply in good faith and from which neither one may renege without the consent of the other. The autonomy of contracts allows the parties to establish such stipulations, clauses, terms and conditions as they may deem appropriate provided only that they are not contrary to law, morals, good customs, public order or public policy. The standard norm in the performance of their respective covenants in the contract, as well as in the exercise of their rights thereunder, is expressed in the cardinal principle that the parties in that juridical relation must act with justice, honesty and good faith.”⁵

It must be emphasized that distribution utilities are mandated by law to provide continuous, sufficient and reliable distribution services and connections to their distribution systems for their end-users within their respective franchise areas. As enunciated in the case of *Ridjo Tape & Chemical Corp. vs. Court of Appeals*⁶, MERALCO must

⁵ *Bricktown Development Corp. v. Amor Tierra Development Corp.*, G.R. No. 112182 December 12, 1994

⁶ G.R. No. 126074 February 24, 1998

ensure that its electricity apparatuses and property are in good condition, not tampered or otherwise defective, to wit:

“Corollarily, it must be understood that MERALCO has the imperative duty to make a reasonable and proper inspection of its apparatus and equipment to ensure that they do not malfunction, and the due diligence to discover and repair defects therein. Failure to perform such duties constitutes negligence.”

Moreover, MERALCO, as a distribution utility, is required under Section 3 of Commonwealth Act No. 146 (C.A. 146) to conduct periodic inspection of its electric meters, to wit:

“Sec. 3. The Commission shall have the power to establish a reasonable schedule of fees to be paid by public services concerned for testing services. Said tests shall be made only once every six months for taximeters; once every two-year period on electric meter and gas meters: Provided, that this shall be without prejudice to any test asked for by any interested party, which shall be paid by said party should it be found that the complaint is unjustified, or by the public service concerned should it be found otherwise.”

This mandate is necessary in order to preserve the integrity of the metering facilities of distribution utilities and to prevent other forms of insidious scheme or devices to deliberately reduce electricity consumption which would prejudice the interest not only of the distribution utilities but also of the consumers in general.

From the foregoing, it is clear that the process in inspecting, removing and replacing the old electric meter with a new digital electric meter was diligently followed by the personnel of MERALCO. The inspection and replacement was even witnessed by PO2 Leonardo R. Pedro. It is also clear from the records that complainant was given sufficient explanation, notice and opportunity to attend the testing of the meter but he however did not seize the opportunity to do so. It must also be emphasized that MERALCO tested the meter in the presence and under the supervision of this Commission through its representative Engineer, Engr. Allan T. Guzman. The laboratory test revealed that the old meter was indeed defective and had an accuracy of 87.97%.

Well-entrenched is the principle that in order to establish a case before judicial and quasi-administrative bodies, it is necessary that allegations must be supported by substantial evidence. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion⁷.

Applying the foregoing rule, the Commission is of the view that the pieces of evidence presented by the complainant are inadequate. No reasonable conclusion can be formed out of them. It failed to convince this Commission that the inspection performed by MERALCO was done in bad faith.

It is a basic rule in evidence that a party must prove his allegations on the strength of his own evidence and not on the weakness of his opponent's case. The party charged with that burden, it must be stressed, must prove his allegation of facts by clear, positive and convincing evidence⁸. Thus, it is incumbent upon complainant to present these material pieces of evidence.

To dispel any doubt on the veracity of these test results, it is important that they have to be validated. Thus, MERALCO should show that it has fully complied with the procedures in handling and custody of the subject kWh meter. Any deviation on its part in the observance of such procedure would cast doubt on the probative value of the test results. It must establish that what it tested in the laboratory was the same kWh meter it removed from the premises of the complainant.

Section 2 of Rule V of the Implementing Rules and Regulations of R.A. 7832, as amended, provides:

"RULE V

INSPECTION RULES AND PROCEDURES

**Section 2. Routine Inspections Shall Be Conducted
As Follows:**

X X X

⁷ Federico M. Ledesma, Jr. versus National Labor Relations Commission, G.R. No. 174585, October 19, 2007

⁸ Ligaya R. Machica versus Roosevelt Services Center, Inc., G.R. No. 168664, May 4, 2006

- c. Routine inspections shall be conducted with or without the presence of the customer, actual user or their representative, provided that no meter shall be removed without their presence, except for reasons of public policy.
- d. During routine inspections, meters removed shall be placed in a suitable container, properly identified and sealed and shall be opened only for testing by an ERC representative. x x x.
- e. After each routine inspection, the DU's representative shall prepare a routine inspection report indicating their findings if the meter is removed for testing. The DU's representative must issue a notice of meter testing to the customer, actual user or their representative for them to witness the testing of the said meter. If such customer, actual user or representative fails to appear during the designated time, the testing of the meter may proceed in the presence of the ERC representative. x x x"

As discussed earlier, MERALCO and the representative of the Commission, Engr. Guzman, conducted the laboratory test of the subject meter. The laboratory test revealed that the subject meter was indeed defective and had an accuracy of 87.97%.

Based on the documentary evidences it presented, MERALCO has sufficiently shown to have complied with the procedures relative to the removal, handling, and testing of the kWh meter. There was no indication that it deviated from the required procedures so as to compromise the physical integrity of the kWh meter it tested. As inspected and verified by the Commission's representative, the subject meter was placed in a plastic bag, duly sealed, unaltered and in an uncompromised condition before the conduct of testing.

The result of the laboratory test conducted by the Commission dispels the claim of complainant that the meter may have been manipulated by MERALCO. Its faithful compliance with the procedures of handling and testing the kWh meter belies any doubt on the veracity of the test results of the defective kWh meter. With the pieces of evidence presented by MERALCO and the test report of the representative of the Commission, MERALCO was able to prove that the subject meter was defective.

In view of the absence of such relevant evidence, this Commission could not to make a reasonable conclusion upon these pieces of evidence presented by the complainant since these are found wanting in clarity, definiteness and persuasiveness.

Considering the foregoing, complainant is obligated to pay his electric bill and the billing adjustment computed by MERALCO pursuant to Section 3.5.4 and Section 3.5.7 of the Distribution Services and Open Access Rules (DSOAR).

Moreover, under the MREC, complainant has the obligation to pay said electric bills, thus:

"Article 32. Obligation to Pay Monthly Electric Bills – A. Monthly Electric Bills – Consumers must pay their bills not later than nine (9) days after receipt of the monthly bill. The bills must be based on consumption registered by their accurate electric meters. The said bills shall be conclusive between the parties, without prejudice to the rights and obligations of either party under any of the provisions of the Magna Carta."

"Article 33. Obligation to Pay Billing Adjustments and Undercharges – A consumer may be compelled to pay a billing adjustment in case there is a stoppage or failure by the customer's meter to register the full amount of energy consumed without any fault on the part of the customer.

In the event that a meter in service is found to have an average error of more than the tolerance of minus two percent (2%) without any evidence of tampering by the customer, the utility may ask for payment of a billing adjustment from its customers of the unregistered consumption. If the said electric meter was merely found to be defective and has not completely stopped, and such defect could not be easily detected by the concerned customer, the distribution utility may only be allowed to recover the unregistered consumption for a maximum period of six (6) months prior to the discovery of the defect. In cases where there is actual stoppage, or any conspicuous defect of the said meter, the distribution utility may only be allowed to recover the unregistered consumption for a maximum period of three (3) months prior to such discovery of the stoppage.

Notwithstanding the preceding paragraphs, the distribution utility may recover the full amount of the unregistered consumption if it has been complying with the two-year meter testing requirement under the Implementing Rules and Regulations of RA 7832, otherwise known as the Anti-Electricity Pilferage Act; Provided, however, that the recovery period should not go beyond the period from the last testing of the meter prior to the date of discovery, but which period shall not exceed two (2) years. The distribution utility must enter into an agreement with the consumer for a staggered payment scheme within a period equivalent to at least the number of months covering the billing adjustment, unless the consumer opts to accelerate the payment period.

The refund or billing adjustment should be based on the rate prevailing during the period sought to be recovered, and the estimated consumption shall be based upon the result of the ERC test on the affected meter during the time of discovery. If there is no ERC test result, the estimated consumption shall be based on the average use of energy for the immediately preceding six (6)-month period of like use, or the lowest monthly consumption within three (3) months after the time of discovery.

In case of disagreement on such bill, the ERC shall resolve the same.

Consumers shall pay undercharges to the distribution utility upon showing of proof of the latter's entitlement, the amount of the undercharge shall be computed back to the date the error commenced. However, if the error or omission resulted from conspicuous defects and/or other billing errors due to the fault of the DU, the recoverable period shall not exceed three (3) months; thus, the DU will only be allowed to collect undercharges incurred for the three (3)-month period immediately preceding the date of discovery of such error or omission. This provision shall likewise be applicable to errors arising under Article 9, Paragraph 2 of the Magna Carta."

All told, complainant is liable to pay his electric bill in the amount of PhP5,496.75 and the billing adjustment in the amount of PhP1,578.95.

WHEREFORE, premises considered, the instant Complaint is hereby **DISMISSED** for lack of merit. Accordingly, complainant is hereby directed to pay his electric bill in the amount of PhP5,496.75 and the billing adjustment in the amount of PhP1,578.95 within fifteen (15) days from receipt hereof.

SO ORDERED.

Pasig City, 28 December 2016.

FOR AND BY AUTHORITY
OF THE COMMISSION


GLORIA VICTORIA C. YAP-TARUC
Commissioner

We Concur:

(On Leave)
JOSÉ VICENTE B. SALAZAR
Chairman


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


ALFREDO J. NON
Commissioner


GERONIMO D. STA. ANA
Commissioner

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