

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



LUZVIMINDA VILLEGRAS,
Complainant,

-versus-

ERC CASE NO. 2010-149CC

**MANILA ELECTRIC COMPANY
(MERALCO),**
Respondent.

X-----X

D O C K E T E D
Date: JUN 28 2017
By: M

DECISION

Before the Commission for resolution is the verified Complaint filed on 16 June 2010 by Luzviminda Villegas against Manila Electric Company (MERALCO), seeking relief from payment of the differential billing imposed by MERALCO due to complainant's alleged use of a tampered meter.

The instant Complaint stemmed from the following factual antecedents:

Complainant Luzviminda Villegas is a resident of 263-A Pribado St., San Miguel, Manila, and an actual user of electricity distributed by MERALCO under Service Identification Number (SIN) number 411648801 registered in the name of Primavera V. Mateo.¹

On 13 April 2010, at around two o'clock in the afternoon (2:00 P.M.), the service inspection team of MERALCO conducted an inspection on the metering facility² of complainant. Before the conduct of the inspection, MERALCO inspectors sought permission and informed the complainant of their purpose. According to MERALCO, the inspection was conducted in the presence of the complainant.

¹ Complainant's Position Paper at p. 1.

² With Meter No. 33SWN34224.

In the course of the inspection, MERALCO discovered that Meter No. 33SWN34224 bearing SIN number 411648801 showed indications that it was tampered as the meter had dirt inside, and had to be removed and replaced with a new meter (number 109Ba139937). MERALCO inspectors also discovered that the terminal seal of the meter was missing. They accomplished a Notice and a Meter and Device Laboratory Test Request (MDLTR) to subject the meter to a laboratory examination to determine whether or not it was tampered. Complainant affixed her signature on the Notice and the MDLTR.

Subsequently, the alleged tampered meter was brought to MERALCO's Meter laboratory for testing. On 11 May 2010, Mr. Lester Velasco Pena, a Meter Technician of MERALCO, conducted the laboratory test and confirmed or concluded that the meter was tampered due to the following findings:

- (1) Cover seals 20 MMIP 1996 were tampered by pulling out from the sealing wire and
- (2) The driving gear of the 2nd shaft was deliberately filed causing it to disengage partially from the driven gear of the unit pointer when subjected to a dial test of 5000 dial revolution. The meter registered only 3kWh instead of 18kWh as required for a normal or untampered meter.
(sic)

On that same day, a separate laboratory test was conducted by the Commission's meter technician, Engr. Vincent John G. Castro. The independent laboratory test showed that:

- (1) Cover seal condition: Deformed
- (2) Filed gear
- (3) Average accuracy 16.66%

On 27 May 2010, complainant received a formal demand letter from MERALCO apprising her of the results of the laboratory test and confirming that her kWh meter was tampered. In the said letter, MERALCO demanded from complainant the amount of PhP765, 736.30 as differential billing, otherwise, her electric service will be disconnected should she fail to pay the said amount. In addition, MERALCO shall impose surcharges due to "Violation of Contract". Due to the tampered condition of the meter, it failed to register the actual, correct and full electric consumption. Hence, based on the billing history and actual load of complainant, MERALCO computed the differential billing of PhP765,736.30, representing the unregistered electricity consumption of the complainant covering the period from 01 June 2005 to 13 April 2010.

Complainant insists that the claim of the respondent that she violated the pertinent provisions of Republic Act (RA) No. 7832 also known as "An Act Penalizing the Pilferage of Electricity and Theft of Electric Power Transmission Lines/Materials, Rationalizing System Loss by Phasing Out Pilferage Losses as a Component Thereof, and for other Purposes" has no factual or legal basis.

On 16 June 2010, complainant filed a verified complaint against the respondent before the Commission.

Several pre-hearing conferences were conducted by the Commission to explore the possibility of an amicable settlement between the parties. These pre-hearing conferences, however, yielded negative results. Hence, the complaint was set for formal hearings.

During the 26 January 2012 hearing, complainant was presented as witness who testified in support of her complaint. In the course of her direct examination, several documents were identified by the said witness and duly marked in evidence as Exhibits "A" to "D", inclusive.

At the 2 August 2012 continuation of hearing, complainant and respondent moved to apply the Commission's Rules on Summary Procedure in resolving this complaint. Said motion was granted. The parties were then directed to file their respective position papers.

On 8 October 2012, complainant filed her "Position Paper" while respondent filed its "Position Paper for the Respondent" on 12 October 2012.

On 15 October 2012, the Commission issued an Order directing complainant and respondent to file their respective draft decisions pursuant to Section 2.3 of Executive Order No. 26, Series of 1992.

In compliance therewith, respondent filed its "Draft Decision" on 16 November 2012.

On 5 August 2013, the Commission issued another Order denying the "Motion to Resolve the Case"³ filed by respondent and directing complainant to file her draft decision within an extendible period of ten (10) days from receipt thereof.

On 13 September 2013, complainant filed a "Manifestation" stating, among others, that she filed her position paper on 2 October 2012 and that her counsel was not furnished with a copy of the Order dated 15 October 2012 directing them to file a draft decision.

³ Filed on 20 June 2013

On 24 October 2013, an Order was issued giving complainant an extendible period of sixty (60) days from receipt thereof within which to file her draft decision.

On 29 January 2014, complainant filed a "Draft Decision".

Taking into consideration the parties' respective positions, affidavits, and other submissions, the issues in this case can be summed up as follows:

ISSUE

WHETHER OR NOT COMPLAINANT IS LIABLE TO PAY THE DIFFERENTIAL BILLING IMPOSED AGAINST HER IN THE AMOUNT OF SEVEN HUNDRED SIXTY FIVE THOUSAND SEVEN HUNDRED THIRTY SIX AND 30/100 (PhP765,736.30).

DISCUSSION

Complainant insists that she could not have violated Republic Act No. 7832 since she does not have the necessary expertise or skill to tamper an electric meter. She contends that she did not have any knowledge of the alleged tampering of MERALCO's meter. She asserts that the inspection was conducted without the presence of an officer of the law or an ERC representative, in blatant violation of Section 4 of R.A. 7832.

Respondent, on the other hand, insists that complainant violated R.A. 7832 as evidenced by the tampered meter and that the inspection thereon was conducted in accordance with law. Respondent presented documentary evidence such as the MDLTR⁴, MERALCO Meter Verification Report⁵, ERC Report of Electric Watt-hour Meter Tests⁶, and Service Billing History⁷, to prove the existence of a tampered meter.

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*,

⁴ Meter and Device Laboratory Test Request, Exhibit "5".

⁵ Exhibit "12".

⁶ Exhibit "13".

⁷ Exhibits "16-30".

*Tape & Chemical Corp. vs. Court of Appeals*⁸, MERALCO must 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."

Since complainants are contesting the validity of the findings of MERALCO personnel, it is the burden of respondent MERALCO to prove the existence of a tampered meter and that the conduct of the inspection was done in accordance with law.

Section 4 of R.A. 7832 provides:

"Section 4. Prima Facie Evidence – (a) the presence of any of the following circumstances shall constitute prima facie evidence of illegal use of electricity as defined in this

⁸ G.R. No. 126074 February 24, 1998

Act, by the person benefited thereby, and shall be the basis for : (1) the immediate disconnection by the electric utility to such person after due notice, xxx:

x x x

(iv) The presence of a tampered, broken, or face seal on the meter, or mutilated, altered or tampered meter recording chart or graph or computerized charges, graph, or log.

(v) The presence in any part of the building or its premises which is subject to the control of the consumer or on the electric meter, of a current reversing transformer, jumper, shoring and/or shunting wire, and/or loop connection or any other similar device;

x x x

(viii) x x x; Provided, however, **That the discovery of any of the foregoing circumstances, in order to constitute prima facie evidence, must be personally witnessed and attested to by any officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB).**" (Underscoring supplied)

Under the law, the presumption that there is *prima facie*⁹ case of illegal use of electricity stands when the discovery of any of the circumstances (i.e. tampered meter) was witnessed by an officer of the law or a duly authorized representative of the ERC.

When a *prima facie*¹⁰ case exists, the distribution utility is discharged from the burden of proving the existence of pilferage under RA No. 7832. A *prima facie* case of illegal use of electricity shall be the basis for: (a) immediate disconnection by the electric utility or cooperative to any such person after due notice; (b) the holding of preliminary investigation by the prosecutor and the subsequent filing in court of the pertinent information; and (c) the lifting of any temporary restraining order or injunction which may have been issued against a utility or cooperative.¹¹

⁹ Prima facie evidence is defined as:

¹⁰ Evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient. Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence. H. Black, et al., BLACKS LAW DICTIONARY 1190 (6th ed., 1990).

¹¹ Section 1, Rule III, RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 7832, as amended

In **MERALCO vs. Spouses Chua and Paqueo**,¹² the Honorable Supreme Court enunciated the importance of having an authorized government representative present during inspection as this goes into the essence of due process, thus:

"To reiterate, the discovery of a tampered, broken, or fake seal on the meter shall only constitute *prima facie* evidence of illegal use of electricity by the person who benefits from the illegal use *if such discovery is personally witnessed and attested to by an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB)*. With such *prima facie* evidence, MERALCO is within its rights to immediately disconnect the electric service of the consumer after due notice."

Section 1, Rule III of the Rules and Regulations Implementing RA 7832 (*IIRR*) defines an officer of the law as one who, *by direct supervision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as barangay captain, barangay chairman, barangay councilman, barangay leader, officer or member of Barangay Community Brigades, barangay policeman, PNP policeman, municipal councilor, municipal mayor and provincial fiscal.*

The importance of having an authorized government representative present during an inspection was highlighted during the Senate deliberations on RA 7832 when Senator John H. Osmeña, the laws author, explained:

Mr. President, if a utility like MERALCO finds certain circumstances or situations which are listed in Section 2 of this bill to be *prima facie* evidence, I think they should be prudent enough to bring in competent authority, either the police or the NBI, to verify or substantiate their finding. If they were to summarily proceed to disconnect on the basis of their findings and later on there would be a court case and the customer or the user would deny the existence of what is listed in Section 2, then they could be in a lot of trouble.

¹² G.R. NO. 160422, July 5, 2010

We emphasized the significance of this requirement in *Sps. Quisumbing v. MERALCO*, when we said:

The presence of government agents who may authorize immediate disconnections go into the essence of due process. Indeed, we cannot allow respondent to act virtually as prosecutor and judge in imposing the penalty of disconnection due to alleged meter tampering. That would not sit well in a democratic country. After all, Meralco is a monopoly that derives its power from the government. Clothing it with unilateral authority to disconnect would be equivalent to giving it a license to tyrannize its hapless customers." (Underscoring supplied)

Based on the documents submitted, it was disclosed that the Metering Facilities Inspection Report (MFIR) appears to be the only document which speaks about the conduct of the inspection. While the complainant signed the MFIR, it was not shown whether there was an officer of the law or an ERC authorized representative present during the inspection. Thus, the absence of said persons belies the existence of a *prima facie* case for anti-pilferage. However, this does not necessarily mean that MERALCO's right to present its case is already foreclosed. As a consequence, MERALCO now carries the burden of proving that theft was indeed committed by the complainant. It is undisputed that complainant was present and witnessed the inspection and consequent removal as well as replacement of the subject meter.

To prove the fact of theft and the liability of complainant, MERALCO presented several documents Such as the MFIR, the Joint-Affidavit of Inspection, Notice and a Meter and Device Laboratory Test Request (MDLTR). According to Mr. Payba and Mr. Plesis-Dales, they removed the meter with no. 33SWN34224 from its meter base in the presence of complainant. After removing the said meter, they showed the same to complainant of its present condition. They then placed the subject meter in a meter plastic bag and sealed the bag with seal number B09BT0047569 to preserve its actual and true condition at the time of inspection and removal. The meter bag and tag thereon was also signed by complainant so that it cannot be opened until its arrival to MERALCO's meter laboratory. MERALCO personnel installed a new electric meter with number 109BA139937 to the electric service of

complainant and explained to complainant that the subject meter will be brought to MERALCO's meter laboratory for further testing.¹³

MERALCO presented to the Commission the "Notice", a Meter and Device Laboratory Test Request (MDLTR) and the MFIR to dispel any doubt that the subject meter may have been manipulated by MERALCO prior to its laboratory testing.

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

- 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

¹³ Exhibit "1-A" of MERALCO; Joint-Affidavit of Inspection

proceed in the presence of the ERC representative.
xxx”

On 11 May 2010, MERALCO proceeded with the laboratory testing in the presence of the Commission's representative, Engr. Vincent John G. Castro, to determine whether the subject meter was tampered. 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. In the course of the laboratory testing, it was verified and confirmed that the meter was indeed tampered. The test yielded the following results:

“(1) Cover seals 20 MMIP 1996 were tampered by pulling out from the sealing wire; and

(2) The driving gear of the 2nd shaft was deliberately filed causing it to disengage partially from the driven gear of the unit pointer when subjected to a dial test of 5000 dial revolution. The meter registered only 3kWh instead of 18kWh as required for a normal or untampered meter. Under this condition, the meter had been registering only 16.66% of the actual energy used by the customer.”¹⁴

On the other hand, Engr. Castro also prepared a report¹⁵ indicating his findings on the laboratory test of Meter No. 33SWN34224. The laboratory test revealed that the subject meter was indeed tampered and had an accuracy of 16.66%, to wit:

- a. Cover seal condition: Deformed
- b. Filed gear
- c. Average Accuracy: 16.66%

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 tampered. 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

¹⁴ Exhibit “12”; MERALCO Meter Verification Report

¹⁵ Report of Electric Watthour Meter Tests

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.

With MERALCO having justified that indeed the electric meter was tampered, a disputable presumption exist that complainant benefitted by the illegal use of electricity. Thus, the burden of proving otherwise or the non-existence of the tampered meter now rests with the complainant. Complainant should present contradicting evidence to refute the presumption that they benefited from the illegal use of electricity.

Complainant, however, failed to present any evidence to support their denial that they are not responsible on the existence of a tampered meter. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters.¹⁶ Indeed, denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.¹⁷

Thus, the Commission finds basis on the imposition and assessment of differential bill against complainant in accordance with Section 6 of R.A. No. 7832, the Terms and Conditions of Service approved by the Board of Energy (now ERC) in its Decision in BOE Case No 85-121 and Article 35 of the MREC. The pertinent provisions of which are as follows:

A. R.A. 7832

"Section 6. Disconnection of Electric Service.

x x x

For purposes of this Act, "differential billing" shall refer to the amount to be charged to the person concerned for the unbilled electricity illegally consumed by him as determined through the use of methodologies which utilize, among others, as basis for determining the amount of monthly electric consumption in kilowatt-hours to be billed, either: (a) the highest recorded monthly consumption within the five-year billing period preceding

¹⁶ People of the Philippines vs. Carlito Mateo; G.R. No. 179036, July 28, 2008

¹⁷ People of the Philippines vs. Agustino Tamalon; G.R. nO. 180169, February 27, 2009

the time of the discovery, (b) the estimated monthly consumption as per the report of load inspection conducted during the time of discover, (c) the higher consumption between the average consumptions before or after the highest drastic drop in consumption within the five-year billing period preceding the discovery, (d) the highest recovered monthly consumption within four (4) months after the time of discovery, or (e) the result of the ERB test during the time of discovery and, as basis for determining the period to be recovered by the differential billing either: (1) the time when the electric service of the person concerned recorded an abrupt or abnormal drop in consumption, or (2) when there was a change in his service connection such as a change of meter, change of seal or reconnection, or in the absence thereof, a maximum of sixty (60) billing months up to the time of discovery: Provided, however, That such period shall in no case, be less than one (1) year preceding the date of discovery of the illegal use of electricity."

B. BOE Case No.85-21

"CUSTOMER'S LIABILITY

x x x

Customers will be held responsible for tampering, interfering with, or breaking of seals of meters or other equipment of the company installed on the Customer's premises, and shall be held liable for the same according to the law. Xxx

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 properly, and/or removing the Company's entire property in the event of termination of the contract for any cause.

x x x

PAYMENTS:

x x x In the event of the stoppage, or the failure by any meter to register the full amount of energy consumed, the Customer shall be billed for such period on an estimated

consumption based upon his use of energy in a similar period of like use x x x”

C. MREC

“Article 35. Obligation to Pay Differential Billing. – A consumer who is discovered to have committed the offense of illegal use of electricity shall, in addition to the imposition of appropriate penal sanction, be required to pay a differential billing to the electric distribution utility to be computed in accordance with existing law, rules and regulations.”

Based on the billing history of the complainant, MERALCO computed the differential billing of Php765,736.30 representing the value of electricity actually consumed by the registered consumer/user but not registered in the meter on account of the tampered condition of the meter. MERALCO computed the amount of Php765,736.30 based on 1,163 kWh¹⁸. This is the highest recorded monthly consumption of the subject service account of complainant within the five-year billing period preceding the time of the discovery of the tampering multiplied by the number of months or allowable period of recovery and at the current rate of electricity at the time of apprehension. The current rate means the average rate of electricity per kWh as reflected in the current bill. Current bill means the latest monthly bill served by the distribution utility which does not include any period before the time of apprehension.¹⁹

In the absence of any compelling evidence to the contrary, the Commission is constrained to consider the weight of the evidence presented by the respondent as against the denial and self-serving statements of the complainant. The tampered condition complainant's metering facility resulted in non-registration of her actual electrical consumption to the prejudice of the respondent.

In addition to the unregistered consumption, MERALCO is entitled to collect surcharges from the complainant equivalent to twenty-five percent (25%) of her next current/clean bill pursuant to Section 8 (a) of R.A. 7832.

WHEREFORE, the foregoing premises considered, the complaint filed by Luzviminda Villegas is hereby **DISMISSED** for lack of merit.

¹⁸ Exhibit “27” of MERALCO’s Position Paper

¹⁹ Paragraph 3, pars. (k) and (l) of IRR of R.A. 7832

Accordingly, complainant Villegas is hereby directed to pay the Manila Electric Company (MERALCO) the differential billing amounting to **Seven Hundred Sixty Five Thousand Seven Hundred Thirty Six Pesos and 30/100** (PhP765,736.30), plus 25% surcharge of their current bills, within fifteen (15) days from receipt hereof.

SO ORDERED.

Pasig City, 13 June 2017.

**FOR AND BY AUTHORITY
OF THE COMMISSION**


GLORIA VICTORIA C. YAP-TARUC
Commissioner

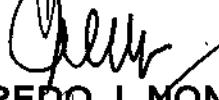
We Concur:

JOSE VICENTE B. SALAZAR*

Chairman


JOSEFINA PATRICIA A. MAGPALE-ASIRIT

Commissioner


ALFREDO J. NON

Commissioner


GERONIMO D. STA. ANA

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