

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



**FE VALENZUELA,**  
Complainant,

-versus-

**ERC CASE NO. 2009-201C**

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

X-----X

**ANTONIO PAREDES, JR.,**  
Complainant,

-versus-

**ERC CASE NO. 2009-202C**

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

X-----X

**FRANCISCO L. PAREDES,**  
Complainant,

**DOCKETED**  
Date: JUN 28 2017  
By: [Signature]

-versus-

**ERC CASE NO. 2009-203C**

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

X-----X

**QUINTIN PAREDES III,**  
Complainant,

-versus-

**ERC CASE NO. 2009-206C**

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

X-----X

## DECISION

Before the Commission for resolution are the verified complaints filed by complainants Fe Valenzuela, Antonio Paredes, Jr., Francisco L. Paredes, Jr. and Quintin Paredes III against Manila Electric Company (MERALCO) contesting the latter's differential billings due to the alleged tampered meters.

Complainant Fe Valenzuela is the actual user of the electric service installed at 46 Ubay St., Barangay Siena, Quezon City under Service ID No. (SIN) 529583501 registered in the name of A (Antonio Paredes. Complainant Antonio L. Paredes, Jr. is the actual user of the electric service installed at the same address under SIN 529583601 registered in the name of Leticia B. Sur. Complainant Francisco L. Paredes, Jr. is the actual user of electric service installed in the same address under SIN 529583401 registered in the name of Ernesto Malinay. Complainant Quintin Paredes III is the registered customer of the electric service installed at the same address under SIN 529583201.<sup>1</sup>

Complainants alleged, among others, that:

- “5. On April 29, 2009, respondent’s representative, without the permission of the owners (Quintin, Antonio and Francisco) and without legal authority from any competent judicial, quasi-judicial or administrative body, entered the premises of the subject six-door apartment complex and conducted an inspection of the electric meters located inside the same. It was learned that the inspection was part of an apparent saturation drive conducted by respondent’s representative in the community without the presence, cooperation and assistance of police authorities, representatives of the Energy Regulatory Commission (ERC) nor any other neutral or unbiased personality.
6. On the course of these saturation drives, respondent’s representative took possession of, again without the presence and assistance of police authorities, any ERC representative nor any other neutral or unbiased personality, the electric meters of the subject apartment units and replaced them with new Meralco meters.

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<sup>1</sup> Draft Decision of MERALCO

7. In the meantime, the confiscated Meralco meters were under the sole custody, possession and control of the respondent even up to the time when they were supposedly allowed to be viewed by the complainants and the public on May 14, 2009, or a total long period of fifteen days after their confiscation.
8. Respondent subsequently reached a uniform observation, albeit arbitrarily, on all the confiscated Meralco meters to the effect that they were all allegedly tampered. All of them had allegedly fake seals and mis-aligned dial pointers. Respondent then demanded differential billings from the complainants and threatened to disconnect electric services unless they pay the same."<sup>2</sup>

Respondent, on the other hand, alleges that:

1. On April 29, 2009, inspectors of the Respondent together with PO1 Michael Esparagoza went to the above cited premises of the complainants and inspected the electric meters found thereat. During the course of their inspection, they found out that meter number 33SHN35089 registered in the name of Leticia B. Sur and used by complainant Antonio Paredes had a missing (meaning removed from the sealing ring) terminal seal and the cover seals attached thereat are not the usual ones which respondent and the Commission install. Having known such, the inspectors of the respondent, in the presence of Francine Paredes who introduced herself to be the daughter of complainant Antonio Paredes and PO1 Esparagoza, removed meter number 33SHN35089 for laboratory testing and replaced it with meter number 105BA114096.
2. Thereafter, respondent's inspectors together with PO1 Esparagoza proceeded to inspect meter number 33HZN19570 installed at the premises of Quintin Paredes III. During the course of their inspection, they also found out that both the terminal and cover seals of the meter were not the usual ones which Respondent and this Commission install (meaning it must be verified whether it is genuine or not). Having

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<sup>2</sup> Pages 4-5, pars. 5-8, Consolidated Complainants' Position Paper dated April 23, 2012

known such, the inspectors of the Respondent, in the presence of Registered Customer/Complainant Quintin Paredes III himself and PO1 Michael Esparagoza, removed meter number 33HZN19570 for laboratory testing and replaced it with meter number 107BA266049.

3. Respondent's Inspectors together with PO1 Esparagoza then proceeded to inspect meter number 34GM 3093 registered in the name of A. (Antonio) Paredes and used by Fe Valenzuela,. During the course of their inspection, they also found out that both the terminal and cover seals of the meter were not the usual ones which Respondent and the Commission install (meaning it must be verified whether it is genuine or not). Having known such, the inspectors of the Respondent in the presence of Maureen Q. Valenzuela who introduced herself to be one of the users of the electric service and PO1 Esparagoza, removed meter number 34 GM3093 for laboratory testing and replaced it with meter number 103BA310138.
4. Respondent's inspectors together with PO1 Esparagoza proceeded to inspect meter number 34LGN45845 registered in the name of Ernesto P. Malinay and used by Francisco Paredes. During the course of their inspection, they also found out that both the terminal and over seals of the meter were not the usual ones which Respondent and the Commission installs (meaning it must be verified whether it is genuine or not). Having known such, the inspectors of the Respondent, in the presence of complainant Francisco Paredes himself and PO1 Esparagoza, removed meter number 34LGN45845 for laboratory testing and replaced it with meter number 101BA004678.
5. Respondent's inspectors prepared Metering Facilities Inspection Report Nos. C-20814 for the electric service of registered customer Leticia B. Sur, C-20770-08 for the electric service of registered customer/complainant Quintin Paredes III, C-20769-08 for the electric service of registered customer A. (Antonio) Paredes, C-20768-08 for the electric service of registered customer Ernesto P. Malinay, indicating therein their findings.

6. Respondent also alleged that meter numbers 34GM3093, 33STN3589, 34LGN45845, and 33HZN19570 were all placed in a meter plastic bag and sealed while in transit from the registered customers/complainants premises up to the meter laboratory.
7. In the presence of an engineer from the Commission, respondent then forthwith conducted the necessary laboratory testing on meter numbers 33STN35089, 33HZN19570, 34GM3093, and 34LGN45845 which yielded the following results:

**Meter Number 33STN35089**

“Cover seals 20IP 1993 were found fake;

The 1000<sup>th</sup>, 100<sup>th</sup>, and 10<sup>th</sup> dial pointers of the meter registered were found out of alignment indicating that they were manipulated and set to desired readings;”

**Meter Number 33HZN19570**

“Cover seals 20 IP 1994 were found fake;

The 1000<sup>th</sup>, 100<sup>th</sup>, and 10<sup>th</sup> dial pointers of the meter registered were found out of alignment indicating that they were manipulated and set to desired readings;”

**Meter Number 34GM3093**

“Cover seals 21 (ERC unreadable) were found fake;

The 1000<sup>th</sup>, 100<sup>th</sup>, and 10<sup>th</sup> dial pointers of the meter registered were found out of alignment indicating that they were manipulated and set to desired readings;”

### **Meter Number 34LGN45845**

“Cover seals 23C 2001 were found fake;

The 1000<sup>th</sup>, 100<sup>th</sup>, and 10<sup>th</sup> dial pointers of the meter registered were found out of alignment indicating that they were manipulated and set to desired readings;”

8. Given such findings, the respondent demanded from the registered customers/complaints payment of the corresponding differential billings as computed by the respondent using the manner of computation prescribed by R.A. 7832 in the amount of Seventy Seven Thousand Two Hundred Fourteen and 30/100 (PhP77,214.30) from registered customer Leticia B. Sur and/or complainant Antonio Paredes, Jr.; Twenty Six Thousand Five Hundred Eighty Seven and 5/100 (PhP26,587.05) from complainant Quintin Paredes III; Thirty Thousand Four Hundred Forty Two and 30/100 (PhP30,442.30) from registered customer Antonio Paredes and/or complainant Fe Valenzuela; Fifty Two Thousand Seven Hundred Seventy Nine and 60/100 (PhP52,779.60) from registered customer Ernesto Malinay and/or complainant Francisco Paredes, plus surcharges for each offense as indicated in the demand letters sent by the respondent to the complainant all dated June 1, 2009.<sup>3</sup>

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 position papers, 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 position papers, affidavits, evidence and arguments altogether, the issues which this Commission is called to resolve is as follows:

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<sup>3</sup> Pages. 1-4, Draft Decision For the Respondent

## ISSUE

Whether or not complainants are liable for the differential billings charged by respondent.

## DISCUSSION

Complainants argue that MERALCO cannot remove and replace their electric meters without their consent as it is violative of the due process clause of the 1987 Constitution. They argue that the removal and replacement of his electric meter is against the law, and thus, they are not liable to pay the differential billings.

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, complainants should be directed to pay the differential billings.

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 complainants' electric meters, it was not necessary for MERALCO to give prior notice to and obtain the consent of complainants 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 complainants' 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."<sup>4</sup>

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*<sup>5</sup>, 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

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<sup>4</sup> Bricktown Development Corp. v. Amor Tierra Development Corp., G.R. No. 112182 December 12, 1994

<sup>5</sup> G.R. No. 126074 February 24, 1998

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 meters with new electric meters was diligently followed by the personnel of MERALCO. The inspection and replacement was even witnessed by PO1 Esparagoza. It is also clear from the records that complainants were given sufficient explanation, notice and opportunity to attend the testing of the meter but they however did not seize the opportunity to do so.

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 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*<sup>6</sup> 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*<sup>7</sup> 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.<sup>8</sup>

In ***MERALCO vs. Spouses Chua and Paqueo***,<sup>9</sup> 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

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<sup>6</sup> Prima facie evidence is defined as:

<sup>7</sup> 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).

<sup>8</sup> Section 1, Rule III, RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 7832, as amended

<sup>9</sup> G.R. NO. 160422, July 5, 2010

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 (*IRR*) 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. Osmea, 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.

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)

MERALCO alleges that the inspection of complainants’ electric meters was witnessed by a police officer, PO1 Esparagoza, who supposedly signed the MFIR<sup>10</sup>. Other than these documentary exhibits, however, no further evidence was adduced. On the other hand, complainants, denying respondent’s allegation, adduced: 1) a Certification dated 23 March 2012 signed by Police Chief Inspector Joseph Garcia De Vera<sup>11</sup> to the effect that no “PO1 Michael Esparagoza” is among the PNP personnel assigned to the district covering the inspected premises, and 2) the copy of the police blotter for 29 April 2009<sup>12</sup> which does not contain any record of the inspection.

While respondent adduced a Joint Affidavit of Inspection dated 15 August 2012 that includes PO1 Esparagoza as among the affiants, his signature is glaringly missing therein. This omission tends to further belie his supposed presence during the inspection. Thus, it is our view that no prima facie case was established by MERALCO. However, this does not necessarily mean that MERALCO’s right to present its case is already foreclosed. As a consequence, MERALCO has the burden of proving that indeed complainants committed the theft of electricity.

It is a basic rule in evidence that the burden of proof is on the part of the party who makes the allegations — *ei incumbit probatio, qui dicit, non qui negat*. If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weakness of that of his opponent.<sup>13</sup>

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 confiscated from the premises of the complainant. This will led us to the examination of every link in the chain of custody over the kWh meter from its confiscation, handling, and testing by the MERALCO.

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<sup>10</sup> Exhs. “6-B”, “8-B”, “10-B” and “12-B”

<sup>11</sup> Exhibit “F”

<sup>12</sup> (Exh. “E”)

<sup>13</sup> *Rufina Patis Factory vs. Alusitain*, 434 SCRA 418 (2004)

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. If, after such testing, the subject meter is found to be tampered, the DU may assess the customer or actual user a differential billing in accordance with these rules and regulations. Failure to pay the differential billing after due notice is a ground for disconnection of the customer's electric service in the subject premises.
- 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.
- f. Inspections to be undertaken by DUs to establish the presence of any of the prima facie evidence of illegal use of electricity, as enumerated in Section 4 of RA 7832, must be witnessed by an officer of the law or an ERC representative. If such prima face evidence is established, the DU may disconnect the customer's electric service after due notice and non-payment of the differential billing."

In his Affidavit of Meter Testing,<sup>14</sup> Mr. Dennis B. Villar in the presence of this Commission's representatives, Engr. Isidro B. Madrid and Engr. Ronaldo T. Uy, proceeded to conduct the laboratory test on 18 May 2009. The scheduled laboratory tests of the subject meters were set on 14 May 2009 as indicated "Palala"<sup>15</sup> but complainants failed to appear at MERALCO's laboratory. MERALCO and the representatives of the Commission decided to proceed with the meter testing on 18 May 2009 notwithstanding the absence of complainants. In the course of the joint meter laboratory test, it was disclosed that the testing machine could no longer determine the accuracy level of the meter on the amount of electricity that passed through it because its dial pointers were already out of alignment. Thus, the meters could no longer record its accurate registration of electric consumption. Mr. Villar prepared the Meter Verification Reports<sup>16</sup> indicating his findings, to wit:

**Meter No. 33STN35089**

- "a) Cover seals 20 IP 1993 were found fake;
- b) The 1000<sup>th</sup>, 100<sup>th</sup>, and 10<sup>th</sup> dial pointers of the meter register were found out of alignment indicating that they were manipulated and set to desired readings."

**Meter No. 33HZN19570**

- "a) Cover seals 20 IP 1994 were found fake;
- b) The 1000<sup>th</sup>, 100<sup>th</sup>, and 10<sup>th</sup> dial pointers of the meter register were found out of alignment indicating that they were manipulated and set to desired readings."

**Meter No. 34GM3093**

- "a) Cover seals 21 (ERC unreadable) were found fake;
- b) The 1000<sup>th</sup>, 100<sup>th</sup>, and 10<sup>th</sup> dial pointers of the meter register were found out of alignment indicating that they were manipulated and set to desired readings."

**Meter No. 34LGN45845**

- "a) Cover seals 23C 2001 were found fake;
- b) The 1000<sup>th</sup>, 100<sup>th</sup>, and 10<sup>th</sup> dial pointers of the meter register were found out of alignment indicating that they were manipulated and set to desired readings."

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<sup>14</sup> Exhibit "14" of MERALCO

<sup>15</sup> Exhibits "7", "9", "11" and "13" of MERALCO

<sup>16</sup> Exhibits "17", "20", "23", and "26" of MERALCO

Engrs. Mardrid and Uy prepared the Report of Electric Watthour Meter Tests<sup>17</sup> with the following findings:

Cover Seal condition: Fake  
Mis-aligned dial pointers:  
a. 1000<sup>th</sup> b. 100<sup>th</sup> c. 10<sup>th</sup>

Hence, it was confirmed that kWh meter Nos. 33STN35089, 33HZN19570, 34GM3093 and 34LGN45845 were indeed tampered in violation of R.A. No. 7832.

Based on the testimonial and documentary evidences it presented, MERALCO has sufficiently shown to have complied with the procedures<sup>18</sup> relative to the confiscation, 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 representatives, 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 tampered kWh meter. With the pieces of evidence presented by MERALCO and the test reports of the representatives of the Commission, MERALCO was able to prove that the subject meters were tampered in violation of Section 2 of R.A. 7832, to wit:

"Section 2. Illegal Use of Electricity. – It is unlawful for any person, whether natural or juridical, public or private, to:

x x x

(c) Tamper, install or use a tampered electrical meter, jumper, current reversing transformer, shorting or shunting wire, loop connection or any other device which interferes with the proper or accurate registry or metering of electric current or otherwise results in its diversion in a manner whereby electricity is stolen or wasted;

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<sup>17</sup> Exhibits "18", "21", "24" and "26-A" of MERALCO

<sup>18</sup> Sections 2 and 3 of Rule V of this Commission's Resolution No. 6, Series of 2011 (A Resolution Adopting the Amendments to the Rules and Regulations Implementing Republic Act No. 7832) issued on January 31, 2011



x x x"

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

Complainants, 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.<sup>19</sup> Indeed, denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.<sup>20</sup>

Thus, the Commission finds basis on the imposition and assessment of differential bill against complainants 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 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

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<sup>19</sup> People of the Philippines vs. Carlito Mateo; G.R. No. 179036, July 28, 2008

<sup>20</sup> People of the Philippines vs. Agustino Tamolon; G.R. No. 180169, February 27, 2009

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.”

Section 6 of R.A. No. 7832 or the “*Anti-Pilferage of Electricity and Theft of Electric Transmission Lines and Materials Act of 1994*” defines differential billing as:

“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 the time of the discovery, (b) the estimated monthly consumption as per the report of load inspection conducted during the time of discovery, (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 recorded 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.”

Based on the billing history of the complainants, MERALCO computed the following differential billings representing the value of electricity actually consumed by the registered consumers/users but not registered in the meter on account of the tampered condition of the meter.

Registered Customer	Service ID No.	Amount of Differential Billing (PhP)	Basis/Method of Computation
Letecia B. Sur	529583601	77,214.30	Connected Loads
Quintin Paredes III	529583201	26,587.05	Highest Consumption
A. Paredes	529583501	30,442.30	Connected Loads
Ernesto P. Malinay	529583401	52,779.60	Highest Consumption

In support of its claim for differential billings, MERALCO presented the affidavit of Mr. Michael Roland B. Arbues<sup>21</sup>, its Billing Support Staff who prepared the computation of the differential billings for the complainants.

Using the methodologies above, MERALCO computed the aforesaid amount of differential. For complainant Paredes III, MERALCO used the highest recorded monthly consumption of the subject service accounts of complainants within the five-year billing period preceding the time of the discovery of the tampering and the highest consumption for the next thirty (30) days following the installation of a new meter, respectively, 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.<sup>22</sup> On the other hand, for complainant Malinay, MERALCO used the highest recorded monthly consumption within four (4) months after the time of the discovery of the tampering.<sup>23</sup>

As can be gathered from the evidence presented, the electrical consumptions of complainants Paredes III and Malinay for the period June 2008 to April 2009 do not show any sudden or drastic drop. Thus, in computing the differential billings, MERALCO is justified in using the foregoing methodologies.

Tampering with the electric meter is committed by the consumer to prevent the meter from registering the correct amount of electric consumed; thus, while using the same regular power supply, they are billed for less than what they actually consumed. Tampering affects only the registered usage as reflected in the electric meter, not the amount of electricity actually used, assuming a more or less uniform monthly usage of electricity.<sup>24</sup> Stated otherwise, when an electric meter is tampered, the recorded consumption is less than the

<sup>21</sup> Exhibit "27" of MERALCO

<sup>22</sup> Section 4 (4.3) (ii) of the IRR of R.A. 7832

<sup>23</sup> Section 4 (4.3) (iii) of the IRR of R.A. 7832

<sup>24</sup> MERALCO v. Wilcon Builders Supply, Inc., 556 SCRA 742, 753-754 (2008), citing MERALCO v. T.E.A.M. Electronics Corporation, 540 SCRA 62 (2007).

electricity actually used. Consequently, when a tampered electric meter is replaced, assuming the same amount of monthly rate of usage, the new electric meter will register the increased use of electricity that had previously been concealed by the tampered meter.<sup>25</sup>

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 complainants. The tampered condition of complainants' metering facility resulted in non-registration of their actual electrical consumptions to the prejudice of the respondent.

As to the computation of MERALCO on the differential billings of complainants Leticia Sur and A. Paredes, the Commission is inclined to disagree with the respondent.

It was highly impossible that complainant Leticia Sur would consume the high amount of electricity when her electricity billings after the replacement of a new meter showed that the energy consumption ranged from an average of 344 kWh<sup>26</sup> for the period April 2008 to April 2009<sup>27</sup>. It was therefore impossible that complainant Sur could consume 938 kWh per month over a period of one (1) year.

MERALCO was unable to show how the complainant Sur incurred an electricity consumption of 938 kWh per month for a period of one year considering the electricity consumed was used for residential purposes only. MERALCO failed to adduce evidence on the standard daily energy usage on each connected load which is an indispensable factor in determining the overall load profile of a load in use. Thus, the Commission cannot sanction the payment of differential bills not supported by evidence.

The applicable methodology to be used in determining the amount of monthly electric consumption in kilowatt-hours to be billed against the complainant Sur is her highest recorded monthly consumption within the five-year period preceding the time of discovery of the tampering, i.e., 404 kWh for the billing period 22 April 2007 to 22 May 2007. Thus, the amount of differential billing that complainant Sur should pay is PhP13,105.10 computed as follows:

$$\begin{aligned} \text{Differential Billing} &= (404 \times 11 \times \text{PhP}10.55/\text{kWh}) - \text{PhP}33,770.10 \\ &= \text{PhP}13,105.10 \end{aligned}$$

<sup>25</sup> Id. at 754.

<sup>26</sup> Exhibit "34" of MERALCO; Billing Period 5/21/2009 and 06/21/2009 to 09/21/2009

<sup>27</sup> Compliance of MERALCO dated February 15, 2016

Where:

- 404 - The highest recorded monthly consumption within the five-year period preceding the time of discovery of the illegal connection
- 11 - Allowable period of recovery (June 2008 to April 2009)
- PhP10.55/kWh - MERALCO's current rate for the month of February April 2009
- PhP33,779.10 - Total electric bills actually paid (June 2008 to April 2009)

Similarly, the applicable methodology to be used in determining the amount of monthly electric consumption in kilowatt-hours to be billed against the complainant A. Paredes is the highest recorded monthly consumption within the five-year period preceding the time of discovery of the tampering, i.e., 301 kWh for the billing period 22 December 2006 to 22 January 2007. Thus, the amount of differential billing that complainant Sur should pay is PhP12,735.02 computed as follows:

$$\begin{aligned} \text{Differential Billing} &= (301 \times 11 \times \text{PhP}10.52/\text{kWh}) - \text{PhP}22,096.70 \\ &= \text{PhP}12,735.02 \end{aligned}$$

Where:

- 301 - The highest recorded monthly consumption within the five-year period preceding the time of discovery of the illegal connection
- 11 - Allowable period of recovery (June 2008 to April 2009)
- PhP10.52/kWh - MERALCO's current rate for the month of April 2009
- PhP22,096.70 - Total electric bill actually paid (February 2005 to February 2008)

In addition to the unregistered consumption, MERALCO is entitled to collect surcharges from the complainants equivalent to twenty-five percent (25%) of their current bills pursuant to Section 8 (a) of R.A. 7832.

**WHEREFORE**, premises considered, the complaints filed by Fe Valenzuela, Antonio Paredes, Jr., Francisco L. Paredes, Jr. and Quintin Paredes III hereby **DISMISSED** for lack of merit.

Accordingly, complainants are hereby directed to pay the Manila Electric Company (MERALCO) the differential billing amounting to **Thirteen Thousand One Hundred Five Pesos and 10/100 (PhP13,105.10)** for registered customer Leticia B. Sur and/or complainant Antonio Paredes, Jr.; **Twenty Six Thousand Five Hundred Seventy Eight Pesos and 05/100 (PhP26,578.05)** for complainant Quintin Paredes III; **Twelve Thousand Seven Hundred Thirty Five Pesos and 02/100 (PhP12,735.02)**; **Fifty Two Thousand Seven Hundred Seventy Nine Pesos and 60/100 (PhP52,779.60)** for registered customer Ernesto Malinay and/or complainant Francisco Paredes, 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**  
Commissioner

Go/mmcg/erc case no. 2009-2001 cc valenzuela vs. meralco decision

\* On preventive suspension as per Order of the Office of the President (OP-DC Case No. 17-D-094) dated May 2, 2017

**Copy Furnished:**

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