

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



**CORNELIA R. SEVILLA, on behalf
of DANIEL SEVILLA,**
Complainant,

-versus-

ERC CASE NO. 2011-190CC

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

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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 7 June 2011 by Cornelia R. Sevilla, on behalf of Daniel Sevilla, against Manila Electric Company (MERALCO), seeking relief from payment of the differential billing imposed by MERALCO due to complainant's alleged tampered electric meter.

The instant Complaint stemmed from the following factual antecedents:

Complainant Daniel G. Sevilla is a resident of 7 Camus St., Brgy. San Agustin, Malabon City, and an actual user of electricity distributed by MERALCO under Service Identification Number (SIN) 562445301.

On 19 January 2011, MERALCO conducted a periodic inspection of its electric meters in Malabon City, which included the metering facility¹ of complainant. Before the inspection, the MERALCO crew introduced themselves and sought permission from the complainant. According to MERALCO, the inspection was witnessed by the complainant and PO1 Ritchie H. Masangkay of the Philippine National Police (PNP).

In the course of the inspection, the MERALCO crew discovered that Meter No. 33ESN31084 bearing 562445301 showed indications that it was tampered as the electric meter had a "broken cover seal wire", and had to be removed and replaced with a new electric meter (Meter No. 33SYN83637). The old electric meter was then placed in a

¹ With Meter No. 33ESN31084.

meter bag. Subsequently, the MERALCO crew prepared the Metering Facilities Inspection Report (MFIR) No. N76629-10 and a separate Notice informing the complainant that Meter No. 33ESN31084 will be subjected to a laboratory examination on 27 January 2011 at ten o'clock in the morning (10:00 A.M.) to determine whether or not it was tampered. Complainant affixed his signature on the MFIR and on the said Notice. Afterwards, the MERALCO crew left the complainant's house and brought the alleged tampered electric meter to MERALCO's meter laboratory for testing.

Complainant, however, failed to appear during the scheduled laboratory examination.

On 10 February 2011, E.N. Concepcion, a Meter Technician of MERALCO, proceeded with the laboratory test in the presence of Engr. Lawrence A. Pamintuan, a representative from the Commission, and concluded that the electric meter was tampered due to the following findings:

- a) Cover seals 21-12-9176 were tampered by cutting the sealing wire;
- b) The 1000th dial, the 100th dial pointers of the meter register were found out of alignment indicating that they were manipulated to get desired reading.

On that same day, a separate laboratory test was conducted by Engr. Pamintuan. The independent laboratory test showed that:

- a) Cover seal condition: with cut sealing wire;
- b) Misaligned dial pointers: 1000th, 100th and 10th.

Consequently, MERALCO demanded from complainant the amount of Fifty-Five Thousand Seven Hundred Seventy-Two Pesos and Five Centavos (PhP55,772.05) as differential billing, otherwise his electric service will be disconnected should he fail to pay the said amount. In addition, MERALCO imposed 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 that the differential billing is PhP55,772.05, representing the unregistered electricity consumption of the complainant covering the period from 21 September 2009 to 19 January 2011.

The complainant, however, denied any participation in the tampering of the subject electric meter. He requested the reversal of the amount charged against him and a re-investigation to determine whether the discovered mis-aligned dial pointers of the subject electric meter were deliberately done or were mere consequences of the electric meter's ordinary wear-and-tear. Moreover, complainant alleges that the fluctuation in his electricity consumption was due to the following factors: (a) when his daughter arrived from the United States of America (USA) and when his other daughter suffered a stroke, they frequently used their air-conditioning unit; (b) when the gate of their parking lot was constructed, they used electricity for welding works; and (c) when the Maynilad upgraded its facilities that resulted in stronger water pressure and better water service, and thus they no longer used their motor pump.

MERALCO, however, maintained its findings and cast aside complainant's explanations.

Aggrieved, complainant initiated the instant case.

During the pre-hearing conference, no compromise or amicable settlement was agreed upon by the parties. Thus, the parties were directed to file their respective position papers. After the submission of their position papers, the parties were further required to submit draft Decisions in accordance with Section 2.3 of Executive Order No. 26, Series of 1992. After the parties had submitted their respective draft Decisions, the instant case was submitted for resolution.

Taking into consideration the parties' respective positions, and other submissions, the issue to be resolved in this case:

ISSUE

WHETHER OR NOT COMPLAINANT IS LIABLE TO PAY THE DIFFERENTIAL BILLING IMPOSED AGAINST HIM IN THE AMOUNT OF PhP55,772.05.

DISCUSSION

Complainant argues that he did not break the cover seal wire of Meter No. 33ESN31084, nor caused the misalignment of the 1000th, the 100th and 10th dial pointers of the said electric meter. He alleges that MERALCO failed to adduce evidence to show that the said misalignment was caused by human intervention or that the mechanism

of the said electric meter to provide accurate reading of electricity consumption is not susceptible to ordinary wear and tear.

Complainant likewise argues that his receipt of the inspection report does not by itself constitute admission on his part of all that were written therein. On the other hand, the evidence submitted before the Commission would show that MERALCO erred in requiring him to pay the amount of the differential billing based on his highest power consumption within the 60-month-period preceding the inspection. He explained that the highest peak (Exhibit "8-A" of MERALCO) in his power consumption was registered during the period when her daughter came from abroad for a vacation as evidenced by a copy of the pertinent page of her passport attached to complainant's Letter dated 3 June 2011 addressed to Atty. Francis Saturnino C. Juan, and the beginning of the unprecedented drop (Exhibit "7-A" of MERALCO) of his power consumption was the month when another daughter succumbed to her lingering illness on 16 September 2009. Complainant also points out that his bills for September, October and December 2010, leading to the inspection in January 2011 have higher power consumptions compared to the same months of 2009 when the alleged abrupt dropped in his consumption occurred. He further points out that after the alleged tampered electric meter was replaced on 19 January 2011, his MERALCO bill did not drastically increase as the replacement electric meter had registered only 268 kilowatt-hours (kWh), which is just 14 kWh more than his power consumption prior to the meter's replacement in February 2011 (254 kWh), or just 40 kWh more than his power consumption in February 2010 (228 kWh), and merely 8 kWh more than in February 2009 (260 kWh) consumption.

Further, complainant claims that MERALCO's invocation of the provisions of Article 1308 of the Civil Code is misplaced, as the subject contract is one of adhesion where both parties do not stand on a level playing field.

Respondent, on the other hand, insists that complainant violated Republic Act No. 7832, or the "Anti-Electricity and Electric Transmission Lines/Materials Pilferage Act of 1994," as evidenced by his use of a tampered electric meter. Respondent presented documentary evidence such as the Meter Verification Report, Single Phase Meter Verification testing checklist, the Commission's Report of Electric Watthour Meter Tests, to prove the existence of a tampered electric meter. Respondent likewise argues that the complainant's claim that the tampering could have been done by MERALCO's lone inspector who conducted an inspection prior to the 19 January 2010 inspection cannot be given credence absent any proof thereof.

Moreover, MERALCO stresses that it had complied with the rules and regulations implementing R.A. No. 7832 in the conduct of the inspection of the electric meter of the complainant. It alleges that an officer of the law was present when its crew conducted the inspection, and that at the time of the inspection, they discovered that the cover seals of the subject electric meter was broken, which was a tell-tale sign that it was tampered with. It further alleges that the tampered state of the subject electric meter was confirmed when it was subjected to physical examination and laboratory testing in the presence of a representative of the Commission.

MERALCO also argues that complainant violated the pertinent provisions of R.A. No. 7832 and the Magna Carta for Residential Electricity Consumers (Magna Carta) for his illegal use of electricity. Thus, he is obligated to pay the differential billing being demanded by MERALCO. MERALCO explains that the billing history of the complainant would show that his monthly consumption was erratic or inconsistent with the monthly registrations of the tampered electric meter. MERALCO observes that complainant consumed as high as 546 kWh in his June 2008 to July 2008 bill. Yet, he registered a sudden drop in his consumption beginning August 2009 to September 2009. MERALCO asserts that it had correctly computed the complainant's differential billing of PhP55,772.30 on the basis of his highest registered consumption within the sixty (60)-month period preceding the inspection and up to the allowable maximum affected period of no more than two (2) years.

Moreover, MERALCO contends that since it had already sold its property to the complainant, which is electricity, it is but just and fair that the complainant should pay the differential billing which represents his unregistered kilowatt-hours consumption. MERALCO concludes that this would be unjust enrichment on the part of the complainant to its prejudice.

It must be stressed that while electricity is property² whose enjoyment, as a general rule, the owner may extend or deny to others,³ electricity is not an ordinary kind of property that a service provider may grant or withhold to consumers at will. Electricity is a basic necessity whose generation and distribution is imbued with public interest, its provider being a public utility subject to strict regulations by the State in the exercise of police power.⁴

² *United States v. Carlos*, 21 Phil. 553, 560 (1911).

³ Article 429 of the Civil Code provides:

The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonable to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.

⁴ *Republic v. Manila Electric Company*, 440 Phil. 389 (2002).

Thus, it must be determined first whether MERALCO had complied with the procedures required by law and existing rules and regulations for the inspection and removal of complainant's electric meter and the latter's apprehension for illegal use of electricity.

Section 4(a) of R.A. No. 7832 expressly prescribes that the discovery of any of the circumstances enumerated therein must be personally witnessed and attested to by an officer of the law or a duly authorized representative of the ERC, to wit:

“SEC. 4. Prima Facie Evidence. – x x x

(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 xxx xxx

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

xxx xxx xxx

(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 an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB).**” (Underscoring supplied)

Since complainant is 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*⁵ 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*⁶ 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

⁵ Prima facie evidence is defined as:

⁶ 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).

restraining order or injunction which may have been issued against a utility or cooperative.⁷

In *MERALCO vs. Spouses Chua and Paqueo*,⁸ 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 (*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. 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

⁷ Section 1, Rule III, RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 7832, as amended

⁸ G.R. NO. 160422, July 5, 2010

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 complainant's electric meters was witnessed by a police officer, PO1 Ritchie H. Masangkay, who supposedly signed the MFIR. Other than these documentary exhibits, however, no further evidence was adduced. MERALCO failed to submit any affidavit of the said police officer attesting that he personally witnessed the discovery of the illegal connection in complainant's metering facility. It is important to stress at this point that the presence of government agents in pilferage cases goes into the very essence of due process as MERALCO cannot be allowed to act virtually as prosecutor and judge at the same time in imposing the penalty of disconnection due to alleged electric meter at the same time tampering. This principle was resonated in the case of *Quisumbing v. MERALCO*,⁹ and reiterated in the case of *MERALCO v. Chua*¹⁰ which provided the necessary guidance for distribution utilities on how to conduct or investigate electricity pilferage cases. Hence, it is imperative that an officer of the law be present at the time of the removal of the electric meter since what was being conducted was an electricity pilferage operation. 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.

Since the *prima facie* presumption afforded by Section 4 of R.A. No. 7832 finds no application in the instant case, it behooves upon MERALCO to first prove that the complainant actually manipulated the dial pointers in his meter before it can hold him accountable for

⁹ G.R. No. 142943 (03 April 2002).

¹⁰ G.R. No. 160492 (25 July 2010).

differential billing. MERALCO presented the result of the joint laboratory test conducted by its personnel and the representative of the Commission to dispel the claim of complainant that the subject meter may have been manipulated by MERALCO.

However, the Commission has observed that based on the complainant's billing record, no discernable difference exists between his electric bills before and after MERALCO had replaced his tampered meter. Complainant consumed between 254 kWh to 292 kWh of electricity from 19 June 2010 to 19 January 2011, and the following usage record of complainant after MERALCO installed a new meter to replace the tampered one from 19 January 2011 to 19 February 2011, was 268 kWh, which is within the range of complainant's regular consumption of electricity.

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.¹¹ Stated otherwise, when an electric meter is tampered, the recorded consumption is less than the 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.¹²

If the complainant had indeed tampered his electric meter, it stands to reason that after MERALCO replaced the tampered electric meter with a new one, his electric bills would have gone up to reflect the electricity he was actually consuming. The fact that the complainant's monthly electric consumption remained virtually unchanged even after the defective electric meter had been replaced disproves the contentions that he tampered with his electric meter and that his electric meter registered less than the electricity he had actually consumed.

Aside from the doubtful assumption that the complainant had tampered his meter, the Commission also considered that MERALCO did not provide any factual or legal basis for its differential billing. Section 6 of R.A. No. 7832 provides for the manner by which a public utility can compute the differential billing.

¹¹ *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).

¹² *Id.* at 754.

"SEC. 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 other, 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 the discovery, (c) the higher consumption between the average consumption 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 change in his service connection such as 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."

It must be noted that complainant's electricity significantly spiked to 546 kWh from 21 June 2008 to 22 July 2008 and dropped to 312 kWh from 22 August 2009 to 21 September 2009. Complainant was able to satisfactorily establish and explain the sudden changes in his electricity billings. From 26 June 2008 until 15 July 2008, his daughter came from the USA for a vacation and lived with him at his house. During her stay, his family regularly used electric appliances, most especially the air conditioning unit. Thus, their electricity consumption went up to 546 kWh. Sometime in August 2009, the other daughter of the complainant was seriously ill due to kidney failure. They had to use their air conditioning unit then to ease her daughter's suffering. However, on 16 September 2009, his daughter succumbed to her illness. Complainant's family then stayed for one week at the funeral home. Accordingly, his electricity consumption went down from 457 kWh to 312 kWh. The foregoing circumstances appear to be consistent with the upward and downward trends of complainant's electric consumption.

Furthermore, MERALCO failed to present any evidence to show how its billing analyst came up with the computation of the differential billing. MERALCO did not present any affidavit from its billing analyst, who should have attested to the methodology used in arriving at the PHP55,772.05 differential billing. To grant MERALCO's claims based on insufficient proof would be unjust and inequitable.

MERALCO is duty bound to explain to its customers the basis for arriving at a certain unusual billing, particularly in cases of unregistered consumptions. Otherwise, consumers will stand piteously at the public utility's mercy.¹³ Courts cannot and will not in any way blindly grant a public utility's claim for differential billing if there is no sufficient evidence to prove the same.¹⁴ As MERALCO has failed to substantiate its claim for the differential billing, we rule that the complainant cannot be held to account for the billed amount.

Another reason not to hold the complainant accountable for MERALCO's differential billing is the Supreme Court's ruling in *MERALCO v. Lamoy*, to wit:¹⁵

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

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

Therefore, in the absence of any sufficient, clear and convincing evidence to hold complainant liable for pilferage and for the untested differential billing, no liability for any offense and for the payment of said billing should attach to the complainant.

¹³ *MERALCO v. Macro Textile Mills Corporation*, 424 Phil. 811, 828 (2002).

¹⁴ *MERALCO v. Wilcon Builders Supply, Inc.*, *supra*, at 756-757.

¹⁵ G.R. No. 158911 (04 March 2008).

WHEREFORE, premises considered, the Commission hereby ABSOLVES complainant DANIEL SEVILLA from the payment of the differential billing of Fifty-Five Thousand Seven Hundred Seventy-Two Pesos and Five Centavos (PhP55,772.05) for failure of respondent MERALCO to establish that the complainant had illegally consumed electricity.

SO ORDERED.

Pasig City, 13 June 2017.

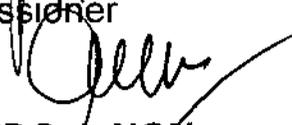
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OF THE COMMISSION

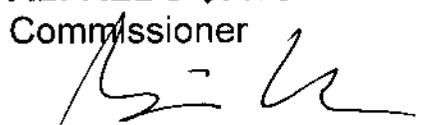

GLORIA VICTORIA C. YAP-TARUC
Commissioner

We Concur:

JOSE VICENTE B. SALAZAR*
Chairman


JOSEFINA PATRICIA A. MAGPALE-ASIRIT
Commissioner


ALFREDO J. NON
Commissioner


GERONIMO D. STA. ANA
Commissioner

do/mccg/2011-190 cc sevilla vs meralco decision final

* 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:

1. **Atty. Raul G. Coralde**
Atty. Edito E. Cedro
MANILA ELECTRIC COMPANY (MERALCO)
Legal Department
Ortigas Avenue, Pasig City, Metro Manila

2. **ATTY. ENRICO P. SEVILLA**
Public Attorney's Office
Counsel for Complainant Daniel Sevilla
7 Camus St., San Agustin
Malabon City