

**Manila Electric Company (MERALCO) vs. Spouses Edito and Felicidad Chua and Josefina Paqueo
G.R. No. 160422; 5 July 2010**

Facts: The monthly electric bills of spouses Edito and Felicidad Chua (the Chuas) from 11 June to 11 September 1996 ranged from ₱747.84 to ₱887.27 for 231 to 269 kilowatt hours of electricity consumed per month. They were surprised when their electric bill for 11 September to 11 October 1996 (September 1996 bill) amounted to ₱4,906.87 for 1,297 kilowatt hours of consumed electricity, which was approximately 553% higher than their previous monthly bill. Their daughter went to MERALCO to question the bill and paid the same under protest to avoid disconnection. MERALCO replaced the old meter with a new one because the old meter's terminal was missing, its cover seal was broken and it had a broken sealing wire. Based on the new meter, the Chuas' electric bills from 11 October 1996 to 24 January 1997 ranged from ₱700.00 to ₱800.00 for an average usage of 227 to 254 kilowatt hours of electricity. MERALCO then sent a demand letter to the Chuas requiring them to pay its differential billing of ₱183,983.66. When the Chuas refused to pay, MERALCO disconnected their electric supply. Later, MERALCO sent the Chuas another letter demanding payment of the reduced differential billing of ₱71,737.49. The Chuas filed a case for *mandamus* and damages with prayer for preliminary mandatory injunction to compel MERALCO to restore their electrical connection. The Regional Trial Court (RTC) issued the injunctive writ and subsequently ruled in favor of the Chuas and awarded them ₱300,000.00 as moral damages. The Court of Appeals (CA) affirmed the RTC's decision but reduced the moral damages to ₱100,000.00. MERALCO, thus, brought the case to the Supreme Court for review.

MERALCO argued that it had the right to immediately disconnect the Chuas' electric service pursuant to Section 4 of Republic Act No. 7832 (RA 7832). It added that under said law, the person who is benefited by the unlawful use of electricity is presumed to be the perpetrator of the meter-tampering; hence, there was no need to prove that the Chuas actually tampered with the meter. MERALCO explained that the differential billing represented the monetary equivalent of the electricity used by the Chuas but not registered by the meter. MERALCO further argued that based on Section 9 of RA 7832, courts cannot issue writs of injunction against any private electric utility exercising its right to disconnect electric service unless the electric utility acted in bad faith or with grave abuse of authority, which the Chuas supposedly failed to prove. MERALCO contended that even assuming it had no right to disconnect the electric service, the Chuas could not claim moral damages because they did not sustain any, having sourced their electric supply from another electric meter within the premises.

Issue: (1) Whether or not MERALCO validly disconnected the Chuas' electric service; (2) Whether or not the issuance of the injunctive writ was in order; (3) Whether or not the Chuas should pay the differential billing; and (4) Whether or not the Chuas were entitled to moral damages.

Held: (1) **For its failure to comply with Sections 4 and 6 of RA 7832, MERALCO had no authority to immediately disconnect the Chuas' electric service.**

Under **Section 4 of RA 7832**, 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 can 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 author of RA 7832 explained during the Senate deliberations that having an authorized government representative would be prudent so that MERALCO's findings could be verified and substantiated if a case was filed and the customer would deny such findings. Furthermore, the presence of government agents go into the essence of due process; MERALCO cannot be allowed to act virtually as prosecutor and judge in imposing the penalty of disconnection due to alleged meter tampering.

In this case, MERALCO failed to comply with the required presence of an "officer of the law," as shown by the testimony of MERALCO's representative who inspected the meter, and by his Meter/Socket Inspection Report. MERALCO did not even allege in its submissions to the Court that an ERB representative or an officer of the law ever accompanied its representative during the inspection of the Chuas' electric meter. While MERALCO averred in its Answer that an ERB representative witnessed the testing of the Chua's electric meter at the MERALCO laboratory, it never identified such ERB representative. The results of such laboratory testing was also not signed by an ERB representative or any officer of the law.

For lack of any evidence showing that a government representative personally witnessed and attested to the discovery of the Chuas' tampered electric meter, no supporting *prima facie* evidence can be invoked for the immediate disconnection of the Chuas' electric service pursuant to Section 4 of RA 7832.

The presence of the consumer during the MERALCO inspection cannot be a substitute for the presence of the government representative. Thus, even if the Chuas' daughter acknowledged having witnessed MERALCO's inspection and signed the inspection report, her presence did not characterize the discovered broken meter seal as *prima facie* evidence of illegal use of electricity justifying immediate disconnection. Accordingly, Section 1, Rule III of the IRR, insofar as it provides that the discovery may, in the alternative, be witnessed by the consumer concerned to constitute *prima facie* evidence of illegal use of electricity, is invalid for expanding the statutory requirements of RA 7832.

Under **Section 6 of RA 7832**, MERALCO is authorized to immediately disconnect the electric service of its consumers without the need of a court or administrative order when: (a) the consumer, or someone acting on his behalf, is caught *in flagrante delicto* in any of the acts enumerated in Section 4 of RA 7832; or (b) when any of the circumstances so enumerated, constituting *prima facie* evidence of illegal use of electricity, is discovered for the second time.

To be caught *in flagrante delicto*, or in the very act of committing the crime, necessarily implies positive identification by an eyewitness or eyewitnesses *to the act of tampering* so that there is "direct evidence" of culpability, or "that which proves the fact in dispute without the aid of any inference or presumption." In this case, MERALCO presented no proof that it ever caught the Chuas, or anyone acting on the Chuas' behalf, in the act of tampering with their electric meter. The Chuas could not have been caught *in flagrante delicto* since they were the ones who reported the defect in their meter. The presence of a broken cover seal, broken sealing wire, and a missing terminal seal, would not be enough to declare the Chuas *in flagrante delicto* tampering with the electric meter. In fact, the electric meter was in a concrete post outside of the Chuas' perimeter fence – a location accessible to the public. MERALCO also did not present evidence that it caught the Chuas committing any of the acts constituting *prima facie* evidence of illegal use of electricity *for the second time*.

(2) The issuance of the injunctive writ was proper.

Under **Section 9 of RA 7832**, no writ of injunction or restraining order shall be issued by any court against any electric utility exercising the right and authority to disconnect electric service, unless there is *prima facie* evidence that the disconnection was made with evident bad faith or grave abuse of authority.

Electricity is a basic necessity whose generation and distribution is imbued with public interest, and its provider is a public utility subject to strict regulation by the State in the exercise of police power. In view of MERALCO's dominance over its market and its customers and the latter's relatively weak bargaining position

as against MERALCO, and in view too of the serious consequences and hardships a customer stands to suffer upon service disconnection, MERALCO's failure to strictly observe the legal requirements for instant disconnection can be equated to the bad faith or abuse of right that the law speaks of.

MERALCO abused its superior and dominant position as well as the authority granted to it by law as a service provider when it persisted in disconnecting the Chuas' electric service. Hence, the exception under Section 9 of RA 7832, which allows injunction to issue when disconnection is attended by bad faith or grave abuse of authority, should apply.

An injunctive writ issues only upon a showing that: a) the applicant possesses a clear and unmistakable right; b) there is a material and substantial invasion of such right; and c) there is urgent and permanent necessity for an injunctive writ to prevent serious damage. In this case, the Chuas were paying MERALCO customers. In the absence of the *prima facie* evidence required by Section 4 of RA 7832 and the requirements of Section 6 of RA 7832, and in light as well of the improbability that the Chuas tampered with their electric meter (as discussed below), the Chuas had an unmistakable right to be provided with continuous power supply – a right MERALCO invaded when it cut off their electric service. Electricity being what it is and has been in modern day living, an urgent and permanent need existed to prevent MERALCO from cutting off the Chuas' electric service.

(3) The Chuas were not accountable for the differential billing.

Since the *prima facie* presumption afforded by Section 4 of RA 7832 did not apply, it fell upon MERALCO to first prove that the Chuas actually manipulated the dial pointers on their meter before it could hold them accountable for the differential billing. The following circumstances, however, cast serious doubt on the allegation that the Chuas ever tampered with their electric meter: *First*, the Chuas themselves requested MERALCO to inspect their meter for possible defects after they received their unusually high September 1996 bill. Had the Chuas been guilty of tampering, they would not have drawn attention to themselves by reporting the problem with their meter; as the beneficial users of the electric service, they would have been MERALCO's main suspects once the tampering came to light. *Second*, 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. The Chuas' monthly electric consumption, however, remained virtually unchanged even after the defective electric meter had been replaced.

Given the surrounding circumstances, the Chuas' long-term electric consumption record, the exposed location of their electric meter, the unusual upward spike of the meter reading in September 1996, the inspection and the replacement by a new electric meter, and the continued readings consistent with the readings prior to the September 1996 spike, it would not be surprising if the tampering of the seals came immediately before September 1996 and were made by parties other than the Chuas for their own reasons. The Chuas would not have tampered with their own meter to increase their meter reading.

Furthermore, MERALCO did not provide any factual or legal basis for its differential billing in accordance with Section 6 of RA 7832.

According to MERALCO's witness, the period affected by the Chuas' tampered electric meter was from 17 August 1992 to 11 October 1996. Said witness, however, did not explain how he established this 4-year period as the period affected by the tampered electric meter. He did not mention any abrupt or abnormal drop in the Chuas' electric consumption, nor did he identify anything suspicious in the Chuas' billing history that would lead him to conclude that the tampering began on 17 August 1992. His testimony was also uncorroborated by evidence.

MERALCO used the Chuas' September 1996 bill to compute the differential billing – the same bill that the Chuas protested with Meralco for being extraordinarily high. While Section 6 of RA 7832 allows MERALCO to use the consumer's highest recorded monthly consumption as the basis to compute the differential billing, still,

Meralco – after examining the Chuas’ records for the past 4 years – should have noticed that the September 1996 bill was truly unusual. Based on their billing history, the Chuas consistently consumed no more than 300 kilowatt hours of electricity every month for the past 4 years, but their usage under the September 1996 bill dramatically spiked to 1,297 kilowatt hours, or a difference of more than 400%. Moreover, after MERALCO replaced the alleged tampered electric meter, the Chuas continued to consume the same amount of electricity they had consumed prior to the September 1996 bill. Given the strange circumstances surrounding the September 1996 bill, MERALCO should have exercised prudence and employed another method to compute the Chuas’ differential billing, such as using the estimated monthly consumption based on a load inspection report. At the very least, MERALCO should have investigated the Chuas’ complaint regarding the sudden increase in their electric bill, especially considering the Chuas’ claim that they had not done anything new or used any additional appliances during the period covered by the September 1996 bill. Nothing in the record suggests that MERALCO even attempted to study, or even tried to explain, the sudden surge in the Chuas’ September 1996 bill.

Also, while MERALCO admitted, before the lower courts, the existence of its second demand letter which reduced its original differential billing, it chose to ignore the existence of this letter in its submissions to the Supreme Court, and instead reverted to its demand for the original differential billing. Such unexplained and inconsistent posture further strengthened the Court’s doubts on to the legitimacy and correctness of the differential billing.

Moreover, the presence of a defect in the meter, whether inherent, intentional or unintentional, including meter-tampering, which has existed for a considerable length of time, will create a presumption of constructive notice of such defect or tampering. MERALCO’s failure to discover such defect or tampering, considering the length of time, will amount to inexcusable negligence that will bar it from collecting differential billing against the consumers.

If MERALCO’s findings were presumed correct, MERALCO discovered the broken seals in the Chuas’ meter after **more than 4 years** (from August 1992 to October 1996), and only because the Chuas reported a possible defect with their electric meter. During this long period, MERALCO’s personnel had the opportunity to inspect and examine the Chuas’ electric meter to determine the monthly dues payable. Notably, the alleged tampering in this case did not require special training or knowledge to be detected; the missing terminal seal, the broken cover seal, and the broken sealing wire of the meter were visible to the naked eye and would have caught the attention of MERALCO’s personnel in the course of their meter readings. And even if MERALCO did not conduct its regular monthly inspections, it was reasonable to expect that within said 4-year period, MERALCO would, at the very least, annually examine the electric meter to verify its condition and to determine the accuracy of its readings if ordinary examination showed defects as in the case of the Chuas’ meter. That it failed to do so constituted inexcusable negligence on its part, and barred it from collecting its differential billing.

(4) The Chuas were entitled to moral damages in the amount of ₱100,000.00.

Considering the manner MERALCO disconnected the Chuas’ electric service, the award of moral damages was proper. Apart from the havoc wreaked on the Chuas’ daily lives when MERALCO abruptly and without legal basis cut off their electricity, the removal of the electric meter also caused the Chuas extreme social humiliation and embarrassment as they were subjected to speculations in their neighborhood of being “power thieves.” As Mrs. Felicidad Chua testified, she suffered sleepless nights and felt serious anxiety after the removal of their electric meter came to the attention of the *barangay*. She even had to consult a doctor for this anxiety. Thus, even if the Chuas subsequently obtained their electricity from another source, the damage to the Chuas’ reputation and social standing had already been done.

As prevailing jurisprudence deems the award of moral damages in the amount of ₱100,000.00 appropriate in cases where MERALCO wrongfully disconnected electric service, the CA’s ruling, reducing the moral damages awarded from ₱300,000.00 to ₱100,000.00, was sustained.