

DAVAO LIGHT & POWER CO., INC., PETITIONER, VS. CRISTINA OPEÑA AND TEOFILO RAMOS, JR., RESPONDENTS.*G.R. No. 129807. December 09, 2005*

Ponente: CHICO-NAZARIO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-129807/>**CHICO-NAZARIO, J.:**

This is a petition for review on certiorari of the decision[1] of the Court of Appeals in CA-G.R. CV No. 35114 dated 29 May 1997 affirming, with modification, the decision[2] of the Regional Trial Court (RTC), Branch 17, Davao City, in Civil Case No. 19,648-89 declaring as null and void the documents presented by petitioner with regard to respondents' unbilled consumption.

The records establish the following facts:

In their complaint filed on 19 July 1989 before the RTC of Davao City, respondents, as plaintiffs below, alleged that petitioner Davao Light and Power Co., Inc. (DLPC), defendant below, is a franchise holder authorized to operate an electric and power plant in Davao City. Respondents, on the other hand, are petitioner's customers as electric meter nos. 47019 and 1587 were attached to respondent Teofilo Ramos, Jr.'s (respondent Ramos, Jr.) office and residence, respectively. Under the agreement between respondents, respondent Ramos, Jr. was supposed to pay the electric bills to petitioner although both electric meters were under the account name of his mother-in-law, respondent Cristina Opeña (respondent Opeña).

Sometime in 1988, petitioner, through its fieldmen or inspection team, examined the electric meter in respondent Ramos, Jr.'s office allegedly in response to a report of an alleged "broken Davao Light seal." As a consequence of said inspection, both electric meters were removed and eventually replaced. Respondents purportedly observed that their electric consumption a few months after the installation of the replacement meters were relatively similar with their usage as recorded by the previous electric meters. Thus, they were taken aback when petitioner charged them the amount of P 7,894.99 for one billing month. After they complained about this excessive amount, petitioner made an adjustment and subsequently reduced said electric bill to P5,625.55 which respondents paid under protest.

On 17 May 1989, petitioner wrote respondent Opeña charging her P84,398.76 for the alleged unbilled electric consumption of respondent Ramos, Jr.'s office from September 1983 to September 1988.[3] The amount was allegedly arrived at based on the highest recorded consumption from 1983 to 1988.

On 17 June 1989, petitioner sent another letter[4] to respondent Opeña reiterating its demand for the payment of the unbilled electric consumption. This time, the letter contained a threat that respondents' failure to settle their obligation within ten days would compel petitioner to take the necessary legal action before the proper court and would result in the immediate disconnection of the electric supply to respondents.

On 23 June 1989, petitioner again wrote respondent Opeña demanding the amount of P49,512.63 allegedly representing the amount of unbilled electric consumption of respondent Ramos, Jr.'s residence.[5] As was stated

in the 17 May 1989 letter, petitioner claimed that this amount was computed based on the highest recorded consumption from 1983 to 1988.

Respondents asserted in their complaint that these demands by petitioner were without proper and correct basis as they had paid all their electric bills for the period 1983 to 1988. They also stated that the charges for unbilled electric consumption could have emanated from fraudulent manipulations executed by petitioner itself.

Respondents, therefore, prayed for the following reliefs from the trial court:

- a) Forthwith issue a temporary restraining order before notice and a writ of preliminary injunction, directing the defendants or any person acting for and in its behalf to desist and refrain from doing any act that would disconnect the electrical light connection at plaintiffs' house and office, and also desist in enforcing the so-called "Computations" referred to.
- b) Order the defendants to adjust correctly or calibrate the electric meters by competent men or persons.
- c) To declare null and void the documents (Annexes "C" to "C-*" and "G" to "G-*") denoted as "Computation of Tampered Meter".
- d) Order the payment of moral and exemplary damages in the amounts of P 200,000.00 and P 50,000.00 respectively.
- e) Direct defendants to reimburse plaintiffs the amount of P 2,000.00 as initial expenses in the preparation and filing of the complaint; and to further pay the amount of P 33,477.86 in concept of attorney's fee.
- f) To make the preliminary injunction final.

PLAINTIFFS further pray for such other relief that may be just and proper in the premises.[6]

Traversing the allegations of the complaint, petitioner declared in its answer[7] that at the time of the institution of this suit, petitioner continuously supplied electrical services to respondents pursuant to the service contracts it entered into with respondent Opeña. One of these service contracts was dated 30 May 1977[8] under account number 510-4019 with meter number 47019. The other service contract was dated 07 November 1950[9] under account number 510-4020 with meter number 1587.

On 16 September 1988, petitioner's representatives, together with an energy regulation analyst of the Energy Regulatory Board (ERB) and a photographer, went to respondents' office building and residential house to examine and test the electric meters installed thereat. The examination and testing of electric meter number 47019 was allegedly witnessed by respondent Ramos, Jr.'s employee named Myrna Galagar (Galagar). In the case of electric meter number 1587, Joy Perucho (Perucho),[10] another employee of respondent Ramos, Jr., purportedly observed the procedure.

According to petitioner, the examination of electric meter number 47019 showed that petitioner's murray seal, otherwise known as the outer seal, was already broken while the government seal or inner seal was deformed. In addition, the meter testing conducted by the ERB regulation analyst Engr. Carlos V. Reyes (Engr. Reyes) revealed that electric meter number 47019 was not registering any electric consumption at light load and, when it was tested at full load, the same only recorded a 27.57% consumption.

On the other hand, the examination of electric meter number 1587 indicated that its murray seal was no longer attached thereto and had been substituted with an unauthorized lead seal and the government seal which should be attached to said electric meter was already missing. The inspection team also noticed that said electric meter's second and third dials from the right were misaligned. Just like electric meter number 47019, Engr. Reyes also subjected electric meter number 1587 to a test which revealed that it was not registering any electric consumption

at light load and recorded only 33.53% of electricity utilized at full load.

As the two electric meters in question were already inaccurate, Engr. Reyes and petitioner decided to remove them and had them individually wrapped, sealed, and brought to petitioner's office for safekeeping.

Pursuant to the procedure adopted by petitioner in cases of meter tampering, respondents were required to make a deposit for the repair and replacement of the two electric meters. The amount of deposit required in this case was pegged at P4,000.00 for each account which was paid by respondent Ramos, Jr. on 19 September 1988. With this payment, petitioner immediately installed "good meters" at respondents' residence and office.

Everything seemed back to normal following the replacement of the allegedly tampered electric meters on 19 September 1988. Problem, however, arose anew when in January 1989, respondents received from petitioner an electric bill charging them with the amount of P7,894.99 for account number 510-4019 prompting respondents to file a complaint with petitioner. On verification, it was discovered that electric meter number 7168 which replaced electric meter number 47019 erroneously recorded respondents' electric consumption beginning November 1989. Accordingly, respondents' January electric bill was revised to only P5,625.55 and credit memorandum no. 38711 dated 07 February 1989[11] was issued in favor of respondents.

On or about 17 March 1989, petitioner's customer relations department received a letter-complaint from Konsumo Dabaw regarding respondents' recomputed electric bill for account number 510-4019. Petitioner thereafter conducted another verification of electric meter number 7168 and it was then discovered that said meter was running backwards, and that no error was committed by petitioner in respondents' meter reading on 14 January 1989. Accordingly, petitioner sent a letter[12] to Konsumo Dabaw explaining this matter and on 30 March 1989, petitioner replaced electric meter number 7168 with electric meter number 24305.

In the third week of June 1989, petitioner adjusted respondents' December 1988 to May 1989 electric bills based on the latter's monthly consumption as registered by electric meter number 24305 and taking into consideration credit memorandum no. 3887.

Petitioner likewise claimed in its answer that respondents' unbilled consumption amounting to P84,398.76 relative to account number 510-4019[13] and P49,512.63 for account number 510-4020[14] covered the period September 1983 to September 1988 and was based on the highest registration of the electric meter for each account – 1,047 kilowatthours for account number 510-4019[15] and 963 kilowatthours in the case of account number 510-4020.[16] The amounts claimed as unbilled consumption, however, merely represented petitioner's initial bargaining position with respondents in the hope that the latter would come clean and submit proof as to when they had the electric meters tampered and made additions to their connected load.

Also, petitioner asserted in its answer that its letter dated 16 June 1989[17] giving respondents the period of ten days within which to settle the matter with petitioner was designed to bring respondents to the bargaining table for a fair and just settlement of petitioner's claim and that the threatened actions contained in said letter were never implemented by petitioner.

Furthermore, based on the summaries of respondents' monthly electric consumption from September 1983 to June 1989[18] it would appear that the tampering of electric meter number 47019 occurred between late December 1983 or early January 1984 when said meter registered only 302 kilowatthours – a drastic drop in consumption considering its recording of 708 kilowatthours for the previous billing period. As regards electric meter number 1587, its tampering allegedly occurred sometime in late July or early August 1985 when this electric meter registered only 170 kilowatthours which was way below its previous recording of 663 kilowatthours for the previous billing period.

In its answer, petitioner moreover presented another method of computing respondents' unbilled consumption which was arrived at using respondents' daily average consumption registered by the new electric meters and multiplying this by thirty days. Thus, for account number 510-4019, petitioner charged respondents the amount of P65,918.13 as of September 1988 plus 2% monthly surcharge from October 1988 to July 1989 totalling P8,636.12. In addition, this amount was supposed to carry the 2% monthly surcharge until fully paid. With respect to account number 510-4020, petitioner claimed the amount of P28,328.45 for the period August 1985 to September 1988, plus P4,028.74 representing 2% monthly surcharge from October 1988 to July 1989. Similarly, this amount would carry the 2% surcharge until fully settled by respondents.

Ultimately, petitioner prayed that judgment in its favor be given ordering respondents to jointly and severally pay:

(1)

The sum of P74,554.25 as unbilled consumption under Account No. 510-4019 inclusive of 2% monthly surcharge up to July, 1989, plus 2% monthly surcharge thereon from August, 1989 until fully paid.

(2)

The sum of P32,357.19 as unbilled consumption under Account No. 510-4020 inclusive of 2% monthly surcharge up to July, 1989, plus 2% monthly surcharge thereon from August, 1989 until fully paid.

(3)

The sum of P50,000.00 as damages for attorney's fee and expenses of litigation, plus an additional P30,000.00 should there be an appeal or petition for certiorari.

(4)

The sums of P20,000.00 and P10,000.00 as moral damages and exemplary damages.[19]

On 20 July 1989, Presiding Judge Renato A. Fuentes, considering the nature of the complaint and the urgency of the provisional remedy prayed for, ordered petitioner from doing any act complained of within twenty days from receipt of said order and scheduled the hearing for the issuance of the writ of preliminary injunction on 01 August 1989.[20]

After the pre-trial, the continuous trial of the case proceeded in reverse order as agreed upon by the parties in order for petitioner, as defendant below, to prove its allegation of meter tampering.

JOSE ROBERTO A. SARDINIA (Sardinia) testified that at the time material to this case, he was the legal assistant in petitioner's Legal Affairs and Public Relation Department. On 16 September 1988, petitioner's system department ordered the conduct of inspection and examination of alleged tampered electric meters. Relative to said directive, two teams were formed, one of which was headed by Sardinia himself. The other members of his team were an instrument technician from petitioner's laboratory department named Alfredo Lucero (Lucero); driver; lineman; photographer; a representative of the city electrician office; and Engr. Reyes.

In the afternoon of said date, his team proceeded to the place where the electric meters in question were installed. There, they were met by respondent Ramos, Jr.'s employees Perucho and Galagar. Perucho and Galagar informed Sardinia that it was their employer, respondent Ramos, Jr., who actually paid the electric bills under the account

name of respondent Opeña. In addition, Perucho and Galagar told the team that respondent Ramos, Jr., was in Manila during that time. Despite this information, the inspection team proceeded with their planned examination of the two electric meters. Engr. Reyes conducted the meter testing which was witnessed by Perucho and Galagar. The photographer who accompanied the inspection team likewise took photos of the two electric meters while these were being examined.[21]

As part of his duty as the team leader, Sardinia made written reports of the results of the meter testing. According to Sardinia, the government seal (inner seal) of the electric meter bearing serial number 47019 was deformed and its DLPC seal (outer seal) was broken.[22] As for electric meter number 1587, the inspection revealed that its government seal was missing while its DLPC's seal was substituted with a deformed lead seal which was not the type used by petitioner.[23]

After the electric meters were tested by Engr. Reyes, Sardinia had them wrapped with manila paper. Sardinia's name and signature as well as those of Engr. Reyes and an employee of respondent Ramos, Jr. were written on the tape used for sealing the wrapping paper. Thereafter, the electric meters were taken to petitioner's office.

When asked by the court, Sardinia stated that the information regarding the existence of tampered electric meters was relayed to petitioner by an informant whose identity he refused to divulge. Moreover, due to the alleged urgency of the situation, his team could not afford to wait for respondent Ramos, Jr. to return from Manila; hence, they continued with the inspection.

Petitioner next presented ENGR. REYES on the witness stand. Essentially, he testified that his work involved using standard metering instrument and conducting inspections and investigations of alleged tampering of electric meters both in residential and commercial buildings.

According to Engr. Reyes, on 16 September 1988, he inspected two electric meters as evidenced by the reports he accomplished and marked as Exhibits "4" and "5" for petitioner. Using a standard equipment of his office, he discovered that the two electric meters were not accurately registering the electricity consumed by respondent Ramos, Jr. Particularly, electric meter number 47019 did not record electric consumption at light load and 27.57% consumption at full load.[24] Similarly, electric meter number 1587 did not register any rotation when tested at light load; at full load, it reflected only a 33.53% accuracy.[25]

Further, Engr. Reyes corroborated Sardinia's testimony that the government seal of electric meter number 47019 was deformed or tampered with. In his report as regards electric meter number 1587, Engr. Reyes shared Sardinia's observation that its DLPC's seal was deformed while its government seal was missing.

Lucero testified that he was assigned in the laboratory section of petitioner. He maintained that it was the standard procedure observed by petitioner that electric meters acquired by the latter are tested[26] using a standard testing instrument and thereafter, the meters are turned over to the representatives of the Board of Energy (BOE)[27] who subject the meters to their own examination. After the BOE establishes the accuracy of an electric meter, it attaches thereto a seal which is known as the BOE seal. This seal protects the meter from being opened such that one cannot get into the internal component of an electric meter without breaking the BOE seal. Once an electric meter bearing the BOE seal is installed, petitioner attaches to its bottom portion an outside seal which prevents the meter from being pulled out anytime.

In addition, Lucero averred that on 16 September 1988, he was a member of the inspection team which examined the electric meters issued under the account name of respondent Opeña. As part of the team, it was his task to make a load inspection report[28] for each electric meter listing therein the various electrical items connected to every meter.

Another witness for petitioner was ARSENIO SACAMOS, JR. (Sacamos, Jr.), head of petitioner's billing and collection department. Sacamos, Jr. stated in the witness stand that he was requested by Atty. Oscar Breva, petitioner's counsel, to prepare a summary of kilowatt consumption for account numbers 510-4019 and 510-4020. In the case of account number 510-4019, his department collated the material data from September 1983 to June 1989. His analysis of the data established a drastic drop in electric consumption recorded by electric meter number 47019 commencing in January 1984 until September 1988 when the replacement meter registered a high consumption.

As regards account number 510-4020, Sacamos, Jr. averred that they gathered the pertinent information from September 1983 to June 1989 and data revealed a severe drop in electric consumption from July 1985 until September 1988 when electric meter number 1587 was replaced.

As the two electric meters were not accurately registering the amount of electricity used by respondent Ramos, Jr., petitioner demanded from the latter payments of unbilled consumption for the two accounts. For account number 510-4019, he prepared a computation of unbilled consumption of respondents indicating that as of 19 September 1988, a total unpaid consumption amounting to P65,918.13 for the period January 1984 to September 1988 inclusive of P22,737.49 cumulative surcharge.

In account number 510-4020, the unbilled consumption prepared by their department indicated a total unbilled consumption to be P28,328.45 which includes P8,184.72 in surcharges.[29]

Over the vigorous objection by respondents' counsel, the trial court received in evidence the updated summary of kilowatthour consumption prepared by Sacamos, Jr.'s department for the period July 1989 to March 1990 of account number 510-4019 as recorded by electric meter number 24305.[30] A similar summary was prepared for account number 510-4020 as registered by electric meter number 45908 which replaced electric meter number 1587.[31]

In the course of his testimony, Sacamos, Jr. also explained the processes of computing a consumer's actual electric consumption. The first method simply involves computing the average consumption of electric power while the second involves calculating the average monthly reading at a certain period of time after a defective electric meter was replaced.

Petitioner then presented as its witness the head of its customers relation department in 1983, JOSELITO ORTIZ. Ortiz testified regarding a letter-complaint of respondent Ramos, Jr. coursed through Konsumo Dabaw complaining of the abnormal reading of the replacement meter for account number 510-4019. In his response to said letter-complaint, Ortiz wrote separate letters to Konsumo Dabaw[32] and to respondent Ramos, Jr.[33] explaining that the erroneous meter reading was because the meter installed in lieu of the purported tampered one was registering electric consumption backwards. Because of this finding, another electric meter was installed under account number 510-4019 and a credit adjustment was made on the electric bills under the name of respondent Opeña.

The last witness for petitioner was MANUEL ORIG, vice-president of petitioner who stated in his testimony that petitioner suffered damages because of the filing of this case by respondents, to wit: moral damages in the amount of P20,000.00; exemplary damages amounting to P10,000.00; attorney's fees of P40,000.00; and litigation expenses of P10,000.00.[34]

On the other hand, respondents presented for their first witness GALAGAR. Galagar testified that after the removal of the two electric meters involved in this case, the inspection team requested her and her former fellow employee Perucho to observe the meter testing and examination conducted by the team despite their lack of

knowledge about the whole procedure. After the testing, she and Perucho signed the inspection reports prepared by Sardinia's team which were marked during the trial as Exhibits "7" and "AA." In addition, Galagar stated that during the entire period of her employment with respondent Ramos, Jr., she never saw anyone tinker with the subject electric meters.

The second witness presented by respondents was respondent RAMOS, JR. himself who declared that he learned about the removal of the two electric meters upon his return from his trip to Manila. Soon thereafter, he went to petitioner's office to clarify what transpired in the afternoon of 16 September 1988 and was told by Atty. Braganza that the inspection team removed the electric meters because they were defective. In addition, he was informed that the electric supply to his residence and his office would be reconnected upon his payment of the P2,000.00 deposit for each electric meter. Respondent Ramos, Jr. also declared in court that he had no participation in the alleged tampering of the electric meters nor did he cause anyone else to tamper the same.

On cross-examination, respondent Ramos, Jr. admitted that at the time he paid the deposit to petitioner, he was made to sign a letter dated 19 September 1988[35] which, in part, reads:

September 19, 1988

The Manager
Davao Light & Power Co., Inc.
Davao City

Dear Sir:

This has reference to kilowatthour Meter No. 47019/1587 under Account Nos. 510-4019/-4020 connected to the electrical installation in the name of my mother-in-law CRISTINA OPENA which I understand has been reported to you as having been tampered.

...

Very truly yours,

(SGD)TEOFILO RAMOS, JR.

After the trial, the court a quo issued its decision dated 01 October 1990[36] the dispositive portion of which reads:

WHEREFORE, finding the evidence of plaintiff, sufficient by preponderance, to sustain relief in the enforcement of defendant's computation of alleged tampered meters, marked as plaintiff's [Annexes] "C," to "C-8" up to "G" and "G-8," finding the evidence of defendant in the reverse order of trial, not sufficient by preponderance of evidence, to warrant enforcement of [defendant's] so-called unbilled electrical consumption against plaintiff, the above-documents, are declared null and void, without any effect, against plaintiff.

As a consequence of the filing of this case, on account of the trouble, worries, mental agony, suffered by plaintiff due to defendant's unreasonable imposition of the so-called unbilled consumption, without any factual and legal basis, defendant is ordered to pay plaintiff the amount of P10,000.00 as moral damages, including exemplary damages, by way of example to the public, in the amount of P5,000.00 and cost against defendant.

As a result of this decision, defendant's counterclaim, is denied.[37]

The trial court dismissed as without basis petitioner's claim that electric meter numbers 1587 and 47019 were tampered with. The trial court pointed to the fact that petitioner's evidence and testimonies given by Sardinia, Engr. Reyes, and Lucero failed to bolster its position that the subject electric meters were indeed tampered

particularly since the identity of the purported perpetrator of the misdeed was never established by petitioner. Petitioner's recalcitrance to reveal its confidential source did not also escape the trial court's perceptiveness, thus:

Indeed, why defendant cannot reveal the identity of the source of its information, as to the defect of the subject meters, when precisely, it was because of the said information, that prompted defendant to inspect and test the subject [meters]? There is nothing urgently dangerous to protect the identity of said informant because anyway, he or she, can be safely protected by defendant and that anyway everything was known, so that plaintiff or anybody else, cannot do anything to run after the alleged informant. As it [turned-out], said information, could have provided sufficiently, a key to [plaintiff's] involvement [to] the alleged "tampering," . . .[38]

Another point taken against petitioner was its insistence to conduct the examination of the electric meters in question despite the absence of respondent Ramos, Jr. As the trial court observed, both Galagar and Perucho did not know anything about electricity and the procedure undertaken by petitioner's inspection team. Moreover, the presence of respondent Ramos, Jr. could have presented petitioner with the opportunity to confront him on the matter of electric meter tampering.

As for the amount of unbilled consumption, it was the trial court's finding that the procedure adopted by petitioner in computing the amounts being claimed from respondents were "unreliable and highly speculative"[39] as the factors considered such as average monthly consumption seemed to have been arbitrarily arrived at.

Aggrieved by the trial court's decision, petitioner elevated its case to the Court of Appeals which affirmed, with modification, the findings of the court a quo, to wit:

WHEREFORE, in view of the foregoing disquisitions, except for the deletion therefrom of the award of moral damages, exemplary damages and attorney's fees, the appealed judgment is hereby AFFIRMED, in all other respects.[40]

Petitioner is now before this Court, through the instant petition for review, relying upon the following arguments:

- Passage of R.A. No. 7832[41] vindicates petitioner.
- Broken, deformed, and missing seals are prima facie evidence of meter-tampering.
- Consumption record of respondents show a significant drop in consumption.
- Failure to disclose tipster does not destroy presumption.
- Concern of the Court of Appeals over possible defect of electric meters or that the tipster was responsible for the tampering is misplaced.
- Manner of computation of the amount and period of the unbilled consumption (now called differential billing under R.A. No. 7832) is legal and reasonable.[42]

Essentially, petitioner raises the issues of: (1) whether the Court of Appeals erred in not retroactively applying Republic Act No. 7832 and (2) whether the appellate court erred in not finding respondents liable for unbilled consumption.

The petition is bereft of merit.

The law in force at the time of the institution of the present case was Presidential Decree No. 401 or the law Penalizing the Unauthorized Installation of Water, Electrical or Telephone Connections, the Use of Tampered Water or Electrical Meters, and Other Acts. The pertinent portion of this statute provides:

. . . [A]ny person who installs any water, electrical or telephone connection without previous authority from the Metropolitan Waterworks and Sewerage System, the Manila Electric Company or the Philippine Long

Distance Telephone Company, as the case may be; tampers and/or uses tampered water or electrical meters or jumpers or other devices whereby water or electricity is stolen; steals or pilfers water and/or electric meters or water, electric and/or telephone wires; knowingly possesses stolen or pilfered water and/or electrical meters as well as stolen or pilfered water, electrical and/or telephone wires, shall, upon conviction, be punished by prison correccional in its minimum period or a fine ranging from two thousand to six thousand pesos, or both.

..

On 08 December 1994, Rep. Act No. 7832 otherwise known as the "Anti-electricity and Electric Transmission Lines/Materials Pilferage Act of 1994" was approved. Section 2 of this law enumerates the acts constitutive of illegal use of electricity, to wit:

SEC. 2. Illegal Use of Electricity. - . . .

...

(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;

(d) Damage or destroy an electric meter, equipment, wire, or conduit or allow any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electric current; and

(e) Knowingly use or receive the direct benefit of electric service obtained through any of the acts mentioned in subsections (a), (b), (c), and (d) above.

On the other hand, Section 4 of the same law lists the circumstances which shall establish the prima facie evidence of illegal use of electricity. Among these are:

(iii) The existence of any wiring connection which affects the normal operation or registration of the electric meter;

(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;

...

(vi) The mutilation, alteration, reconnection, disconnection, bypassing or tampering of instruments, transformers, and accessories;

(vii) The destruction of, or attempt to destroy, any integral accessory of the metering device box which encases an electric meter or its metering accessories; and. . .

Petitioner insists that the Court of Appeals erred when it did not apply the presumption of meter tampering in this case. It argues that the broken, deformed, and missing seals are prima facie evidence of meter tampering and, when taken together with the significant drop in the registered electric consumption of respondents, establishes that the latter clearly benefited from the inaccuracy of electric meters 47019 and 1587. We do not agree.

In the case of *United States v. Luling*,^[43] this Court recognized "that no constitutional provision is violated by a statute providing that proof by the state of some material fact or facts shall constitute prima facie evidence of guilt, and that then the burden is shifted to the defendant for the purpose of showing that such act or acts are innocent and are committed without unlawful intention."^[44]

In *Jison v. Court of Appeals*,^[45] we declared –

The foregoing discussion, however, must be situated within the general rules on evidence, in light of the burden of proof in civil case, i.e., preponderance of evidence, and the shifting of the burden of evidence in such cases. Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. However, in the course of trial in a civil case, once plaintiff makes out a prima facie case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's prima facie case, otherwise, a verdict must be returned in favor of plaintiff. Moreover, in civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's. The concept of "preponderance of evidence" refers to evidence which is of greater weight or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth.[46]

In other words, the proof of the existence of the prima facie evidence is still the burden of the plaintiff. Moreover, as will be shown later, Rep. Act No. 7832 cannot apply because it was only approved on 08 December 1994; hence, the general rules on evidence must be applied.

In this case, petitioner anchors its claim of meter tampering on the result of the examination conducted by its inspection team. Its witnesses – Sardinia, Engr. Reyes, and Lucero - all testified that a plain view of the electric meters in question showed that the inner and outer seals which were supposed to be attached thereto were either deformed, missing, or replaced with ordinary lead wire. Furthermore, the meter testing conducted by Engr. Reyes revealed that the two electric meters were not accurately recording the electric consumption of respondents.

We hold that petitioner's evidence is insufficient for us to rule in its favor.

While it is true that respondent Ramos, Jr. merely offered a categorical denial of the accusation hurled against him and his co-respondent Opeña, nevertheless, the records of this case present other factors which should tilt the scale of evidence in favor of respondents.

As established by petitioner's witnesses Sardinia and Lucero, the allegedly tampered electric meters were installed in conspicuous portions of respondent Ramos, Jr.'s residence and office. In his cross-examination Sardinia testified in the following manner:

ATTY. CADIENTE:

Q

- You are familiar with the place of Cristina Opeña and/or Teofilo Ramos?

A

- I am not really that familiar, but I have seen the place when I inspected.

Q

- It is located along Quezon Boulevard in this city, is that correct?

A - Yes, sir.

Q

- The meter is located also in front of the building facing Quezon Boulevard?

A

- Yes, sir.

Q

- And it is located about 2-1/2 to 3 meters high?

A

- I think, it is higher than that.

Q

- And the place is surrounded by residential houses?

A

- Yes, sir.

Q

- It is also a busy street?

A

- I think.

Q

- We said busy, because several trucks, several jeepneys, several cars and even pedestrian passed the street?

A

- Yes, sir.

Q

- Would you agree with me, that if somebody opened or touched the meter, just facing the Quezon Boulevard street, this is very visible to people around?

A

- I don;t think, I can agree with you, because the location of meter is quite higher, considering that this is beyond [reach of] ordinary people.

Q

- But it can be seen by people around or even by the pedestrian [passing] by?

A

- Yes, sir.

Q

- In fact, even the passing passengers inside the jeep, it can be seen?

A

- It can be seen.

Q

- In other words, if somebody touches or opens [tinkers] with that meter, it can be easily visible to the people around?

A

- I think.[47]

On the other hand, Lucero's cross-examination proceeded thus:

Q

- On September 16, 1988, when you went to the place of plaintiff, you knew that the electric meter was installed outside the residence?

A

- The installation of the meter?

Q

- The meter was outside the residence fronting Boulevard Avenue?

A

- Yes, Sir.

Q

- And it is elevated about three meters high from the ground?

A

- I cannot remember.

Q

- But it is above the ground?

A

- It is above the ground.

Q

- Can it be reached by a hand without stepping on a certain object or you have to step on a ladder?

A

- I cannot remember.

Q

- And you admit that Quezon Boulevard is a very busy street whereby trucks, jeeps and several pedestrians pass from time to time?

A

- Yes, Sir.[48]

As can be gleaned from the testimonies of petitioner's witnesses, the electric meters were mounted in notable places within the premises owned by respondent Opeña. More than that, the building itself was situated along a busy street in Davao City. This being the case, it becomes highly inconceivable that no one witnessed the alleged tampering of the subject electric meters considering the surroundings where they were set up. Indeed, any person tinkering with the meters could have easily attracted the attention and suspicion of neighbors and passers-by.

Even if this Court indulges petitioner in its claim that it received a confidential information from an unidentified source regarding the claimed meter tampering, still, such allegation cannot support a finding against respondents. As aptly observed by the Court of Appeals:

Appellants[49] (petitioner herein) admit that they have no direct evidence to show that appellees (respondents herein) caused the meter to be tampered, claiming that in cases such as this, it is well nigh impossible to secure such kind of evidence because it is a clandestine operation.

However, appellants contradicted their own stand when they claim that they have their own source which furnished them information regarding the alleged tampering. Appellants' witness Jose R. Sardinia in answer to the court's query testified –

Q - Did the Court understand from you Mr. Sardinia that the source of this alleged tampering were submitted to your [field] office confidentially?

A - Yes, Your Honor.

Q - As Assistant Legal Officer of the Davao Light, this confidential matter is not even known to you?

A - It was given to me in confidentially (sic) and I am not going to divulge it.

Q - Meaning that confidential has something to do with the business of Davao Light or confidentially in the sources of information itself?

A - Yes, I think, this is confidentially taken in order for the company to protect it safeguard also the person.

Q - Meaning you are safeguarding the identity of the informer?

A - Yes, Your Honor.

Notwithstanding the fact that appellants have the best or complete evidence entirely within their control, they refused to produce or at least, refrained from producing the same. Thus appellants failed to prove their claim with

the best evidence obtainable – their informer/source.

On this matter, it has been held that where a party fails to present a fact necessary to his case when it is within his power to do so, it will be presumed that such fact does not exist. [50]

On this point, petitioner relies heavily on this Court's holding in the case of *People of the Philippines v. Lopez*[51] where we ruled that the testimony of an informer is not indispensable in view of the testimony of the prosecution witnesses who participated in the "buy-bust" operation. Such reliance is misplaced.

In the *Lopez* case, we held that there was no need for the prosecution to present the confidential informer as the poseur-buyer himself positively identified the accused as the one who sold to him one deck of methamphetamine hydrochloride or "shabu." The trial court then properly relied on the testimonies of the police officers despite the prosecution's decision not to present the informer.

In this case, as the testimonies of petitioner's witnesses failed to directly link respondents to the alleged meter tampering, it was essential for petitioner to present, as its witness, the supposed informer instead of simply relying on the testimonies of some members of the inspection team. As the records show, the testimonies of Sardinia, Engr. Reyes, and Lucero were bereft of any indication that respondents either tampered or caused the claimed tampering of the electric meters.

Anent the issue of unbilled consumption, petitioner contends that the amount to be charged to a consumer for unbilled consumption cannot be calculated with exactitude. Thus, even Rep. No. 7832 itself provides for five different methods of computing the sum of unbilled consumption and two modes of determining the period of back-billing [52] and that the two methods it employed in determining respondents' unbilled consumption in this case are now incorporated into the said legislation. This, petitioner maintains, proves that there was nothing arbitrary in its determination of the unbilled consumption it seeks from respondents. These techniques involve the use of the highest recorded monthly consumption within the five-year billing period preceding the time of the discovery and employing the highest recorded monthly consumption within four (4) months after the time of discovery.[53]

Petitioner's argument fails to convince.

It is a basic rule in our jurisdiction that laws do not have retroactive effect, unless the contrary is provided.[54] In the present case, Rep. Act No. 7832 is bereft of any indication that the legislature intended to give it a retroactive application. On the contrary, Section 17 of said law clearly provides that it "shall take effect thirty (30) days after its publication in the Official Gazette or in any two (2) national papers of general circulation." As the Rep. Act No. 7832 plainly states its prospective application, we cannot give credence to petitioner's argument that its passage validates the amounts it imposed on respondents for unbilled consumption.[55]

Moreover, petitioner, as a public utility corporation, "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 the defects therein." [56]

As claimed by petitioner, the sudden "drastic" drop in the registered electric consumption commenced sometime in December 1983 or January 1984 for account number 510-4019 and July 1985 or August 1985 for account number 510-4020.[57] Inexplicably, petitioner allowed several years to lapse before deciding to conduct an inspection of the electric meters involved in this case. Such failure on its part to detect the extended unusual pattern in the recorded electric consumption clearly demonstrates gross negligence on its part and palpable violation of its 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."[58]

Indeed, it is highly inequitable if we are to allow a public utility company to be continuously remiss in its duty and then later on charge the consumer exorbitant amount for the alleged unbilled consumption or differential billing when such a situation could have been easily averted. We simply cannot sanction petitioner's utter neglect of its duty over a number of years as this would undoubtedly be detrimental to the interest of the consuming public.

WHEREFORE, premises considered, the petition is DENIED, and the Court of Appeals' decision dated 29 May 1997 in CA-G.R. CV No. 35114, affirming with modification the decision of the Regional Trial Court, Branch 17, Davao City in Civil Case No. 19,648-89, is hereby AFFIRMED. With costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Penned by Associate Justice B. A. Adefuin-de la Cruz with Associate Justices Gloria C. Paras and Ricardo P. Galvez concurring; Rollo, pp. 28-39.

[2] Rollo, pp. 49-80.

[3] Annexes "A," "B," and "C" to "C-8" of respondents' complaint; Records, pp. 9-19.

[4] Annex "D" of respondents' complaint; Records, p. 20.

[5] Annexes "E," "F," and "G" to "G-8" of respondents' complaint; Records, pp. 21-31.

[6] Records, pp. 7-8.

[7] Records, pp. 48-56.

[8] Records, p. 38.

[9] Records, p. 39.

[10] Spelled in some parts of the records as "Perocho."

[11] Records, p. 265.

[12] Annex "3" of petitioner's answer; Records, pp. 57-58.

[13] Supra, note 3.

[14] Supra, note 5.

[15] Recorded in October 1983.

[16] Recorded in April 1985.

[17] Should be 17 June 1989; Supra, note 4.

[18] Annex "5" of petitioner's answer for account number 510-4019 and Annex "6" for account number 510-4020; Records, pp. 61-64.

[19] Records, p. 56.

[20] Records, p. 32.

- [21] Records, pp. 359-360.
- [22] Annex "B-1" of the Petition; Rollo, p. 43.
- [23] Annex "C-1" of the Petition; Rollo, p. 47.
- [24] Annex "B" of the Petition; Rollo, p. 41.
- [25] Annex "C" of the Petition; Rollo, p. 45.
- [26] TSN, 19 April 1990, p. 5; at that time, petitioner employed a certain Engr. Crusado and Antonio Jundos who performed the testing.
- [27] Id. at 6; conducted by Engr. Carlos V. Reyes and Engr. Catagman.
- [28] Exhibits "7" and "8" for the petitioner; Records, pp. 44-45.
- [29] Exhibit "12-A" of petitioner; Records, p. 173.
- [30] By that time, electric meter number 47019 had been replaced by electric meter number 24305; Exhibit "9-C" of petitioner; Records, p. 259.
- [31] Exhibit "10-C" of petitioner; Records, p. 260.
- [32] Records, pp. 57-58.
- [33] Records, p. 60.
- [34] TSN, 22 June 1990, p. 16.
- [35] Exhibit "1" of petitioner; Exhibit "D" of respondents; Records, p. 76.
- [36] Records, pp. 356-387.
- [37] Records, pp. 386-387.
- [38] Records, p. 376.
- [39] Records, p. 380.
- [40] Rollo, p. 39.
- [41] An Act Penalizing the Pilferage of Electricity and Theft of Electric Power Transmission Lines/Materials, Rationalizing System Losses by Phasing Out Pilferage Losses as a Component Thereof, and for Other Purposes.
- [42] Rollo, pp. 19-22.
- [43] G.R. No. 11162, 12 August 1916, 34 Phil. 725.
- [44] Id. at 728.
- [45] G.R. No. 124853, 24 February 1998, 286 SCRA 495.
- [46] Id. at 532; citation omitted.
- [47] TSN, 07 March 1990, pp. 43-44.
- [48] TSN, 19 April 1990, pp. 15-16.
- [49] The other appellant before the Court of Appeals was Eliseo R. Braganza, Jr. who, according to petitioner

herein, has no more personal interest in this petition for review after the Court of Appeals modified the decision of the trial court by deleting the awards of moral and exemplary damages and attorney's fees in favor of respondents.

[50] Rollo, pp. 33-34.

[51] G.R. No. 102381, 29 September 1992, 214 SCRA 323.

[52] SEC. 6. Disconnection of Electric Service.- ...

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.

[53] Citing Section 6, par. 2 (a) and (d) of Rep. Act No. 7832.

[54] Article 4, Civil Code of the Philippines.

[55] See BPI Leasing Corporation v. Court of Appeals, et al., G.R. No. 127624, 18 November 2003, 416 SCRA 4.

[56] Ridjo Tape & Chemical Corp. v. Court of Appeals, G.R. No. 126074, 24 February 1998, 286 SCRA 552.

[57] Records, p. 54.

[58] Supra, note 52.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.