

Disconnection of Electricity Supply due to Meter Tampering – Balancing TNB’s Rights and Consumer Protection

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This note looks at the issues surrounding the disconnection of electricity supply upon discovery of meter tampering following the 2015 amendments to the Electricity Supply Act 1990 (“ESA 1990”).

TNB’s power to disconnect electricity supply is governed by Section 38(1) of ESA 1990. Consumers have previously contended that TNB is not entitled to disconnect electricity under that section after the tampered meter is rectified on the basis that upon such rectification, there is no longer any irregularity which justifies the disconnection as a statutorily prescribed response to an offence under Section 37 of the ESA 1990.

This argument was accepted by the Federal Court in Civil Appeal No. 02-28-03/2017 Tenaga Nasional Berhad v Pandan Prima Sdn Bhd & Mayaria Sdn Bhd and Civil Appeal No. 02-38-04/2017 Karun Klasik Sdn Bhd v Tenaga Nasional Berhad (“**Decisions**”). However, it must be noted that these Decisions are cases concerning tampering offences discovered before the amendments to Section 38(4) of ESA 1990.

Following the amendment to Section 38(4) of ESA 1990, the Federal Court granted leave to TNB in Civil Application No. 08(i)-6-01/2020(A) Tenaga Nasional Berhad v Chiew Thai Kay & Anor to argue, among others, that disconnection after rectification is permissible.

Brief Background

On 7.6.2018, TNB conducted an inspection on the meter’s installations at the premises of the consumer. TNB discovered that the electricity meter’s installations had been tampered. As a result, the meter failed to record an accurate reading of the electricity supplied resulting in under-charging of electricity bills issued to the consumer.

TNB then issued a Disconnection Notice dated 7.6.2018 under the ESA 1990 notifying that evidence of tampering was found during inspection, and consequently the electricity supply to the Premises would be disconnected. The consumer then applied for an injunction to prevent the disconnection.

At the hearing of the leave application before the Federal Court, TNB argued that the Decisions are only applicable to tampering offences discovered before the amendment to Section 38(4) of ESA 1990. The amended Section 38(4) of ESA 1990 now requires TNB to disconnect the electricity supply in order for TNB to issue a statutory written statement, which would serve as prima facie evidence of the sum payable to TNB. Further, the Decisions are all pre-amendment cases.

The Federal Court allowed TNB’s application for leave to appeal against the decision of the Court of Appeal on the following questions:

- (a) Whether the statutory power conferred on TNB under the amended Section 38(1) of ESA 1990 to disconnect the supply of electricity can be prohibited by implied limitations on the exercise of power, namely that the power must be exercised immediately upon discovery of meter tampering and/or in any event, before the tampered meter is rectified?
- (b) Whether TNB’s exercise of the statutory power to disconnect the supply of electricity under the amended Section 38(1) of ESA 1990 can be precluded or prevented without express prohibitions in the Supply Act on the exercise of such power?
- (c) Whether under the amended Section 38(4) of ESA 1990, it is a pre-requisite for TNB to disconnect electricity supply before it is able to issue the statutory written statement to its consumers and rely upon the same as prima facie evidence of the payment that has to be made by the consumer under Section 38(3) of ESA 1990?

Conclusion

The Federal Court's decision in Chiew Thai Kay is of public importance as it turns on the interpretation of the amended Section 38 of ESA 1990 and it will no doubt clarify the law in relation to TNB's right to disconnect electricity supply under the amended Section 38(4) of the ESA 1990 even after rectification has been carried out.

Additionally, the decision of the Federal Court in Chiew Thai Kay is also likely to decide the effect of the disconnection in relation to TNB's statutory right to issue the written statement under the amended Section 38(4) of the ESA 1990 which would constitute prima facie evidence as to the amount payable from the consumer to TNB.

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