


TENAGA NASIONAL BHD v DSP (M) SDN BHD

[CaseAnalysis](#) | [2026] MLJU 891

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Malayan Law Journal Unreported

SESSIONS COURT (KLANG)

NOORHISHAM MOHD JAAFAR SCJ

CIVIL SUIT NO BL-B52NCvC-4-01 OF 2024

17 March 2026

Noorhisham Mohd Jaafar SCJ:

GROUND OF JUDGMENT INTRODUCTION

[1] The Plaintiff commenced this action against the Defendant pursuant to [s. 38\(3\)](#) of the [Electricity Supply Act 1990](#) (“the ESA”), seeking to recover RM383,707.05 representing an alleged loss of revenue.

[2] The claim arises from an inspection carried out on 22.10.2020 at the Defendant’s premises, during which the Plaintiff alleges that meter tampering was discovered, following which rectification works were carried out.

[3] On the totality of the evidence before me, I find that the Plaintiff has failed to establish its claim against the Defendant on a balance of probabilities. I therefore dismiss the Plaintiff’s claim with costs.

[4] My reasons are set out below.

BRIEF FACTS

[5] The brief facts, as gathered from the pleadings, the documentary and oral evidence, as well as the written submissions before me, may be summarised as follows.

[6] At all material times, the parties relevant to this action were as follows:

- (i)The Plaintiff is a licensee under the ESA responsible for the management, administration, and supply of electricity in Malaysia.
- (ii)The Defendant carried on the business of manufacturing plastic components at its business address and supplying as well as exporting such components to customers in the sports and recreation industry and other related industries.

[7] In connection with the operation of its business, the Defendant applied to the Plaintiff for the supply of electricity to premises located at Lot 17, Jalan Sultan Mohamed 3, Bandar Sultan Sulaiman, 42000 Pelabuhan Klang, Selangor Darul Ehsan (the Premises). The Plaintiff subsequently agreed to provide such supply.

[8] Pursuant thereto, the Defendant was the registered consumer, and the electricity consumed at the Premises was billed in accordance with the applicable tariff.

[9] During the period of electricity supply, the Defendant made payments for the electricity supplied pursuant to the bills issued by the Plaintiff.

[10] Subsequently, on 22.10.2020, the Plaintiff, through its agents and servants, conducted an inspection of the meter installation at the Premises, during which the alleged tampering was discovered and subsequently rectified.

[11] Following the said inspection, the Plaintiff issued a Notice of Claim for Loss of Revenue dated 11.11.2020 against the Defendant.

[12] The Plaintiff thereafter commenced this action against the Defendant, alleging that the electricity meter installation at the Premises had been tampered with, resulting in a purported loss of revenue amounting to RM383,707.05 in respect of the period from 31.7.2019 to 22.10.2020

ISSUES FOR DETERMINATION

[13] While issues were initially framed by the parties at Enclosure 32, a subsequent consideration of the pleadings, evidence adduced at trial, and written submissions reveals that six issues arise for determination, which I now set out below:

- (i) Whether the Plaintiff has proved meter tampering at the Defendant's premises on a balance of probabilities;
- (ii) Whether the Plaintiff has proved a causal link between the alleged S1 wire condition and the under-registration of electricity;
- (iii) Whether the procedural deficiencies in the inspection process undermine the reliability of the Plaintiff's evidence;
- (iv) Whether the Guideline has the force of law;
- (v) Whether the Plaintiff's method of calculation provided a reasonable and fair basis for estimating the quantum claimed; and
- (vi) Whether the Plaintiff may recover the claimed loss of revenue on the basis of unjust enrichment.

[14] Before turning to the issues for determination, it is convenient to set out the settled principles governing the burden and standard of proof, which inform the evaluation of the pleadings, the evidence adduced at trial, and the parties' submissions.

BURDEN AND STANDARD OF PROOF

[15] The burden and standard of proof in civil proceedings are governed by well-established statutory and judicial principles, to which I now turn.

Statutory provisions

[16] Elementary though it may be, it is worth noting at the outset that the burden and standard of proof in this case are the legal burden and the standard of proof on a balance of probabilities, as prescribed by [sections 101, 102 and 103](#) of the [Evidence Act 1950](#) (the Act). [S. 101](#) of the Act reads:

"101 Burden of proof

- (1) *Whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.*
- (2) *When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."*

[17] [S. 102](#) of the Act reads:

"102 On whom burden of proof lies

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side."

[18] And [s. 103](#) of the Act reads:

"103 Burden of proof as to particular fact

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person."

Precedents

[19] Over the years, case law has developed guidelines concerning the burden of proof. The Court of Appeal in *Abu Bakar Pangis & Ors v. Tung Cheong Sawmill Sdn Bhd & Ors and Another Appeal* [\[2014\] 5 MLJ 384](#) ; [2015] 5 CLJ 753 explained the concept of proving a civil claim on the balance of probability. In delivering judgment of the Court of Appeal, Abdul Wahab Patail JCA observed:

"[22] Objectively speaking, the nature of proof of a claim is not about believing one party or witness and not the other. Otherwise, justice in civil litigation falls prey to the uncertainty of who and what is believed or not by whoever presides in the court. It is to avoid this and to put the matter of proof upon an objective basis that the two fundamental concepts of the burden of proof and proof upon a balance of probabilities were developed. ...

[24] To appreciate how burden of proof functions, it is necessary to bear in mind the process of determination of facts in civil litigation:

- (a) *A plaintiff relying upon a cause of action carries the burden of proving the facts in support of it. He does so by setting out such facts in his*

pleadings, thereby giving the other party notice and an opportunity to check and verify that those facts are true and correctly stated, and the other party may, to enable him to do so, require further and better particulars.

- *(b) In respect of those facts in support:*
 - *(i) if not disputed by the defence, it is deemed to have been accepted and it is not necessary to prove it;*
 - *(ii) if a fact in support is disputed and the plaintiff had disclosed the nature of the evidence relied upon, then if conceded by the defence it is deemed to have been proved, and no further proof is necessary;*
 - *(iii) if a fact in support is disputed and the plaintiff had disclosed the nature of the evidence relied upon, and it remained disputed by the defence, but if after discovery and or interrogatory it was conceded by the defence, it is deemed to have been proved, and no further proof is necessary.*

- *(c) If not conceded, a disputed fact in support proceeds to trial stage where:*
 - *(i) if as to a disputed fact no evidence is produced by the plaintiff in the form of oral testimony of a witness or documentary evidence in support thereof, then it is held to have been not proved;*
 - *(ii) if as to the disputed fact evidence is produced in the form of oral testimony of a witness or documentary evidence, and such evidence is not challenged in cross-examination, then it is held to have been proved;*
 - *(iii) if as to the disputed fact evidence is produced in the form of oral testimony of a witness or documentary evidence produced, and such evidence is not demolished during cross-examination, and no evidence to support the cross-examination is adduced, or if adduced failed to support the basis of cross-examination, then the evidence is held to remain unshaken and the disputed fact have been proved;*
 - *(iv) if as to the disputed fact evidence is produced in the form of oral testimony of a witness or documentary evidence, and cross-*

examination succeeds to demolish that evidence, then the disputed fact is held to be not proved;

- *(v)if as to a disputed fact evidence is produced in the form of oral testimony of a witness or documentary evidence, and despite cross-examination the version is maintained, it is for the court to assess what weight is to be given to such evidence in proof of the disputed fact.”*

(See also: *Wong Thin Yit v. Mohamed Ali* [1971] 1 LNS 151 ; [\[1971\] 2 MLJ 175](#); *Krishna Murthey & Anor. v. Law Lye Chua* [1992] 2 CLJ Rep 668; *Jafri Elias v. Khor Tang Seah* [1992] 2 CLJ Rep 601; and *MGI Securities Sdn Bhd v. Teong Teck Leng & Ors* [2000] 5 CLJ 163 ; [\[2000\] 1 MLJ 354](#))

FIRST ISSUE: WHETHER THE PLAINTIFF HAS PROVED METER TAMPERING AT THE DEFENDANT’S PREMISES ON A BALANCE OF PROBABILITIES **Opposing Contention in Brief**

[20] Learned counsel for the Plaintiff submitted that the meter installation at the Defendant’s premises had been tampered with during the inspection on 22.10.2020. She placed reliance on the evidence of PW1 and PW2, the broken terminal seal, the discrepancy between the meter display and the incoming busbar readings, the loosened S1 wire for the Blue Phase, and the inspection materials including the portable test results, photographs and the Meter Inspection and Testing Form. Concluding her argument, she submitted that these matters established tampering and supported the Plaintiff’s claim.

[21] Learned counsel for the Defendant contended that the Plaintiff failed to prove the S1 wire had been loosened prior to inspection. He relied on inconsistencies in photographs showing the wire’s position before and after removal of terminal cover, and sequence indicating the meter passed accuracy testing before alleged tampering was identified. He further submitted that no credible technical explanation was provided for the 0-ampere reading. He therefore submitted that the evidence did not establish any tampering.

Analysis

[22] Having considered the opposing contentions, I am persuaded by the submissions advanced by learned counsel for the Defendant.

[23] My reasons are these.

The Alleged Tampering in Question

[24] The Plaintiff's case rests on the allegation that the electricity meter installation for the Blue Phase at the Defendant's premises had been tampered with, causing the meter to under-record electricity consumption.

[25] According to the Plaintiff, the alleged tampering manifested in three specific observations made during the inspection, namely:

- (a) the seal at the meter terminal was found broken;
- (b) the S1 wire in the Main Meter for the Blue Phase was found to be loose; and
- (c) as a result, the current reading in the meter for the Blue Phase registered 0 ampere.

[26] On the Plaintiff's case, the absence of any current registration for the Blue Phase meant that approximately one-third of the electricity consumption (about 33%) was not recorded by the meter, and this alleged under-recording was assumed to have persisted from 31.7.2019 until 22.10.2020.

[27] Against that backdrop, I now turn to examine the issue in the following sequence.

(i) Sequence and Technical Observations from Inspection Photographs

[28] The first matter concerns the physical condition of the wiring at the meter terminal, as revealed by the photographic record taken by the Plaintiff's photographer (PW2) on the instructions of the inspection team leader (PW1), both members of the Special Engagement Against Losses (SEAL) Team.

[29] The Defendant reconstructed the chronological sequence of the photographs by reference to the .JPG serial numbers generated by the recording device, which PW2 confirmed were produced by the iPad during extraction and remained unaltered. That reconstructed sequence, tendered as Exhibit D3, was not challenged during the trial and was carried out in the presence of all parties. Both PW2 and PW1 accepted that the chronological order of the photographs could be determined by reference to their serial numbers.

[30] When examined in that sequence, the photographs at Bundle A1, Pages 6086, 6088, and 6089 show the SEAL Team conducting accuracy tests using the portable test set, which recorded results within acceptable error margins before the alleged tampering was identified. That chronology indicates that the meter was functioning properly during the initial stage of inspection and discloses a temporal disconnect between the accuracy testing and the subsequent discovery of the alleged tampering. If the S1 wire had already been loosened at the time of testing, one would ordinarily expect the portable test set to detect some irregularity. The fact that the meter passed the accuracy test therefore sits uneasily with the Plaintiff's allegation that the tampering predated the inspection.

[31] The difficulty becomes more pronounced when one turns to the position of the S1 wire itself. The photographs taken before the transparent terminal cover was removed depict the S1 and S2 wires positioned at approximately the same height, with no obvious displacement of the S1 wire or exposure of its copper conductor. In contrast, the photograph taken after the terminal cover was removed shows the S1 wire noticeably lower, with the copper conductor exposed. PW1 accepted in cross-examination that removal of the terminal cover would not disturb the position of the wires. That concession is, in my view, significant because it leaves no satisfactory explanation for the apparent change in the S1 wire's position between the "before" and "after" photographs.

[32] The preceding conclusion is reinforced by two further matters. First, the positions of all other phase wires remained unchanged before and after removal of the terminal cover, with only the S1 wire for the Blue Phase appearing materially different. Second, the photographs taken before removal of the transparent terminal cover show no lowered position or exposed copper conductor for the S1 wire.

[33] In my judgment, the absence of any contemporaneous explanation for why only the S1 wire of the Blue Phase appeared materially different after removal of the terminal cover gives rise to a serious evidential difficulty for the Plaintiff. In the face of that unexplained inconsistency in the contemporaneous photographic record, I am unable to conclude with confidence that the loosened S1 wire was an existing condition discovered during the inspection, rather than

a condition whose apparent manifestation arose only after the cover was removed.

[34] Seen through that lens, material inconsistencies in photographic evidence or witness testimony may justify the court declining to rely upon such evidence (see: **Tenaga Nasional Berhad v. Vision Pines Sdn Bhd** [2022] 1 LNS 3171). On that footing, I am unable to conclude that the condition depicted at Page 6083 existed prior to removal of the terminal cover. That unexplained contrast materially weakens the Plaintiff's allegation that the loosened S1 wire was an existing condition discovered during inspection.

[35] The Plaintiff relied on **Tenaga Nasional Bhd v. Evergrowth Aquaculture Sdn Bhd & Other Appeals** [2021] 9 CLJ 179 ; [\[2021\] 5 MLJ 937](#), where the Federal Court observed that a court may draw logical inferences from surrounding circumstances where the evidence points to a single rational conclusion of meter tampering. I am guided by that principle. However, in **Evergrowth Aquaculture**, the inference arose from the discovery of a metal clamp attached to the test terminal block, which constituted physical evidence objectively capable of interfering with the meter's recording function.

[36] The present case stands on a different footing. Here, the photographic record and chronology admit multiple competing inferences, particularly given the unexplained change in the S1 wire's position, the sequence showing that the meter passed accuracy testing before the alleged tampering, and the absence of reliable technical evidence explaining how the alleged condition could produce a sustained 0-ampere reading. Viewed in that light, I am unable to draw the single logical inference of tampering urged by the Plaintiff.

[37] More crucially, the reconstructed chronology gives rise to a further difficulty for the Plaintiff. The inspection lasted approximately 42 minutes, as evidenced by two placards of "MAKLUMAT JANGKA" in Bundle A1, Page 6096 (Enclosure 60), one marked "SEBELUM" at 13:00 and the other marked "SELEPAS" at 13:42. These placards denote the periods before and after rectification, but do not indicate the precise point in time or sequence of each photograph. The only reliable chronological indicator is the .JPG serial number, confirmed by PW1 and PW2 during cross-examination.

[38] Considered against the reconstructed chronology, the photographic record shows that the meter underwent accuracy testing and produced readings within acceptable error margins before the condition of the S1 wire was identified. The photograph depicting the loosened S1 wire appears only after those tests had been completed. To my mind, this sequence in the contemporaneous record is difficult to reconcile with the Plaintiff's assertion that the alleged tampering existed prior to the commencement of the inspection.

(ii) Improbability of 0 Ampere Reading from a Loosened S1 Wire

[39] The Plaintiff's case encounters a further difficulty at the level of technical explanation. It assumes that the loosened S1 wire resulted in a complete absence of current reading for the Blue Phase. This assumption is consistent with PW1's remark in the Plaintiff's inspection form "*LITAR ARUS DIBUKA*," indicating an open circuit. However, technical evidence elicited during the trial does not support a total cessation of current.

[40] Cross-examined, PW1 accepted that where a terminal screw is loosened but still maintains contact, current may continue to flow through the circuit, albeit at a reduced level rather than ceasing altogether. To my mind, this concession indicates that a partially loosened connection would not ordinarily result in a 0-ampere reading.

[41] Pursuant to [Order 40A](#) of the [Rules of Court 2012](#), the Defendant's expert witness (DW1) filed two expert reports exhibited to his affidavits: (a) "*Afidavit Saksi Pakar*" dated 24.3.2025 (Enclosure 61); and (b) "*Afidavit Saksi Pakar Tambahan*" dated 16.7.2025 (Enclosure 86), in which he set out his technical explanation. He testified that as long as the conductor remains inserted within the conductive terminal, the circuit remains capable of carrying current, even if the connection is not fully tightened.

[42] During the trial, DW1 conducted a simulation in Court using a similar meter and ammeter, demonstrating that current would continue to flow even if the S1 wire was loosened. Having had the benefit of observing the simulation first-hand during the trial, I am satisfied that the simulation supported DW1's explanation and is consistent with the basic electrical principle that a circuit remains operative so long as conductive contact between components is maintained.

[43] DW1 further explained that when current continues through a partially loosened connection, the resulting resistance may produce arcing or overheating at the point of contact. Such conditions ordinarily leave visible indicators on the relevant components, including burning, charring, discolouration, or other forms of damage. These physical manifestations would be expected if the alleged wiring condition persisted for any significant time. Significantly, I observe that this technical explanation was not contradicted by the Plaintiff's own witness. During re-examination, PW1 accepted that current would still flow, albeit not at full capacity, even if the S1 wire was loosened, which is consistent with the explanation given by DW1.

[44] Be that as it may, the record before me shows no such damage or physical irregularity was documented in the inspection photographs. Compounding the difficulty, the impugned meter was not seized or preserved for independent examination. The evidential record therefore contains no material from which such verification can be made.

[45] In that evidential setting, the Court is left without reliable technical proof that the loosened S1 wire could have produced a sustained 0- ampere reading for the Blue Phase. The combination of PW1's concessions, DW1's simulation evidence, and the absence of physical indicators demonstrates that current would still have flowed despite the loosened S1 wire. On that score, I find that the Plaintiff's assumption that the loosened wire caused total cessation of current is unfounded and unsupported on a balance of probabilities.

Assessment of Tampering Allegations Against Evidential Standards

[46] I find it necessary at this stage to step back and evaluate the Plaintiff's case in its broader evidential setting. The Court's analysis under subheadings (i) and (ii) bears directly on whether the evidential threshold for proving tampering has been met.

[47] In this regard, I am well alive to the decision in *Tenaga Nasional Bhd v. Asia Knight Bhd (Previously known as Perfect Scope Bhd)* [2017] 3 MLJ 631 ; [2018] 5 CLJ 227, where the Court of Appeal recognised that a plaintiff may discharge its burden of proof on a balance of probabilities through witness testimony supported by contemporaneous documents such as photographs, investigation forms, notification letters and police reports. The Court observed:

*“[11] ... We agree with the submission of learned counsel for the plaintiff that **the evidence produced by the plaintiff’s witnesses were consistent and credible. It was also corroborated by the production of the photographs, the ‘borang siasatan perjangkaan LPC MV/HV’, ‘surat pemakluman semakan meter’, ‘surat pemberitahuan pengambilan barang kes’ and police report. In this connection, we have perused the learned judge’s written judgment and note that the learned judge did not make any finding that there was no tampering of the meter. ... On the totality of the evidence, we are of the view that on a balance of probabilities, the plaintiff had succeeded in proving that the meter was tampered.” (Emphasis added)***

[48] The passage demonstrates that, in an appropriate case, a finding of tampering may be established through witness testimony supported by contemporaneous documentary evidence. In this regard, the Court of Appeal in **Asia Knight** observed, with reference to the Federal Court decision in *WRP Asia Pacific Sdn Bhd v. Tenaga Nasional Bhd* [\[2012\] 4 MLJ 296](#) ; [2012] 4 CLJ 478, that “*a subjective finding of the plaintiff’s employee is required to prove tampering*”. (see also: *Big Man Management Sdn Bhd v. Tenaga Nasional Bhd* [\[2025\] 5 MLJ 290](#) ; [2025] 7 CLJ 519; and *Tenaga Nasional Bhd v. Ichi-Ban Plastic (M) Sdn Bhd* [\[2018\] 3 MLJ 141](#) ; [2018] 3 CLJ 557).

[49] That proposition, however, cannot be taken to mean that a subjective assertion by inspecting officers will invariably suffice in every case regardless of the surrounding evidential circumstances. The court must still evaluate whether the factual foundation of that finding is supported by credible, coherent, and corroborated evidence. Indeed, in **Asia Knight** itself, the Court of Appeal emphasised that the plaintiff’s witnesses were consistent and that their testimony was corroborated by contemporaneous documentary materials, which together supported the finding of tampering.

[50] The Plaintiff also relied on the decision of the Court of Appeal in *Thomas Thomas v. Tenaga Nasional Bhd* [\[2018\] 5 MLJ 831](#) ; [2017] 4 CLJ 340 for a proposition that a registered consumer may be held liable for loss of revenue arising from meter tampering even if the consumer was not personally responsible for the interference. That position is well established beyond cavil. However, that authority presupposes that meter tampering has first been

established. In the present case, the evidential difficulties identified earlier in this judgment indicate that the Plaintiff has not demonstrated that the alleged tampering has been satisfactorily proved on the evidence presently before the Court. Viewed as a coherent whole, the principle in **Thomas Thomas** does not materially advance the Plaintiff's case at this stage of the analysis.

[51] The present case therefore stands on a materially different evidential footing from the authorities relied upon by the Plaintiff. The unexplained contrast between the photographs, the sequence of the inspection photographs, and the absence of any objective technical examination of the impugned meter mean that the evidence lacks the coherent and corroborated foundation which, in **Asia Knight**, justified a finding of tampering.

Summing-up

[52] On the balance of probabilities, I am satisfied that the Plaintiff has failed to prove that the meter installation at the Defendant's premises had been tampered with.

[53] I therefore answer the First Issue in the negative.

SECOND ISSUE: WHETHER THE PLAINTIFF HAS PROVED A CAUSAL LINK BETWEEN THE ALLEGED S1 WIRE CONDITION AND THE UNDER-REGISTRATION OF ELECTRICITY **Opposing Contention in Brief**

[54] Learned counsel for the Plaintiff submitted that the inspection revealed a discrepancy between the current measured at the incoming busbar and that recorded by the meter, indicating under- registration of electricity consumption. According to her, the deficit readings obtained through the ammeter and portable test show that the S1 wiring condition for the Blue Phase caused the meter to under-record electricity usage. These measurements, together with the inspection findings and contemporaneous documents, were relied upon to establish under-registration and revenue loss.

[55] Learned counsel for the Defendant submitted that the Plaintiff failed to establish any reliable causal link between the alleged S1 wire condition and the deficit readings. Arguing further, he emphasised that the testing instruments lacked calibration certificates, the methodology was unreliable, and the Test Terminal Block readings could not reasonably prove under-registration. He

therefore submitted that the Plaintiff failed to establish a causal link between the S1 wire condition and under-registration of electricity.

Analysis

[56] Having considered the opposing contentions, I am persuaded by the submissions advanced by learned counsel for the Defendant.

[57] My reasons are these.

[58] The question under this issue is narrower but no less important. Even assuming, for the sake of argument, that the alleged S1 wire condition is taken in the Plaintiff's favour, has the Plaintiff established on a balance of probabilities that it caused the under- registration of electricity consumption.

[59] It is well established that a defendant may challenge the technical or expert evidence adduced by the plaintiff either through cross- examination or by calling expert evidence of its own, and the court must consider the totality of the expert evidence placed before it (see: *UMW Toyota Motor Sdn Bhd & Anor v. Allan Chong Teck Khin & Anor* [\[2021\] 3 MLJ 107](#) ; [2021] 5 CLJ 193).

[60] With the preceding propositions in mind, I now turn to examine the issue at hand in the following sequence.

(i) Absence of Calibration Evidence

[61] The Plaintiff's case that the meter under-registered electricity consumption relies primarily on readings from an ammeter and a portable test set during inspection. These readings formed the basis for asserting a substantial discrepancy between the current measured at the busbar and the current recorded by the meter.

[62] As a matter of law, there is no presumption that the Plaintiff's instruments were accurate (see: *Kee Jee Piaou v Tenaga Nasional Berhad* [2014] MLRA 200 ; [2014] 1 LNS 284; *Tenaga Nasional Bhd v. Taiko Plantations Sdn Bhd* [2013] 2 CLJ 229 ; [2011] 2 AMR 333). Any such presumption must arise from an express statutory provision (see: *Public Prosecutor v. Leong Kow Chai* [\[1968\] 2 MLJ 29](#)). Where specialised instruments are relied upon to establish a technical deficit, their reliability and accuracy assume central evidential importance.

[63] It therefore falls upon the Plaintiff to establish that the instruments used were accurate and properly calibrated. However, no calibration certificates were produced for these instruments. In that regard, I recognise the force of the Defendant's argument that proof of calibration forms a necessary foundation before the readings can be relied upon. In the absence of such evidence, the Court has no objective assurance of the reliability of the measurements. This approach finds support in *Tenaga Nasional Berhad v. Syarikat Sim Quarry Sdn Bhd* [2018] 1 LNS 294, where the reliability of the measuring device was supported by the production of a calibration certificate in court.

[64] In my assessment, this evidential concern is particularly significant in the context of the Plaintiff's case. The meter allegedly recorded "0A" for the Blue Phase while a substantial current flowed at the busbar. Even on the Plaintiff's own evidence, the S1 wire was merely loosened. Seen against that backdrop, a claim that the meter registered zero current calls for clear and reliable measurement evidence, particularly where the alleged deficit is alleged to be approximately 30%. In the present case, however, the instruments producing the deficit readings were unsupported by calibration documentation. In the absence of objective assurance of their accuracy, the alleged 30% deficit cannot safely be treated as reliable evidence of under-registration, and I am therefore unable to place reliance on those readings.

[65] Nor was that evidential gap cured during re-examination. PW1 stated that the relevant calibration certificate had been destroyed. To my mind, that explanation is insufficient to discharge the Plaintiff's evidential burden in the factual context of the present case. Even if that testimony is accepted, it does not establish that the instruments were accurate at the time of inspection. What remains absent is any objective proof that the instruments were capable of producing reliable measurements at the material time.

(ii) Reliability of the Testing Method Employed by the Plaintiff

[66] A further difficulty arises from the methodology employed during the testing process itself. The portable test set used by the inspection team was connected to the Test Terminal Block (TTB), which forms part of the secondary circuit of the meter installation and through which test measurements were

obtained. According to the Plaintiff's inspection form, the circuit for the Blue Phase was recorded as "open".

[67] PW1 accepted in cross-examination that if the secondary circuit were genuinely open, the reading produced by the testing equipment would be zero. The test conducted by the Plaintiff nevertheless produced a deficit reading of approximately 30%, rather than a zero reading. To my mind, this inconsistency raises an immediate concern as to whether the testing configuration accurately reflected the condition which the Plaintiff alleged existed within the meter installation.

[68] The Defendant's expert witness, DW1, offered a technical explanation for this discrepancy. He explained that such a result could arise if the TTB had been placed in a bypass configuration during the testing process, in which the portable test set may detect current flowing through the bypass link while the meter itself records no current. If the secondary circuit for the Blue Phase was already open, connecting the portable test set to the TTB would ordinarily yield no current flow and therefore no deficit reading. DW1 further explained that the portable test set could instead have been connected directly to the busbar or to the incoming cables at the primary circuit, which he demonstrated could be carried out safely.

[69] Having regard to the manner in which the testing was conducted and the inconsistency between the recorded configuration and the results obtained, I am unable to treat the testing results as reliable proof that the meter was under-registering electricity consumption to the extent alleged by the Plaintiff.

Cumulative Evidential Assessment

[70] Those difficulties cannot be viewed in isolation. When considered cumulatively, I am unable to treat the alleged deficit reading as reliable proof that the meter was under-registering electricity consumption. In particular:

- (i) the absence of calibration evidence leaves the accuracy of the measuring instruments unverified;
- (ii) the uncertainty surrounding the configuration of the TTB raises the possibility that the observed discrepancy arose from the testing arrangement itself; and

- (iii) the surrounding evidential circumstances do not satisfactorily explain how a loosened wire could produce the complete absence of current registration asserted by the Plaintiff.

[71] Taken together, I find that the preceding matters render the evidential foundation of the Plaintiff's case on causation unsatisfactory. I emphasise that the Court does not require scientific certainty in determining causation in a civil claim. However, the Plaintiff must still establish, on a balance of probabilities, that the alleged wiring condition was capable of producing the under-registration asserted. I am therefore unable to conclude that the alleged condition of the S1 wire caused the meter to under-register electricity consumption as alleged by the Plaintiff.

Summing-up

[72] On the balance of probabilities, I am satisfied that the Plaintiff has failed to prove that the alleged condition of the S1 wire caused the meter to under-register electricity consumption.

[73] I therefore answer the Second Issue in the negative.

THIRD ISSUE: WHETHER THE PROCEDURAL DEFICIENCIES IN THE INSPECTION PROCESS UNDERMINE THE RELIABILITY OF THE PLAINTIFF'S EVIDENCE

Opposing Contention in Brief

[74] Learned counsel for the Plaintiff submitted that the Defendant's procedural objections do not invalidate the claim or render the inspection findings unreliable. She proceeded on the basis that any non-compliance with the Energy Commission Guideline would affect only the weight of the evidence, not its admissibility. She concluded that the SEAL Team inspection documented the condition of the meter installation and the inspection findings through the inspection form and photographs.

[75] Learned counsel for the Defendant submitted that the inspection by the Plaintiff's SEAL Team was affected by procedural irregularities that undermined the reliability of the findings of alleged meter tampering. According to him, the Plaintiff failed to seize the impugned meter, record anomalies during the inspection, and produce calibration certificates for the testing devices used. These deficiencies, he argued, prevented independent verification of the meter's

condition and the accuracy of the measurements relied upon, thereby affecting the reliability of the inspection findings.

Analysis

[76] Having considered the opposing contentions, I am persuaded by the submissions advanced by learned counsel for the Defendant.

[77] My reasons are these.

[78] The Defendant challenges the inspection on the basis of alleged procedural departures from the “Garis Panduan Prosedur Tuntutan Kerugian Hasil” issued by the Energy Commission (the Guideline), contending that such departures compromise the integrity of the inspection process.

[79] For present purposes, the issue concerns the evidential reliability of the inspection process rather than the legal status of the Guideline itself, which will be addressed later in this judgment. I address the issue in the following sequence.

(i) Failure to Seize the Meter

[80] Paragraph 4.4 of the Guideline reads:

“4.4 Tindakan Pembedulan

Kejanggalan yang ditemui hendaklah diperbetulkan dengan serta merta selepas pemeriksaan dijalankan bagi memastikan kehilangan unit dapat dihentikan dan pembilan dapat dibuat dengan teratur. Walau bagaimanapun, sekiranya kejanggalan tidak dapat diperbetulkan, tindakan pembedulan hendaklah diambil dalam masa yang munasabah.

...

4.4.1 Sekiranya kerosakan selain daripada meter yang disebabkan oleh pengusikan ke atas pemasangan, contohnya pendawaian, alatubah arus, “Test Terminal Block” (TTB) dan seumpamanya, tindakan pembedulan hendaklah dibuat dengan segera.

...

IV. mengambil bahan bukti yang diguna dalam pengusikan ke atas pemasangan. Selain itu, meter juga perlu diambil sebagai bahan bukti untuk membuktikan

bahawa ianya boleh merekodkan penggunaan elektrik sebenar sekiranya pengusikan tidak dilakukan;”

[81] In substance, paragraph 4.4(iv) contemplates that materials allegedly used in the interference, including the meter itself, be taken as evidential material so that its proper functioning may later be verified and any alleged tampering distinguished from normal operation.

[82] In the present case, the alleged tampering concerned the S1 wire rather than the internal mechanism of the meter. Nevertheless, paragraph 4.4(iv) envisages that the meter be preserved as evidential material capable of demonstrating whether it could accurately record electricity consumption notwithstanding the alleged interference. As admitted by PW5, who testified in his capacity as the Executive of Revenue Assurance, this step was not taken. The original meter was neither seized nor preserved and was subsequently removed from service, with the result that the evidential record contains no physical material by which the condition of the meter, its terminal assembly, or the S1 wiring interface can now be independently examined.

[83] The significance of this omission is heightened in the present case because the alleged interference concerned the S1 wiring for the Blue Phase rather than any identified defect within the internal mechanism of the meter. Physical examination of the meter would therefore have provided the most direct means of determining whether the alleged wiring condition could in fact have affected the meter’s operation.

[84] In my judgment, the absence of this procedural safeguard materially weakens the evidential foundation of the Plaintiff’s allegation that the meter installation had been tampered with. This difficulty is further compounded by the fact that the Plaintiff itself relied on consumption readings associated with the same meter for the nine- day averaging period following the inspection. By failing to preserve the meter as evidential material, the Defendant was deprived of the opportunity to subject the meter and its terminal assembly to independent examination, which could have assisted the Court in assessing whether the alleged under-registration was caused by tampering or by some other technical condition within the installation.

[85] The evidential gap identified above also bears upon the circumstances surrounding the subsequent replacement of the meter shortly after the inspection. The Plaintiff submitted that the issue concerning the replacement of the meter nine days after the inspection was not specifically pleaded. I am unable to accept that contention. The Defendant had pleaded that the Plaintiff's calculation of the alleged loss of revenue was unfounded, unfair, and unreasonable. Evidence relating to the replacement of the meter and the consumption data relied upon for the nine-day averaging period emerged during the trial and was put to the Plaintiff's witnesses without objection.

[86] It is trite that in civil proceedings parties may, by consent whether express or implied, validate a mode of adducing evidence even if it departs from the pleadings, and such irregularity is thereby waived. When evidence represents a departure from the pleadings, it should be objected to when adduced, and failure to do so generally cures any defect in the pleadings. The exception is where the evidence represents a radical departure from the pleadings rather than a mere variation, modification or development. (see: *Superintendent of Lands & Surveys (4th Div) v. Hamit bin Matusin* [1994] 3 MLJ 185; and *Ang Koon Kau & Anor v. Lau Piang Ngong* [1984] 2 MLJ 277 ; [1985] CLJ Rep 24)

[87] In the present case, I find it plain that the evidence relating to the meter replacement and the nine-day averaging period was put squarely to PW1 and PW5 during cross-examination. Both witnesses confirmed the relevant facts, and no objection was taken. In those circumstances, the Plaintiff cannot now contend that the issue was improperly raised or should be disregarded.

[88] PW5 confirmed that the meter at the Premises was replaced by the Plaintiff, with the replacement meter installed on 1.11.2020 following the inspection. Billing records show two different meter numbers, reflecting the replacement. The nine-day averaging period ran from 22.10.2020 to 31.10.2020, during which consumption readings were recorded by the original meter.

[89] While mindful that the Plaintiff, as the electricity licensee, bears an operational duty to rectify irregular installations and prevent further loss of electricity, it appears to me that the subsequent replacement of the meter shortly thereafter sits uneasily with the earlier evidence that the meter had

passed the post-inspection accuracy test and was treated as capable of recording the consumption relied upon for the nine-day averaging period.

(ii) Inadequate Photographic Evidence of the Inspection

[90] Paragraph 4.3.1 of the Energy Commission Guideline reads:

“4.3 Bahan Bukti

4.3.1 Semua bahan bukti atau kejanggalan (anomalies) yang dijumpai pada pemasangan dan/atau meter hendaklah diambil gambarnya dengan jelas dan terang seperti senarai semak di Lampiran 9.”

[91] In essence, paragraph 4.3.1 contemplates that all evidence or anomalies be clearly photographed in accordance with the inspection checklist. A comparison between the checklist in Lampiran 9 and the photographs produced by the Plaintiff in Bundle A1 reveals several deficiencies in compliance with the photographic requirements.

[92] Four items were not documented as required, namely:

Item 3	Photograph of the meter room entrance before the inspection
Item 4	Photograph of the meter installation location
Item 12	Photograph of the meter room entrance after the inspection
Item 14	Photograph of the notice left at the premises after the inspection.

[93] In the circumstances of the present case, the absence of these photographs reduces the evidential weight of the inspection findings. Such photographs serve to corroborate the conditions observed during the inspection and provide objective visual confirmation of the state of the installation. Without them, the Court is left without independent means of verifying the conditions relied upon by the Plaintiff.

[94] Although the Plaintiff maintains that the inspection was otherwise sufficient, the absence of the photographs contemplated by the Guideline

materially weakens the evidential value of the inspection findings in this case. These omissions limit the Court's ability to assess whether the alleged meter interference occurred in the manner asserted by the Plaintiff.

(iii) Missing Seal Allegation

[95] Paragraph 4.2.3 of the Guideline reads:

"4.2.3 Hasil pemeriksaan dan ujian pada perenggan 4.2.2 hendaklah diisi di dalam Borang Pemeriksaan dan Pengujian Pepasangan Meter yang disediakan dengan lengkap dan ditandatangani oleh Juruteknik/Eksekutif Teknikal/Jurutera bertugas. Rujuk Lampiran 6(a) – 6(h).

Sekiranya operasi melibatkan Suruhanjaya Tenaga, borang pemeriksaan dan pengujian hendaklah diserahkan kepada Suruhanjaya Tenaga sejurus selepas operasi selesai."

[96] In substance, paragraph 4.2.3 contemplates that the results of the inspection and testing be fully recorded in the prescribed inspection form and authenticated by the responsible personnel, thereby ensuring accountability and traceability of the inspection process.

[97] A further evidential difficulty arises in relation to the Plaintiff's allegation that the seal on the left side of the meter terminal was missing at the time of inspection. As I assess it, this allegation is not supported by any contemporaneous inspection record. It does not appear in the inspection form prepared during the inspection, is not reflected in the photographs taken at the premises, and was not specifically pleaded in the Plaintiff's Statement of Claim.

[98] Instead, the allegation surfaced only during oral testimony at trial. PW1 confirmed that under the Guideline, any anomaly discovered during inspection ought to be recorded in the relevant inspection form. Where a structured inspection process is followed and formal documentation is prepared, any anomaly observed at the meter, particularly one suggesting possible tampering, would ordinarily be recorded in the inspection form or supporting photographic record.

[99] Here, the absence of any contemporaneous record materially weakens the evidential basis of the alleged missing seal. Without such documentation, I am

unable to treat the allegation as a reliable indicator of meter tampering, and accordingly assign it limited evidential weight.

(iv) Alleged Refusal to Sign the Inspection Form

[100] Paragraph 4.2.4 of the Guideline reads:

“4.2.4 Hasil pemeriksaan dan ujian hendaklah dimaklumkan secara lisan kepada pengguna/pemilik/wakil selepas pemeriksaan dan ujian dijalankan. Borang pemeriksaan dan pengujian pada perenggan 4.2.3 hendaklah ditandatangani oleh pengguna/pemilik/wakil dan jika enggan, catitan hendaklah dibuat di ruangan yang disediakan seperti “pengguna/pemilik/wakil premis enggan menandatangani”.

[101] In substance, paragraph 4.2.4 contemplates that the inspection results be communicated to the consumer or representative and that any refusal to sign the inspection form be expressly recorded in the inspection document.

[102] The Plaintiff asserted that the Defendant’s representative refused to sign the inspection form following the inspection. However, the Guideline requires that any such refusal be recorded in the inspection form itself so that the circumstances of the inspection are properly documented. In the present case, I observe no such notation appears in the inspection form produced before the Court.

[103] The absence of any contemporaneous record of the alleged refusal is, in my view, significant. One would ordinarily expect any refusal by the consumer’s representative to sign the inspection form to be clearly recorded in the inspection document prepared during the inspection. On the whole, I find that the absence of such documentation weakens the reliability of the Plaintiff’s assertion.

[104] Paragraph 4.3.1 and Lampiran 9 of the Guideline further require that a photograph be taken to show that the relevant documents were left at the premises after the inspection. The Plaintiff did not comply with this requirement. The only evidence said to approximate compliance is the photograph at Bundle A1, Page 6095, showing PW1 holding certain documents while explaining matters to DW3. However, the photograph is indistinct and inconclusive and

does not satisfy the documentation or photographic requirements prescribed under the Guideline. Consequently, it carries minimal evidential weight.

(v) Absence of Evidence of Calibration of the Meter-Testing Device

[105] Paragraph 10 of the Guideline for Electricity Meters: Approval, Testing and Initial Verification Requirements issued by the Energy Commission reads:

“Meter Testing Equipment

10.(1) The following pieces of test equipments are deemed by this guideline to be standards:

- *(a) Reference standards;*
- *(b) AC/ DC Transfer standards;*
- *(c) AC Transfer standard;*
- *(d) Working standards.*

(2) All standards shall be maintained and calibrate by the following intervals by an approved accredited laboratory and/or National Measurement Standards Laboratory:

...

Reference Standard - 2 years”

[106] In essence, paragraph 10 contemplates periodic calibration of all meter-testing equipment to ensure the reliability and accuracy of testing results.

[107] DW1 acknowledged that such equipment is required to undergo periodic calibration in accordance with the Guideline for Electricity Meters: Approval, Testing and Initial Verification Requirements issued by the Energy Commission. To my mind, this requirement serves as an important procedural safeguard to ensure that testing during inspections is conducted using equipment whose accuracy has been independently verified, thereby directly contributing to the reliability of the results obtained.

[108] In the present case, however, no calibration certificate or other documentary evidence was produced to demonstrate that the testing device used during the inspection had been calibrated in accordance with the relevant

guideline. In the absence of such evidence, the Court cannot place full evidential weight on the testing results relied upon by the Plaintiff.

Cumulative Impact of Procedural Deficiencies

[109] Considered collectively, the procedural deficiencies identified during the inspection raise serious evidential concerns as to the reliability of the inspection findings relied upon by the Plaintiff. The failure to seize the meter deprived the Court of the opportunity for independent verification, while the absence of contemporaneous documentation concerning the alleged missing seal and the alleged refusal to sign the inspection form further weakens the evidential foundation of the Plaintiff's claim.

[110] In this evidential context, I take the view that these deficiencies cannot be regarded as minor. They reinforce the broader evidential difficulties already identified in the Plaintiff's case and undermine the Court's ability to treat the inspection findings as reliable proof of the alleged meter interference. This conclusion rests on the cumulative effect of the procedural deficiencies themselves and not on any legal requirement imposed by the Guideline, the legal status of which will be addressed later in this judgment.

Summing-up

[111] On the balance of probabilities, I am satisfied that the procedural deficiencies identified during the inspection process materially undermine the reliability of the inspection findings relied upon by the Plaintiff.

[112] I therefore answer the Third Issue in the affirmative.

FOURTH ISSUE: WHETHER THE GUIDELINE HAS THE FORCE OF LAW **Opposing Contention in Brief**

[113] Learned counsel for the Plaintiff submitted that the Guideline does not have the force of law and imposes no mandatory requirements for assessing loss of revenue claims. She argued that it serves only as an administrative reference and cannot override the statutory framework under the ESA and the Licensee Supply Regulations 1990. She further submitted that any non-compliance would not invalidate the Plaintiff's claim.

[114] Learned counsel for the Defendant contended that the Guideline carries regulatory significance and is not merely administrative. Relying on [ss. 50C](#) and [50E](#) of the [ESA](#), he stressed that the Guideline is issued under statutory authority and must be complied with by licensees, and that non-compliance may attract penal consequences. Concluding his argument, he asserted that the Guideline has legal force within the statutory framework, rendering its non-compliance a matter of legal consequence.

Analysis

[115] Having considered the opposing contentions, I am persuaded by the Plaintiff's submission that the Guideline does not have the force of law, albeit my reasoning proceeds on a slightly different footing.

[116] My reasons are these.

[117] The Defendant's argument rests on the premise that the Guideline has legal force and, on that basis, contends that the Plaintiff's alleged non-compliance negates its claim against the Defendant. It is therefore necessary to address the legal status of the Guideline, which is conceptually distinct from the evidential deficiencies identified in the preceding issue.

[118] As the law presently stands, the Guideline is administrative and advisory in character and does not have the force of law. While the Guideline may carry regulatory significance within the statutory scheme, it does not operate as a condition precedent to the determination of civil liability under [s. 38](#) of the [ESA](#). (see: *Tenaga Nasional Berhad v. L & A Packaging Sdn Bhd* [2020] 1 LNS 1452 ; [\[2020\] MLJU 1507](#); and *Tenaga Nasional Berhad v. Lension (M) Sdn Bhd* [2018] 1 LNS 42). It provides technical and regulatory guidance relating to meter tampering and the computation of loss of revenue. Unless incorporated into statute or subsidiary legislation, such guidelines do not create enforceable rights and do not bind the Court in determining whether the Plaintiff's computation is reasonable and fair.

[119] Established principles recognise that regulatory guidelines occupy a subordinate position within the legal hierarchy. They may guide administrative practice and assist in the application of regulatory standards. However, they cannot alter, expand, or restrict rights and liabilities that arise under statute.

[120] Against that backdrop, I now address the statutory provisions relied upon by the Defendant.

(i) Sections 50C and 50E of the ESA

[121] The Defendant's argument centres on the contention that [s. 50C](#) and [s. 50E](#) of the [ESA](#) render compliance with the Guideline issued by the Energy Commission mandatory and that any departure amounts to statutory illegality which would defeat the Plaintiff's claim.

[122] [S. 50C](#) of the [ESA](#) provides:

"50C Guidelines or directions by Commission

- (1)*The Commission may, from time to time, issue guidelines or directions on any matter as provided under this Act to any licensee, non-domestic electrical installation owner or operator, registered manufacturer or importer, competent person or any person.*
- (2)*The Commission may, from time to time, issue any direction in writing to any licensee, non-domestic electrical installation owner or operator, registered manufacturer or importer, competent person or any person on the compliance or non-compliance of the Act or any regulations made under this Act, conditions of licences, including the remedying of a breach of a license condition or on any other matter requiring the making of a direction or specifically to be made the subject of a direction under this Act in accordance with such procedures as may be prescribed.*
- (3)*The guidelines or directions issued by the Commission under this section shall be registered and shall be effective from the date of such registration or such later date as the Commission may specify in the guidelines or directions.*
- (4)*A licensee, non-domestic electrical installation owner or operator, registered manufacturer or importer, competent person or any person shall comply with the guidelines and directions."*

[123] [S. 50E](#) of the [ESA](#) provides:

"50E Offence for non-compliance with codes, guidelines or directions of the Commission

A person who fails to comply with any codes, guidelines or directions of the Commission issued under this Act commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.”

[124] In my view, these provisions operate within the sphere of regulatory enforcement. They impose obligations which may expose a non-complying party to enforcement action by the Energy Commission. However, their function is regulatory in nature and they do not operate to invalidate or defeat a civil claim brought under [s. 38](#) of the [ESA](#).

[125] Consistent with that regulatory character, the statutory scheme does not indicate that compliance with the Guideline constitutes a condition precedent to the recovery of loss arising from meter interference. A departure from the Guideline may affect the evidential weight of the Plaintiff’s computation, but it does not, without more, preclude recovery where the Court is satisfied that the amount claimed represents a reasonable and fair estimate of the loss suffered.

(ii) S. 104 of the Evidence Act 1950

[126] The Defendant further advances an evidential argument grounded in the concept of “fact in precedence”. It is contended that the Plaintiff is not entitled to adduce evidence on the fact in issue, namely the alleged tampering with the electricity meter, unless it first discharges the burden of proving certain “fact in precedence”.

[127] The Defendant identifies two such alleged prerequisite facts.

- (a) that the measuring devices utilised by the Plaintiff are accurate and reliable, as envisaged under the Guideline for Electricity Meters Approval, Testing and Initial Verification Requirements issued by the Energy Commission; and
- (b) that the meter in question would have functioned properly in the absence of interference, as contemplated under the Energy Commission Guideline.

[128] In support of this submission, the Defendant relies on [sections 136\(2\)](#) and [104](#) of the [Evidence Act 1950](#).

[129] [S. 136 \(2\)](#) of the [Evidence Act 1950](#) reads:

“136 Court to decide as to admissibility of evidence

...

(2) If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of the fact and the court is satisfied with the undertaking.

ILLUSTRATIONS

- (a) *A wishes to prove a dying declaration by B. A must prove B’s death.*
- (b) *A wishes to prove by secondary evidence the contents of a lost document. A must prove that the document has been lost.”*

[130] [Section 104](#) of the [Evidence Act 1950](#) reads:

“104 Burden of proving fact to be proved to make evidence admissible

The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact, is on the person who wishes to give the evidence.”

[131] Relying on these provisions, the Defendant contends that the Plaintiff’s alleged failure to prove the asserted “fact in precedence” renders the Plaintiff disentitled from adducing evidence of tampering. It is further submitted that any such evidence, if admitted, would be inadmissible in law.

[132] In my view, this submission proceeds from a fundamental misconception. It conflates an advisory technical procedure contained in an administrative guideline with the legal requirements governing admissibility of evidence under statute.

[133] While [s. 104](#) of the [Evidence Act 1950](#) requires a party to establish any fact necessary to render evidence admissible, the Guideline merely sets out recommended technical practices relating to meter approval, testing and verification. These include matters such as calibration intervals and testing procedures. Such recommendations do not transform compliance with the Guideline into a legal condition precedent to the admissibility of evidence.

[134] To my mind, the true “fact in precedence” contemplated by [sections 104](#) and [136\(2\)](#) concerns the reliability or proper functioning of the meter or measuring system. That fact may be established through various forms of evidence, including inspection findings, technical testimony, physical observations of interference, and circumstantial evidence. In my judgment, the law as presently stands does not require that this fact be proved exclusively through strict adherence to the procedures described in the Guideline.

[135] It follows, therefore, that non-compliance with the Guideline does not, without more, render the Plaintiff’s evidence inadmissible under [section 104](#). At most, it may affect the weight or credibility to be accorded to such evidence.

[136] In my judgment, whether the Plaintiff has discharged its burden of proving meter tampering therefore remains a matter to be determined on the totality of the evidence before the Court. The Guideline may serve as a useful technical reference, but its advisory character cannot prevent the Court from evaluating otherwise admissible evidence where the relevant prerequisite facts are established.

Summing-up

[137] For these reasons, I am unable to accept the Defendant’s submission that compliance with the Energy Commission Guideline constitutes a mandatory legal requirement governing the Plaintiff’s claim. While the Guideline serves an important regulatory and technical function, it does not possess the force of law and does not determine the Court’s assessment of civil liability under the ESA. Any non-compliance may affect the evidential weight of the Plaintiff’s case, but does not, without more, invalidate a civil claim under the ESA.

[138] I therefore answer the Fourth Issue in the negative.

FIFTH ISSUE: WHETHER THE PLAINTIFF’S METHOD OF CALCULATION PROVIDED A REASONABLE AND FAIR BASIS FOR ESTIMATING THE QUANTUM CLAIMED **Opposing Contention in Brief**

[139] Learned counsel for the Plaintiff submitted that the method used to calculate the undercharged bill was a reasonable and fair estimate of electricity consumption not recorded by the meter. That calculation, she stated, was derived from post-inspection consumption data and carried out in accordance

with the applicable regulatory framework for recovery of loss of revenue. She further submitted that the calculation was supported by the written statement issued under [s. 38\(4\)](#) of the [ESA](#) and the relevant Energy Commission Guideline, which constitutes prima facie evidence of the amount claimed.

[140] Learned counsel for the Defendant contended that the Plaintiff's calculation was not representative of the historical consumption pattern at the Premises. According to him, the nine-day averaging method was adopted only because it produced a higher recovery figure and was inconsistent with the compensatory purpose of the statutory framework governing recovery of loss of revenue. Concluding his argument, he submitted that the Plaintiff's methodology did not provide a reasonable and fair basis for estimating the quantum claimed.

Analysis

[141] Having considered the opposing contentions, I am persuaded by the submissions advanced by learned counsel for the Defendant.

[142] My reasons are these.

[143] The issue here is whether the methodology adopted by the Plaintiff provides a reasonable and fair basis for estimating the alleged loss of electricity consumption. I address that question in the following sequence.

(i) Role of the Energy Commission Guideline Within the Statutory Framework

[144] At the outset, I find it apposite to address the role of the Energy Commission Guideline within the statutory framework governing the estimation of loss of revenue.

[145] In this regard, I recall that the issue of whether compliance with the Guideline constitutes an overriding consideration in determining the fairness and reasonableness of the loss of revenue claimed, to the exclusion of other evidence, was raised in **Evergrowth Aquaculture**. The Federal Court, however, declined to determine that question, observing that it involved matters of fact and evidential evaluation rather than a pure question of law.

[146] Against that backdrop, I proceed to refer to the authorities on the legal status of guidelines. The distinction between a guideline and a binding legal

requirement has long been recognised in comparative jurisprudence. In *Norbis v. Norbis* [1986] [65 ALR 12](#), it was observed:

*“The distinction between such a guideline and a binding rule of law, though essential, may be thin in practice. **But the distinction must be maintained and a failure to apply the guideline cannot be treated as an error in law: a failure to apply the guideline is no more than a factor which warrants a close scrutiny of the particular exercise of the discretion. What cannot be shut out is the discretion of a primary judge not to apply the guideline when the circumstances of the particular case show that its application would produce an unjust or inequitable result or that another approach would produce a more just and equitable result.” (Emphasis added)***

[147] Likewise, in *Ainsley Financial Corp. v. Ontario Securities Commission* [1994 *CanLII 2621*], the court recognised that guidelines issued by regulators are administrative instruments intended to assist regulatory administration rather than binding legal norms:

*“The authority of a regulator, like the Commission, to issue non-binding statements or guidelines intended to inform and guide those subject to regulation is well established in Canada. The jurisprudence clearly recognizes that regulators may, as a matter of sound administrative practice, and without any specific statutory authority for doing so, issue guidelines and other non-binding instruments... **Non-statutory instruments, like guidelines, are not necessarily issued pursuant to any statutory grant of the power to issue such instruments. Rather, they are an administrative tool available to the regulator so that it can exercise its statutory authority and fulfil its regulatory mandate in a fairer, more open and more efficient manner.***

...

*Having recognized the Commission’s authority to use non statutory instruments to fulfil its mandate, the limits on the use of those instruments must also be acknowledged. A non statutory instrument can have no effect in the face of contradictory statutory provision or regulation... Most importantly, for present purposes, **a non- statutory instrument cannot impose mandatory requirements enforceable by sanction; that is, the regulator cannot issue de facto laws disguised as guidelines.***

...

*Nor, in my view, are pronouncements which are true guidelines rendered invalid merely because they regulate, in the broadest sense, the conduct of those at whom they are directed. Any pronouncement by a regulator will impact on the conduct of the regulated. **A guideline remains a guideline even if those affected by it change their practice to conform with the guideline.***” (Emphasis added)

[148] The same underlying principle is reflected within the domestic statutory framework governing delegated legislation. [S. 23](#) of the [Interpretation Acts 1948 and 1967](#) provides:

“23 Avoidance of subsidiary legislation in case of inconsistency with Act

(1) Any subsidiary legislation that is inconsistent with an Act (including the Act under which the subsidiary legislation was made) shall be void to the extent of the inconsistency...”

[149] As is plain, [s. 23](#) reflects the settled principle that subsidiary legislation must operate within the scope of the parent Act and cannot extend beyond it. In my judgment, administrative guidelines, which rank lower in the hierarchy of norms than subsidiary legislation, cannot enlarge the statutory framework or create obligations not contemplated by the statute.

[150] Consistent with [s. 23](#), the Federal Court in *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v. Muziadi bin Mukhtar* [\[2020\] 1 MLJ 141](#) ; [2020] 1 CLJ 1 reaffirmed the primacy of the parent Act over subordinate instruments, citing with approval *Ramachandran Appalanaidu & Ors v. Dato’ Bandar Kuala Lumpur & Gasing Meridian Sdn Bhd* [2012] 1 LNS 625 and observed:

*“[81] It is trite that **subsidiary or delegated legislation shall not be broader than the enabling legislation.** This general principle of statutory interpretation is codified in [s 23](#) of the [Interpretation Act 1948 and 1967](#)...*

*[82] Therefore, **the subsidiary legislation must yield to the primacy of the parent Act and must operate in the context of the parent Act.** As the stream cannot rise above its source, so the subsidiary/delegated legislation cannot be broader than the parent Act.*

[83] We would like to emphasise that **a statutory provision which delegates to the executive the power to make regulations should be strictly construed** and that, where the power is conferred in general terms, it may be necessary to imply restrictions in its scope in order to avoid interference with the common law rights which have been codified in the parent Act itself.” (Emphasis added)

[151] Flowing from the above, I find that compliance with the Guideline is evidentially relevant but not legally determinative of the fairness or accuracy of the loss-of-revenue calculation. A regulatory guideline cannot enlarge the statutory scheme or operate as a substitute for proof of loss under [s 38](#) of the [ESA](#). The reliability of the calculation must therefore be assessed against the totality of the evidence adduced. To my mind, compliance with the Guideline may form part of the evidential matrix, but it cannot operate as an overriding consideration that excludes scrutiny of other evidence capable of undermining the calculation relied upon.

[152] At most, compliance with the Guideline may assist the Plaintiff in establishing a prima facie case under [s. 38\(4\)](#) of the [ESA](#). However, as recognised by the Federal Court in **Ichi-Ban Plastic**, such prima facie evidence is not conclusive against the consumer and remains open to rebuttal.

[153] The structure and operation of the statutory framework reinforce that position. A proper reading of the relevant provisions shows that the assessment of loss of revenue is intended to be undertaken through a broader evidential evaluation rather than by rigid reliance on any single administrative instrument. So far as relevant, that approach is reflected in the following provisions:

- (a) **The Energy Commission Guideline**

Paragraph 5.3.3 of the Energy Commission Guideline requires the Plaintiff to consider supporting documents such as water bills, tenancy agreements, sales and purchase agreements and other relevant materials when computing the loss of revenue.

- (b) **The Licensee Supply Regulations 1990**

Regulation 11(2) of the LSR 1990 prescribes that the Plaintiff is to consider “*the licensee’s own records, the consumer’s consumption record and history, available*

technical evidence and other relevant circumstances” so as to fairly arrive at the underbilled amount.

[154] Read together, the Licensee Supply Regulations 1990 and the Energy Commission Guideline indicate that loss-of-revenue assessment requires a holistic evaluation of the available evidence. In that context, the Guideline operates as an administrative aid within the statutory framework rather than as an overriding consideration of the calculation.

(ii) Plaintiff’s Back -Billing Method and Selection of the Nine-Day Average

[155] The central question is whether the Plaintiff has established that the quantum claimed represents a reasonable and fair estimate of electricity allegedly not recorded by the meter. The burden rests on the Plaintiff to demonstrate that the methodology adopted provides a reasonable and fair basis for estimating the alleged loss of revenue.

[156] The Plaintiff relied on electricity consumption data recorded over a nine-day period following the inspection. This average was then used as the basis for estimating the alleged deficit for the prior back- billing period. By contrast, Paragraph 5.2.1(l) of the Energy Commission Guideline provides that where a sudden drop in usage is observed, consumption for three consecutive months preceding the drop should form the default averaging basis, reflecting historical consumption at the Premises prior to the suspected irregularity.

[157] During cross-examination, PW4 who testified in his capacity as the Executive of Revenue Assurance admitted that the three-month method contemplated by the Guideline was available and could have been applied. He further acknowledged that using that method would have produced a lower recovery figure. Significantly, PW4 confirmed that his role involved selecting the method which generated the highest yield for the Plaintiff.

[158] The preceding admission must be evaluated against the governing statutory framework. The recovery of loss of revenue under the ESA is compensatory in nature. Its purpose is to restore the licensee, so far as reasonably possible, to the position it would have occupied had the alleged under-registration not occurred, and not to confer upon it a windfall at the consumer’s expense.

[159] In **Ichi-Ban Plastic**, the Federal Court recognised that where meter tampering renders precise measurement impossible, the court may accept estimation of loss. However, the Federal Court emphasised that such estimation must be reasonable and fair, depending on the quality of the evidence adduced. The principle therefore permits estimation as a practical necessity, but it does not authorise the adoption of a methodology chosen primarily for its revenue-maximising effect rather than its capacity to produce a reasonable and fair estimate of the alleged loss.

[160] The preceding conclusion is consistent with, though distinguishable from, **Tenaga Nasional Berhad v. Yu Woon Gin & Anor** [2016] 1 LNS 1292 ; [\[2016\] MLJU 1019](#), where the High Court accepted that an averaging method could be used when precise measurement was not possible and there was no evidence that it produced a higher quantification. The present case stands on a different footing. The Plaintiff's own witness admitted that alternative methods were available and that the nine-day averaging method was selected because it generated a higher recovery figure. Seen in that light, it appears clear that the difficulty here lies not in the use of estimation itself but in the deliberate selection of a method known to produce a higher yield rather than one reflecting the Premises' historical consumption pattern. In my judgment, a methodology adopted on that basis cannot be regarded as a reasonable and fair estimate of the alleged loss.

[161] As regards the Defendant's argument that the decision of the Court of Appeal in **Tenaga Nasional Bhd v. AWP Enterprise Sdn Bhd** [2015] 1 CLJ 400, which observed that once the evidential burden shifts to the consumer, the consumer bears the burden of demonstrating that the calculation is "*manifestly unreasonable, excessive, or wrong*", has been overruled by implication by the Federal Court in **Ichi-Ban Plastic** and is therefore rendered obsolete, I find no basis for accepting that submission.

[162] As I observe it, nothing in **Ichi-Ban Plastic** suggests that the Federal Court intended, whether expressly or by implication, to overrule or displace the approach articulated in **AWP Enterprise**. Had such a departure been intended, it would reasonably have been expected to be stated in clear terms. This is all the more so given that **AWP Enterprise** itself formed part of the group of appeals considered by the Federal Court in **Ichi-Ban Plastic**.

[163] Nor do the subsequent authorities support the Defendant's contention. In its subsequent decision in **Evergrowth Aquaculture**, the Federal Court referred to **AWP Enterprise** without expressing any reservation as to its correctness. Indeed, the evidential approach articulated in **AWP Enterprise** continues to find application in later decisions addressing the calculation of loss of revenue claims (see: **Tenaga Nasional Berhad v. Motif Baiduri Sdn Bhd** [2024] CLJU 326 ; [\[2024\] MLJU 334](#); **Paskaran Appukuttan Nair v. Tenaga Nasional Berhad** [2025] CLJU 2891; **Tenaga Nasional Berhad lwn. Tan Li Hua** [2025] CLJU 2300; **Tenaga Nasional Berhad v. Regency International Hotel Sdn Bhd** [2026] CLJU 180 ; [\[2026\] MLJU 242](#)).

[164] Properly understood, the Federal Court in **Ichi-Ban Plastic** reaffirmed that where precise measurement is no longer possible, estimation may be employed provided it is reasonable and fair, depending on the quality of the evidence available. Nothing in that reasoning is inconsistent with the evidential approach articulated in **AWP Enterprise**. In my judgment, the two decisions operate on different planes. That is because **Ichi-Ban Plastic** addresses the permissibility of estimation as a practical necessity where precise measurement of electricity consumption is no longer possible, whereas **AWP Enterprise** concerns the evidential burden borne by the consumer in seeking to displace or rebut the calculation relied upon by the licensee.

(iii) Deficiencies in the Plaintiff's Methodology

[165] Applying the foregoing principles to the evidence adduced in this case, the Court identifies four material deficiencies in the methodology adopted by the Plaintiff:

- (a) Absence of evidence of tampering prior to 31.7.2019 - No allegation or report of tampering exists before this date, and PW4 confirmed that prior usage data showed no irregularities.
- (b) Post-inspection meter replacement - the Plaintiff replaced the meter immediately after obtaining the nine-day average (22.10.2020–31.10.2020), undermining the reliability of that data.
- (c) Failure to reflect historical usage patterns - The nine-day average does not reflect actual usage patterns, which fluctuated due to production

cycles. PW4 admitted the assumption of consistently high monthly usage is inconsistent with historical consumption.

- (d) Selection based on revenue yield rather than compensatory accuracy - PW4 admitted the nine-day average was chosen to generate higher “yields” for the Plaintiff. If the default three-month method had been applied, losses would still have been recovered, albeit at a lower quantum.

[166] Taken together, I find that these deficiencies demonstrate that the nine-day averaging method does not provide a reasonable and fair estimate of the alleged loss of revenue. The method disregards historical consumption, fails to account for contextual factors including reduced production during the COVID-19 pandemic, and prioritises financial yield over accuracy. While estimation may be employed where precise measurement is impossible, it must remain reasonable and fair. Taking the matter in the round, I am driven to conclude that the Plaintiff’s methodology falls short of the standard of a reasonable and fair estimate and therefore fails to establish the quantum claimed on a balance of probabilities.

(iv) Defendant’s Rebuttal Evidence Explaining the Consumption Pattern

[167] Those deficiencies are not the end of the matter. It is also necessary to consider whether the Defendant has adduced credible rebuttal evidence explaining the consumption pattern observed at the Premises.

[168] To that end, the Defendant adduced documentary and operational evidence addressing the Premises’ electricity usage during the relevant period. The Defendant relied on operational records, including the Plaintiff’s billing, electricity consumption data, raw material usage, and machine operating time (2018–2020), together with a Ministry of International Trade and Industry letter dated 15.4.2020. These documents, corroborated by DW2 (the Defendant’s director for 40 years) and DW4 (the chartered accountant practising with BW & Associates), showed that lower electricity consumption in 2020 corresponded with reduced production arising from COVID-19 restrictions.

[169] Significantly, I observe that this body of evidence was neither meaningfully challenged nor discredited during cross-examination. In that regard, the more-than-century-old rule in *Browne v. Dunn* [1893] 6 R 67 long

recognised and applied by Malaysian courts, bears directly on the present issue (see: *Aik Ming (M) Sdn Bhd & Ors v. Chan Ching Chuen & Ors & Another Case* [1995] 2 MLJ 770 ; [1995] 3 CLJ 639; and *Sivalingam Periasamy v. Periasamy & Anor* [1996] 4 CLJ 545 ; [1995] 3 MLJ 395). Failure to challenge material aspects of a witness's evidence in cross-examination may, depending on the circumstances, amount to an acceptance of that evidence unless there is other compelling evidence to the contrary. (see: *China Road & Bridge Corporation & Anor v. DCX Technologies Sdn Bhd* [2014] 7 CLJ 644 ; [2014] 5 MLJ 1).

[170] Here, the Defendant's rebuttal material included an overview of the Plaintiff's billing records, electricity consumption data, raw material usage, machine operating time, and contemporaneous operational records produced at trial. In the absence of any meaningful challenge to this evidence, I accept that the Defendant has placed before me credible documentary material explaining the reduced electricity consumption during the relevant period.

(v) Expert Regression Analysis of Electricity Consumption and Production Output

[171] Beyond the documentary and operational records referred to above, the record before me shows that the Defendant also relied on expert analytical evidence addressing the relationship between electricity consumption and production activity at the Premises.

[172] For that purpose, the Defendant relied on a regression analysis conducted by DW1, examining the relationship between electricity consumption at the Premises and production activity, based on the Defendant's operational records. From my observation, the analysis demonstrated that variations in electricity usage correlated with changes in production output and did not support the Plaintiff's assumption of a consistent deficit in electricity registration. It further reflected that consumption reductions during 2020 coincided with reduced manufacturing activity due to COVID-19 restrictions, a factor disregarded in the Plaintiff's calculation.

[173] I now turn to the regression study conducted by DW1 in greater detail. The study sought to determine whether the reduction in electricity consumption between 31.7.2019 and 22.10.2020 resulted from reduced production activity or from the alleged under- registration by the meter. It was carried out using the

Defendant's operational records referred to above. Two studies were performed based on those records:

- (a) Study 1: January 2016 - December 2022 (including the alleged tampering period).
- (b) Study 2: January 2016 - July 2019 (excluding the alleged tampering period to remove potential bias).

[174] Suffice it to state that both studies indicated that the observed reduction in consumption corresponded with reduced production rather than meter under-registration. In particular, the analysis did not support the Plaintiff's claim of a consistent 33% shortfall. The regression study relied solely on operational records and supporting documents produced at trial, all of which were placed before me and were also not meaningfully challenged or discredited during the trial. The principle in **Browne v. Dunn** therefore applies with equal force.

[175] Proceeding on that basis, I accept that the regression analysis provides a structured and empirically supported explanation of the Premises' consumption pattern. This analysis further reinforces my earlier finding that the Plaintiff's nine-day averaging method does not provide a reasonable and fair estimate of the alleged loss of revenue.

[176] By way of comparison, I note that the High Court in *Tenaga Nasional Bhd v. Everthrough Rubber Products Sdn Bhd* [2025] 9 CLJ 133 ; [\[2025\] MLJU 1568](#) rejected the expert evidence due to contradictions and doubts concerning the reliability of the underlying data. Similarly, in *Tenaga Nasional Berhad v. Ice Man Sdn Bhd* [2025] CLJU 739 ; [\[2025\] MLJU 895](#), the High Court rejected the expert evidence after finding that the witness was not an expert in meter tampering or the Plaintiff's meter installation, and that his opinion was not grounded in independent documents or research but was based primarily on photographs, exhibits tendered in court, and the Plaintiff's trial evidence.

[177] The present case stands in marked contrast. DW1 holds a Bachelor of Electrical and Electronics Engineering from the University of Melbourne and is a registered Energy Manager certified by the Energy Commission. Since 2025, he has held the designation of Registered Energy Manager (Type 2), permitting work relating to both electrical and thermal energy systems. His opinion, free from

any inherent inconsistency or contradiction, was grounded in contemporaneous documents, including electricity bills, production records, and financial data, none of which were meaningfully challenged. Viewed in that light, I find that his analysis was grounded in objective data and consistent with the operational reality at the Premises, thereby enhancing its reliability.

(vi) Assessment of Plaintiff's Methodology and Damages

[178] Drawing the foregoing strands together, I am unable to accept the Plaintiff's submission that the Defendant merely raised bare denials to the Plaintiff's computation. The Defendant in fact adduced documentary, operational, and expert evidence addressing the alleged reduction in electricity consumption, all of which I have considered.

[179] Against that evidential background, I find that the nine-day averaging method does not provide a reasonable and fair basis for the quantum claimed. The method departs from the Premises' historical consumption pattern, fails to account for fluctuations in production, including the effects of the COVID-19 restrictions, and was selected for its higher recovery yield rather than its accuracy. For those reasons, it cannot be regarded as a reasonable and fair measure of the alleged loss of revenue.

[180] More fundamentally, the Plaintiff has also failed to establish on a balance of probabilities the foundational facts necessary to support any compensatory assessment, namely meter tampering and a causal link between the alleged condition of the installation and any under-recording of electricity consumption.

[181] I am mindful of the observation in **Evergrowth Aquaculture** that where meter tampering is proved but the loss-of-revenue calculation contains errors, damages may still be assessed (see also: *Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd* [2015] 2 CLJ 453 ; [\[2015\] MLJU 33](#); and *Melawangi Sdn Bhd v. Tiow Weng Theong* [\[2020\] 3 MLJ 677](#) ; [2020] 4 CLJ 1). That principle, however, presupposes that the underlying liability has first been established. It does not assist the Plaintiff here. In my judgment, the difficulty lies not merely in the quantification of the alleged loss, but in the Plaintiff's failure to prove the foundational facts upon which any assessment of damages could properly rest.

Summing-up

[182] On the balance of probabilities, I am satisfied that the Plaintiff's method of calculation was not a reasonable and fair basis for estimating the quantum claimed.

[183] I therefore answer the Fifth Issue in the negative.

SIXTH ISSUE: WHETHER THE PLAINTIFF MAY RECOVER THE CLAIMED LOSS OF REVENUE ON THE BASIS OF UNJUST ENRICHMENT *Opposing Contention in Brief*

[184] Learned counsel for the Plaintiff submitted that the Defendant, as the registered consumer and occupier of the Premises, had sole access to and control over the electricity installation and was the party who derived the benefit from the electricity supplied at the Premises. She proceeded on the basis that, having enjoyed the benefit of electricity consumption at the Premises, the Defendant could not avoid responsibility for the loss of revenue claimed by the Plaintiff.

[185] Learned counsel for the Defendant, however, submitted that no such claim was pleaded in the Statement of Claim, and that the Plaintiff cannot advance a claim founded on unjust enrichment at the submission stage. In support, he relied on the Federal Court decision in **Ichi-Ban Plastic**, where it was established that a claim premised on unjust enrichment must be specifically pleaded before the Court may adjudicate upon it.

Analysis

[186] Having considered the opposing contentions, I am persuaded by the submissions advanced by learned counsel for the Defendant.

[187] My reasons are these.

[188] Upon perusal of the pleadings, I find that the Plaintiff's claim was framed entirely as a statutory claim for loss of revenue arising from the alleged meter tampering, and no alternative plea of unjust enrichment was pleaded in the Statement of Claim.

[189] The Federal Court in **Ichi-Ban Plastic** stated:

"[95] In another part of the judgment in Dream Property Sdn Bhd v Atlas Housing Sdn Bhd, this court discussed the requirements that must be fulfilled to make out a cause of action in unjust enrichment as follows:

The principle underlying the cases of Banque Financiere de la Cite v Parc (Battersea) Ltd and Sempra Metals Ltd (formerly Metallgesellschaft Ltd) v IRC is that, in the context of the present case, a cause of action in unjust enrichment can give rise to a right to restitution where it can be established that:

- *(a) the plaintiff must have been enriched;*
- *(b) the enrichment must be gained at the defendant's expense;*
- *(c) that the retention of the benefit by the plaintiff was unjust; and*
- *(d) there must be no defence available to extinguish or reduce the plaintiff's liability to make restitution.*

*[96] Coming back to the present appeals, as an alternative or in addition to the statutory cause of action under [s 38\(3\)](#) of the Act for recovery of loss of revenue, TNB is similarly entitled to legally pursue the claim based on a cause of action in unjust enrichment. **If TNB elects to pursue relief for unjust enrichment then, as is a matter of settled law, there must be a proper and specific plea in the statement of claim that this cause of action is so founded. Further, material particulars that give rise to unjust enrichment must be provided in the pleadings.** (Emphasis added)*

[190] The Federal Court in *Samuel Naik Siang Ting v. Public Bank Bhd* [\[2015\] 6 MLJ 1](#) ; [2015] 8 CLJ 944 establishes that “... it is a cardinal rule in civil litigation that parties are bound by their pleadings and are not allowed to adduce facts and issues which they have not pleaded.”

[191] In this light, I am unable to accept the Plaintiff's reliance on unjust enrichment as a basis for recovery, as this would introduce an unpleaded cause of action at the submission stage. The belated assertion cannot be sustained, being contrary to the well- established principles that confine parties to the four corners of their pleaded case, a conclusion which I am satisfied to reach.

[192] That position reflects the fundamental purpose of pleadings, namely to ensure fairness and avoid surprise. As HRH Raja Azlan Shah CJ (as His Royal Highness then was) observed in *KEP Mohamed Ali v. KEP Mohamed Ismail* [\[1981\] 2 MLJ 10](#) ; [1980] CLJU 169:

“As one of the objects of modern pleadings is to prevent surprise, we cannot for one moment think that the Defendant was taken by surprise. To condemn a party on a ground of which no material facts have been pleaded may be a great denial of justice as to condemn him on a ground on which his evidence has been improperly excluded.”

[193] For these reasons, I decline to entertain the Plaintiff’s attempt to advance an unpleaded claim founded on unjust enrichment beyond what is properly disclosed in the pleadings. The Plaintiff cannot rely on bare or unparticularised assertions raised at the submission stage as a basis to construct a substantive cause of action not pleaded in the Statement of Claim.

[194] Be that as it may, and lest I have fallen into error in my conclusion on the pleading point, I proceed to consider the unjust enrichment argument in the alternative.

[195] Even assuming that such a claim had been properly pleaded, I find that the evidential difficulties identified earlier in relation to the alleged meter tampering would equally undermine any contention that the Defendant had obtained a benefit through the alleged interference with the meter installation.

[196] As addressed in the earlier segments of this judgment, the Plaintiff’s case is affected by significant evidential shortcomings, including the anomalies identified earlier, the inconsistencies surrounding the inspection photographs, the unexplained contrast between the condition of the wiring before and after the removal of the terminal cover, and the absence of any objective examination of the impugned meter. Taken together, these matters leave me unable to be satisfied that the meter installation had in fact been tampered with.

[197] In those circumstances, I am likewise unable to conclude that the Defendant obtained any benefit arising from the alleged interference with the meter installation. Absent proof of tampering and any corresponding benefit derived from it, the factual foundation for a claim in unjust enrichment is simply not made out.

Summing-up

[198] On the balance of probabilities, I am satisfied that the Plaintiff is not entitled to recover the claimed loss of revenue on the basis of unjust enrichment.

[199] I therefore answer the Sixth Issue in the negative.

SYNTHESIS OF FINDINGS

[200] Drawing the foregoing analysis together, I summarise the principal findings as follows:

- (i)the Plaintiff has failed to prove that the meter installation at the Defendant's premises had been tampered with;
- (ii)the Plaintiff has failed to prove that the alleged condition of the S1 wire caused the meter to under-register electricity consumption;
- (iii)the procedural deficiencies identified during the inspection process materially undermine the reliability of the inspection findings relied upon by the Plaintiff;
- (iv)While the Guideline serves an important regulatory and technical function, it does not possess the force of law and does not determine the Court's assessment of civil liability under the ESA. Any non-compliance may affect the evidential weight of the Plaintiff's case, but does not, without more, invalidate a civil claim under the ESA;
- (v)the Plaintiff's method of calculation was not a reasonable and fair basis for estimating the quantum claimed; and
- (vi)the Plaintiff is not entitled to recover the claimed loss of revenue on the basis of unjust enrichment.

[201] In that analytical context, it bears recalling that while the court may draw inferences from proven facts, the circumstances relied upon must give rise to a reasonable and definite inference, and must do more than merely present competing possibilities of equal probability. In *Woo Yew Chee v. Yong Yong Hoo* [1978] 1 LNS 240 ; [\[1979\] 1 MLJ 131](#), Raja Azlan Shah Acting CJ Malaya (as His Majesty then was) observed:

"In a civil case one needs only circumstances raising a more probable inference in favour of what is alleged. An inference from an actual fact that is proved is just as much part of the evidence as the fact itself. Where direct proof is not available it is enough if the circumstances appearing in evidence give rise to a reasonable and definite inference; they must do more than give rise to conflicting inferences

of equal degree of probability so that the choice between them is a mere matter of conjecture (see Richard Evans & Co. Ltd. v. Astley [\[1911\] AC 674](#), 687). By more probable is meant no more than that upon a balance of probabilities such an inference might reasonably be considered to have some greater degree of likelihood.... It is to be noted that once the right principle has been applied the appellate court has said over and over again that this type of case becomes a matter of fact for the learned trial judge.”

[202] In other words, the inference must arise as the more probable conclusion from the proven facts. Where the same circumstances are capable of supporting two competing inferences of equal probability, the court cannot prefer one over the other as doing so would amount to conjecture rather than proof. In *Formis Resources Bhd & Ors v. Risk Management and Safety System Pty Ltd & Ors And Other Appeals* [\[2016\] 6 MLJ 73](#) ; [2016] 9 CLJ 169, the Court of Appeal held as follows:

“[52] ... These events and matters are capable of more than one inference. Where that is the case, the sinister inference cannot be preferred without more even where the burden is one on a balance of probabilities. The Court of Appeal had expressed to this effect in Heller Factoring (M) Sdn Bhd (Formerly Known As Matang Factoring Sdn Bhd) v. Metalco Industries (M) Sdn Bhd [1995] 3 CLJ 9 ; [\[1995\] 2 MLJ 153](#), 177:

It is well established that when two inferences are equally open from the same set of facts, the sinister inference is not preferred.”

[203] Applying these principles to the present case, I find that the evidence relied upon by the Plaintiff does not lead to a single compelling inference. At its highest, the circumstances relied upon by the Plaintiff are capable of giving rise to two possible explanations, namely: (i) the inference of tampering advanced by the Plaintiff; and (ii) the alternative explanation advanced by the Defendant arising from the same evidential circumstances.

[204] Having considered the evidence as a whole, I find that the Plaintiff’s explanation does not represent the more probable inference on the evidence. The unexplained change in the S1 wire’s position, the chronology showing that accuracy testing preceded the alleged discovery of tampering, and the absence

of objective verification of the meter leave the evidence capable of supporting competing inferences of equal probability.

[205] Given the circumstances, I decline to prefer the inference of tampering merely because it is alleged. As reflected in the authorities cited above, where the same facts are equally consistent with two competing inferences, the court cannot prefer one over the other without engaging in speculation. Taken in the round, the Plaintiff's inference of tampering therefore does not emerge as the more probable explanation on the evidence.

[206] For completeness, I have considered the Plaintiff's reliance on the inspection findings, the contemporaneous documents, the certified statement under [s. 38\(4\)](#) of the [ESA](#), and the authorities cited in support of its claim. However, when evaluated together with the oral testimony, documentary materials, photographs and expert evidence adduced at trial, and viewed against the evidential difficulties identified earlier in this judgment, those matters do not overcome the deficiencies affecting the proof of tampering, causation, and the quantum claimed. I therefore find that the evidential difficulties form a consistent pattern which undermines the reliability of the Plaintiff's case as a whole, and I am unable to conclude that the Plaintiff has discharged its burden of proof on a balance of probabilities.

CONCLUSION

[207] For the reasons set out above, I find that the Plaintiff has failed to establish its claim against the Defendant on a balance of probabilities.

[208] I therefore dismiss the Plaintiff's claim with costs.

[209] And I fix the costs at RM20,000.00.