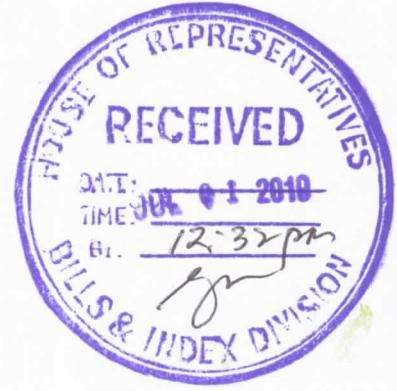


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

EIGHTEENTH CONGRESS

First Regular Session



HOUSE BILL NO. 0346

INTRODUCED BY REPRESENTATIVE XAVIER JESUS D. ROMUALDO

EXPLANATORY NOTE

The Public Service Act was passed in 1936 to govern public services and with the fast-changing pace of the economies of the world, there is already an urgent need to update the provisions of this law to avoid confusion between public utility and public service and its scope.

The intent of this bill is to provide a clear definition of "Public Utility" that will include three (3) vital sectors: 1.) Distribution of Electricity System as defined by Section 4(n) Republic Act No. 9136; 2.) Transmission of Electricity System as defined by Section 4 (ccc) of R.A. No. 9136; and 3.) Water Pipeline Distribution System or Sewerage Pipeline System as defined by Republic Act No.6234, as amended, and Presidential Decree No. 198, as amended.

The National Economic and Development Authority (NEDA) Secretariat in consultation with the Philippine Competition Commission (PCC) shall continue as the recommending expert on the classification of a person, business or service as a public utility. Existing administrative agencies will continue to be governed by their respective charters consistent with existing statutes.

This bill during the 17th Congress was approved on Third Reading by the House of Representatives on September 8, 2017 and was transmitted to the Senate on September 11, 2017 for its appropriate action.

The support of the Members of Congress for the immediate approval of this measure is earnestly sought.

A handwritten signature in black ink, appearing to read "X-J-RM".

XAVIER JESUS D. ROMUALDO

Republic of the Philippines
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EIGHTEENTH CONGRESS

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0346
HOUSE BILL NO.

INTRODUCED BY REPRESENTATIVE XAVIER JESUS D. ROMUALDO

**AN ACT PROVIDING FOR THE DEFINITION OF PUBLIC UTILITY, FURTHER AMENDING
FOR THE PURPOSE COMMONWEALTH ACT NO. 146, OTHERWISE KNOWN AS THE
“PUBLIC SERVICE ACT”, AS AMENDED**

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

1

2 SECTION 1. *Public Utility.* – Section 13 of Commonwealth Act No. 146, as amended, is hereby
3 further amended, is hereby further amended to read as follows:

4 “Section 13. x xx;

5 “(b) The term ‘public service’ includes every person that now or hereafter may own,
6 operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele,
7 whether permanent, occasional or accidental, and done for general business purpose, x xx canal, **PUBLIC**
8 **MARKET**, irrigation system x xx.

9 “x xx

10 “**(D) (1) PUBLIC UTILITY DEFINITION.** – ‘PUBLIC UTILITY’ REFERS TO A
11 PERSON THAT OPERATES, MANAGES AND CONTROLS FOR PUBLIC USE ANY OF THE
12 FOLLOWING:

13 “**(I) DISTRIBUTION OF ELECTRICITY (AS DEFINED BY SECTION 4(N)**
14 **OF REPUBLIC ACT NO. 9136) OTHERWISE KNOWN AS THE ‘ELECTRIC POWER**
15 **INDUSTRY ACT OF 2001’) SYSTEM;**

16 “**(II) TRANSMISSION OF ELECTRICITY (AS DEFINED BY SECTION**
17 **4(CCC) OF REPUBLIC ACT NO. 9136) SYSTEM; AND**

18 “**(III) WATER PIPELINE DISTRIBUTION SYSTEM OR SEWERAGE**
19 **PIPELINE SYSTEM (AS DEFINED BY REPUBLIC ACT NO. 6234, ENTITLED ‘AN ACT**
20 **CREATING THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM AND**
21 **DISSOLVING THE NATIONAL WATERWORKS AND SEWERAGE AUTHORITY; AND FOR**

1 OTHER PURPOSES', AS AMENDED, AND PRESIDENTIAL DECREE NO. 198, KNOWN AND
2 REFERRED TO AS THE 'PROVINCIAL WATER UTILITIES ACT OF 1973', AS AMENDED).

3

4 "(2) AMENDMENT OF PUBLIC UTILITY DEFINITION. – NO OTHER
5 PERSON SHALL BE DEEMED A PUBLIC UTILITY UNDER SECTION 14(D)(1) UNLESS
6 OTHERWISE SUBSEQUENTLY PROVIDED BY LAW.

7 "THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY (NEDA)
8 SECRETARIAT, IN CONSULTATION WITH THE PHILIPPINE COMPETITION
9 COMMISSION (PCC), SHALL RECOMMEND TO CONGRESS THE CLASSIFICATION OF A
10 PUBLIC SERVICE AS A PUBLIC UTILITY ON THE BASIS OF THE FOLLOWING
11 CRITERIA:

12 "(1) THE PERSON REGULARLY SUPPLIES AND DIRECTLY TRANSMITS
13 AND DISTRIBUTES TO THE PUBLIC THROUGH A NETWORK A COMMODITY OR
14 SERVICE OF PUBLIC CONSEQUENCE;

15 "(II) THE COMMODITY OR SERVICE IS NECESSARY TO THE PUBLIC AND
16 A NATURAL MONOPOLY THAT NEEDS TO BE REGULATED WHEN THE COMMON
17 GOOD SO REQUIRES;

18 "(III) THE COMMODITY OR SERVICE IS NECESSARY TO FOR THE
19 MAINTENANCE OF LIFE AND OCCUPATION OF RESIDENTS;

20 AND

21 "(IV) THE COMMODITY OR SERVICE IS OBLIGATED TO PROVIDE ADEQUATE
22 SERVICE TO THE PUBLIC ON DEMAND."

23

24 SEC. 2. *Certificate of Authority*. – Section 15 of Commonwealth Act No. 146, as amended, is
25 hereby further amended to read as follows:

26 "Section 15. With the exception of those enumerated in the preceding section, no public
27 service shall operate in the Philippines without possessing a valid and subsisting **FRANCHISE**,
28 **certificate, OR ANY OTHER APPROPRIATE FORM OF AUTHORIZATION FOR THE**
29 **OPERATION OF PUBLIC A PUBLIC SERVICE** [from the Public Service Commission known as
30 'certificate of public convenience', or 'certificate of public convenience and necessity',] as the case may

1 be, to the effect that the operation of said service and the authorization to do business will promote the
2 public interests in a proper and suitable manner.

3 “**The [Commission] ADMINISTRATIVE AGENCY** may prescribe as a condition for the
4 issuance of the certificate provided in the preceding paragraph that the service can be acquired by the
5 Republic of the Philippines or any instrumentality thereof upon payment of the cost price of its
6 **CAPITAL STOCK, OR** useful equipment, less reasonable depreciation; and likewise, that the certificate
7 shall be valid only for a definite period of time; and that the violation of any of these conditions shall
8 produce the immediate cancellation of the certificate without the necessity of any express action on the
9 part of the [Commission] **ADMINISTRATIVE AGENCY**.

10 “x xx.”

11 Sec. 3. *Proceedings Upon Notice and Hearing.* – Section 16 of Commonwealth Act No. 146, as
12 amended to read as follows:

13 “Section 16. Proceedings of the [Commission] **ADMINISTRATIVE AGENCY**, shall have
14 power, upon proper notice and hearing in accordance with the rules and provisions of the Act, subject to
15 the limitations and exceptions mentioned and saving provisions to the contrary:

16 “(a) To issue certificates [which shall be known as certificates of public convenience,]
17 authorizing the operation of public service within the Philippines whenever the [Commission]
18 **ADMINISTRATIVE AGENCY** finds that the operation of the public service proposed and
19 theauthorization to do business will promote the public interest in a proper and suitable manner.
20 [Provided, That thereafter, certificates of public convenience and certificates of public convenience and
21 necessity will be granted only to citizens of the Philippines or of the United States or to corporations, co-
22 partnerships, associations or joint-stock companies constituted and organized under the laws of the
23 Philippines; Provided, That sixty per centum of the stock or paid-up capital of any such corporations, co-
24 partnership, association or joint-stock company must belong entirely to citizens of the Philippines or of
25 the United States: Provided, further, That no such certificates shall be issued for a period of more than
26 fifty years.]

27 “x xx

28 “(c) To fix and determine **MAXIMUM** individual or joint rates, tolls, charges, classifications,
29 REVENUES, or schedules thereof, as well as commutation, mileage, kilometrage, and other special rates
30 which shall be imposed, observed, and followed thereafter by any public service **WHEN THE PUBLIC**
31 **INTEREST SO REQUIRES:** *Provided,* That the [Commission] **ADMINISTRATIVE AGENCY** may,

1 in its discretion, approve rates proposed by public services provisionally and without necessity of any
2 hearing; but it shall call a hearing thereon within thirty days, thereafter, upon publication and notice to the
3 concerns operating in the territory affected: *Provided, further,* That in case the public service equipment of
4 an operator is used principally or secondarily for the promotion of a private business, the net profits of
5 said private business shall be considered in relation with the public service of such operator for the
6 purpose of fixing the rates.

7 **"IN THE PUBLIC INTEREST, THE ADMINISTRATIVE AGENCY MAY ESTABLISH**
8 **AND ENFORCE A METHODOLOGY FOR SETTING RATES, TAKING INTO ACCOUNT ALL**
9 **RELEVANT CONSIDERATIONS, INCLUDING THE EFFICIENCY OF THE REGULATED**
10 **PUBLIC SERVICE. THE RATES MUST BE SUCH AS TO ALLOW THE RECOVERY OF JUST**
11 **AND REASONABLE COSTS AND A REASONABLE RATE OF RETURN TO ENABLE THE**
12 **PUBLIC SERVICE TO OPERATE VIABLY. THE ADMINISTRATIVE AGENCY MAY ADOPT**
13 **ALTERNATIVE FORMS OF INTERNATIONALLY ACCEPTED RATE-SETTING**
14 **METHODOLOGY AS IT MAY DEEM APPROPRIATE AND WILL PROMOTE EFFICIENCY.**
15 **THE RATE-SETTING METHODOLOGY SO ADOPTED AND APPLIED MUST ENSURE A**
16 **REASONABLE PRICE OF THE COMMODITY OR SERVICE. THE RATES PRESCRIBED**
17 **SHALL BE NONDISCRIMINATORY.**

18 **"THIS PROVISION SHALL NOT BE INTERPRETED AS MANDATING RATE**
19 **REGULATION AND AMENDING OR REPEALING (1) LAWS PROVIDING A**
20 **DEREGULATION POLICY, SUCH AS REPUBLIC ACT NOS. 7925, 8479, 9136, AND 9295 AND**
21 **(2) REGULATIONS PROMULGATED BY THESE ADMINISTRATIVE AGENCIES TO**
22 **DEREGULATE RATES.**

23 **"THE PCC IS HEREBY MANDATED TO CONDUCT REGULAR STUDIES ON**
24 **WHETHER DEREGULATION IS WARRANTED IN A SECTOR AND SUBMIT ITS**
25 **RECOMMENDATION TO CONGRESS.**

26 "xx."

27 SEC. 4. *Proceedings Without Hearing.* - Section 17 of Commonwealth Act No. 146, as amended, is
28 herby further amended to read as follows:

29 "Section 17. Proceedings of [Commission] **ADMINISTRATIVE AGENCY** without previous
30 hearing. – The [Commission] **ADMINISTRATIVE AGENCY** shall have the power without previous
31 hearing, subject to established limitations and exception and saving provisions to the contrary:

1 “x xx

2 “(b) To require any public service to pay the actual expenses incurred by the [Commission]

3 **ADMINISTRATIVE AGENCY.**

4 The [Commission] **ADMINISTRATIVE AGENCY** may also assess against any public service
5 **REASONABLE** costs [not to exceed twenty-five pesos] with reference to such investigation.

6 “x xx.”

7 SEC. 5. *Acts Requiring Approval.* – Section 20 of Commonwealth Act no. 146, as amended, is
8 hereby further amended as follows:

9 “Section 20. Acts requiring the approval of the [Commission] **ADMINISTRATIVE AGENCY.**

10 – Subject to established limitations and exceptions and saving provisions to the contrary, it shall be
11 unlawful for any public service or for the owner, lessee or operator thereof, without the approval and
12 authorization of the [Commission] **ADMINISTRATIVE AGENCY** previously had –

13 “x xx

14 “(i) To sell, alienate or in any manner transfer shares of its capital stock to any alien if the result
15 of that sale, alienation, or transfer in itself or in connection with another previous sale shall be the
16 reduction to less than sixty *per centum* of the capital stock belonging to Philippine citizens **IN THE**
17 **OPERATION, MANAGEMENT AND CONTROL OF A PUBLIC UTILITY AS REQUIRED BY**
18 **THE CONSTITUTION.** Such sale, alienation or transfer shall be void and of no effect and shall be
19 sufficient cause for ordering the cancellation of the certificate.

20 “x xx.”

21 Sec. 6. *Penalties for Violations.* – Section 21 of Commonwealth Act No. 146, as amended, is hereby
22 further amended to read as follows:

23 “Section 21. Every public service violating or failing to comply with the terms and conditions of
24 any order[s], decision[s] or regulation [s] of the [Commission] **ADMINISTRATIVE AGENCY** shall be
25 subject to **DISGORGEMENT OF PROFITS, TREBLE DAMAGES**, a fine [of not exceeding two
26 hundred pesos] **OF UP TO FIVE MILLION PESOS** per day for every day during which such default or
27 violation continues[;], [Commission] **ADMINISTRATIVE AGENCY** is hereby authorized and
28 empowered to impose such fine, after due notice and hearing. **THE MAXIMUM DAILY FINE OF**
29 **FIVE MILLION PESOS SHALL BE INCREASED EVERY FIVE (5) YEARS UPON**
30 **CERTIFICATION BY THE NEDA ON THE COMPUTATION OF THE COST OF MONEY**

1 **BASED ON THE CUMULATIVE THREE HUNDRED SIXTY (360) – DAY TREASURY BILL**
2 **RATE.**

3 “**The PENALTIES AND** fines so imposed shall be paid to the Government of the Philippines
4 through the [Commission] **ADMINISTRATIVE AGENCY**, and failure to pay the **PENALTY OR**
5 fine in any case within the same specified in the order or decision of the [Commission]
6 **ADMINISTRATIVE AGENCY** shall be deemed good and sufficient reason for the suspension of the
7 certificate of said public service until payment [shall be] IS made. Payment may also be enforced by
8 appropriate action brought in a court of competent jurisdiction. The remedy provided in this section shall
9 not be a bar to, or affect any other remedy provided in this act shall be cumulative and additional to such
10 remedy or. Remedies.”

11 SEC. 7. *Administrative Cost Recovery Mechanism.* – Section 40 of Commonwealth act no. 146,
12 as amended, is hereby further amended to read as follows:

13 “Section 40. The [Commission] **ADMINISTRATIVE AGENCY** is authorized and ordered to
14 charge and collect from any public service or applicant, as the case may be, [the following]
15 **REASONABLE** fees as reimbursement of its expenses in the authorization, supervision and/or regulation
16 of public service[:], **AND TO IMPOSED APPROPRIATE PENALTIES AND FINE AS PROVIDED**
17 **BY LAW.”**

18 [(a) x xx

19 x xx

20 (i)x xx

21 This section shall not be applicable to the Republic of the Philippines, nor to its instrumentalities.

22 Aside from the appropriations for the Commission under the annual General Appropriations Act,
23 any unexpended balance of the fees collected by the Commission under this section shall be constituted
24 receipts automatically appropriated each year, and together with any surplus in the standardizing meter
25 laboratory revolving fund under Commonwealth Act Numbered Three hundred forty-nine, shall be
26 disbursed by the Public service Commissioner in accordance with special budgets to be approved by the
27 Department of Justice, the Budget Commission and the Office of President of the Philippines for
28 additional needed personal services, maintenance and operating expenses, acquisition of urgently needed
29 vehicles, furniture and equipment, maintenance of an adequate reference library, acquisition of a lot and
30 building for the Commission, and other expenses necessary for efficient administration and effective

1 supervision and regulation of public services. (as amended by Com. Act No. 454 and R.A No. 3792,
2 approved June 22, 1963.)]

3 SEC. 8. *Recognition of Administrative Agencies.* – all references to the Public Service
4 Commission in Commonwealth act no. 146, as amended, shall mean any administrative agency to which
5 the powers and duties of the Public Service Commission were transferred in accordance with their
6 respective charters and related statutes.

7 SEC. 9. *Interpretation.* – This Act shall be subject to the regulatory powers of the State to
8 promote public interest in Article IX-C, section 4 and Article XII, Section 17 of the Constitution. A
9 person classified as a public utility prior to the effectivity of this Act and declassified as such under this
10 Act shall be considered a public service and a business effected with public interest for the purpose of
11 article XII, section 17 of the Constitution. Such person shall continue to be subject to regulation by
12 relevant administrative agencies under existing laws.

13 No franchise, certificate, or authorization granted by the appropriate administrative agencies shall
14 be (1) exclusive in character, (2) for a longer period than fifty years, and (3) granted except under the
15 condition that is shall be subject to amendment, alteration, or repeal by Congress when the common good
16 so requires.

17 SEC. 10. *General Law.* – Commonwealth Act No. 146, as amended, shall be construed as a
18 general law that shall apply suppletorily to special law or existing sector-specific laws governing public
19 services, except for Section 13(d) of Commonwealth Act No. 146, as amended, as further amended by
20 Section 1 of this Act.

21 SEC. 11. *Comprehensive Baseline Survey.* – The PCC shall commission the University of the
22 Philippines Law Center (UPLC) or such other institutions to conduct a comprehensive baseline survey of
23 the regulatory governance and regulatory substance of public services within six (6) months from the
24 effectivity of this Act.

25 SEC. 12. *Performance Audit,* - administrative agencies must ensure the annual conduct of
26 performance audit by an independent evaluation team to ensure cost-norms and the quality of services
27 provided to the public and the ability of manpower and system resources of the public service provider to
28 immediately respond to emergency cases. Metrics for various types of services must be established to
29 sustain reliability, security, and safety, of the public.

1 Sec. 13. *Rules and Regulations.* – Administrative agencies under Section 8 of this act shall, in

2 coordination with the UPLC, promulgate rules and regulations to implement the provisions of this Act

3 within ninety (90) days from the effectivity of this Act.

4 SEC. 14. *Separability Clause.* – If any provision of this Act is declared unconstitutional, the

5 remainder of this Act or any provision not affected thereby shall remain in force and effect.

6 Sec. 15. *Repealing Clause.* – All laws, decrees, orders rules and regulations or other issuances as

7 part thereof, including Commonwealth Act no. 146 or the Public service Act, as amended, inconsistent

8 with the provisions of this Act are hereby repealed or modified accordingly.

9 SEC 16. *Effectivity,* - This Act shall take effect after fifteen (15) days after its publication in the

10 *Official Gazette* or in a national newspaper of general circulation.

11 Approved.