

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

HOUSE RESOLUTION No. 571



Introduced by
BAYAN MUNA Representatives CARLOS ISAGANI T. ZARATE,
FERDINAND R. GAITE and EUFEMIA C. CULLAMAT

RESOLUTION
DIRECTING THE COMMITTEE ON GOVERNMENT ENTERPRISES AND
PRIVATIZATION TO CONDUCT AN INVESTIGATION, IN AID OF
LEGISLATION, ON THE ALLEGEDLY ONEROUS CONCESSION AGREEMENT
SIGNED BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE
PHILIPPINES AND THE TWO WATER CONCESSIONAIRES, NAMELY MANILA
WATER COMPANY, INC. AND MAYNILAD WATER SERVICES, INC.

WHEREAS, pursuant to RA 6234 or the Metropolitan Waterworks and Sewerage System (MWSS) Charter, MWSS has jurisdiction, supervision and control over all waterworks and sewerage system in the territory comprising the cities of Manila, Pasay, Quezon, Cavite and Caloocan, and the municipalities of Antipolo, Cainta, Las Piñas, Makati, Malabon, Mandaluyong, Marikina, Montalban, Navotas, Parañaque, Pasig, Pateros, San Juan, San Mateo, Taguig, Taytay, all of Rizal Province, the municipalities of Bacoor, Imus Kawit, Noveleta, Rosario, all of Cavite province and Valenzuela, Bulacan

WHEREAS, according to Section 3 of RA 6234, one of the functions of the MWSS is to fix periodically water rates and sewerage service fees as the it may deem just and equitable in accordance with the standards outlined in Section 12 of the Act. It also has the power and function to approve, regulate, and supervise the establishment, operation and maintenance of waterworks and deepwells within its jurisdiction operated for commercial, industrial and governmental purposes and to fix just and equitable rates or fees that may be charged to customers thereof;

WHEREAS, Section 12 of RA 6234 states that "(t)he rates and fees fixed by the Board of Trustees for the System and by the local governments for the local systems shall be of such magnitude that the System's rate of net return shall not exceed twelve per centum (12%), on a rate base composed of the sum of its assets in operation as revalued from time to time plus two months' operating capital;"

WHEREAS, through RA 8041, known as the National Water Crisis Act of 1995, implemented through EO 289, s. 1995 and EO 311, s. 1996, MWSS entered into concession agreements with Manila Water Company, Inc. and Maynilad Water Services, Inc. to privatize the operation of water facilities and projects related to increasing water supply, treatment and distribution to industrial and household consumers;

WHEREAS, currently, MWSS, through its Regulatory Office (MWSS-RO) is mandated to monitor the concession agreement, enforce rates and service standards, regularly independent

audits of the performance of concessionaires, among others.¹ In the agreement, the MWSS Board of Trustees, upon the recommendation of its Regulatory Office (RO), retains the power to approve any and all proposed rate adjustments;²

WHEREAS, under Section 9.3.4 General Rates Setting Policy/Rate Rebasing Determination, the concession agreement guaranteed the rate of return of the concessionaires despite that the concessionaires are already monopolies in a captive market;

WHEREAS, the concession agreement imposes that the MWSS has the obligation to pay for the legal cost of Maynilad and Manila Water should they challenge any regulatory decision that disapproves their rate increases;

WHEREAS, Article 12.2 of the Concession Agreement³ signed between the MWSS and Manila Water Company, Inc. and Maynilad Water Services, Inc. states that all disagreements, disputes, controversies or claims which cannot be resolved through consultation and negotiation among the parties shall be resolved not by the Philippine justice system but a foreign tribunal, in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITL) except when it conflicts with the provisions of the concession agreement;⁴

WHEREAS, according to MWSS Board Resolution Numbers 2013-100 and 2013-101 dated Sept. 12, 2013, it rejected Maynilad's and Manila Water's petition for an upward adjustment of their basic charge and ordered the concessionaires to lower water rates for the benefit of the consumers. Also, in the resolutions, the Board of Trustees approved and confirm resolutions treating corporate income tax as a non-recoverable expense and discontinuing the charging of CERA, among others;

WHEREAS, on Sept. 2013 and Oct. 2013, Manila Water and Maynilad contested the RO's rejection of their petitioned rate increases for the rate rebasing period of 2013-2018 to the International Chamber of Commerce (ICC). The firms' petitions included corporate income tax recovery and other expenses unrelated to the delivery of water services. The international appeals panel decided in favor of Maynilad, but the other panel favored MWSS over Manila Water;

WHEREAS, in Jul. 24, 2017, the Tribunal ordered the Philippine government to indemnify Maynilad for the P3.425 billion in actual losses it had suffered from Mar. 11, 2015 to Aug. 31, 2016, without prejudice to Maynilad seeking further recourse against (1) MWSS for losses from January 1, 2013 to March 10, 2015, and (2) the Republic for losses from September 1, 2016 onwards.. The Tribunal also stated that it would entertain an additional claim from Maynilad for losses from September 1, 2016 onwards in case the parties are unable to settle that matter between themselves;⁴

WHEREAS, on Sept. 2018, the MWSS Board has approved the RO's rate rebased tariffs for the periods of 2018-2022, which again reportedly disallows the recovery of corporate income tax. The MWSS-RO announced a staggered P5.73 per cu.m. rate increase for Maynilad and P6.22 per cu.m. for Manila Water;

¹ CPBRD Policy Brief No. 2019-01. Addressing Institutional Challenges in Water Resource Management, Addressing Institutional Challenges in Water Resource Management, page 4

² <http://ro.mwss.gov.ph/wp-content/uploads/2013/09/MWSS-Board-Resolution-No.2013-101-RO-Manila-Water.pdf>

³ <http://ro.mwss.gov.ph/wp-content/uploads/2013/02/CA-MWCI.pdf>

⁴ <https://www.syciplaw.com/news/articles/fa/253>

1 **WHEREAS**, the Singapore's PCA finalized an International Chamber of Commerce (ICC)
2 arbitration decision that Maynilad may recover its corporate income tax through pass-on charges.
3 Maynilad demanded that the Philippine government pay Php3.4 billion in indemnification for non-
4 recovery of its CIT for the period March 11, 2015 to August 31, 2016.

5
6 **WHEREAS**, Maynilad is reportedly willing to drop the claims that have now accumulated P19.6
7 billion in foregone revenue due to non-implementation of the decision made by the international
8 tribunal. According to Maynilad chair Manuel V. Pangilinan that the company was amenable to a
9 settlement provided that both parties would agree on a tariff structure;

10
11 **WHEREAS**, on Nov. 29, 2019, Manila Water disclosed to Philippine Stock Exchange that it has
12 received from lawyers a notice of award from Singapore's Permanent Court of Arbitration.
13 According to the concessionaire, "the Tribunal ruled that Manila Water has a right to
14 indemnification for actual losses suffered by it on account of the Republic's breach of its
15 obligation." The Tribunal ordered the Philippine government to pay Manila Water the following:
16 (1) P7.39 billion, which represents the actual losses of Manila Water from Jun. 1, 2015 to November
17 22, 2019 because it refused the concessionaire's demand to increase water rates, (2) 100% of the
18 amounts paid by Manila Water to PCA and (3) 85% of Manila Water's other claimed costs. The
19 Office of the Solicitor General (OSG), on the other hand, confirmed the ruling and studying all
20 remedies available as the award is not yet final and executory;⁵

21
22 **WHEREAS**, it is the consumers who will ultimately pay for the penalties incurred by the
23 government despite that the concession agreement signed by both parties deprived the one to pay
24 the right to judicial remedies against the concessionaires as it declared the customers as "non-
25 parties;"

26
27 **WHEREAS**, the MWSS-RO and the water concessionaires have a long history of irregularities of
28 setting water rates, including but not limited to pass-on charges of corporate income tax, operating
29 expenses, advanced collection for future project and redundant collection of foreign exchange
30 recovery adjustments;

31
32 **WHEREAS**, on April 6, 2017, MWSS approved the concessionaires' application to recover
33 foreign exchange losses by increasing both Maynilad and Manila Water's water rates, through
34 Foreign Currency Differential Adjustment Mechanism (FCDA). Maynilad was granted an increase
35 of P0.13 per cubic meters (cu.m.) while Manila Water was granted an increase of P0.44 cu.m. in
36 their respective water rates;

37
38 **WHEREAS**, in the past, IBON databank reported that passed-on foreign exchange losses by
39 water firms was doubly collected from consumers in the form of FCDA and Current Exchange
40 Rate Adjustment (CERA). FCDA is a rate adjustment made on a quarterly basis, while CERA is
41 at P1 per cubic meter. Both serve with the same purpose which is for Maynilad and Manila Water
42 to recover losses on foreign exchange fluctuations;

43
44 **WHEREAS**, for Maynilad customers, this would mean an increase of P2.60 for those who
45 consume an average of 10 cu.m. or less per month, P9.67 for those who consume 20 cu.m. and
46 P20.09 for those who consume 30 or more cu.m. Manila water customers consuming an average
47 of 10 cu.m. or less per month will have an increase of P1.91, P4.19 for those who consume 20
48 cu.m. and P8.60 for those who consume 30 cu.m. or more;

⁵ <https://www.gmanetwork.com/news/money/companies/717292/int-l-court-orders-gov-t-to-pay-manila-water-p7-4-b/story/>

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2 **WHEREAS**, the Water for the People Network (WPN) revealed that Maynilad and Manila Water
3 included their income tax payments and operating expenses, among others, in the basic charge of
4 their water rates;

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6 **WHEREAS**, WPS reported that the Maynilad and Manila Water had been passing n their P1.3
7 billion income tax payments to consumers annually, for a total P15.3 billion from 2008 to 2012,
8 apart from the corporate income taxes amounting P8.07 billion from 2013-2014, all enjoying a six-
9 year income tax holiday granted by the Board of Investments from 2009-2015;

10
11 **WHEREAS**, based on a research in 2012, the giant water firms collected in advance cost of their
12 future projects. The study unearthed that the 2007 rate rebasing included the P45.3 billion Laiban
13 Dam Project and P5.4 billion Angat Dam Irrigation Project. Both projects were eventually
14 cancelled by MWSS in 2010 due to problems in technicalities, but collections were already made,
15 which consumer group Water for All Refund Movement estimated to already reached P6 billion
16 in 2012;

17
18 **WHEREAS**, last August 2019, the Supreme Court uphold the fines totaling to P1.8 billion on
19 MWSS, Manila Water and Maynilad or P921.5 million each distributor for violating Sec. 8 of RA
20 9275 or the Clean Water Act. The concessionaires filed separate motions for reconsideration. On
21 Oct. 2, 2019, Manila Water warned the Supreme Court that its customers are facing a 780% rise
22 on water rates or P26.70 per cubic meter increase in water rates to build the necessary water
23 facilities if the decision is not reversed;⁶

24
25 **WHEREAS**, on Oct. 11, 2019, MWSS Chief Regulator Patrick Ty assured the public that the
26 financial penalties imposed by the Supreme Court may not be passed on to consumers in
27 accordance to the concession agreement. Also, Manila Water denied the 780% water hike;

28
29 **WHEREAS**, whether the case brought to the international courts end up favoring the
30 government or the concessionaires, the consumers will be on the losing end. If the case favored
31 the government, the consumers will still have to shoulder the expensive legal cost of the
32 concessionaires as obligated by the agreement. If the case favored the concessionaires, apart from
33 the legal cost, the consumers will be the one paying the fines or penalties through tariff;

34
35 **WHEREAS**, it is the primordial duty of the Congress, in exercise of its legislative and oversight
36 functions, to protect the Filipino people from onerous agreements. Congress must immediately
37 investigate the concession agreements signed by MWSS and the two water concessionaires and
38 amend the provisions or repeal it, if deemed necessary, in accordance to the benefit of the
39 consumers;

40
41 **NOW, THEREFORE BE IT RESOLVED**, that the House of Representatives, through its
42 Committee on Government Enterprises and Privatization to conduct an investigation, in aid of
43 legislation, on the allegedly onerous concession agreement signed between the Government of the
44 Republic of the Philippines and the two water concessionaires, namely, Manila Water Company,
45 Inc. and Maynilad Water Services, Inc.

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⁶ <https://businessmirror.com.ph/2019/10/03/maynilad-manila-water-appeal-p2-billion-fines-imposed-by-supreme-court-for-violating-clean-water-act/>
<https://www.philstar.com/headlines/2019/10/10/1958985/manila-water-warns-780-water-rate-hike>

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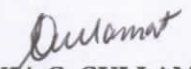
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