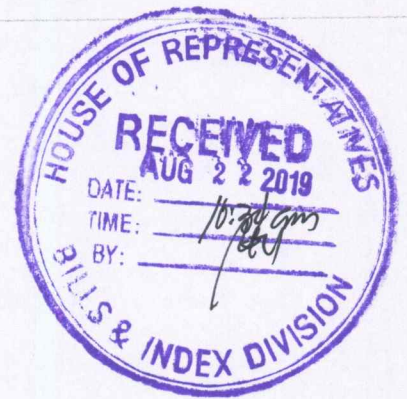


EIGHTEENTH CONGRESS)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



HOUSE OF REPRESENTATIVES

Introduced by Representative Rufus B. Rodriguez

House Bill No. 4105

EXPLANATORY NOTE

Consumers often experience high prices and poor quality of basic services in the Philippines, because only a few local players or oligarchs effectively control the market. Competition and foreign investment are inhibited, because limitations that should only apply to the operation of a public utility are usually also applied to all public services. This situation is caused by the ambiguity in the definition of public utility that is often used interchangeably with public service under Commonwealth Act No. 146 or the Public Service Act. The key to fixing this problem is to develop a clear statutory definition of a public utility by amending the Public Service Act.

The Public Service Act is a law that was crafted in 1936 to govern public services in the Philippines. Understandably, it no longer sufficiently addresses the changes in the economic framework brought about by globalization and rapid technological innovation. Hence, there is a need to adjust the provisions of the law to bring it to the 21st century and enable it to fulfill its purpose of truly serving the public.

Notwithstanding numerous amendments, this 80-year old law is still a good law in terms of protecting the public interest, albeit outdated in certain aspects, particularly: 1) the transfer of the functions of the Public Service Commission to various administrative agencies; 2) the definition of public service, which is often used as a proxy for public utility, in reference to the 1987 Constitution; 3) the appropriate mechanism for fixing rates based on reasonable rate of return; and 4) the applicable penalties and fees for public services.

This bill proposes to further amend the Public Service Act to effect the necessary changes in the antiquated provisions of the law to increase its relevance to contemporary concerns, in the interest of providing the general public with more choices, better services, and lower prices.

This legislative reform will significantly contribute to increasing competition, as well as protecting the public interest. More competition among providers would result in lower prices and improved quality of basic services in the Philippines creating a more competitive economy towards a better quality of life for all.


RUFUS B. RODRIGUEZ

EIGHTEENTH CONGRESS)
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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:

Section 1. Public Utility. –Section 13 of Commonwealth Act No. 146, as amended, is hereby further amended by adding a new paragraph to be designated as Section 13 (d) to read as follows:

"Section 13. xxx

(D) I. *PUBLIC UTILITY DEFINITION.* –"PUBLIC UTILITY" REFERS TO A PERSON THAT OPERATES, MANAGES AND CONTROLS FOR PUBLIC USE ANY OF THE FOLLOWING:

- (1) DISTRIBUTION OF ELECTRICITY (AS DEFINED BY SECTION 4 (N) OF REPUBLIC ACT NO. 9136) SYSTEM;
- (2) TRANSMISSION OF ELECTRICITY (AS DEFINED BY SECTION 4 (CCC) OF REPUBLIC ACT NO. 9136) SYSTEM;
- (3) GAS OR PETROLEUM PIPELINE DISTRIBUTION SYSTEM; AND,
- (4) WATER PIPELINE DISTRIBUTION SYSTEM OR SEWERAGE PIPELINE SYSTEM (AS DEFINED BY REPUBLIC ACT NO. 6234, AS AMENDED, AND PRESIDENTIAL DECREE NO. 198, AS AMENDED).

II. *AMENDMENT OF PUBLIC UTILITY DEFINITION.* - NO OTHER PERSON, BUSINESS OR SERVICE SHALL BE DEEMED A PUBLIC UTILITY UNDER SECTION 13 (D) I UNLESS OTHERWISE SUBSEQUENTLY PROVIDED BY LAW.

THE PHILIPPINE COMPETITION COMMISSION (PCC), IN CONSULTATION WITH THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY (NEDA) SECRETARIAT, WILL RECOMMEND TO CONGRESS THE CLASSIFICATION OF A PERSON, BUSINESS OR SERVICE AS A PUBLIC UTILITY ON THE BASIS OF THE FOLLOWING CRITERIA:

- (1) THE PERSON PERFORMS A PUBLIC SERVICE;
- (2) THE BUSINESS OR SERVICE REGULARLY SUPPLIES AND DIRECTLY TRANSMITS AND DISTRIBUTES TO THE PUBLIC THROUGH A NETWORK A COMMODITY OR SERVICE OF PUBLIC CONSEQUENCE;
- (3) THE BUSINESS OR SERVICE, IS NECESSARY TO THE PUBLIC AND, IF A NATURAL MONOPOLY, NEEDS TO BE REGULATED WHEN THE COMMON GOOD SO REQUIRES;

- (4) THE BUSINESS OR SERVICE IS NECESSARY FOR THE MAINTENANCE OF LIFE AND OCCUPATION OF RESIDENTS; AND,
- (5) THE BUSINESS OR SERVICE IS OBLIGATED TO PROVIDE ADEQUATE SERVICE TO THE PUBLIC ON DEMAND."

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

"Section 15. With the exception of those enumerated in the preceding section, no public service shall operate in the Philippines without possessing a valid and subsisting FRANCHISE, certificate, OR ANY OTHER APPROPRIATE FORM OF AUTHORIZATION FOR THE OPERATION OF A PUBLIC SERVICE [from the Public Service Commission known as "certificate of public convenience," or "certificate of public convenience and necessity,"] as the case may be, to the effect that the operation of said service and the authorization to do business will promote the public interests in a proper and suitable manner.

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

xxx."

Sec. 3. Proceedings Upon Notice and Hearing. – Section 16 of Commonwealth Act No. 146, as amended, are hereby further amended to read as follows:

"Section 16. Proceedings of the [Commission] ADMINISTRATIVE AGENCY, upon notice and hearing. – The [Commission] ADMINISTRATIVE AGENCY shall have power, upon proper notice and hearing in accordance with the rules and provisions of this Act, subject to the limitations and exceptions mentioned and saving provisions to the contrary:

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

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(c) To fix and determine MAXIMUM individual or joint rates, tolls, charges, classifications, REVENUES, or schedules thereof, as well as commutation, mileage, kilometrage, and other special rates which shall be imposed, observed, and followed thereafter by any public service WHEN THE

PUBLIC INTEREST SO REQUIRES: Provided, That the [Commission] ADMINISTRATIVE AGENCY may, in its discretion, approve rates proposed by public services provisionally and without necessity of any hearing; but it shall call a hearing thereon within thirty days, thereafter, upon publication and notice to the concerns operating in the territory affected: Provided, further, That in case the public service equipment of an operator is used principally or secondarily for the promotion of a private business, the net profits of said private business shall be considered in relation with the public service of such operator for the purpose of fixing the rates.

THE MAXIMUM RATE OF RETURN SHALL BE EQUAL TO THE POST-TAX WEIGHTED AVERAGE COST OF CAPITAL FOR THE SAME OR COMPARABLE BUSINESSES COMPUTED USING ESTABLISHED METHODOLOGIES SUCH AS THE CAPITAL ASSET PRICING MODEL. INCOME TAX SHALL BE ALLOWED AS A CASH OUTFLOW FOR RATE-DETERMINATION PURPOSES. THIS PROVISION SHALL NOT BAR THE APPLICATION OF PERFORMANCE-BASED RATE REGULATION SHOULD THE ADMINISTRATIVE AGENCY REGULATING SUCH PUBLIC SERVICE DEEM IT EFFICIENT AND IN THE PUBLIC INTEREST.

THE PHILIPPINE COMPETITION COMMISSION (PCC) IS HEREBY MANDATED TO CONDUCT REGULAR STUDIES ON WHETHER DEREGULATION IS WARRANTED IN A SECTOR AND SUBMIT ITS RECOMMENDATION TO CONGRESS.

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Sec. 4. *Proceedings Without Hearing.* – Section 17 of Commonwealth Act No. 146, as amended, is hereby further amended to read as follows:

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

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(b) To require any public service to pay the actual expenses incurred by the [Commission] ADMINISTRATIVE AGENCY in any investigation if it shall be found in the same that any rate, toll, charge, schedule, regulation, practice, act or service thereof is in violation of any provision of this Act or any certificate, order, rule, regulation or requirement issued or established by the [Commission] ADMINISTRATIVE AGENCY. The [Commission] ADMINISTRATIVE AGENCY may also assess against any public service REASONABLE costs [not to exceed twenty-five pesos] with reference to such investigation.

xxx."

Sec. 5. *Acts Requiring Approval.* – Section 20 of Commonwealth Act No. 146, as amended, is hereby further amended to read as follows:

"Section 20. Acts requiring the approval of the [Commission] ADMINISTRATIVE AGENCY. – Subject to established limitations and exceptions and saving provisions to the contrary, it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the approval and authorization of the [Commission] ADMINISTRATIVE AGENCY previously had –

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(i) To sell, alienate or in any manner transfer shares of its capital stock to any alien if the result of that sale, alienation, or transfer in itself or in connection with another previous sale shall be the reduction to less than sixty per centum of the capital stock belonging to Philippine citizens IN THE OPERATION, MANAGEMENT AND CONTROL OF A PUBLIC UTILITY AS

REQUIRED BY THE CONSTITUTION. Such sale, alienation or transfer shall be void and of no effect and shall be sufficient cause for ordering the cancellation of the certificate.

xxx.”

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

“Section 21. Every public service violating or failing to comply with the terms and conditions of any certificate or any orders, decisions or regulations of the [Commission] ADMINISTRATIVE AGENCY shall be subject to DISGORGEMENT OF PROFITS, TREBLE DAMAGES, a fine OF UP TO FIVE MILLION PESOS, DIVESTMENT, OR ALL OR ANY COMBINATION THEREOF [of not exceeding two hundred pesos] per day for every day during which such default or violation continues; and the [Commission] ADMINISTRATIVE AGENCY is hereby authorized and empowered to impose such fine, after due notice and hearing. THE FINE OF UP TO FIVE MILLION PESOS SHALL BE INCREASED EVERY FIVE (5) YEARS UPON CERTIFICATION BY NEDA ON THE COMPUTATION OF THE COST OF MONEY BASED ON THE CUMULATIVE 360-DAY TREASURY BILL RATE.

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

Sec. 7. Administrative Cost Recovery Mechanism. – Section 40 of Commonwealth Act No. 146, as amended, is hereby further amended to read as follows:

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

Sec. 8. Recognition of Administrative Agencies. – All references to the Public Service Commission in Commonwealth Act No. 146, as amended, shall mean any administrative agencies to which the powers and duties of the Public Service Commission were transferred in accordance with their respective charters and related statutes.

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

Sec. 10. Operation of a Public Service. – The power to grant any franchise, certificate, or any other form of authorization for the operation of a public service belongs to Congress,

unless otherwise provided by law to an administrative agency. No franchise, certificate, or authorization granted for the operation of a public service shall be (a) for a period longer than fifty years, and (b) granted except under the condition that it shall be subject to amendment, alteration, or repeal by Congress when the public interest so requires.

Sec. 11. General Law. – Commonwealth Act No. 146, as amended, shall be construed as a general law that shall apply suppletorily to special laws or existing sector-specific laws governing public services, except for Section 13 (d) of Commonwealth Act No. 146, as amended, as further amended by Section 2 of this Act.

Sec. 12. Comprehensive Baseline Survey. – The PCC shall commission the University of the Philippines Law Center (UPLC) or such other institutions to conduct a comprehensive baseline survey of the regulatory governance and regulatory substance of public services within six (6) months from the effectivity of this Act.

Sec. 13. Performance Audit. – Administrative agencies must ensure the annual conduct of performance audit by an independent evaluation team to ensure cost-norms and the quality of services provided to the public and the ability of manpower and system resources of the public service provider to immediately respond to emergency cases. Metrics for various types of services must be established to sustain reliability, security, and safety of the public.

Sec. 14. Rules and Regulations. – Administrative agencies under Section 8 of this Act shall, in coordination with the UPLC, promulgate rules and regulations to implement the provisions of this Act.

Sec. 15. Repealing Clause. – All laws, decrees, orders, rules and regulations or other issuances or parts thereof, including Commonwealth Act No. 146 or the Public Service Act, as amended, inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Sec. 16. Separability Clause. – If any portion or provision of this Act is declared unconstitutional, the remainder of this Act or any provision not affected thereby shall remain in force and effect.

Sec. 17. Effectivity. – This Act shall take effect after fifteen (15) days following the completion of its publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

Approved,