

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

EIGHTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 9313



Introduced by Hon. Elpidio F. Barzaga, Jr.

**AN ACT GRANTING MANILA WATER COMPANY, INC.
A FRANCHISE TO ESTABLISH, OPERATE, AND MAINTAIN THE WATERWORKS AND
SEWERAGE SYSTEM IN THE EAST ZONE SERVICE AREA OF METRO MANILA AND
PROVINCE OF RIZAL**

EXPLANATORY NOTE

The access to safe, affordable and reliable water is a basic human right. The participation of the private sector increases efficiency and innovation, service quality and saves taxpayers' money.

This bill seeks to grant MANILA WATER COMPANY, INC. (MWC) a franchise to establish, operate and maintain the waterworks and sewerage system for commercial purposes and in the public interest in the Service Area East Zone.

MWC was incorporated on 6 January 1997 to provide water treatment, sewerage and sanitation, distribution services, pipeworks, and management services to residential, commercial, and industrial customers. MWC became a subsidiary of Ayala Corporation (AC) in 2010.

In 1995, Congress passed Republic Act No. 8041 ("The Water Crisis Act") to allow the privatization of water services to address the nationwide water crisis which adversely affected the health and well-being of the population, food production and industrialization process.

MWC participated in the bidding process conducted by government and was declared the winner to provide services for the East Zone. The Metropolitan Waterworks and Sewerage System (MWSS) entered into a concession agreement (CA) with MWC on 21 February 1997 granting MWC the exclusive right to provide water and used water services to the East Zone of the franchise area of the MWSS. The East Zone encompasses 23 cities and municipalities spanning a 1,400-square kilometer area that includes Makati,

Mandaluyong, Pasig, Pateros, San Juan, Taguig, Marikina, most parts of Quezon City, portions of Manila as well as 14 towns of Rizal province.

Pursuant to President Rodrigo R. Duterte's drive to protect the interest of the Filipino consumer and the national government, the government pushed for the revision of the CA. After a renegotiation, a Revised Concession Agreement (RCA) was signed by MWC and MWSS on 31 March 2021. MWC is now considered a public utility subject to all restrictions applicable to public utilities such as nationality restriction. The RCA contained the following features:

1. The RCA confirms the continuation of the concession until July 31, 2037. The Revised CA largely adopts the provisions of the New Clark City - Joint Venture Agreement (NCC-JVA) for the development of water and wastewater infrastructure in New Clark City.
2. Consistent with the NCC-JVA, the RCA removes recovery of the Corporate Income Taxes and adjustment for foreign currency differential (FCDA). To mitigate the impact of tariff increases on customers, the RCA lowers the inflation factor to 2/3 of the Consumer Price Index adjustment and imposes caps on increases in standard rates for water (1.3x the previous standard rate) and wastewater (1.5x the previous standard rate). Instead of a market-driven appropriate discount rate, MWC shall now be limited to a 12% fixed nominal discount rate.
3. The rate rebasing mechanism under the original CA is retained. Thus, the rates for water and sewerage services provided by MWC shall be set at a level that will permit it to recover over the term of the concession expenditures efficiently and prudently incurred and to earn a reasonable rate of return.
4. To align with the government's program to assist the disadvantaged sector and to contribute to the recovery of the economy post-COVID 19, the Revised CA includes a tariff freeze until 31 December 2022.
5. Finally, the Undertaking Letter of the Republic is retained but has been amended to exclude the non-interference clause. It now applies only to contracts and obligations existing at the time of execution of the RCA.

While respecting the terms of the RCA, a legislative franchise will promote and protect the continuity and stability of the essential services rendered by MWC. It will secure the continuing obligation of MWC to provide uninterrupted and adequate supply and distribution of potable water for domestic, commercial and other purposes, and to provide necessary sewerage services in the East Zone.

The entry of MWC into the scene in 1997 has shown a dramatic improvement in the provision of water and used water services in the East Zone. MWC has reduced non-revenue water (water lost through leaks in pipes) in the East Zone to 12% and MWC has expanded the scope of its services to many areas which were not covered before. MWC's decades-long experience in the industry and the financial strength of AC has been further strengthened by

the recent entry of Trident Water Company Holdings, Inc. (Trident) into MWC. Trident is part of the Razon Group of Companies and provides MWC with a track record for providing efficient public services, fund raising capacity, non-adversarial and cooperative relationship with government and regulators. MWC now has the unqualified support of its two big stockholders groups, as well as the significant public shareholdings in MWC as a listed company in the Philippine Stock Exchange.

The grant of franchise will also prepare MWC for a change in regulatory framework for water services proposed in the pending bills for the creation of the Department of Water Resources. The grant of franchise also gives Congress oversight over MWC and the services that it renders in the East Zone.

Considering that MWC possesses the required capability, it is apt for the Congress to grant MWC the franchise to establish, operate and maintain the waterworks and sewerage system for commercial purposes and in the public interest in the Service Area East Zone.

The Support of the Members of Congress for the prompt and timely passage of this measure is earnestly requested.

A handwritten signature in black ink, appearing to be the initials 'EFB' or similar, written in a cursive style.

HON. ELPIDIO F. BARZAGA, JR.
Representative
Lone District of the City of Dasmariñas, Cavite

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

SECTION 1. Nature and Scope of Franchise. — Subject to the provisions of the Constitution and applicable laws, rules and regulations, there is hereby granted to Manila Water Company, Inc., hereunder referred to as the grantee, its successors or assignees, a franchise to establish, operate, and maintain, for commercial purposes and in the public interest, a waterworks and sewerage system to ensure an uninterrupted and adequate supply and distribution of potable water for domestic, commercial, and other purposes, and for the establishment and maintenance of sewerage system in the East Zone Service Area of Metro Manila and Province of Rizal, under a concession from the Metropolitan Waterworks and Sewerage System (MWSS)), or under an appropriate certificate of public convenience and necessity, license, or permit from the appropriate water regulatory agency.

Under this Act, the grantee, shall have the sole right to establish, manage, operate, repair, expand, and improve the waterworks and sewerage system in the East Zone Service Area as defined in the Concession Agreement between the grantee and MWSS dated February 21, 1997, as amended under the Revised Concession Agreement dated March 31, 2021 or as may hereafter be amended, including the right to bill and collect fees for the water supply and sewerage services in the service area from the end-users.

Without prejudice to the obligation of the MWSS to source and supply raw water under the Revised Concession Agreement, the grantee shall

develop new raw water sources as its operations may require. The grantee may enter into bulk water supply arrangements.

SECTION 2. Manner of Operation of Facilities. — All waterworks and sewerage systems for water and sewerage services owned, maintained, operated, or managed by the grantee, its successors, or assignees shall be operated and maintained at all times in accordance with industry standards provided in RA No. 9275 or the “Philippine Water Act of 2004” and Presidential Decree No. 1067 or the “Water Code of the Philippines”, and as specified in the Revised Concession Agreement, certificate of public convenience and necessity, license or permit.

The grantee shall comply with the standards set by the Regulatory Office or its legal successor, and other government agencies concerned, their resolutions and other issuances.

The La Mesa Dam and Reservoir which was designed to work with the Balara Water Treatment Plants operated by the grantee shall continue to be managed by the grantee with the approval of the Regulatory Office or its legal successor.

It shall be the duty of the grantee, its successors and assignees, whenever required to do so by the Regulatory Office or its legal successor, or any other authorized government agency, to modify, improve, and change such system or facilities in such manner and to such extent as the progress in science and improvements in the water supply and sewerage services may reasonably require, and to employ the latest technology and innovations that promote efficiency, environmental sustainability and is beneficial to consumers.

The grantee shall promote water conservation and avoid water wastage. With the approval of the Regulatory Office or its legal successor, considering cost efficiencies, the grantee shall establish water impounding facilities, consider and undertake the recovery and appropriate reuse of wastewater, grey water, industrial water, and reclaimed water. The grantee may adopt waste-to-energy or similar technology utilizing sludge waste from its wastewater facilities to promote energy efficiency in its operations.

SECTION 3. Certificate of Public Convenience and Necessity, License, or Permit. — For purposes of this Act, the Revised Concession Agreement shall serve as the certificate of public convenience and necessity, or license or permit of the grantee for the operation of its waterworks and sewerage system.

The Revised Concession Agreement between the MWSS and the grantee shall remain valid unless otherwise terminated, after due notice and hearing for reasons provided in the Revised Concession Agreement, or invalidated by a court of competent jurisdiction, or by a government agency

authorized by law to do so where national security, national emergency, or public interest so requires, or unless modified or amended under this Act or any subsequent law.

The grantee, its successors or assignees, shall apply for a certificate of public convenience and necessity, license or permit when a new regulatory framework for water service providers is established by law or when required by the Regulatory Office or its legal successor which will supersede the terms and conditions of the Revised Concession Agreement; Provided That, if the public service function and assets of MWSS are privatized by law, the grantee shall have the right of first refusal to acquire ownership of the facilities or waterworks and sewerage system in the East Zone Service Area owned by MWSS, and the grantee shall then own the waterworks and sewerage system in the franchise area.

Regulatory Office shall mean the Regulatory Office referred to under the Revised Concession Agreement, or its legal successor tasked to regulate the services and operations of waterworks and sewerage systems.

SECTION 4. Excavation and Restoration Works. — For the purpose of erecting and maintaining water pipelines, sewerage line, and other related facilities, it shall be lawful for the grantee, its successors or assignees, with prior approval of the Department of Public Works and Highways (DPWH), Metropolitan Manila Development Authority (MMDA) or the local government units (LGU) concerned, as may be appropriate, to make excavations or lay pipes in any of the public places, roads, highways, streets, lanes, alleys, avenues, sidewalks, or bridges in the East Zone Service Area of Metro Manila and Province of Rizal; *Provided, however,* That public place, road, highway, street, lane, alley, avenue, sidewalk, or bridge disturbed, altered, or changed by reason of erection of water pipelines and other related facilities, shall be repaired or replaced in workmanlike manner by the grantee, its successors or assignees, in accordance with the standards set by the DPWH, MMDA, or the LGU concerned. Should the grantee, its successors or assignees, after the ten (10)-day notice from the said authority, fail, refuse, or neglect to repair or replace any part of a public place, road, highway, street, lane, alley, avenue, sidewalk, or bridge altered, changed or disturbed by the grantee, its successors or assignees, then the DPWH, MMDA or the LGU concerned shall have the right to have the same repaired or replaced in good order and condition and charge the grantee, its successors or assignees at double the amount of the costs and expenses for such repair or replacement.

SECTION 5. Responsibility to the Public. — The grantee, its successor or assignees shall conform to the ethics of honest enterprise and shall provide water supply and sewerage services to its service area in a prudent, efficient and satisfactory manner.

For the public interest, as far as feasible and whenever required by the Regulatory Office or its legal successor, the grantee shall modify, improve, or change its facilities, pipelines, systems, and equipment for the purpose of providing efficient and reliable service at reasonable costs. The grantee shall charge reasonable and just fees for its services to all types of consumers and water users within its franchise area as set in accordance with Section 6 of this Act.

The grantee, its successors or assignees, shall comply with environmental and sustainability standards and shall work with the local government to ensure safe and inclusive development.

SECTION 6. *Setting Tariffs, Rates, and Other Charges.* — The Regulatory Office, or its legal successor, shall establish tariffs, rates and other charges which are fair and reasonable, and ensure economic viability and a fair return on investments.

Tariffs, rates and charges shall be based on and consistent with a rate-setting methodology that the Regulatory Office or its legal successor shall, after due consultation with stakeholders, define and publish, taking into account the following, among others:

- a. reasonable and prudent capital and recurrent costs of providing the service including a reasonable rate of return on capital;
- b. efficiency of the service;
- c. incentives for enhancement of efficiency;
- d. willingness to pay of the customers/consumers;
- e. equity considerations; and
- f. administrative simplicity.

Tariffs, rates and charges set by the Regulatory Office, or its legal successor, shall be presumed valid and reasonable, unless declared otherwise in a proper administrative or judicial proceeding.

SECTION 7. *Protection of Consumer Interests.* — The grantee shall establish a consumer desk that will handle consumer complaints and ensure adequate protection of consumer interests. The grantee shall act with dispatch on all complaints brought before it.

The grantee shall reduce the duration and frequency of interruptions in its services and in that regard, shall observe the relevant standards imposed by the Regulatory Office or its legal successor.

SECTION 8. *Election of Independent Directors.* — The Board of the grantee shall have independent directors constituting at least twenty percent (20%) of its total membership. These directors must be elected by a majority of the total number of outstanding shares entitled to vote.

An independent director is a person who, apart from shareholdings and fees received from the corporation, is independent of management and free from any business or other relationship which could, or could reasonably be perceived to materially interfere with the exercise of independent judgment in carrying out the responsibilities as a director.

SECTION 9. *Right of the Government.* — A special right is hereby reserved to the President of the Philippines, in times of war, rebellion, public peril, calamity, emergency, disaster or disturbance of peace and order, to temporarily take over and operate the waterworks and sewerage system of the grantee; to temporarily suspend the operation of any portion thereof in the interest of public safety, security and public welfare; or to authorize the temporary use and operation thereof by any agency of the government, upon due compensation to the grantee, for the use of said waterworks and sewerage system during the period when they shall be so operated.

SECTION 10. *Right of Eminent Domain.* — Subject to the limitations and procedures prescribed by law, the grantee, its successors or assignees is authorized to exercise the power of eminent domain insofar as it may be reasonably necessary for the efficient establishment, improvement, upgrading, rehabilitation, maintenance, and operation of services. The grantee is authorized to install and maintain its water pipelines and other facilities over, under, and across public property, including streets, highways, parks, and other similar property of the Government of the Philippines, its branches, or any of its instrumentalities. The grantee may acquire private property as is actually necessary for the realization of the purposes for which this franchise is granted, including, but not limited to pipelines, buildings, infrastructure, machineries and equipment previously, currently or actually used, or intended to be used, or have been abandoned, unused or underutilized, or which obstructs its facilities, for the operation of a waterworks and sewerage system for the conveyance of water supply and sewerage services to end-users in its service area: *Provided*, That expropriation proceedings before the proper court shall have been instituted and just compensation paid.

SECTION 11. *Terms of the Franchise.* — This franchise shall be for a term of twenty-five (25) years from the effectivity of this Act, unless sooner cancelled or revoked by Congress when the public interest so requires or when the grantee fails to reasonably comply with regulatory standards.

SECTION 12. *Acceptance and Compliance.* — Acceptance of this franchise shall be given in writing to the Congress of the Philippines, through the Committee on Legislative Franchises of the House of Representatives and the Committee on Public Services of the Senate, within sixty (60) days from the effectivity of this Act. Upon giving such acceptance, the grantee, its

successors or assignees, shall exercise the privileges granted under this Act. Nonacceptance shall render this franchise void.

SECTION 13. Warranty in Favor of the National and Local Governments.

— The grantee shall hold the national, provincial, city, and municipal governments of the Philippines free from all claims, liabilities, demands, or actions arising out of accidents causing injury to persons or damage to properties, during the construction or operation of the waterworks and sewerage system facilities of the grantee.

SECTION 14. Liability for Damages. — The grantee shall be liable for any injury to persons and damage to property arising from or caused by any accident arising from any defective construction of any infrastructure built pursuant to the operation of its business under this franchise, or by any neglect or failure to keep its pipelines and other related facilities in safe condition.

SECTION 15. Sale, Lease, Transfer, Grant of Usufruct, or Assignment of Franchise. — The grantee shall not sell, lease, transfer, grant the usufruct of, nor assign this franchise or the rights and privileges acquired thereunder to any person, firm, company, corporation, or other commercial or legal entity, nor merge with any other corporation or entity, nor shall the controlling interest of the grantee be transferred, simultaneously or contemporaneously, to any person, firm, company, corporation, or entity without the prior approval of Congress; *Provided*, That the foregoing limitations shall not apply to any transfer, sale or issuance of shares of stock at the level of corporate stockholders of the grantee; *Provided, further*, That the foregoing limitations shall not apply in case of assignment or transfer of the operation of any of its related business; *Provided, however*, That any transfer, sale, or issuance at the level of the corporate stockholders of the grantee is in accordance with applicable constitutional limitations.

The grantee shall inform Congress, through the Office of the Speaker of the House of Representatives and the Office of the Senate President, of any sale, lease, transfer, grant of usufruct, or assignment of franchise or the rights and privileges acquired thereunder, or of the merger or transfer of the controlling interest of the grantee, within sixty (60) days after the completion of the said transaction. Failure to report to Congress such change of ownership shall render the franchise *ipso facto* revoked. Any person or entity to which this franchise is sold, transferred, or assigned shall be subject to the same conditions, terms, restrictions, and limitations of this Act.

SECTION 16. Dispersal of Ownership. — In accordance with the constitutional provision to encourage public participation in public utilities, the grantee, a publicly listed corporation in the Philippine Stock Exchange, shall maintain its listing therein and comply with its minimum public float requirement during the term of the franchise. Noncompliance therewith shall render the franchise *ipso facto* revoked.

SECTION 17. Information Dissemination. — An information dissemination campaign regarding public services and operations of the grantee, as well as the general provisions of the franchise including its term, shall be made to all end-users in the franchise area.

SECTION 18. Reportorial Requirement. — The grantee shall submit an annual report on its compliance with the terms and conditions of the franchise and on its operations to the Congress of the Philippines, through the Committee on Legislative Franchises of the House of Representatives and the Committee on Public Services of the Senate, on or before April 30 of every year during the term of its franchise.

The annual report shall include an update on the development, operation and expansion of business; audited financial statements; latest GIS officially submitted to the SEC, if applicable; certification of the Regulatory Office on the status of its permits and operations; and an update on the public float in its outstanding shares,, if applicable.

The Regulatory Office or its legal successor shall, one (1) year from the grant of this franchise, and every five (5) years thereafter, conduct a comprehensive assessment of the grantee's operations and compliance with the conditions imposed hereunder and submit a report thereof to Congress. The grantee shall transmit to the Regulatory Office or its legal successor all information and documents necessary to complete such assessment.

SECTION 19. Fine. — Failure of the grantee to submit the requisite annual report to Congress shall be penalized by a fine of Five hundred pesos (P500.00) for each working day of noncompliance. The fine shall be collected separately from the reportorial penalties imposed by the Regulatory Office, or its legal successor, and it shall be remitted to the Bureau of the Treasury.

SECTION 20. Equality Clause. — Any advantage, favor, privilege, exemption or immunity granted under existing franchises, or which may hereafter be granted for water utility, upon prior review and approval of Congress, shall become part of this franchise and shall be accorded immediately and unconditionally to the herein grantee: *Provided*, That the foregoing shall neither apply to nor affect provisions of waterworks and sewerage system franchises concerning territorial coverage, the term, or the type of service authorized by the franchise.

SECTION 21. Applicability of Existing Laws. — The grantee shall comply with and be subject to the provisions of Commonwealth Act No. 146, or the "Public Service Act," as amended, Republic Act No. 9275 or the "Philippine Water Act of 2004", Presidential Decree No. 1067 or the "Water Code of the Philippines", and other pertinent laws relating to the operation of its business.

SECTION 22. Repealability Clause. — This franchise shall be subject to amendment, alteration or repeal by Congress when public interest so requires.

SECTION 23. Separability Clause. — If any of the sections or provisions of this Act is held invalid, all other provisions not affected thereby shall remain valid.

SECTION 24. Repealing Clause. — All laws, decrees, orders, resolutions, instructions, rules and regulations, and other issuances or parts thereof which are inconsistent with the provisions of this Act, are hereby repealed, amended, or modified accordingly.

SECTION 25. Effectivity. — This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in any newspaper of general circulation.

Done this 10th day of May 2021.