

EIGHTEENTH CONGRESS
REPUBLIC OF THE PHILIPPINES
First Regular Session

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HOUSE OF REPRESENTATIVES

House Bill No. 301

Introduced by Representative VICTOR A. YAP

EXPLANATORY NOTE

Commonwealth Act No. 146 or the Public Service Act was passed in 1936 to govern public services in the Philippines. However, some provisions in this 80-year-old law are not only outdated but have also become restrictive.

Due to the ambiguity under the current law, the definition of public utility is often used interchangeably with public service. Because of this, limitations that should only apply to the operation of a public utility are also applied to all public services, impeding competition and foreign investment.

To correct this, this bill seeks to limit the definition of public utilities to distribution of electricity, transmission of electricity, and water pipeline distribution system or sewerage pipeline system. This bill also provides for criteria that will serve as basis of the National Economic and Development Authority, in consultation with the Philippine Competition Commission, when it recommends to Congress the classification of a public service as a public utility.

Furthermore, this measure seeks to impose appropriate penalties and fines for violations of public service which include disgorgement of profits, treble damages, divestment, and a fine of up to P5 million per day for every day during which such violation continues.

These amendments will significantly increase competition and protect public interest. More competition among providers would result in lower prices and improved quality of basic services for Filipinos.

In view of the foregoing, the immediate passage of this bill is earnestly sought.

VICTOR A. YAP
Representative, 2nd District of Tarlac

HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 301

Introduced by Representative Victor A. Yap

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

3
4 "Section 13. xxx.

5 (B) The term "public service" includes every person that now or hereafter
6 may own, operate, manage, or control in the Philippines, for hire or compensation,
7 with general or limited clientele, whiter permanent, occasional or accidental, and
8 done or general business purpose, xxx canal, PUBLIC MARKET, irrigation
9 system xxx.

10 "xxx

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

15 **I. DISTRIBUTION OF ELECTRICITY (AS**
16 **DEFINED BY SECTION 4 (N) OF REPUBLIC**
17 **ACT NO. 9136, OTHERWISE KNOWN AS THE**
18 **"ELECTRIC POWER INDUSTRY REFORM ACT**
19 **OF 2001") SYSTEM;**

20 **II. TRANSMISSION OF ELECTRICITY (AS**
21 **DEFINED BY SECTION 4 (CCC) OF REPUBLIC**
22 **ACT NO. 9136) SYSTEM; AND,**

1 III. WATER PIPELINE DISTRIBUTION SYSTEM
2 OR SEWERAGE PIPELINE SYSTEM (AS
3 DEFINED BY REPUBLIC ACT NO.6234,
4 ENTITLED "AN ACT CREATING THE
5 METROPOLITAN WATER-WORKS AND
6 SEWERAGE SYSTEM AND DISSOLVING THE
7 NATIONAL WATERWORKS AND SEWERAGE
8 AUTHORITY; AND FOR OTHER PURPOSES,"
9 AS AMENDED, AND PRESIDENTIAL DECREE
10 NO. 198, KNOWN AND REFERRED TO AS THE
11 "PROVINCIAL WATER UTILITIES ACT OF
12 1973," AS AMENDED).

13 "(2) *AMENDMENT OF PUBLIC UTILITY DEFINITION.* -
14 NO OTHER PERSON SHALL BE DEEMED A PUBLIC UTILITY
15 UNDER SECTION 13 (D)(1) I UNLESS OTHERWISE
16 SUBSEQUENTLY PROVIDED BY LAW.

17 THE NATIONAL ECONOMIC AND DEVELOPMENT
18 AUTHORITY (NEDA) SECRETARIAT, IN CONSULTATION
19 WITH THE PHILIPPINE COMPETITION COMMISSION (PCC),
20 SHALL RECOMMEND TO CONGRESS THE CLASSIFICATION
21 OF A [PERSON, BUSINESS OR SERVICE] PUBLIC SERVICE AS
22 A PUBLIC UTILITY ON THE BASIS OF THE FOLLOWING
23 CRITERIA:

24 I. THE PERSON REGULARLY SUPPLIES AND
25 DIRECTLY TRANSMITS AND DISTRIBUTES
26 TO THE PUBLIC THROUGH A NETWORK A
27 COMMODITY OR SERVICE OF PUBLIC
28 CONSEQUENCE;

29 II. THE COMMODITY OR SERVICE IS
30 NECESSARY TO THE PUBLIC AND A
31 NATURAL MONOPOLY THAT NEEDS TO BE
32 REGULATED WHEN THE COMMON GOOD SO
33 REQUIRES;

34 III. THE COMMODITY OR SERVICE IS
35 NECESSARY FOR THE MAINTENANCE OF
36 LIFE AND OCCUPATION OF RESIDENTS; AND,

1 IV. THE COMMODITY OR SERVICE IS
2 OBLIGATED TO PROVIDE ADEQUATE
3 SERVICE TO THE PUBLIC ON DEMAND.”
4

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

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

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

26 xxx.”

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

29 “Section 16. Proceedings of the [Commission]
30 **ADMINISTRATIVE AGENCY**, upon notice and hearing. – the
31 [Commission] **ADMINISTRATIVE AGENCY** shall have power, upon
32 proper notice and hearing in accordance with the rules and provisions of
33 this Act, subject to the limitations and exceptions mentioned and saving
34 provisions to the contrary:

35 (a) To issue certificates [which shall be known as certificates of
36 public convenience,] authorizing the operation of public service within the
37 Philippines whenever the [Commission] **ADMINISTRATIVE AGENCY**
38 finds that the operation of the public service proposed and the

1 authorization to do business will promote the public interest in a proper
2 and suitable manner. [Provided, That thereafter, certificates of public
3 convenience and certificates of public convenience and necessity will be
4 granted only to citizens of the Philippines or of the United States or to
5 corporations, co-partnerships, associations or joint-stock companies
6 constituted and organized under the laws of the Philippines; Provided,
7 That sixty per centum of the stock or paid-up capital of any such
8 corporations, co-partnership, association or joint-stock company must
9 belong entirely to citizens of the Philippines or of the United States:
10 Provided, further, That no such certificates shall be issued for a period of
11 more than fifty years.]

12 "xxx

13 "(c) To fix and determine **MAXIMUM** individual or joint rates,
14 tolls, charges, classifications, **REVENUES**, or schedules thereof, as well
15 as commutation, mileage, kilometrage, and other special rates which shall
16 be imposed, observed, and followed thereafter by any public service
17 **WHEN THE PUBLIC INTEREST SO REQUIRES: Provided,** That the
18 [Commission] **ADMINISTRATIVE AGENCY** may, in its discretion,
19 approve rates proposed by public services provisionally and without
20 necessity of any hearing; but it shall call a hearing thereon within thirty
21 days, thereafter, upon publication and notice to the concerns operating in
22 the territory affected: *Provided, further,* That in case the public service
23 equipment of an operator is used principally or secondarily for the
24 promotion of a private business, the net profits of said private business
25 shall be considered in relation with the public service of such operator for
26 the purpose of fixing the rates.

27 **"IN THE PUBLIC INTEREST, THE ADMINISTRATIVE**
28 **AGENCY MAY ESTABLISH AND ENFORCE A METHODOLOGY**
29 **FOR SETTING RATES, TAKING INTO ACCOUNT ALL**
30 **RELEVANT CONSIDERATIONS, INCLUDING THE EFFI-**
31 **CIENCY OF THE REGULATED PUBLIC SERVICE. THE RATES**
32 **MUST BE SUCH AS TO ALLOW THE RECOVERY OF JUST AND**
33 **REASONABLE COSTS AND A REASONABLE RATE OF**
34 **RETURN TO ENABLE THE PUBLIC SERVICE TO OPERATE**
35 **VIABLY. THE ADMINISTRATIVE AGENCY MAY ADOPT**
36 **ALTERNATIVE FORMS OF INTERNATIONALLY-ACCEPTED**
37 **RATE-SETTING METHODO-LOGY AS IT MAY DEEM**
38 **APPROPRIATE AND WILL PROMOTE EFFICIENCY. THE**

1 RATE-SETTING METHODO-LOGY SO ADOPTED AND
2 APPLIED MUST ENSURE A REASONABLE PRICE OF THE
3 COMMODITY OR SERVICE. THE RATES PRESCRIBED SHALL
4 BE NON-DISCRIMINATORY.

5 "THIS PROVISION SHALL NOT BE INTERPRETED AS
6 MANDATING RATE REGULATION AND AMENDING OR
7 REPEALING (1) LAWS PROVIDING A DEREGULATION
8 POLICY, SUCH AS REPUBLIC ACT NOS. 7925, 8479, 9136, AND
9 9295 AND (2) REGULATIONS PROMULGATED BY THESE
10 ADMINISTRATIVE AGENCIES TO DEREGULATE RATES.

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

16 "xxx."

17 **Sec. 4. *Proceedings Without Hearing.*** – Section 17 of Commonwealth Act No.
18 146, as amended, is hereby further amended to read as follows:

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

24 "xxx.

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

35 "xxx."

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

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

7 ”xxx

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

16 “xxx.”

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

19 “Section 21. Every public service violating or failing to comply
20 with the terms and conditions of any certificate or any order[s],
21 decision[s] or regulation[s] of the [Commission] **ADMINISTRATIVE**
22 **AGENCY** shall be subject to **DISGORGEMENT OF PROFITS,**
23 **TREBLE DAMAGES,** a fine [of not exceeding two hundred pesos] **OF**
24 **UP TO FIVE MILLION PESOS**’per day for every day during which
25 such default or violation continues[;], **DIVESTMENT, OR ALL OR**
26 **ANY COMBINATION THEREOF;** and the [Commission]
27 **ADMINISTRATIVE AGENCY** is hereby authorized and empowered to
28 impose such fine, after due notice and hearing. **THE MAXIMUM**
29 **DAILY FINE OF FIVE MILLION PESOS SHALL BE**
30 **INCREASED EVERY FIVE (5) YEARS UPON CERTIFICATION**
31 **BY NEDA ON THE COMPUTATION OF THE COST OF MONEY**
32 **BASED ON THE CUMULATIVE (360)-DAY TREASURY BILL**
33 **RATE.**

34 “The **PENALTIES AND** fines so imposed shall be paid to the
35 Government of the Philippines through the [Commission]
36 **ADMINISTRATIVE AGENCY,** and failure to pay the **PENALTY OR**
37 fine in any case within the same specified in the order or decision of the
38 [Commission] **ADMINISTRATIVE AGENCY** shall be deemed good

1 and sufficient reason for the suspension of the certificate of said public
2 service until payment [shall be] IS made. Payment may also be enforced
3 by appropriate action brought in a court of competent jurisdiction. The
4 remedy provided in this section shall not be a bar to, or affect any other
5 remedy provided in this Act but shall be cumulative and additional to such
6 remedy or remedies.”

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

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

15 [(a) xxx
16 xxx
17 (i) xxx
18 xxx
19 xxx.]

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

22 Aside from the appropriations for the Commission
23 under the annual General Appropriation Act, any
24 unexpended balance of the fees collected by the
25 Commission under this section shall be constituted receipts
26 automatically appropriated each year, and together with any
27 surplus in the standardizing meter laboratory revolving
28 fund under Commonwealth Act Numbered Three hundred
29 forty-nine, shall be disbursed by the Public Service
30 Commissioner in accordance with special budgets to be
31 approved by the Department of Justice, the Budget
32 Commission and the Office of the President of the
33 Philippines for additional needed personal services,
34 maintenance and operating expenses, acquisition of
35 urgently needed vehicles, furniture and equipment,
36 maintenance of an adequate reference library, acquisition of
37 a lot and building for the Commission, and other expenses
38 necessary for efficient administration and effective
39 supervision and regulation of public services. (As amended
40 by Com. Act No. 454 and RA No. 3792, approved June 22,
41 1963.)]

42
43 **Sec. 8. Recognition of Administrative Agencies.** – All references to the Public
44 Service Commission in Commonwealth Act No. 146, as amended, shall mean any
45 administrative agency to which the powers and duties of the Public Service Commission
46 were transferred in accordance with their respective charters and related statutes.

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

8 No franchise, certificate, or authorization granted by the appropriate
9 administrative agencies shall be (1) exclusive in character, (2) for a longer period than
10 fifty years, and (3) granted except under the condition that it shall be subject to
11 amendment, alteration, or repeal by congress when the common good so requires.

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

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

20 **Sec. 12. Performance Audit.** – Administrative agencies must ensure the annual
21 conduct of performance audit by an independent evaluation team to ensure cost-norms
22 and the quality of services provided to the public and the ability of manpower and system
23 resources of the public service provider to immediately respond to emergency cases.
24 Metrics for various types of services must be established to sustain reliability, security,
25 and safety of the public.

26 **Sec. 13. Rules and Regulations.** – Administrative agencies under Section 8 of
27 this Act shall, in coordination with the UPLC, promulgate rules and regulations to
28 implement the provisions of this Act within ninety (90) days from the effectivity of this
29 Act.

30 **Sec. 14. Separability Clause.** – If any portion or provision of this Act is declared
31 unconstitutional, the remainder of this Act or any provision not affected thereby shall
32 remain in force and effect.

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

37 **Sec. 16. Effectivity.** – This Act shall take effect after fifteen (15) days after its
38 publication in the Official Gazette or in a newspaper of general circulation.

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Approved,