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 However, some provisions in this 80-year-old law are not only outdated but have also become restrictive.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
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 amended to read as follows:

"Section 13. xxx.
(B) The term "public service" includes every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done or general business purpose; xxx canal, PUBLIC MARKET, irrigation system xxx.

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

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

II. TRANSMISSION OF ELECTRICITY (AS DEFINED BY SECTION 4 (CCC) OF REPUBLIC ACT NO. 9136) SYSTEM; AND,
III. WATER PIPELINE DISTRIBUTION SYSTEM
OR SEWERAGE PIPELINE SYSTEM (AS
DEFINED BY REPUBLIC ACT NO.6234,
ENTITLED "AN ACT CREATING THE
METROPOLITAN WATER-WORKS AND
SEWERAGE SYSTEM AND DISSOLVING THE
NATIONAL WATERWORKS AND SEWERAGE
AUTHORITY; AND FOR OTHER PURPOSES,"
AS AMENDED, AND PRESIDENTIAL DEGREE
NO. 198, KNOWN AND REFERRED TO AS THE
“PROVINCIAL WATER UTILITIES ACT OF

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

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

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

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

III. THE COMMODITY OR SERVICE IS
NECESSARY FOR THE MAINTENANCE OF
LIFE AND OCCUPATION OF RESIDENTS; AND,
IV. THE COMMODITY 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, is 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.]

"xxx
(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.

"IN THE PUBLIC INTEREST, THE ADMINISTRATIVE
AGENCY MAY ESTABLISH AND ENFORCE A METHODOLOGY
FOR SETTING RATES, TAKING INTO ACCOUNT ALL
RELEVANT CONSIDERATIONS, INCLUDING THE EFFI-
CIENCY OF THE REGULATED PUBLIC SERVICE. THE RATES
MUST BE SUCH AS TO ALLOW THE RECOVERY OF JUST AND
REASONABLE COSTS AND A REASONABLE RATE OF
RETURN TO ENABLE THE PUBLIC SERVICE TO OPERATE
VIABLY. THE ADMINISTRATIVE AGENCY MAY ADOPT
ALTERNATIVE FORMS OF INTERNATIONALLY-ACCEPTED
RATE-SETTING METHODOLOGY AS IT MAY DEEM
APPROPRIATE AND WILL PROMOTE EFFICIENCY.
RATE-SETTING METHODOLOGY SO ADOPTED AND
APPLIED MUST ENSURE A REASONABLE PRICE OF THE
COMMODITY OR SERVICE. THE RATES PRESCRIBED SHALL
BE NON-Discriminatory.

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

"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.

"xxx."

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:

"xxx.

"(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 –

"xxx

"(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 order[s], decision[s] or regulation[s] of the [Commission] ADMINISTRATIVE AGENCY shall be subject to DISGORGEMENT OF PROFITS, TREBLE DAMAGES, a fine [of not exceeding two hundred pesos] OF UP TO FIVE MILLION PESOS' per day for every day during which such default or violation continues[;], DIVESTMENT, OR ALL OR ANY COMBINATION THEREOF; and the [Commission] ADMINISTRATIVE AGENCY is hereby authorized and empowered to impose such fine, after due notice and hearing. THE MAXIMUM DAILY FINE OF 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] IS 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.”

[(a) xxx
xxx
(i) xxx
xxx
xxx.]

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

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

Sec. 8. Recognition of Administrative Agencies. – All references to the Public
Service Commission in Commonwealth Act No. 146, as amended, shall mean any
administrative agency 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 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 shall continue to be subject to regulation by relevant administrative agencies
under existing laws.

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

Sec. 10. 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 1 of this Act.

Sec. 11. 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. 12. 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. 13. 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 within ninety (90) days from the effectivity of this
Act.

Sec. 14. 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. 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. Effectivity. – This Act shall take effect after fifteen (15) days after its
publication in the Official Gazette or in a newspaper of general circulation.
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Approved.