

Republic of the Philippines
House of Representatives
Quezon City

SEVENTEENTH CONGRESS
First Regular Session



COMMITTEE REPORT NO. **295**

Submitted by the Committee on Economic Affairs on 31 MAY 2017

Re: House Bill No. **5828**

Recommending its approval in substitution of House Bills Numbered 4389, 4468, 4501, 4787 and 4996

Sponsors: Representatives Arthur C. Yap and Joey Sarte-Salceda

Mr. Speaker:

The Committee on Economic Affairs to which were referred House Bill No. 4389, introduced by Representative Gloria Macapagal Arroyo, entitled:

"AN ACT FURTHER AMENDING COMMONWEALTH ACT NO. 146, OR THE PUBLIC SERVICE ACT, AS AMENDED"

House Bill No. 4468, introduced by Representative Joey Sarte-Salceda, entitled:

"AN ACT FURTHER AMENDING COMMONWEALTH ACT NO. 146 OR THE PUBLIC SERVICE ACT, AS AMENDED"

House Bill No. 4501, introduced by Representative Arthur C. Yap, entitled:

"AN ACT FURTHER AMENDING COMMONWEALTH ACT NO. 146 OR THE PUBLIC SERVICE ACT, AS AMENDED"

House Bill No. 4787, introduced by Representatives Feliciano Belmonte, Jr. and Jose Christopher Y. Belmonte, entitled:

"AN ACT FURTHER AMENDING COMMONWEALTH ACT NO. 146 OR THE PUBLIC SERVICE ACT, AS AMENDED"

House Bill No. 4996, introduced by Representative Manuel Monsour T. Del Rosario III, entitled:

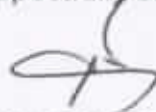
"AN ACT FURTHER AMENDING COMMONWEALTH ACT NO. 146 OR
THE PUBLIC SERVICE ACT, AS AMENDED"

has considered the same and recommends that the attached House Bill No.
— **5828** entitled:

"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 approved, in substitution of House Bills Numbered 4389, 4468, 4501, 4787
and 4996 with Representatives Gloria Macapagal-Arroyo, Joey Sarte-Salceda,
Arthur C. Yap, Feliciano Belmonte, Jr., Jose Christopher Y. Belmonte, and
Manuel Monsour T. Del Rosario III as authors thereof.

Respectfully submitted,



REP. ARTHUR C. YAP

Chairman

Committee on Economic Affairs

THE HONORABLE SPEAKER
HOUSE OF REPRESENTATIVES
Quezon City

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
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5828
HOUSE BILL NO. _____

Introduced by Representatives Gloria Macapagal-Arroyo, Joey Sarte-Salceda, Arthur C. Yap, Feliciano Belmonte, Jr., Jose Christopher Y. Belmonte, and Manuel Monsour T. Del Rosario III

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 further amended by adding a new paragraph to be
3 designated as Section 13 (d) to read as follows:

4 "Section 13. xxx.

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

8 (1) DISTRIBUTION OF ELECTRICITY (AS DEFINED
9 BY SECTION 4 (N) OF REPUBLIC ACT NO.
10 9136, OTHERWISE KNOWN AS THE "ELECTRIC
11 POWER INDUSTRY REFORM ACT OF 2001")
12 SYSTEM;

13 (2) TRANSMISSION OF ELECTRICITY (AS
14 DEFINED BY SECTION 4 (CCC) OF REPUBLIC
15 ACT NO. 9136) SYSTEM; AND,

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

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

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

- 23 (1) THE PERSON PERFORMS A PUBLIC SERVICE;
24 (2) THE BUSINESS OR SERVICE REGULARLY
25 SUPPLIES AND DIRECTLY TRANSMITS AND
26 DISTRIBUTES TO THE PUBLIC THROUGH A
27 NETWORK A COMMODITY OR SERVICE OF
28 PUBLIC CONSEQUENCE;
29 (3) THE BUSINESS OR SERVICE IS NECESSARY
30 TO THE PUBLIC AND, IF A NATURAL

1 MONOPOLY, NEEDS TO BE REGULATED
2 WHEN THE COMMON GOOD SO REQUIRES;
3 (4) THE BUSINESS OR SERVICE IS NECESSARY
4 FOR THE MAINTENANCE OF LIFE AND
5 OCCUPATION OF RESIDENTS; AND,
6 (5) THE BUSINESS OR SERVICE IS OBLIGATED
7 TO PROVIDE ADEQUATE SERVICE TO THE
8 PUBLIC ON DEMAND."

9 **Sec. 2. Certificate of Authority.** –Section 15 of Commonwealth Act No.
10 146, as amended, is hereby further amended to read as follows:

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

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

1 xxx."

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

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

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

27 xxx

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

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

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

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

27 xxx."

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

30 "Section. 17. Proceedings of [Commission]
31 ADMINISTRATIVE AGENCY without previous hearing. – The

1 [Commission] ADMINISTRATIVE AGENCY shall have power
2 without previous hearing, subject to established limitations and
3 exception and saving provisions to the contrary:

4 xxx

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

15 xxx."

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

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

24 xxx

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

1 transfer shall be void and of no effect and shall be sufficient cause
2 for ordering the cancellation of the certificate.

3 xxx."

4 **Sec. 6. Penalties for Violations.** – Section 21 of Commonwealth Act No.
5 146, as amended, is hereby further amended to read as follows:

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

22 The PENALTIES AND fines so imposed shall be paid to the
23 Government of the Philippines through the [Commission]
24 ADMINISTRATIVE AGENCY, and failure to pay the PENALTY OR
25 fine in any case within the same specified in the order or decision of
26 the [Commission] ADMINISTRATIVE AGENCY shall be deemed
27 good and sufficient reason for the suspension of the certificate of
28 said public service until payment [shall be] IS made. Payment may also
29 be enforced by appropriate action brought in a court of competent
30 jurisdiction. The remedy provided in this section shall not be a bar

1 to, or affect any other remedy provided in this Act but shall be
2 cumulative and additional to such remedy or remedies.”

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

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

13 [(a) xxx
14 xxx
15 (i) xxx
16 xxx
17 xxx.]

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

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

31 **Sec. 10. General Law.** – Commonwealth Act No. 146, as amended, shall
32 be construed as a general law that shall apply suppletorily to special laws or
33 existing sector-specific laws governing public services, except for Section 13 (d)

1 of Commonwealth Act No. 146, as amended, as further amended by Section 2 of
2 this Act.

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

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

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

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

21 **Sec. 15. Repealing Clause.** – All laws, decrees, orders, rules and
22 regulations or other issuances or parts thereof, including Commonwealth Act No.
23 146 or the Public Service Act, as amended, inconsistent with the provisions of
24 this Act are hereby repealed or modified accordingly.

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

Approved,

HOUSE BILL No. _____

In substitution of House Bills Numbered 4389, 4468, 4501, 4787 and 4996
(As approved on May 10, 2017)

**“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”**

*Introduced by: REPRESENTATIVES GLORIA MACAPAGAL ARROYO,
JOEY SARTE SALCEDA, ARTHUR C. YAP, FELICIANO BELMONTE, JR. and
JOSE CHRISTOPHER Y. BELMONTE, and MANUEL MONSOUR T. DEL ROSARIO III*

*Committee Referral: COMMITTEE ON ECONOMIC AFFAIRS
Committee Chairperson: REPRESENTATIVE AUTHUR C. YAP*

OBJECTIVES:

- To clarify the definition of public utilities in order to open up certain industries to more competition
- To provide a mechanism for rate fixing that allows a reasonable rate of return to attract investments into public utilities

KEY PROVISIONS:

1. Provides a clear definition of public utility” that covers 3 sectors:
 - (a) Distribution of electricity (as defined by section 4 (n) of RA 9136) system;
 - (b) Transmission of electricity (as defined by section 4 (ccc) of RA 9136) system; and
 - (c) Water pipeline distribution system or sewerage pipeline system (as defined by RA 6234, as amended, and PD 198, as amended). (Sec. 1)
2. Retains the National Economic and Development Authority (NEDA) Secretariat, in consultation with the Philippine Competition Commission (PCC), as the recommendatory authority to Congress in the classification of a person, business or service as a public utility. (Sec. 1)
3. Recognizes the administrative agencies to which the powers and duties of the Public Service Commission (PSC) were transferred in accordance with their respective charters and related statutes. (Sec. 8)
4. Provides an appropriate mechanism for fixing rates based on reasonable rate of return. (Sec. 3)
5. Strengthens the enforcement remedies of administrative agencies. (Sec. 6)

RELATED LAW:

- Commonwealth Act No. 146 or the Public Service Law (1936).