

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
Second Regular Session



COMMITTEE REPORT NO. 990

Submitted by the Committee on Legislative Franchises on May 24, 2021.

Re: House Bill No. 9423

Recommending its approval in substitution of House Bill No. 9313

Sponsors: Representatives Franz E. Alvarez and Elpidio F. Barzaga

Mr. Speaker:

The Committee on Legislative Franchises to which was referred House Bill No. 9313, authored by Rep. Elpidio F. Barzaga entitled:

“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”

has considered the same and recommends that the attached House Bill No. 9423 entitled:

“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”

be approved in substitution of House Bill No. 9313 with Reps. Elpidio F. Barzaga, Franz E. Alvarez, Janette L. Garin, John Marvin “Yul Servo” C. Nieto, Eleandro Jesus F. Madrona, Eric M. Martinez, Cyrille “Beng” F. Abueg-Zaldivar, Strike B. Revilla and Alyssa Sheena P. Tan as authors thereof.

Respectfully submitted:



FRANZ E. ALVAREZ

Chairperson

Committee on Legislative Franchises

**THE HONORABLE SPEAKER
HOUSE OF REPRESENTATIVES
QUEZON CITY**

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HOUSE BILL NO. **9423**
(In substitution of House Bill No. 9313)

Introduced by **REPS. ELPIDIO F. BARZAGA, FRANZ E. ALVAREZ, JANETTE L. GARIN, JOHN MARVIN “YUL SERVO” C. NIETO, ELEANDRO JESUS F. MADRONA, ERIC M. MARTINEZ, CYRILLE “BENG” F. ABUEG-ZALDIVAR, STRIKE B. REVILLA and ALYSSA SHEENA P. TAN**

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

Be it enacted by the Senate and House of Representatives of the Philippines in 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 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 the 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 Regulatory Office.

SEC. 2. Definition of Terms. — As used in this Act:

(a) *Concession Agreement* refers to the agreement entered into between the grantee and MWSS on 21 February 1997, including its Amendment dated 26 October 2001, and the Memorandum of Agreement and Confirmation dated 23 October 2009, as amended by the Revised Concession Agreement dated 31 March 2021, or as may hereafter be amended.

(b) *Franchise Area* refers to the Service Area East as defined and delineated under the Concession Agreement including the cities of Makati, Mandaluyong, Pasig, Pateros, San Juan, Taguig, Marikina, and parts of Quezon City and Manila, and the towns of Angono, Baras, Binangonan, Cainta, Cardona, Jala-Jala, Morong, Pililia, Rodriguez, Tanay, Taytay, Teresa and San Mateo, and Antipolo City in the Province of Rizal, and subject to applicable laws.

1 (c) *Regulatory Office* refers to the Regulatory Office established under the
2 Concession Agreement (the “MWSS Regulatory Office”), or its legal
3 successor as may be created or reorganized by Executive Order or by law.
4

5 **SEC. 3. *Rights and Privileges.*** — Without limiting the scope of authority of
6 the grantee provided under Section 1, the grantee shall establish, manage, operate,
7 repair, rehabilitate, expand, and improve the waterworks and sewerage system in the
8 Franchise Area, including the right to bill and collect fees from end-users for water
9 supply and sewerage services.
10

11 The grantee shall also have the rights and privileges to:

12
13 (a) develop, finance, construct, install, maintain, and operate, as its
14 operations may require, water sources, including new raw water
15 sources, including deep wells, dams, aqueducts, tunnels, treatment
16 plants, reservoirs, pump stations, and facilities for transmission,
17 conveyance and distribution of water including pipelines, machineries,
18 and other waterworks for the purpose of supplying water in the Franchise
19 Area, for domestic, commercial, industrial, and other purposes;
20

21 (b) recover, supply, distribute, and reuse treated and grey water, whether in
22 bulk or retail, within Franchise Area for domestic, commercial or
23 industrial and other purposes;
24

25 (c) finance, construct, install, maintain, and operate sewerage systems,
26 whether separate or combined, as may be necessary for the proper
27 sanitation and other uses within the Franchise Area: *Provided*, That the
28 grantee may only offer services to non-residential customers for
29 industrial effluents compatible with available treatment processes;
30

31 (d) purify water from deep well, reservoirs, dams and other water sources
32 subject to the approval of the Department of Health or any other
33 government agency concerned;
34

35 (e) construct works across, over, through or alongside, any stream, water-
36 course, canal, ditch, public places, bridges, street, avenue, highway, or
37 railway, as the location of said works may require: *Provided*, That the
38 works be constructed in a manner as to afford security to life and
39 property, and to the extent reasonably possible not to obstruct
40 traffic: *Provided, further*, That the stream, water-course, canal, ditch,
41 public places, bridges, street, avenue, highway, or railway so crossed or
42 intersected shall be restored as provided in Section 6; and
43

44 (f) disconnect water supply and discontinue provision of water or
45 wastewater services if customer defaults in the payment of fees for the
46 services provided, or for acts of pilferage pursuant to Republic Act No.
47 8041 or the “National Water Crisis Act of 1995”.
48

49 **SEC. 4. *Manner of Operation of Stations or Facilities.*** – All waterworks and
50 sewerage systems for water and sewerage services owned, maintained, operated, or

1 managed by the grantee, its successors or assignees shall be operated and
2 maintained at all times in accordance with industry standards provided for in RA No.
3 9275 or the “Philippine Clean Water Act of 2004” and Presidential Decree No. 1067 or
4 “The Water Code of the Philippines”, and as specified in the Concession Agreement,
5 certificate of public convenience and necessity, license, or permit.
6

7 The grantee shall comply with the resolutions, issuances, and standards set by
8 the Regulatory Office and other concerned government agencies.
9

10 The La Mesa Dam and Reservoir which was designed to be a complementary
11 facility to the Balara Water Treatment Plants operated by the grantee shall continue to
12 be managed by the grantee with the approval of the Regulatory Office.
13

14 It shall be the duty of the grantee, its successors or assignees, whenever
15 required to do so by the Regulatory Office, or any authorized government agency, to
16 modify, improve, and change the waterworks and sewerage system or facilities in a
17 manner and extent as the technological improvements in the water supply and
18 sewerage services shall render beneficial to consumers, and shall promote efficiency
19 and environmental sustainability.
20

21 The grantee shall promote water conservation and avoid water wastage. With
22 the approval of the Regulatory Office and considering cost efficiencies, the grantee
23 shall establish water impounding facilities, consider and undertake the recovery and
24 appropriate reuse of wastewater, grey water, industrial water, and reclaimed water.
25 The grantee may adopt waste-to-energy or similar technology utilizing sludge waste
26 from its wastewater facilities to promote energy efficiency in its operations.
27

28 **SEC. 5. Certificate of Public Convenience and Necessity, License or**
29 **Permit.** – For purposes of this Act, the Concession Agreement shall serve as the
30 certificate of public convenience and necessity, license, or permit of the grantee for
31 the operation of its waterworks and sewerage system.
32

33 The Concession Agreement between the MWSS and the grantee shall remain
34 valid unless otherwise terminated, after due notice and hearing for reasons provided
35 in the Concession Agreement, or invalidated by a court of competent jurisdiction or by
36 a government agency authorized by law to do so when national security, national
37 emergency, or public interest so requires, or unless modified or amended under this
38 Act or any subsequent law.
39

40 The grantee, its successors or assignees, shall apply for a certificate of public
41 convenience and necessity, license, or permit when a new regulatory framework for
42 water service providers is established by law or when required by the Regulatory
43 Office, which will supersede the terms and conditions of the Concession Agreement:
44 *Provided*, That if the public service function and the recovered and retained assets of
45 the MWSS, as defined in the Concession Agreement, are privatized by law, the
46 grantee shall have the right to match the highest compliant bid after a public bidding
47 for MWSS owned assets in the waterworks and sewerage system in the Franchise
48 Area. The right to match shall be exercised within thirty (30) days from receipt of written
49 notice of the amount of the highest compliant bid, and the grantee shall have a period
50 of ninety (90) days to pay the bid price: *Provided, further*, That the bidding process
51 shall be in accordance with the Commission on Audit Circular No. 89-296 or the “Audit
52 Guidelines on the Divestment or Disposal of Property and Other Assets of National
53 Government Agencies and Instrumentalities, Local Government Units and

1 Government-Owned or Controlled Corporations and their Subsidiaries” and other
2 related laws or issuances.

3
4 **SEC. 6. Excavation and Restoration Works** – For the purpose of erecting
5 and maintaining water pipelines, sewerage line, and other related facilities, it shall be
6 lawful for the grantee, its successors or assignees, with prior approval of the
7 Department of Public Works and Highways (DPWH), Metropolitan Manila
8 Development Authority (MMDA), or the local government units (LGU) concerned, as
9 may be appropriate, to make excavations or lay pipes in any of the public places,
10 roads, highways, streets, lanes, alleys, avenues, sidewalks, or bridges in the
11 Franchise Area: *Provided, however,* That public place, road, highway, street, lane,
12 alley, avenue, sidewalk, or bridge disturbed, altered, or changed by reason of erection
13 of water pipelines and other related facilities, shall be repaired or replaced in
14 workmanlike manner by the grantee, its successors or assignees, in accordance with
15 the standards set by the DPWH, MMDA, or the LGU concerned. Should the grantee,
16 its successors or assignees, after a ten (10)-day notice from the said authority, fail,
17 refuse, or neglect to repair or replace any part of a public place, road, highway, street,
18 lane, alley, avenue, sidewalk, or bridge altered, changed or disturbed by the grantee,
19 its successors or assignees, then the DPWH, MMDA, or the LGU concerned shall
20 have the right to have the same repaired or replaced in good order and condition and
21 charge the grantee, its successors or assignees at double the amount of the costs and
22 expenses for such repair or replacement.

23
24 **SEC. 7. Responsibility to the Public.** – The grantee, its successors or
25 assignees shall conform to the ethics of honest enterprise and shall provide water
26 supply and sewerage services to the Franchise Area in a prudent, efficient, and
27 satisfactory manner.

28
29 For the public interest, as far as feasible and whenever required by the
30 Regulatory Office, the grantee shall modify, improve, or change its facilities, pipelines,
31 systems, and equipment for the purpose of providing efficient and reliable service at
32 reasonable costs. The grantee shall charge reasonable and just fees for its services
33 to all types of consumers and water users within its Franchise Area in accordance with
34 Section 8 of this Act.

35
36 The grantee, its successors or assignees, shall comply with environmental and
37 sustainability standards, and shall work with the local government units to ensure safe
38 and inclusive development.

39
40 **SEC. 8. Setting Tariffs, Rates and Other Charges.** – The Regulatory Office,
41 with the approval of MWSS Board of Trustees under the Concession Agreement, shall
42 establish tariffs, rates and other charges which are fair and reasonable, and ensure
43 economic viability and a fair return on investments.

44
45 Tariffs, rates and charges shall be based on and consistent with a rate-setting
46 methodology that the Regulatory Office shall, after due consultation with stakeholders,
47 define and publish, taking into account the following:

- 48
49 (a) reasonable and prudent capital and recurrent costs of providing the service
50 including a reasonable rate of return on capital;
51 (b) efficiency of the service;

- 1 (c) incentives for enhancement of efficiency which shall not exceed the limitations
- 2 applicable to public utilities;
- 3 (d) willingness to pay of the customers/consumers;
- 4 (e) equity considerations; and
- 5 (f) administrative simplicity.

6
7 Tariffs, rates, and charges set by the Regulatory Office, as approved by the
8 MWSS Board of Trustees under the Concession Agreement, shall be presumed valid
9 and reasonable, unless declared otherwise in a proper administrative or judicial
10 proceeding.

11
12 **SEC. 9. Protection of Consumer Interests.** – The grantee shall establish a
13 consumer desk that will handle consumer complaints and ensure adequate protection
14 of consumer interests. The grantee shall act with dispatch on all complaints brought
15 before it.

16
17 The grantee shall ensure that service interruptions shall be minimal and shall
18 observe the standards imposed by the Regulatory Office.

19 **SEC. 10. Election of Independent Directors** – The Board of Directors of the
20 grantee shall have independent directors constituting at least twenty percent (20%) of
21 its total membership. These independent directors must be elected by a majority of all
22 the holders of outstanding shares entitled to vote.

23
24 An independent director is a person who, apart from shareholdings and fees
25 received from the corporation, is independent of management and free from any
26 business or other relationship which could, or could reasonably be perceived to,
27 materially interfere with the exercise of independent judgment in carrying out the
28 responsibilities as a director.

29
30 **SEC. 11. Right of the Government.** – A special right is hereby reserved to the
31 President of the Philippines, in times of war, rebellion, public peril, calamity,
32 emergency, disaster, or disturbance of peace and order, to temporarily take over and
33 operate the waterworks and sewerage system of the grantee; to temporarily suspend
34 the operation of any portion thereof in the interest of public safety, security, and public
35 welfare; or to authorize the temporary use and operation thereof by any agency of the
36 government, upon due compensation to the grantee, for the use of said waterworks
37 and sewerage system during the period when they shall be so operated.

38
39 **SEC. 12. Right of Eminent Domain.** – Subject to the limitations and
40 procedures prescribed by law, the grantee, its successors or assignees, is authorized
41 to exercise the power of eminent domain insofar as it may be reasonably necessary
42 for the efficient establishment, improvement, upgrading, rehabilitation, maintenance,
43 and operation of services. The grantee is authorized to install and maintain its water
44 pipelines and other facilities over, under, and across public property, including streets,
45 highways, parks, and other similar property of the Government of the Philippines, its
46 branches, or any of its instrumentalities. The grantee may acquire private property as
47 is actually necessary for the realization of the purposes for which this franchise is

1 granted, including pipelines, buildings, infrastructure, machineries, and equipment
2 previously, currently, or actually used, or intended to be used, or have been
3 abandoned, unused, or underutilized, or which obstructs its facilities, for the operation
4 of a waterworks and sewerage system for the conveyance of water supply and
5 sewerage services to end-users in the Franchise Area: *Provided*, That expropriation
6 proceedings before the proper court shall have been instituted and just compensation
7 paid.

8
9 **SEC. 13. *Term of the Franchise.*** – This franchise shall be for a term of twenty-
10 five (25) years from the effectivity of this Act, unless sooner cancelled or revoked by
11 Congress when the public interest so requires or when the grantee fails to reasonably
12 comply with regulatory standards.

13 **SEC. 14. *Acceptance and Compliance.*** — Acceptance of this franchise shall
14 be given in writing to the Congress of the Philippines, through the Committee on
15 Legislative Franchises of the House of Representatives and the Committee on Public
16 Services of the Senate, within sixty (60) days from the effectivity of this Act. Upon
17 giving such acceptance, the grantee, its successors or assignees, shall exercise the
18 privileges granted under this Act. Nonacceptance shall render this franchise void.

19
20 **SEC. 15. *Warranty in Favor of the National and Local Governments.*** — The
21 grantee shall hold the national, provincial, city, and municipal governments of the
22 Philippines free from all claims, liabilities, demands, or actions arising from accidents
23 causing injury to persons or damage to properties, during the construction or operation
24 of the waterworks and sewerage system facilities of the grantee.

25
26 **SEC. 16. *Liability for Damages.*** — The grantee shall be liable for any injury
27 to persons and damage to property caused by any accident arising from defective
28 construction of infrastructure built pursuant to the operation of its business under this
29 franchise, or by neglect or failure to keep its pipelines and other related facilities in
30 safe condition.

31
32 **SEC. 17. *Sale, Lease, Transfer, Grant of Usufruct, or Assignment of***
33 ***Franchise.*** — The grantee shall not sell, lease, transfer, grant the usufruct of, nor
34 assign this franchise or the rights and privileges acquired thereunder to any person,
35 firm, company, corporation, or other commercial or legal entity, nor merge with any
36 other corporation or entity, nor shall the controlling interest of the grantee be
37 transferred, simultaneously or contemporaneously, to any person, firm, company,
38 corporation, or entity without the prior approval of Congress: *Provided*, That the
39 foregoing limitations shall not apply to any transfer, sale, or issuance of shares of stock
40 at the level of corporate stockholders of the grantee: *Provided, further*, That the
41 foregoing limitations shall not apply in case of assignment or transfer of the operation
42 of any of its related business: *Provided, furthermore*, That any transfer, sale, or
43 issuance at the level of the corporate stockholders of the grantee is in accordance with
44 applicable constitutional limitations.

45
46 The grantee shall inform Congress, through the Office of the Speaker of the
47 House of Representatives and the Office of the Senate President, of any sale, lease,
48 transfer, grant of usufruct, or assignment of franchise or the rights and privileges
49 acquired thereunder, or of the merger or transfer of the controlling interest of the
50 grantee, within sixty (60) days after the completion of the said transaction. Failure to
51 report to Congress such change of ownership shall render the franchise *ipso facto*

1 revoked. Any person or entity to which this franchise is sold, transferred, or assigned
2 shall be subject to the same conditions, terms, restrictions, and limitations of this Act.
3

4 **SEC. 18. Dispersal of ownership.** – In accordance with the constitutional
5 provision to encourage public participation in public utilities, the grantee, a publicly
6 listed corporation in the Philippine Stock Exchange, shall maintain its listing therein
7 and comply with its minimum public float requirement during the term of the franchise.
8 Noncompliance therewith shall render the franchise *ipso facto* revoked.
9

10 **SEC. 19. Information Dissemination.** — An information dissemination
11 campaign regarding public services and operations of the grantee, as well as the
12 general provisions of the franchise including its term, shall be made known to all end-
13 users in the Franchise Area.
14

15 **SEC. 20. Reportorial Requirement.** — The grantee shall submit an annual
16 report on its compliance with the terms and conditions of the franchise and on its
17 operations to the Congress of the Philippines, through the Committee on Legislative
18 Franchises of the House of Representatives and the Committee on Public Services of
19 the Senate, on or before April 30 of every year during the term of its franchise.
20

21 The annual report shall include an update on the development, operation, and
22 expansion of business; audited financial statements; latest GIS officially submitted to
23 the SEC, if applicable; certification of the Regulatory Office on the status of its permits
24 and operations; and an update on its minimum public float required under Section 18.
25

26 The Regulatory Office shall, one (1) year from the grant of this franchise, and
27 every five (5) years thereafter, conduct a comprehensive assessment of the grantee's
28 operations and compliance with the conditions imposed hereunder and submit a report
29 thereof to Congress. The grantee shall transmit to the Regulatory Office all information
30 and documents necessary to complete such assessment.
31

32 **SEC. 21. Fine.** — Failure of the grantee to submit the requisite annual report to
33 Congress shall be penalized by a fine of Five hundred pesos (P500.00) for each
34 working day of noncompliance. The fine shall be collected separately from the
35 reportorial penalties imposed by the Regulatory Office and it shall be remitted to the
36 Bureau of the Treasury.
37

38 **SEC. 22. Equality Clause.** — Any advantage, favor, privilege, exemption, or
39 immunity granted under existing franchises, or which may hereafter be granted for
40 water distribution utility, upon prior review and approval of Congress, shall become
41 part of this franchise and shall be accorded immediately and unconditionally to the
42 herein grantee: *Provided*, That the foregoing shall neither apply to nor affect provisions
43 of waterworks and sewerage system franchises concerning territorial coverage, the
44 term, or the type of service authorized by the franchise.
45

46 **SEC. 23. Applicability of Existing Laws.** — The grantee shall comply with
47 and be subject to the provisions of Commonwealth Act No. 146, or the "Public Service
48 Act," as amended, and other pertinent laws relating to the operation of its business.
49

50 **SEC. 24. Repealability and Nonexclusivity Clause.** — This franchise shall
51 be subject to amendment, alteration, or repeal by Congress when public interest so
52 requires and shall not be interpreted as an exclusive grant of the privileges herein
53 provided for.

1
2 **SEC. 25. Separability Clause.** — If any of the sections or provisions of this Act
3 is held invalid, all other provisions not affected thereby shall remain valid.
4

5 **SEC. 26. Repealing Clause.** — All laws, decrees, orders, resolutions,
6 instructions, rules and regulations, and other issuances or parts thereof which are
7 inconsistent with the provisions of this Act are hereby repealed, amended, or modified
8 accordingly.
9

10 **SEC. 27. Effectivity.** — This Act shall take effect fifteen (15) days after its
11 publication in the *Official Gazette* or in any newspaper of general circulation.
12

13 Approved,