



HOUSE OF REPRESENTATIVES

H. No. 5828

BY REPRESENTATIVES MACAPAGAL-ARROYO, SALCEDA, YAP (A.), BELMONTE (F.), BELMONTE (J.C.), DEL ROSARIO, ALVAREZ (P.), FARIÑAS, SUAREZ, PRIMICIAS-AGABAS, MARCOLETA, BELMONTE (R.), ZAMORA (M.C.), TAMBUNTING, MACEDA, EVARDONE, BULUT-BEGTANG, ROMUALDO, VERGARA, ALMARIO, SY-ALVARADO, BRAVO (M.V.), BENITEZ, BATOCABE, CHIPECO, NIETO, DE VENEZIA AND RELAMPAGOS, PER COMMITTEE REPORT NO. 295

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 House of Representatives of the Philippines in Congress assembled:

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

3 "Section 13. x x x.

4 "(b) The term 'public service' includes every person that
5 now or hereafter may own, operate, manage, or control in the
6 Philippines, for hire or compensation, with general or limited
7 clientele, whether permanent, occasional or accidental, and done

1 for general business purpose, x x x canal, PUBLIC MARKET,
2 irrigation system x x x.

3 "x x x

4 "(D) (1) *PUBLIC UTILITY DEFINITION.* – 'PUBLIC
5 UTILITY' REFERS TO A PERSON THAT OPERATES, MANAGES AND
6 CONTROLS FOR PUBLIC USE ANY OF THE FOLLOWING:

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

11 "(II) TRANSMISSION OF ELECTRICITY (AS DEFINED BY
12 SECTION 4(CCC) OF REPUBLIC ACT NO. 9136) SYSTEM; AND

13 "(III) WATER PIPELINE DISTRIBUTION SYSTEM OR
14 SEWERAGE PIPELINE SYSTEM (AS DEFINED BY REPUBLIC ACT
15 NO. 6234, ENTITLED 'AN ACT CREATING THE METROPOLITAN
16 WATERWORKS AND SEWERAGE SYSTEM AND DISSOLVING THE
17 NATIONAL WATERWORKS AND SEWERAGE AUTHORITY; AND
18 FOR OTHER PURPOSES', AS AMENDED, AND PRESIDENTIAL
19 DECREE NO. 198, KNOWN AND REFERRED TO AS THE
20 'PROVINCIAL WATER UTILITIES ACT OF 1973', AS AMENDED).

21 "(2) *AMENDMENT OF PUBLIC UTILITY DEFINITION.* –
22 NO OTHER PERSON SHALL BE DEEMED A PUBLIC UTILITY
23 UNDER SECTION 13(D)(1) UNLESS OTHERWISE SUBSEQUENTLY
24 PROVIDED BY LAW.

25 "THE NATIONAL ECONOMIC AND DEVELOPMENT
26 AUTHORITY (NEDA) SECRETARIAT, IN CONSULTATION WITH
27 THE PHILIPPINE COMPETITION COMMISSION (PCC), SHALL
28 RECOMMEND TO CONGRESS THE CLASSIFICATION OF A PUBLIC
29 SERVICE AS A PUBLIC UTILITY ON THE BASIS OF THE
30 FOLLOWING CRITERIA:

1 “(I) THE PERSON REGULARLY SUPPLIES AND
2 DIRECTLY TRANSMITS AND DISTRIBUTES TO THE PUBLIC
3 THROUGH A NETWORK A COMMODITY OR SERVICE OF PUBLIC
4 CONSEQUENCE;

5 “(II) THE COMMODITY OR SERVICE IS NECESSARY TO
6 THE PUBLIC AND A NATURAL MONOPOLY THAT NEEDS TO BE
7 REGULATED WHEN THE COMMON GOOD SO REQUIRES;

8 “(III) THE COMMODITY OR SERVICE IS NECESSARY FOR
9 THE MAINTENANCE OF LIFE AND OCCUPATION OF RESIDENTS;
10 AND

11 “(IV) THE COMMODITY OR SERVICE IS OBLIGATED TO
12 PROVIDE ADEQUATE SERVICE TO THE PUBLIC ON DEMAND.”

13 SEC. 2. *Certificate of Authority.* – Section 15 of Commonwealth Act
14 No. 146, as amended, is hereby further amended to read as follows:

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

25 “The [Commission] **ADMINISTRATIVE AGENCY** may
26 prescribe as a condition for the issuance of the certificate
27 provided in the preceding paragraph that the service can
28 be acquired by the Republic of the Philippines or any
29 instrumentality thereof upon payment of the cost price of its
30 **CAPITAL STOCK, OR** useful equipment, less reasonable
31 depreciation; and likewise, that the certificate shall be valid only

1 for a definite period of time; and that the violation of any of
2 these conditions shall produce the immediate cancellation of the
3 certificate without the necessity of any express action on the part
4 of the [Commission] ADMINISTRATIVE AGENCY.

5 "X X X."

6 SEC. 3. *Proceedings Upon Notice and Hearing.* – Section 16 of
7 Commonwealth Act No. 146, as amended, is hereby further amended to read as
8 follows:

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

15 "(a) To issue certificates [which shall be known as
16 certificates of public convenience,] authorizing the operation of
17 public service within the Philippines whenever the
18 [Commission] ADMINISTRATIVE AGENCY finds that the
19 operation of the public service proposed and the authorization to
20 do business will promote the public interest in a proper and
21 suitable manner. [Provided, That thereafter, certificates of public
22 convenience and certificates of public convenience and necessity
23 will be granted only to citizens of the Philippines or of the
24 United States or to corporations, co-partnerships, associations or
25 joint-stock companies constituted and organized under the laws
26 of the Philippines; Provided, That sixty per centum of the stock
27 or paid-up capital of any such corporations, co-partnership,
28 association or joint-stock company must belong entirely to
29 citizens of the Philippines or of the United States: Provided,

1 further, That no such certificates shall be issued for a period of
2 more than fifty years.]

3 "x x x

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

20 "IN THE PUBLIC INTEREST, THE ADMINISTRATIVE
21 AGENCY MAY ESTABLISH AND ENFORCE A METHODOLOGY FOR
22 SETTING RATES, TAKING INTO ACCOUNT ALL RELEVANT
23 CONSIDERATIONS, INCLUDING THE EFFICIENCY OF THE
24 REGULATED PUBLIC SERVICE. THE RATES MUST BE SUCH
25 AS TO ALLOW THE RECOVERY OF JUST AND REASONABLE
26 COSTS AND A REASONABLE RATE OF RETURN TO
27 ENABLE THE PUBLIC SERVICE TO OPERATE VIABLY. THE
28 ADMINISTRATIVE AGENCY MAY ADOPT ALTERNATIVE
29 FORMS OF INTERNATIONALLY ACCEPTED RATE-SETTING
30 METHODOLOGY AS IT MAY DEEM APPROPRIATE AND WILL
31 PROMOTE EFFICIENCY. THE RATE-SETTING METHODOLOGY SO

1 ADOPTED AND APPLIED MUST ENSURE A REASONABLE PRICE OF
2 THE COMMODITY OR SERVICE. THE RATES PRESCRIBED SHALL
3 BE NONDISCRIMINATORY.

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

10 "THE PCC IS HEREBY MANDATED TO CONDUCT
11 REGULAR STUDIES ON WHETHER DEREGULATION IS
12 WARRANTED IN A SECTOR AND SUBMIT ITS RECOMMENDATION
13 TO CONGRESS.

14 "x x x."

15 SEC. 4. *Proceedings Without Hearing.* - Section 17 of
16 Commonwealth Act No. 146, as amended, is hereby further amended to
17 read as follows:

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

23 "x x x

24 "(b) To require any public service to pay the actual
25 expenses incurred by the [Commission] ADMINISTRATIVE
26 AGENCY in any investigation if it shall be found in the same that
27 any rate, toll, charge, schedule, regulation, practice, act or
28 service thereof is in violation of any provision of this Act or
29 any certificate, order, rule, regulation or requirement issued
30 or established by the [Commission] ADMINISTRATIVE AGENCY.

31 The [Commission] ADMINISTRATIVE AGENCY may also assess

1 against any public service REASONABLE costs [not to exceed
2 twenty-five pesos] with reference to such investigation.

3 "x x x."

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

6 "Section 20. Acts requiring the approval of the
7 [Commission] ADMINISTRATIVE AGENCY. – Subject to
8 established limitations and exceptions and saving provisions to
9 the contrary, it shall be unlawful for any public service or for the
10 owner, lessee or operator thereof, without the approval and
11 authorization of the [Commission] ADMINISTRATIVE AGENCY
12 previously had –

13 "x x x

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

23 "x x x."

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

26 "Section 21. Every public service violating or failing to
27 comply with the terms and conditions of any certificate or any
28 order[s], decision[s] or regulation[s] of the [Commission]
29 ADMINISTRATIVE AGENCY shall be subject to DISGORGEMENT
30 OF PROFITS, TREBLE DAMAGES, a fine [of not exceeding two

1 hundred pesos] OF UP TO FIVE MILLION PESOS per day for every
2 day during which such default or violation continues[:],
3 **DIVESTMENT, OR ALL OR ANY COMBINATION THEREOF;** and the
4 [Commission] **ADMINISTRATIVE AGENCY** is hereby authorized
5 and empowered to impose such fine, after due notice and
6 hearing. **THE MAXIMUM DAILY FINE OF FIVE MILLION PESOS**
7 **SHALL BE INCREASED EVERY FIVE (5) YEARS UPON**
8 **CERTIFICATION BY THE NEDA ON THE COMPUTATION OF THE**
9 **COST OF MONEY BASED ON THE CUMULATIVE THREE HUNDRED**
10 **SIXTY (360)-DAY TREASURY BILL RATE.**

11 "The **PENALTIES AND** fines so imposed shall be paid to
12 the Government of the Philippines through the [Commission]
13 **ADMINISTRATIVE AGENCY**, and failure to pay the **PENALTY OR**
14 fine in any case within the same specified in the order or decision
15 of the [Commission] **ADMINISTRATIVE AGENCY** shall be
16 deemed good and sufficient reason for the suspension of the
17 certificate of said public service until payment [shall be] **IS**
18 made. Payment may also be enforced by appropriate action
19 brought in a court of competent jurisdiction. The remedy
20 provided in this section shall not be a bar to, or affect any other
21 remedy provided in this Act but shall be cumulative and
22 additional to such remedy or remedies."

23 *SEC. 7. Administrative Cost Recovery Mechanism.* - Section 40 of
24 Commonwealth Act No. 146, as amended, is hereby further amended to
25 read as follows:

26 "Section 40. The [Commission] **ADMINISTRATIVE**
27 **AGENCY** is authorized and ordered to charge and collect from
28 any public service or applicant, as the case may be, [the
29 following] **REASONABLE** fees as reimbursement of its expenses

1 in the authorization, supervision and/or regulation of public
 2 services[:], AND TO IMPOSE APPROPRIATE PENALTIES AND
 3 FINES AS PROVIDED BY LAW.”

4 [(a) x x x

5 x x x

6 (i) x x x

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

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

26 SEC. 8. *Recognition of Administrative Agencies.* – All references to
 27 the Public Service Commission in Commonwealth Act No. 146, as amended,
 28 shall mean any administrative agency to which the powers and duties of the
 29 Public Service Commission were transferred in accordance with their
 30 respective charters and related statutes.

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

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

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

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

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

1 SEC. 13. *Rules and Regulations.* – Administrative agencies under
2 Section 8 of this Act shall, in coordination with the UPLC, promulgate rules
3 and regulations to implement the provisions of this Act within ninety (90) days
4 from the effectivity of this Act.

5 SEC. 14. *Separability Clause.* – If any portion or provision of this Act
6 is declared unconstitutional, the remainder of this Act or any provision not
7 affected thereby shall remain in force and effect.

8 SEC. 15. *Repealing Clause.* – All laws, decrees, orders, rules and
9 regulations or other issuances or parts thereof, including Commonwealth Act
10 No. 146 or the Public Service Act, as amended, inconsistent with the
11 provisions of this Act are hereby repealed or modified accordingly.

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

Approved,

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