

MEMORANDUM OF AGREEMENT AND CONFIRMATION

This Memorandum of Agreement and Confirmation ("Agreement") made and executed this 23rd day of October 2009 by and between:

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, a government corporation duly organized and existing pursuant to Republic Act No. 6234, as amended, with principal office at Katipunan Road, Balara, Quezon City, Philippines, represented herein by its Administrator, **DIOSDADO JOSE M. ALLADO** (hereinafter, "MWSS");

- and -

MANILA WATER COMPANY, INC., a corporation duly organized and existing under the laws of the Republic of the Philippines, with address at 2nd Floor, MWSS-Administration Bldg., Katipunan Road, Balara, Quezon City, represented by its President, **JOSE RENE D. ALMENDRAS** (hereinafter, "MANILA WATER");

(MWSS and MANILA WATER shall be referred to collectively as the "Parties", and individually as a "Party".)

RECITALS:

On 21 February 1997, the Parties have entered into a *Concession Agreement* (the "Concession Agreement") giving MANILA WATER the right and obligation to manage, operate, repair, decommission and refurbish all the facilities required to provide water delivery services and sewerage services in the East Concession Zone of the service area of MWSS, as defined in the *Concession Agreement*;

The *Concession Agreement* is for a period of twenty-five (25) years to expire in the year 2022;

To guarantee the concession granted to MANILA WATER during the lifetime of the *Concession Agreement*, the Republic of the Philippines, through the Department of Finance ("DOF"), issued a Letter of Undertaking dated July 31, 1997 (the "DOF Letter of Undertaking") in favor of MANILA WATER;

During the eleventh (11th) year of the implementation of the *Concession Agreement*, the Parties have identified and discussed the option of renewing/extending the *Concession Agreement* pursuant to the following Government Policies:

- (a) To increase investments in water and wastewater improvement projects, to pursue the mandate of the government to accelerate waste water projects, to comply with the Clean Water Act and the recent Supreme Court decision for the clean up and preservation of Manila Bay, and sufficient concession fees to support the implementation of new water source projects as enumerated in the Final Business Plan;

- (b) To mitigate the impact on tariff increases through the renewal/extension of the *Concession Agreement*;

The Parties acknowledged and agreed that the renewal/extension of the *Concession Agreement* will be beneficial and advantageous to the growing population in the East Concession Area as this would enable MANILA WATER to substantially increase its capital investments and expenditures program to meet the long-term water supply and wastewater services needs of such growing population in the East Concession Area. The renewal/extension would likewise result in the mitigation of future water tariff increases as a result of the expected increase in capital expenditures by MANILA WATER.

NOW THEREFORE, in accordance with Section 16.12 of the *Concession Agreement* and in view of the foregoing considerations, the Parties hereby agree to renew/extend the *Concession Agreement* for an additional period of fifteen (15) years from the year 2022, or until the year 2037, under the same terms and conditions of the *Concession Agreement*, as amended; and in consideration thereof, appropriate approval processes were undertaken:

- (a) Upon review and evaluation of the MANILA WATER Business Plan, the MWSS Board of Trustees approved the renewal/extension of the *Concession Agreement* with MWSS under the following Board Resolutions:

(i) Board Resolution No. 2009-072 -authorizing the renewal/extension of the *Concession Agreement* of MANILA WATER and MWSS for an additional fifteen (15) years from 2022 to 2037, subject to the written consent of the Republic of the Philippines pursuant to Sec. 16.12 of the *Concession Agreement*. A copy of Board Resolution No. 2009-072 is hereto attached as Annex "A" and made an integral part hereof.

(ii) Board Resolution No. 2009-135, confirmed the adoption of the Advice Memo of Senior Deputy Administrator Cruz and Chief Regulator Quizon, as confirmed by MANILA WATER President Jose Rene D. Almendras, and authorizing transmittal thereof to the DOF. A copy of Board Resolution No 2009-135 and the Clarification to the Department of Finance (DOF) concerns relative to assumptions on the Investment Plan (2008-2037) of Manila Water Company, Inc. (MWC) dated June 3, 2009 signed by the Sr. Deputy Administrator Macra A. Cruz and the Chief, Regulator Manuel P. Quizon and conformed by Jose Rene D. Almendras, MWC President are hereto attached as Annex "B" and made an integral part hereof.

(b) On October 6, 2009, Hon. Executive Secretary Eduardo R. Ermita transmitted to the DOF Secretary the Special Authority signed by Her Excellency Gloria Macapagal Arroyo, designating the Honorable Secretary Margarito B. Teves or in his absence, Undersecretary Jeremias N. Paul, Jr., to perform necessary actions on behalf of the Republic of the Philippines, relative to the extension of the *Concession Agreement* between MWSS and MANILA WATER and the corresponding extension of Performance Undertaking in favor of MANILA WATER, pursuant to RA No 8041, EO No. 311 and Sections 16.12 and 15.3 (iii)(d) of February 21, 1997 *Concession of Agreement*. A copy of these documents are hereto attached as Annex "C" and made an integral part hereof.

(c) On October 19, 2009, the Honorable Secretary Margarito B. Teves transmitted to Administrator Diosdado Jose M. Allado the signed Letter of

Consent and Undertaking in behalf of the Republic in connection with the extension of the *Concession Agreement* from 7 May 2022 to 6 May 2037. A copy of Letter of Consent and Undertaking is hereto attached as Annex "D" and made an integral part hereof.

(d) On October 20, 2009, the Original Copy of the Letter of Consent and Undertaking signed by the Secretary of Finance in behalf of the Republic was transmitted by the Administrator of MWSS to MANILA WATER. A copy of the transmittal letter dated October 20, 2009 of the MWSS Administrator is hereto attached as Annex "E" and made an integral part hereof.

(e) The same was acknowledged by MANILA WATER through its President, Jose Rene D. Almendras, through a letter dated October 22, 2009. Through this letter MANILA WATER transmitted the check representing compliance to its commitment to increase by 100% the concession fee (Corporate Operating Budget COB) of MWSS and the MWSS Regulatory Office. Further, MANILA WATER reiterated its commitment to implement the programs and projects which will allow compliance to the service obligation targets agreed in the CA Renewal Business Plan. This shall now be realigned to ensure the delivery of services to customers in the most efficient manner in light of the dramatic changes in weather pattern and natural calamities which could hit its service areas. A copy of the letter dated October 22, 2009 of MWC President is hereto attached as Annex "F" and made an integral part hereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed and executed by their respective duly authorized signatories as of the date first written above.


METROPOLITAN WATERWORKS
AND SEWERAGE SYSTEM

By:



DIOSDADO JOSE M. ALLADO
Administrator

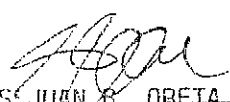
MANILA WATER COMPANY, INC.

By:


JOSE RENE D. ALMENDRAS
President

WITNESSES:


OSCAR T. GARCIA
Chairman
MWSS Board of Trustees


LUIS JUAN B. ORETA
Chief Finance Officer & Treasurer
Manila Water Company, Inc.

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
QUEZON CITY, METRO MANILA)S.S.

BEFORE ME, a Notary Public for and in Q.C., this 23rd day of October 2009,
personally appeared the following:

Name	Competent Evidence of Identity	C.T.C. No.	Date/Place Issued
DIOSDADO JOSE M. ALLADO representing Metropolitan Waterworks and Sewerage System	Passport No. XX 4418153		Aug. 26/09
JOSE RENE D. ALMENDRAS representing MANILA WATER Company, Inc.	Passport No. XX 4280971		Aug. 3/09

who were identified by me through competent evidence of identity to be the same persons described in the foregoing instrument, who acknowledged before me that their respective signatures on the instrument were voluntarily affixed by them for the purposes stated therein, and who declared to me that they have executed this instrument as their free and voluntary act and deed and that of the principals that they represent.

This instrument consists of four (4) pages, including this page on which this acknowledgment is written, and is signed by the parties hereto, together with their instrumental witnesses, on each and every page hereof.

WITNESS MY HAND AND SEAL, on the date and at the place first above written.

Doc. No. 56
Page No. 12
Book No. 100
Series of 2009.

[Faint circular notary seal and signature]

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Republic of the Philippines
METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM
Katipunan Avenue, Balara, Quezon City

Excerpts from the Minutes of the Seventh Regular Meeting of the Board held on 16 April 2009:

"Resolution No. 2009-072

"WHEREAS, pursuant to the MWSS Charter, R. A. 6234, as amended, MWSS has jurisdiction, supervision, and control over all waterworks and sewerage systems within Metropolitan Manila, the entire province of Rizal and a portion of the province of Cavite;

"WHEREAS, pursuant to R. A. No. 8041 (the National Water Crisis Act of 1995), as implemented by E.O. 286 dated 06 December 1995 and E.O. 311 dated 20 March 1996, MWSS was mandated to enter into arrangements that will result in the involvement or participation of the private sector in any or all of the segments, operations and/or facilities of the MWSS;

"WHEREAS, MWSS has determined to grant concessions to private sector corporations, at least 60% of the outstanding capital stock of which is owned and controlled by Philippine nationals, which shall act as contractors to perform certain functions, and as agents for the exercise of certain rights and powers, of MWSS under its Charter, to operate the system of waterworks and sewerage services referred to in the Charter;

"WHEREAS, pursuant to a process of open public bidding and selection, Manila Water Company, Inc. (MWCI) had been awarded the right to enter into the Concession Agreement (CA) dated 21 February 1997 with respect to the Service Area East, which Agreement will expire in 2022;

"WHEREAS, in its effort to participate in the pump priming activity of the government, through its program of tariff mitigation, among others, MWCI resubmitted its proposal for the renewal/extension of the Concession Agreement for the East Zone;

"WHEREAS, Section 16.12 of the CA provides in part that, '[a]t the time of such expiration MWSS shall have the option to rebid the Concession or undertake any other course of action it seems appropriate with respect to the Concession; it being understood that without their express approval at such time neither MWSS nor the Republic shall incur any financial obligation in respect of such rebidding

VERIFIED XEROX COPY

[Signature]

or other undertaking. This Agreement may not be renewed except with the express written consent of MWSS and the Republic;

"WHEREAS, pursuant to the policy of Government to accelerate wastewater projects to protect the environment pursuant to the Clean Air Act and in support to the Supreme Court decision to clean up Manila Bay and to ensure water supply security, the MWCI under its Business Plan submitted on 02 March 2009, hereto attached as Annex 'A' and made an integral part hereof, proposed to increase the investments on wastewater and new water sources projects;

"WHEREAS, to mitigate the impact of the increase in investments and the acceleration of wastewater projects on the increase in water rates in the East Concession area, MWCI, the MWSS East Zone Concessionaire, proposed the renewal/extension of its Concession Agreement by fifteen (15) years from 2008 to 2022 to 2008 to 2037;

"WHEREAS, in consideration of this renewal/extension, MWCI, in its letter signed by its President, Mr. Jose Rene D. Almendras, dated 28 April 2009, hereto attached as Annex 'B' and made an integral part hereof, committed to: (1) increase by 100% the regulatory fees due MWSS which shall form part of the total concession fees as defined in the Concession Agreement; and (2) mitigate tariff such that, a 56% reduction in the balance of the 2008 approved rate rebasing for 2009-2012 tariff will result to benefit the consumers; zero increase in 2009, P1 increase, each year, for 2010 to 2012. Beyond 2012, it is estimated that an increase of only P1 per cubic meter, for 2013 to 2016 will be needed. For 2017 to 2037, tariff shall be adjusted based on Consumer Price Index (CPI) and FCDA only;

"WHEREAS, a series of public consultations was conducted prior to this approval to inform and educate stakeholders of the issues that warrant the extension of the Concession Agreement;

"WHEREAS, the Office of the Government Corporate Counsel, through the 15 April 2009 Supplementary Memorandum of Government Corporate Counsel Alberto Agra, hereto attached as Annex 'C' and made an integral part hereof, opined, among others, that a renewal/extension of the Concession Agreement may be legally undertaken even before its expiration for the following reasons:

- 1) The Concession Agreements, especially the legal framework, do not prohibit an extension thereof;
- 2) MWSS has a statutory obligation to ensure the 'uninterrupted and adequate supply and distribution of potable water' at rates that are deemed 'just and equitable';

[Handwritten signature]

- 3) Application of Doctrine of Last Antecedent allows for an extension;
- 4) The extension of the concession agreement falls within the sole administrative discretion of MWSS;
- 5) The bidding procedure and legal framework was tailor-fitted to address the unique and unprecedented magnitude of the privatization of MWSS;
- 6) The extension of the Concession Agreements, at this time, may even prove to be an invaluable aid to the economic plans of the National Government;
- 7) The extension of contracts or agreements imbued with public interest, like the MWSS concession agreement, is not unprecedented; and
- 8) The Water Crisis Act together with the terms and provisions found in the Concession Agreements allow for its extension without the need of public bidding.

"NOW THEREFORE, the foregoing considered, BE IT RESOLVED, as it is hereby resolved, in the interest of public service and pursuant to the Concession Agreement, that the Concession Period of Manila Water Company, Inc., be renewed/extended, as it is hereby renewed/extended for an additional period of fifteen (15) years, from 2022 to 2037, subject to the written consent of the Republic of the Philippines (ROP) as required under Section 16.12 of the Concession Agreement."

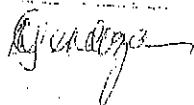
"RESOLVED, also to authorize the MWSS Administrator, Diosdado Jose M. Allado, to sign, execute and deliver any and all documents and agreements, and to do any and all acts as may be required and or necessary to fully effect the foregoing resolution."


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I, the undersigned, hereby certify that the foregoing is a true copy of the resolution adopted by the Board of Trustees of the Metropolitan Waterworks and Sewerage System, and spread in the minutes of a duly constituted meeting of said Board held on 16 April 2009, and confirmed on 28 April 2009.




DARLINA T. UY
Manager, Legal Services Dept./
Board Secretary VI Designate

Office of the President
of the Philippines
Malacañang

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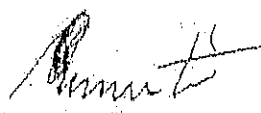
Hon. MARGARITO B. TEVES
Secretary
Department of Finance (DOF)
Manila

Sir:

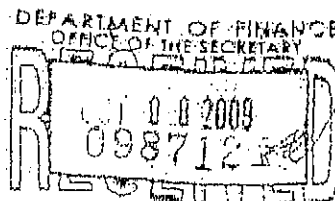
I am pleased to transmit to you the enclosed **Special Authority** signed by the President dated **OCT 06 2009**, which designates you or, in your absence, **Undersecretary Jeremias N. Paul, Jr.**, to perform necessary actions, on behalf of the Republic of the Philippines, relative to the extension of the Concession Agreement (CA) between the Metropolitan Waterworks and Sewerage System and Manila Water Company Inc. (MWCI), and the corresponding extension of Performance Undertaking in favor of MWCI, pursuant to RA No. 8041, EO No. 311 and Sections 16.12 and 15.3 (III)(d) of February 21, 1997 CA.

Best regards.

Very truly yours,


EDUARDO R. ERMITA
Executive Secretary

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LHM/JAA/mbm



MALACANAN PALACE

MANILA

BY THE PRESIDENT OF THE PHILIPPINES

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

KNOW YE, that reposing special trust and confidence in the integrity, prudence and ability of:

HON. MARGARITO B. TEVES

Secretary of Finance

or, in his absence,

HON. JEREMIAS N. PAUL, JR.

Undersecretary of Finance

I, **GLORIA MACAPAGAL-ARROYO**, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution and laws of the Philippines, have vested **Secretary MARGARITO B. TEVES** or, in his absence, **Undersecretary JEREMIAS N. PAUL, JR.**, authority to:

- a) Approve the extension from 7 May 2022 to 6 May 2037 of the Concession Agreement (the "Agreement") dated 21 February 1997 executed by the Metropolitan Waterworks and Sewerage System (MWSS) with **Manila Water Company, Inc. (MWCI)** for the operation of the waterworks and sewerage services of the MWSS with respect to the Service Area East as identified under Schedule 1 of the Agreement.
- b) Conclude, sign, and deliver, for and in behalf of the Republic of the Philippines, a **Performance Undertaking** in favor of MWCI and its successors and assigns in connection with the **Agreement** and its extension.
- c) Sign, execute, and deliver any deed or document of whatsoever kind and nature which may be necessary or proper for the purpose of implementing the said Performance Undertaking.

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Secretary M. B. Teves or, in his absence, Undersecretary J. N. Paul, Jr. is further granted full power and authority to do and perform every act and thing which may be requisite for the accomplishments of the special power herein granted, as fully to all intents and purposes as I, the President of the Republic of the Philippines, might or could do if acting personally, and hereby ratifying and confirming all that he shall lawfully do or caused to be done by virtue of these presents.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

DONE in the City of Manila, Philippines, this 9th day of October in the year of our Lord, Two Thousand and Nine.

Gloria M. Arroyo



By the President:

Eduardo R. Ermita

EDUARDO R. ERMITA
Executive Secretary





Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

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19 October 2009

ATTY. DIOSDADO JOSE M. ALLADO
Administrator
Metropolitan Waterworks and Sewerage System
Katipunan Road, Balara, Quezon City

Subject : Extension of the Concession Agreement (CA) Between
Metropolitan Waterworks and Sewerage System (MWSS)
and Manila Water Company Inc. (MWCI)

Dear Administrator Allado:

This refers to your 29 April 2009 letter requesting for the extension of the Performance Undertaking (PU) ("First PU") signed in 1997 relative to the subject.

Transmitted herewith is the PU ("Second PU") addressed to Manila Water Company Inc. for the period of extension of the subject CA from 07 May 2022 to 06 May 2032, which shall be extended for the period 07 May 2032 to 06 May 2037, subject to the conditions in the Second PU.

Thank you.

Very truly yours,


MARGARITO B. TEVES
Secretary 008761



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

19 October 2009

MANILA WATER COMPANY, INC.
MWSS Compound,
Katipunan Road,
Balara, Quezon City

Ladies and Gentlemen:

I am the Secretary of Finance of the Republic of the Philippines (the "Republic") and am delivering this undertaking letter on behalf of the Republic in connection with the extension of the Concession Agreement (the "Agreement") dated 21 February 1997 between Metropolitan Waterworks and Sewerage System ("MWSS"), a government-owned corporation and Manila Water Company, Inc. (the "Concessionaire"), from 7 May 2022 to 6 May 2037. This undertaking letter shall be effective from 7 May 2022 to 6 May 2032, and shall be extended by the Republic for the period 7 May 2032 to 6 May 2037, subject to paragraph 3 below.

This undertaking letter is furnished to you pursuant to Section 15.3 (iii) (d) of the Agreement. Capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

In connection with the extension of the Agreement, the Republic undertakes with you as follows:

1. Acknowledgment

The Republic hereby acknowledges and approves the extension of the Agreement from 7 May 2022 to 6 May 2037.

2. Undertaking

MWSS shall comply with all its obligations to the Concessionaire under the Agreement.

The Republic hereby guarantees the payment when due of all amounts for which MWSS may become liable pursuant to Section 3.2 ("Liabilities/Revenues"), Section 9.4.4 ("Expiration Payment"), Section 10.3.2 ("Early Termination Amount") and Section 14.2 ("MWSS Indemnity") of the Agreement.

3. Standard Rates Reduction

The Republic shall not interfere with the mechanism contained in Article 9 of the Agreement relating to the setting of rates and connection charges for water and sewerage services provided by the Concessionaire within the Service Area. In this

regard, the Republic hereby confirms that if the Republic or any Government-owned agency shall cause MWSS or the Regulatory Office to reduce Standard Rates below the level that would otherwise be applicable in accordance with the Agreement, or to defer implementation of any increase in Standard Rates beyond the date for implementation thereof in accordance with the Agreement, the Republic shall indemnify the Concessionaire in respect of any loss to the Concessionaire occasioned by such action.

4. Extension of this Undertaking Letter from 2032 to 2037

In the event that, during the period 7 May 2027 to 6 May 2037, the Regulatory Office shall determine that the Concessionaire shall incur Expenditures which shall not be recovered through immediate rate adjustments by way of Rebasing Adjustment or Extraordinary Price Adjustment but through an Expiration Payment or similar payments, this undertaking shall remain in effect until 6 May 2037.

5. Foreign Exchange Convertibility

The Republic hereby confirms that the Concessionaire shall be entitled to convert earnings received in Pesos under the Concession into foreign currency from time to time on a non-discretionary basis.

6. Raw Water Supply

The Republic hereby acknowledges and approves the letter delivered pursuant to Section 3.9 of the Agreement from MWSS to NWRB dated 27 November 1996, which letter was acknowledged and approved by the MWSS Board of Directors on 25 July 1997.

* * * *

This undertaking letter shall be governed by, and construed in accordance with, the law of the Republic of the Philippines. Any dispute relating to this undertaking letter shall be finally settled by arbitration before an arbitration panel consisting of three members appointed and conducting proceedings in Singapore in accordance with the arbitration rules of the United Nations Commission on International Trade Law as in effect of the date hereof. The arbitration shall be conducted in the English language.

The Republic hereby waives for itself and its assets and revenues, to the extent permitted by applicable law, and any and all immunity from suit, execution, or other legal process in connection with any action or proceeding to enforce an arbitral award relating to this undertaking letter. Notwithstanding the foregoing, the Republic does not waive any such immunity in respect of property which is (i) used by a diplomatic or consular mission of the Philippines, (ii) property of a military character and under the control of a military authority or defense agency, or (iii) located in the Philippines and dedicated to a public or government use.

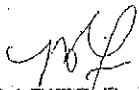
This undertaking letter is being furnished to you solely for your benefit in connection with the Agreement and is limited strictly to the matters stated herein and is not to be read as extending by implication or otherwise, to any matter.

The Republic consents to any assignment by you of your rights under this letter to secure loans incurred in connection with carrying out your obligations under the Concession. Apart from any such assignment, this undertaking letter is not to be used, circulated, quoted or otherwise referred to for any purpose.

Very truly yours,

THE REPUBLIC OF THE PHILIPPINES

By:


MARGARITO B. TEVES

Secretary of Finance

008762



Republic of the Philippines
METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM

June 30, 2009

HON. JEREMIAS N. PAUL, JR.
Undersecretary
Department of Finance (DOF)
6th Floor, Bangko Sentral 6-Storey Building
Malate, Manila

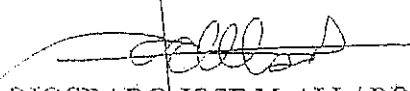
Dear Undersecretary Paul:

Pursuant to your letter dated June 19, 2009, we are transmitting MWSS Board Resolution No. 2009-135 dated June 30, 2009 adopted by the MWSS Board of Trustees (BOT) to confirm the Clarifications to the DOF Concerns Relative to the Assumptions on MWCI Investment Plan 2008-2037 submitted to the MWSS BOT thru a memo dated June 3, 2009 and jointly signed by MWSS Senior Deputy Administrator Cruz and MWSS Chief Regulator of the Regulatory Office, Mr. Manuel P. Quizon and confirmed by MWCI President.

We hope and trust that this resolution completes the requirements of the DOF in the processing and approval of the Letter of Undertaking by the Honorable Secretary of Finance relative to the renewal/extension of the Concession Agreement with Manila Water Company.

Thank you.

Very truly yours:


DIOSDADO JOSE M. ALLADO
Administrator



Republic of the Philippines
METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM

Excerpts from the Minutes of the Eleventh Regular Meeting of the Board held on 30 June 2009:

"Resolution No. 2009-135

"WHEREAS, MWSS BOT Resolution No. 2009-072 was approved on 16 April 2009 and confirmed on 28 April 2009 authorizing the renewal/extension of the Concession Agreement (CA) of Manila Water Company, Inc. (MWCI) for an additional period of fifteen (15) years, from 2022 to 2037, subject to the written consent of the Republic of the Philippines pursuant to Section 16:12 of the CA;

"WHEREAS, the Republic of the Philippines is represented in the Concession Agreement by the Department of Finance (DOF);

"WHEREAS, the MWSS wrote a letter to the DOF dated April 29, 2009 requesting its consent and approval of the renewal/extension of the CA as well as the renewal of the July 31, 1997 DOF Letter of Undertaking for such period as the renewal/extension of the CA with MWCI;

"WHEREAS, the DOF, in a letter to MWSS Senior Deputy Administrator Macra A. Cruz dated May 19, 2009 (Annex 'A'), requested the MWSS *'to clarify and confirm to us how the tariff rebasing fits into the picture and how it may affect the committed rates underlying the MWSS Board-approved extension. To quote the Board Resolution "beyond 2012, it is estimated that an increase of only P1 per cubic meter, for 2013 to 2016 will be needed. For 2017 to 2037, tariff shall be adjusted based on Consumer Price Index (CPI) and FCDA only". We were made to understand during the May 15 meeting that all the provisions of the Concession Agreement remain the same'*;

"WHEREAS, MWSS Senior Deputy Administrator Cruz referred the May 19, 2009 DOF letter to MWCI and, consequently, MWCI replied on May 21, 2009 clarifying the concerns raised by the DOF;

"WHEREAS, MWSS Senior Deputy Administrator Cruz, and MWSS Regulatory Office Chief Regulator Manuel P. Quizon submitted an advice memo dated June 3, 2009 (the Advice Memo), attached hereto as Annex 'B', in answer to the DOF letter dated May 19, 2009 where it clarified the technical and financial assumptions contained in MWCI's Investment Plan for 2008 to 2037 in relation to the rate rebasing mechanism of the CA;

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Resolution No.
... and adopting
Advice Memo of MWSS-SDA
and the Chief Regulator re: MWCI's
15-year term renewal/extension.

Page 2

"WHEREAS, the Advice Memo bears the conformity by MWCI through its President, Jose Rene D. Almendras;

"WHEREAS, on June 11, 2009, the MWSS Administrator transmitted the Advice Memo to the DOF carrying the recommendations for approval by Chief Regulator Quizon and MWSS Acting Senior Deputy Administrator Isaias P. Bongar and duly noted by the Chairman of the MWSS Board of Trustees, Oscar I. Garcia;

"WHEREAS, the DOF, in a letter to the MWSS dated June 19, 2009, requested a supplemental board resolution to confirm the clarifications to DOF concerns on the technical and financial assumptions contained in MWCI's Investment Plan for 2008 to 2037 in relation to the rate rebasing mechanism of the CA.

"NOW, THEREFORE, the foregoing considered, BE IT RESOLVED, as it is hereby resolved, to pass this resolution confirming the adoption of the Advice Memo of Senior Deputy Administrator Cruz and Chief Regulator Quizon, as confirmed by MWCI President Jose Rene D. Almendras, and authorizing its transmittal to the DOF."

* * *

I, the undersigned, hereby certify that the foregoing is a true copy of the resolution adopted and confirmed by the Board of Trustees of the Metropolitan Waterworks and Sewerage System, and spread in the minutes of a duly constituted meeting of said Board held on 30 June 2009.

988
DARLINA T. UY

Manager, Legal Services Dept./
Board Secretary Designate



DEPARTMENT OF FINANCE
Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

URGENT

19 May 2009

Ms. Macra Cruz
Senior Deputy Administrator
Metropolitan Waterworks and Sewerage System
Balara, Quezon City

Dear Ms. Cruz:

Thank you for extending clarification on the premises underlying the extension of the MWSS Concession Agreement with Manila Water Services, Inc. (Manila Water) from the original expiration date of 2022 to 2037 which was approved by the MWSS Board per Board Resolution No. 2009-072 dated 16 April 2009.

Relative thereto and pursuant to the agreement reached during our meeting last May 15, 2009, kindly forward to us the services, coverage and other commitments, including the final business plan supporting the committed tariff increases provided under the schedule signed by Mr. Jose Rene D. Alemandras attached hereto as Annex A (Annex B of the Board Resolution). *In addition, the MWSS needs to clarify and confirm to us how the tariff rebasing fits into the picture and how it may affect the committed rates underlying the MWSS Board approved extension. To quote the Board Resolution "Beyond 2012, it is estimated that an increase of only P1 per cubic meter, for 2013 to 2016 will be needed. For 2017 to 2037, tariff shall be adjusted based on Consumer Price Index (CPI) and FCDA only". We were made to understand during the May 15 meeting that all the provisions of the Concession Agreement remain the same.*

Further, may we follow up on copies of all communications from the Department of Finance or communications confirmed by the Department of Finance and/or the National Economic Development Authority in connection with the MWSS Concession Agreements for the East and the West Zones. Please note that we have verbally requested this last week. Lastly, kindly provide us with a copy of the Supreme Court decision to clean up Manila Bay referred to in MWSS Board Resolution.

We would appreciate receiving the requested submissions before the end of this week.

Thank you and with best regards.

Very truly yours,

Solaced Emilia J. Cruz
Solaced Emilia J. Cruz
Director IV and Officer-in-Charge
Corporate Affairs Group-Corporate Concerns Office

cc: Mr. Diosdado Jose M. Allado, MWSS Administrator
Underscretary Jeremias N. Paul, DOF
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Republika ng Pilipinas
PANGASIWAAN NG TUBIG AT ALIKANTARILYA SA KALAKHANG
MAYNILA
Metropolitan Waterworks and Sewerage System
Katipunan Road, Balara, Quezon City 1105, Philippines

FROM: MACRA A. CRUZ Senior Deputy Administrator, MWSS-CO MANUEL P. QUIZON Chief Regulator, MWSS-RO	FOR APPROVAL AND CONFIRMATION BY: THE BOARD OF TRUSTEES THRU: DIOSDADO JOSE M. ALLADO Administrator
SUBJECT: Clarifications to Department of Finance (DOF) Concerns Relative to Assumptions on the Investment Plan (2008 - 2037 of Manila Water Company, Inc. (MWCI))	DATE: 03 June 2009

BACKGROUND:

1. On April 16, 2009, the MWSS presented to the Board of Trustees the proposed renewal of the Concession Agreement (CA) for fifteen (15) years or from 2008 - 2022 to 2008 - 2037 by MWCI. The proposal to renew the CA of MWSS with MWCI is anchored on three (3) basic principles: 1.) It is advantageous to the consumers and has always been supported by the general public as demonstrated in nine (9) public consultations done since 2007 when the proposal was first submitted by MWCI, 2.) It will mitigate the impact of tariff increases necessary to be able to implement long term water supply and wastewater projects, and 3.) It will help Government's economic stimulus plan to increase investments and job creation.
2. On April 16, 2009, the MWSS Board of Trustees passed Resolution No. 2009 - 072 approving the fifteen (15) year extension of the CA with MWCI's committing the following:
 - a. To mitigate tariff increases such that there will be a reduction of the balance of the approved 2008 rebased tariff by 60% since there will be zero increase of the rebased tariff in 2009 and a PI increase of rebased tariff for each year in 2010 to compensate for increased in the consumer price index (CPI) and the quarterly foreign currency differential adjustment (FCDA) to recover foreign exchange losses. Beyond 2012, provided all assumptions in the financial model remain the same and pursuant to the revenue neutrality principle, it is estimated that an increase in rebased tariff, in real terms, will only be P1 per cubic meter for 2013-2016, subject to CPI and FCDA adjustments. For 2017 - 2037, tariff shall be adjusted based on the rates of CPI and FCDA only. It was clarified that the rate rebasing framework in the CA ensures

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accountability for the protection of relevant stakeholders and that the test of prudence and efficiency of expenditures is observed at all times.

- b. To increase its total investments from the approved P187 billion for the period 2008-2022 to P450 billion for 2008 -2037. Wastewater projects shall be accelerated to enable MWSS to comply with the Clean Water Act and the recent Supreme Court ruling on the clean up and preservation of Manila Bay. In addition, and as included in the approved 2008 rate rebasing plan, sufficient debt service support is ensured to enable MWSS to pursue new water source projects, as enumerated in the MWCI Business Plan.
 - c. To increase its share in the current operating budget support to MWSS by 40% as part of the concession fees
3. On April 28, 2009, MWCI agreed to increase its share in the current operating budget of MWSS by 100% i.e., from P198 million paid in January 2009 to P396 million. The increment shall be paid fifteen (15) days after the CA Renewal/Extension becomes effective.

Based on the assumptions of the 2008-2037 Business Plan; including the 100% increase in MWCI's share in the MWSS current operating budget, MWCI submitted to the MWSS Board of Trustees, through the MWSS Administrator, a recalculation of the tariff impact that showed an estimated tariff increase of P1.00 per cubic meter, in real terms, for each year from 2013- 2016. Tariff beyond 2016 is estimated to increase by the rate of the CPI and FCDA.

During its discussions in its April 28, 2009 meeting, the MWSS Board of Trustees confirmed Resolution No. 2009-072 and clarified that the current provisions of the CA, including the mechanism on rate rebasing, shall continue to be in place in the extension of the CA.

Consequently, MWCI submitted to the MWSS a Final Business Plan for 2008-2037 (the "April 2009 Final Business Plan") incorporating the 100% increase in its share in the current operating budget of MWSS and the corresponding tariff impact of the same.

4. On April 29, 2009, MWSS transmitted to the Secretary of the Department of Finance (DOF) a copy of the MWSS Board resolution 2009-072 seeking his consent to the renewal/extension of the CA as the representative of the Republic, with the request that the Letter of Undertaking signed in 1997 by then Secretary of Finance, Roberto F. de Ocampo, be likewise renewed/extended, in behalf of the Republic.
5. On May 19, 2009, DOF requested the MWSS for a clarification on the premises underlying the assumptions (services, coverage and other commitments including the April 2009 Final Business Plan) supporting MWCI's committed tariff increases in the Proposed Investment Plan for 2008 - 2037. In addition, DOF requests that "the MWSS needs to clarify and confirm to us how the tariff rebasing fits into the picture and how it may affect the committed rates underlying the MWSS Board approved extension. To quote the Board Resolution "beyond 2012, it is estimated that an

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5. The April 2009 Final Business Plan assumes the back loading of investment recovery by MWCI in the event of the Renewal/Extension of the CA that will result in the reduction of the balance of the approved 2008 rebased tariff by 66% since there will be zero increase in rebased-tariff in 2009 and a one peso (Php1.00) per cubic meter increase for each year from 2010 to 2012, in addition to the CPI and FCDA.
6. The April 2009 Final Business Plan likewise assumes that after 2012 unrecovered expenditures shall be considered in the 2013 rate rebasing exercise and if all assumptions in the said plan remain the same, the adjustment in rebased tariff is estimated to be at one peso (Php1.00) for each year of 2013 to 2016, in addition to CPI and FCDA. Beyond 2016, with the current assumptions still in place, tariff shall be adjusted by the rate of the CPI and FCDA only;
7. MWCI likewise commits in the April 2009 Final Business Plan an increase in investments from 187 billion pesos for the 2008-2022 plan to 458 billion pesos for the period 2008-2037 to pursue the mandate of the government to accelerate wastewater projects to comply with the Clean Water Act and the recent Supreme Court decision for the cleanup and preservation of Manila Bay and sufficient Concession Fees to support the implementation of new water source projects as enumerated in the said business plan;
8. In its 21 May 2009 letter, MWCI proposed to expand its sewerage coverage to 100% within the three (3) river systems by 2018 and 100% coverage for the entire MWSS East Zone by 2025, the investment for wastewater projects beyond 2022 covering the Manggahan catchment basin, for instance, amounts to 16 billion pesos;
9. In order for the MWSS to implement programs and projects to improve its capacity to manage its private concessionaires and implement improvements of its retained assets, MWCI will increase its contribution to the current operating budget of MWSS by 100%, from 198 million pesos to 396 million pesos;
10. The Rate Rebasing Mechanism of the CA provides for the re-examination, reevaluation and revalidation of past expenditures prudently and efficiently incurred in the attainment of service obligation targets. Likewise, the same mechanism provides for the submission of a business plan by the concessionaire for the next five (5) years that is aligned with the MWSS Master Plan, National/International Development Goals on water and wastewater services and customer interests;
11. Any shortfall or excess in expenditures prudently and efficiently incurred due to distortions (i.e., re-profiling of projects, changes in technical/financial assumptions) of the Final Business Plan shall be considered in the Opening Cash Position in subsequent rate rebasing exercises beginning 2013, subject to the principles of revenue neutrality and affordability of consumers;

In summary the assumptions used in the April 2009 Final Business Plan of MWCI are as follows:

- Tariff - 66% reduction in the balance of the approved 2008 rebased tariff, zero increase in 2009 and P1 per cubic meter for 2010 to 2012; P1 per cubic meter for 2013 to 2016 in rebased tariff and from 2017 onwards, subject to the recovery mechanisms of the CA (CPI, FCDA, EPA and Rate Rebasing every five (5) years)

CAPEX – increased from P187 B in 2008 approved Business Plan to P458 B in the Investment Plan (as of April 2009)

Service Obligations – 99% water coverage by 2037 including expansion areas; 100% wastewater coverage, either through sewerage and sanitation by 2037


Operational and Financial

Billed Volume – 4% growth annually
NRW – 25 to 17%
OPEX Growth Rate – 5%

CAPEX

Internal, with wastewater acceleration, reliability and expansion
Concession Fees, with Laiban 1 and 2, BNAQ, 15 cms and Sumag

CONFORME:


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