

MWSS RESOLUTION STOPPING THE COLLECTION OF FOREIGN CURRENCY DIFFERENTIAL ADJUSTMENT (FCDA) BY MAYNILAD WATER SERVICES INC. (MWSI)



Republika ng Pilipinas
PANGASIWAAN NG TUBIG AT ALKANTARILYA
SA KALAKIANG MAYNILA

Metropolitan Waterworks and Sewerage System

REGULATORY OFFICE

Katipunan Road, Balara, Quezon City 1105, Philippines



Resolution No. 03-015-CA

Series of 2003

WHEREAS, MWSS Board of Trustees Resolution No. 487-2001, which is an integral part of Amendment No. 1 to the Concession Agreement, provides that Maynilad Water Services, Inc. (MWSI) is allowed to recover a Foreign Currency Differential Adjustment (FCDA) with respect to present and future FOREX losses or gains from the period 01 January 2002 until the Expiration Date on a quarterly basis under certain conditions foremost of which is "the quarterly review and adjustment thereof;

WHEREAS, the Regulatory Office determined initially that MWSI was entitled to an FCDA of Php4.07 per cu. m. as of the effectivity of Amendment No. 1;

WHEREAS, the right of MWSI to collect amounts for whatever purpose shall continue be governed by the Concession Agreement, as amended; as well as other agreements it has entered into with MWSS, e.g., MWSS Board of Trustees Resolution No. 219-2002 "fixing for the so-called Standstill Period until 31 December 2002;

WHEREAS, the right of MWSI to collect FCDA as granted to it by Amendment No. 1 is "subject to quarterly review and adjustment" but the first quarterly review was suspended by the agreement of the parties by virtue of MWSS BOT Resolution No. 219-2002 with the conform of Maynilad;

WHEREAS, by virtue of MWSS BOT Resolution No. 219-2002 the Php4.07 per cu. m. FCDA was not adjusted until the end of calendar year 2002;

WHEREAS, the Standstill Period provided for by MWSS BOT Resolution No. 219-2002 was not extended beyond 31 December 2002;

WHEREAS, the quarterly review and adjustment for the last quarter of CY 2002 should have taken effect on the first quarter of this calendar year;

WHEREAS, despite the provisions of Amendment No. 1 and MWSS BOT Resolution No. 219-2002, the Regulatory Office, in the course of its monitoring of MWSI bills, noted that MWSI is still implementing the rates for 2002 all-in average tariff at P19.92 per cu. m., which includes the Php4.07 per cu. m. FCDA and the Php4.21 per cu. m. adjustment for the accelerated EPA;

WHEREAS, the Regulatory Office took judicial notice that Maynilad has not been paying Concession Fee to the MWSS Corporate Office since March 2001, hence, there is no cause to incur foreign currency exchange losses; and, in view thereof, the Regulatory Office determined that the FCDA adjustment for this quarter is zero, or stated otherwise, MWSI has no cause to collect any amount for FCDA beginning January 2003;

WHEREAS, the only justification of MWSI in collecting the said amounts of AEPA and FCDA is the Interim Order dated 07 February 2003;

WHEREAS, the Interim Order dated 07 February 2003 only determined that the concession of MWSI was not terminated as of 07 February 2003 and no amount of legal fees could lead to the conclusion that the Interim Order granted MWSI the right to collect from the provisions of the Concession Agreement, as amended;

WHEREAS, from the foregoing there is no legal basis for the assessment and collection of the amount of Php4.07 per cu. m. FCDA by MWSI beginning 01 January 2003.

NOW, THEREFORE, BE IT RESOLVED, as it is hereby resolved, to order Concessionaire Maynilad Water Services, Inc. to cease and desist from assessing and collecting the amount of Php4.07 per cu. m. Foreign Currency Differential Adjustment immediately upon receipt hereof;

RESOLVED, further, to order Concessionaire Maynilad Water Services, Inc. to account for all amounts collected representing the subject Php4.07 per cu. m. FCDA from 01 January 2003 until it actually stops collecting the same;

RESOLVED, finally, to furnish the Concessionaire Maynilad Water Services, Inc., a copy of this resolution; and to indorse this resolution to the Board of Trustees of owner Metropolitan Waterworks and Sewerage System.

This resolution amends Resolution No. 03-013-CA dated 21 April 2003. 28 April 2003.

DA ANGEL EFREN J. AGUSTIN
Customer Service Regulation

DA CRISTETO E. DIÑOPOL, JR.
Technical Regulation

SDA EDUARDO C. SANTOS
Chief Regulator

DA VIRGILIO P.A. OCAYA
Administration and Legal Affairs

DA RAMON B. ALIKPALA
Financial Regulation

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Katipunan Road, Balara, Quezon City

OFFICE OF THE BOARD SECRETARIAT

Excerpts from the Minutes of the Seventh Special Meeting of the MWSS Board of Trustees for the Regulatory Office held on 30 April 2003:

Resolution No. 126-2003

"WHEREAS, to enable Maynilad Water Services, Inc. (MWSI) to recover its present and future foreign exchange (FOREX) losses or gains for the period 01 January 2002 until the Expiration Date, pursuant to Board Resolution No. 487-2001, made an integral part of Amendment No. 1 to the Concession Agreement, MWSS granted MWSI a Foreign Currency Differential Adjustment (FCDA), on a quarterly basis, subject to quarterly review and adjustment thereof, of FOUR PESOS & 07/100 (P4.07) per cubic meter."

"WHEREAS, in the course of monitoring MWSI bills, the Regulatory Office (RO) discovered that MWSI is still collecting the FCDA of P4.07 per cubic meter despite the fact that it has not been paying Concession Fees since March 2001."

"WHEREAS, in its letter dated 03 March 2003, RO reminded MWSI to stop from continuously collecting FCDA for failure to pay Concession Fees since March 2001, hence, no FOREX losses incurred, but to no avail."

"WHEREAS, RO passed Resolution No. 03-015-CA ordering MWSI, among others:

- To cease and desist, immediately upon receipt of Resolution No. 03-015-CA, from assessing and collecting P4.07 per cubic meter as FCDA;
- To account for all amounts collected representing the subject FCDA of P4.07 per cubic meter beginning 01 January 2003 until it stops from collecting the same."

"WHEREFORE, BE IT RESOLVED, as it is hereby resolved, to APPROVE and CONFIRM RO Resolution No. 03-015-CA, copy attached as Annex "A" hereof."

"RESOLVED, further, to AUTHORIZE RO to publish RO Resolution No. 03-015-CA in TWO (2) newspapers of general circulation."

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 April 2003.

MA. LOURDES R. NAZ
OIC, Board Secretariat