



## IMPLEMENTING RULES AND REGULATIONS ON THE IMPOSITION OF FINES AND PENALTIES FOR FAILURE TO MEET THE SERVICE OBLIGATIONS UNDER THE REVISED CONCESSION AGREEMENTS

Pursuant to Sections 4(q) and 4(r) of Executive Order (EO) No. 149, series of 2021,<sup>1</sup> the Metropolitan Waterworks and Sewerage System (MWSS) Regulatory Office (RO) hereby adopts and promulgates the following Implementing Rules and Regulations (IRR) on the imposition of fines and penalties for failure of the Concessionaires to meet their Service Obligations under the Revised Concession Agreements (RCA).

### Rule 1 Preliminary Provisions

**Section 1. Title.** – This IRR shall be referred to as the “Implementing Rules and Regulations on the Imposition of Fines and Penalties for Failure to Meet the Service Obligations under the Revised Concession Agreements.”

**Section 2. Declaration of Policy.** – It is hereby declared the policy of the State to acknowledge that water is a basic human right, and that the right of the Customers to continuous and adequate supply and distribution of safe drinking water for domestic, commercial, and other purposes must be promoted, protected, and fulfilled.

The State also recognizes the importance of the proper maintenance, operation, and establishment of environment-friendly water, sanitation, and wastewater treatment infrastructures for the protection, preservation, and revival of the quality of the country’s water resources and ecological balance.

**Section 3. Objectives.** – The State shall implement measures to achieve the following objectives:

- a. Ensure that the Concessionaires comply with their Service Obligations as set forth under the RCA and other issuances promulgated by the MWSS RO; and
- b. Penalties are provided for violations of the RCA, laws, rules, regulations, and other issuances.

**Section 4. Scope and Coverage.** – This IRR shall govern violations of Service Obligations and other specific violations of the RCAs, laws, rules, regulations, and issuances being implemented by the MWSS RO.

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<sup>1</sup> Transferring the Metropolitan Waterworks and Sewerage System from the Department of Public Works and Highways to the Office of the President.

## **Rule 2**

### **Definition of Terms**

**Section 5. *Definition of Terms.*** – All terms used in this IRR shall have the same meanings and definitions as those provided in the RCA. In addition, the following terms shall have the following meanings and definitions:

- a. “Average Water Tariff” refers to the average water rates computed during the Rate Rebasing Exercise and adjusted based on the implemented inflation, Extraordinary Price Adjustment, and Rebasing Convergence Adjustment.
- b. “Average Sewer Tariff” refers to the charges imposed for the discharge of sewage into the sewer system. It is computed using the following formula:

$$\text{Average Sewer Tariff} = \text{Sewer Charge Rate} \times \text{Average Water Tariff}$$

- c. “Billed Volume” refers to the quantity of treated water sold to all Customers.
- d. “Data Logger” refers to a battery-powered electronic device which monitors and records measurements at set intervals equipped with an internal microprocessor, data storage, and sensor. The information is transferred to a data repository so conditions are measured, documented, analyzed, and validated.
- e. “Data Repository” refers to a centralized location or storage system where data is collected, organized, and stored to provide a reliable and accessible source of data for analysis and decision-making. This includes pressure data from data loggers installed by Maynilad in PMPs/RBCs and Manila Water in RBCs.
- f. “Effluent” refers to treated wastewater discharged from wastewater treatment facilities (WWTF) of the Concessionaires which is passed into a body of water or a receiving facility for reuse
- g. “Equal Distribution” means that all affected Customers shall receive the same amount of rebates, refunds, or credits.
- h. “Key Performance Indicators & Business Efficiency Measures” (KPI+BEMs) refers to the rationalized system of performance and efficiency measurements of Concessionaires’ operations.
- i. “Million Cubic Meters” (MCM) refers to a unit of measurement used to measure the volume.
- j. “Million Liters per Day” (MLD) refers to a unit of volumetric flow rate for the volume of fluid which passes per unit time.

- k. "Neutral Zone" refers to the +1% territory or threshold of the Target NRW Percentage in which the Concessionaires will not be penalized on the basis of NRW.
- l. "Non-revenue Water" (NRW) refers to the volume of treated water produced and distributed but not billed. It is composed of Commercial Losses and Physical Losses.
- m. "Pounds per Square Inch" (psi) refers to a unit of pressure expressed in pounds of force per square inch of area.
- n. "Pressure Monitoring Point" (PMP) refers to pressure data loggers of Maynilad which are strategically installed in the Service Area West and installed at tertiary lines.
- o. "Regulatory Benchmark Customers" (RBC) refers either to the Customers farthest from the source and/or those located at the highest portion of the water supply network. RBCs are to be denominated by the Customers' account details (number, name, and address) being among the hydraulically critical WSCs, which are affected first whenever deviation in normal pressure occurs.
- p. "Sanitary Surveillance" is an on-site inspection and evaluation of all conditions, devices, and practices in the water-supply system that may pose an actual or potential danger to the health and well-being of the consumer.
- q. "Sewerage Charge" (SC) is the tariff paid for the discharge of used water. A sewerage charge is the amount of money paid for indirect discharges, that is domestic sewage or effluent discharged into the sewer system.
- r. "Total Residual Chlorine" (TRC) is the total amount of chlorine present in an effluent sample which is the sum of the free chlorine residual and the combined available chlorine residual.
- s. "Wastewater Treatment Facilities" (WWTF) are sewage and septage treatment facilities operated by the Concessionaires, the primary purpose of which is to remove impurities and contaminants that may be present from septage or sewage before they are discharged into a body of water or a receiving facility for reuse.
- t. "Water Distribution Center" refers to all facilities or structures of the Concessionaires that are used in supplying drinking water to Customers.
- u. "Water Service Connection" (WSC) refers to accounts connected to a water main which are tapped to an MWSS or Concessionaires' secondary or tertiary

water main and covered by an appropriate water service connection contract. It is measured from the tapping or connection point to the water meter.

- v. "Weighted Average Distribution" is the proportion, in percentage, of the average water tariff per customer type (e.g., residential) multiplied by the number of affected customer per type, over total of all type (average water tariff per Customer type multiplied by the number of affected Customer of the respective type).
- w. "Workstation" refers to a computer connected to the Concessionaires' central server to view water availability and pressure readings emanating from a data logger installed at every PMP/RBC.

### **Rule 3** **Administrative Proceeding**

**Section 6. Preliminary Investigation.** – Upon complaint or information received or obtained in any form or from any source, that the Concessionaire has failed to meet its Service Obligations, or at its own instance, the MWSS RO may initiate and conduct a preliminary investigation to determine whether there is a sufficient ground to believe that the Concessionaire has failed to meet any of its Service Obligations under the RCA or its Approved Business Plan.

**Section 7. Notice to Explain.** – The MWSS RO shall, after it has conducted its investigations, issue a Notice to Explain to the concerned Concessionaire, attaching therewith a copy of the results of its investigations and other pieces of evidence, and requiring the latter to submit its answer to the notice within fifteen (15) calendar days from receipt thereof. The MWSS RO, under exceptional cases and for justifiable reasons, may grant the Concessionaires, upon written request, an extension of time to submit their answer, subject to the sound discretion of the MWSS RO.

**Section 8. Answer.** – The concerned Concessionaire shall submit its Answer to the Notice to Explain in writing, together with its pieces of evidence, by either denying specifically the allegations and findings of the MWSS RO or alleging any lawful defense. All allegations in the notice not specifically denied in the answer shall be deemed admitted.

**Section 9. Fact-Finding Investigation.** – For purposes of ascertaining or establishing the alleged failure of the Concessionaires to meet their respective Service Obligations, the MWSS RO shall use every and all reasonable means to speedily and objectively ascertain facts such as, but not limited to, the examination of documents submitted by the Concessionaires and/or Complainants, gathering of evidence, and interview of witnesses and Complainants.

**Section 10. *Supplementary Notices to Explain and Answers.*** – The MWSS RO, at its discretion, may issue supplementary Notices to Explain to the Concessionaire when it deems necessary for the Concessionaire to address further any concerns, violations, or non-compliances related to its Service Obligations and Approved Business Plan.

Upon receipt of the supplementary Notices to Explain, the Concessionaire may be required to file its Answers with the timeframe specified by the MWSS RO, taking into consideration the complexity of the matter and the overall objective of ensuring a fair and expeditious process. The MWSS RO, at its discretion, may grant the Concessionaire, upon written request, an extension of time to file its Answers to the supplementary Notices to Explain under exceptional cases and for justifiable reasons.

**Section 11. *Meetings.*** – Upon request of the concerned Complainant or Concessionaire, or at the instance of the MWSS RO, the MWSS RO may schedule and conduct a meeting with the Complainant or Concessionaires with the objectives of speedy and adequate disposition of the issues, mutual consultation, negotiation, and clarification of issues. The MWSS RO shall set the date and venue for the meeting. Additional meetings may be scheduled upon the discretion of the MWSS RO based on justifiable reasons.

**Section 12. *Conduct of Meetings.*** – The Concessionaires and the Complainant shall be afforded with full and equal opportunity to prove their respective cases, submit evidence in support thereof, and clarify relevant issues and matters.

**Section 13. *Subpoena.*** – The MWSS RO may issue *subpoena duces tecum* and *subpoena ad testificandum* to compel the production of documents which relate to any matter relevant to investigations and the personal appearance at proceedings before the MWSS RO.

**Section 14. *Decision of the MWSS RO.*** – If the MWSS RO finds no necessity for further proceedings, the case shall be deemed submitted for a decision. The case shall also be submitted for decision upon the expiration of the period for filing the answer required of the Concessionaires and when no answer is filed.

Within thirty (30) calendar days from the date the case is submitted for decision, the MWSS RO shall render a decision setting forth the factual and legal bases for the same. Should the MWSS RO find the Concessionaires to have failed to comply with the Service Obligations, the findings and decision of the MWSS RO to penalize the Concessionaires, together with the computation of penalty and demand for payment thereof, shall be sent to the Concessionaires.

Any decision promulgated pursuant to this IRR shall require at least three (3) votes of the Members of the RO *en banc*.

**Section 15. *Motion for Reconsideration.*** – Within fifteen (15) calendar days from receipt of the decision of the MWSS RO, the Concessionaires may file a motion for

reconsideration to the MWSS RO. No second motion for reconsideration of a decision or final resolution of the MWSS RO shall be allowed.

**Section 16. *Resolution of Motion.*** A motion for reconsideration shall be resolved by the MWSS RO within fifteen (15) calendar days from receipt thereof.

**Section 17. *Finality of Decisions/Resolutions.*** – Decisions and resolutions of the MWSS RO shall be final and executory after the lapse of fifteen (15) calendar days from receipt thereof of the Concessionaires.

#### **Rule 4 Penalties**

**Section 18. *Penalties for Failure to Meet Service Obligations.*** - A failure by the Concessionaire to meet any Service Obligation which continues for more than fifteen (15) days (or three [3] days in cases where the failure could adversely affect public health or welfare) from written notice thereof from the MWSS RO to the Concessionaires shall constitute a basis for the MWSS RO to assess financial penalties against the Concessionaires. The amount of any such penalty shall be equal to the highest of:

- A. twenty-five percent (25%) of the costs that, in the reasonable opinion of the Regulatory Office, the Concessionaire will incur in order to meet the Service Obligation in question;
- B. or in respect of each of the following obligations:
  - i. Water availability - Average water tariff x Two cubic meters (2m<sup>3</sup>)/day for each affected connection x number of days;
  - ii. Water quality - Fifty percent (50%) of average water tariff x volume of water discharged by the affected water distribution center;
  - iii. Water pressure - Twenty percent (20%) of average water tariff x volume of water discharged by the affected water distribution center;
  - iv. Effluent quality - Fifty percent (50%) of average sewerage tariff x volume of wastewater received by the affected plant;
  - v. Non-Revenue Water - Fifty percent (50%) of average water tariff x volume of water computed to be lost due to leakages;
- C. or Liquidated damages. For this purpose, the approved expenditure for the Project not completed or implemented as contained in the spending plan shall be the basis in computing the liquidated damages.

Refer to Annex A for the *Detailed Methodology of Calculating the Penalties.*

**Section 19. *Payment, Rebate, Refund, or Credit of Penalties.*** – The Concessionaires shall pay any penalties assessed within ten (10) calendar days after receipt of a demand

thereof. Alternatively, all penalties collected or assessed by the MWSS RO shall be returned to the Customers by the Concessionaires in the form of rebates, refunds, or credits, if feasible and practicable, or in any manner the MWSS RO deems appropriate.

**Section 20. *Failure to Pay Penalties.*** – In the event the Concessionaires fail to make timely payment of an assessment pursuant to this IRR, the MWSS RO may draw equivalent of such unpaid amount under the performance bond or may treat such non-payment as a basis for downward adjustment in the rates. Any unpaid penalty may be collected from the insurance or other securities posted by the Concessionaires.

## **Rule 5**

### **Liquidated Damages**

**Section 21. *Imposition of Liquidated Damages.*** – The MWSS RO may recommend the imposition of Liquidated Damages under Rule 4 of this IRR, in case of the following:

- a. Concessionaire's failure to complete or implement a project within the timeline set in its Approved Business Plan;
- b. The Concessionaire's refusal or failure to satisfactorily complete the work or perform its obligations within the specified time; or
- c. The Concessionaire's failure to commence appropriate action to correct a failure to meet its obligations under Section 6.5.1 of the RCAs to the satisfaction of the MWSS RO within thirty (30) days (or such longer period as the MWSS RO may provide) from written notice by the MWSS RO.

**Section 22. *Amount of Liquidated Damages.*** – Liquidated damages shall be equal to one-tenth of one percent (equivalent to 0.1%) of the cost of the unperformed portion for every day of delay of the work or satisfaction of obligation, from date of notice by the MWSS RO.

**Section 23. *Recommendation of the MWSS RO.*** – If the MWSS RO finds that the Concessionaires to have refused or failed to satisfactorily complete the work or perform their obligation within a specified time, the decision together with the recommendation to impose liquidated damages shall be submitted to the MWSS Board of Trustees within five (5) calendar days for its review and approval. A copy of the decision and recommendation of the MWSS RO shall also be sent to the Concessionaires within the same period.

## **Rule 6**

### **Informing the Public**

**Section 24. *Public Information.*** – The MWSS RO and the Concessionaires shall ensure the widest dissemination of this IRR and shall conduct activities for its effective implementation.

**Section 25. *Public Disclosures.*** – The MWSS RO, Concessionaires, and the Complainants shall not disclose or make public any record or information on any investigation pending the MWSS RO's action on its decision. Only upon the approval and consent of the RO *en banc* may disclose any information to the public: *Provided*, that any such disclosure shall be balanced, fair, and accurate.

**Section 26. *Dissemination of the Decision of the MWSS.*** – The MWSS RO and the Concessionaires shall disseminate all decisions to the affected Customers regarding the failure of the Concessionaires to comply with their Service Obligations through press releases, conferences, meetings, advisories, and/or other modes of communication as the MWSS RO deems appropriate.

## **Rule 7**

### **Final Provisions**

**Section 27. *Technical Rules.*** – Subject to the requirements of due process, the technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply to the proceedings before the MWSS RO. The MWSS RO shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and to obtain a just, expeditious, and inexpensive resolution of the case.

**Section 28. *Construction.*** – The words and phrases used in this IRR shall be interpreted to give meaning and enforce the provisions of the RCA.

**Section 29. *Complementary Nature of Other Rules.*** – Other rules and regulations issued, approved, and/or confirmed by the MWSS RO or the MWSS Board of Trustees on related subject matters shall be complementary to this IRR.

**Section 30. *Separability Clause.*** – If any part or provision of this IRR is declared invalid or unconstitutional, the other provisions not affected thereby shall remain in force and effect.

**Section 31. *Amendment, Modification and/or Repeal.*** – Upon its own initiative, the MWSS RO may suspend the implementation, modify, or repeal any provision of this IRR.

**Section 32. *Repealing Clause.*** – All agreements, rules and regulations, or parts thereof which are inconsistent with the provisions of these Rules are hereby repealed, amended or modified accordingly.

**Section 33. *Effectivity.*** – These Rules shall take effect immediately after its publication in the Official Gazette or in at least two (2) newspapers of general circulation, whichever comes first.



Issued this 21st day of June 2023 in Quezon City, Philippines.

Approved by:

*(signed)*

**PATRICK LESTER N. TY**  
Chief Regulator

*(signed)*

**CLAUDINE B. OROCIO-ISORENA**  
Deputy Administrator  
Administration and Legal Affairs

*(signed)*

**EVELYN B. AGUSTIN**  
Deputy Administrator  
Technical Regulation

*(signed)*

**LEE ROBERT M. BRITANICO**  
Deputy Administrator  
Customer Service Regulation

*(signed)*

**CHRISTOPHER D. CHUEGAN**  
Acting Deputy Administrator  
Financial Regulation

## ANNEX A: DETAILED METHODOLOGY OF CALCULATING THE PENALTIES

### A-1: CALCULATION OF PENALTIES

A failure by the Concessionaire to meet any Service Obligation which continues for more than 15 days (or three [3] days in cases where the failure could adversely affect public health or welfare) from written notice thereof from the MWSS RO to the Concessionaire shall constitute a basis for the MWSS RO to assess financial penalties against the Concessionaire. The amount of such penalty shall be equal to the highest of:

- A. **Twenty-five percent (25%)** of the costs that, in the reasonable opinion of the MWSS RO, the Concessionaire will incur in order to meet the Service Obligation in question. Depending on the nature of the Service Obligation breached including the cause of failure, the MWSS RO shall determine the CAPEX and/or OPEX to be incurred to restore the Service Obligation, in coordination with the concerned Concessionaire. The penalty shall be equivalent to 25% of the cost of such CAPEX and/or OPEX.

Following the MWSS RO determination that the Concessionaire failed to meet a particular Service Obligation, the MWSS RO shall come up with the required CAPEX and/or OPEX to meet the subject Service Obligation, as basis for the penalty computation. The Concessionaire may recommend/suggest alternative CAPEX and/or OPEX in order to meet the Service Obligation in question, with technical details. The MWSS RO shall then review the technical feasibility of the Concessionaire's recommendation/suggestion vis-à-vis MWSS RO determination for the final computation of the penalty to be imposed.

Below is an illustrative penalty computation for Concessionaire's failure to provide uninterrupted 24-hour water supply at minimum pressure of 7-psi (24/7).

- a. Determine the areas affected by the failure of providing 24-hour water supply at minimum 7-psi (24/7) using the pressure data loggers. In coordination with the concerned Concessionaire, determine the affected number of water service connections (WSC) under the influence area of the Pressure Monitoring Point/s (PMP) or the Regulatory Benchmark Customer/s (RBC), less the number of accounts below 24/7 even during normal conditions;
- b. Determine the average consumption per WSC under the influence of area of the PMP/RBC using the latest billed volume submitted in the KPI+BEMs report;

- c. Calculate for the total consumption in MLD that the Customers could have potentially used during the duration of failure of Service Obligation using the formula below:

$$C = \frac{A \times B}{1,000}$$

Where: C is total consumption in MLD

A is number of WSCs affected

B is average consumption per WSC in m<sup>3</sup>/day

- d. Determine the daily average number of hours when water was supplied for 24/7 by accessing the data thru the pressure data loggers;
- e. Determine the daily average pressure in psi for the duration of the non-attainment of the minimum 7-psi Service Obligation by accessing the data thru the pressure data loggers;
- f. Calculate for the water deficit in terms of water availability using the formula below:

$$E = C \times [1 - (\frac{D}{24hr})]$$

Where: E is water deficit<sub>24-hr</sub> in MLD

C is total consumption in MLD

D is number of hours per day when water supply was at 24/7 level of service

- g. Calculate for the water deficit considering the average pressure during the Service Obligation failure vis-à-vis the required 7-psi minimum pressure, using the formula below:

$$G = E \times [1 - (\frac{F}{7psi})]$$

Where: G is water deficit<sub>7-psi</sub> in MLD

E is total consumption in MLD

F is average pressure in psi when the water pressure is below 7-psi

- h. Determine the cost of CAPEX and/or OPEX in PhP per MLD that the Concessionaire may occur to restore the 24/7 level of water service;

- i. Calculate for the cost of penalty using the formula below:

$$P = G \times H \times 25\%$$

Where: P is total cost of penalty in PhP

G is total water deficit in MLD

H is average cost of CAPEX and/or OPEX in PhP per MLD

- j. Calculate for the Customer rebate using the formula below:

Equal Distribution:

$$R = \frac{P}{A}$$

Where: R is rebate in PhP/WSC

A is number of WSCs affected

P is total cost of penalty in PhP

Or

Weighted Average Distribution:

$$R = \frac{P \times K}{L}$$

Where: R is the total rebate per Customer type

P is total cost of penalty in PhP

K is the weight per Customer type (residential, semi-business, industrial, and commercial)

L is number of WSC per Customer type (residential, semi-business, industrial, and commercial)

## B. Failure on Service Obligations

- i. Water Availability

As stipulated in Article 11.4 of the Revised Concession Agreement, the formula to compute for the failure to meet the Service Obligation for Water Availability is stated below:

$$\text{Average water tariff} \times \text{Two cubic meters (2m}^3\text{) / day for each affected connection} \times \text{number of days}$$

If the Concessionaires' water supply failed to provide the 24-hour water service availability, use the average tariff to compute the penalty. To assess for the amount of penalty, the methodology shall be as follows:

- a. Determine the average water tariff in PhP/m<sup>3</sup> during the duration of the failure;
- b. Determine the areas affected by the failure of providing 24-hour water service availability using the pressure data loggers. In coordination with the concerned Concessionaire, determine the affected number of WSCs under the influence area of the RBCs/PMPs, which refers to accounts with zero (0) psi pressure or below;
- c. Determine the duration of the failure through the access of pressure data loggers;
- d. Calculate for the cost of penalty using the formula below:

$$E = A \times B \times C \times (D / 24) \times 2$$

Where: E is total cost of penalty in PhP

A is average water tariff in PhP/m<sup>3</sup>

B is number of WSCs affected

C is duration of failure in days

D is ave. duration of failure in hours

2 is the average consumption per WSC in m<sup>3</sup>/day

- e. Calculate for the customer rebate using the formula below:

Equal Distribution:

$$R = \frac{P}{A}$$

Where: R is rebate per Customer in PhP/WSC

A is number of WSCs affected

P is total cost of penalty in PhP

Or

Weighted Average Distribution:

$$R = \frac{P \times K}{L}$$

Where: R is the total rebate per Customer type

P is total cost of penalty in PhP

K is the weight per Customer type (residential, semi-business, industrial, and commercial)

L is number of WSC per Customer type (residential, semi-business, industrial, and commercial)

ii. Water Quality

To compute for the penalty specified for failure to meet Service Obligation for Water Quality, the methodology of calculation shall be as follows:

- a. Determine the average tariff during the duration of failure;
- b. Determine the duration of the failure;
- c. Determine the design capacity of the applicable water facility [Service Reservoir (SR)/Water Treatment Plant (WTP)]
- d. Calculate for the total cost of penalty using the formula below:

$$D = 0.5 \times A \times B \times C$$

Where: D is total cost of penalty in PhP

A is average water tariff during the failure in Service Obligation in PhP/m<sup>3</sup>

B is duration of the failure in water quality standards

C is design capacity of the affected water facility (SR/WTP) during the duration of the failure in m<sup>3</sup>/day

- e. Calculate for the customer rebate using the formula below:

Equal Distribution:

$$R = \frac{P}{A}$$

Where: R is rebate in PhP/WSC

A is number of WSCs affected

P is total cost of penalty in PhP

Or

Weighted Average Distribution:

$$R = \frac{P \times K}{L}$$

Where: R is the total rebate per Customer type

P is total cost of penalty in PhP

K is the weight per Customer type (residential, semi-business, industrial, and commercial)

L is number of WSC per Customer type (residential, semi-business, industrial, and commercial)

### iii. Water Pressure

As stipulated in Article 11.4 of the Revised Concession Agreement, the formula to compute for the failure to meet the Service Obligation for Water Pressure is stated below:

*Twenty percent (20%) of average water tariff × volume of water discharged by the affected water distribution center*

If the Concessionaires failed to provide the interim 7-psi minimum pressure at all times, use the average water tariff to compute the penalty for Water Pressure. The methodology of calculation shall be as follows:

a. Determine the average water tariff during the duration of the Service Obligation failure;

b. Determine the production deficit by using the formula below;

Production deficit in m<sup>3</sup>/day = Ave. production during normal conditions less  
Ave. production during failure

c. Determine the duration of the failure in providing 7-psi water pressure in days through the RBCs/PMPs or other modes of validation;

d. Calculate for the total cost of penalty using the formula below:

$$D = A \times B \times C \times 20\%$$

Where: D is total cost of penalty in PhP

A is average water tariff in PhP/m<sup>3</sup>

B is production deficit in m<sup>3</sup>/day

C is duration of the failure in days

e. Calculate for the Customer rebate using the formula below:

Equal Distribution:

$$R = \frac{P}{A}$$

Where: R is rebate in PhP/WSC

A is number of WSCs affected

P is total cost of penalty in PhP

Or

Weighted Average Distribution:

$$R = \frac{P \times K}{L}$$

Where: R is the total rebate per Customer type

P is total cost of penalty in PhP

K is the weight per Customer type (residential, semi-business, industrial, and commercial)

L is number of WSC per Customer type (residential, semi-business, industrial, and commercial)

#### iv. Effluent Quality

To compute for the penalty specified for failure to meet Service Obligation for Effluent Quality, the methodology of calculation shall be as follows:

- a. Determine Sewerage Charge during the duration of failure;
- b. Determine the total volume of wastewater received by the applicable facility during the duration of the failure.
- c. Calculate for the total cost of penalty using the formula below:

$$C = 0.5 \times A \times B$$

Where: C is the total cost of penalty in PhP

A is Sewer Charge in PhP/m<sup>3</sup>

B is total volume of wastewater received

- d. Calculate for the customer rebate using the formula below:

Equal Distribution:

$$R = \frac{P}{A}$$

Where: R is rebate in PhP/WSC

A is number of WSCs in the influence area of the affected facility

P is total cost of penalty in PhP

Or

Weighted Average Distribution:

$$R = \frac{P \times K}{L}$$



Where: R is the total rebate per Customer type  
P is total cost of penalty in PhP  
K is the weight per Customer type (residential, semi-business, industrial, and commercial)  
L is number of WSC per Customer type (residential, semi-business, industrial, and commercial)

v. Non-Revenue Water

As stipulated in Article 11.4 of the Revised Concession Agreement, the formula to compute for the failure to meet the Service Obligation for Non-Revenue Water (NRW) is stated below:

*Fifty percent (50%) of average water tariff x volume of water computed to be lost due to leakages*

Assessment for the calculation of penalty for NRW shall be annually based on Concessionaires' targets in their respective Approved Business Plans. To assess for the amount of penalty, the methodology shall be as follows:

- a. Determine the average water tariff in PhP/m<sup>3</sup> during the assessed year;
- b. Establish the 1% neutral zone value in reference to the target total NRW in percentage for the year being assessed. Use the formula below:

$$B = A + 1\%$$

Where: B is the neutral zone value in percentage  
A is the target total NRW in percentage

- c. If the actual total NRW is greater than the neutral zone value for the year being assessed, proceed to "d" for the calculation of penalty. Otherwise, no penalty to be calculated;
- d. Determine the volume lost for the year being assessed using the formula below. The target NRW volume is applied by an additional 1% in consideration to the neutral zone;

$$E = C - [D * (1 + 1\%)]$$

Where: E is the volume lost in MCM  
C is the actual NRW volume in MCM  
D is the target NRW volume in MCM

To derive for NRW volume in MCM, use the formula below:

$$NRW\ Volume = Production\ Volume - Billed\ Volume$$

- e. Calculate for the total cost of penalty using the formula:

$$G = E \times 1,000,000 \times F \times 50\%$$

Where: G is the total cost of penalty in PhP

E is the volume lost in MCM

F is the average water tariff for the year being assessed in PhP/m<sup>3</sup>

- f. Calculate for the rebate per WSC using the formula below:

Equal Distribution:

$$R = \frac{P}{A}$$

Where: R is rebate per Customer in PhP/WSC

P is total cost of penalty in PhP

A is total number of WSCs end of December

Or

Weighted Average Distribution:

$$R = \frac{P \times K}{L}$$

Where: R is the total rebate per Customer type

P is total cost of penalty in PhP

K is the weight per Customer type (residential, semi-business, industrial, and commercial)

L is number of WSC per Customer type (residential, semi-business, industrial, and commercial) End of December

- C. **Liquidated Damages** shall be equal to one-tenth of one percent (or 0.1%) of the cost of the unperformed related CAPEX portion under the Approved Business Plan for every day of delay of the work or satisfaction of obligation, from the date of notice by the MWSS Regulatory Office.

**A-2:**  
**RULES FOR THE IMPOSITION OF PENALTIES  
FOR WATER QUALITY AND WASTEWATER EFFLUENT**

**A. Water Quality Penalty Provisions**

1. The three (3)-day provision of Article 11.4 of the RCA shall include the parameters that could adversely affect public health or welfare, which are the **mandatory and primary parameters** specified in the prevailing Philippine National Standards for Drinking Water (PNSDW) or as agreed by the local drinking water quality monitoring committee including any issuance by the MWSS RO.
2. Parameters not included in “1” shall follow the 15-day provision of Article 11.4 of the RCA.
3. For samples failing the standards set by PNSDW including any issuance by the MWSS RO, a Notice of Nonconformance (NC) shall be issued.
4. The MWSS RO shall immediately schedule a joint resampling and sanitary surveillance with the Concessionaires for the initial NC.
  - 4.1. Resampling shall include the initial failed sampling point, its upstream, and downstream.
  - 4.2. Sanitary surveillance shall make use of the sanitary survey form established by the MWSS RO or by the Department of Health (DOH).
5. The results of the resampling shall be interpreted as follows:
  - 5.1. If the *initial failed sampling point, its upstream, and downstream comply* with the water quality standard, there is no penalty to be calculated.
  - 5.2. If the *initial failed sampling point remains noncompliant*, while its upstream and downstream are compliant, the **NC shall be classified as an isolated case**. The Concessionaire shall determine the cause of the failure and issue an advisory to the Customer when necessary.
  - 5.3. If *upstream and/or downstream sample fail(s), while the initial failed sampling point complies* with the standard, **return to “3.”**
  - 5.4. If the *initial failed sampling point and its upstream or downstream fail* the water quality standard, the MWSS RO will then issue a **Notice to Explain (NTE)** requiring the Concessionaire to monitor the three (3) sampling points for three (3) consecutive days. Penalty will be imposed for failure that continues for three (3) days upon receipt of NTE.

- i. Penalty shall be enforced if any of the MWSS RO or Concessionaire samples continue to remain noncompliant for three (3) consecutive days. The MWSS RO shall also collect samples every five (5) days thereafter to determine the duration of the failure.
- ii. No penalty if all three (3) sampling points (initial failed sampling point, upstream, downstream) comply with the standard within three (3) consecutive days.

Table below illustrates this provision.

Sample Case (three [3] consecutive days)	Assessment	Remarks
Initial Failed Sampling Point: Passed Upstream/Downstream: Passed	Passed	No penalty
Initial Failed Sampling Point: Failed Upstream/Downstream: Failed	Failed	For Penalty
Initial Failed Sampling Point: Failed Upstream/Downstream: Passed	Failed	For Penalty
Initial Failed Sampling Point: Passed Upstream/Downstream: Failed	Failed	For Penalty

*Note:* In case of conflicting results of the joint resampling, the findings of the DOH-National Reference Laboratory (NRL) shall prevail. If DOH-NRL is not available, the MWSS RO results shall prevail.

## B. Effluent Quality Penalty Provisions

1. Parameters that could adversely affect public health or welfare shall follow the *three (3)-day provision* of Article 11.4 of the RCA.
  - 1.1. For WWTF discharging to Class B or SB water body, the parameter is **total coliform** or **fecal coliform** whichever is applicable based on the Department of Environment and Natural Resources Administrative Order (DAO) effluent standards indicated in the valid Discharge Permit. Along with coliform (total/fecal), **total residual chlorine** (TRC) using 2 mg/L as maximum allowable limit (MAL) shall also be complied with. Both coliform (total or fecal) and TRC should conform with the set standards in order to be compliant with the requirement;
  - 1.2. For WWTF which effluent is used for either direct or indirect potable reuse, parameters shall be **all the significant effluent parameters**

contained in the facility's discharge permit, including any additional parameters required by the DOH and the local drinking water quality monitoring committee. Moreover, both the total/fecal coliform and TRC should conform with the set standards in order to be compliant;

- 1.3. For facilities without a valid discharge permit, the **requirements of the prevailing DAO** shall be applied. Moreover, both the coliform (total/fecal) and TRC should conform with the set standards in order to be compliant.
2. Parameters not included in "1" shall follow the *15-day provision* of Article 11.4 of the RCA.
3. The MWSS RO shall issue an NC when sample from either the MWSS RO or Concessionaire's report has shown with any exceedance in the effluent standard. Hence, Concessionaires are required to report a nonconforming sample immediately. Nonreporting shall warrant an automatic penalty from the date of occurrence of the noncompliance until a complying data has been recorded.
4. Penalty calculation shall be applied in either MWSS RO's or the Concessionaire's samples reported with any nonconformance.
5. Concessionaires shall conduct a resampling immediately upon receipt of the NC. The MWSS RO may or may not conduct a joint resampling.
6. Results of resampling shall be interpreted as follows:
  - 6.1. For NC issued under the three (3)-day provision –
    - 6.1.1. Penalty shall be issued if the sample from the Concessionaire or the MWSS RO remains noncompliant for three (3) continuous days from the receipt of NC.
    - 6.1.2. Upon confirmation of penalty, the MWSS RO shall collect samples immediately and every five (5) days thereafter to determine the duration of the nonconformance.
    - 6.1.3. No penalty will be imposed if any sample complies with all the required parameters within the three (3) continuous sampling events.
  - 6.2. For NC issued under the 15-day provision –
    - 6.2.1. Penalty shall be issued if the Concessionaire's or the MWSS RO's samples remain noncompliant for three (3)

successive sampling conducted within 15 days from the receipt of NC;

- 6.2.2. The MWSS RO may conduct joint sampling at any time during the period;
- 6.2.3. The MWSS RO shall collect samples immediately after confirmation of penalty and every five (5) days thereafter to determine the duration of the nonconformance;
- 6.2.4. No penalty will be imposed if any sample complies with the allowable limits for all the required parameters within the three successive sampling events.

Note: Any findings of the MWSS RO that the Concessionaires have discharged treated wastewater exceeding the applicable and prevailing wastewater standards shall be reported to the Department of Environment and Natural Resources for its information and appropriate action.