

# TERMS OF REFERENCE

## CONSULTANCY SERVICES FOR THE COMPREHENSIVE REVIEW OF TARIFF SETTING METHODOLOGY OF LOCAL AND FOREIGN UTILITIES

July 2025



## **I. RATIONALE**

The MWSS RO determines the tariff for water and sewerage services using the Concession Pricing Model (CPM) under the Revised Concession Agreement (RCA), which is grounded in efficiency, affordability, and cost recovery.

Tariff setting methodologies vary among other utilities in the Philippines and abroad. These methodologies may be similar or completely different from the CPM. In support of continuous improvement in utility regulation that aligns with evolving global practices, the MWSS RO deemed it necessary to undertake a review of alternative tariff-setting methodologies. This initiative reflects the MWSS RO's continuing commitment to promoting sound regulatory practices that balance service affordability for customers and financial viability of the Concessionaires.

## **II. BACKGROUND**

Under Republic Act (RA) No. 6234 (MWSS Charter), the MWSS has jurisdiction, supervision and control over all waterworks and sewerage systems within Metro Manila, the entire province of Rizal and a portion of the province of Cavite.

RA No. 8041 the "National Water Crisis Act of 1995", as implemented by EO 286 and EO 311, mandated MWSS to enter into arrangements that will result in the involvement or participation of the private sector in any or all the segments and or facilities of the MWSS.

Under the Concession Agreements dated 21 February 1997, MWSS and the Concessionaires, namely, Maynilad Water Services, Inc. ("Maynilad") for the West Service Area and Manila Water Company, Inc. ("Manila Water") for the East Service Area, mutually agreed on the grant to the Concessionaires the right to operate the waterworks and sewerage services in their respective Service Areas. Following a review of the CAs in 2020, certain amendments were made resulting in the signing of the RCAs by MWSS and Manila Water on 31 March 2021 and with Maynilad on 18 May 2021.

Under Article 3(h) of the MWSS Charter, MWSS is authorized, among other things, to periodically fix water rates and sewerage service fees as the system may deem just and equitable in accordance with the standards outlined in Section 12 of this Act.



Such power to fix rates is subject to the procedures and mechanisms laid under the RCA, where the matter of rate fixing is subject to the recommendation of the MWSS RO and submitted for approval of the MWSS.

Under Article 9.4 General Rates Setting Policy / Rate Rebasing Determination of the RCA, among others, concessionaires are allowed to recover expenditures prudently and efficiently incurred and to earn a rate of return, referred to as the "Appropriate Discount Rate" (ADR), equal to nominal 12% on these expenditures for the remaining term of the Concession, subject to the guidelines set forth under Article 9 and related provision of the RCA.

Maynilad and Manila Water was granted under RA No. 11600 and 11601 (Franchise Laws), a franchise to establish, operate, and maintain a waterworks system and sewerage and sanitation services in the West Zone and East Zone Services Area of Metro Manila and Province of Rizal, respectively.

**Section 8 Setting Tariffs, Rates and Other Charges under the Franchise Laws** states that:

The Regulatory Office, with the approval of the MWSS Board of Trustees under the Concession Agreement, shall establish tariffs, rates and other charges which are fair and reasonable, and ensure economic viability and a fair return on investment.

Tariffs, rates and charges shall be based on and consistent with a rate-setting methodology that the Regulatory Office shall, after due consultation with stakeholders, define and publish, taking into account, among others,

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(g) Methodology provided under the Concession Agreement.

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And Section 5 Certificate of Public Convenience and Necessity, License or Permit states:

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The grantee, its successors or assignees, shall apply for a certificate of public convenience and necessity, license, or permit when a new regulatory framework for water service providers is established by law or when required by the Regulatory Office, which will supersede the terms and conditions of the Concession Agreement.

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As the Concession Agreements are considered as PPP arrangements between MWSS and the Concessionaires, it may be covered by the PPP Code and its IRR. Section 143 of the IRR of RA 11966 provides:

**Section 143. General Rules on Variation, Expansion, or Extension.** A contract variation, expansion, or extension of an executed PPP Contract may be allowed, subject to the due diligence of the Head of the Implementing Agency.

The following variation, expansion, or extension of an executed PPP Contract, shall be approved by the appropriate Approving Body pursuant to Section 7 of the Code and Title IV of this IRR: (a) Change/s in the agreed schedule or parametric formula to calculate tariff and adjustments thereof, as stipulated in the PPP Contract, unless already regulated and publicly-disclosed in accordance with Title IX of this IRR;

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Since the privatization of the MWSS in 1997 and in accordance with the RCA, the Concession Pricing Model is based on a Cash Flow framework, wherein the Expenditures, Receipts, Cash Flows, Opening Cash Position and Future Cash Flows, covering time periods as the MWSS RO may determine, are being recovered.

Tariff levels are generally set taking into consideration objectives such as cost recovery, efficiency in the provision of services, and affordability to customers. According to the Asian Development Bank (ADB)<sup>1</sup>, there are a number of different approaches for tariff regulation including cost of service (COS) regulation and incentive regulation such as price cap regulation. The form of tariff regulation that is adopted by the regulator is usually provided for in the regulatory framework or,

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<sup>1</sup> ADB: Introduction to Economic Regulation of Water Supply and Wastewater Utilities



where there is private sector involvement, by the Private Sector Participation contract. This influences the tariff setting process and the specific role of the regulator in determining tariffs.

Tariff regulation approaches vary across countries. According to ADB, the COS regulation is applied mostly in the water sector in the US, Canada, and Japan as well as a number of countries in Eastern Europe. In the Philippines, the National Water Resources Board (NWRB) and the Local Water Utilities Administration (LWUA) also used the COS approach for regulating water operators and utilities under their jurisdictions.

Countries also differ on the use of Regulatory Asset Base (RAB) in their tariff-setting formulas. ADB defines RAB as the sum of the total assets utilized by the service provider for supplying water and wastewater services. RAB combined with performance-based regulation (PBR) is also used in the water utility sector in countries such as Australia and New Zealand. In the Philippines, the Energy Regulatory Commission (ERC) shifted from the Return on Rate Base (RORB) to PBR with RAB used for calculating the Annual Revenue Requirement.

### **III. OBJECTIVE OF THE CONSULTANCY SERVICES**

The objective of the engagement is to conduct a comprehensive review of rate-setting and adjustment mechanisms implemented by local and international utilities. The review shall include, but not limited to, methodologies such as the COS regulation, PBR, RAB, Price Cap and Revenue Cap regulations, and Asset-Based approaches.

This study aims to evaluate the comparative key lectures, benefits, limitations and regulatory implications of each methodology vis-à-vis the current CPM, taking into account their applicability to the MWSS Concessionaires, consistency with existing laws and regulations, and the potential impact on the stakeholders, particularly on the customers. The goal is to support evidence-based decisions on whether enhancements or alternatives to the current CPM are appropriate and feasible.

### **IV. SCOPE OF WORK**

The Consultant shall submit the following:

1. Literature review discussing, summarizing, analyzing published information and academic literatures related to rate setting methodologies and tariff adjustment mechanism across local and international utilities, including but

not limited to the RAB methodology, preferably in water and sewerage services;

2. Benchmark and compare the rate-setting and tariff adjustment practices, focusing on how various regulatory frameworks define and/or determine allowable revenues, cost recovery, efficiency incentives and adjustment factors, while highlighting affordability and sustainability.

The comparative analysis should include;

- a.) The current CPM under the RCA;
  - b.) Rate setting methodologies and adjustment mechanisms identified in Item 1;
  - c.) Rate setting methodologies adopted by Philippine regulators, e.g., ERC, NWRB, LWUA.; and
  - d.) Rate setting methodologies in international jurisdiction, e.g., Australia, UK, USA, Japan, Canada, New Zealand.
3. Review of the advantages, disadvantages, and applicability of rate setting methodologies and adjustment mechanisms, including but not limited to the RAB methodology, as practiced by the utilities mentioned in Item No.2 to the MWSS Concessionaires discussing the following;
    - a.) Legal implications on the RA No. 6234, Revised Concession Agreements and its amendment, RA No. 11600 and 11601 "Franchise Bills", relevant IRRs (if any), and PPP requirements;
    - b.) Qualification and valuation of assets and treatment for recovered assets;
    - c.) Treatment of Concession Fees, Depreciation of Assets, Debt Service, Financing Cost, Provision for Bad Debts and Construction in Progress if CPM will transition to other rate setting methodologies; and
    - d.) Limitation of 12% ADR and RORB with the incentive mechanism of other rate setting methodologies and mechanisms;



4. Develop simulation models to assess the financial and service level implications of applying various tariff-setting methodologies. The simulations should compare various scenarios against the current CPM and assess potential effects on the tariff and the service obligations, emphasizing the potential benefits to customers;
5. Identify and recommend possible next steps based on the findings of the study, including proposed revisions to the RCA and compliance with the PPP requirements, or phased transition plans, if applicable;
6. Present the findings of the study in a Public Consultation and/or Public Hearing, to the MWSS RO, MWSS BOT, and as necessary, to other government agencies;
7. The Consultant shall provide comprehensive support to the MWSS if there will be a change in the tariff-setting methodology. The support extends to addressing any issues, concerns, or requests for clarification that the MWSS may encounter throughout the process with other agencies.

## V. DELIVERABLES

The following reports shall be submitted and/ or presented to the MWSS RO, MWSS BOT, and as necessary, to other agencies.

Deliverables	Timeline
<p><b>1) Literature Review</b></p> <p>Literature review discussing, summarizing, analyzing published information and academic literatures related to rate setting methodologies and tariff adjustment mechanism across local and international utilities, including but not limited to the RAB methodology, preferably in water and sewerage services;</p> <p>Literature review should include the following for each rate setting methodologies and adjustment mechanisms;</p>	<p>not later than 30 days from commencement date</p>

Deliverables	Timeline
<ul style="list-style-type: none"> <li>a.) Definition and overview;</li> <li>b.) Historical context;</li> <li>c.) Benefits of implementation;</li> <li>d.) Challenges encountered in implementation;</li> </ul>	
<p><b>2) Benchmarking and Comparative Report</b></p> <p><b>Section 1.)</b> Benchmark and compare the rate-setting and tariff adjustment practices, focusing on how various regulatory frameworks define and/or determine allowable revenues, cost recovery, efficiency incentives and adjustment factors, while highlighting affordability and sustainability.</p> <p>The comparative analysis should include;</p> <ul style="list-style-type: none"> <li>a.) The current CPM under the RCA;</li> <li>b.) Rate setting methodologies and adjustment mechanisms identified in Item 1;</li> <li>c.) Rate setting methodologies adopted by Philippine regulators, e.g., ERC, NWRB, LWUA and</li> <li>d.) Rate setting methodologies in international jurisdiction, e.g., Australia, UK, USA, Japan, Canada, New Zealand.</li> </ul> <p><b>Section 2.)</b> Review of the advantages, disadvantages, and applicability of rate setting methodologies and adjustment mechanisms, including but not limited to the RAB methodology, as practiced by the utilities mentioned in Item No.2 of the Scope of Work to the MWSS Concessionaires discussing the following;</p>	<p>not later than 90 days from commencement date.</p>



Deliverables	Timeline
<p>a.) Legal implications on the RA No. 6234, Revised Concession Agreements and its amendment, RA No. 11600 and 11601 "Franchise Bills", relevant IRRs (if any), and PPP requirements;</p> <p>b.) Qualification and valuation of assets and treatment for recovered assets;</p> <p>c.) Treatment of Concession Fees, Depreciation of Assets, Debt Service, Financing Cost, Provision for Bad Debts and Construction in Progress if CPM will transition to other rate setting methodologies; and</p> <p>d.) Limitation of 12% ADR and RORB with the incentive mechanism of other rate setting methodologies and mechanisms.</p>	
<p><b>3) Initial Final Report</b></p> <p>This report shall contain the following sections;</p> <p><b>Section 1.</b> Revised Literature Review as commented by RO.</p> <p><b>Section 2.</b> Revised Benchmarking and Comparative Report as commented by RO.</p> <p><b>Section 3.</b> Simulations and results to assess the financial and service level implications of applying various tariff-setting methodologies. The simulations should compare various scenarios against the current CPM and assess potential effects on the tariff and the service obligations, emphasizing the potential benefits to customers.</p> <p>The consultant shall provide all working and computational files associated with the simulations and the report to the MWSS RO.</p> <p><b>Section 4.</b> Identify and recommend possible next steps based on the findings of the study, including proposed</p>	<p>not later than 140 days from commencement date</p>

<b>Deliverables</b>	<b>Timeline</b>
revisions to the RCA and compliance with the PPP requirements, or phased transition plans, if applicable.	
<b>4) Final Report</b>  This shall contain the revised initial final report based on the comments by the MWSS RO, and present the findings to the MWSS RO, MWSS BOT, and as necessary, to other government agencies.	not later than 180 days from commencement date

The consultant is required to submit each report in 5 printed copies and an electronic copy via USB. The MWSS RO shall provide comments within 15 days after the submission of each consultant's reports. All comments of the MWSS RO should be reflected on the Initial Final and Final Report. The MWSS RO prefers all reports, data and simulations be submitted in a computer / laptop containing all necessary software.

## **VI. CONTRACT DURATION**

The study is expected to be fulfilled/completed within a period of one hundred eighty (180) days after the issuance of the Notice to Proceed (NTP). In the event that there will be changes in the current rate setting methodology, the Consultant shall continue to provide comprehensive support to the MWSS in securing the required approvals from all relevant agencies.

## **VII. QUALIFICATIONS AND LIMITATIONS OF THE FIRM AND KEY PERSONNEL**

### **Applicable Experience & Capability of the Consultant/Firm**

The firm should have at least five (5) years of experience in financial planning, audit, and regulation of large infrastructure projects, preferably of water, sewerage, and power sectors or in case of new firms, pursuant to 53.1.3(a) of IRR of R.A. 12009 the individual experiences of the principal and key staff, including the times when employed by other consultants. Such experiences specifically refer to:



- a. Financial planning and rate/price determination and structuring and/or financial audit for large infrastructure projects/companies/entities, preferably in water, sewerage, and power; and
- b. Financial Audit for rate setting and/or due diligence audit required for enterprise valuation such as mergers and acquisition of companies with large infrastructure projects, preferably in the water, sewerage, and power sector.

**Key Personnel and their corresponding minimum qualifications;**

**a. Project Manager / Economic Expert**

The Economics Expert shall possess the following qualifications:

- A Bachelor's degree in Economics, preferably with a Master's degree in Economics, or a Bachelor's degree in Finance, Accountancy, or Business Administration with Master's degree in Economics, from a recognized academic institution;
- At least fifteen (15) years of substantial and relevant professional experience in economic analysis within the context of economic regulation, five (5) years of which should be as a team leader/project manager;
- Demonstrated expertise in regulatory economics, particularly in tariff design, cost-benefit analysis, and market assessments, with a strong preference for experience in the water supply, sewerage, and power sectors;
- Familiarity with rate-setting methodologies, including but not limited to asset-based rate-setting models, performance-based regulation, and other international best practices;
- Preferably with international experience in regulatory environments.

**b. Financial Expert**

The Financial Expert shall possess the following qualifications:

- A Bachelor's degree in Accountancy, preferably with a Master's degree in Accountancy, Business Administration, or a closely related field from a recognized academic institution;
- The candidate shall hold a valid certification as a Certified Public Accountant (CPA);
- At least fifteen (15) years of demonstrable and relevant experience in financial analysis, financial valuation, and/or financial planning;

- Proven experience in project costing and revenue forecasting for large-scale infrastructure projects, with preference given to those with prior engagements in the water supply, sewerage, and power sectors.

**c. Financial Modeler**

The Financial Modeler shall possess the following qualifications:

- A Bachelor's degree in Economics, Accountancy, Finance, or a related field from a recognized academic institution;
- A minimum of five (5) years of relevant professional experience in the development and application of financial models, as well as in financial analysis, financial valuation, and/or financial planning;
- Demonstrated experience supporting large-scale infrastructure or capital expenditure (CAPEX) projects, with preference for engagements in the water supply, sewerage, and power sectors;
- Proficient in Microsoft Excel, and/or other computer software or financial modeling tools, as required for the development and building dynamic, scenario-based financial models for use in investment planning, tariff setting, and project evaluation.

**d. Legal Expert**

The Legal Expert shall possess the following qualifications:

- Must be a member in good standing of the Philippine Bar;
- A minimum of five (5) years of extensive professional experience in the practice of corporate law, preferably within a regulated sector;
- Demonstrated proficiency in contract review, legal due diligence, and the resolution of legal and regulatory issues arising in complex commercial and infrastructure transactions;
- Substantial exposure to large-scale infrastructure projects, with preference for experience in the water supply and sewerage sector;
- Preferably with experience in analyzing and advising on the implications of revising rate-setting methodologies, particularly in relation to adjustments or amendments in concession agreements or Public Private Partnership (PPP) contracts, and ensuring alignment with regulatory and contractual obligations;



- Preferably with expertise in the legal aspects of PPP arrangements, including risk allocation, government undertakings, concession agreements, and compliance with applicable regulatory frameworks.

## VIII. CONSTRAINTS

To ensure fairness and objectivity, the following constraints shall apply:

- a. The Consultant firm and any member of the proposed team of Consultants had no previous professional relationship or engagement, directly or indirectly with the Concessionaires, their parent companies and subsidiaries in the past one (1) year immediately preceding the day of submission of bids;
- b. Any key member of the proposed team of Consultants has not been a partner, director, officer, or employee of the East and West Zone Concessionaires of the MWSS within the prohibitive period immediately preceding the day submission of bids, prescribed as follows: i. Three (3) years for a partner, director or officer; and ii. One (1) year for an employee;
- c. Any key member of the proposed team of Consultants has no familial relationship within the 3rd civil degree of consanguinity or affinity with any of the employees or officers of the MWSS CO, the MWSS RO or any of the Concessionaires, or current members of the Bids and Awards Committee of the MWSS CO or the MWSS RO.

All other provisions of RA 12009 and its IRRs shall also apply to the Consultant firm and any key member of the proposed team of Consultants.

## IX. TERMS OF PAYMENT

### a. Remuneration Payments

Deliverables	Percent of Contract Value
1. Literature Review	15%
2. Benchmarking Report	15%

3. Initial Final Report	40%
4. Final Report	30%
<b>Total</b>	<b>100%</b>

#### **b. Reimbursable Expenses**

The Consultant may include certain Reimbursable expenses, as part of the project cost. The Reimbursable for the project shall be limited to the following:

- i. Laptop computer with operating systems to be used exclusively for the project;
- ii. Heavy duty colored printer to be used exclusively for the project;
- iii. Printing and report reproduction;
- iv. Communication expenses;
- v. Consumable office supplies;
- vi. Meeting expenses and;
- vii. Pantry supplies.

Reimbursable expenses shall be claimed within a two-month period after the end of each calendar month, otherwise they are deemed waived. These must be supported by proof of payments, e.g. Official Receipt. The laptop computer with operating systems and printers and computer software, subject to reimbursement, shall be turned over to the MWSS RO upon the conclusion of the engagement.

#### **X. ASSISTANCE TO BE PROVIDED BY THE MWSS RO**

The MWSS RO shall provide the following assistance to the Consultants:

- a. Furnished office space with telephones/ internet access;
- b. Make its personnel available to support this undertaking;
- c. Additional logistics required; and



- d. Assist the Consultants in securing data needed from the Concessionaires and the MWSS.

#### **XI. MODE OF PROCUREMENT**

The Procurement of Consultancy Services for the Comprehensive Review of Tariff Setting Methodology of Local and Foreign Utilities shall be under RA No. 12009 and its IRR. Using the Quality Based Evaluation (QBE) procedure, the contract shall be awarded to prospective bidder with the Highest Rated Bid (HRB), considering its Technical Bid component, with the contract price agreed as a result of the negotiation and post-qualification.

  /   APPROVED /    DISAPPROVED

  
**PATRICK LESTER N. TY**  
Chief Regulator