Water Sector Regulation in the Philippines

by

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Outline

- Service Providers
  - Pre-Privatization
  - Post-Privatization (after 1997)
- Regulation (Pre-Privatization)
- Regulation (Post-Privatization)
- Challenges and Issues
- Water Regulatory Commission Act
Service Providers

▪ Pre-Privatization
  ● MWSS
  ● Water Districts
  ● LGU’s
  ● Private Systems

▪ Post-Privatization
  ● MWSS Concessions
  ● Subic Water
  ● LGU Concessions
  ● No Water District Concessions
Regulatory Bodies

- **Pre-Privatization**
  - Metropolitan Waterworks and Sewerage System (MWSS)
  - Local Water Utilities Administration (LWUA)
  - Local Government Unit (LGU) Council
  - National Water Resources Board (NWRB)

- **Post-Privatization**
  - MWSS Regulatory Office (MWSS-RO)
  - Subic Bay Metropolitan Authority (SBMA) Regulatory Office (SBMA-RO)
  - Contract Administration Unit (CAU), Department of Interior and Local Government (DILG)
## Regulation (Pre-Privatization)

<table>
<thead>
<tr>
<th></th>
<th>MWSS</th>
<th>Water Districts</th>
<th>LGU</th>
<th>Private Systems</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Regulatory Body</strong></td>
<td>MWSS Board</td>
<td>LWUA</td>
<td>LGU Council</td>
<td>NWRB</td>
</tr>
<tr>
<td><strong>Tariff Setting</strong></td>
<td>MWSS Board</td>
<td>LWUA</td>
<td>LGU Council</td>
<td>NWRB</td>
</tr>
<tr>
<td><strong>Targets/ Standards</strong></td>
<td>MWSS Board</td>
<td>LWUA</td>
<td>LGU Council</td>
<td>NWRB</td>
</tr>
<tr>
<td><strong>Jurisdiction</strong></td>
<td>MWSS Charter</td>
<td>Provincial Water Utilities Act</td>
<td>Local Government Code</td>
<td>Section 11 of PD 1206</td>
</tr>
<tr>
<td><strong>Licensing</strong></td>
<td>Exclusive MWSS Service Area</td>
<td>Exclusive/LGU Resolution</td>
<td>Exclusive LGU Boundaries</td>
<td>Non-exclusive</td>
</tr>
<tr>
<td><strong>Independence</strong></td>
<td>Board appointed by President for fixed terms</td>
<td>Board appointed by President for fixed terms</td>
<td>Elected every three years</td>
<td>Ex-officio from ten government entities</td>
</tr>
<tr>
<td><strong>Accountability</strong></td>
<td>Civil Service Regular Laws</td>
<td>Civil Service Regular Laws</td>
<td>Civil Service Regular Laws</td>
<td>Civil Service Regular Laws</td>
</tr>
<tr>
<td><strong>Transparency</strong></td>
<td>Public hearing, performance audit not required</td>
<td>Public hearing, performance audit not required</td>
<td>Public hearing required, performance audit not required</td>
<td>Public hearing, performance audit not required</td>
</tr>
<tr>
<td><strong>Financial Stability</strong></td>
<td>Water/Sewer Fees National Budget</td>
<td>Loan Payments National Budget</td>
<td>Water/Sewer Fees LGU Budget</td>
<td>Levy on Private Systems</td>
</tr>
<tr>
<td><strong>Dispute Resolution</strong></td>
<td>NWRB</td>
<td>NWRB/Office of the President (OP)</td>
<td>NWRB</td>
<td>Regional Trial Court</td>
</tr>
</tbody>
</table>
## Water Sector Privatization

<table>
<thead>
<tr>
<th>System</th>
<th>Date</th>
<th>Type</th>
<th>Population</th>
<th>Initial Tariff (per cu.m.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>MWSS</td>
<td>1997</td>
<td>Two Concessions &lt;br&gt; Manila Water Company &lt;br&gt; Maynilad Water Services</td>
<td>11,000,000</td>
<td>East – P2.32 &lt;br&gt; West – P 4.96</td>
</tr>
<tr>
<td>Subic Water (SBMA)</td>
<td>1997</td>
<td>Joint Venture &lt;br&gt; involving SBMA, Olongapo Water District and Two Private Firms</td>
<td>Approx. 500,000</td>
<td>P15.00</td>
</tr>
<tr>
<td>LGU Concessions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Magdalena, Laguna</td>
<td>2000</td>
<td>Design-Build-Lease</td>
<td>13,562</td>
<td>P20.75</td>
</tr>
<tr>
<td>Kalilangan, Bukidnon</td>
<td>2002</td>
<td>Design-Build-Lease</td>
<td>14,169</td>
<td>P14.25</td>
</tr>
<tr>
<td>Lantapan, Bukidnon</td>
<td>2002</td>
<td>Design-Build-Lease</td>
<td>29,945</td>
<td>P10.75</td>
</tr>
</tbody>
</table>
## Regulation (Post-Privatization)

<table>
<thead>
<tr>
<th>Regulatory Body</th>
<th>MWSS Concessions</th>
<th>Water District Concessions</th>
<th>LGU Concessions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tariff Setting</strong></td>
<td>MWSS-RO to recommend MWSS Board to approve (Standard, Extraordinary, Rebasing)</td>
<td>?</td>
<td>Technical Working Group (TWG) to recommend. LGU Council to approve (Standard, Extraordinary)</td>
</tr>
<tr>
<td><strong>Targets</strong></td>
<td>MWSS RO/MWSS Board</td>
<td>?</td>
<td>CAU-TWG/LGU Council</td>
</tr>
<tr>
<td><strong>Jurisdiction</strong></td>
<td>MWSS Charter</td>
<td>?</td>
<td>Local Government Code</td>
</tr>
<tr>
<td><strong>Licensing</strong></td>
<td>Exclusive</td>
<td>?</td>
<td>Exclusive</td>
</tr>
<tr>
<td><strong>Independence</strong></td>
<td>RO reporting to MWSS Board</td>
<td>?</td>
<td>CAU composed of policy level and TWG</td>
</tr>
<tr>
<td><strong>Accountability</strong></td>
<td>RO accountable to MWSS Board</td>
<td>?</td>
<td>CAU accountable to LGU Council</td>
</tr>
<tr>
<td><strong>Transparency</strong></td>
<td>Public Performance Audit</td>
<td>?</td>
<td>Unclear</td>
</tr>
<tr>
<td><strong>Financial Stability</strong></td>
<td>Concession Fee</td>
<td>?</td>
<td>Supervision Fee</td>
</tr>
<tr>
<td><strong>Dispute Resolution</strong></td>
<td>Local arbitration for minor dispute International arbitration for major dispute</td>
<td>?</td>
<td>Local arbitration</td>
</tr>
</tbody>
</table>
Chief Regulator

Technical Regulator
- Operations Monitoring
- Water and Sewage Quality

Legal and Administration Regulator
- Administration
- Legal
- Financial Audit and Asset Monitoring
- Tariff Control and Monitoring

Financial Regulator
- Metering Efficiency

Customer Service Regulator
- Complaint Services Monitoring

Public Information

MWSS Regulatory Office
MWSS Regulatory Office
(Functions)

- Monitoring the Concession Agreements
- Reviewing and monitoring of water supply and sewerage rates
- Implementing *Extraordinary Price Adjustment* provisions
- Implementing *Rate Rebasing* provisions
- Monitoring contracts between the Concessionaire and customers for the provision of water and sewerage services
- Arranging for regular, independent technical and financial audits of the activities of the Concessionaire, and the public dissemination of such information
- **Monitoring and enforcing standards of service, and any agreed improvement** in these standards, or extensions in the coverage of water supply and sewerage services
MWSS Regulatory Office
(Functions)

- Monitoring the production of audited financial information, ruling on cost allocations and other accounting practices appropriate for the rate-setting methodology
- Monitoring the reported, audited condition of water and sewerage service infrastructure assets, and enforcement of the Concession Agreement with respect to these
- **Prosecuting or defending proceedings before the Appeals Panel**
- Reporting on the Regulatory Office’s activities and communicating the Office’s decisions
- Responding to complaints or representations from customers, and other interested groups
MWSS Regulatory Office
(Experience)

- **Recommendatory only on water tariff**, only Board of Trustees can set tariff
- **RO budget is subject to BOT approval**
- **Hiring of personnel is subject to BOT approval**
- Except for initial seminar in Florida in 1997, **regulators and staff have no formal training**, all training require BOT approval
- **BOT imposes that concessionaires follow MWSS specifications**, which are not in accordance with the CA
- Some **projects under MWSS responsibility delayed or cancelled**, affecting compliance of targets
Subic Water Office of Water Regulation

Chairman
(appointed by the four members)

Board Member
(appointed by SBMA)

Board Member
(appointed by SBMA)

Board Member
(appointed by Olongapo City)

Board Member
(appointed by Olongapo City)

Operations Monitoring

Administration

Legal

Financial Audit and Asset Monitoring

Metering Efficiency
Subic Office of Water Regulation
(Powers and Functions)

- Fix and regulate water and sewerage rates
- Set and uphold water quality standards and systems efficiency
- Monitor condition of assets.
- Require and receive regular reports from franchisee.
- Monitor standards of service.
- Investigate and respond to complaints.
- Foster the development of customer consultation.
Local Government Concessions (CAU)

- CAU to administer contract in behalf of the LGU
  - CAU to have two levels: A Policy Governing Board and a Technical Working Group
  - Policy Governing Board responsible for general contract monitoring and enforcement and setting policies for long-term development of the lease
  - Technical Working Group responsible for contract regulation involving all technical matters
  - Consultant engaged (under PPIAF funding) to set up a functioning CAU. However, Consultant has not yet started work.
Vice-President  
Development Bank of the Phil.  
Chairman, Policy Governing Board  
Chief Regulator

Private Operator

Policy Governing Board

Mayors of Participating LGU’s

Project Management Units (LGU)

Technical Working Group

Project Manager  
DBP-PMO

Project Manager  
DILG-WSSPMO  
Chairman, TWG

Area Coordinators  
DBP-PMO  
DILG-WSSPMO

Advisors  
Legal  
Technical  
Financial

Legend:  
--- Line Function  
----- Coordination

Contract Administration Unit (CAU)
Contract Administration Unit
(Functions and Responsibilities)

- **Policy Governing Board**
  - General contract monitoring and enforcement
  - Setting of policies for *contract amendment*
  - Approval of applications for *extraordinary rate adjustment*
  - Approval of conditions for *CAU event of early termination*

- **Technical Working Group**
  - Approval to revisions to any prescribed *forms*
  - Approval of *fees*
  - Approval of the general *design and cost estimates of extension works*
Contract Administration Unit
(Functions and Responsibilities)

- Maintenance of records of complaints from the Operator relating to the state of **watershed protection**
- **Certification of Asset Condition Reports** and determination of frequency of updating
- Directing **technical audits**
- Directing **remedial works**
- Monitoring the application of the **standard rate adjustment**
- **Evaluation of conditions for applying extraordinary rate adjustment** and recommend appropriate action to the Policy Governing Board
- **Evaluation of conditions for CAU event of early termination**
- Monitoring of compliance to **performance standards**
Water Districts

- No successful privatization because of many unresolved issues regarding the regulatory framework
- All of the solicited and unsolicited proposals for water concessions are on hold pending the resolution of the regulatory issue
Challenges and Issues

- Unclear jurisdiction in case of water district concessions.
- Deficiencies in NWRB governance and regulatory structure.
- Conflict with resource regulation.
- Lack of independence of interim regulatory bodies.
- Vulnerability to political interference
- Interim regulatory bodies under control and supervision of government entity which is also the contracting party.
- Conflict of interest of interim regulatory bodies.
Challenges and Issues

- Lack of training of interim regulatory bodies.
- Multiple, independent and uncoordinated regulatory bodies resulting in inconsistent regulatory policies and processes.
- Unsuitable dispute resolution and appeal mechanisms.
- Rate of return limitation (12% RORB).
- Exclusivity of service area discourages private competition.
- Regulation by contract administration only.
- Existing legislation not intended for regulating private operators.
Water Regulatory Commission
(Stakeholders)

- Metropolitan Waterworks and Sewerage System (MWSS)
- Local Water Utilities Administration (LWUA)
- Subic Bay Metropolitan Authority (SBMA)
- National Water Resources Board (NWRB)
- Coordinating Council for Private Sector Participation (CCPSP)
- Department of Interior and Local Government (DILG)
- Department of Public Works and Highways (DPWH)
- National Economic and Development Authority (NEDA)
- Department of Justice (DOJ)
Water Regulatory Commission Act  
(Declaration of Policy)

- It is hereby the declared policy of the State to pursue and foster, in an orderly, rational, efficient and vigorous manner, the **attainment of complete coverage** over the entire country of piped-water supply and sewerage services at reasonable rates and, in this connection, **encourage the participation and investment of the private sector**, both domestic and foreign, in the provision of piped-water supply and sewerage services. For this purpose, there is a need to establish a **single agency of government** to be invested with ample powers for the **rational and effective economic regulation of all piped-water supply and sewerage systems**.
Water Regulatory Commission Act
(Independence/Accountability)

- Attached agency of the Office of the President.
- Relationship between the Commission and Office of the President shall be **limited only to coordination and/or consultation**
- Commission to make its policies and plans conform as closely as possible to policies and plans of the Office of the President.
- The Commission shall be a **collegial body** composed of three members, a Chairman and two associate commissioners, **appointed by the President, with fixed, staggered terms.**
Water Regulatory Commission Act
(Tariff Setting)

- The Commission shall have the power to formulate principles for approving tariffs taking into account the following:
  - Capital and recurrent costs of providing the service including a reasonable rate of return on capital
  - Efficiency of the service
  - Incentives for enhancement of efficiency
  - Willingness to pay of the consumers
  - Equity considerations
  - Administrative simplicity
Water Regulatory Commission Act (Tariff Setting)

- The Commission shall approve tariffs which are fair and reasonable and which allow for the economic viability of the operations and business of the licensee, including a reasonable return on their investments considering the prevailing costs of capital in the domestic and international markets.

- When proposing tariffs for specific customers or groups of customers, providers should consider that tariffs should cover:
  - At least the cost that would be avoided if the customers subject to such tariffs were not serviced
  - At most the cost providing the service to those customers on a stand-alone basis.
Water Regulatory Commission Act
(Jurisdiction)

- The Commission shall have the power to regulate persons or entities, whether from the public or private sector, that provide piped-water supply and/or sewerage services.

- The Commission shall have the power to issue, grant, modify, monitor, enforce, suspend and/or cancel licenses.

- All persons and public or private entities intending to engage in the provision of piped-water supply and/or sewerage Services, including but not limited to operators of privately-owned water supply systems, local water districts and LGU’s operating water supply systems shall be required to apply for and obtain a license from the Commission prior to their operation.
Water Regulatory Commission Act (License)

- Except for service areas to which exclusive rights are granted under existing laws, **licensees do not have the exclusive right** to a certain service area.
- The Commission may issue one, two, or more licenses for operators within any existing or proposed service area(s).
- The Commission shall promulgate the rules, guidelines, and standards to be applied in determining who should be awarded the license for a specific service area, based on technical, financial, economic, and organizational considerations, managerial capacity, and past record and experience.
Water Regulatory Commission Act
(Transparency)

- The Commission shall have the power to disseminate and publish comparative information on prices and service performance of licensees.
- The Commission shall have the power to provide a system for complaints and appeal relating to tariffs, quality of service and equitable distribution.
- The Commission shall conduct public hearings or consultations with consumers, licensees and other affected stakeholders before issuing new rules and regulations.
Water Regulatory Commission Act
(Transparency)

Any license issued under this Act shall contain provisions designed to ensure that licensees:

- publish the tariff and other charges, and other terms and conditions approved by the Commission
- Prepare and make available for public inspection, codes of practice specifying the manner and procedure for metering, billing and collection, disconnection or suspension of service in case on non-payment of tariffs and reconnection and recovery of arrears
- Maintain financial accounts in accordance with the manner and procedure specified in the license.
Water Regulatory Commission Act  
(Targets/Standards)

- The Commission has the power in the exercise of its powers and functions, **take into account licensee’s service targets and performance** against such targets in response of consumer service standards, regarding water pressure, minimum flow rates, connections, and billing and metering requirements and procedures, among others.
Water Regulatory Commission Act
(Financial Stability)

- The Commission has the power to impose and collect an annual levy on all licensees to the extent necessary for achieving the purposed, powers and functions of the Commission.

- The sum of ____ shall be set aside from any available funds of the National Treasury, and is hereby appropriated and authorized to be released, for the organization of the Commission and its initial operations. Thereafter, funds sufficient to fully carry out the objectives, powers, and functions of the Commission shall be appropriated for every fiscal year in the General Appropriations Act.
Water Regulatory Commission
(Dispute Resolution)

- All orders, rulings, and decisions of the Commission are **final and executory, unless appealed to the Court of Appeals** within 15 days from receipt of notice of such order, ruling or decision.

- No injunction may be issued by any court or administrative agency to restrain any proceeding before, or the implementation of execution of any order, ruling or decision of the Commission, except on the basis of a question of law brought before the Supreme Court on certiorari.
Water Regulatory Commission Act
(Dispute Resolution)

- The Commission shall have the power to provide a system for the settlement of disputes between and among licensees.
- Where there is dispute between two or more licensees for interconnection between them, the Commission may make a binding arbitration of the terms and conditions of interconnection that are in dispute.
Debt Finance
Technical Assistance

Licensing/rate setting
Dispute resolution
Concession contract
approvals
Contracting for audit

Asset ownership
Primary supply
obligation
Service delivery or
contract monitoring

Contract service
delivery

Regulation of Philippines Water Utilities
Proposed Institutional Framework (WRCA)
Water Regulatory Commission Act (Chronology/Status)

- August 1999 - NEDA request for technical assistance in drafting a bill on economic regulation for water and sanitation.
- January 2000 - Team of consultants hired through the PPIAF
- July 26, 2000 - World Bank provided NEDA with first draft of WRC. Version was disseminated by NEDA to concerned agencies but only CCPSP and NWRB provided comments.
Water Regulatory Commission Act
(Chronology/Status)

- May 9, 2001 - CCPSP letter to DOJ seeking and opinion in case of a concession where the water district is privatized, whether it is the LWUA or NWRB to regulate.

- 31 May - 1 June 2001 - Roundtable Discussion Building Consensus on Interim Water Regulatory Measures and Working Towards Strategic Regulatory Reforms, organized by the CCPSP.

- July 25, 2001 - Draft WRCA was scheduled by NEDA INFRACOM for deliberation. Deliberation was deferred in order to accommodate additional comments from concerned agencies.
Water Regulatory Commission Act
(Chronology/Status)

- July 31 and August 6, 2001 - Representatives from concerned agencies (CCPSP, MWSS, LWUA, NWRB, DILG) met with NEDA Technical Secretariat to discuss and consolidate agency comments prior to next INFRACOM deliberation.

- September 6, 2001 - Draft WRCA was deliberated by NEDA INFRACOM, resulting in a matrix of consolidated agency comments, comments from the Technical Secretariat and comments of the INFRACOM.
Water Regulatory Commission Act
(Chronology/Status)

- November 6-8, 2001 - Consolidation writeshop in preparation for the Third National Water Summit was conducted. One of the agenda items discussed was the WRCA. The participants recognized the need for the draft act to be certified as priority legislative agenda.

- November 22, 2001 - Draft WRCA was deliberated by representatives from the Policy and Governance Initiatives, the national government, the legislative and the Global Water Partnership.

- June 2002 - Draft WRCA is one of the agenda items for discussion during the National Water Conference (also known as the Water Summit), where the draft WRCA is expected to be certified as priority legislative agenda by the President.
Water Regulatory Commission
(Unresolved Issues)

- Sanitation services should be defined and included.
- Define what type of legal entity a water district should be (government corporation or private corporation)
- More detailed description of relationship between WRC and Office of the President.
- Include producers of bottled water, rural water systems, level 1 and 2 systems.
- Whether Commission to focus only on pricing or to exercise both franchising and pricing functions.
Water Regulatory Commission  
(Unresolved Issues)

- Provisions for agencies having authority under their charters to set up their own water utility systems or regulate their respective areas of jurisdiction.
- Restrictions for arbitrary removal of regulators should be included.
- Exemptions from the regulations on compensation should cover not only the regulators but the whole staff of the Commission.
- More detailed qualification criteria for regulators.
Water Regulatory Commission
(Unresolved Issues)

- The legal process observed in the granting of past franchises should be respected by the Commission.
- A new licensee should complement and not compete with existing licensee in the given service area.
- Does the privatization of water systems and other PSP schemes require the approval of the Commission? This should not be the case as the Commission should not be a project approving body.
- Does the Act take into consideration provisions of the Public Service Law specially on the 12% rate of return base?
There should be a clear provision for BOT and other PSP variants.

There should be clear provisions on how to deal with the MWSS and LGU’s with lease existing lease and concession contracts.

Include a provision that licensee must use materials that pass prescribed standards accepted in the Philippines and internationally.

Principles for tariff setting should include the price of raw water.
Water Regulatory Commission
(Unresolved Issues)

- Abolition of existing units within NWRB and LWUA and its personnel is unjustifiable and unreasonable.
- Funding source for retirement benefits of affected personnel should be specified.
- Clarification on whether “violation” mentioned in the Act refers to the Act itself or promulgations of the Commission.
- Possibility of sourcing funding out of levies from gross revenues of regulated firms should be explored.
Water Regulatory Commission
(Unresolved Issues)

- Provide more details regarding qualifications and procedures for granting a license.
- Conferring exclusivity to incumbent service providers should be restudied, as this goes against objectives of Act.
- Principles or procedures for setting, adjustment and publication of approved tariffs should be made clearer.
- Principles or procedures for sale and modification of license should be made clearer.
- Transitional arrangements for existing licensees to convert to licenses issued by the Commission should be prescribed.
Water Regulatory Commission
(Unresolved Issues)

- The requirement for small providers to be licensed should be restudied.
- Provisions giving the Commission duties and powers beyond economic regulation should be restudied.
- Make clear whether the license under the Commission is the only license necessary to carry out piped water and sewerage services.
- Make clear who is required to apply for a license, the operator, the owner, or both.
- Provisions for penalties and fines for failure of licensees to comply with terms of their license should be included.