

Promoting Public Interest in the MWSS-Maynilad Dispute

By IBON Foundation (Philippines)

It is almost a year now since Maynilad Water Services Inc. terminated its Concession Agreement (CA) with the Metropolitan Waterworks and Sewerage System (MWSS). But the case remains unresolved. And since the hearings are conducted behind closed doors, public information on the issue depends largely on media reports quoting unidentified sources.

Thus, people find inconsistencies in the positions taken by the MWSS. For instance, MWSS Administrator Orlando Hondrade said before that government 'will not pressure Maynilad to hold on to the concession.' [1]

The arbitration panel is supposed to decide only on the exact amount that government owes Maynilad. Whatever the decision is, Maynilad is definitely out of the west zone concession. An MWSS-Regulatory Office official told IBON that it remains the government position. [2]

However, in June 2003, reports came out that government offered Maynilad an extension of the repayment period of its maturing debts. Government also offered to restructure water rates to help Maynilad recover its losses. The objective obviously is for Maynilad to reconsider its termination. [3]

People never knew what happened to the proposal. But Maynilad apparently did not take the offer as the MWSS filed a minor dispute in August 2003. It claimed that Maynilad overcharged its customers by as much as P5 billion. [4]

Interestingly, reports of the overcharging leaked out as early as March 2003. But it took the MWSS five months before it formally filed the charges. Did the MWSS simply wait for the 'right time?'

What is really the MWSS position? This paper attempts to clarify crucial issues in the MWSS-Maynilad dispute. It also makes concrete proposals on how government must handle the problem consistent with the public welfare.

Background and Recent Developments

On December 9, 2002, Maynilad filed a notice of early termination. It cited MWSS' refusal to grant its request for a tariff relief or higher rates. The water firm argued that this undermined its capacity to fulfill its obligations to creditors and government. Maynilad also sought at least \$303 million from government to recover its investments since taking over the concession. [5]

But MWSS contested the allegations, claiming that it gave all the necessary support to Maynilad. An International Appeals Panel is now hearing the case. It is composed of one representative each from the MWSS, Maynilad and the International Chamber of Commerce (ICC). They are Mr. Picasso Antonio from Maynilad, Mr. Berndardo Pardo from the MWSS, and Mr. Allan Philips from the ICC. [6]

Based on official pronouncements, the panel is tasked to determine two things. First, who is at fault? And second, how much should MWSS reimburse Maynilad?

The CA states that the arbitration panel should decide on the case at least 90 days upon formally receiving the complaint. But such period is not mandatory and can be extended until all issues are joined and tackled. The first round of hearings happened in August 2003 and followed by another round in September 2003. They focused on the presentation of 'evidences and witnesses' of both parties. The panel did not set a target deadline to conclude the hearings. [2]

Recent developments show that the arbitration may be protracted. A minor dispute filed by MWSS in August 2003 is expected to prolong the process. Meanwhile, as ordered by the arbitration panel, Maynilad shall continue servicing its concession area until further notice.

In August 2003, Maynilad renewed its \$120-million performance bond signifying its continued operations. The bond serves as a guarantee fund that the MWSS can withdraw if Maynilad fails to fulfill its concession obligations. [7]

But the arbitration panel gave a standing order on MWSS not to touch the performance bond until the case is over. In addition, the MWSS must also shoulder the financial obligations of Maynilad, estimated at around P15 billion.

On November 14, 2003, the panel decided that Maynilad should pay the MWSS concession fees amounting to P6.7 billion. But in return, the MWSS may allow Maynilad to hike its rates so that it can fulfill its obligations. This move is practically a 'win-win deal' for the MWSS and Maynilad, but at the expense of consumers.

Furthermore, it bolstered the perception that the MWSS is still persuading Maynilad to stay so as not to jeopardize government's water privatization program. The 'deal' is grossly unfair to Maynilad consumers who are already burdened with high rates and poor services.

For one, the water rates that Maynilad charges its costumers already include payment for concession fees. It is not the costumers' fault that Maynilad stopped paying concession fees. In fact, it is Maynilad that owes its customers because of the illegal fees it collected.

Barely a week after the panel's decision, a Quezon City trial court issued an order effectively suspending Maynilad's payment of past and maturing loans. As such, government cannot touch the \$120 million performance bond of Maynilad as payment for concession fees. Government is supposed to collect the payment for concession fees last November 22, 2003.

Actually, the court order is 'consistent' with the MWSS' position that Maynilad may hike its rates to be able to pay concession fees. With the performance bond 'untouchable,' debt-ridden Maynilad can argue that a rate hike is the only option.

Urgent Issues

There are several urgent issues surrounding the MWSS-Maynilad row and the on-going arbitration. These can be summed up as follows:

1. The privacy of the arbitration and negotiations make the exercise less credible.

The MWSS failed to explain why the arbitration should be held away from public scrutiny. The excuse that Maynilad wants the arbitration behind closed doors is not justifiable. What is at stake is public interest even if one of the parties involved is a private company.

In addition, the danger of keeping the public from participating, or at least observing the process, is that the arbitration becomes less credible. As it stands now, people have the impression that there are secret attempts to forge deals that may compromise the general welfare.

2. The CA, which provides the basis for the arbitration, is further exposed as having fundamental defects that undermine public interest.

The CA states that the arbitration panel shall be composed of representatives from the private concessionaire, the MWSS, and an independent arbiter. It is assumed that the MWSS representative stands for the interest of government and consumers. But without public access to the hearing, it remains an assumption.

What is clear is that dispute settlement provision of the CA makes 'government regulation' of the private concessionaires meaningless. Supposedly, government shall exercise regulatory power over the private concessionaires through the MWSS-Regulatory Office to safeguard public interest.

But as the people are witnessing now, the private concessionaires cannot only question the decisions of the MWSS-Regulatory Office. It can also bar the people from participating in the dispute settlement.

3. The MWSS is not consistent with its official position in dealing with Maynilad.

Reports of MWSS attempts to strike a deal with Maynilad that are inconsistent with its official stand betray the interests of the people. While it accuses Maynilad of overcharging and underperformance, the MWSS still entertains the idea that Maynilad would stay.

In addition, the MWSS is also open to the idea of a Suez take-over of Maynilad. Suez is the 40% French co-owner of Benpres in Maynilad. In April 2003, Suez held closed-door meetings with MWSS executives to present its plan on how to 'save' Maynilad. Reports also came out that the World Bank's International Finance Corp. (IFC) wants an 11% stake in the beleaguered water firm. [8] Again, the MWSS did not present these options to the public.

These proposals, which the public did not know, give the impression that government is merely using its accusations of overcharging for Maynilad to rethink its termination. They give the

impression that government handles the case against Maynilad without due consideration to public interest.

4. Government’s position does not consider the general failure of water privatization.

Obviously, the position taken by the MWSS (e.g., pursue privatization) does not take into account the general failure of water privatization. In fact, as sanctioned by the CA, Maynilad is even allowed to recommend a qualified replacement operator (QRO) to take over the west zone concession. [2]

Government promised more efficient and more affordable water services under MWSS privatization. But from August 1997 to January 2003, basic water rates in MWSS service areas already increased by 253 (west zone) to 427 percent (east zone). [9]

In September 2003, Manila Water Company Inc., the holder of the east zone concession, further increased its rates by more than P5 per month for customers with a monthly consumption of 30 cubic meters. The adjustment is due to foreign currency differential adjustment (FCDA). Such mechanism allows private concessionaires to recover losses due to fluctuations in the peso-dollar exchange rate. [10]

Maynilad and Manila Water also performed miserably in terms of supply, sewer, and sanitation coverage as both failed to comply with their CA commitments. (See Table)

Table 1 Summary of Maynilad and Manila Water’s Actual Performance versus Commitments, As of 2001 (Figures in Percent)								
Indicator	Maynilad				Manila Water			
	Target		Actual		Target		Actual	
Coverage for:	Low	High	Low	High	Low	High	Low	High
Supply	36	100	8	100	34	100	0	100
Sanitation	0	100	0	21	0	82	0	3
Sewer	0	55	0	36	0	22	0	21

Source of Basic Data: MWSS-Regulatory Office

Review Privatization Program

The immediate task of government is to be transparent and consistent in dealing with Maynilad. Transparency and consistency can only be achieved if the MWSS would allow substantial people’s participation in the arbitration. Instead of holding closed-door talks with Maynilad, the MWSS should encourage the participation of concerned consumer groups and even legislators. In this way, public interests in the arbitration may be safeguarded.

But in light of the glaring failure not only of Maynilad but also of Manila Water to fulfill their contract obligations, government must review its MWSS privatization program. Do the consumers really feel the supposed benefits of privatizing water services?

In a survey conducted by the World Bank and the MWSS-Regulatory Office in 2000, called the Public Assessment of Water Services (PAWS) Project, 67% of the 10,000 household respondents think that water services did not improve or became worse since privatization. Meanwhile, according to the same survey, service quality registered poor rating in over 50% of the barangays surveyed. [9]

The Maynilad issue gives a chance to government not only to restudy but also to correct a fundamentally defective program. Government should seize this opportunity to right the injustice committed against the 9.2 million consumers in MWSS areas. Thus, government must pursue its case against Maynilad in the framework of reviewing its MWSS privatization program.

Take over Maynilad

The MWSS should compel the arbitration panel to come up with a definite deadline to conclude the case. Meanwhile, the MWSS can already take over Maynilad while the case is being arbitrated to start the process of reviewing water privatization program. Besides, it is already shouldering the financial obligations of Maynilad even before the hearings began.

Government can consider the following in its take-over of Maynilad:

1. Establish a special committee that will design concrete measures for running Maynilad's concession.

Such committee may be composed of representatives from the National Economic Development Authority (NEDA), Department of Finance (DOF), and the MWSS. Representatives from the union of employees and consumers must also be included in the new group that will operate the west zone concession.

2. Review Maynilad's financial situation to determine what obligations should government absorb and what obligations should Maynilad absorb.

This step is important to ensure that government would not be burdened by unnecessary debts Maynilad incurred. For example, if Maynilad borrowed and spent P16 million on advertising and around P1.2 billion on consultancy contracts with its own partners, it would be unfair for government to shoulder the responsibility of paying such loans.

3. Ensure that Maynilad would return every centavo that it owes the people such as the billions of pesos Maynilad overcharged its customers.

Money that rightfully belongs to government like the P128 million that MWSS has won from a suit involving a distillery's illegal pipe connection, which Maynilad took after it won the west zone concession in 1997, must also be refunded.

Meanwhile, government must declare a moratorium on water rates adjustments as it reviews the privatization of the MWSS.

Furthermore, there are many provisions in the CA that MWSS customers did not know when the Ramos administration signed the agreement with the private concessionaires six years ago. It is only now that people and perhaps even legislators are becoming aware of these onerous provisions. This should further compel government to push through with the review of MWSS privatization.

Water privatization is failing not only in the Philippines but also worldwide. Apparently, there are fundamental contradictions between providing a basic service and the drive for profits of private corporations that 'government regulation' cannot reconcile.

Sources and References:

1. 'MWSS Wont' Contest Return of Concession' by Ruffy Villanueva, Business World, page 1, December 11, 2002.
2. Telephone interview with an official of the Metropolitan Waterworks and Sewerage System-Regulatory Office, October 16, 2003.
3. 'Government Woos Maynilad to Take Back Franchise' by Des Ferriols, The Philippine Star, page B-1, June 9, 2003.
4. 'Maynilad Water Rapped for Overcharging Clients' by Christine Gaylican, Philippine Daily Inquirer, page A17, August 12, 2003.
5. 'Lopez Give Up Maynilad' by Cecille Visto and Ruffy Villanueva, Business World, page 1, December 10, 2002.
6. Minutes of the privilege speech and interpellation of Representative Mario Joyo Aguja, Journal Service, Plenary Affairs Bureau, Philippine House of Representatives, Downloaded from http://www.congress.gov.ph/download/journals/12_3rs_5.pdf+Maynilad&hl=en&lr=lang_en&ie=UTF-8 (Homepage of the Philippine Congress).
7. 'MWC, Maynilad Renew Performance Bonds' by Christine Gaylican, Philippine Daily Inquirer, page B3, August 2, 2003.
8. 'French Partner Bares Plan to Save Maynilad' by Jose Aravilla and Ted Toress, The Philippine Star, page B-1, April 10, 2003.
9. 'Maynilad and MWSS: Basic Contradictions Behind a Failed Union' by Arnold Padilla, IBON Facts & Figures Special Release, Vol. 26 No. 7, April 15, 2003.
10. 'Manila Water Hikes Rates' by Christine Gaylican, page A22, September 24, 2003.