

Republic of the Philippines
Metropolitan Waterworks and Sewerage System –
Regulatory Office
Quezon City

IN THE MATTER OF THE
PETITION TO INSTITUTE
PENALTY PROCEEDINGS AND
IMPOSE PENALTIES ON
MANILA WATER COMPANY,
INC. (MWC) FOR FAILURE TO
MEET SERVICE OBLIGATIONS,
PARTICULARLY SECTION 5.1.2
OF THE MWSS-MWC
CONCESSION AGREEMENT
(SERVICE OBLIGATION TO
ENSURE CONTINUITY OF
SUPPLY THROUGHOUT ITS
SERVICE AREA),

RENATO M. REYES JR.,
REP. CARLOS ISAGANI ZARATE,
VERONICA DACILLO,
REGINALD VALLEJOS, LOLITA
T. DONATO,

Petitioners,

Vs.

MANILA WATER COMPANY,
INC.,

Respondent.

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PETITION

PETITIONERS, unto the Metropolitan Waterworks and Sewerage System – Regulatory Office, most respectfully state -

NATURE OF THE PETITION

1. This is a petition praying for the **INSTITUTION OF PENALTY PROCEEDINGS** and the **IMPOSITION OF PENALTIES** on Mania Water Company Inc. (hereinafter referred to as MWC) pursuant to Section 10.4 of the MWSS-MWC Concession Agreement (hereinafter referred to as Concession Agreement) mandating the imposition of penalties on MWC for its continuing failure to comply with its service obligation, particularly Sec. 5.1.2 of the Concession Agreement respecting Continuity of Supply, during the course of the severe water service interruption affecting the entire concession area of MWC which started on 6 March 2019.

2. Further, it is our most respectful position that the Petitioners, as MWC customers severely affected by MWC's still unresolved water service interruption, can validly petition the MWSS – Regulatory Office (hereinafter referred to as MWSS-RO), particularly its Chief Regulator, to act on customer complaints involving issues respecting breaches of MWC's service obligations in its Concession Agreement, particularly 'Continuity of Supply.'

3. The Petition also calls for public participation when the MWSS-RO, particularly its Chief Regulator, engages the MWC's voluntary commitment to provide relief in the water bills of affected customers during the period of severe water service interruption.

4. The Petition also calls on the MWSS-RO, particularly its Chief Regulator, to determine other relief, remedies or penalties, which can be imposed on MWC by the MWSS-RO as a result of the continuing severe water service interruption across the East Zone.

5. The Petition also seeks to highlight the invaluable role of the public and MWC customers, being the most severely affected sector, in any discussions respecting relief, remedies or penalties arising

from the continuing water service interruption across the East Zone.

6. The Petition also seeks to submit our most respectful position that the Concession Agreement is not a mere contractual agreement between private parties, but one imbued with public interest hence the necessity of public participation in the resolution of the issues raised herein.

THE PETITIONERS

7. The Petitioners are customers of MWC, all of whom have been affected by the continuing severe water service interruption across the entire concession area.

8. The Petitioners are MWC account-holders or consumers deriving their water supply from a specific MWC account.

9. The Petitioners incurred unexpected and unplanned costs due to the continuing severe water service interruption, including the purchase of incidentals necessary for water storage.

10. All notices, orders, resolutions, and other processes pertinent to ALL PETITIONERS may be served at 4th Floor, Erythrina Bldg., 1 Maaralin St., Diliman, Quezon City

11. Renato Maniquis Reyes, Jr, is a Quezon City resident and Manila Water customer through account number 11841386 under the name of his deceased grandfather Procopio Maniquis. Their household continues to suffer from interrupted service.

12. Rep. Carlos Isagani T. Zarate, a Quezon City resident and Manila Water customer under account number 20751964, who experienced disruption in his daily schedule and incurred additional expenses for his household's water needs.

13. Veronica Dacillo is a Mandaluyong resident and Manila Water customer through account number 11126676, who suffered the severe effects of having no water for several days. Dacillo

was forced to spend for big water containers, the cost of which was far bigger than her monthly water bills.

14. Reginald Vallejos is a Quezon City resident and Manila Water customer through account number 13919913 under the name of Mario Francisco. At the start of the water crisis, petitioner Vallejos had to spend for water containers, the amount of which far exceeded his average monthly water bill. His health also suffered due to the frequent lifting of heavy containers.

15. Lolita T. Donato is a Manila Water customer under account number 10288217. She experienced the worsening of her medical condition during the water service interruption, as she also had to lift water containers and deal with the stress of not knowing when water services will be restored.

FACTUAL ANTECEDENTS

16. On 4 March 2019, MWC issued Service Advisory: 2019 El Nino Water Supply Contingency Plan¹, stating thus –

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In light of PAGASA's recent El Niño advisory and its threat to Metro Manila's domestic water supply, Manila Water will be implementing operational adjustments that may affect water service across the entire East Zone. **This is to help arrest the rapid decline of the water level at La Mesa Dam, due to limited inflows from rainfall.** (Emphasis supplied.)

In this regard, some areas in the cities of

¹ ANNEX A. Manila Water Company Inc. 4 March 2019. SERVICE ADVISORY: 2019 El Niño Water Supply Contingency Plan. Retrieved from <https://www.manilawater.com/customer/agos/2019-03-04/service-advisory--2019-el-ni-o-water-supply-contingency-plan>

Marikina, Pasig, Quezon City, Taguig, Mandaluyong, San Juan, and Antipolo, Angono, Binangonan, San Mateo, Rodriguez, Taytay, and Jalajala in Rizal, will experience low pressure to no water during peak demand hours.

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17. On 8 March 2019, MWC through its Facebook Page, issued a statement apologizing for the inconvenience brought by the unexpected water service interruption across the East Zone while stating that **'an artificial increase in demand was created when people started storing water, even in areas not supposed to be affected.'**² (Emphasis supplied.)

18. Further, the same statement said that the artificial increase in demand was 'observed during the hours when we were supposed to be refilling our reservoirs (midnight to early morning) beginning Thursday early morning.'³

19. As a result, the statement said, 'the reservoirs were not completely refilled from yesterday until this morning thus resulting in the unexpected water service interruption.'⁴

20. On 13 March 2019, MWC issued a Service Advisory stating the implementation of 'operational adjustments that may affect water service **across the entire East Zone**' which **'may last for the next three months or until the rainy season sets in.'** (Emphasis supplied.)

21. For reference, the entire advisory⁵ states thus –

² ANNEX B. Manila Water Company Inc. 4 March 2019. Retrieved from <https://www.facebook.com/manilawater/photos/a.419191434858879/1920262531418421/?type=3&theater>

³ Ibid.

⁴ Ibid.

⁵ ANNEX C. Manila Water Company Inc. 13 March 2019. Advisory: Water Interruption Schedule Starting March 14, 2019. Retrieved from <https://www.manilawater.com/customer/agos/2019-03-13/advisory--water-interruption-schedule-starting-march-14--2019>

As we stabilize distribution of available supply to help slow down the rapid decline of the water level at La Mesa Dam, Manila Water is employing a revised water interruption scheme with more definite schedules. With this, customers may experience from 6 to 21 hours of service interruption. However, when water is available in your taps, pressure may be lower than usual.

We will start implementing these adjustments across the entire East Zone on March 14 and 15. This scheme may last for the next three months or until the rainy season sets in.

Manila Water will be implementing operational adjustments that may affect water service across the entire East Zone.

The specific schedules for the water interruption may be viewed at the official Facebook page.

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Manila Water has also undertaken the following efforts:

1. Hospitals & Schools: Manila Water is prioritizing hospitals and schools areas. The company is deploying water tankers and finding ways to divert water towards problematic areas. We give priority to hospitals in terms of augmenting supply during these times of interruption.
2. Households & Commercial Establishments: Manila Water, since then, has been providing water tankers in affected areas.

Manila Water apologizes for the inconvenience as it strives to work harder to restore normal operations.

We are advising residents of the said barangays to store enough water to supply their needs during the interruption period.

22. From 13 March 2019 until the submission of this Petition, MWC continued to issue service advisories assuring the public of its efforts to restore uninterrupted water supply across the East Zone concession area.

23. However, from 4 March 2019 until the submission of this Petition, MWC customers, including the Petitioners, continued to experience severe water supply interruption, including instances in which the announced scheduled supply restoration were not met.

24. As a result of continuing water supply interruption, MWC customers, including the Petitioners, incurred unexpected costs arising from the emergency purchase of incidentals for water storage.

25. Further, MWC customers, including the Petitioners, incurred undue economic injury in their personal capacities, in the practice of their profession, or in the conduct of their business as a result of the contingencies undertaken to prepare for the severe water service interruption.

26. Due to widespread public discontent arising from the severe water service interruption across the East Zone concession, the House of Representatives and the Senate conducted congressional hearings to determine the reasons for the sudden water supply shortage in the East Zone and discuss the immediate remedies that can be undertaken to restore the continuity of supply in the concession area.

27. The House of Representatives and the Senate conducted hearings on 18 March 2019 and 19 March 2019, respectively.

28. During the congressional hearing on 18 March 2019, MWC's President and Chief Operating Officer Ferdinand dela Cruz

admitted and stated the following –

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On March 6, the La Mesa Reserve breached the critical level of 69 meters which prevented us from getting 150 million liters per day from the La Mesa Reserve as the level of water went below the lowest opening it could flow into to reach our water treatment plants in Balara. This additional 150 million liters per day is important to augment the 1600 million liters per day contractual allocation we get from the Angat system. Without this additional 150 million liters per day of untreated water from the La Mesa Reserve, we cannot fully serve the peak demand, at sufficient pressure, of your constituents. (Emphasis supplied.) To visualize the scale of 150 million liters per day, it is equivalent to 15,000 tankers making one trip a day carrying 10 cubic meters. We cannot source any more supply from our system losses which has already been brought down to 12% from a high of 63% when we inherited the East Zone concession of Metro Manila in 1997.

Your honor, on March 6, nawala po ang 150 million liters per day na dati naming inaasahan at nagkaroon kami ng 9% Supply Deficit.⁶

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29. In the same speech, Mr. Dela Cruz outlined the contingency measures being undertaken by MWC to address the supply

⁶ ANNEX D. Manila Water Company, Inc. 18 March 2019. Manila Water Opening Statement for Congressional Hearing before the Committee on Metro Manila Development. Retrieved from <https://www.manilawater.com/customer/agos/2019-03-18/manila-water-opening-statement-for-congressional-hearing-before-the-committee-on-metro-manila-development>

deficit situation of one hundred fifty million liters per day (150mld), which include –

a. Implementation of 'a more widespread water interruption plan to allow our network reservoirs to refill properly and our pumping stations to stabilize;⁷

b. Commencement of operations of the Cardona Water Treatment Plant 'which draws water from Laguna Lake started delivering 24 million liters per day of treated water to the towns of Binangonan, Angono, Baras and Jala Jala;⁸

c. Access of decommissioned and new deepwell sources ' which will progressively deliver up to 40 million liters within April, rising to 50 million liters per day in June;

d. Maynilad's commitment 'to provide 50 million liters per day of cross border flows,' the full-volume of which will be delivered by 14 June.

30. The MWC President and CEO also mentioned that San Miguel has offered its excess capacity of 140 million liters per day in their Bulacan Water treatment Plant to MWSS for tankering.'

31. During the Senate hearing before the Committee on Public Services on 19 March 2019, amid intense questioning by the senators, MWC President and CEO expressed openness to explore ways to provide some relief to affected customers, and a commitment to cooperate in a review of its performance against its service obligations in providing 24/7 service.

32. Mr Dela Cruz's commitment is herein reproduced in full –

⁷ Ibid.

⁸ Ibid.

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As President of Manila Water, I have already given instructions to my team to explore ways to provide some relief in the water bills of your affected constituents during the periods of service interruption. We will discuss this with our regulators and we will update this Committee on the progress of this initiative. (Emphasis supplied.)

We will fully cooperate with the MWSS Regulatory Office as they review our performance during this incident period against our service obligations particularly in providing 24/7 service. This process is clearly spelled out in Section 10.4 of the Concession Agreement.⁹ (Emphasis supplied.)

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33. On 20 March 2019, President Rodrigo Duterte formally intervened on what was already deemed a 'water crisis' and met with the officials of MWSS, MWC and Maynilad, threatening to fire responsible officials and cancel all concession agreements.

34. Until the submission of this Petition, MWC has not yet restored uninterrupted 24-hour supply of water to all connected Customers in the Service Area, as per its Service Obligation in its Concession Agreement.

DISCUSSION

⁹ ANNEX E. Manila Water Company, Inc. 19 March 2019. Manila Water Opening Statement for Senate Hearing before the Committee on Public Services. Retrieved from <https://www.manilawater.com/customer/agos/2019-03-19/manila-water-opening-statement-for-senate-hearing-before-the-committee-on-public-services>

The MWSS-RO, particularly its Chief Regulator, should act on the voluntary commitment of MWC to provide some relief in the water bills of its affected customers covering the periods of service interruption and ensure public participation in any proceedings.

35. Given the open, voluntary commitment of MWC, the MWSS-RO, particularly its Chief Regulator, cannot now say that it has no power to exact any form of restitution or compensation from MWC arising from the period of service interruption.

36. It should be noted that the MWC, facing intense public backlash has conceded to provide some relief in the water bills of affected customers during the periods of service interruption.

37. As such, it is our most respectful submission that anything less than some actual relief in the water bills during the periods of service interruption will most definitely be taken by MWC customers and the public-at-large as an unacceptable surrender of the MWSS-RO, particularly its Chief Regulator, of its duty to serve the public first and foremost.

What constitutes 'some relief in the water bills'?

38. As far as the Petitioners are concerned, 'some relief in the water bills' constitute the following:

- a. General rebate for all MWC accounts covering the average reasonable cost for the unexpected, emergency purchase of incidentals (i.e. water drum, water pail, among others) due to the continuing period of service interruption;

b. Waiver of the P83.14 minimum charge for all MWC accounts which experienced water service interruptions and consumed 10 cubic meters or less per month;

c. General rebate for all MWC accounts covering the average reasonable cost of foregone revenue or earnings due to contingencies taken during the continuing period of service interruption.

39. The above-mentioned reliefs should not be too difficult for the MWSS-RO, particularly its Chief Regulator, to understand as these constitute the real and actual costs borne by MWC customers during the continuing period of service interruption.

40. These real and actual costs had been clearly articulated in all congressional hearings and in the day-to-day complaints of affected MWC customers.

41. The Petitioners expect nothing less than these reliefs as the end result of proceedings related to MWC's voluntary commitments.

The MWSS-RO, particularly its Chief Regulator, should impose penalties on MWC for its failure to comply with its service obligation on continuity of supply

42. It bears stressing that the Concession Agreement itself provides the mechanism for the imposition of penalties in the event of MWC's breach of its service obligations, particularly continuity of supply or the availability of an uninterrupted 24 hour supply of water to all connected Customers in the Service Area.

43. It is for this reason that we most respectfully submit that the Chief Regulator errs and fails in his duty to the public every time he insists that he can only 'exert moral pressure' but 'cannot legally

compel' MWC to be accountable for breaches in its service obligation.

44. With great irony, no less than MWC itself had declared itself ready to be subjected to a performance review of its service obligations covering the period of water service interruption, as it is, according to MWC, 'clearly spelled out in Section 10.4 of the Concession Agreement.'

45. As such, it should be clear that penalty proceedings can be undertaken and penalties can be imposed on MWC in the event of a breach of its service obligations.

46. In view of the admissions of Manila Water and the actual situation within the East Zone concession in which continuity of supply or the availability of an uninterrupted 24-hour supply of water has not yet been achieved and might not be achieved until the end of the summer months, there should be no doubt in anyone's mind, particularly the MWSS-RO and its Chief Regulator, that penalties should be imposed on MWC.

MWC has not been truthful to the public on the real situation of the East Zone concession from the start of the water service interruption

47. In truth, one main reason why Petitioners have absolute resolve to call for the imposition of penalties is not simply due to the fact that continuity of supply within the East Zone was lost from 6 March 2019.

48. Aggravating the actual breach of its service obligation is the lingering observation that MWC has not been truthful to the public on the real situation of the East Zone concession from the start of the water service interruption on 6 March 2019.

49. A perusal of all MWC service advisories from 4 March 2019 would show that MWC kept on changing the reasons for its water service interruption.

50. The first reason given by MWC for its water service interruption was PAGASA's El Niño advisory.

51. This was refuted no less by an official of PAGASA, Rusy Abastillas of its Climate Monitoring and Prediction Division, who said, "Kung El Niño ito, dapat 'yung ibang dams din nagbabaan, eh hindi naman."¹⁰

52. The second reason was the creation of artificial demand for water in areas within the East Zone concession supposedly unaffected yet by the water service interruption.

53. The final reason was the most consistent and believable, as stated by MWC President and CEO -

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On March 6, the La Mesa Reserve breached the critical level of 69 meters which prevented us from getting 150 million liters per day from the La Mesa Reserve as the level of water went below the lowest opening it could flow into to reach our water treatment plants in Balara.

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54. To be fair, the decline of La Mesa water levels was mentioned from the beginning, but never was it discussed as the main reason for the severe water service interruption across the concession area.

55. **More importantly, it should be noted that it took two weeks until the first congressional hearing for MWC to make a full, honest disclosure on the exact state of the La Mesa reservoir.**

¹⁰ ANNEX F. Ralf Rivas. Rappler. 13 March 2019. El Niño to blame for Manila Water woes? Data doesn't support it. Retrieved from <https://www.rappler.com/business/225479-data-does-not-support-manila-water-service-interruptions-march-2019>

Acute water supply crisis within the East Zone could have been avoided

56. Another reason for the absolute resolve of the Petitioners to call for the imposition of heavy penalties against MWC is the fact that the acute water supply crisis could have been avoided, and perhaps remedial measures could have been undertaken with wide public support if only MWC fully disclosed the real situation of the La Mesa reservoir earlier than it actually did.

57. We are absolutely certain that the La Mesa reserve did not reach the critical level of sixty-nine meters in a single day, and forward projections of the La Mesa reserve reaching critical levels could have been determined and warned the public that preparing for the onslaught of short water supply was a public and civic duty.

Without the La Mesa Reserve, MWC cannot provide continuity of supply to its customers

58. An important revelation during the first congressional hearing is MWC's disclosure that the concession is operating daily at a water supply deficit of one hundred-fifty million liters per day without the augmentation of supply from the La Mesa Reserve.

59. This admission shows that customer demand has outpaced water supply in the East concession area over an actually prolonged period of time.

60. In fact, as early as August 2018, MWC Chief Operating Officer Geodino Carpio already mentioned that 'demand has increased beyond Angat's capacity to provide.'¹¹

61. As such, the current situation should have been

¹¹ ANNEX H. Victor V. Saulon. BusinessWorld: Manila Water flags risk of water shortage between 2021 and 2023. 29 August 2018. Retrieved from <https://www.bworldonline.com/manila-water-warns-of-water-shortage-between-2021-and-2023/>

anticipated and contingencies undertaken well before the events of March 6.

62. This fact should also give the MWSS-RO and its Chief Regulator some pause on whether MWC has actually overextended way beyond its current actual capacity, especially since the other concession area has not found itself in the same supply deficit situation despite relying mostly on Angat Dam for its water supply.

63. For all of these, there is absolutely every reason for the MWSS-RO and its Chief Regulator to impose penalties on Manila Water Company.

Given the new development and disclosures, MWSS-RO should reconsider, if not suspend or cancel MWC rate hike

64. Beyond the imposition of penalties against MWC for its failure to comply with its service obligation respecting continuity of supply, it is our most respectful submission that the MWSS-RO should also now reconsider, if not suspend or cancel the MWC's recently approved rate hike.

65. The discussions during the rate rebasing period on issues surrounding the East concession area have not been as thorough as now.

66. The business plan submitted by Manila Water and approved by MWSS now appears flawed and has resulted in an unprecedented water crisis.

67. The new disclosures made during the course of congressional hearings should compel the MWSS-RO to reconsider whether or not the approval of MWC's rate hike was justified, given the current problems being experienced in the concession area.

68. Allowing MWC to continue charging customers at the new approved rates, over the next five years, is tantamount to rewarding inefficiency, mismanagement, if not untruthfulness to the

public.

69. It is clear as day that despite the promises of better service during the rate rebasing period, MWC has failed to anticipate and plan for its own water crisis, to the utter dismay of millions of East concession area customers.

PRAYER

WHEREFORE, it is most respectfully prayed that this PETITION for the **INSTITUTION OF PENALTY PROCEEDINGS** and the **IMPOSITION OF PENALTIES** against Manila Water Company Inc. be given **DUE COURSE** and **SET FOR HEARING**.

FURTHER, it is prayed that, after notice and hearing, a **DECISION** be made **IMPOSING PENALTIES** against Manila Water Company Inc. for the **BREACH** of its **SERVICE OBLIGATIONS** pursuant to Section 10.4 in relation to Section 5.1.2 of the MWSS-MWC Concession Agreement.

FURTHER, other reliefs are prayed for, particularly the following:

- a. **ORDER** Manila Water Company Inc. to implement a general rebate for all MWC accounts covering the average reasonable cost for the unexpected, emergency purchase of incidentals (i.e. water drum, water pail, among others) due to the continuing period of service interruption;
- b. **ORDER** Manila Water Company Inc. to implement a waiver of the P83.14 minimum charge for all MWC accounts which experienced water service interruptions and consumed 10 cubic meters or less per month;
- c. **ORDER** Manila Water Company Inc. to implement a general rebate for all MWC accounts covering the average reasonable cost

of foregone revenue or earnings due to contingencies taken during the continuing period of service interruption;

d. **UNDERTAKE** a review of the approved rate hike and **SUSPEND** its implementation until a thorough performance review of Manila Water Inc. has been conducted by the MWSS.

RESPECTFULLY SUBMITTED.

Quezon City, 25 March 2019.

By:

RENATO REYES, JR.

Petitioner

REP. CARLOS ISAGANI ZARATE

Petitioner

VERONICA DACILLO

Petitioner

REGINALD VALLEJOS

Petitioner

LOLITA T. DONATO

Petitioner

VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING

WE, RENATO M. REYES JR., VERONICA DACILLO, REGINALD VALLEJOS, RODITO BIENIO, SR., LOLITA T. DONATO, of legal age, Filipino, residents of Metro Manila after having been duly sworn in accordance with law, hereby depose and state that:

1. We are the Petitioners in the instant Petition that was filed before the MWSS-RO.
2. We have caused the preparation of the foregoing Petition.
3. We have read the said pleading and hereby aver that the allegations therein are true and correct of our personal knowledge or based on authentic records.
4. We have not commenced any other action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of our knowledge, no such other action or claim is pending therein.
5. If We should hereafter learn that the same or similar action or claim has been filed or is pending before the Supreme Court, Court of Appeals, or any other tribunal or agency, We shall report such fact within five days therefrom to the MWSS-RO.

IN WITNESS WHEREOF, We have hereunto set our hands this 25 of March 2019 in Quezon City, Philippines.

RENATO REYES, JR.

Petitioner, Drivers License No2-08-007278

REP. CARLOS ISAGANI ZARATE

Petitioner

VERONICA DACILLO

Petitioner

REGINALD VALLEJOS

Petitioner

LOLITA T. DONATO

Petitioner

SUBSCRIBED AND SWORN to before me this 25th of March 2015 at Quezon City, affiants exhibiting to me competent proof of identification.

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Pasay, Metro Manila

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