



MWSS

REGULATORY OFFICE

Metro Manila's Water PPP: Take-aways of a Regulator

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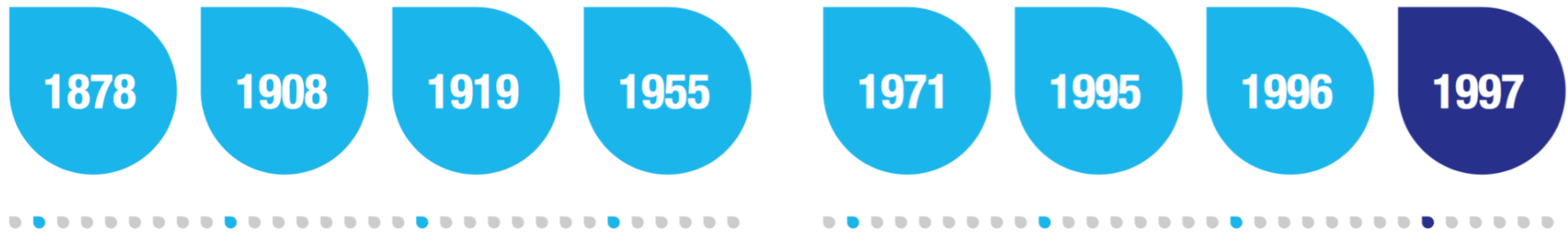
Outline

- The MWSS Regulatory Office
- Chronology: 2014-2016
- Take-aways of a Regulator
- Concluding Remarks



The MWSS Regulatory Office

A few historical highlights



Carriedo Water Works System

Construction began on the country's first water system, the Carriedo Waterworks, delivering 16 million liters of water per day to 300,000 people in Manila.

Manila Water Supply System

A new supply system is completed as the Carriedo Water Works System evolved into the Manila Water Supply System.

Metropolitan Water District

Water supply stabilized and water coverage expanded to 14 neighboring cities and municipalities of Manila with the creation of the Metropolitan Water District.

National Waterworks and Sewerage Authority (NAWASA)

Nationwide coverage is realized through the National Waterworks and Sewerage Authority (NAWASA).

Metropolitan Waterworks and Sewerage System (MWSS)

The Metropolitan Waterworks and Sewerage System (MWSS) was created, replacing NAWASA and transforming the water supply system from its national coverage back to supplying water to Manila and neighboring towns.

Water Crisis

With a looming water crisis, Republic Act No. 8041 otherwise known as the National Water Crisis Act of 1995, created a legal basis for privatization and authorized the President to reorganize MWSS into a more effective and innovative organization.

Executive Order No. 286 approved the reorganization of MWSS and prepared the groundwork for eventual privatization.

Private Sector Participation

Executive Order No. 311 encouraged the private sector's participation in the operation and facilities of MWSS.

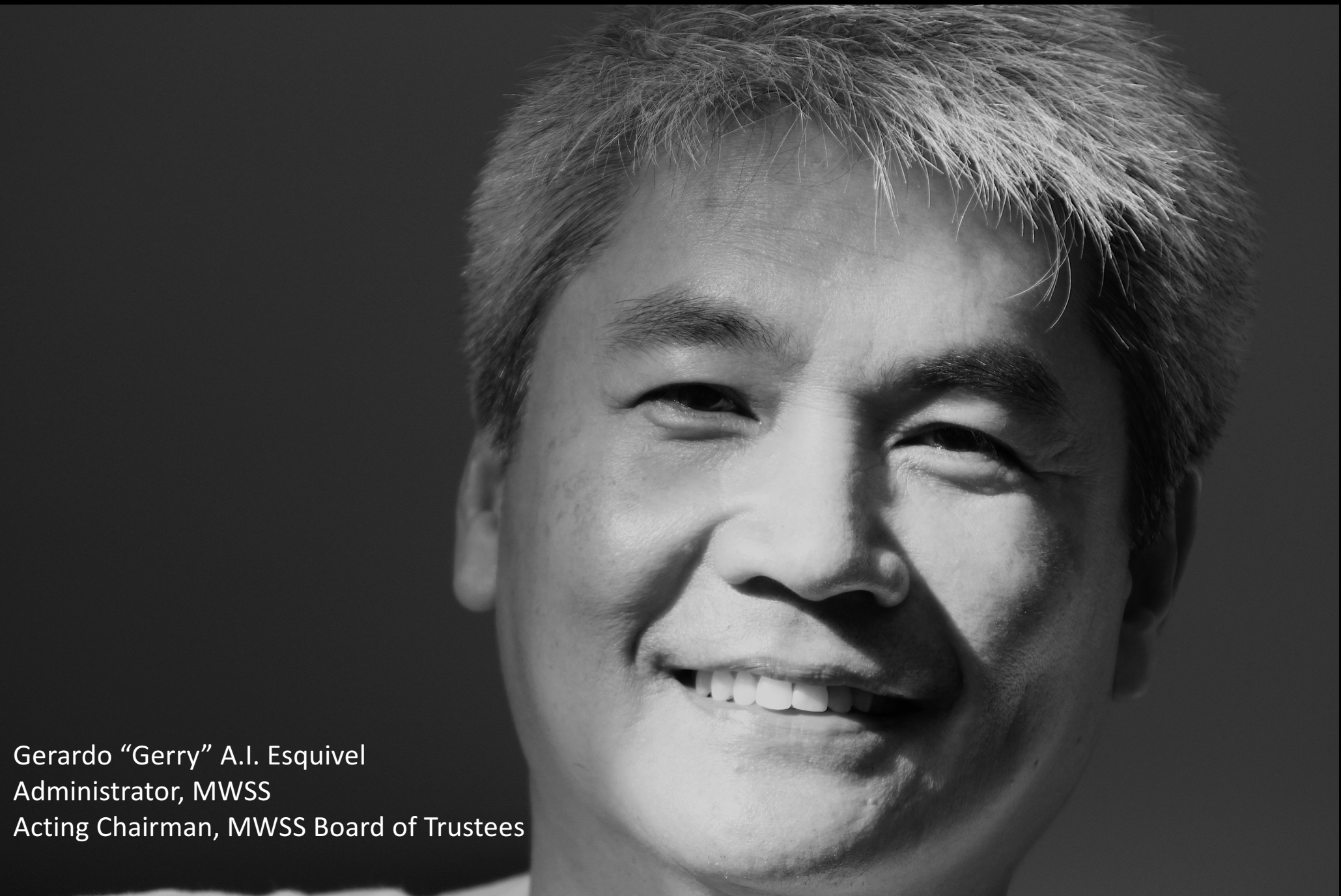
MWSS Regulatory Office (MWSS-RO)

MWSS was privatized, splitting its jurisdiction into two water zones. Following the signing of the Concession Agreements, the east zone went to the Manila Water Company, Inc. and the west zone to Maynilad Water Services, Inc.

The MWSS Regulatory Office (MWSS RO) was created in August 1997 by virtue of the Concession Agreements.

The MWSS





Gerardo "Gerry" A.I. Esquivel
Administrator, MWSS
Acting Chairman, MWSS Board of Trustees

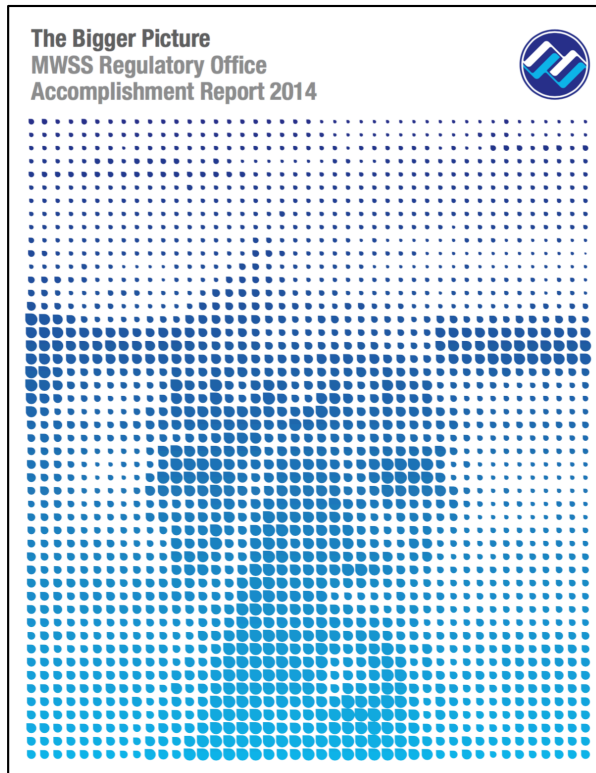


Emmanuel "Copper" L. Caparas
Member, MWSS Board of Trustees
Acting Chief Regulator, MWSS Regulatory Office

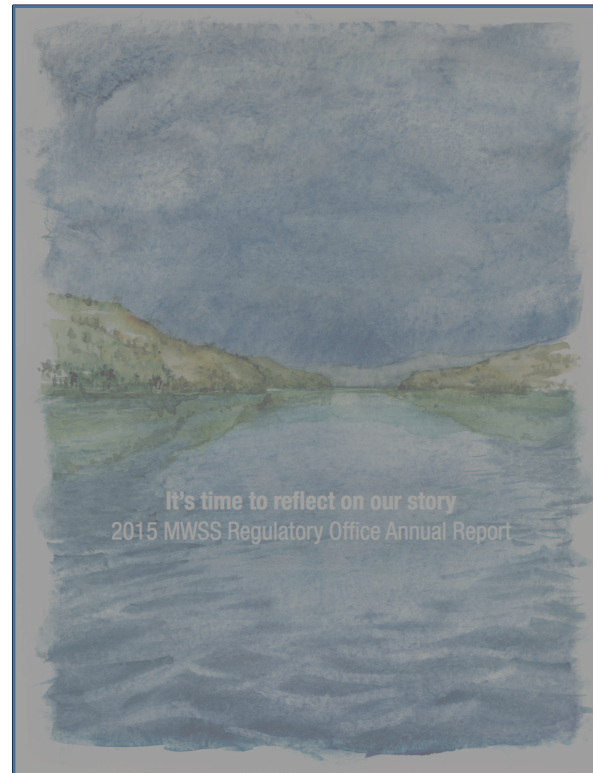


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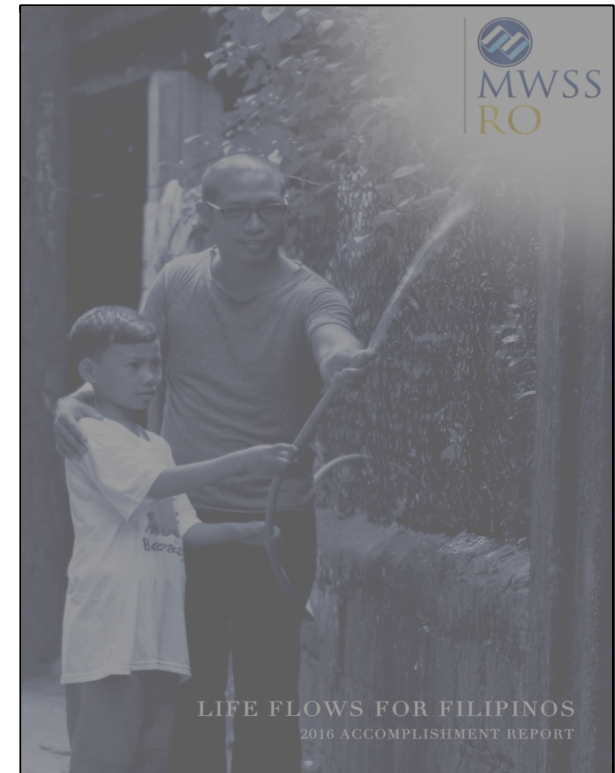
Chronology: 2014-2017



2014

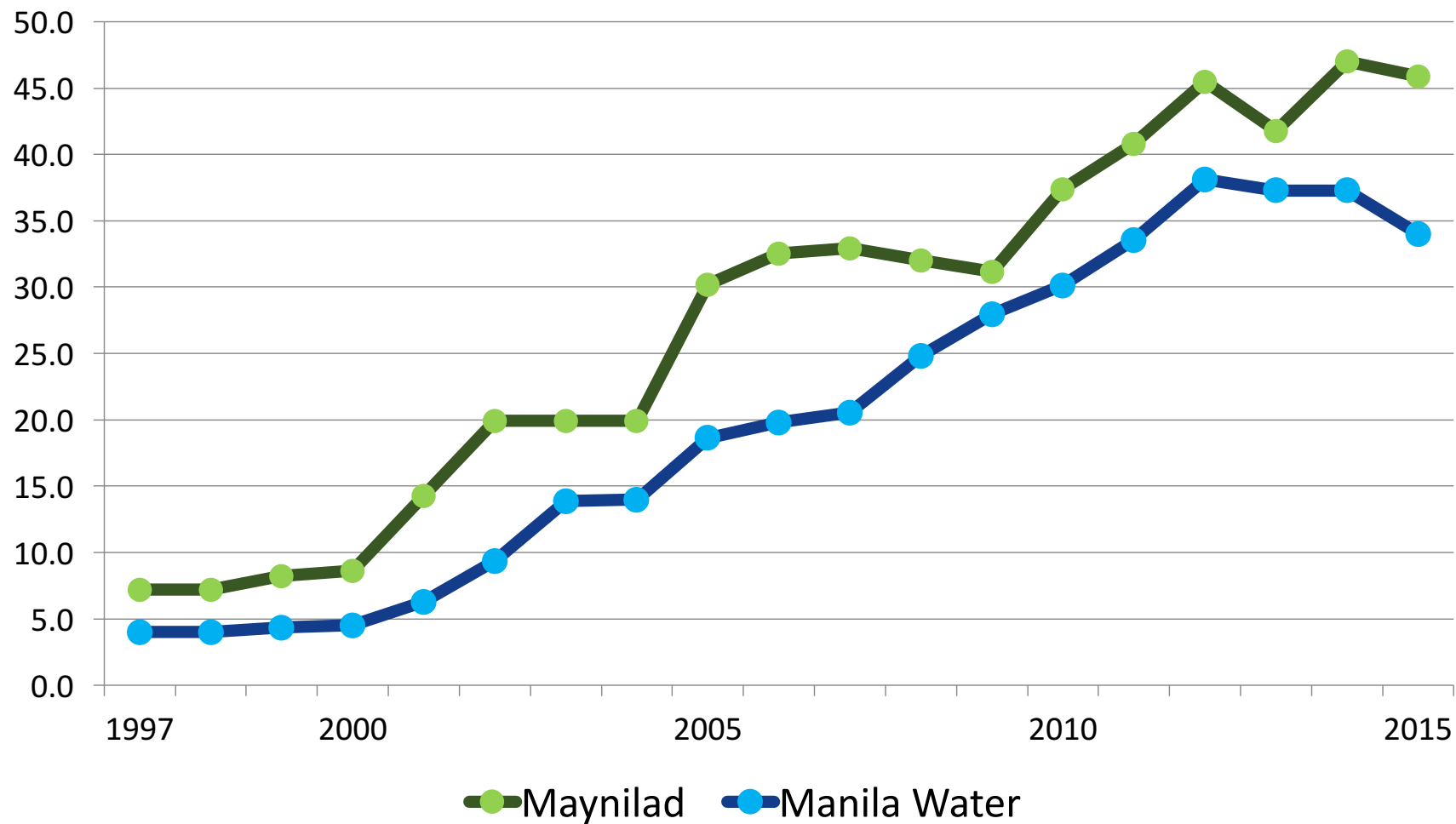


2015

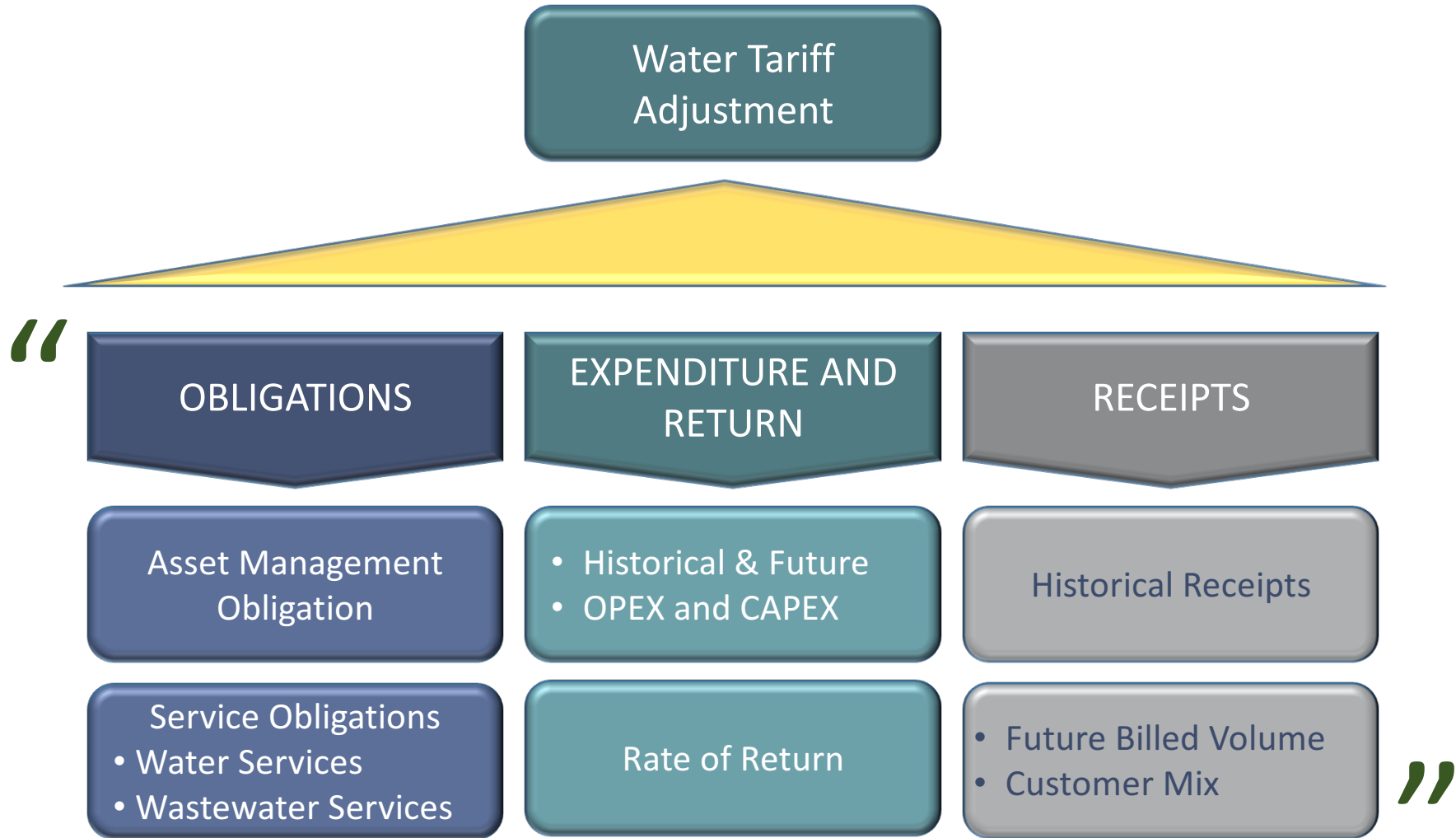


2016



All-in Tariff, in Php per cu.m.



Rate Rebasing: Building Blocks



Rates Adjustments: Petition vs Determination

	March 2012 Petition of the Concessionaire	September 2013 Determination of the Regulatory Office	Alternative Rates Adjustment of the Concessionaires in the Arbitration
	Php8.58/cu.m.* (28.35% increase)	(Php1.46/cu.m.) (4.82% decrease)	Php4.06/cu.m. (13.41% increase)
	Php5.83/cu.m. (22.79% increase)	(Php7.24/cu.m.) (29.47% decrease)	Php3.60/cu.m. (14.65% increase)

*based on Maynilad's Business Plan submitted on 23 May 2013

Arbitration: Disputed Items

- **Unauthorized disallowance of Corporate Income Tax.**

- Incorrect estimate of the Appropriate Discount Rate for Future Cash Flows.
- Unauthorized adjustments to the Opening Cash Position set during the last Rate Rebasing.
- Improper addition of Guaranty Deposits to Maynilad's Historical and Future Receipts.
- Unreasonable and improper disallowances in Other Expenditures in the Opening Cash Position.
- Unreasonable and improper adjustments to Other Expenditures in the Future Cash Flows.

Maynilad

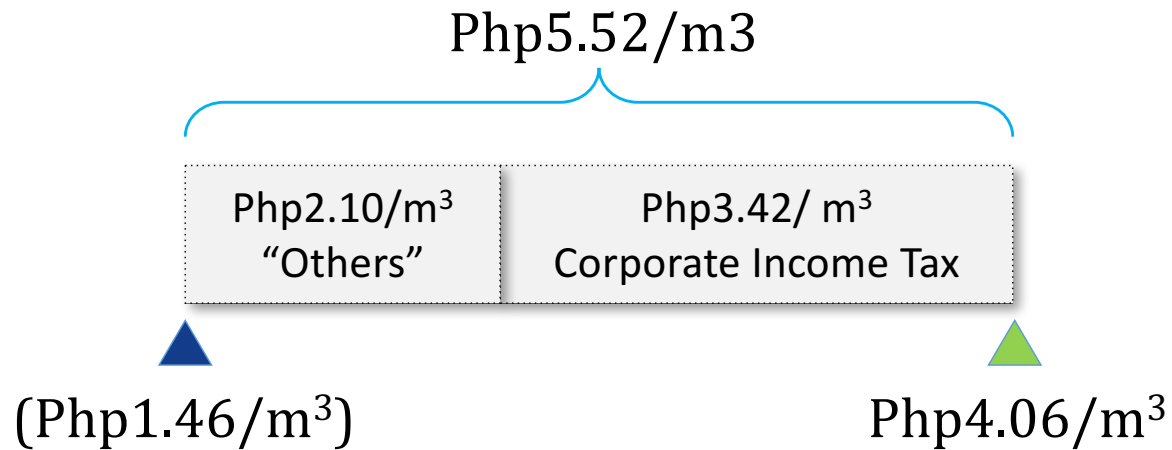
- The RO erred in its computation of Past Cash Flows, particularly in its treatment of Guaranty Deposits and in disallowing certain items from Manila Water's past OPEX and CAPEX.
- The RO erred in its computation of Future Cash Flows, e.g., **disallowance of Corporate Income Tax.**
- The RO erred in its computation of the Appropriate Discount Rate.
- The implementation of the Regulatory Office's proposed Rate Rebasing Determination unduly impairs Manila Water's financial standing and would cause a negative impact on its ability to meet its future obligation targets.

Manila Water

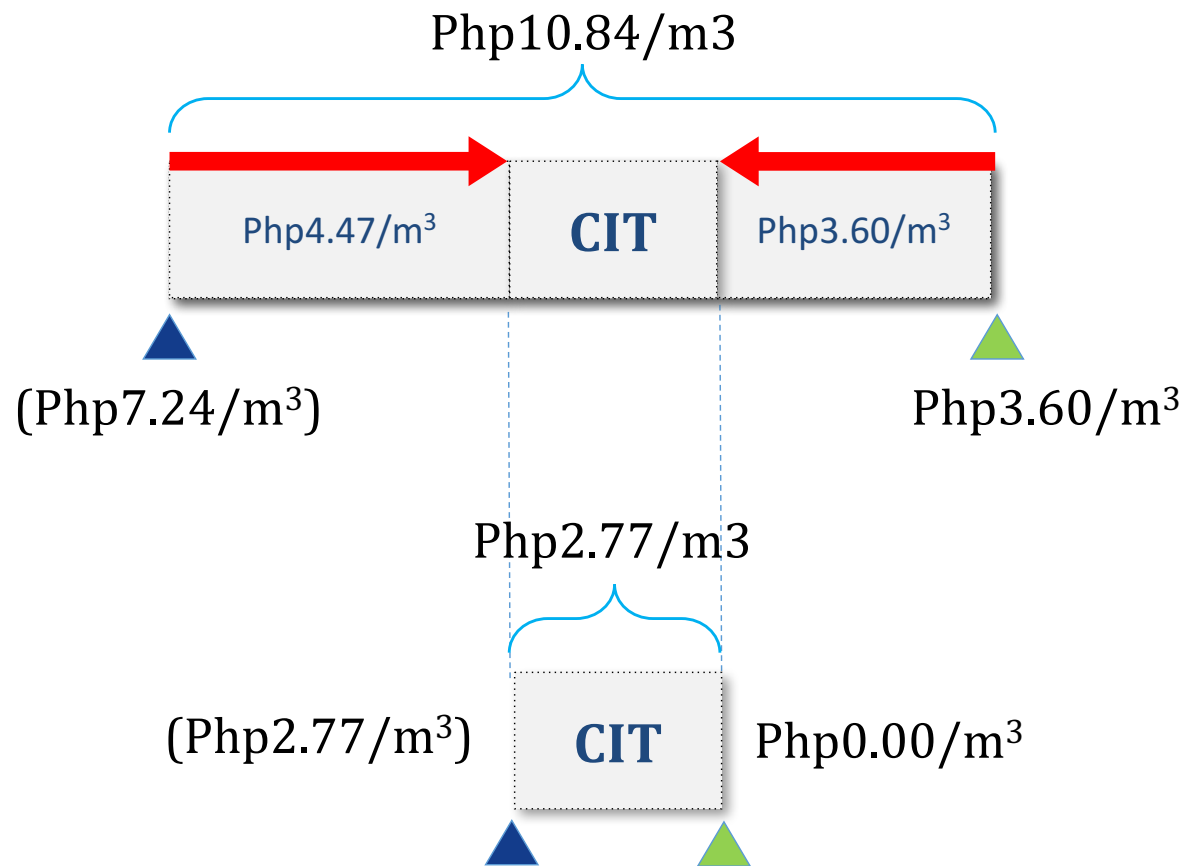
Arbitration: Disputed Items

- The issues were eventually limited to the recoverability of the Concessionaire's corporate income tax.
- In the arbitration with Maynilad, the parties did not resolve all other issues; the Arbitral Panel applied the pendulum nature of the arbitration.
- In the arbitration with Manila Water, the parties resolved all other issues.

Arbitration: Maynilad



Arbitration: Manila Water



CIT: Corporate Income Tax



Issues



Are the Concessionaires utilities?



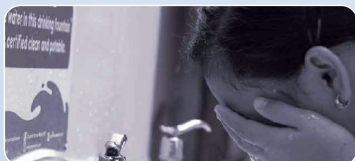
Is corporate income tax a recoverable expenditure?



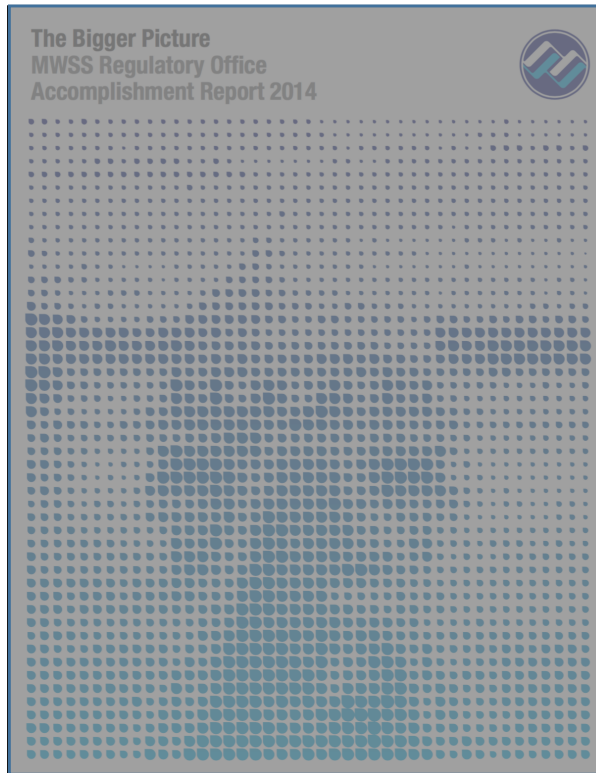
If the corporate income tax is not recoverable, should the Appropriate Discount Rate be computed fully pre-tax?



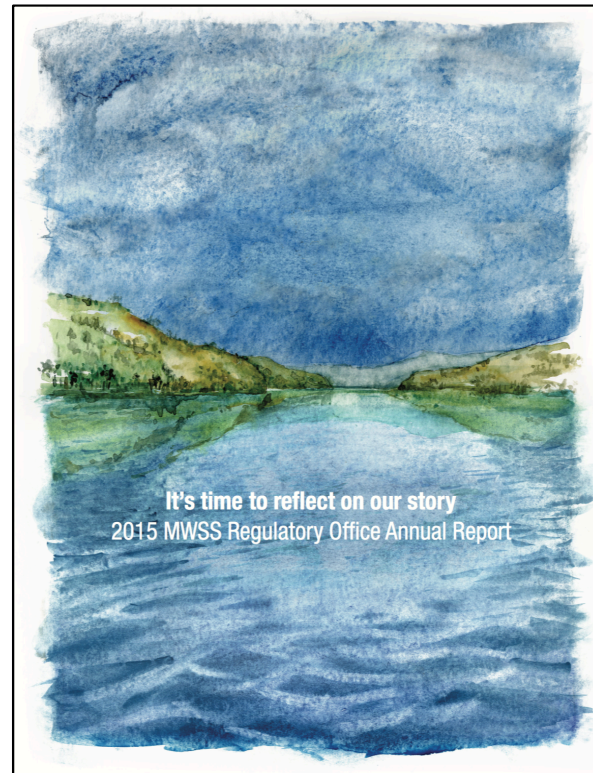
How should the Appropriate Discount Rate be computed?



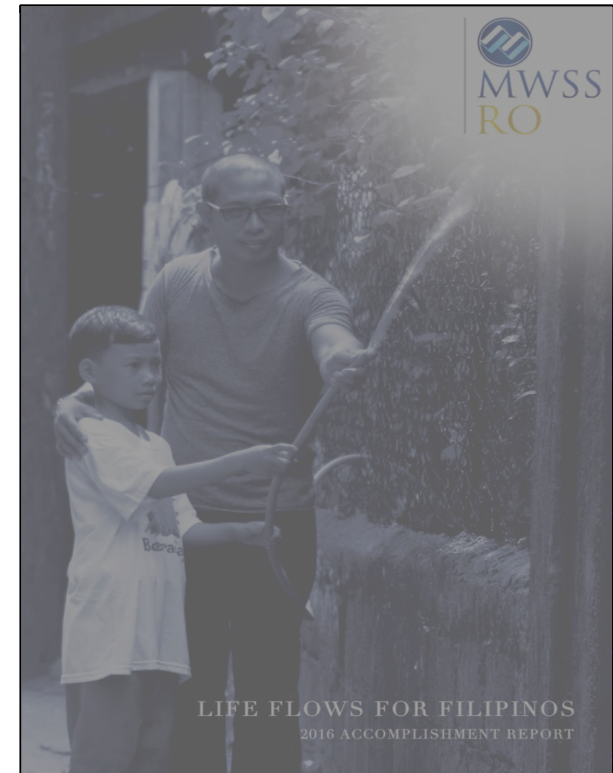
What constitutes a recoverable expenditure?



2014



2015



2016

Arbitral Award: A Regulatory Challenge



By majority, finds that the Claimant is entitled to include its Corporate Income Tax in its Future Cash Flows for each year of operations

By majority, upholds Claimant's alternative Rebasing Adjustment for the Fourth Rate Rebasing Period of 13.41%, which means an average basic water charge of Php30.28/cu.m., resulting in an adjusted rate of Php34.34/cu.m. for every Charging Year of the Fourth Rate Rebasing Period”



Corporate Income Tax is not an allowed Expenditure under the Concession Agreement

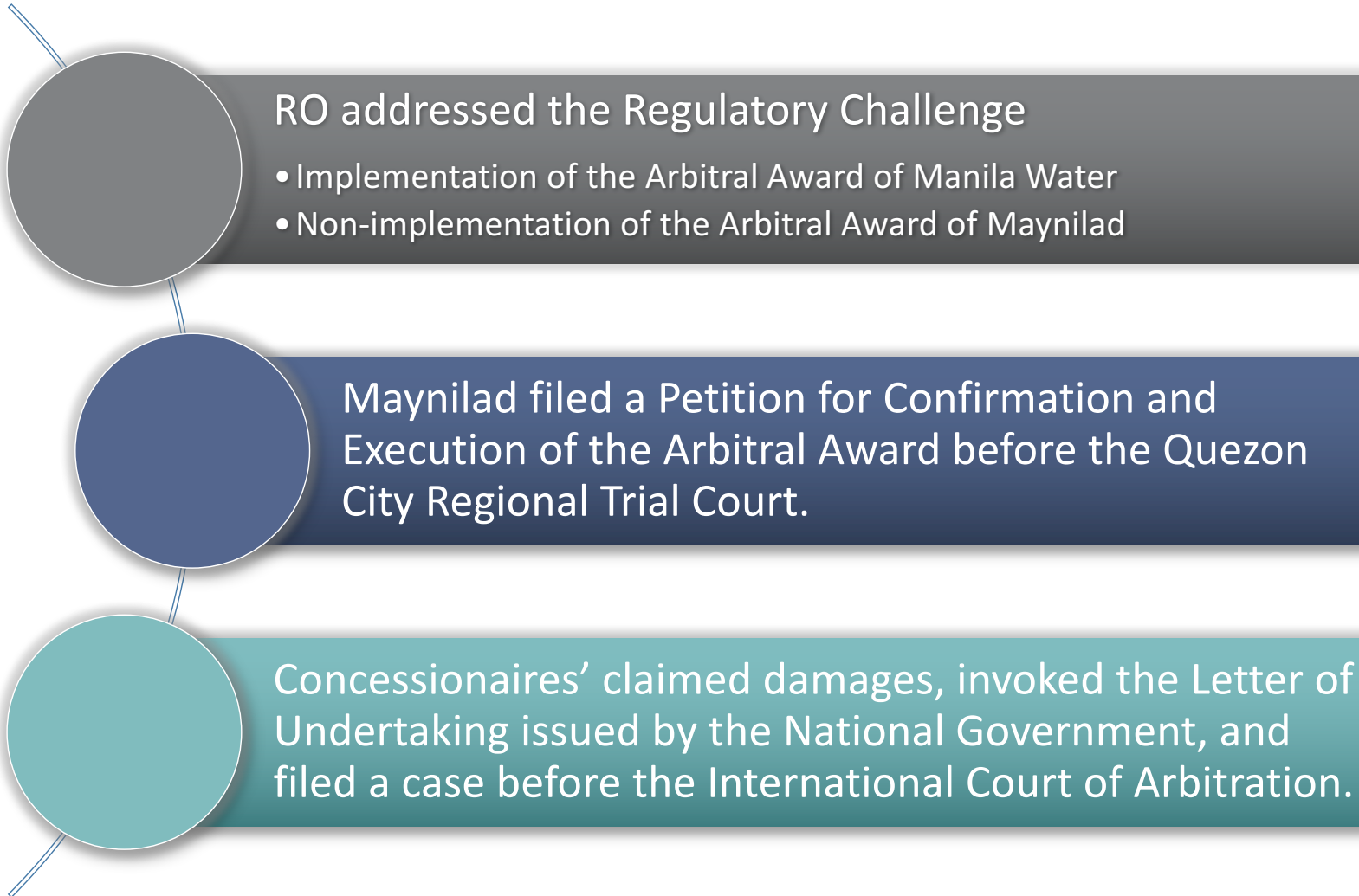
The Appropriate Discount Rate should not be computed fully pre-tax

Response to a Regulatory Challenge

The Regulatory Office argued that it cannot fully implement the Final Award in the Maynilad Dispute for the following reasons:

- The Regulatory Office has the moral and the legal obligation to uniformly apply the General Rate Setting Policy under the Concession Agreements;
- As a government entity, the Regulatory Office has the overriding duty to protect and defend the constitutional guarantee to equal protection;
- The identical issues raised by Concessionaires involve matters of law and public policy; and
- The MWSS has the plain legal duty under its Charter to set “just and equitable rates”.

Arbitration: Status



Supreme Court Cases

G.R. No. 207444

- Waterwatch Coalition, Inc., et. al. vs. Ramon B. Alikpala, Jr, in his capacity as Chairperson of the Board of Trustees of the Metropolitan Waterworks and Sewerage System, et. al.

G.R. No. 208207

- Water for All Refund Movement, Inc., et. al. vs. Metropolitan Waterworks and Sewerage System, et. al.

G.R. No. 210147

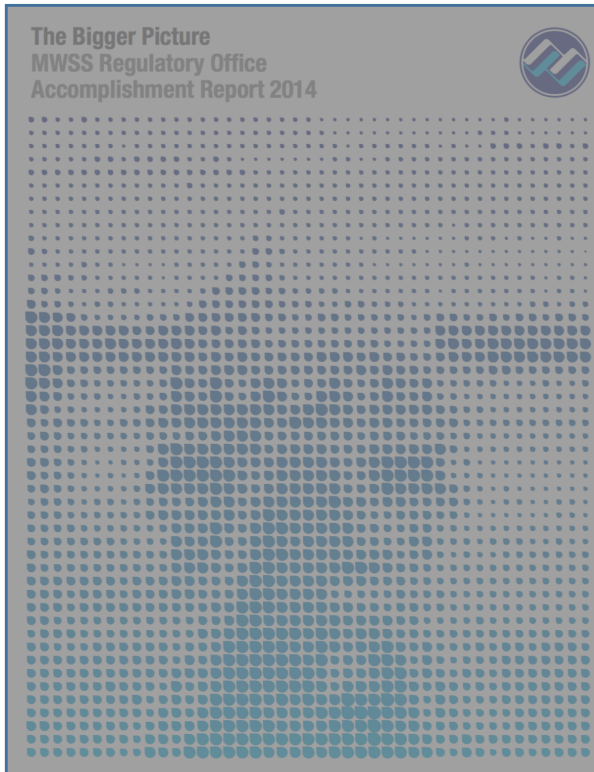
- Virginia S. Javier, et. al. vs. Metropolitan Waterworks and Sewerage System, et. al.

G.R. No. 213227

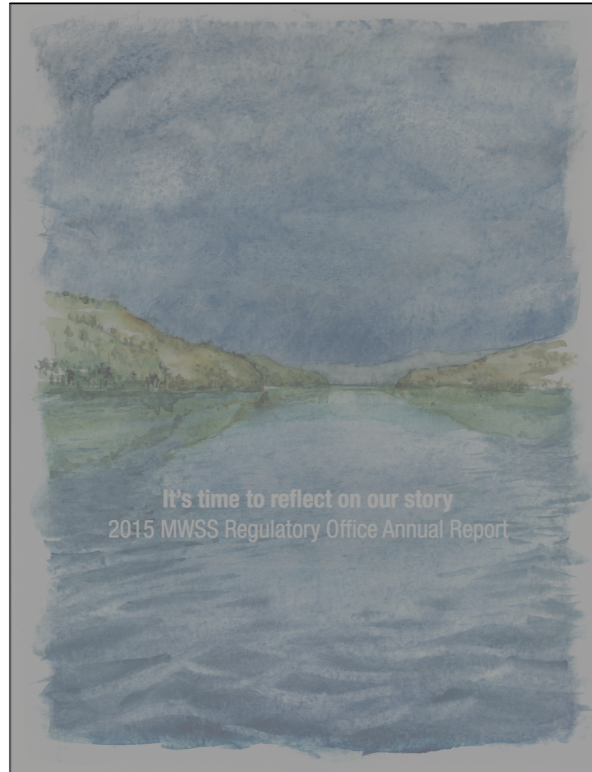
- ABAKADA-Guro Party List, represented by Atty. Florante B. Legaspi, Jr vs. Metropolitan Waterworks and Sewerage System, et. al.

G.R. No. 219362

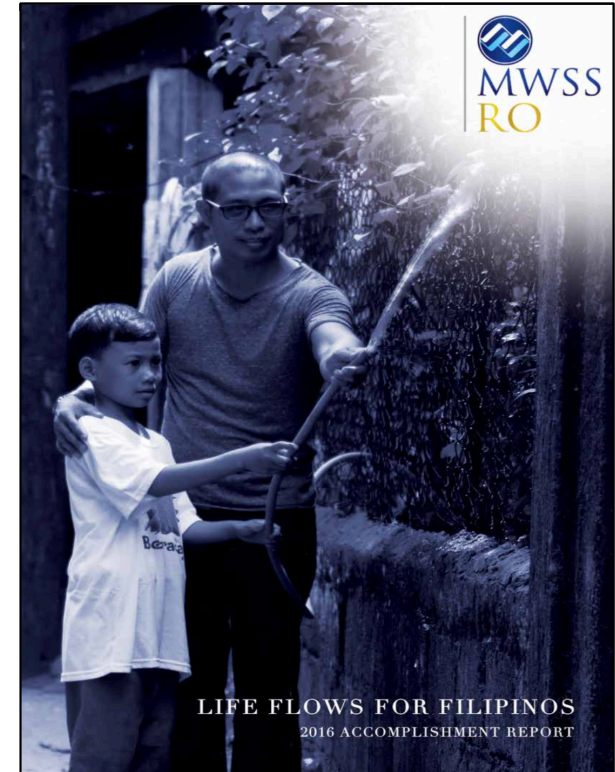
- Neri Colmenares and Carlos Isagani Zarate, Representatives of Bayan Muna Party-List vs. Hon. Cesar Purisima, in his capacity as Secretary of Finance, et. al.



2014



2015



2016

2016



Change in administration



Preparation for the Fourth Rate Rebasing



Strengthening the Office



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Take-aways of a Regulator

Take-away 1



The notion of incomplete contracts

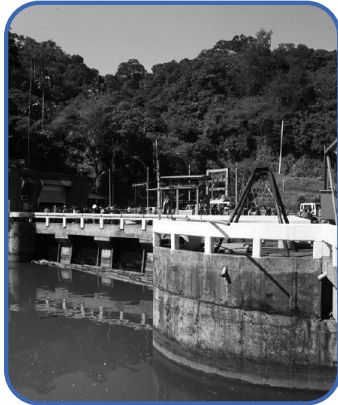
- Contracts have gaps, missing provisions, and ambiguities.
- Completing contracts



Implications on regulation by contracts

- Concession Agreement provides that MWSS shall arrange for the delivery to the RO a manual
- Concession Agreement covers Dispute Resolutions to address all disagreements
- Legal issues should be finally resolved in courts with proper jurisdiction.

Take-away 2



The notion of social optimum vs maximum shareholder value

- Public-Private Partnership is created to deliver a common purpose
- Partners have different goals: social optimum vs maximum shareholder value



Implications on regulation

- Regulatory capacity building especially for smaller water districts

Take-away 3



The notion of asymmetric information

- A party in an economic transaction has information that a counterparty does not possess



Implications on regulation

- Standard government interventions such as regulation of monopolies to replicate a competitive environment are not sufficient to restore optimality



Implications on organization

- Adverse selection and moral hazard

Concluding Remarks

The need for a strong Regulatory Office




Initiatives of the MWSS Regulatory Office



Support of other institutions, e.g., ADB

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IN MEMORY OF ALFRED NOBEL
“for his analysis of market power and regulation”

Jean Tirole

Born: 1953 in Troyes, France (French citizen)
Affiliation at the time of the award:
Toulouse 1 Capitole University, France

#NobelFacts Jean Tirole is the third French Laureate awarded the Prize in Economic Sciences. Maurice Allais was awarded in 1988, and Gerard Debreu in 1983.

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“It’s also being with the right people, in the right place, at the right moment. And, you know, it’s team work too.”



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<http://ro.mwss.gov.ph>

c.a.r.e. ECH₂O

Care and Respect for the Environment through
Efficient Conservation of Water

