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People's Resistance and Alternatives to Privatization of Water and Power Services

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FDC bulletin

June-July 2004

The Fiasco that is the NPC



THE National Power Corporation (NPC) is at the center of the government's, as well as of the Filipino people's, present woes. It contributes heavily to the Philippines' debt problem and is one big reason for the country's rising electricity rates, now the fourth highest in the world.

The government's solution is

privatization. But three years after the passage of the Electric Power Industry Restructuring Act (EPIRA), NPC has no takers.

Heavy Losses

According to the NPC it continually incurs losses due to the peso's depreciation, the high cost of foreign borrowings, and the

rises in global fuel prices. NPC also cited the 40-centavo per kilowatt-hour cap on its power purchase cost adjustment (PPA) since June 2002 (which was then flaunted by President Gloria Macapagal-Arroyo as her gift to the people) as a major reason for the losses. It has been reported that NPC's losses have already reached P100 billion in 2003.

But Freedom from Debt Coalition (FDC) Secretary General Lidy Nacpil elucidates, "Increase in the fluctuations in the cost of peso against the dollar and price of fuel also increase NPC's obligations to the independent power producers (IPPs) as most, if not all, of the power contracts with the IPPs are dollar-denominated ... On top of this is the take-or-pay provision in the contracts that assures IPPs of payment for the contracted power even when it is not actually generated."

Heavy Debts

NPC's total liabilities of P1.3 trillion account for almost 20% of the P5.4-trillion consolidated public sector debt. It is equivalent to more than 40% of the P3.3-trillion National Government

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debt, and up to 70% of the P2.1-trillion total debt of government-owned and controlled corporations. Majority of NPC's debt and obligations include lease obligations to the IPPs as provided for by Build-Operate-Transfer (BOT) arrangements and energy off-take contracts.

"The level of NPC's debt is alarming," Nacpil exclaimed, "NPC debt largely contributes to the current debt crisis, as government borrows heavily from international and local markets to help finance NPC's obligation." Only recently, the government has raised \$400-million sovereign-guaranteed bonds for NPC, which is part of its \$1.5-billion borrowing requirement for 2004.

Government Assumption of Debts

The government has recently indicated that it will assume P500-billion of the NPC debts. This represents almost half of the NPC's total liabilities of P1.3 trillion. The government says that assuming NPC's debts will make the corporation attractive to the private sector. Otherwise, no foreign investor in his/her right mind will buy the debt-laden NPC. In privatizing the power industry, the government posits that the transfer of NPC's assets to the private sector will unburden the government. But how can the government talk of

unburdening through NPC's privatization when in fact it has to assume the burden of NPC's debts in order for it to be privatized?

It is highly alarming that while the national government is suffering a P3.355-trillion debt burden, it is willing to bear NPC's P500-billion debt that will add to its worsening fiscal conditions. At the same time, this proposal is in violation of the EPIRA as the P500-billion NPC debt to be assumed is 150% higher than the P200-billion ceiling that Sec.32 of the EPIRA set on NPC debts that the government can assume.

Increasing Electricity Rates

NPC and the Power Sector Assets and Liabilities Management (PSALM) Corporation recently applied for an increase in power rates by P1.87 per kilowatthour - 80% of the current basic power generation rates of NPC. This impending rates increase is on top of the recently approved rates adjustment of both Meralco and NPC amounting to a total of 30-centavo increase starting July.

The government claims that the rates increase will likewise make the power industry attractive to investors who have allegedly been hesitant to enter the industry because of "artificially low rates" offered by the state-owned firm. The new rates increase is at the prodding of the Asian Development Bank (ADB)

and the World Bank (WB) - major lenders to and architects of privatization of the power industry in the Philippines and in other countries. The government's compliance with these creditor's conditions stems from its desperation brought by the fiscal crisis now threatening the nation - a crisis that is squarely a responsibility of the Gloria Macapagal-Arroyo government.

The Lies of Privatization

According to the government, the ADB and the World Bank, the privatization of NPC is key to the settlement of the industry's problems. But the successive power rates increases only prove that GMA and her accomplices have been lying all along - when they were trying to make the public accept the power privatization policy, they claimed that it will NOT lead to higher prices. Now they're saying that the power rates have to be raised to hasten privatization.

They say that the proceeds from the privatization of NPC will be used to partly settle its debts, and that bringing in the private sector will ensure that the industry will be run more efficiently. A large part of these NPC debts were accumulated through onerous transactions with private corporations. The people have been carrying the burden of these debts as taxpayers and consumers. Now, the government in-

tends to double the already extremely high electricity rates in the face of successive increases in oil prices, fares, and cost of basic commodities and services. Obviously their idea of a more efficient industry is an industry more profitable for the private sector at the expense of consumers, especially the poor. It's about time for the government, ADB and WB to admit that their prescription of privatization is only adding to the misery of the poor Filipinos.

It's the IPPs, Stupid

What the government refuses to recognize and to address is the fact that NPC's woes are all rooted in the onerous IPP contracts. According to Nacpil, the onerous terms in the IPP contracts have resulted in NPC's

ballooning debts from only P122 billion in 1994 to almost P1.4 trillion in 2003.

Through its own review, the government acknowledged that many of these contracts were plagued with onerous provisions grossly disadvantageous to both government and consumers. These deepened NPC's indebtedness, even as electricity consumers pay higher power rates through the PPA. The government subsequently renegotiated some of the contracts found to be defective, but until today it has not disclosed to the public the details of the results. While it claims to have saved US\$1.07 billion, there is no clear impact on electricity rates and even on NPC debts.

The People Lose Again

The problem of the NPC debts

is virtually a no-win situation for the Filipino people. Filipinos carry the burden of the NPC debts as consumers by way of high electricity costs. Filipinos also carry the burden of the NPC debts as taxpayers. Time and again, the National Government helps NPC pay its obligations by extending loans to this government-owned and controlled corporation, instead of using these funds to expand urgently needed basic services.

Now, the government wants to assume P500-billion of NPC's debts. This means paying these debts will be passed on to the people as taxes. It also means that the reduction of the PPA previously flaunted by Arroyo will have to be paid for by the people just the same, now in the form of taxes. It ultimately means that the government will bear the huge debts of NPC, while the private sector is secure in earning zero-risk and debt-free profits.

Wrong Assumption

FDC challenges the Arroyo government to back off from its plan to further add to the suffering of the people. It demands that the government refrain from assuming NPC's debt. Instead, FDC calls on the government to:

1. **Conduct a full public disclosure of the details of the renegotiations with IPPs.**

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What is keeping the government from disclosing the details if indeed it was able to realize the savings it claims?

2. **Conduct an official investigation to audit all public debts, beginning with those of NPC's.** The public has the right to know whether these public debts are legitimate or fraudulent, onerous and odious, and decide which should be honored, renegotiated, or repudiated.
3. **Repeal the Automatic Appropriations Act for Debt Service.** This Act has been the biggest disincentive for fiscal discipline, promoting irresponsible borrowing by the government and irresponsible lending by the creditors.

FDC puts forth these calls to the incoming government and the new set of executive officials and legislators. It is time to get our assumptions, our first principles right. It is time to junk this wrong assumption of onerous debts, which shall benefit no one, save a favored few. ■

Partial victory in the face of an emerging triple whammy electricity rate increases

THE Supreme Court recently declared illegal the Manila Electric Company's (Meralco) provisional increase in January 2004, ruling that the Energy Regulatory Commission (ERC) committed grave abuse of discretion in granting the increase. Thus, the P0.12/kWh rate hike collected by Meralco from January 1 to 13 was permanently disallowed.

Victory, But Where's the Refund?

The High Court's decision vindicates consumers who often fall prey to Meralco's deception. It is especially significant at this conjuncture amid the flurry of rate increases within the next few days. The Court decision, however, is unlikely to deter Meralco and other distribution utilities from imposing new rate increases, knowing how treacherous these corporations are in making additional revenues. Thus, the decision calls for more vigilance from the consumers, as more increases are about to come our way.

With the Supreme Court's ruling, the next logical step for the ERC is to order Meralco to refund immediately the P0.12/kWh that it was able to collect in January, before the High Court issued a status quo order against the collection of the said increase.

Impending Triple Whammy

While the consumers are poised to gain back P0.12/kWh from Meralco, they are about to lose an estimated 30 centavos/kWh soon: P0.13/kWh to be collected by Meralco and P0.16/kWh to be collected by the National Power corporation (NPC) for the Luzon grid. This may even increase to about P0.50/kWh if ERC also allows Meralco and NPC to collect from consumers the P20-billion penalty that Meralco incurred when it reneged in its power supply contract with NPC.

Unjust Increases

It is unjust and immoral for the consumers to be made to pay for costs arising from the onerous Independent power Producer (IPP)



contracts. Therefore, any rate increase or adjustment due to these contracts should be suspended until all the contracts have been fully reviewed and acted upon accordingly.

We all know that consumers are made to pay even for the electricity that is not generated or consumed because of the “take-or-pay” clause in the IPP contracts. Even the currency and fuel price adjustments are passed on to the consumers because of these burdensome contracts forged by NPC and Meralco with their respective IPPs.

Full Disclosure, Now

The Freedom from Debt Coalition (FDC) calls on the ERC to halt the rate increase this July until Meralco and NPC have fully explained to the public the grounds for the adjustments. We dare Meralco and NPC to disclose to the public the following:

1. How much is Meralco paying for its sources of electricity: Duracom Power, Quezon Power (Philippines) Ltd., its sister companies First Gas-Sta. Rita and First Gas-San Lorenzo, and Napocor. How much is the actual electricity generated by the IPPs contracted by Meralco?
2. How much is NPC paying for each IPP? How much power is actually generated by these IPPs? What amendments were made in the contract with these IPPs?

Government Complicity

Meralco and NPC are not the only ones to blame for this triple whammy rate increases; fingers are also pointing to the incumbent administration, which failed to take any decisive action to address the burdensome contracts of both companies.

Contrary to her pronouncements of lower electricity rates, President Arroyo even allowed Meralco to continue getting expensive power from its IPPs while reducing its off-take from cheaper NPC plants.

Furthermore, President Gloria Macapagal-Arroyo and her administration’s Energy Team plus NEDA and the Department of Finance are all mum regarding NPC’s onerous IPP contracts. Three years have passed since the President’s order to review and renegotiate the contracts, but until now, the public has yet to know the real score behind the renegotiations. While this administration claims some US\$1.3 billion in savings from the renegotiation, this remains a mere “fiction” to consumers since electricity rates continue to increase and NPC debts balloon.

Should the government and distribution utilities fail to publicly disclose information that form as their bases for the rate increase and on their IPPs, consumers will have to resort again to the courts to compel them. ■

No Recognition for an Illegitimate President

A People's Summit - a gathering of democratic and freedom loving citizens, organizations and movements - was held on June 28 2004, at the Bahay ng Alumni, UP Diliman, Quezon City. It was convened by ALTERNATIBA, a

of the Gloria Macapagal-Arroyo (GMA) machinations during the elections and provide a counterpole to the falsehood of the Arroyo-De Castro proclamation that the Joint Plenary of Congress has imposed on the Filipino people.

Malacañang augurs nothing different.

It means six more years of corruption, non-transparent and non-accountable governance: more of Jose Pidal, PIATCO deals and Diosdado Macapagal Avenues. It means six more years of abetting corruption in big business in exchange for political patronage, at the expense of consumers: more of Maynilad bailouts, Meralco coddling and onerous concessions to independent power producers (IPPs). It means six more years of trade liberalization and privatization of all spheres of

More of the Same

In the three years in office, which she attained by virtue of constitutional succession, GMA has amply demonstrated what her administration stood for. Six more years in



broad coalition of various progressive and independent people's movements, co-convened by Coalition for HOPE, CODE DEMOCRACY, Bangon Pilipinas Movement, and Kilos Bagong Umaga, and attended by various other organizations and individuals.

The People's Summit was held to ferret out and expose the truth



the economy that leads to privation and poverty of the people. Already, there are talks of constitutional change to legalize global corporations' plunder of the local economy, natural resources and environment.

Ultimately, it means six more years of economic bungling: more debts and budget deficits. For having flaunted her supposed economic expertise, GMA refuses to acknowledge her flawed economic policies and her responsibility over the fiscal crisis.

Legacy of Fiscal Mismanagement

The fiscal crisis is right here, right now. It stares the country in the face in the form of consistently huge percentages of budget allocations for debt service, severe deficit problems since 1998, and unprecedented high levels of borrowings since 1998. It has not reached the level of defaults only because of the automatic appropriations law, and through new borrowings to pay off the old. This cycle will eventually break when new borrowings are no longer available.

It is true that the debt problem is a legacy of past administrations, and past presidents starting with Marcos all share in responsibility and culpability. But it took the 'expert economist' in GMA to finally run the economy to the ground. GMA holds the record as the biggest

borrower among Philippine presidents, achieved in less than three years, racking up P1.32 trillion in foreign and domestic borrowings since assuming office in 2001 until as early as the third quarter of 2003.



No Recognition

The Freedom from Debt Coalition (FDC) calls for the non-recognition of an illegitimate president. It calls on the Filipino people and on all organized groups and sectors to unite and take part in various forms of protest to expose the illegitimacy of the GMA administration.

FDC calls on everyone to: expose the different types and modalities of electoral fraud perpetrated by GMA's political machinery in the May 10 elections; expose the illegitimacy,

non-transparency and non-accountability of the government's economic programs and policies, especially toward debt, and the privatization of basic social services such as water and power; and demand immedi-

ate attention for basic economic and social issues sidelined by the elections such as high consumer prices, poor revenue collection, rising unemployment, inadequate wages, unfinished land reform and poor social services.

All these along with the call for urgent economic measures long advocated by FDC: the repeal of the automatic appropriations law for debt service; the audit of all outstanding debts; the institution of a ceiling on debt payments; and the strict regulation of borrowings and contingent liabilities. ■

PEOPLE'S SUMMIT, 28 JUNE 2004

Declaration of Unity

Stand for Truth, Fight for National Survival and True People's Governance!

AS the Filipino people slept in the wee hours of the morning of June 20, 2004, Gloria Macapagal Arroyo, like a thief in the night, aided by her Majority in Congress, stole the highest position in government and was proclaimed president of the Philippine Republic. By means of tyranny of the GMA Majority in Congress, they managed to successfully suppress the truth with regard to the 2004 elections.

For the truth can be found in the Election Returns that the GMA Majority refused to reveal to the people during the national canvassing. The truth is there in filing cabinets, where the Supreme Court had thrown out petition cases to disallow an incumbent president to run for the same office while in control of all government resources. The truth is lost in the wind in the cries of protest of small farmers against the misuse of

recovered Marcos wealth released for GMA electioneering. The truth is there in plunder cases filed against GMA that have been mothballed in Congress.

The Filipino people are all too familiar with irregularities and anomalies that transpire during elections. They are symptoms of an electoral system that through the years, with every dispensation of political power, has proven to be bankrupt. But when electoral fraud is undertaken on a large-scale and systematic manner, it indicates a level of decay of a political system that has ceased to enable genuine representation of the people.

We firmly take our stand for truth. Gloria Macapagal Arroyo is an illegitimate president, her government an illegitimate government, a product of sham elections.

The suppression of legiti-

mate mass actions in protest over electoral fraud is an affront to our civil liberties and political rights. The deployment of NCRDC of the AFP, in the guise of national-ity security measures against so-called destabilization forces, and its use for violent dispersal of mass actions, and the zoning of communities known to participate in protest actions have thrown NCR in a state of virtual martial rule.

We decry the suppression of our civil liberties and political rights. We refuse to cower in submission to this kind of rule. We call on the people to resist repression and rule by military force.

Under GMA's previous three year administration, the economy has been driven to ground and the Filipino people made to suffer untold poverty and immiseration.

The Arroyo Government has

amassed a huge deficit combined with a ballooning debt, from which it tries to extricate itself through more borrowings. Today the combined debt of the national government and its owned and controlled corporations amount to PhP5.39 Trillion, where in 2001 when she assumed power it stood at only PhP 3.35 trillion.

Unemployment has drastically risen, as a consequence of economic policies that continue to undermine and weaken Philippine agriculture and industry under conditions of dominance by industrial and financial multinationals in the globalized economic order. In the meantime, prices of basic commodities have outrageously shot up, while her government slashes its budget for health, education and social services.

All these, while GMA coddles corporate inefficiency and irresponsibility, as in the failed privatization of water utilities and onerous contracts with independent power producers (IPPs) in the power utilities sector. And on the receiving end, the Filipino people pay higher rates for water and electricity to fund generous incentives to these IPPs and private utilities.

We cry ENOUGH! Enough of GMA's economics! GMA's policies throughout her three year rule has shown that she carries not the interest of Philippine economic progress, much less that of the welfare of the large majority of the Filipino toiling masses. We call on the people to stand and oppose the illegitimacy, non-transparency and non-accountability of the Arroyo government's economic programs and policies. We call on the people to demand that basic and social issues be addressed!

GMA was never the people's choice. When she came to power on the crest of EDSA 2, she did so on the assertion of constitutional succession. GMA failed in gaining a mandate in the 2004 elections. The Joint Congress Plenary may have proclaimed her president, but to the Filipino people she is a BOGUS president. Moreover, GMA is an illegitimate president, not only by virtue of the sham

2004 elections but because she does not carry the true interest of the large majority of the Filipino people.

The Joint Congress Plenary has done a great disservice to the Filipino people by foisting upon us this BOGUS president. We reject the legitimization that they are about to do in the inauguration rites of the GMA government on June 30, 2004.

We call on the Filipino people to take direct action in pursuing their legitimate demands, and to persist in attaining true people's governance.

FDC Bulletin is a publication of the **Freedom from Debt Coalition.**

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The Maynilad Debacle

THE Supreme Court has recently nullified a local court's order that previously prevented the Metropolitan Waterworks and Sewerage System (MWSS) from touching the water concessionaire Maynilad's performance bond. This decision has removed all legal impediments for the government to draw the full \$120 million on the concessionaire's performance bond to partly cover its long overdue P8 billion concession fees.

Maynilad's Machinations

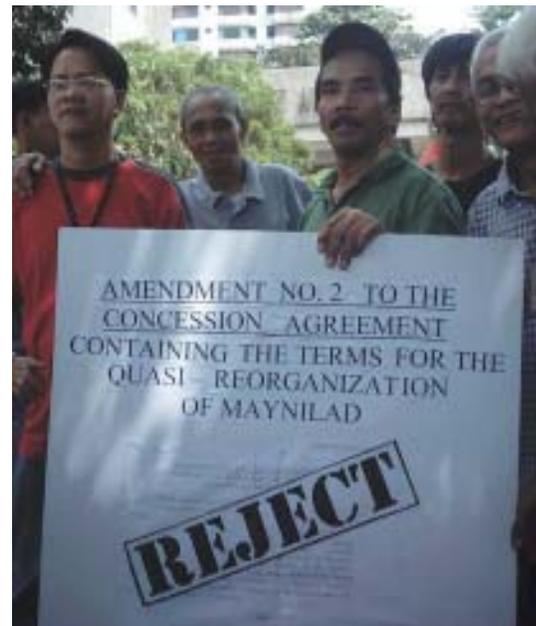
It should be remembered that in 2003 Maynilad and the MWSS entered into an early contract termination dispute before an International Appeals Panel. The Appeals Panel decided in favor of the MWSS to collect Maynilad's overdue concession fees by allowing it to draw on Maynilad's performance bond. Maynilad, however, subverted the panel's decision by filing for corporate rehabilitation in a local court implicating the performance bond issue. The rehabilitation court issued a stay order that prompted MWSS to elevate the case to the Supreme Court. While the high court deliberated, Amendment 2 was being concocted.

Moro-Moro?

The question is this: why did

the MWSS not wait for the Supreme Court's decision before it entered into an agreement with Maynilad? Did the Office of the Government Corporate Counsel have little faith in the strength of their case against Maynilad? As stated in Amendment 2, MWSS's participation in Maynilad's quasi-reorganization will be "expressly for purposes of its financial recovery of outstanding Concession Fees..." According to the financial recovery plan, Maynilad will pay out P3-billion of its P8-billion outstanding concession fees by allowing MWSS to draw US\$50 million from Maynilad's US\$120 million performance bond. MWSS will now risk the remaining P5 billion in exchange for 62% equity in financially insolvent Maynilad.

Or was the legal squabble a mere stage show to mislead the public because higher forces were obdurately preserving the government's water privatization policy at the expense of public interest? And was the government doggedly bent on bailing out a major election campaign supporter when it agreed to a debt-to-equity scheme with the West Zone water distributor?



Corporate Mismanagement

Even on a cursory examination, Maynilad's financial records show glaring marks of corporate mismanagement, which further confounds the government's decision to bailout a company whose financial woes are clearly of its own making. Consider the following:

- **High Debt-to-Equity Ratio.** Maynilad's overborrowing has pushed its debt-to-equity far beyond the acceptable range. As of December 31, 2002, the company's total liabilities amounted to P15.9 billion, thrice larger than its stockholders equity of P5.3 billion.
- **Insufficient CAPEX.** Maynilad failed to deliver the required capital expenditures (CAPEX) as per its financial model and business plan. In 2001, CAPEX should have accumulated to P10.537 billion, but actual

figures only amounted to P 3.297 billion.

- **Heavy Losses.** The company continues to incur losses contrary to its projection that it should have started earning in 2000. Its losses almost tripled from P469M in 2000 to P1.117B in 2001, even when it started to default on its concession fee payments.
- **Inflated Salaries.** Out of the combined revenues from water and sewer services amounting to P2.54 billion, the company spent 40% for salaries, wages and benefits totaling P1.004 billion. This is questionable considering that water distribution is not labor intensive.
- **Expensive Consultants.** The Thames financial consultancy report fiercely criticized Maynilad for hiring expensive expatriate consultants. 60% of Maynilad's capital expenditure

was allocated for paying exorbitant consultancy fees of its affiliate companies.

- **Favored Suppliers.** Maynilad's 2002 Financial Statement shows that Maynilad, in 2001 and 2002 made its related parties richer by almost P5B. If Maynilad's payables to these related parties were to be added, the total amount would be P4.745B.
- **Penalizing Consumers.** Maynilad's huge collection of P2.722B in Foreign Currency Differential Adjustment far exceeded combined revenues from water and sewer services at P2.122B in 2002. Customers practically paid double for water service.

The Privatization Myth

Seven years of subjecting Metro Manila's water distribution utility to the whims of private

water operators showed none of the rosy promises of water privatization. Rates are skyrocketing, actual performance in delivery of services fall short of targets, more loans are incurred to cover for Maynilad's failure to remit its concession fees. And now, the MWSS, with blessings from the Arroyo administration, is selling out on the Filipino people by steamrolling an agreement that will free the Benpres-Suez conglomerate from its self-made PhP 19 billion burden.

The Arroyo administration should look at the failed water privatization experiments of Buenos Aires (Argentina), Cochabamba (Bolivia), Jakarta (Indonesia), Atlanta (Georgia, USA), among other countries, and find that Metro Manila's own experience is not unique. These are showcases of bungled World Bank-dictated water privatization policies which pave the way for transnational water companies to capture the \$1 trillion global water market.

The Freedom from Debt Coalition (FDC) maintains that water provision should stem out of the recognition that access to this life-giving element is a human right. Giving preference to the profit motives of private companies before the basic needs of the people is immoral and a betrayal of public interest. The government's water privatization policy protects, above all, the interest of corporate water providers.

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Scrap Amendment 2!

The Supreme Court decision has rendered Amendment 2 useless. Its avowed purpose of recovering the financial obligations of Maynilad has already been addressed by the Court's decision. If the government persists in pushing its implementation, then it only confirms that it has other purposes to serve. It confirms that Amendment 2 is merely another ploy to preserve a flawed water privatization policy - a policy that was sold to the public in 1997 as the solution to an impending water crisis, a solution that proved worse than the crisis itself.

FDC asserts that Amendment 2 is nothing but a sell-out of public interest. Amendment 2 must be scrapped now! Instead, FDC asserts that a thorough multiparty public technical and financial audit of Maynilad and honest-to-goodness due diligence process by MWSS are urgent and imperative! Also, part of the investigation should tell why the Board of Investments and the MWSS allowed Maynilad (together with Manila Water) to declare itself still in the pre-operating phase when it has been operating for seven years now.

MWSS should immediately draw the full \$120 million on Maynilad's performance bond to assure the people that the West Zone concessionaire would answer for its failure to perform its obligations. ■

AN OPEN LETTER TO THE MWSS BOARD

24 June 2004

Hon. FLORANTE M. SORIQUEZSecretary of Public Works and Concurrent Chair of the Board of Trustees
Metropolitan Waterworks and Sewerage System**Mr. ORLANDO HONDRADE**Chief Administrator
Metropolitan Waterworks and Sewerage System**Mr. EDUARDO SANTOS**Chief Regulator
MWSS - Regulatory Office
Katipunan Road, Balara, Quezon City**Dear Secretary Soriquez and
Members of the MWSS Board:**

The Freedom from Debt Coalition urges the MWSS Board to immediately draw on the full US\$120-million performance bond. The Supreme Court decision removes all legal barriers to drawing on the bond and there is no more reason to delay calling on the full amount.

It is extremely unfortunate that at this point the US\$120 million performance bond is no longer enough to cover unpaid concession fees that have already ballooned to US\$180 million. This is even more reason why the MWSS must act quickly.

Further, FDC believes the High Court decision renders moot MWSS's debt-to-equity deal with Maynilad through Amendment 2. We urge the MWSS Board to cancel Amendment 2, terminate the Maynilad contract, and take over the running of the service without the baggages of Maynilad. We urge MWSS to work for a viable PUBLIC water utility rather than work for the viability of Maynilad only to turn it over to private hands.

THE NATIONAL EXECUTIVE COMMITTEE

Freedom from Debt Coalition

Noted by:

LIDY B. NACPILSecretary General
Freedom from Debt Coalition

cc: Office of Government Corporate Counsel c/o Undersecretary Teehankee