Risks and Opportunities Faced by Small Peri-Urban Water Service Providers: Two cases

Results from two case studies by the Institute for Popular Democracy[1]

In the past years most of the literature and policy discussions about private sector participation has been focused around the possibility that large private utilities will take over service provision and investments in the large urban areas. This has not happened to the extent that the optimists had hoped. Where PSP did happen, such as in Metro Manila, one of the realities that has emerged is a situation where local governments, communities groups and other or third-party providers have filled-in swathes of the service area that the private companies could not yet serve.

The story is not much different in the case of water districts and municipality-run services that are not always able to clinch financing deals large enough to achieve near-universal service coverage. The overall average picture among water districts is one where they are able to serve only fraction of the people in their designated service area. Most recent data (2004) from the Philippine Association of Water Districts (PAWD) show that average coverage is only 21% of the water districts' areas of responsibility, which has been the case since the 1970s.

There appears to be a need for a policy framework peri-urban policy framework to encourage small private investors whether the central utility is operated by the private or the public sector.

There is no question that there is organizational, technical and even some financial capacity that can be and has been mobilized to fill the demands that central utilities cannot always immediately support. There is also no question that people are better-off with rather than without these small service providers.

What has been lacking though is an investment climate and a policy regime that will reduce the risks for these kinds of investments so that they too can become bankable.

It is not especially surprising the central utility operators and their creditors and shareholders should have an ambiguous if not an altogether hostile attitude towards any entity that encroaches into the franchise and picks out their potential customers. Yet, there may be rules of engagement that can lead to outcomes that are beneficial to all, especially to communities that cannot expect adequate water services.

Reticulation Policy – these are policies that allow small operators to turn-over their built-up assets to central utilities. Questions that such policies should address include physical and operational standards that the small operators need to match to get compensation for the investments that they have made. Corollarily, it is also important to ask whether compliance with reticulation standards must happen at the commencement of the business provider's business or if this needs to be stressed only if the small provider looks forward to being compensated by the central utility.

[1] Presented by Jude Esguerra on 25 May 2007. The research is supported by EPRA, implemented by an IPD team composed of Frances Lo, Nai Rui Chng, Carmille Ferrer, Jamir Ocampo, Melai Tuba, and Jude Esguerra

Bulk Sales Policies – these are policies that govern the price at which a central utility may sell its supplies to smaller distributors within its service area. Issues that such policies need to address include a) discounts that the small operators can be eligible for, given that small operators make it unnecessary for the central utility to incur expenditures in distribution facilities, in personnel and in spilled and stolen water in order to realize revenues b) responsibility and accountability for water quality standards after mother meters;

Exclusivity Policies – these policies pertain to the pretext and legal bases that cooperatives, neighbourhood associations and local government units need to make investments even within service areas of larger utilities. Issues that such policies need to address include a) the precise manner of compensating the central utility for a well-specified loss of future revenue b) possible loss of the presumption of exclusivity and reduction in the size of the service area of the central utility where investment plans promised in certificates of public convenience are not set into motion c) incentives for the central utilities for contracting third-party providers even in areas where they have a capability to invest (e.g., the MWSS concessionaires are allowed by the Regulator to take credit for services rendered by third-party providers).

Financing and Bankability– these policies pertain to the possibility of financial cooperation between the central utilities, local governments and the peri-urban service providers. If the small peri-urban water providers are to be encouraged to invest it is important to note that they are not always capable of achieving full cost recovery for themselves. Their bankability then depends not only on the mitigation of risks and on the efficiencies that small communities can achieve (e.g., through volunteerism and the use of high-maintainance but low cost technologies) but also on the mobilization of cross subsidies and the deepening of financial markets that serve this sector.

Bacolod City

The Bacolod City Case study reveals that water districts can have the flexibility, and perhaps even the motivation, to respond to requests for cooperation from urban poor communities. The Bacolod City Water District responded to the request from an urban poor community to extend supplies from the water mains and to provide technical support as well. The Bacolod City Water District had the personnel and the water supplies to serve this corner of the city, but extending secondary and tertiary pipes to the community was not part of the water district's medium-term investment plan – this is where the small service provider in sitio Tinagong Paraiso took the initiative.

The urban poor community can be considered an *independent* service provider, rather than just an agent of the water district, because it took the initiative to undertake investments and to take the risks associated with investing in and operating a community water distribution system.

There are known cases of water districts e.g., in General Santos City and in Cebu province where, unlike in Bacolod City, the managers appear to have an incentive to take-over the operations of small distributors. In these places the small operators usually have their own ground water sources. The customers of these small water providers are therefore potential customers of the water district, whose enrolment with the water district can allow for optimal utilization of water district assets.

Documentation is not available but incentives for managers and for the water districts appear to have been introduced that motivate water districts to increase sales, in competition with small providers. Executive order 279[2], for instance, is leading water districts to act more and more like commercial entities; the EO may be having this effect because among other things it operationalizes the phasing out of subsidized credits for water districts. The increasingly commercial rather than developmental character of water districts has ambiguous effects on the risks that small water providers face; in some dimensions commercialization will reduce the possibility that the water district might intrude on its own accord in commercially non-viable areas, small operators know that the more commercially viable areas will come into consideration before others will. In other respects, as in the case of providers that find themselves in zones that have potentially high commercial viability, the risks for small providers is most probably on the rise.

The Bacolod City case shows that the water district is willing to cooperate with urban poor communities. It is important to highlight the circumstances, however, under which this kind of cooperation may occur:

First (exclusivity), it would appear that a water district will not insist on exclusivity for areas that it does not yet plan on reaching. It will allow, even support, communities in making service level improvements if it does not itself intend on expanding it's infrastructure in the community's direction. Water districts do not have clear rules, in terms of required minimum returns on investment, when deciding to expand towards a certain area. It is possible though that, even if the Bacolod City Water district, had ready access to credit for financing distributionsystem expansion, Tinagong Paraiso would not be on the top of the list of priority areas for expansion. This is because Tinagong Paraiso is only a small community and lies some distance from the water district's main supply lines.

Distribution system expansion in water services is about at least three things: capital, water supplies and operations costs. The Bacolod City Water District did not have capital, but it had water supplies. Below we discuss operations costs.

Second (bulk sales arrangement), there is a bulk sales agreement for water between the water district and Tinagong Paraiso. Because the urban poor community in Bacolod City secured its water supply from the water district it increased sales accruing to the water district and is not seen as a competitor; no issue of cherry-picking arose, even though the community has existing ground water sources in some parts that, despite its limited yield, continues to be an important source of some households for their non-drinking needs. Bulk sales arrangements also ensure that, operations costs and personnel requirements do not rise for the water district. This is because bulk water arrangements typically effect a transfer of operations costs and risks to the bulk supply buyer, who transacts directly with the direct consumers.

[2] With the enactment of EO 279 in 2004, the LWUA was mandated to focus on extending concessional financing to WDs that are not yet fully credit-worthy. However, non-creditworthy WDs are expected to eventually become creditworthy entities (the LWUA is tasked to craft policies to encourage this).

Under the bulk sales arrangement Tinagong Paraiso would be paying for the costs of pilferage, delinquency, bill distribution, payment collection and distribution system expansion and rehabilitation. There have been numerous instances in other places – e.g., in the West Zone of Metro Manila – where communities are overwhelmed by such operations costs and risks associated with purchasing and then reselling supplies bulk water supplies.

The risks and costs that prove difficult for communities to handle are often also difficult and costly for the central operator to handle, especially in the case of informal settlements. In such cases the central utility does not replace that small water provider, the result is merely a reversion to the situation unimproved water services. Recognizing the savings in operations costs that self-managed systems provide for a central utility the Davao City Water District has recently introduced small discounts for their subdivision concessionaires. The costs savings in urban poor communities are bound to be higher.

Third (full financing by the community), financing for capital expenditures was fully shouldered by the Tinagong Paraiso community. This was in terms of the service (secondary) line that conveys water from the main water line, the mother meter, and the main pipe that transmits water from the mother meter to the tertiary lines going to the households. The households paid for the tertiary lines, household meters and internal plumbing and appliances. The community was required to make upfront purchase and payment[3] of equipment specified by the engineers of the Bacolod City Water District. Fortunately, credit financing was available to the community – which is rare.

Financing is not just about the availability of a creditor for the water water district (e.g., for additional pumps to convey the supplies farther) or for the small water provider, which will then complemet each other. There can be a lot of credit availability but information/credibility problems on the part of the creditor and commercial risks on the part of the community can prevent the credit financing from materializing.

In the Bacolod City case study, no financing was available for the water district to meet the urban poor community half-way or to whatever extent warranted by the increased net revenue resulting from the bulk sales arrangement. The Bacolod City water district could have made investments in terms of the secondary line extending towards the community, or it could have extended short-term (e.g., two-year) financing to allow the community to repay from cash generated from the operation of the small water system itself. But this can be an area for incremental improvement to the approach, since local governments are allowed to and have in the past lent funds to water districts. A case of a local government that has lent to its water district is the city of San Jose del Monte in Bulacan.

On the side of the Tinagong Paraiso credit was available from an NGO (Kaisampalad) but the decision to make the investment and then to secure financing from the NGO depended significantly on the social capital that the community happened to possess.

[3] In other cases e.g., Manila Water the service line and the mother meter are paid over the course of a couple of months, which is short-term but not upfront. The short-term loan can be paid through surcharges on water consumed. This matters significantly

Some urban poor communities have some collective action capabilities (that perhaps no other urban poor community in Bacolod city has) needed to make their investment viable. The community needed to decide that it wanted to improve water services collectively instead of each household searching for a solution on its own. The members of the community needed to decide collectively on the improvement that they wanted, they needed to agree that the costs were reasonable, to enforce commitments to contribute resources effort and time and to abide by the rules that they set for implementing and enforcing agreements among them.
For replication to happen in Bacolod City the supply of financing i.e., for communities and on for the water district both have to increase. But that is just the supply side.

On the demand side the information asymmetry as well as the collective action problems may, however, be greater on the side of communities. Few communities can achieve the level of solidarity found in Tinagong Paraiso. Few creditors know water as a business and fewer still know how to mitigate the risks.

Creditors, at least at the start, would be more at ease working with and lending to water districts; there is scope for casting water districts in the role of creditors who on-lend to communities and collect through surcharges on water consumption. The level of trust that communities must have in relation to the water district and in relation to their leaders is also higher if the payment needs to be made upfront – that is, even before the service improves. Thus, even if the credit that becomes available is only short-term in nature it may dramatically increase the willingness of community members to co-finance aspects of the service improvement plans that will benefit their communities.

The threshold of community capacity needed rises with the size of the collective investment and the community's collective investment is higher if no contribution is forthcoming from the water district or the LGU; there is also scope for looking at water district business models, even in the context of EO 279, so that they may still contribute to financing community initiatives in non-viable areas.

The Bacolod City case is that of community that is outside of the region of viability and not covered by the water district's current investment plans.

Binangonan

The town of Binangonan in the province of Rizal (located east of Metro Manila) is unique for having more than twenty water cooperatives that, with the explicit permission of the local government, have taken on much of the water service provision in the rural *barangays* over the past eight years.[4] This process was initiated through local (municipal) legislation in 1998- the resolution (MR 98-01) transferred management and operations of *barangay* water systems to people's organizations, cooperatives and associations. Under the resolution, each cooperative or association

[4] A motivating factor for this was the success of the Darangan Water Service Development Cooperative (DWSDC), the first water cooperative in the country that has been in existence for almost 40 years (see LGSP 2003). The Darangan cooperative currently provides piped water for approximately six thousand people.

can only service its own barangay. Around 20 water cooperatives were formed servicing 20 *barangays*.

Some years after these have been set up, however, the strain of having to serve an increasing customer base is already becoming apparent in the operations of the Binangonan water cooperatives and there is a strong need for system upgrading. Physical resources of many of the water cooperatives are stretched, water pressure is already low and water service is in some cases available only for 2.5 hours a day (water has to be rationed to all customers)[5].

A major threat to the cooperatives' continued existence is also the planned entry of the East Zone concessionaire, Manila Water Company, in the area. In 2005, the mayor of Binangonan informed the cooperatives that Manila Water, one of the two private concessionaires serving Metro Manila, was planning to sell water into areas being served by the cooperatives. The cooperatives see this as potentially fatal to their existence. Nonetheless, the local government has also declared it will prefer the water co-ops over Manila Water if the co-ops can supply water to the *poblacion*[6] (where water services is still operated by the municipality). FEBICO (Federation of Binangonan Cooperatives) said it has viable co-ops, with enough capacity to supply water to the poblacion with minimal costs. The challenge for cooperatives is to learn how they can scale up their small successes where opportunities such as these will arise.

There are constraints being faced by these cooperatives, though. And these constraints and difficulties are quite common in many cases all over the developing world. Studies show that small-scale water providers whether they are organized as cooperatives, NGOs or SMEs face issues related to exclusivity, financing, pricing of bulk water and reticulation in relation to a central utility, whether public or private.

Exclusivity Claims of the Central Utility Operator

Binangonan water cooperatives face a formidable foe in Manila Water where the latter may at any time invoke its exclusivity rights over the area of operations of the former. The 1997 Concession Agreement which provides that "In the event of any application to the NWRB for which MWSS consent is sought by a third party for a license to provide water and sewerage services to a new development after the Commencement Date (a "New Third Party License"), MWSS shall consent to the grant by the NWRB to the Concessionaire of the right to provide such services to such new development if the Concessionaire agrees to provide such services on (a) substantially similar terms as set forth in the proposed New Third Party License and (b) at the Standard Rates then in effect for such services. If the conditions set out in the previous sentence are not met, or if the Concessionaire voluntarily declines to provide the services to such new development, MWSS may consent to the grant of a license to the third-party service provider for a term not longer than 10 years, subject

[5] Nonetheless, there are also cooperatives who are able to provide 24-hr. service. The number of customers also varies; other cooperatives, in fact, serve less than 1,000 households (540- 650 households). There are also still unserved households, either because they do not have the money to connect to the water system or the water cooperative's infrastructure is insufficient to extend services to these households.

[6] The town center, where commercial development and population are concentrated.

to revocation upon not less than 60 days' notice to such third party provider if the Concessionaire notifies MWSS and the NWRB in writing that the Concessionaire is in a position to provide such services in accordance with the conditions of this clause (ii).[7] In other words, the concessionaire has the right of first refusal and may at a moment's notice displace a third party provider. The concession agreement has no discussion about compensation for investments that the third party provider that may be rendered redundant by the decision of the Concessionaire to expand in the direction of small water provider's service area.

However, there are important legal caveats to this, chief among them is the provision in the Local Government Code of 1991 (Republic Act 7160) which authorizes Municipalities to establish waterworks system[8] as part of its role to provide for the general welfare of the constituents. As a result, the Municipality of Binangonan took upon itself to establish a waterworks system through the BWSAs and eventually, turning over the task to the Binangonan water cooperatives. Such action is allowed in Section 447 of Republic Act 7160[9] and rendered the water cooperatives as primary distributors and agent of the municipality of Binangonan[10].

To reiterate its intent to manage and operate its own waterworks, the Municipality of Binangonan even came out with a *Sangguniang Bayan* Resolution[11] where the municipal government explicitly stated that it is only going to "avail of the technical assistance/ expertise of the MWSS/ Manila Water," and once the Laiban Dam or other sources are available, "…requesting Manila Water to provide bulk water, sanitation and sewerage services to the municipality." It is evident in the resolution that the municipal government knows the parameters of its authority and powers, and, in no way are they abdicating or reneging on its duties stipulated in the Local Government Code.

As evidenced by many other field studies, it is the community residents themselves in rural and peri-urban areas who took the cudgels of delivering water to their respective areas such as those in Dinoronan in Albay, Roxas in Palawan and General Santos City in South Cotabato. Binangonan is no different to these communities given the absence of NAWASA and later, MWSS in the area. In reality, it is the small-scale water providers "…that overcame the local knowledge problem by indicating households' willingness-to-pay and provided service to customers that for various reasons presented higher risks to the larger companies."[12]

[7] Article 5 Section 5.3 of the Concession Agreement

[8] Section 17 of Republic Act 7160: Basic Services and Facilities

[9] Section 447 (a) (5) (vii): Subject to existing laws, provide for the establishment, operation, maintenance, and repair of an efficient waterworks system to supply water for the inhabitants; regulate the construction, maintenance, repair and use of hydrants, pumps, cisterns and reservoirs; protect the purity and quantity of the water supply of the municipality and, for this purpose, extend the coverage of appropriate ordinances over all territory within the drainage area of said water supply and within one hundred (100) meters of the reservoir, conduit, canal, aqueduct, pumping station, or watershed used in connection with the water service; and regulate the consumption, use or wastage of water;

[10] Legal study prepared by the Institute of Human Rights, University of the Philippines Law Center, unpublished

[11] SB Resolution 156-2000 - "Resolution of the Local Government Unit of Binangonan to Continue Operating its Local Waterworks and Sewerage System"

[12] Nicola Tynan, "Private Participation in Infrastructure and the Poor: Water and Sanitation," George Mason University, Conference Paper for Infrastructure for Development: Private Solutions and the Poor, 31 May - 2 June 2000, London, UK

On the legal plane, there is at best an inconsistency between the presumption that concessionaires as agents of MWSS possess exclusive rights to serve the francshise area, which implies the power to exclude other service providers. On the other hand, consistency with the local government code and with previous decisions of the Naitonal Water Ressources Board also make it possible to interpret a concession contract as nothing more than a license to serve, rather than a right to exclude others from making service improvements.

Bulk Selling Policy

Manila Water claims that it is not the bad guy in this situation. In fact, it is willing to peacefully co-exist with the water cooperatives through the bulk water selling scheme where the cooperatives buy water from them at bulk rates and distribute it to its network. In effect, the water cooperatives become, twice over, the primary distributor of water only this time, they are now the agents of Manila Water.

In such a scheme, Pag-asa Water Cooperative, for instance, being the cooperative that services the first barangay in Binangonan coming from Angono (where Manila Water has already established its presence) has been offered a bulk rate of PhP11 – 12/ cubic meter under the category of mixed usage. Currently, Pag-asa sells its water at PhP12/ cubic meter, PhP4 of which is the cost of water while PhP8 goes to operations and maintenance plus other expenditures. If Pag-asa cooperative enters into a Memorandum of Agreement with Manila Water, the cost per cubic meter of water would come out at PhP19 – 20, higher than what it charges its members and customers now. When told about this, Manila Water officials say that Pag-asa does not have to profit PhP8/ cubic meter as it is a cooperative anyway. Pag-asa cooperative explains that the add-on is not profit but is used to finance the day-to-day operations of the cooperative including paying for services that they provide their members e.g. *damayan* fund[13], patronage refund and for training and education.

In a dialogue with the Business Territory officials in charge of the Binangonan area, they said that they are not forcing the cooperatives to connect with the Manila Water network if they do not want to but quickly added that “they are forced to serve the customers who write to us or call our office asking for connection.”[14] In several occasions, Manila Water has been asked about its bulk water pricing and its answer has always been that it represents the cost of delivering water to their “partners” and that the price, anyway, roughly rises in proportion to the number of customers being served.

Manila Water is particularly satisfied with its performance of almost 100% connection in its concession area; a significant number of the new connections has been through their *Tubig sa Barangay* program that caters mainly to informal settlers and urban poor communities where 5 or so households share one connection and cost. Because water is such a crucial service, many community organizations take initiative to negotiate an agreement with the company, as what happened in Taguig and Angono.

[13] Small contribution to a cooperative member whose next of kin died.
[14] Meeting with Manila Water on 24 April 2007, Manila Water Main Office in Balara, Quezon City

There is a perception, however, that Manila Water is only biding its time before it comes in and assumes operations in the area, citing either local government pressure to take over the facilities or some consumer complaint they received. Again, it will go back to invoking the claim of exclusivity in justifying the take-over. Or it will invoke "orders from the top" as bulk water selling is considered a transition mechanism for the concessionaires before it converts its bulk connections with its customers to individual connections. This has been explicitly laid down in an MWSS Board and Regulatory Office Resolution in 2005.[15]

In the meantime, however, Manila Water continues to offer bulk water in Binangonan without any proper explanation of possible outcomes and repercussions. This has worked in the past in containing risks and in achieving high sales turnovers; yet, it is also a mode of provision that preserves the company's right to take-over retail operations altogether in the future. It is understandable, given the fact that area business officials meet their key performance indicators and targets with little cost to the company. Manila Water is able to save up on operation and maintenance cost, headaches caused by non-revenue water and pilferage since it is the obligation of its "partners" to handle all cost incurred after the mother meter.

Reticulation

By virtue of the Sanggunian Resolution, Binangonan cooperatives became heirs of an existing barangay water system network built by municipal funds and other grants. In subsequent improvements of the system, these cooperatives through the aid of the local and provincial government and district representatives were able to expand the network in each of the barangay where they were assigned to operate. Most, if not, all of the big expenditure assets were solicited from government officials and offices, and ownership has already been deemed transferred to the cooperatives. Recently, though, there are several cooperatives that are able to finance its service improvements using their own funds. Big-ticket expenditures include construction of new pumping stations to service expansion area and rehabilitation of pipes to address leakages and pilferage.

The design and lay-out of these water networks usually follow the requirements of any public infrastructure project since, in many instances, funds for their construction are coursed through the Department of Public Works or the city/ municipal engineer's office. It appears, however, that questions are raised on the standard and quality of this infrastructure set-up in the light of questions raised with regard to the reticulation policy. This matter of compliance with construction standards is important for at least two reasons: first, construction standards can be a major factor, sometimes the only factor used, in determining whether the central utility will be allowed by its owner and its regulator to compensate the community's water service provider in case of a take-over of the service area. Second, non-compliance with construction standards may also be used as a legitimate pre-text for taking over the service area of small water service providers, especially if water pressure, quality or hours of service is affected.

[15] MWSS-RO Resolution 05-006-CA – "Policy Guideline on Providing Water Services to Customers in Open Communities and Depressed Areas"

However, these need not be the only policy frameworks of course. In the first instance, the commercial value of a localized water system is not only in its pipes, pumps and tanks; it inheres, perhaps more importantly, in the operational practices that have been set up to control risk and realize revenue from these assets. In build-operate-transfer schemes one usually has a contract pre-termination clause that compensates a private company for the net present value of the expected future income stream associated with the contract and not with the book value of its physical assets.

In the second instance, the fitness of an operator can also be gauged in terms of it s ability to deliver specified outcomes rather than via the means that it uses to deliver such outcomes.

Water industry standards on reticulation as practiced by central utilities like water districts allow for take-over and transfer of water system to their network when the other party meets the requirements; in the case of villages and subdivisions, for instance, its system must meet the technical specifications set by LWUA and the water district with regard to pipes, valves, sewage, etc., must sign a Memorandum of Agreement donating the entire system to the water district, and a low non-revenue water.[16] In this particular example, villages and subdivisions are the less contentious section of the service area as developers and contractors are required by law to set up a package of services to its prospective buyers which include electricity, roads, and water; this package is part of the cost of the property being sold. Experiences of water districts in the provinces show that village homeowners would usually want an immediate turnover of its system to the water district which means that these are relatively new water networks that do not have the attendant problems of NRW or any unaccounted water. For older networks, though, construction and performance requirements usually have to be met before proper turnover takes place, and the MOA specifically lays down that such a turnover is considered a donation and that no compensation will ensue.[17]

Unlike homeowners' associations within subdivisions, though, people's organizations and cooperatives operating in so-called open areas are a different case altogether. In the case of non-profit organizations and community associations whose areas have not been reached by the central utility and do not have the facilities for a water network set-up, the residents bear the cost of the network installation and its operations and maintenance. Applying the same rule of no compensation to them is tantamount to *taking* and is contrary to the Constitution. The law requires that for any expropriation of property, due process must be followed and just compensation should be given to the affected party as determined by the court of law.

It appears that Manila Water thinks otherwise, and invokes the provision in the Concession Agreement that allows them to take-over assets without compensation as assets acquired after 1997 are deemed assets of MWSS; by extension, assets that could be used freely by Manila Water. In the case of Manila Water's business

[16] In some cases, the NRW required is 10% before transfer happens although this rate appears to be arbitrary. In the case of Bacolod City Water District (BACIWA), they require that NRW must not be higher than theirs – 38.9% currently (Phone interview with BACIWA General Manager Atty. Julie Ann Carbon).
[17] Phone interview with BACIWA General Manager Atty. Julie Ann Carbon

partners in Taguig City it would appear that Manila Water is not preparing to compensate neighbourhood associations for their investments based on two claims i) that the neighbourhood associations have already recovered fair returns to their assets – even if the assets may still have economic value and, additionally ii) that the facilities are substandard and need to be replaced in their entirety.

Recommendations

Small scale water providers, in a way, are the "other" private party, and in the continued absence of publicly delivered services, they are the ones who take on this task. Water Districts on average are able to serve less than half of the service area assigned to them – it is usually small water service providers that take up the slack While the big commercial operations such as the private concessionaires and even water districts get innumerable encouragement, incentives and regulatory forebearance, cooperatives are practically left to fend for themselves.

The hands-off, we'll-let-you-sink-or-swim attitude of the local government unit of Binangonan is definitely not the way to handle water cooperatives. Such an endeavor requires a whole range of support activities, from technical assistance and professional training to accessibility of long-term funds that would ensure sustainability of operations. Risks and threats to the existence of these water cooperatives could easily be mitigated if these support mechanisms are well in place and institutionalize.

Given the current situation of the Binangonan cooperatives and the threats they face with the impending entry of Manila Water in their area, the following recommendations are contributions to a possible package of rules and mechanisms that would protect working and viable small scale providers from central utility take-over:

Recommendations on exclusivity

The policy of monopoly over a certain area has not been beneficial to consumers in general, and has already discouraged community initiative. For areas that have not been reached by the central utility, it is the entrepreneurs in the form of mobile truckers, standpipe operators and well drillers who have "exploited" the situation. In areas, however, where community organizations took the initiative to organize the residents into a collective network of customers and operators at the same time, they are faced with possible displacement and high connection fees to the central utility network without them getting any compensation for the infrastructure that they have set up.

In the case of Binangonan cooperatives whose legal standing as water distributors is based on the Local Government Code and further reiterated by *Sangguniang Bayan* resolutions, exclusivity could be viewed as a two-way street. There are several options that could are open for this case:

a) MWSS Regulatory Office with concurrence by the MWSS Board comes out with a resolution addressing the issue of exclusivity, and calls on the concessionaires to respect local government unit's authority and mandate to create its own waterworks and sewerage system;[18] Such a resolution must consider the relevant laws and must take necessary action to either amend the Concession Agreement or create a supplemental provision to it;

b) In relation to the above, MWSS must not oppose the application of existing water providers for water permits and Certificate of Public Convenience (CPC) in order that their "legitimization" is no longer considered an issue; it should also be seen that the grant of these permits is an important requisite for access to long-term finance;

c) Carve out from the concession area those municipalities and cities that already have viable and efficient water services (especially those run by people's organizations and cooperatives) subject to a set of criteria that protects and promote public interest and safety; these areas could be regulated by a regulatory body composed of the NWRB, local government, DOH, etc.

Recommendations on bulk water scheme

In general, households in open communities that decided to invest in water services infrastructure and to operate these ought not to pay for water that is more expensive than the water supplied to those with direct connections. To achieve this bulk sales rates should be significantly lower so that a typical community provider can still recover prudent and efficient costs for services that the central provider no longer needs to provide and for risks such as water theft that the central provider no longer needs to worry about.

Recommendations on reticulation

Future connection to the central utility network should only be one of the options open to small scale water providers, and must not be forced on them when their current set up is considered more efficient and apt. Central utility, however, must adhere to provisions of law with regard to reticulation policy. As such, the following should be addressed:

a) Due process must at all times be respected with regard to expropriation and the attendant compensation; any provisions in the Concession Agreement or any contract that is contrary to this and other laws must be repealed and/ or amended;

b) To avoid future dispute as regards network connection, clear and above-board agreements and standards must be discussed and contracts drawn up to prevent arbitrary decisions; and

c) In cases where entire systems have to be replaced, central utility must allow for a reasonable period of recovery of investment of small-scale providers before taking over the network.

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[18] Atty. Minas of the MWSS Regulatory Office Legal Department announced during the public consultation in Binangonan for the rate rebasing process that "nobody can compel or force the cooperatives to connect to Manila Water or to close its operations to give way to them."

d) It should be clarified that the regulator for small water providers, whether in water districts or inside the MWSS service area, is the National Water Resources Board. While the engineering standards of infrastructure at the time of turn-over to the central utility should be a consideration for the small service provider, compliance or non-compliance with construction standards specified by the water district or the MWSS concessionaire need not be requirements for the commencement of operation by small water providers. Standards set by these central utilities should also not be relevant as long as the National Water Resources Board is confident that the minimum outcomes can be delivered using the technology specified in the small service provider's CPC application.