

TITLE 4: ECONOMIC RESOURCES
DIVISION 8: UTILITIES

§ 8122. Commonwealth Utilities Corporation: Duties.

(a) CUC shall supervise the construction, maintenance operations, and regulation of electric, water, and sewage services; provided that whenever feasible CUC shall contract with the private sector to assume its duties with respect to one or more of its divisions.

(b) CUC shall, within 90 days of the effective date of this chapter or upon achieving a quorum of board members, whichever is later, implement a plan by which CUC or its designee will establish rates, meter, bill, and collect fees in a fair and rational manner from all consumers of utility services it has not privatized so that the corporation will be financially independent of all appropriations by the Commonwealth Legislature by October 1, 2009, or as soon as possible thereafter.

(c) Notwithstanding [4 CMC § 8439](#) or any other provision of law, CUC may:

(1) Issue invitations for bids to privatize or transfer ownership, control, management, or operations, in whole or in part, of a utility service and the property relating to that utility service;

(2) Award any contract therefore, contingent upon the contractor obtaining from the Commission a certificate of public convenience and necessity as required under [4 CMC § 8441](#).

The Commission's review shall include a determination of whether the divestiture and the contractor's proposed rates, charges, assessments, and costs are consistent with the public interest. A business undertaking, licensed in the Commonwealth for at least eight years and engaged in a business closely related to the utility service for which CUC publishes a request for proposal or solicits bids, shall be permitted to submit a proposal upon the payment of the required fees and shall by operation of law pre-qualify as a responsible bidder or offeror for such request for proposal or bid.

(d) For the purposes of a deliberate and uninterrupted transition to regulation under the Public Utilities Commission, and notwithstanding [4 CMC §§ 8433, 8442](#) and any other provision of law, the Commonwealth Utilities Corporation's Executive Director's power and authority to set rates, fees, charges and rents shall take effect on January 27, 2006 and continue until such time as the Public Utilities Commission shall issue an order setting rates, fees, charges or rents for a utility service.

(e) CUC shall be responsible for the maintenance and operation of all water wells located on public school grounds to ensure that water wells comply or meet the Division of Environmental quality's Safe Drinking Water Quality Standards, including but not limited to the chlorination of water.

(f) CUC shall prioritize the interconnection with net metering for health and education renewable energy capacity. CUC shall establish a net metering agreement with public health and education entities, as may be requested by the entity, have authority to review and approve the engineering and interconnection plan in accordance with industry standard standards; and shall apply net metering

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credits to off-set the base, levelized energy adjustment, and other utility cost. Any net metering credits for the public health or education entity and not a specific site where photovoltaic (PV) or wind power renewable energy may be located. The excess energy credit shall be carried forward as credits for public health and education agencies for no more than two fiscal years. Any reasonable direct expense to the CUC for reviewing and interconnecting the PV or wind power renewable energy capacity shall be the responsibility of the health or educational agency.

Source: PL 4-47, § 1 (§8122); amended by PL 6-30, § 16; subsections (a) and (c) amended by PL 12-39, § 1(a); (d) added by PL 13-50, § 1; amended by EO No. 2006-04, § 4(8122); (a) amended and (c) added by PL 15-35, § 3(b)(4)(A) and (B), respectively; (c) repealed and reenacted and (d) added by PL 15-40, §3(g) and (h), respectively, modified; (c) amended by PL 15-67, § 2, modified; repealed and reenacted by PL 16-17 § 10(8122); (d) amended by PL 17-03 § 2 (May 12, 2010); (f) added by PL 18-75 § 3 (Feb. 13, 2015).

Commission Comment: The Commission added “4 CMC §§” before “8433, 8422” in subsection (d) and corrected the cross-references in subsection (c) pursuant to [1 CMC § 3806\(c\)](#). See the comment to [4 CMC §§ 8111](#) and [8112](#) for more information about PL 16-17.

PL 13-50 was enacted on April 21, 2003 and contained severability and savings clause provisions.

See the comment to [4 CMC § 8111](#) regarding Executive Order No. 2006-04.

PL 15-35 repealed and reenacted the entire Chapter 4 (entitled “Commonwealth Telecommunications Act”) of Title 4 of the Commonwealth Code and renamed it “Public Utilities Commission.” PL 15-35 was enacted on October 24, 2006, and did not include any findings or purpose provision but did include the following title, repealer, and conforming sections in addition to other enactments and severability and savings clauses:

Section 1. Title. This Act may be cited as the “Commonwealth Public Utilities Commission Act of 2006.”

Section 2. Repealer and Re-enactment. Title 4, Division 8, Chapter 4 is repealed and re-enacted to read as follows: ...

Section 3. CTC and CUC: Conforming Amendments.

(a) *Commonwealth Telecommunications Commission*.

(1) Upon the effective date of this act, the Commonwealth Telecommunications Commission (CTC) is hereby abolished and replaced by the Commonwealth Public Utilities Commission (PUC) with respect to regulatory authority and oversight jurisdiction over all telecommunication utility matters. The PUC will exercise jurisdiction over such matters in accordance with this act and the rules and regulations promulgated by the PUC hereafter, pursuant to the provisions of this act.

(2) The various conditions and requirements previously imposed on Pacific Telecom, Inc., (PTI), and the Micronesian Telecommunica-

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tions Corporation (MTC) by the CTC in its decision and order in CTC Case No. 03-01 are hereby vacated and set aside, except the following:

(A) The CTC approval of the transfer of ownership of MTC from Verizon to PTI shall remain and shall continue to be valid;

(B) The certificate of public convenience and necessity issued by the CTC in favor of PTI and MTC in 2005 shall also remain valid and effective; and

(C) The condition of the decision and order of the CTC prohibiting PTI and MTC from imposing any inter-island toll charge between the islands of Saipan, Rota, and Tinian shall remain effective and shall continue unchanged.

In the event that there is good cause shown for the re-imposition of any of the conditions or requirements previously imposed by the CTC, then and only in the event shall the PUC begin a new process of holding a hearing with all the necessary procedural safeguards in place to ensure that a fair hearing is accorded both the telecommunications company affected and the interested party having standing to make such assertion before the PUC.

(3) The PUC shall have the authority to promulgate all necessary rules and regulations needed to carry out its mandate under this act; and shall not be bound the rules and regulations of the CTC which are hereby vacated and set aside.

(4) Any unexpended balance of moneys and any fees or other moneys now owing to the CTC shall be and the same are hereby transferred and assigned over to the PUC hereby created, to be used and disposed of, as provided by law.

(5) Except as otherwise provided by law, the regulations, standards, procedures, franchises and all other such aspects related to the regulation of the functions and operation of a regulated telecommunications utility that are in force when this Act becomes effective, shall continue to apply until amended or repealed by PUC.

(6) Upon the effective date of this act, all the members of the CTC holding office shall immediately cease to be commissioners. Within 30 days after the effective date of this act, the governor shall appoint new members to the PUC in accordance to [§ 8403](#) of Section 2 of this act.

(b) Commonwealth Utilities Corporation.

(1) When a provision of this Commonwealth PUC Act conflicts with a provision of the Commonwealth Utilities Corporation Act, Public Law 4-47, as amended, [4 CMC §§ 8111 et seq.](#), the provision of this Commonwealth PUC Act shall control.

(2) For regulatory purposes, including the setting of rates, the approval of prices fees, charges, terms and services, and the resolution of disputes between a regulated utility and its customers, the PUC is the successor to the Commonwealth Utilities Corporation Board (CUC), and all such Orders, decisions, rules, regulations, certificates, guidelines, practices and regulatory procedures of the CUC shall continue in full force and effect.

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(3) Except as otherwise provided herein, the regulations, standards, procedures, franchises and all other such aspects related to the regulation of the functions and operation of a regulated power, water, wastewater or cable television regulated utility that are in force when this Act becomes effective, shall continue to apply until amended or repealed by PUC.

(4) Notwithstanding § (1) of this section or any law to the contrary, 4 CMC § 8122, as amended by Executive Order No. 2006-4, is amended further as follows:

(A) § 8122(a) is amended to read: ...

(B) A new subsection (c) is added to § 8122 to read: ...

PL 15-40 was enacted on December 22, 2006, and included the following short title and findings and purpose sections in addition to other enactments and severability and savings provisions. The Commission changed the references to 4 CMC §§ 8439 and 8441 to [4 CMC §§ 8452](#) and [8454](#), respectively, in subsection (c) above, and the references to 4 CMC §§ 8425 and 8429 to [4 CMC §§ 8433](#) and [8442](#), respectively, in subsection (d) above, to agree with renumbered sections pursuant to its authority by [1 CMC § 3806](#).

Section 1. Short Title. This Act may be cited as the “The PUC Amendments Act of 2006.”

Section 2. Findings and Purposes. The Legislature finds that a few limited amendments are needed to further improve the Public Utilities Commission Act (Public Law 15-35 ([4 CMC §§ 8401-8461](#))) and Executive Order 2006-4 ([4 CMC §§ 8111-8158](#)). The Legislature further finds that regulation must be fair and flexible and advance the public interest. Regulators must be experts by reason of knowledge, experience or training and understand the needs of the CNMI and its people.

Amendments included in this act relate to the (1) qualifications of commissioners and (2) their ethical position. Other amendments (1) clarify the PUC’s authority to issue interim orders for partial and immediate relief and to set rates that reflect various classes and types of service, and (2) allow the CUC to continue to conduct its business while the PUC is being constituted. CUC may also issue an RFP for power privatization and make an award contingent upon the contractor obtaining from the PUC a certificate of public convenience and necessity and an approval of its rates and CUC’s divestiture. This Act is a necessary and proper use of the legislative authority granted by Article II of the Commonwealth Constitution.

PL 15-67 was enacted into law by override on June 5, 2007 and contained the following findings in addition to severability and savings provisions. The Commission changed the references to 4 CMC §§ 8439 and 8441 to [4 CMC §§ 8452](#) and [8454](#), respectively, in subsection (c) above to agree with renumbered sections pursuant to its authority by [1 CMC § 3806](#).

Section 1. Findings. The Legislature finds that privatization of a utility service of the Commonwealth Utilities Corporation (CUC) is a monumental task that must be cautiously undertaken. The CUC must thorough-

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ly review all companies interested in privatizing a utility service and must choose a company that would further the best interests of the public as well as comply with all procurement regulations. The Legislature finds that there are several companies that have been licensed to do business in the Commonwealth for at least ten years that may qualify to undertake the privatization of a utility service. However, such companies may not have been engaged in a business that is closely related to a utility service throughout their tenure in the Commonwealth. Accordingly, the Legislature finds that 4 CMC § 8122(c) must be amended to allow more companies licensed in the Commonwealth for at least ten years and engaged in a business closely related to a utility service for at least eight years to qualify as a responsive bidder to any CUC request for proposals to privatize a utility service. This would level the playing field for many companies that would otherwise qualify as a responsive bidder to any such request for proposals or bid.

Public Law 17-3 (effective May 12, 2010) included severability and savings clause provisions and the following:

Section 1. Findings and Purposes. The Legislature finds that the Commonwealth Supreme Court, in *Torres v. Commonwealth Utilities*, 2009 MP 14, determined that the Legislature, in enacting Public Laws 15-35 and 15-40, intended the laws to apply prospectively. However, the Legislature in enacting Public Laws 15-35 and 15-40, intended that the CUC increased rates, which sought to address a perilous shortfall in CUC's ability to pay for fuel and related costs of operations, would be retroactively recognized and retroactively effective.

It is therefore the purpose of this Act to clarify the ambiguity surrounding subsection (d) of Section 8122 of Title Four of the Commonwealth Code such that the rate decisions made by CUC's Executive Director are ratified, as was the original intent of the Legislature. The Legislature finds and declares that this Act is a proper use of the Legislative power granted by Article II section 1 of the Constitution of the Commonwealth of the Northern Mariana Islands.

...

Section 3. Applicability. This Act is intended to clarify the intent of the Legislature in passing Public Laws 15-35 and 15-40 on the dates of enactment. This Act and every modification or repealer herein shall constitute the law to be applied to any administrative proceeding in the Commonwealth or any case filed the courts of the Commonwealth which has not been reduced to final judgment as of the effective date of this act, regardless of when such proceeding or case was filed, as was originally intended.