

TITLE 4: ECONOMIC RESOURCES
DIVISION 8: UTILITIES

§ 8123. Commonwealth Utilities Corporation: Powers.

Except as otherwise provided or limited in this division or by other law, in order to carry out its duties CUC shall have all of the powers conferred by law on a public corporation, and all the powers reasonably incidental to that purpose, including the power to:

- (a) Prescribe, adopt, amend, and repeal by-laws;
- (b) Receive and hold funds from contractors, consumers, lessees, the Commonwealth government, and other sources;
- (c) Sue and be sued in its corporate name;
- (d) Acquire and hold any interest allowed by law in any real or personal property, tangible or intangible, in connection with the activities of the corporation, and to sell, mortgage, or otherwise dispose of such interest;
- (e) Borrow money from any public or private source, either within the Commonwealth or the United States, or in any other country, and to give security in connection with such borrowing, provided that any borrowing in excess of \$500,000 shall be approved by law;
- (f) Upon prior approval by joint resolution of the Legislature in conformity with the Commonwealth Development Authority Act (4 CMC § 10101 et seq.) as to each issue of bonds, to make and issue tax exempt bonds and other tax exempt obligations for sale to the general public;
- (g) Pursuant to public notice and bidding wherever possible, to make contracts and execute all instruments necessary or convenient to exercise the powers of the corporation;
- (h) Hire such employees as are necessary for the operation of the corporation and engage the services of independent experts, advisors, and other contractors as necessary to the fulfillment of the purposes of the corporation;
- (i) Contract to transfer to private ownership or control the construction, management, and operation of the electrical power, water, and sewer systems in a public manner that is fair to the government, its employees, and utility service consumers;
- (j) Assume existing contracts with respect to utility services;
- (k) Regulate utility services to the extent permitted by federal law and contractual obligations of the Commonwealth government;
- (l) Strengthen the existing system of metering, billing, and collecting fees for utility services;
- (m) To the extent deemed lawful and necessary, and subject to the requirements of chapter 4 of this division, to review and establish utility rates and other fees for electrical power, water, and sewer, except that no fee for electrical power, water, or sewer shall be higher than the actual cost to the corporation to connect customers and provide the utility;

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(n) Prepare and submit a budget as a government corporation pursuant to 1 CMC § 7206;

(o) Establish a system of rewards for persons other than government employees in the course of their official duties who furnish information that leads to a conviction of a criminal offense involving theft of utility materials or services;

(p) Effectuate the settlement of disputes between CUC and the Commonwealth Development Authority (CDA) as required by their Memorandum of Agreement. CUC may issue shares of cumulative, non-convertible, non-transferable preferred stock valued at \$45,000,000.00 to CDA. CUC and CDA may provide by written agreement, subject to the terms and conditions of the Memorandum of Agreement, such terms and conditions being incorporated herein by reference, for

(1) Guaranteed annual dividends fixed and payable as agreed;

(2) Buy-back provisions;

(3) Default provisions;

(4) Preferred shareholders rights; and

(5) Consistent with Commonwealth law, such other rights and remedies as are typically found in shareholder and stock purchase agreements.

(q) Take such action as it deems necessary and proper to operate the corporation, further its purposes, administer its services, and perform its duties.

(r) The powers of the Corporation shall be subject to Public Law 15-35 as amended.

Source: PL 4-47, § 1 (§ 8123); amended by PL 6-30, §§ 17, 18; PL 8-23, § 18; PL 10-36, § 3; subsections (j), (k), and (m) amended by PL 12-39, § 1(a); subsection (p) added by PL 13-36, § 2; (p) repealed in entirety by PL 15-12, § 3(B); amended by EO No. 2006-04, § 4 (8123); (p) added by PL 15-74, § 4, modified; (e) amended by EO No. 2008-09, § 3(8123); repealed and reenacted by PL 16-17 § 10(8123), modified.

Commission Comment: The Commission modified this section pursuant to the authority granted by 1 CMC § 3806(f) and (g). The Commission changed capitalization and changed the second occurrence of “tangible” in subsection (d) to “intangible” to correct a manifest error. See the comment to 4 CMC §§ 8111 and 8112 for more information about PL 16-17. Executive Order 2008-09 (Re-organization Plan No. 4 of 2008), signed July 30, 2008, amended subsection (e) of this section. 30 Com. Reg. 28773 (Sept. 25, 2008). Section 5 of Executive Order 08-09 notes that the Reorganization Plan “shall become effective sixty days after submission to the Legislature, unless specifically modified or disapproved by a majority of members of each house of the Legislature.” 30 Com. Reg. 28774 (Sept. 25, 2008).

In addition to severability and savings clauses, PL 13-36, which took effect on December 10, 2002, contained the following findings:

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Section 1. Findings. The Commonwealth Utilities Corporation (CUC) and the Commonwealth Development Authority (CDA), both public corporations existing as autonomous agencies of the Government of the Commonwealth of the Northern Mariana Islands, have been involved in a legal dispute in the Superior Court of the Commonwealth. The parties desire to settle their disputes in an out-of-court settlement and have agreed on the terms of a mutual settlement that requires, among other things, a waiver of a portion of the debt owed by CUC to CDA and the conversion of the balance of debt to equity ownership. CUC and CDA have reduced the terms and conditions of their agreement to writing and seek the assistance of the legislature in effectuating certain provisions. The legislature finds that the out-of-court settlement reached by CUC and the authority CDA is a reasonable resolution of their differences. The legislature further finds that the terms and conditions of the settlement are in the public interest.

PL 15-74 was enacted on July 20, 2007, and contained the following title and findings, in addition to another enactment (6 CMC § 1609) and severability and savings clause provisions. The Commission designated a different subsection letter than what was specified in the original text of PL 15-74, § 4.

Section 1. Title. This Act may be cited as the “Theft of Utility Services Act of 2006.”

Section 2. Findings. The Legislature finds that theft of utility services has been prevalent in the Commonwealth for many years. However, the existing criminal laws do not specifically provide for prosecution of such activities. The Legislature further finds that for example, the Commonwealth Utilities Corporation has lost and continues to lose revenue from theft of utility services. Accordingly, the Legislature finds that criminalizing theft of utility services is necessary to deter such activities and possibly increase the revenue of the Commonwealth Utilities Corporation, or its duly licensed private contractors, and telecommunications and cable television companies. The purpose of this legislation is to criminalize theft of utility services and provide for penalties upon conviction of such a crime.

Public Law 17-62 (effective December 3, 2011) authorized a CUC loan as allowed in subsection (e) of this section. PL 17-62, in pertinent part, provides:

Section 2. CUC Loan Authorization.

Notwithstanding any law or regulation to the contrary, the Commonwealth Utilities Corporation (CUC) is hereby authorized to borrow an amount up to \$10,000,000 from Independence Bank of East Greenwich, Rhode Island and guaranteed by the United States Department of Agriculture subject to CPUC approval to fund CUC's obligations under the Stipulated Orders entered in USA v. CUC and CNMI [No. 08-0051] [DNMI] and for other projects on Rota and Tinian, as set forth on the loan schedule of projects.