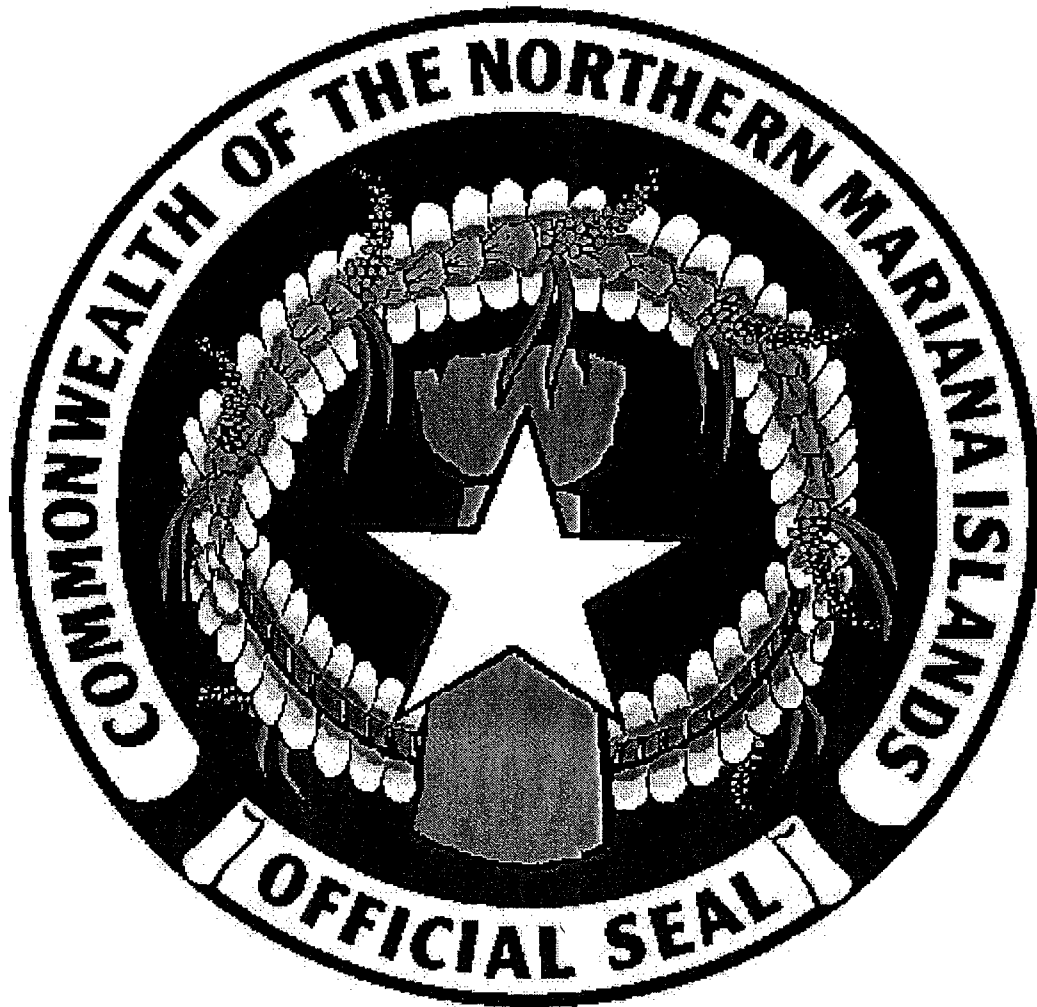


COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA, & NORTHERN ISLANDS



COMMONWEALTH REGISTER
VOLUME 28
NUMBER 07

JULY 21, 2006

COMMONWEALTH REGISTER

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Timothy P. Villagomez
Lieutenant Governor

EXTENSION OF EMERGENCY Volcanic Activity on Anatahan

WHEREAS, On January 23, 2006, a Declaration of Emergency was issued with respect to volcanic activity on the island of Anatahan; and

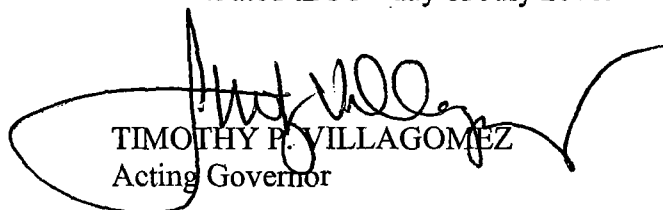
WHEREAS, said Declaration declared the island of Anatahan as unsafe for human habitation and restricted all travel to said island with the exception of scientific expeditions; and

WHEREAS, the volcanic activity and seismic phenomena which prompted said Declaration continues to exist on the island of Anatahan;

NOW, THEREFORE, I, TIMOTHY P. VILLAGOMEZ, by the authority vested in me as Acting Governor, and pursuant to Article III, Section 10 of the Commonwealth Constitution and 3 CMC §5121, do hereby extend a state of disaster emergency in the Commonwealth with respect to the island of Anatahan under the same terms and conditions as are contained in the original Declaration.

This Extension of Emergency shall remain in effect for thirty (30) days, unless the Governor shall, prior to the end of the 30-day period, notify the Presiding Officers of the Legislature that the state of emergency has been revoked or further extended for alike term, and giving reasons for extending the emergency.

Dated this 3rd day of July 2006.


TIMOTHY P. VILLAGOMEZ
Acting Governor

cc: Lt. Governor (Fax: 664-2311)
Senate President (Fax: 664-8803)
House Speaker (Fax: 664-8900)
Mayor of the Northern Islands (Fax: 664-2710)
Executive Assistant for Carolinian Affairs (Fax: 235-5088)
Director of Emergency Management (Fax: 322-7743)
Attorney General (Fax: 664-2349)
Secretary of Finance (Fax: 664-1115)
Commissioner of Public Safety (Fax: 664-9027)

DIRECTIVE

DATE: MAY 08 2006
No. 254

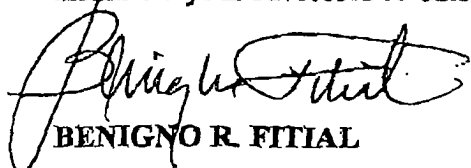
TO: All Gubernatorial Appointees
FROM: Governor
SUBJ.: Annual Leave, Sick Leave and other Employment Benefits

Those government Officials who are appointed by the Governor, based upon statutory or constitutional authority, are exempted from the Civil Service System, but are not included within the Excepted Service Personnel System. Such Appointed Officials include Executive Branch Department Heads, Special Assistants established by statute or Constitution, Heads of agencies and offices assigned by statute to the Office of the Governor

As Gubernatorial Appointees, you serve at the pleasure of the Governor and are accountable to me and the Commonwealth for the successful accomplishment of your duties and responsibilities. You will be paid on a salary basis, as established by statute, and are on duty twenty-four hours a day for the full period of your appointment. You will not receive any overtime, compensatory time, differential or premium pay or any other additional compensation, other than reimbursement for legitimate costs incurred, such as approved travel and per diem, at rates established by rule or regulation. If you were appointed while on an outside-the-Commonwealth excepted service contract, you will retain your housing and repatriation benefits. Similarly, any Appointed Official who is assigned outside the Commonwealth for permanent duty may receive housing and expatriation/repatriation benefits.

You will not accrue annual leave during your period of appointment. Any annual leave balance that you accrued due to prior employment will be held in abeyance until the end of your appointment, but will in no case be subject to any cash payment. Sick leave will be accrued at the standard rate and will be used for time off for sickness and other personal medical reasons. I anticipate no less than full diligence and dedication from each of you while you are serving the Commonwealth in these senior positions. I have appointed you to provide the leadership and management necessary to effectively and efficiently accomplish the mission of your activity. I will not micromanage your work schedule. I understand that there will be a need for time off. When it is necessary for you to be absent from duty for personal reasons for more than a day, please advise me adequately in advance, by simple letter, of the general reason (personal or sick time-off), the length of absence, what effect it will have on your area of responsibility and a recommended person to be in charge during your absence. Sick leave will be recorded on the OPM form and processed per standard routine.

I fully appreciate the difficulty and stressfulness of the jobs to which I have appointed you. You have my thanks for your successes to date.



BENIGNO R. FITIAL



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Timothy P. Villagomez
Lieutenant Governor

DIRECTIVE

Date: 14 JUL 2006

No.: 255

TO: All Department and Activity Heads

FROM: Governor

SUBJ.: Policy of the Commonwealth of the Northern Mariana Islands Regarding Equal Employment Opportunity

The laws of the United States and of the Commonwealth of the Northern Mariana Islands require that equal opportunity be provided to all U.S. Citizens and legal resident workers in government employment. It also requires that nondiscrimination be exercised in all government employment practices. Statements of the Commonwealth's policy of nondiscrimination can be found in Title 1, §8102 of the Commonwealth Code, and Parts 1.B1 and V.F1 of the *Personnel Service System Rules and Regulations* and Parts IV.C and IV. D of the *Excepted Service Personnel Regulations*. To ensure full compliance with these requirements, the Commonwealth has established a systematic, government-wide program, known as the *CNMI Equal Employment Opportunity Program*, to implement our legal and moral obligations. I personally and officially support this program, and will ensure continued compliance with its tenets with the full force of executive authority.

The Commonwealth government does not condone and will not tolerate discrimination in any form in its employment policies and actions, or in the conduct of its employees. It is especially important to state clearly that the Government has established and will vigorously enforce a policy of non-tolerance for sexual harassment in its workplace and among its workforce. It is my firm belief and the policy of this administration that those residents of the Commonwealth who are legally entitled to work for the Commonwealth government will be considered equally and indiscriminately, in accordance with relevant statutes, for employment and advancement in the government service. Similarly, every employee of the government possesses the right to a workplace free from threat, harassment or coercion. This Administration is committed to guaranteeing these rights to its employees.

As the Governor and Chief Executive Officer of the Government of the Commonwealth of the Northern Mariana Islands, I am, also, the Equal Employment Officer for the Commonwealth, with the authority to institute and maintain a legally compliant Equal Employment Opportunity (EEO) program and to require all departments and activities to ensure full and fair implementation of the program's principles. I am appointing the Director of Personnel as the Deputy EEO Officer for the Commonwealth, with the

authority to develop EEO policies, implement the program, and oversee its operation. The Director of Personnel will appoint an EEO Coordinator in the Office of Personnel Management to provide me, the Director of Personnel, and other key government management and EEO officials with expert advice, analysis and evaluation on EEO matters. The Director of Personnel will also appoint EEO Coordinators in the Office of Personnel Management on both Rota and Tinian. Additionally, the EEO Coordinator will oversee the program government-wide and will assist department and activity EEO staff in the fair and consistent application of EEO laws and policies. The Coordinator will work with the federal Equal Employment Opportunity Commission to resolve charges that are made to their Office.

Each department, activity and autonomous agency within the Executive Branch of the Commonwealth Government will create a similar organization, issue a formal EEO policy statement similar to this directive, and establish implementation procedures. Any department, activity or autonomous agency with less than fifty (50) total staff may request to the Director of Personnel that it join with another department or activity in establishing its EEO program and structure. The Chief Executive of each department, activity and autonomous agency will serve as the Equal Employment Opportunity Officer for his or her organization. In turn, the Chief Executive will appoint either the organization's Deputy or a senior member of management, at a level reporting directly to the Chief Executive, as the organization's Deputy EEO Officer. Similarly, the Chief Executive of each organization will appoint an EEO Coordinator to manage the organization's EEO program. I recommend that the coordinator be a permanent employee with advanced administrative and analytical abilities. These appointments will be published in the organization's EEO policy statement, which will be posted in each workplace and disseminated to each employee.

The EEO Program will provide an administrative procedure for settling complaints of discrimination with regard to government employment or personnel practices. It will include three successive venues for fact finding and conciliation: a counseling stage, an investigative stage and a hearing stage. Each organization will appoint a number of EEO Counselors throughout the divisions/sections of the organization, to include divisions/sections on Rota and Tinian, who will fill this role as a collateral duty. Employees who have previously received EEO training should be continued in their position, if their service and commitment to the program have been satisfactory.

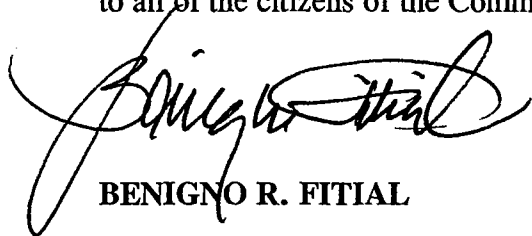
The EEO Program Coordinator at the Office of Personnel Management will establish an investigative capability, utilizing existing CNMI staff trained in investigative skills, that will respond to requests for investigation from the organizational EEO Coordinators. If the complaint is not resolvable at the organizational level, the Civil Service Commission will serve as the ultimate hearing panel for EEO complaints for civil service employees. The Director of Personnel, as the Governor's designee will provide this opportunity for excepted service employees. EEO discrimination complaints, which are initiated by the employee or applicant as a result of perceived discrimination either directly through the EEO structure or through the grievance process, should receive immediate consideration and action as determined appropriate. Failure to act in a timely and responsive manner could result in continued discrimination to the employee and liability to the government.

The Office of Personnel Management and all departments, activities and autonomous agencies will

establish program evaluation and reporting procedures to keep me informed of the status of the Commonwealth's Equal Employment Opportunity Program. This program is not just a matter of complying with federal and local laws. It is a vitally important step in ensuring fair and equal treatment in government employment to all citizens of the Commonwealth. It will repay our efforts tenfold and provide a legacy of equality for citizens yet to come.

All departments, activities and autonomous agencies are directed to comply with the guidance provided herein, which supplements, in more detail, the Equal Employment Opportunity provisions found in the *Personnel Service System Rules and Regulations* and *Excepted Service Personnel Regulations*, as cited above. Individual EEO policy statements are to be immediately prepared and published, with copies forwarded both to my attention and to the Director of Personnel. EEO staffing structures will be established and employees will be trained in coordination with the Office of Personnel Management. Manuals, policies and instructions to further clarify the Commonwealth's nondiscrimination policy and specific implementation procedures will be published and distributed by the Office of Personnel Management. The Office of the Attorney General will provide assistance to the Office of Personnel Management, as requested.

I expect all management staff to support this program fully and wholeheartedly in all hiring and employment processes. Your participation in this program must not be just minimal compliance with Federal and Commonwealth EEO laws; it must be the daily fulfillment of an obligation of fair treatment to all of the citizens of the Commonwealth.



BENIGNO R. FITIAL



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Timothy P. Villagomez
Lieutenant Governor

DIRECTIVE

DATE: 14 JUL 2006 **No.:** 256

TO: All Department and Activity Heads

FROM: Governor

SUBJ.: Notification of Intent to Implement a Furlough of Civil Service Employees

On March 15, 2006, as required by Part III.E3 of the *Personnel Service System Rules and Regulations (PSSR&R)* [NMIAC §10-20.2-263] I provided the Director of Personnel the required sixty (60) days notice of my intent to implement a Reduction-in-Force (RIF) through a reduction in Work Hours. Although that action was not taken my notification of intent is still in effect. However, I am examining all alternatives to avoid the necessity for a full Reduction-in-Force. To date the Government has halted all but essential hiring and initiated the termination of limited term, probationary, excepted service and other non-permanent staff.

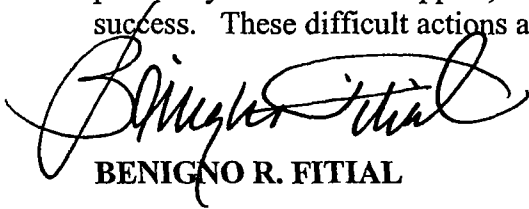
However, the Commonwealth Government's continuing financial hardships require that additional steps be taken to reduce expenditures. Consequently, I am directing the furlough, in a non-pay status, of all non-essential civil service staff for a thirty (30) day period from September 1 to September 30, 2006, inclusive. Annual leave, sick leave or any other paid status will not be authorized for employees placed on furlough. This furlough is not a reduction-in-force action, but it is an adverse action that must follow civil service adverse action procedures.

The Director of Personnel will be responsible for coordinating this action and will work with the Executive Branch department and agency heads, to include all autonomous agencies and public corporations, to ensure smooth implementation of this action. All Department and Activity Heads are directed to provide the Director of Personnel their full cooperation. The Office of the Attorney General will provide the Director of Personnel with all necessary support and assistance throughout the duration of this action. The Director will advise me, prior to the implementation of the furlough, of the number of employees affected and the financial savings resulting from this furlough.

It is my intent that this action shall be implemented in all departments/agencies and at all levels of civil service employment. I recognize that this will not be feasible in all situations, but I expect the exceptions to be minimal and only in vital positions where it is not possible to reduce staff. I also urge the Mayors, the Municipal Councils, the Legislative and Judicial Branches, and all autonomous agencies and public corporations to join the Executive Branch in this cost-cutting measure by reducing non-civil service staff and furloughing civil service staff.

I understand that this furlough will be painful to all affected. However, it is an effort to avoid termination of permanent civil service staff. Please ensure that you communicate the need for this action clearly to all employees and assure them that the government is concerned for their welfare and is making every effort to improve our financial situation.

I expect all management staff to support this furlough action fully and unreservedly and to provide you with the support, assistance and cooperation that you need to make this plan a success. These difficult actions are necessary to help restore the Government's fiscal health.



BENIGNO R. FITIAL

cc: Senate President and all Senators
Speaker of the House of Representatives and all Representatives
Judiciary Branch
Mayors of Saipan, Rota, Tinian and Aguiguan, and the Northern Islands
Chairs, Municipal Councils of Saipan, Rota, Tinian and Aguiguan
Executive Directors of all Public Corporations and Autonomous Agencies


PUBLIC NOTICE OF EMERGENCY REGULATIONS AND NOTICE OF INTENT TO ADOPT AMENDMENTS TO THE IMMIGRATION REGULATIONS AND ALIEN LABOR RULES AND REGULATIONS

EMERGENCY: The Commonwealth of the Northern Mariana Islands, Office of the Attorney General and Department of Labor find that under 1 CMC § 9104(b), the public interest requires that there is a need to clarify the amount of application and immigration fees to be paid to the Commonwealth Treasury for the hiring of alien workers. Prior administrations had adopted a policy that did not comply with the regulations adopted by the Department of Labor and the Division of Immigration. Due to the challenging economic circumstances facing the Commonwealth and the lack of clarity in the fee structure, it is necessary to adopt regulations approved by both Labor and Immigration to clearly state the fees required to hire or renew the work permit for alien workers having an Immigration classification of 706 (K). The Office of the Attorney General further finds that the public interest mandates adoption of these regulations upon fewer than thirty (30) days notice, and that these regulations shall become effective immediately after filing with the Commonwealth Register, subject to the approval of the Attorney General and the concurrence of the Governor, and shall remain effective for 120 days.

REASONS FOR EMERGENCY: It was recently determined that the fees being collected by the Division of Immigration were less than those established by regulation and statute, apparently due to a policy adopted and continued during previous administrations. To impose the fees as written poses hardships for employers in this challenging economic climate. Accordingly, the Office of the Attorney General and Department of Labor find that in the interest of the public, it is necessary that these regulations are approved and adopted immediately.


INTENT TO ADOPT: It is the intent of the Office of Attorney General and the Department of Labor to adopt these emergency amendments to the Immigration Regulations and Alien Labor Rules and Regulations, as permanent, pursuant to 1CMC § 9104(a)(1) and (2). Interested persons may submit written comments on these emergency recommendations to Matthew T. Gregory, Attorney General, Office of the Attorney General, Second Floor, Juan A. Sablan Memorial Bldg, Capitol Hill, Saipan MP 96950 or by fax to (670) 664-2349, or to Gil San Nicolas, Secretary of Labor, Department of Labor, Afetnas Square Building, San Antonio, Saipan, MP 96950 or by fax to (670) 236-0990.

Submitted by:



Matthew T. Gregory
Attorney General

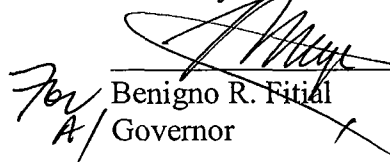
06/27/06
Date



Gil M. San Nicolas
Secretary of Labor

06/26/06
Date

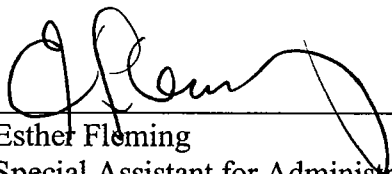
Concurred by:



Benigno R. Fitial
Governor

6/27/06
Date


Received by:



Esther Fleming
Special Assistant for Administration

6/27/06
Date

Filed and Recorded by:



BERNADITA B. DE LA CRUZ
Commonwealth Register

6/27/06
Date

Pursuant to 1CMC §2153, as amended by Public Law 10-50, the emergency rules and regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General's Office.

Dated this 22th day of June, 2006.



Matthew T. Gregory
Attorney General

PUBLIC NOTICE
EMERGENCY AMENDMENTS TO THE IMMIGRATION REGULATIONS AND
ALIEN LABOR RULES AND REGULATIONS.

This amendment is promulgated in accordance with the Administrative Procedure Act, 1 CMC § 9101, et seq. The Office of the Attorney General and the Department of Labor are amending the Alien Labor Rules and Regulations that were published in the Commonwealth Register, Vol. 26, No. 06, June 24, 2004, and the Immigration Regulations published in the Commonwealth Register, Vol. 27, No. 02, February 17, 2005.

Citation of

Statutory Authority:

The Secretary of Labor is authorized to promulgate regulations regarding the requirements for employment of alien workers under 3 CMC § 4424(a)(1). The Office of Attorney General is authorized to promulgate regulations for entry and deportation of aliens in the Commonwealth of the Northern Marianas pursuant to Executive Order 03-01 and 3 CMC § 4312(d).

Short Statement of

Goals and Objectives:

The emergency amendments to the Immigration Regulations and Alien Labor Rules and Regulations Section II will clarify the fees to be charged to employers for the hiring or renewal of alien workers under Immigration classification 706 (K).

Brief Summary of the

Proposed New Section:

These emergency amendments are promulgated to:

Establish that the total fee for labor processing of a 706 (K) permit is \$250.00. The Immigration fee for the alien labor 706 (K) new and renewal permit is \$25.00. The fee for alien registration is an additional \$25.00.

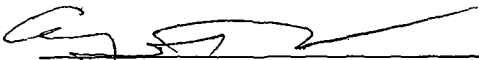
**For Further
Information Contact:**

Kevin A. Lynch, Assistant Attorney General for the Division of Immigration Services, Office of the Attorney General, telephone (670) 664-2366 or facsimile (670) 234-7016.

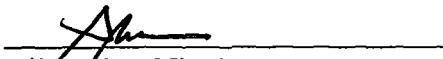
**Citation of Related
and/or Affected Statutes,
Rules and Regulations,
and Orders:**

The emergency amendments affect the Immigration Regulations sections 405 and 1201(B) and Alien Labor Rules and Regulations section XIV.

Submitted by:


Matthew T. Gregory
Attorney General

06/22/06
Date


Gil M. San Nicolas
Secretary of Labor

06/26/06
Date

EMERGENCY AMENDMENTS TO SECTION 1201 OF THE IMMIGRATION REGULATIONS

Immigration Regulation 1201 is hereby repealed and re-enacted to read as follows:

Section 1201. Fees. The following schedule of non-refundable fees shall apply:

A. Vessel or Aircraft Permission to Land	\$100.00
B. Alien Labor 706 (K) New and Renewal Permit	\$ 25.00
C. All Other Entry Permits (applications, extensions, renewals)	\$100.00
D. Alien Registration Card	\$ 25.00
E. Duplicate Copies of Permits, Alien Registration Cards	\$ 25.00

Alien Labor Rules and Regulations section XIV subsection A is amended to read as follows:

- A. An application for a new or renewal LIIDS card (including transfer relief (1) at the conclusion of an Administrative Hearing based on an alleged violation of the Commonwealth labor law, or (2) resulting from a merger, acquisition, reorganization, or incorporation of a business entity) must include a nonrefundable, nontransferable fee as follows:

One Year	\$ 250.00
Transfer Relief	\$ 250.00
Two Years	\$ 500.00

Fees imposed by the Division of Immigration are in addition to the fee for an application for a new or renewal alien worker permit.

**NOTISIAN PUBLIKU POT ENSIGIDAS NA REGULASION YAN
NOTISIAN INTENSION PARA U MA'ADOPTA I MAN
MA'AMENDA NA REGULASION IMIGRASION YAN
AREKLAMENTO YAN REGULASION HOTNALERUN
ESTRANGHERU**

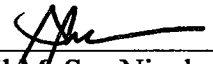
ENSIGIDAS: I Commonwealth I Sankattan Siha Na Islas Marianas, gi Ofisinan I Abugâdu Henerât yan I Dipâtamenton I Hotnaleru masodda na papa I lai 1 CMC Seksiona 9104(b), I interes publiku na marekomenda na manisisita para u maklârifika I tutât I âpas aplikasion yan penan Imigrasion siha ni para u ma'apâsi I Commonwealth Treasury yanggen para u ma'emplea I hotnalerun estrangheru siha. I man hagas na administrasion ma'adopta I areklamento ni ti umafakcha yan I regulasion siha ni ma'adopta ni Dipâtamenton I Hotnaleru yan I Dibision Imigrasion. Sigun I maneran I ekonomia ni ta châchanda mona gi Commonwealth yan ti klâru I estrukturan âpas, nisisârio para u ma'adopta I regulasion ya u ma'aprueba ni todû I dos I Imigrasion yan I Hotnaleru pot para u masângan klâru I manisisita na âpas yanggen para u fan man emplea pat rinueba I petmisun cho'chu' para I hotnalerun estrangheru ni man gai Klasifikasion Imigrasion 706 (K). I Ofisinan I Abugâdu Henerât masodda mâs na I interes publiku ginagagâo I inadoptasion este siha na regulasion gi menos di trenta (30) diha siha na notisia, ya u efektibu este siha na regulasion insigidas despues di mapolu gi Rehistran I Commonwealth, despues di ma'aprueba ni Abugâdu Henerât ya kininfotmen I Gubietno, ya debi di u efektibu para sientu-bente (120) diha siha.

RASON PARA I ENSIGIDAS: Guine ha' gi presente anai maditetmina na I âpas ni marikokohe' ni Dibision Imigrasion man menos kini eyu siha man ma'establesi ginen I regulasion yan I lai, a'annok na sigun I areklamento ni ma'adopta ya makontinua durântên I halacha na atministrasion siha. Yanggen para ta afuetsas I âpas ni ma'tugi' a poposa minapot para I man empleleha gi este ekonomia ni gai chinânda. Sigun I Ofisinan I Abugâdu Henerât yan I Dipâtamenton I Hotnaleru masodda gi interes I publiku, nisisârio na este siha na regulasion u fan ma'aprueba ya ma'adopta ensigidas.

INTENSION PARA U MA'ADOPTA: I intension I Ofisinan I Abugâdu Henerât yan I Dipâtamenton I Hotnaleru para u ma'adopta este siha na amendasion ensigidas para I Regulasion Imigrasion yan I Areklamento yan Regulasion Hotnalerun Estrangheru, petmanente, sigun I lai 1 CMC Seksiona 9104 (a)(1) yan (2). Yanggen hâyi man enteresâo na petsona siña munahalom tinige' opinion pot este ensigidas na rekomendasion siha guatto as Matthew T. Gregory I Abugâdu Henerât, gi Ofisinan I Abugâdu Henerât, gi mina Segundo na bibienda, gi Juan A. Sablan Memorial Building, gi Capitol Hill, giya Saipan MP 96950 pat fax guatto gi (670) 664-2349, osino guatto as Gil San Nicolas, I Sekretârion I Hotnaleru, gi Afetnas Square Building, gi San Antonio, giya Saipan, MP 96950 pat fax guatto gi (670) 236-0990.

Ninahalom as: _____
Matthew T. Gregory
Abugâdu Henerât

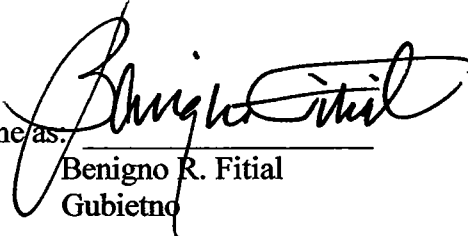
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Gil M. San Nicolas
Sekritarion I Hotnaleru

06/26/06

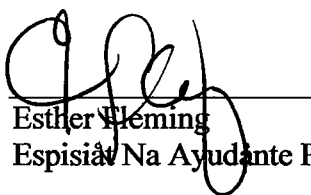
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Kinonfotme/as: 

Benigno R. Fitial
Gubietno

7/20/06

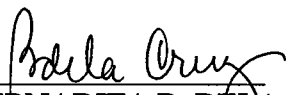
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Maresibe' as: 

Esther Fleming
Espisiâ Na Ayudante Para I Atministrasion

7/18/06

Fecha

Pinelo' yan
Marikot as: 

BERNADITA B. DELA CRUZ
Rehistran I Commonwealth

7-20-06

Fecha

Sigun I lai 1 CMC Seksiona 2153, ni inamenda ni Lai Pupbliku 10-50, I ensigidas na areklamento yan regulasion siha ni man che'che'ton guine esta man ma'ina yan ma'aprueba pot para u fotma yan ligât suficiente ni I Ofisinan I Abugâdu Henerât.

Mafecha este gi mina bente-siette na ha'âne gi Junio, 2006.

Matthew T. Gregory
Abugâdu Henerât

NOTISIAN PUPBLIKU

ENSIGIDAS NA AMENDASION PARA I AREKLAMENTO SIHA GI IMIGRASION YAN GI REGULASION YAN AREKLAMENTON I HOTNALERUN ESTRANGHERU SIHA

Man ma'establesi este siha na amendasion sigun I Akton Areklamenton Atministradot, lai I CMC Seksiona 9101, et. seq. I Ofisinan I Abugâdu Henerât yan I Dipâtamenton I Hotnaleru man ma'amemenda I Areklamento yan Regulasion Hotnalerun Estrangheru ni man mapupblika gi Rehistran I Commonwealth, Baluma 26, Numiru 06, gi Junio bente kuâtto, dos mit kuâtto na sâkkan (June 24, 2004), yan I Regulasion Imigrasion mapupblika gi Rehistran I Commonwealth, Baluma 27, Numiru 02, gi Febreru dies-I-siette, dos mit singko na sâkkan (February 17, 2005).

Annok I Aturidât

I Lai:

I Sekretârion I Hotnaleru ma'aturisa para u establesi regulasion siha ni tineteka I nisisidât para I ma'empleha hotnalerun estrangheru papa I lai 3 CMC Seksiona 4424 (a)(1). I Ofisinan I Abugâdu Henerât ma'aturisa para u establesi regulasion siha para I entrâda yan dipottasion I Estrangheru siha gi hâlom I Commonwealth I Sankattan Siha Na Islas Mariana sigun I Oden Eksekatibu 03-01 yan I lai 3 CMC Seksiona 4312 (d).

Kadada Na Mensâhe

Pot Finiho yan

Diniseha:

I ensigidas na amendasion siha para I Regulasion Imigrasion yan I Areklamento yan Regulasion Hotnalerun Estrangheru Seksiona II siempre a klarifika I âpas ni para u ma'apâsi ni man empleleha yanggen para u fan empleha pat u rinueba I hotnalerun estrangheru siha papa I Immigration Classification 706 (K).

Kadada Na Mensâhe

Pot I Man Mapropone

Na Nuebu Na

Seksiona:

Man ma'establesi ensigidas na amendasion para:

Ma'establesi na I tutât âpas para u machogue I pappet hotnaleru siha pot I petmisun 706 (K) dos sientos singkuenta pesos (\$250). I âpas Imigrasion para I Hotnalerun Estrangheru pot 706 (K) petmisun nuebu pat marinueba bente -singko pesos (\$25). I âpas para I rehistrasion estrangheru ma'omentâyi bente-singko pesos (\$25).

Para Mäs

Infotmasion Ågang: Kevin A. Lynch, Ayudânten I Abugádu Henerát para I Dibision I Setbisiun Imigrasion, gi Ofisinan I Abugádu Henerát, numirun tilifon (670) 664-2366 pat facsimile (670) 234-7016.

Annok I Man Achule'

Yan/pat Inafekta Na

Lai, Areklamento,

Regulasion, yan


Otden Siha:

I ensigidas na amendasion siha a afekta I Regulasion Imigrasion Seksiona 405 yan 1201 (B) yan Areklamento yan Regulasion Hotnalerun Estrangheru XIV.

Ninahalom as:

Matthew T. Gregory
Abugádu Henerát

Fecha



Gil M. San Nicolas
Sékritarion I Hotnaleru



Fecha

**ENSIGIDAS NA AMENDASION PARA I SEKSIONA 1201 GI
REGULSION IMIGRASION SIHA**

RegulSION Imigrasion 1201 madiroga ya matalun otdena pot para u taitai I sigente:
Seksiona 1201. Peña Siha. I sigente siha na âpas ni ti siña mananalu debi di u aplika:

A. Petmisun Bâtko pat Bâtkon Aire Ni Para u Hâlom	\$100.00
B. Petmisun Nuebu pat Marinueba pot Hotnalerun Estrangheru 706 (K)	\$25.00
C. Palu siha Na Petmisun Entrâda (aplikasion, ma'ekstende, rinueba siha)	\$100.00
D. Kâttan Rehistrasion Estrngheru	\$25.00
E. Kopian Duplikasion Petmisu, Kâttan Rehistrasion Estrangheru	\$25.00

Areklamensto yan Regulasion Hotnalerun Estrngheru Seksiona XIV subsection A
ma'amenda pot para u taitai:

- A. I Aplikasion para I nuebu osino marinueba I Kâttan LIIDS (a enklulusu I transfer relief (1) gi risuttan I Administrative Hearing sigun I makontradikta na Lai gi Hotnalerun Commonwealth, pat (2) marisutta ginen linetnun, otganisasion, matalun otganisa I otganisasion, pat Koporasion I bisnis) debi di u enklusu I ti mananalu, ti matransferi na âpas u tinatiyi:

Un Sâkkan	\$250.00
Transfer Relief	\$250.00
Dos Sâkkan	\$500.00

Ma'afuetsas este siha na âpas ni Dibision Imigrasion ma'omentâyi I âpas aplikasion I nuebu pat marinueba na petmisun hotnalerun estrangheru.

**ARONGOL TOULAP REEL GHITIPWOTCHOL ALLÉGH KKAAL ME
AMMATAFAL IGHA EBWE FILLÓÓY LLIWEL KKAAL NGÁLI ALLÉGHÚL
IMMIGRATION ME ALLÉGHÚL ALLIEN LABOR ME AMMWELIL KKAAL**

GHITIPWOTCHOL: Commonwealth Téel Falúwasch Marianas, Bwulasiyool Sów Bwungul Allégh Lapalap me Depattamentool Labor re schungi bwe llól I CMC tálil 9104(b), bwe llól tipeer toulap rebwe mweiti ngáli afattal tittingór (application me óbwóssul immigration iye ebwe mwete ngáli Commonwealth Treasury reel umwuumwul schóól angaang ikka aramasal lúghúl. Mmwal administration kkewe nge e fillooy allegh kka ese tabweey alléghúl Depattamentool Labor me bwulasiyool Immigration. Bwelle reel aweweel ekkonomia mellól Commonwealth me aweweel óbwós iye ese ffat, e ghatch rebwe fillóóy allégh kka e alúghúlúgh mereer Labor me Immigration igha ebwe afattawow yááyál óbwós reel rebwe umwumw me fféer sefál lisensial angaang ngáliir schóól angaang kka aramasal lúghúl ikka relo llól Immigration Classification llól 706 (K). Bwulasiyool Sów Bwungul Allégh Lapalap ebwal schungi bwe llol tipeer toulap bwe rebwe fillóóy allégh kkaal llól eliigh (30) ráálil ammataf yeel, me allégh kkaal ebwe schéschéél kkamalló mwiril schagh atotoolong llól Commonwealth Register,Kapasal igha ebwe alúghúlúghúló mereel Sów Bwungul Allégh Lapalap me Sów Lemelem, nge ebwe allégh llól ebwúghúw ruweigh (120) ráálil.

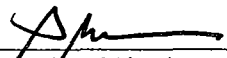
BWÚLÚL GHITIPWOTCH: Bwulasiyool Immigration e schungi bwe óbwós kka rekke bwughi nge eghús schagh mmwal akkaté ye e toowow mereel allégh me aweweel, bwelle reel allégh ye re fillóóy me e sóbwósóbwóló sangi administration kkewe fasúl. Atotoolongol óbwós ye eyoor kkapasal nge e aweiresiir schóól angaang reel aweweel ekkonomia. Schéschéél, Bwulasiyool Sów Bwungul Allégh Lapalap me Depattamentool Labor re schungi bwe llol tipeer toulap bwe allégh kkaal ebwe alúghúlúghúló me kkeyil filló.

AGHIYEGHIL FILLÓ: Bwulasiyool Sów Bwungul Allégh Lapalap e mwuschel bwe Depattamentool Labor ebwe schéschéél fillóóy ghitipwotchol lliwel kkaal ngáli Alléghúl Immigration me Alléghúl Alien Labor, sáangi allégh ye I CMC talil 104 (a) (1) me (2). Schóókka re tipeli nge rebwe ischilong reel Matthew T. Gregory, Sów Bwungul Allégh Lapalap, Bwulasiyool Sów Bwungul Allégh Lapalap, Aruwowal pwo, Juan A. Sablan Memorial Bldg, Capitol Hill, Seipel MP 96950 me ngáre fax reel (670) 664-2349, me ngáre reel Gil San Nicolas, Samwoolul Labor, Bwulasiyool Labor, Afetnas Square Building, San Antonio, Seipel, MP 96950 me ngáre fax reel (670) 236-0990.

Isáliyallong:

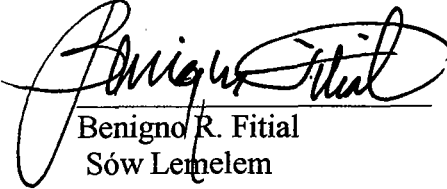
Matthew T. Gregory
Sów Bwungul Allégh Lapalap

Rál


Gil M. San Nicolas
Samwoolul Labor

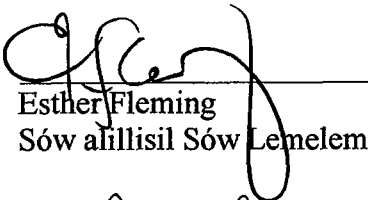
06/26/06
Rál

Alúghúlúgh:


Benigno R. Fitial
Sów Lemelem

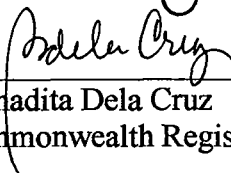
7/30/06
Rál

Mwir sangi:


Esther Fleming
Sów alillisil Sów Lemelem

7/18/06
Rál

Ammwel Sangi


Bernadita Dela Cruz
Commonwealth Register

7/20/06
Rál

Sangi allégh ye I CMC talil 2153, iye aa lliwel mereel Alléghul Toulap 10-50, Alléghúl ghitipwotch kka e appasch nge raa takkal amweri fischiy me alléghéló mereel CNMI Bwulasiyool Sów Bwungul Allégh Lapalap

Rállil ye _____ ótol Alimate, 2006

Matthew T. Gregory
Sów Bwungul Allégh Lapalap

**ARONGOL TOULAP REEL GHITIPWOTCHOL LLIWEL NGÁLI ALLÉGHÚL
IMMIGRATION KKAAL**

Lliwel yeel nge e akkaté bwelle Alléghúl Administrative Procedure Act, I CMC talil 9101 et seq. Bwulasiyool Sów Bwungul Allégh lapalap me Depattamentool Labor re siweli Alléghúl Alien Labor me ammwelil iye aa akkatéwow mellól Commonwealth Register, Vol.26 numero.06, Alimaté 24,2004, me Alléghúl Immigration kka aa akkatééló llól Commonwealth Register, Vol.27, numero 02, Mááischigh 17,2005

Akkatéél Bwángil:

Samwoolúl Labor nge eyoor bwángil ebwe akkaté allégh kkaal bwelle schóól angaang kka aramasal lúghúl rebwe yááyá ngáli allégh ye 3 CMC talil 4424 (a) (1). Bwulasiyool Sów Bwungul Allégh Lapalap nge ebwe mweiti ngali akkatéél Alléghúl atotoolong me assefalil aramasal schóól lúghúl ikka relo llól Commonwealth teel falúwasch Marianas bwelle yaal tingór Sów Lemelem 03-01 me allégh ye 3 CMC talil 4312 (d).

Aweweel Pomwol Allégh:

Ghitipwotchol ssiwel kkaal ngáli Alléghúl Immigration me Alléghúl Alien Labor me Alléghúl kka Talil II ebwe affata óbwóssur school lughul ikka rebwe umwuur me amasawaar alien workers(school angaang kka aramasal lúghúl) ikka relo faal Immigration classification 706 (K).

Aweweel reel Pomwol Talil ye effé:

Ghitipwotchol ssiwel kkaal:

Ebwe ayoora óbwóssul Labor 706 (K) igha ebwe mwoghut ágheli lisensia ye \$250.00. Óbwóssul Immigration ngáliir Alien Labor 706 (K) ikka re ffé me ikka ebwe fféer sefál yaar lisensia nge \$25.00 Óbwóssul alien registration nge e sóbweey ngáli \$25.00.

Reel ammataf: faingi:

Kevin A. Lynch, Sów alillisil Sów Bwungul Allégh
Lapalap llól Bwulasyool Immigration, tilifoon (670) 664-
2366 me ngáre facsimile (670) 234-7016


Akkatéél akkááw pomwol Allégh:

Ghitipwotchol ssiwel kkaal nge ebwe fisch Alléghúl
Immigration táilil 405 me 1201 (B) me Alléghúl Alien
Labor Talil XIV.

Issaliyallong:

Matthew T. Gregory
Sów Bwungul Allégh Lapalap

Rál


Gil M. San Nicolas
Samwoolul Labor


Rál

**GHITIPWOTCHOL LLIWEL KKAAL NGÁLI
TÁLIL 1201 LLÓL ALLÉGHÚL IMMIGRATION**

Alléghúl Immigration 1201 nge ekke fféer sefál me allégh sefál tálil kkaal:
Tálil 1201. óbwós. Tálil kkaal nge e non-refundable nge rebwe tabweey:

A: Óbwóssul waa me ngáre Aircraft \$100.00 (Ebwughúw dóola)

B: Alien Labor 706 (k) fféer sefál me féer sefál llsensia \$25.00

C: Akkáaw lisensial atotoolong (applications, extensions, renewals) \$100.00

D: Alien Resgistration Card: \$25.00

E: Kkopial Lisensia, Alien Registration Cards kka e duplicate \$25.00

Alléghúl Alien Labor me Alléghúl Tálil XIV Tálil A nge aa lliweló igha rebwe árághi:

A: Schéél tingór (application) reel mille e ffé me ebwe féer sefál LIIDS Card (ebwal toolong Transfer relief (1) sáangi administrative hearing iye e bwáári féfféer ngów mellól Commonwealth Labor Law, me ngáre (2) e tooto mereel merger, acquisition, reorganization, me ngáre atotooolongol business entity ebwe ayoora nonrefundable, nontransferable fee ikka elo faal:

Eew ráágh \$250.00

Transfer relief \$250.00

Ruwoow Ráágh \$500.00

Óbwós ye Bwulasiyool Immigration e ayoora nge ebwal toolong óbwóssul application (schéél tingór) ngáli mil ffé me fféer sefál lisensial schóól angaang kka aramasal lúghúl.

Commonwealth of the Northern Mariana Islands
Commonwealth Utilities Corporation

Anthony C. Guerrero, Acting Executive Director
PO Box 501220, CK
3rd Floor, Joeten DanDan Building
Saipan MP 96950-1220
telephone: (670) 236-7025 facsimile (670) 235-6975

PUBLIC NOTICE

**NOTICE OF FINDINGS AND STATEMENT OF REASONS FOR
EMERGENCY ADOPTION OF AMENDMENTS TO THE ELECTRIC SERVICE
REGULATIONS OF THE COMMONWEALTH UTILITIES CORPORATION**

(Amendments to Part 24 of the CUC Electric Service Regulations: Rate Schedules)

EMERGENCY ADOPTION AND IMMEDIATE EFFECT: The Commonwealth of the Northern Mariana Islands, COMMONWEALTH UTILITIES CORPORATION, by and through the Acting Executive Director, Anthony C. Guerrero, finds that, (1) pursuant to 1 CMC § 9104(b), the public interest and the need to prevent imminent peril to the public health, safety or welfare requires the adoption of the attached regulations without prior notice or hearing, and (2) that pursuant to 1 CMC § 9105(b)(2) the public interest and the need to prevent imminent peril to the public health, safety or welfare requires that the amended regulations be effective upon filing with the Registrar of Corporations and mailing, and as the Governor concurs.

Because of the findings set forth herein and the filing directed below, these Regulations shall become effective immediately, pursuant to 1 CMC § 9105(b)(2).

AUTHORITY: CUC is empowered and required to review and establish utility rates and other fees for water, sewer, and electrical power (4 CMC § 8123(m) and (o), as amended by Executive Order 2006-4), provided that the rate structure for utility services is sufficient to recover the costs associated with the operation, maintenance, transmission, generation and delivery of utility services (4 CMC § 8141, as amended by Executive Order 2006-4). CUC is further empowered and required to adopt regulations to carry out CUC's purposes (4 CMC § 8157, as amended by Executive Order 2006-4). The adoption of emergency regulations is further authorized by the CNMI Administrative Procedure Act (APA) (1 CMC § 9105(b)(2)).

SUMMARY: The amendment to the CUC Electric Service Regulations, Part 24 Rate Schedules, as set forth herein, implement an adjustment of the utility rate structure as allowed and required by 4 CMC § 8143(b), as amended by Executive Order 2006-4, and pursuant to 1 CMC § 9105(b)(2) of the CNMI APA. The amendment of the CUC Electric Service Regulations is in accordance with the recommendations and findings set forth in a comprehensive electric, sewer and wastewater rate study prepared for CUC by Economists.com. The amendment of CUC's rate structure is necessary to recover the actual costs associated with the delivery of utility services as mandated by 4 CMC § 8123 (m)-(o), as amended by Executive Order 2006-4. The Fuel Surcharge Fee, made effective on February 27, 2005 as Part 24.5.8 of the CUC Electric Service Regulations, shall be rescinded as of the effective

date of the amendments to Part 24 of the CUC Electric Service Regulations set forth herein in accordance with the mandate of Executive Order 2006-4, Section 3.

The regulations set forth herein, therefore, shall be effective upon filing with the Registrar of Corporations and mailing, and as the Governor concurs.

These Regulations shall be amendments to the CUC Electric Service Regulations. They shall be included in the Electric Service Regulations as an amendment to Part 24: "Rates Schedules" (Vol. 21, No. 8, Commonwealth Register (August 23, 1999), p. 16904, and Vol 21, No. 01 (Jan. 18, 1999), p. 16449 (proposed reg)).

The emergency regulations set forth herein shall also be published as proposed regulations, and public hearings will be scheduled and held in each senatorial district in accordance with the procedural requirements of 1 CMC § 9104 and 4 CMC § 8142 as amended by Executive Order 2006-4 during this time and prior to the publication of a Notice of Final Adoption and Certification of Amendments to Part 24 of the CUC Electric Service Regulations.

REASONS FOR EMERGENCY ADOPTION: The public interest requires adoption of these regulations on an emergency basis for the following reasons:

In September 2005, CUC engaged Economists.com to conduct a comprehensive electric water and wastewater rate study. Like many utilities throughout the Pacific Rim and the United States, CUC was severely affected by the sudden increase in fuel costs in the 2004-2005. In April 2005, CUC implemented an emergency fuel surcharge of 3.5 cents per kilowatt-hour (kWh) for its electric customers. Prior to this action, the last time CUC increased electric rates was in 1989. The purpose of the rate study was to provide CUC and the CNMI Government the critical information required to set a current and long-term rate policy that will recover sufficient revenues to fund operating and capital obligations while minimizing the impact on the ratepayers.

During the past decade, while CUC's electric water and wastewater rates have remained unchanged, such factors as fuel costs, inflation, general increases in the costs of doing business, federal regulations and the need to repair aging systems have led to substantial increases in electric rates at other utilities throughout the United States and the Pacific Rim. CUC's electric rate has remained unchanged except for the fuel surcharge in May 2005 and the water/wastewater rates have not increased at all. The general inflation rate during this period has been 28.3%, but more importantly, **the price of oil**, the driver of the price of No. 2 Diesel fuel that CUC uses for electric generation, has **increased by Two Hundred Thirty-Three Percent (233%)**.

CUC's annualized cost for No. 2 Diesel fuel, therefore, increased from \$27.5 Million in Fiscal Year 2002 to \$60 million in Fiscal Year 2005, **an increase of One Hundred Eighteen percent (118%)**. These costs have increased even further in Fiscal Year 2006 as the price of oil and the price of No. 2 Diesel fuel continues to rise. The cost of production of electricity currently exceeds revenue generated from the sale of electricity to customers. (See Attachment: Executive Summary Electric Rate Study – July 2006 Update).

Beginning in July 2006, CUC will be unable to pay the costs of operating, maintaining, and delivering utility services. Without full cost recovery through an adjustment of its utility rate structure based on

an accurate analysis of the actual costs of power generation and delivery, CUC will be unable to provide power for such necessary services as water pumping and treatment, sewage pumping and treatment, electric service to CHC, to schools, clinics and homes, and to companies that produce drinking water. CUC will also be unable to provide electricity to public safety facilities, to communications facilities, and to its business customers. These conditions present an extreme, immediate and imminent peril to the public health safety and welfare. The adjustment of the utility rate structure is necessary to allow CUC to recover the actual costs of delivering utility services and to insure the continued provision of power to critical CNMI public health and safety facilities, to schools, homes, and work places, and to the CNMI's water and wastewater systems.

Thus, it is in the public interest to implement these regulations as emergency regulations effective immediately. It is also necessary to implement these regulations as emergency regulations effective immediately to avoid an imminent peril to the public, health, safety or welfare.

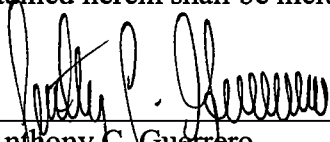
INTENT TO ADOPT AS PERMANENT: It is the intent of CUC, pursuant to 1 CMC § 9104(b), to adopt these Emergency Regulations as permanent regulations, pursuant to the procedures of 1 CMC § 9104(a)(1) and (2), with publication in the Commonwealth Register. An appropriate Notice shall be published. Public hearings will be held in each of the respective senatorial districts prior to the final adoption of these regulations as required by 4 CMC § 8142, as amended by Executive Order 2006-4.

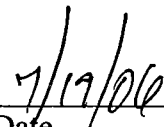
DIRECTIONS FOR FILING AND PUBLICATION: These Regulations shall be filed with the Registrar of Corporations, and copies mailed under registered cover to the Governor in compliance with the provisions of 1 CMC 9105(b)(2). This Notice and these findings shall be filed with the regulation and CUC shall take appropriate measures to make these emergency regulations known to the persons who may be affected by them as mandated by 1 CMC 9105(b)(2), including publication in the next edition of the Commonwealth Register.

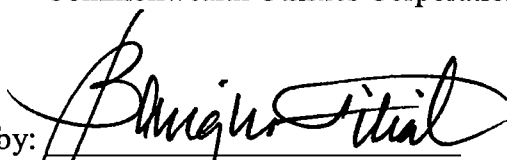
FOR FURTHER INFORMATION CONTACT: Anthony C. Guerrero, Acting Executive Director, Commonwealth Utilities Corporation, P.O. Box 501220, CK, 3rd Floor Joeten Dandan Building, Saipan MP 96950-1220, Telephone (670) 235-7025, Facsimile (670) 235-6925

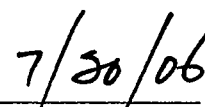
CITATION of RELATED and/or AFFECTED STATUTES, REGULATIONS and ORDERS:

Part 24.1 of the CUC Electric Service Regulations shall be repealed and replaced. Part 24.5.8, the Fuel Surcharge Fee, shall be rescinded. The remaining amendments to the CUC Electric Service Regulations contained herein shall be included as a new Part 24.6.


Submitted by: 
Anthony C. Guerrero
Acting Executive Director
Commonwealth Utilities Corporation


Date

Concurred by: 
Benigno R. Fitial
Governor, CNMI


Date


Filed and
Recorded by:


BERNADITA B. DE LA CRUZ
Commonwealth Registrar

7.20.06
Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3) the emergency regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published pursuant to 1 CMC § 2153(f) in the Commonwealth Register.

Dated the 21st day of July 2006.


MATTHEW T. GREGORY
Attorney General

AMENDMENTS TO REGULATIONS OF THE COMMONWEALTH UTILITIES CORPORATION

AMENDMENTS TO PART 24 of the ELECTRIC SERVICES REGULATIONS OF THE COMMONWEALTH UTILITIES CORPORATION

Part 24, *Rate Schedules*, is hereby amended as follows:

Part 24. Rate Schedules

A. Part 24.1 shall be repealed and a new Part 24.1 shall be added as follows:

~~24.1 The CUC may develop and implement rate schedules segregated into customer categories. Implementation of such rate schedules shall be in accordance with Public Law No. 4-47, as amended. Current rate schedules are in accordance with Public Law 3-11, as amended.~~

24.1 CUC shall establish rates and charges for electric service in a fair and rational manner for all consumers of electricity so that CUC will be financially independent of all appropriations by the Commonwealth Legislature as required by 4 CMC § 8140, as amended by Executive Order 2006-4. Electric rates and charges established by CUC shall be sufficient to recover all costs associated with the administration, operation, maintenance, transmission, generation, and delivery of electric service as required 4 CMC § 8141(c), as amended by Executive Order 2006-4. The term “costs” shall include adequate financial reserves for any debt associated with electric service and for the replacement of obsolete, worn-out, or damaged equipment as required 4 CMC § 8141, as amended by Executive Order 2006-4. These electric rates and charges shall take effect immediately upon compliance with the Administrative Procedures Act, 1 CMC § 9101 *et. seq.*

B. Part 24.5.8 shall be repealed in its entirety:

~~24.5.8 CUC fuel costs shall be recovered through the base electric rates and through the methodology provided in this regulation for the initial and subsequent years’ annual fuel surcharge fee (FSF) and a monthly fuel surcharge adjustment (MFSA). The FSF shall take effect immediately upon compliance with the Administrative Procedures Act, 1 CMC § 9101 *et. seq.*~~

~~24.5.8.1 The purpose of the FSF is to pass through to all consumers of CUC electricity, increases and decreases in fuel costs for the production of electricity, which are above or below the base rate allocation for fuel.~~

~~24.5.8.2 The methodology in this regulation allows for discounts or reductions below the annual FSF ceiling.~~

~~24.5.8.3 The initial FSF shall take effect for the remainder of the current calendar year in which this regulation becomes effective. The initial FSF is computed as follows (see EXHIBIT, Formula No. 1) and shall not exceed \$0.03500 per kilowatt hour (kWh):~~

- ~~Actual year-to-date and any projected remaining year fuel costs for the current calendar year.~~
- ~~Divided by actual year-to-date and any projected remaining year electric sales, in kWh, for the current calendar year,~~
- ~~Minus the base rate allocation for fuel costs.~~

~~24.5.8.4 The FSF for subsequent years is computed as follows (see EXHIBIT, Formula No. 2) and shall not exceed the previous year's FSF by more than \$0.02000 per kilowatt hour (kWh) for those consumers using less than 2,001 KWH per month:~~

- ~~Projected fuel costs for the target year.~~
- ~~Plus and adjustment for the preceding year's under /over recovery of fuel costs.~~
- ~~Divided by estimated electric sales, in kWh, for the target year,~~
- ~~Minus the base rate allocation for fuel costs.~~

~~24.5.8.5 The MFSA is computed as follows(see EXHIBIT, Formula No. 3):~~

- ~~Projected fuel cost for the target month.~~
- ~~Plus an adjustment for any prior months' under /over recoveries.~~
- ~~Divided by estimated electric sales, in kWh, for the target month.~~
- ~~Minus the base rate allocation for fuel costs.~~
- ~~Limited by the annual FSF ceiling.~~

~~24.5.8.6 Base rate allocation for fuel costs. The rates per kWh for electrical service include a base rate allocation for fuel cost of \$0.05493.~~

~~24.5.8.7 The Comptroller shall calculate the initial and subsequent years' annual FSF and each MFSA and prescribes the accounts, the forms, and the details of the calculation required to implement the computations required in this regulation.~~

~~24.5.8.8 The fuel costs, which are subject to cost recovery, include only production fuel for the generation of electricity.~~

~~24.5.8.9 Any difference between the actual fuel costs and FSF revenues shall be accumulated in a deferred account(s) and shall be subject to an annual reconciliation. Any over or under recovery of fuel costs will be included in the next annual FSF.~~

~~24.5.8.10 No interest shall be paid on the balance in the deferred account(s).~~

~~24.5.8.11 Each customer's monthly bill shall show separately the base electric rate charge and the fuel charge adjustment.~~

~~24.5.8.12 Public notice and hearings or workshops. The Comptroller shall provide public notice of the monthly and annual calculations, present the methodology, take comments, and arrange for workshops that may be attended by the customers and other members of the public.~~

C. A new Part 24.6 shall be added as follows:

24.6 Customer Classifications: These regulations develop and implement rate and charge schedules segregated into the following customer classifications:

- Residential.
- Commercial.
- Government.
- Non-Conforming Load.

24.6.1 The Non-Conforming Load classification is defined as any customer with a maximum demand of at least 3,000 kilowatts (kW) in the preceding twelve (12) calendar months and daily operations where the ratio of the maximum demand to the minimum demand exceeded three (3), three times in any 30-day period during the preceding 12 calendar months.

24.6.2 Non-profit organizations, as defined by CUC Electric Service Regulations, paragraph 24.5.7, shall have the option to consult with CUC and elect to be billed at either the residential or commercial rates, whichever is more beneficial to the organization. Changes between customer classification rate schedules shall be made in accordance with CUC Electric Service Regulations, Part 24. Rate Schedules.

24.6.3 Rates and Charges: CUC costs shall be recovered through the following rates and charges: Monthly Customer Charges; Electric Non-Fuel Rates; and Electric Fuel Rates.

24.6.3.1 Monthly Customer Charges.

24.6.3.1.1 CUC shall institute a monthly customer charge schedule for each customer classification as a minimum monthly flat-rate charge, with no credit for usage (see EXHIBIT 1, Page 1 of 2).

24.6.3.1.2 The monthly customer charge shall recover a portion of the costs directly associated with serving customers, irrespective of the amount of electric usage. Such costs are for meter reading, billing, accounting, and collecting and for maintaining and providing capital costs related to meters, equipment, and associated services.

24.6.3.2 Electric Non-Fuel Rates.

24.6.3.2.1 CUC shall institute an electric non-fuel rate schedule for each customer classification, under which consumers shall be billed based on the number of kilowatt-hours (kWh) of electricity consumed during the billing period (see EXHIBIT 1, Page 1 of 2).

24.6.3.2.2 The electric non-fuel rates shall pass through monthly, to all consumers of CUC electricity, approximately one-twelfth (1/12) of all CUC annual operating costs associated with electric service; excluding the cost of

production fuel and lubricating oils and those costs that are recovered through the monthly customer charge.

- 24.6.3.2.3 For residential customers, an inverted block rate schedule, with four (4) rate levels, shall be established. Each successive rate level shall have a higher rate per kWh than the previous level, as distinguished by ascending levels of consumption. Total usage will be applied first to the lowest level of the block rate (001 to 500 kWh). For any usage that is above 500 kWh and up to 1,000 kWh shall be billed at the second rate level. Any usage that is above 1,000 kWh and up to 2,000 kWh shall be billed at the third rate level. Any and all usage above 2,000 kWh shall be billed at the fourth level. The inverted block method provides an effective means of promoting conservation when CUC lacks sufficient generating capacity to provide constant reliable electric service to all of its customers. Further, the first (lowest) rate level within the schedule provides a lifeline rate for consumers that use 500 kWh or less of electricity during a billing period. Refer to EXHIBIT 1, Pages 1 and 2, for examples of how CUC would compute the monthly non-fuel charges for residential customers.
- 24.6.3.2.4 For commercial, government, and non-conforming load customers, separate rate schedules shall be established having only one (1) rate level for each customer classification. Customers within these three (3) classifications shall be charged at the respective rates per kWh. Refer to EXHIBIT 1, Page 2 of 2, for examples of how CUC would compute the monthly non-fuel charges for commercial customers.
- 24.6.3.2.5 The charges based on electric non-fuel rate(s) and the monthly customer charge shall be combined and appear as a separate item, "electric non-fuel charges," on the monthly customer billing statement.
- 24.6.3.2.6 The non-fuel rates and monthly customer charges shall remain in effect for approximately one (1) year from the date of this regulation, unless unanticipated circumstances warrant the need to adjust the rates and charges sooner. Prior to the expiration of the one (1) year period, and each year thereafter, CUC shall commission a review to determine if the non-fuel rates and monthly customer charges should increase or decrease or remain the same.
- 24.6.3.2.7 The CUC Chief Financial Officer shall provide public notice of any adjustments to the electric non-fuel rates and the monthly customer charges, maintain on file the methodology used to determine the rates and charges, take comments, and arrange for public hearings and workshops, as needed, which may be attended by the customers and other members of the public.
- 24.6.3.3 Electric Fuel Rate: CUC shall institute an electric fuel rate schedule, under which all consumers shall be billed based on the number of kilowatt-hours (kWh) of electricity consumed during the billing period (see EXHIBIT 1, Page 1 of 2). The

charge per kWh will be the same for all customer classifications, regardless of the level of consumption.

24.6.3.3.1 The electric fuel rate shall pass through to all consumers of CUC electricity, the monthly fuel costs for generating electricity. Fuel costs subject to cost recovery shall include only production fuel and lubricating oils. Accordingly, the electric fuel rate may increase or decrease or remain the same from month-to-month.

24.6.3.3.2 The electric fuel rate shall take effect on the date that this regulation becomes effective and shall remain in effect through August 31, 2006. The interim electric fuel rate shall be \$0.215 per kWh, as determined by the recent electric rate study. Thereafter, the CUC Chief Financial Officer shall calculate an initial electric fuel rate for September 2006 and for each month thereafter, compute the subsequent months' electric fuel rate.

24.6.3.3.3 On the first day of each month, CUC shall announce the electric fuel rate that will be in effect for that month. If the first day of the month falls on a Saturday, Sunday, or holiday, the new fuel rate will be announced on the first business day thereafter. Regardless of when announced, the rate shall be in effect from the first day through the last day of each month.

24.6.3.3.4 Because CUC monthly billing periods generally overlap portions of two (2) months, e.g. September 12 through October 13, the fuel rate shall be applied on a pro rata basis according to the number of days each month's usage (September and October) is to the total number of days in the billing period. In the example above, the billing period consists of 31 days, of which 18 days (rounded to 58 percent or .58) are in September and 13 days (rounded to 42 percent or .42) are in October. For illustration purposes, assume that electric consumption for the 31-day period is 2,345 kWh and electric fuel rates were \$0.222 per kWh for September and \$0.216 for October. Thus, the electric fuel charges for the billing period would be \$514.68, which is computed as follows:

For September, multiply 2,345 kWh times .58 times \$0.222, which equals \$301.94 For October, multiply 2,345 kWh times .42 times \$0.216, which equals \$212.76. Next, add the two amounts (\$301.94 plus \$212.74) for the total charges, which equals to \$514.68. (see EXHIBIT 2)

Computations:

2345	x	.58	x	.222	=	\$301.94
2345	x	.42	x	.216	=	<u>\$212.74</u>
301.94	+	212.76			=	\$514.68

- 24.6.3.3.5 The charges based on the electric fuel rate shall appear as a separate item, “electric fuel charges” on the monthly customer billing statement.
- 24.6.3.3.6 The methodology in this regulation provides for the computation of the initial and subsequent months’ electric fuel rates (see EXHIBIT 3).
- 24.6.3.3.7 The initial electric fuel rate shall be computed as follows (see EXHIBIT 3, Formula No. 1 and Example of Computation of Initial Fuel Rate):
- Projected fuel costs for September 2006
 - Divided by projected sales, in kWh, for September 2006.
- 24.6.3.3.8. The subsequent months’ electric fuel rate shall be computed as follows (see Formula No. 2 (EXHIBIT 3, page 1 of 2) and Example of Computation Subsequent Months’ Fuel Rate (EXHIBIT 3, page 2 of 2)):
- Projected fuel costs for the target month.
 - Plus or minus any adjustment for the preceding month’s under- or over-recovery of fuel costs.
 - Divided by projected sales, in kWh, for the target month.
- 24.6.3.3.9 Computation of the under- or over-recovery of fuel costs shall be as follows: Previous target month’s actual fuel costs minus (previous target month’s actual sales, in kWh, multiplied by the previous target month’s fuel rate per kWh) (see Formula No. 2 (EXHIBIT 3, page 1 of 2) and Example of Subsequent Months’ Fuel Rate (EXHIBIT 3, page 2 of 2)).
- 24.6.3.3.10 Any difference between the actual fuel costs and the electric fuel rate revenues shall be accumulated in a deferred account and shall be subject to annual reconciliation. No interest shall be charged or paid on any under- or over-recovery balance in the deferred account.
- 24.6.3.3.11 The CUC Chief Financial Officer shall be responsible for calculating the initial and subsequent months’ electric fuel rates; maintain on file the methodology used to determine the fuel rates; prescribe the accounts, forms, and details of the calculations; and provide public notice of the monthly electric fuel rates.
- 24.6.3.3.12 The CUC Executive Director or designated representative shall approve the initial and all subsequent months’ electric fuel rates before they are published and implemented.

EXHIBIT 1

**COMMONWEALTH UTILITIES CORPORATION
SCHEDULE OF ELECTRIC CHARGES AND RATES**

CUSTOMER CLASSIFICATIONS	MONTHLY CUSTOMER CHARGES	RATES PER KILOWATT-HOUR (kWh)		
		ELECTRIC NON-FUEL RATES	ELECTRIC FUEL RATES	TOTAL RATES PER kWh
RESIDENTIAL	\$ 5.60			
1 To 500 kWh		\$ 0.016	\$ 0.215	\$ 0.231
501 To 1,000 kWh		0.066	0.215	0.281
1,001 To 2,000 kWh		0.086	0.215	0.301
Over 2,000 kWh		0.127	0.215	0.342
COMMERCIAL (All kWh Billed)	7.67	0.086	0.215	0.301
GOVERNMENT (All kWh Billed)	7.67	0.091	0.215	0.306
NON-CONFORMING LOAD (All kWh Billed)	\$ 56.00	\$ 0.222	\$ 0.215	\$ 0.437

COMPUTATIONS OF MONTHLY BILLINGS FOR RESIDENTIAL AND COMMERCIAL CUSTOMERS;

Assume RESIDENTIAL CUSTOMER consumed 2,345 kWh during current billing period.

Non-Fuel (Monthly Customer Charge and Usage Charges):

Monthly Customer Charge			\$	5.60
		Rate		
Non-Fuel Usage Charges:		per kWh	Usage	
001 to 500 kWh	\$	0.016	500	8.00
501 to 1,000 kWh		0.066	500	33.00
1,001 to 2,000 kWh		0.086	1,000	86.00
Over 2,000 kWh		0.127	345	43.82
Electric Non-Fuel Charges (shown on billing statement)			\$	176.42
Electric Fuel Charges (prorated)	\$0.222 / \$0.216		2,345	514.68
(shown on billing statement)	(see EXHIBIT 2)			
TOTAL ELECTRIC CHARGES ON BILLING STATEMENT			\$	<u>691.10</u>

Assume COMMERCIAL CUSTOMER consumed 2,345 kWh during current billing period.

Non-Fuel (Monthly Customer Charge and Usage Charges):

Monthly Customer Charge			\$	7.67
		Rate		
Non-Fuel Usage Charges:		per kWh	Usage	
All kWh used during billing period	\$	0.086	2,345	201.67
Electric Non-Fuel Charges (shown on billing statement)	\$			209.34
Electric Fuel Charges	\$0.212 / \$0.216		2,345	514.68
(shown on billing statement)	(see EXHIBIT 2)			
TOTAL ELECTRIC CHARGES ON BILLING STATEMENT			\$	724.02

EXHIBIT 2

**COMPUTATION OF MONTHLY ELECTRIC FUEL CHARGES
PRORATING CHARGES BETWEEN MONTHS
REFERENCE REGULATIONS, PART 24.6.3.3.4**

EXAMPLE FOR A BILLING PERIOD OF SEPTEMBER 12 TO OCTOBER 13, 2006 WITH THEORETICAL ELECTRIC FUEL RATES.

	<u>DATES</u>	<u>BILLING PERIOD NO. DAYS</u>	<u>PERCENT (Rounded)</u>	<u>METER READING</u>
PREVIOUS READING	12-Sep-06	18	58	71606
CURRENT READING	13-Oct-06	<u>13</u>	<u>42</u>	<u>73951</u>
TOTAL		31	100	
TOTAL MONTHLY USAGE				2,345 kWh

TOTAL MONTHLY USAGE				2,345 kWh
<u>MONTH</u>	<u>MONTHLY FUEL RATE (per kWh)</u>	<u>PERCENT (Rounded)</u>	<u>PRO RATA USAGE (kWh)</u>	<u>MONTHLY FUEL CHARGES</u>
SEPTEMBER	\$ 0.222	58	1,360	\$ 301.94
OCTOBER	\$ 0.216	<u>42</u>	<u>985</u>	<u>212.74</u>
TOTAL		100	2,345	
ELECTRIC FUEL CHARGES				<u>\$ 514.68</u>

**FORMULAE FOR THE COMPUTATION OF
MONTHLY ELECTRIC FUEL RATE**

Formula No. 1:

The initial Electric Fuel Rate shall be computed as follows:

$$\text{Electric Fuel Rate (Initial)} = \frac{A}{B}$$

A = CUC projected fuel costs for the month of September 2006.

B = CUC projected sales, in kilowatt-hours (kWh), for the month of September 2006.

Formula No. 2:

The subsequent months' Electric Fuel Rate shall be computed as follows:

$$\text{Electric Fuel Rate (Subsequent Months)} = \frac{C \text{ +/- } D}{E}$$

C = CUC projected fuel costs for the target month.

D = CUC under- or over-recovery of fuel costs for the preceding month.
(Calculation: Previous target month actual fuel costs minus (previous target month actual sales, in kWh, times previous target month fuel rate per kWh).)

E = CUC projected sales, in kWh, for target month.

Example of how the Initial Electric Fuel Rate might be computed for the month of September 2006:

Assume: September 2006 projected fuel costs of \$7.1 million and projected electric sales of 32 million kWh.

$$\text{Electric Fuel Rate (Initial)} = \frac{\$7,100,000}{32,000,000 \text{ kWh}} \quad \text{or} \quad \$0.222 \text{ per kWh (rounded to nearest 1/10 cent)}$$

Example of how a Subsequent Month's Electric Fuel Rate might be computed for any subsequent (target) month after September 2006:

Assume: Target month (October 2006) projected fuel costs of \$7,200,000 and electric sales of 32,500,000 million kWh.

Assume: Previous target month (September 2006) actual fuel costs of \$7,040,000, actual electric sales of 32,500,000 kWh, and fuel recovery charge \$0.222 per kWh.

$$\begin{array}{l} \text{Electric Fuel Rate} = \frac{\$7,200,000 - \$175,000}{32,500,000 \text{ kWh}} \quad \text{or} \quad \$0.216 \text{ per kWh} \\ \text{(Subsequent Months)} \end{array} \quad \text{(rounded to nearest 1/10 cent)}$$

[Actual fuel costs of \$7,040,000 minus (actual sales of 32,500,000 kWh multiplied by fuel rate of \$0.222 per kWh). This results in an over-recovery of fuel costs in the amount of \$175,000, which then must be subtracted from the projected fuel costs for the target month (October 2006). Conversely, had an under-recovery of fuel costs occurred, this amount would be added to the projected fuel costs for the target month.]]

D. Part 24 of the CUC Electric Service Regulations, "Rate Schedules," shall now read as follows:

Part 24. Rate Schedules

24.1 CUC shall establish rates and charges for electric service in a fair and rational manner for all consumers of electricity so that CUC will be financially independent of all appropriations by the Commonwealth Legislature as required by 4 CMC § 8140, as amended by Executive Order 2006-4. Electric rates and charges established by CUC shall be sufficient to recover all costs associated with the administration, operation, maintenance, transmission, generation, and delivery of electric service as required 4 CMC § 8141(c), as amended by Executive Order 2006-4. The term "costs" shall include adequate financial reserves for any debt associated with electric service and for the replacement of obsolete, worn-out, or damaged equipment as required 4 CMC § 8141, as amended by Executive Order 2006-4. These electric rates and charges shall take effect immediately upon compliance with the Administrative Procedures Act, 1 CMC § 9101 et. seq.

24.2 The CUC's rate schedules shall be interpreted and applied by the CUC for each customer's service requirements in accordance with the terms and conditions of such rate schedules and the size and characteristic of such service requirements, as these are determined from time to time.

24.3 A customer who is adversely affected by the application of any rate or charge for electric service may challenge the rate or charge, and if the customer and the CUC do not reach agreement, the matter shall be adjudicated in accordance with Administrative Procedures Act (1CMC 9108 et. seq.).

24.4 If a customer elects to change to another appropriate and applicable rate schedule, the change shall be made provided:

24.4.1 A change has not been made within the past twelve (12) month period; or

24.4.2 The change is made to, or from, new or revised rate schedules; or

24.4.3 There has been a change in the customer's operating conditions for that service which, in the opinion of the CUC, justifies a change and:

24.4.3.1 The change is not made more often than once in twelve (12) months; and

24.4.3.2 The customer has made the request by written notice to the CUC. The change shall become effective for the billing period during which the customer has requested the change.

24.5.1 Residential customers are those who purchase power for use in a single family house or an apartment. In the case of an apartment house which has on meter for the entire building or has one service for the entire building which is on a flat rate schedule, the building is considered a residential building and qualifies for the residential rate.

24.5.2 If a building has separately metered apartments, and part of the building is commercial which is separately metered or on a flat rate schedule, the apartments shall be classified residential.

24.5.3 An apartment building with one service entrance serving the entire building, whether the building is metered or on a flat rate schedule, where there is a commercial business located in the building, the entire building is commercial.

24.5.4 Buildings which are used for housing workers (barracks or houses), where the power is purchased and paid for by a commercial business for profit, shall be classified as commercial. Buildings used by non-profit charitable corporations or organizations, except in the case of a commercial, for profit business owned or operated by a religious organization, shall be classified as residential. (Part 24.5.4 Amended August 16, 1996)

24.5.5 A residence which includes a commercial business shall be classified as commercial.

24.5.6 A commercial customer is defined as such if a business license is required for the business operation.

24.5.7 A non-profit organization is defined as such if it provides CUC with written determination of tax exempt status from the Commonwealth Division of Revenue and Taxation that it qualifies as a charitable organization under Sections 501 and 503(c) of the Northern Marianas Territorial Income Tax or proof that it is not required to file for such a determination.

24.6 Customer Classifications: These regulations develop and implement rate and charge schedules segregated into the following customer classifications:

- Residential.
- Commercial.
- Government.
- Non-Conforming Load.

24.6.1 The Non-Conforming Load classification is defined as any customer with a maximum demand of at least 3,000 kilowatts (kW) in the preceding twelve (12) calendar months and daily operations where the ratio of the maximum demand to the minimum demand exceeded three (3), three times in any 30-day period during the preceding 12 calendar months.

24.6.2 Non-profit organizations, as defined by CUC Electric Service Regulations, paragraph 24.5.7, shall have the option to consult with CUC and elect to be billed at either the residential or commercial rates, whichever is more beneficial to the organization. Changes between customer classification rate schedules shall be made in accordance with CUC Electric Service Regulations, Part 24. Rate Schedules.

24.6.3 Rates and Charges: CUC costs shall be recovered through the following rates and charges: Monthly Customer Charges; Electric Non-Fuel Rates; and Electric Fuel Rates.

24.6.3.1 Monthly Customer Charges.

24.6.3.1.1 CUC shall institute a monthly customer charge schedule for each customer classification as a minimum monthly flat-rate charge, with no credit for usage (see EXHIBIT 1, Page 1 of 2).

24.6.3.1.2 The monthly customer charge shall recover a portion of the costs directly associated with serving customers, irrespective of the amount of electric usage. Such costs are for meter reading, billing, accounting, and collecting and for maintaining and providing capital costs related to meters, equipment, and associated services.

24.6.3.2 Electric Non-Fuel Rates.

24.6.3.2.1 CUC shall institute an electric non-fuel rate schedule for each customer classification, under which consumers shall be billed based on the number of kilowatt-hours (kWh) of electricity consumed during the billing period (see EXHIBIT 1, Page 1 of 2).

24.6.3.2.2 The electric non-fuel rates shall pass through monthly, to all consumers of CUC electricity, approximately one-twelfth (1/12) of all CUC annual operating costs associated with electric service; excluding the cost of production fuel and lubricating oils and those costs that are recovered through the monthly customer charge.

24.6.3.2.3 For residential customers, an inverted block rate schedule, with four (4) rate levels, shall be established. Each successive rate level shall have a higher rate per kWh than the previous level, as distinguished by ascending levels of consumption. Total usage will be applied first to the lowest level of the block rate (001 to 500 kWh). For any usage that is above 500 kWh and up to 1,000 kWh shall be billed at the second rate level. Any usage that is above 1,000 kWh and up to 2,000 kWh shall be billed at the third rate level. Any and all usage above 2,000 kWh shall be billed at the fourth level. The inverted block method provides an effective means of promoting conservation when CUC lacks sufficient generating capacity to provide constant reliable electric service to all of its customers. Further, the first (lowest) rate level within the schedule provides a lifeline rate for consumers that use 500 kWh or less of electricity during a billing period. Refer to EXHIBIT 1, Pages 1 and 2, for examples of how CUC would compute the monthly non-fuel charges for residential customers.

24.6.3.2.4 For commercial, government, and non-conforming load customers, separate rate schedules shall be established having only one (1) rate level for each customer classification. Customers within these three (3) classifications shall be charged at the respective rates per kWh. Refer to EXHIBIT 1, Page 2 of 2, for examples of how CUC would compute the monthly non-fuel charges for commercial customers.

- 24.6.3.2.5 The charges based on electric non-fuel rate(s) and the monthly customer charge shall be combined and appear as a separate item, “electric non-fuel charges,” on the monthly customer billing statement.
- 24.6.3.2.6 The non-fuel rates and monthly customer charges shall remain in effect for approximately one (1) year from the date of this regulation, unless unanticipated circumstances warrant the need to adjust the rates and charges sooner. Prior to the expiration of the one (1) year period, and each year thereafter, CUC shall commission a review to determine if the non-fuel rates and monthly customer charges should increase or decrease or remain the same.
- 24.6.3.2.7 The CUC Chief Financial Officer shall provide public notice of any adjustments to the electric non-fuel rates and the monthly customer charges, maintain on file the methodology used to determine the rates and charges, take comments, and arrange for public hearings and workshops, as needed, which may be attended by the customers and other members of the public.
- 24.6.3.3 Electric Fuel Rate: CUC shall institute an electric fuel rate schedule, under Which all consumers shall be billed based on the number of kilowatt-hours (kWh) of electricity consumed during the billing period (see EXHIBIT 1, Page 1 of 2). The charge per kWh will be the same for all customer classifications, regardless of the level of consumption.
- 24.6.3.3.1 The electric fuel rate shall pass through to all consumers of CUC electricity, the monthly fuel costs for generating electricity. Fuel costs subject to cost recovery shall include only production fuel and lubricating oils. Accordingly, the electric fuel rate may increase or decrease or remain the same from month-to-month.
- 24.6.3.3.2 The electric fuel rate shall take effect on the date that this regulation becomes effective and shall remain in effect through August 31, 2006. The interim electric fuel rate shall be \$0.215 per kWh, as determined by the recent electric rate study. Thereafter, the CUC Chief Financial Officer shall calculate an initial electric fuel rate for September 2006 and for each month thereafter, compute the subsequent months’ electric fuel rate.
- 24.6.3.3.3 On the first day of each month, CUC shall announce the electric fuel rate that will be in effect for that month. If the first day of the month falls on a Saturday, Sunday, or holiday, the new fuel rate will be announced on the first business day thereafter. Regardless of when announced, the rate shall be in effect from the first day through the last day of each month.
- 24.6.3.3.4 Because CUC monthly billing periods generally overlap portions of two (2) months, e.g. September 12 through October 13, the fuel rate shall be applied on a pro rata basis according to the number of days each month’s usage (September and October) is to the total number of days in the billing period. In the example above, the billing period consists of 31 days, of which 18

days (rounded to 58 percent or .58) are in September and 13 days (rounded to 42 percent or .42) are in October. For illustration purposes, assume that electric consumption for the 31-day period is 2,345 kWh and electric fuel rates were \$0.222 per kWh for September and \$0.216 for October. Thus, the electric fuel charges for the billing period would be \$514.68, which is computed as follows:

For September, multiply 2,345 kWh times .58 times \$0.222, which equals \$301.94. For October, multiply 2,345 kWh times .42 times \$0.216, which equals \$212.76. Next, add the two amounts (\$301.94 plus \$212.74) for the total charges, which equals to \$514.68. (see EXHIBIT 2)

Computations:

$$\begin{array}{r r r r r r r}
 2345 & \times & .58 & \times & .222 & = & \$301.94 \\
 2345 & \times & .42 & \times & .216 & = & \underline{\$212.74} \\
 301.94 & + & 212.76 & & & = & \$514.68
 \end{array}$$

24.6.3.3.5 The charges based on the electric fuel rate shall appear as a separate item, “electric fuel charges” on the monthly customer billing statement.

24.6.3.3.6 The methodology in this regulation provides for the computation of the initial and subsequent months’ electric fuel rates (see EXHIBIT 3).

24.6.3.3.7 The initial electric fuel rate shall be computed as follows (see EXHIBIT 3, Formula No. 1 and Example of Computation of Initial Fuel Rate):

- Projected fuel costs for September 2006
- Divided by projected sales, in kWh, for September 2006.

24.6.3.3.8 The subsequent months’ electric fuel rate shall be computed as follows (see Formula No. 2 (EXHIBIT 3, page 1 of 2) and Example of Computation Subsequent Months’ Fuel Rate (EXHIBIT 3, page 2 of 2)):

- Projected fuel costs for the target month.
- Plus or minus any adjustment for the preceding month’s under- or over-recovery of fuel costs.
- Divided by projected sales, in kWh, for the target month.

24.6.3.3.9 Computation of the under- or over-recovery of fuel costs shall be as follows: Previous target month’s actual fuel costs minus (previous target month’s actual sales, in kWh, multiplied by the previous target month’s fuel rate per kWh) (see Formula No. 2 (EXHIBIT 3, page 1 of 2) and Example of Subsequent Months’ Fuel Rate (EXHIBIT 3, page 2 of 2)).

24.6.3.3.10 Any difference between the actual fuel costs and the electric fuel rate revenues shall be accumulated in a deferred account and shall be subject to annual reconciliation. No interest shall be charged or paid on any under- or over-recovery balance in the deferred account.

24.6.3.3.11 The CUC Chief Financial Officer shall be responsible for calculating the initial and subsequent months' electric fuel rates; maintain on file the methodology used to determine the fuel rates; prescribe the accounts, forms, and details of the calculations; and provide public notice of the monthly electric fuel rates.

24.6.3.3.12 The CUC Executive Director or designated representative shall approve the initial and all subsequent months' electric fuel rates before they are published and implemented.

EXHIBIT 1

**COMMONWEALTH UTILITIES CORPORATION
SCHEDULE OF ELECTRIC CHARGES AND RATES**

CUSTOMER CLASSIFICATIONS	MONTHLY CUSTOMER CHARGES	RATES PER KILOWATT-HOUR (kWh)		
		ELECTRIC NON-FUEL RATES	ELECTRIC FUEL RATES	TOTAL RATES PER kWh
RESIDENTIAL	\$ 5.60			
1 To 500 kWh		\$ 0.016	\$ 0.215	\$ 0.231
501 To 1,000 kWh		0.066	0.215	0.281
1,001 To 2,000 kWh		0.086	0.215	0.301
Over 2,000 kWh		0.127	0.215	0.342
COMMERCIAL (All kWh Billed)	7.67	0.086	0.215	0.301
GOVERNMENT (All kWh Billed)	7.67	0.091	0.215	0.306
NON-CONFORMING LOAD (All kWh Billed)	\$ 56.00	\$ 0.222	\$ 0.215	\$ 0.437

COMPUTATIONS OF MONTHLY BILLINGS FOR RESIDENTIAL AND COMMERCIAL CUSTOMERS:

Assume **RESIDENTIAL CUSTOMER** consumed 2,345 kWh during current billing period.

Non-Fuel (Monthly Customer Charge and Usage Charges):

Monthly Customer Charge			\$	5.60
Non-Fuel Usage Charges:	Rate	Usage		
	per kWh			
001 to 500 kWh	\$ 0.016	500		8.00
501 to 1,000 kWh	0.066	500		33.00
1,001 to 2,000 kWh	0.086	1,000		86.00
Over 2,000 kWh	0.127	345		43.82
Electric Non-Fuel Charges (shown on billing statement)			\$	176.42
Electric Fuel Charges (prorated)	\$0.222 / \$0.216	2,345		514.68
(shown on billing statement)	(see EXHIBIT 2)			
TOTAL ELECTRIC CHARGES ON BILLING STATEMENT			\$	691.10

Assume COMMERCIAL CUSTOMER consumed 2,345 kWh during current billing period.

Non-Fuel (Monthly Customer Charge and Usage Charges):

Monthly Customer Charge			\$	7.67
Non-Fuel Usage Charges:	Rate			
	per kWh	Usage		
All kWh used during billing period	\$ 0.086	2,345		<u>201.67</u>
Electric Non-Fuel Charges (shown on billing statement)			\$	209.34
Electric Fuel Charges	\$0.212 / \$0.216	2,345		<u>514.68</u>
(shown on billing statement)	(see EXHIBIT 2)			
TOTAL ELECTRIC CHARGES ON BILLING STATEMENT			\$	<u>724.02</u>

EXHIBIT 2

**COMPUTATION OF MONTHLY ELECTRIC FUEL CHARGES
PRORATING CHARGES BETWEEN MONTHS
REFERENCE REGULATIONS, PART 24.6.3.3.4**

EXAMPLE FOR A BILLING PERIOD OF SEPTEMBER 12 TO OCTOBER 13, 2006 WITH THEORETICAL ELECTRIC FUEL RATES.

	<u>DATES</u>	<u>BILLING PERIOD NO. DAYS</u>	<u>PERCENT (Rounded)</u>	<u>METER READING</u>
PREVIOUS READING	12-Sep-06	18	58	71606
CURRENT READING	13-Oct-06	13	42	73951
TOTAL		31	100	
TOTAL MONTHLY USAGE				2,345 kWh

TOTAL MONTHLY USAGE 2,345 kWh

<u>MONTH</u>	<u>MONTHLY FUEL RATE (per kWh)</u>	<u>PERCENT (Rounded)</u>	<u>PRO RATA USAGE (kWh)</u>	<u>MONTHLY FUEL CHARGES</u>
SEPTEMBER	\$ 0.222	58	1,360	\$ 301.94
OCTOBER	\$ 0.216	42	985	212.74
TOTAL		100	2,345	

ELECTRIC FUEL CHARGES \$ 514.68

EXHIBIT 3

**FORMULAE FOR THE COMPUTATION OF
MONTHLY ELECTRIC FUEL RATE**

Formula No. 1:

The initial Electric Fuel Rate shall be computed as follows:

$$\text{Electric Fuel Rate (Initial)} = \frac{A}{B}$$

A = CUC projected fuel costs for the month of September 2006.

B = CUC projected sales, in kilowatt-hours (kWh), for the month of September 2006.

Formula No. 2:

The subsequent months' Electric Fuel Rate shall be computed as follows:

$$\text{Electric Fuel Rate (Subsequent Months)} = \frac{C \text{ +/- } D}{E}$$

C = CUC projected fuel costs for the target month.

D = CUC under- or over-recovery of fuel costs for the preceding month.

(Calculation: Previous target month actual fuel costs minus (previous target month actual sales, in kWh, times previous target month fuel rate per kWh).)

E = CUC projected sales, in kWh, for target month.

Example of how the Initial Electric Fuel Rate might be computed for the month of September 2006:

Assume: September 2006 projected fuel costs of \$7.1 million and projected electric sales of 32 million kWh.

$$\text{Electric Fuel Rate (Initial)} = \frac{\$7,100,000}{32,000,000 \text{ kWh}} \quad \text{or} \quad \$0.222 \text{ per kWh} \\ \text{(rounded to nearest 1/10 cent)}$$

Example of how a Subsequent Month's Electric Fuel Rate might be computed for any subsequent (target) month after September 2006:

Assume: Target month (October 2006) projected fuel costs of \$7,200,000 and electric sales of 32,500,000 million kWh.

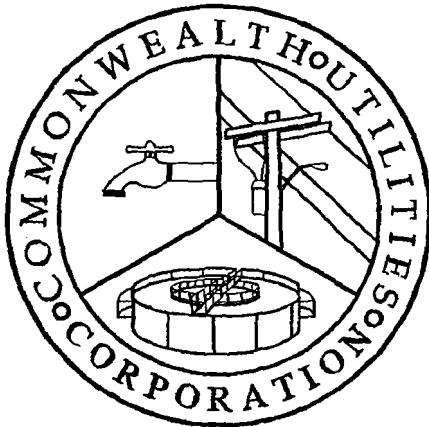
Assume: Previous target month (September 2006) actual fuel costs of \$7,040,000, actual electric sales of 32,500,000 kWh, and fuel recovery charge \$0.222 per kWh.

$$\begin{array}{l} \text{Electric Fuel Rate} = \frac{\$7,200,000 - \$175,000}{32,500,000 \text{ kWh}} \quad \text{or} \quad \$0.216 \text{ per kWh} \\ \text{(Subsequent Months)} \end{array} \quad \text{(rounded to nearest 1/10 cent)}$$

[Actual fuel costs of \$7,040,000 minus (actual sales of 32,500,000 kWh multiplied by fuel rate of \$0.222 per kWh). This results in an over-recovery of fuel costs in the amount of \$175,000, which then must be subtracted from the projected fuel costs for the target month (October 2006). Conversely, had an under-recovery of fuel costs occurred, this amount would be added to the projected fuel costs for the target month.)]

Executive Summary

Background



In September 2005 the Commonwealth Utilities Corporation ("CUC") engaged Economists.com to conduct a comprehensive electric, water and wastewater rate study. Like many utilities throughout the Pacific Rim and the United States, the CUC was severely affected by the sudden increase in fuel costs in the 2004 – 2005 timeframe. In April 2005, the CUC implemented an emergency fuel surcharge of 3.5 cents per kilowatt-hour (kWh) for its electric customers. Prior to this action, the last time that the CUC increased electric rates was in 1989.

Water and wastewater rates have remained unchanged for the past decade as well, even though the overall cost of water and wastewater service in

the United States and the Pacific Rim has been increasing at above-inflation rates. Economists.com delivered a Draft Electric Water and Wastewater Rate Study in January of 2006. In June 2006, the CUC asked Economists.com to update the electric rate study, incorporating changes in electric usage and fuel prices since the January Draft Report. Data from the January Report was based on FY 2005 (12 months ended September 2005) cost and electric usage information, adjusted for known and measurable changes through December of 2005. Since our Draft report was delivered to the CUC, several significant changes occurred, which required substantial revision to the proposed electric rates contained in the Draft Report.

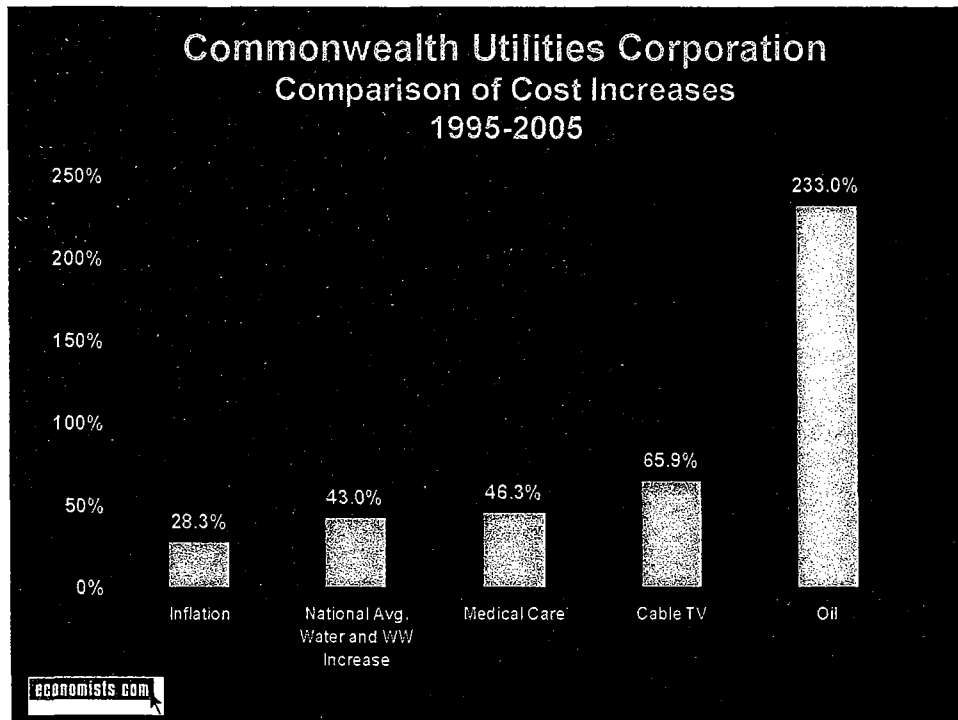
The most significant change is the continuing increase in the price of diesel fuel used to generate electricity in all of the CUC's engines on Saipan, Tinian and Rota. In January, the cost of diesel was projected to cost about \$2.20 per gallon. As of June 2006, the CUC spent about \$2.40 per gallon on Saipan, about \$2.70 per gallon on Tinian and about \$2.77 per gallon Rota. The price of diesel fuel increases with the cost of crude oil, from which it is refined. In June of 2006, the spot price of crude oil was about \$70 per barrel. The renewal of armed conflict in the Israel, Gaza and Lebanon area of the Middle East has resulted in oil prices at \$78 per barrel as of this writing. We are unable to predict what the future will bring with respect to oil prices, but the prospects for a decline in the cost of fuel for the CUC do not look favorable at this time.

The purpose of this rate study is to provide the CUC staff and the government of the CNMI the critical information required to set a current and long-term rate policy that will recover sufficient revenues to fund operating and capital obligations while minimizing the impact on the ratepayers.

Rate Comparison

During the past decade, while the CUC’s electric, water and wastewater rates have remained unchanged, such intermingling factors as fuel costs, inflation, general increases in the cost of doing business, federal regulations and the need to repair aging systems have led to substantial increases in electric rates at other utilities throughout the USA and the Pacific Rim. **Chart ES-1** illustrates this point. While the CUC’s electric rate has remained unchanged except for the fuel surcharge in May 2005, and water/wastewater rates have not increased at all, the inflation rate during this period has been 28.3%. More importantly, the price of oil, the driver of the price of No. 2 Diesel fuel the CUC uses for electric generation, has increased by 233%.

Chart ES-1

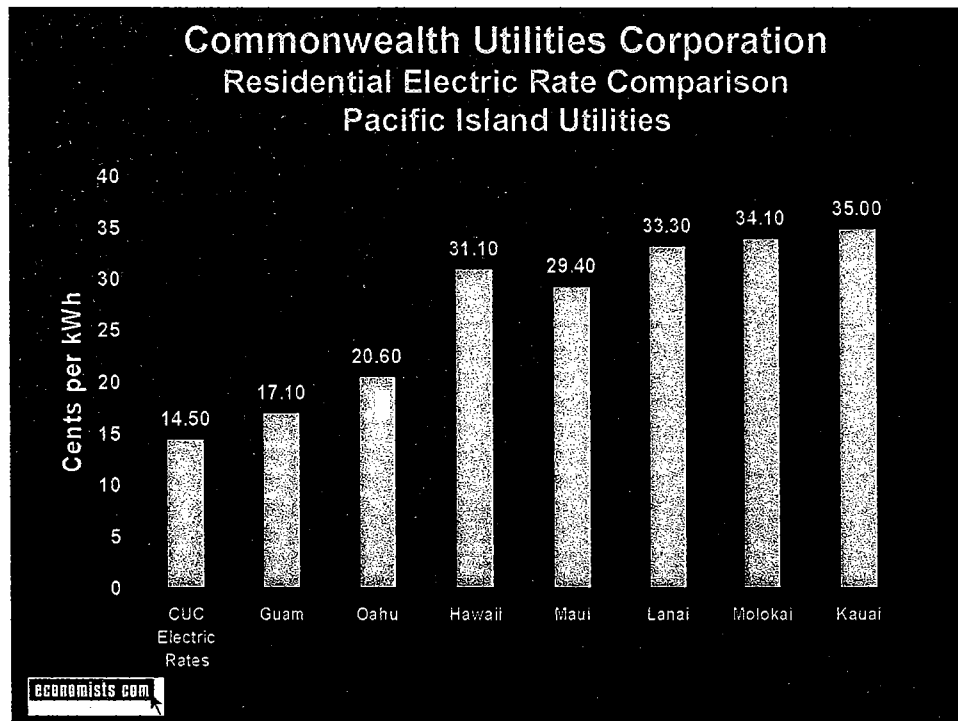


Importantly, the current CUC residential electric rate is less than one-half the average residential rate for comparable Pacific Island utilities. Rate comparisons are presented in Chart ES-2 shows the rates as of June 2006 for Guam Power Authority and the Hawaiian Islands. The most comparable



islands are those of Hawaii, Maui, Lanai, Molokai and Kauai. The number of customers and electric load on Guam and Oahu are significantly greater than the CUC load, and therefore they can take advantage of larger and more efficient generating plants.

Chart ES-2



Electric Rate Study - Methodology

The price of oil has immense importance to the CUC and the citizens and businesses of the CNMI who purchase electricity that the CUC generates because the price of No 2. diesel is directly tied to the price of crude oil. The CUC's annualized fuel bill increased from \$27.5 million in FY 2002 to \$60.0 million in FY 2005, an increase of 118%. **For the 2006 test year, we are projecting the CUC's fuel cost at almost \$77.5 million, 29% above 2005 and 182% above 2002!**

Determining an electric utility's total cost of service requires an analysis of both operating (O & M) and capital costs. The first step in the ratemaking process is to **Functionalize** costs into generation, transmission, distribution and customer related costs. The next step is to **Classify** the functionalized costs into **Capacity, Energy and Customer** components. The final step in the ratemaking process is to **Allocate** the classified costs to customer classes.

Electric System Description

Currently the CUC provides electric service to customer accounts on each of the three primary islands of the CNMI. For all islands, diesel engines are used to generate electricity. Saipan maintains 26 diesel generators with an installed capacity of 118 mW. However, many of the engines are old and in

poor condition and are operating at reduced capacity. Because of routine maintenance and unplanned or forced outages, only 64.9 mW was available as of October 2005. In early 2006, frequent rolling blackouts occurred and recently, the CUC asked hotels and garment manufacturers to use their backup generators and go off the CUC system in order to reduce the severity of the blackouts. In addition, due to the severe financial emergency within the CUC caused by the rapid increase in the cost of fuel, the CUC has delayed maintenance on many of the units and diverted those funds to the purchase of fuel. This has resulted in unplanned outages at some of the CUC-owned units.

With the peak load on Saipan averaging approximately 65 mW, the CUC is on the 'razors edge' of reliability: a forced outage at any of its units causes the CUC to shed load, or cause an island wide blackout. Electric utilities on the US mainland typically maintain a 15% reserve margin over their peak load. However, US mainland utilities typically have many interconnections with neighboring utilities, and can purchase power in emergencies. As an island utility without connections to other utilities, the CUC should have a 20 to 40% margin of generation capacity over its peak load or 80 to 100 megawatts. The CUC is currently examining replacing the generators on Saipan to provide lower cost, more reliable power and reserve capacity.

Average Usage - FY 2005

With the exception of the Non-Conforming Load, average usage in each customer class declined from FY 2004 to FY 2005. The project team is forecasting that average usage will decline for all customers during the 2006 Test Year. Forecast average usage in the Test Year is presented in Table ES-1.

Table ES-1

COMMONWEALTH UTILITIES CORPORATION Electric Cost of Service Study June 2006 Update					
	Residential	Commercial	Non-Conforming Load	Government	Total CUC Avg. Use
FY 2004	996	5,589	1,973,212	5,897	2,294
FY 2005	961	5,245	2,011,275	5,242	2,187
Projected FY 2006	846	4,196	1,206,765	4,980	1,818

The decline in usage is due to the weak CNMI economy and the magnitude of the electric rate increase. We are projecting a 12% decline in average use for residential customers, 20% for commercial customers, 40% for the Non-Conforming Load customer and a 5% decline in government usage.

Electric Revenue Requirement – Test Year 2006

The calculation of a revenue requirement differs from a utility's budget in that it represents only that amount that must be raised through the utility's user rates. As is typical for publicly owned utilities, the

CUC's electric rates were developed using the cash basis of ratemaking. The development of the revenue requirement is similar for both the electric and the water/wastewater utilities. Under the cash basis, electric system revenue requirements consist of cash expenditures and other financial commitments (such as debt service and coverage) that must be met through system operating revenues and other revenue sources. Table ES-2 shows the summary of the CUC FY 2006 Electric revenue requirement.

Table ES-2

Commonwealth Utilities Corporation	
Revenue Requirement Summary	
Test Year 2006	
Generation	
Non-Fuel Personnel/Operating	16,893,424
Fuel	77,623,162
Capital Outlays	348,332
Total Generation	94,864,918
Transmission & Distribution	
Personnel/Operating	10,180,921
Capital Outlays	868,340
Total Trans/Dist	11,049,261
Customer Accounting	
Personnel/Operating	3,624,330
Capital Outlays	141,727
Total Customer Accounting	3,766,057
Administration	
Personnel/Operating	947,147
Capital Outlays	15,747
Total Administration	962,894
Uncollectable	1,659,647
Total CUC Revenue Requirement	\$112,302,777

The project team has made further adjustments to the electric utility revenue requirement for the test year FY 2006. These primarily involve the adjustment of power generation costs for additional increases in fuel costs and an adjustment for uncollectible accounts at 1.5% of total sales, which must be factored into CUC electric rates.

The CUC does not have any working capital or financial reserves at the current time and faces in excess of \$10 million in maintenance expenses for engine repair to provide power on the island of Saipan. In addition, the CNMI government can no longer provide monthly fuel subsidy payments to the CUC, and the CUC must have enough money in reserve to ensure purchase of fuel for the engines. The CUC is in negotiations borrow \$40 million for working capital and engine repair. We assumed that the annual interest rate on the loan will be 7.5%, compounded monthly and amortized over a 20-year period. The annual principal and interest payments of about \$3.8 million are included in the CUC revenue requirement. While the outcome of the loan is uncertain at this time, we will adjust the CUC revenue requirement and electric rates in September after the public hearings to reflect the actual amount of the loan amortization.

Revenues under Current Electric Rate Structure

Table ES-3 compares forecast revenues and cost of service for the electric utility assuming that there are no changes in the CUC's rate structure. The shortfall between revenue at existing CUC rates and the cost-based rates developed in this study is almost \$50 million annually. Without a rate adjustment, the CUC's current financial crisis will continue and deepen. Further, the electric grid will continue to be vulnerable to periodic blackouts and load shedding due lack of fuel and maintenance.

Table ES-3

COMMONWEALTH UTILITIES CORPORATION Electric Cost of Service Study June 2006 Update					
Class	Current Rate Including Surcharge	FY 2006 Projected kWh Usage	FY 2006 Projected Revenue At Current Rates	FY 2006 Projected Revenue Requirement	FY 2006 Shortfall at Current Rates
Residential	\$0.145	124,605,046	\$18,067,732	\$38,732,942	(\$20,665,210)
Commercial	0.195	176,493,042	34,416,143	53,400,681	(\$18,984,538)
Non-Conforming Load	0.195	14,481,180	2,823,830	6,324,678	(\$3,500,848)
Government	0.195	45,052,315	8,785,201	13,844,477	(\$5,059,275)
Total		360,631,582	\$64,092,906	\$112,302,777	(\$48,209,871)

Proposed Electric Rates

In our draft report delivered in January 2006, we provided the CUC and the CNMI government with different rate design options for consideration. Based on discussions with the CUC staff over the last few months, the new CUC electric rate will have three components:

- a monthly customer charge that covers the cost of meters, service drops, transformers, billing and collection and other costs which vary with the number of customers

- a Non-Fuel Electric rate that covers all other costs not included in the customer charge and fuel and lube for generation of electricity.
- a Fuel Electric Rate that covers the cost of diesel fuel and lube used by the CUC to generate electricity.

Since we delivered the report, increased fuel prices and reduced load resulted in a significant increase in the CUC's average cost of electricity. At 31.1 cents per kWh for the Test Year 2006, we felt that it was imperative that the increase in electric rates be mitigated for the low income customers of the CUC. Toward this goal, we developed an inverted block or 'lifeline' rate structure for residential customers. Under this rate structure, the cost per kWh increases with increased usage. The first or 'lifeline' block is set at 500kWh per month and is priced below the average cost of electricity for residential customers. The first 500 kWh should cover lights, refrigeration, television, and other small appliances for an apartment or small home. Customers who use air conditioning will likely consume more than 500 kWh per month.

The inverted block rate will be incorporated in the Non Fuel Electric rate for **Residential customers only**. (The Non-Fuel Electric Rate for Commercial, Government and Non-Conforming Load Customers will be fixed and will not change with monthly usage.) The residential customers Non-Fuel Electric rate will have four consumption blocks based on the monthly usage of residential customers. The first block is for monthly usage for 1-500 kWh. The second block is from 501 to 1,000 kWh per month. The third block is from 1,001 kWh per month to 2,000 kWh per month. The final block is for usage over 2,000 kWh per month.

This is a 'stepped' block rate. All usage is priced starting with the first 500 kWh at the first block price. Only the excess consumption over 500 kWh in a month is priced at the second block up to and including 1,000 kWh per month. Usage over 1,000 kWh per month up to 2,000 kWh per month is priced at the third block. For customers using in excess of 2,000 kWh per month, usage over 2,000 kWh per month is price at the last block.

The Fuel Electric Rate is based on the CUC's cost of diesel fuel used to generate electricity. For the Test Year 2006, the CUC's projected fuel cost is \$77,535,790 and projected Test Year sales of electricity are 360,631,582 kWh, for an average fuel cost of 21.5 cents per kWh. Because of the volatility in the price of diesel fuel, **the Fuel Electric Rate will change monthly based on the CUC's cost of diesel fuel and projected sales of electricity for the month.**

Each month, the CUC will estimate the projected sales of electricity for the upcoming month and the projected cost of diesel fuel and calculate the Fuel Electric Rate for the month. After actual loads and fuels costs are known for that month, the CUC will calculate the actual cost of fuel for the month. Any excess or shortfall will be carried forward and included in the next month's calculation of the Fuel Electric Rate without accruing interest. We believe this mechanism will protect the CUC from fuel induced revenue shortfalls and transmit changes in the cost of diesel fuel, either positive or negative, immediately in to customer rates. Both Guam Power Authority and Hawaiian Electric have monthly fuel adjustment mechanisms in their electric rates.

Table ES-5 shows the Interim electric rates for the CUC. Public hearings will be held on Saipan, Tinian and Rota during August or September 2006 to take comments from CUC customers. Based on the hearings and revised budget and cost data, a final set of rates will be issued.

Table ES-4

COMMONWEALTH UTILITIES CORPORATION Electric Cost of Service Study June 2006 Update									
Monthly kWh Usage	FY 2006 Customers (Number of Bills)	FY 2006 Proposed Customer Charge	FY 2006 Customer Charge Revenue	FY 2006 Projected kWh Sales	FY 2006 Proposed Non Fuel Electric Rate	FY 2006 Proposed Non Fuel Electric Revenue	FY 2006 Proposed Fuel Electric Rate	FY 2006 kWh Fuel Electric Revenue	FY 2006 Revenue under Proposed Rates
0 - 500	55,780	\$5.60	\$312,365	12,082,548	\$0.016	\$193,321	\$0.215	\$2,597,748	\$3,103,434
501 - 1,000	43,226	5.60	\$242,063	27,606,855	0.066	1,822,052	0.215	5,935,474	7,999,589
1,001 - 2,000	33,982	5.60	\$190,298	41,660,840	0.086	3,582,832	0.215	8,957,081	12,730,211
Over 2,000	14,281	5.60	\$79,975	43,254,803	0.127	5,493,360	0.215	9,299,783	14,873,117
Total Residential	147,268		\$824,701	124,605,046		\$11,091,565		\$26,790,085	\$38,706,351
Commercial	42,059	7.67	322,593	176,493,042	0.086	15,195,644	0.215	37,946,004	53,464,241
Non-Conforming Load	12	56.01	672	14,481,180	0.222	3,216,237	0.215	3,113,454	6,330,363
Government	9,047	7.67	69,390	45,052,315	0.091	4,104,162	0.215	9,686,248	13,859,800
Total	198,386		\$1,217,356	360,631,582		\$33,607,608		\$77,535,780	\$112,360,754

The following is notable about these rates:

- The rates shown above are designed to recover sufficient revenues to fund current and future operating expenses incurred by the CUC's electric utility.
- During the course of this study, several CUC officials indicated that current staffing totals are below ideal levels. However, increasing staffing levels significantly beyond current levels is a policy decision that must be left to the CUC management and the government of the CNMI. Therefore, it is not included in this rate study. **If the CUC chooses to increase staffing levels in future years, rate adjustments must be increased accordingly.**
- During the course of this study, officials of the CUC and others expressed concerns about the age and efficiency of the CUC-owned generation units. The issue of generation replacement cost analysis and the development of a long-term financial strategy for the CUC has economic, social and political ramifications that are well beyond the scope of this study. However, we prepared a brief, high-level analysis of replacing the generation fleet on Saipan with modern, fuel-efficient engines burning lower cost heavy fuel oil. Assuming the CUC or the CNMI government can issue tax-free debt, the savings in fuel cost would pay for the capital cost of the new units and provide rate relief to the citizens and business of the CNMI. The CUC and the CNMI government are analyzing this option and should have recommendations within the next two months. If the CUC is to have any chance at borrowing money at competitive rates, their electric rates must recover the full costs of providing electric service.

ATTORNEY GENERAL OPINION NO. 06-06

DATE: 05/30/06

TO : Director of Personnel
FROM : Attorney General
SUBJECT : Payment of Within-Grade Increases and Lump-Sum Bonus Payments

The Office of Personnel Management has requested a formal legal opinion “regarding the government’s obligation for future payment of unpaid within-grade increases and lump-sum bonus payments for employees frozen at step 12 in their grade (Public Law No. 10-76 and No. 11-59).” See 1 CMC § 8213(g). Within-grade increases (except for federally funded employees) and lump-sum bonus payments have not been paid since September 2001.

Issue: What obligation, if any does the government have for retroactive payment of these unpaid statutory benefits, i.e., within-grade increases and lump-sum bonus payments?

1. Lump-sum bonus payments. Lump-sum bonus payments intended for civil service employees frozen on Step 12 for at least two years only apply “if the necessary funding is available by appropriation or lawful reprogramming.” 1 CMC § 8213(e). Thus, in my opinion, absent an appropriation or lawful reprogramming, the Commonwealth has no obligation, retroactive or otherwise, to pay such lump-sum bonus payments.

2. Within-grade increases. Section 8215 of Title 1 of the Commonwealth Code provides for mandatory within-grade increases:

An employee shall be granted a one-step, within-grade increase upon completion of 52 consecutive calendar weeks of sustained satisfactory work performance All requests for within-grade . . . increases shall be acted upon within 90 working days after submitting the request and all supporting documents to the office of personnel. All such requests not acted upon within 90 working days shall be deemed granted upon availability of funds.

1 CMC § 8215

The Planning and Budgeting Act of 1983 states that “[n]o person, including the Civil Service Commission, may reclassify or adjust the salary of a government employee whose salary is paid from appropriations from the general funds without first receiving from the Office of Management and Budget and the Department of Finance certification that lawful and sufficient funds for that purpose are available.” 1 CMC § 7405.

On November 7, 2001, Attorney General Herbert Soll issued an opinion on the issue of whether "within-grade and merit increases can be processed and paid by the Department of Finance pursuant to 1 CMC § 8215 if funds are not appropriated and available." A copy of his opinion is attached hereto.

The issue now is whether the government is obligated to make the payments of the within-grade increases retroactively to civil service employees. It is my opinion that the Commonwealth is obligated to make payment of those within-grade increases retroactively to civil service employees upon appropriation of the funds and certification by the Office of Management and Budget and the Department of Finance that lawful and sufficient funds for those increases exist.



MATTHEW T. GREGORY

Attachment



Commonwealth of the Northern Mariana Islands
Office of the Attorney General

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Attorney General/Civil Division
Tel: (670) 664-2341
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Criminal Division
Tel: (670) 664-2366/2367/2368
Fax: (670) 234-7016

November 7, 2001

Lucy DLG Nielsen
Secretary of Finance
P.O. Box 5234 CHRB
Saipan, MP 96950

via facsimile to 664-1115

Dear Secretary Nielsen:

I am writing in response to your request, dated October 24, 2001, for a legal opinion regarding payment of within-grade and merit increases.

Issue

Can within-grade and merit increases be processed and paid by the Department of Finance pursuant to 1 CMC § 8215 if funds are not appropriated and available?

Summary Response

Although within-grade and merit increases must be processed pursuant to 1 CMC § 8215, if funds are not available for that specific purpose, as certified by both OMB and DOF pursuant to 1 CMC § 7405, the salary of the employee, if paid from the general fund, may not be adjusted.

Legal Analysis

Within grade increases and merit raises are provided for in 1 CMC § 8215 as follows:

§ 8215. Within-Grade and Merit Increase

An employee shall be granted a one-step, within-grade increase upon completion of 52 consecutive calendar weeks of sustained satisfactory work performance. An employee shall be awarded, in addition, a merit increase (not exceeding one step increase in the base salary) by achieving an overall performance appraisal average score equivalent to "outstanding/exceptional" upon completion of 52 consecutive calendar weeks of sustained superior work performance. Such additional merit increase shall not alter the waiting period required for qualifying for the next within-grade step increase. No employee shall be compensated above the maximum

step prescribed for the employee's pay level. All requests for within-grade and merit increases shall be acted upon within 90 working days after submitting the request and all supporting documents to the office of personnel. All such requests not acted upon within 90 working days shall be deemed granted upon availability of funds.

Section 8215 is limited, however by 1 CMC § 7405 which states: "no person, including the Civil Service Commission, may reclassify or adjust the salary of a government employee whose salary is paid from appropriations from the general funds without first receiving from the Office of Management and Budget and the Department of Finance certification that lawful and sufficient funds for that purpose are available." 1 CMC §7405. As the CNMI is presently operating under a continuing resolution, pursuant to 1 CMC § 7204(d), it has been represented to our office that no appropriation or funds for such increases exist.

Where the language of the statute is clear and without ambiguity, the "plain meaning" must be accepted without resorting to statutory construction or interpretation. *Govendo v. Micronesian Garment Mfg. Inc.*, 2 N.M.I. 270 (1991). When the language of a statute is clear, the courts will not construe it contrary to its plain meaning. *Id*; see also *King v. Board of Elections*, 2 N.M.I. 398 (1991). The CNMI Supreme Court has more recently ruled in *Faisao v. Tenorio*, 4 N.M.I. 261, that:

"[A] basic principle of [statutory] construction is that language must be given its plain meaning." *Commonwealth v. Hasinto*, 1 N.M.I. 377, 382 (1990) (citations omitted). Also, "[o]ne statutory provision should not be construed to make another provision [either] inconsistent or meaningless," *In re Estate of Rofag*, 2 N.M.I. 18, 29 (1991), or unconstitutional where open to a constitutional interpretation. *In re Seman*, 3 N.M.I. 57, 73 (1992). Finally, a statute will be an implied repealer of an earlier-enacted statute only where the two are in "irreconcilable conflict" and "an intent to repeal is 'clear and manifest.'" *In re North*, 16 F.3d 1234, 1243 (D.C. Cir. 1994) (quoting *Rodriguez v. United States*, 480 U.S. 522, 524, 107 S. Ct. 1391, 1392, 94 L. Ed. 2d 533, 536 (1987)). *Id.* p 265.

Statutes are irreconcilable only where "there is a positive repugnancy between them or . . . they cannot mutually coexist." *Id.* The Court also noted at footnote 14:

Where they "are capable of co-existence, it is the duty of the courts . . . to regard each as effective." *Radzanower v. Touch Ross & Co.*, 426 U.S. 148, 155, 96 S. Ct. 1989, 1993, 48 L. Ed. 2d 540, 547 (1976) (quoting *Morton v. Mancari*, 417 U.S. 535, 551, 94 S. Ct. 2474, 2483, 41 L. Ed. 2d 290, 301 (1977)).

There is no irreconcilable conflict between the two statutes in question. Within-grade increases and merit increases under 1 CMC § 8215 will be given to government employees upon qualifying, and if not processed within "90 working days the increase shall be deemed granted upon availability of funds". The Planning and

Budgeting Act simply provides in 1 CMC § 7405 that no adjustments to any government employee's salary which comes from appropriations from the general fund will be made without first ensuring through the proper channels that the money is appropriated and available.

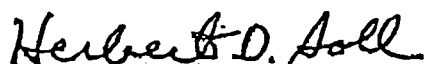
Lastly, the language used in § 7405 is negative and mandatory in that "no person" may adjust the salary "without first" receiving certification. Where statutory restrictions are couched in negative terms they are usually held to be mandatory. 3 Sutherland Statutory Construction (6th Ed. 2001), § 57:0, p. 36. "Negative, prohibitory or exclusive words are generally construed as mandatory when employed in statutory provisions." 82 C.J.S. *Statutes*, § 377. Prohibitory terms, as in § 7405's "without first", carry with them the same connotation and can be considered in the same light as express negative terms. *Id* at 38.

Conclusion

The language of 1 CMC § 7405 is clear, unambiguous, and mandatory. As such, for the reasons set forth above, it is the opinion of the Attorney General's Office that until funds are appropriated for within-grade and merit increases and the Office of Management and Budget and the Department of Finance both certify that lawful and sufficient funds for those increases exist, the salaries of government employees which are paid from the general fund may not be adjusted for such increases.

Please contact me with any further questions you may have in this regard.

Very truly yours,



Herbert Soll
Attorney General

ATTORNEY GENERAL OPINION NO. 06-07

DATE: 07/03/06

TO : Governor
Special Assistant for Management & Budget

FROM : Attorney General

SUBJECT : Use of NMIRF Loan by CUC for Operating Expenses, Including Fuel; Whether Such a Loan Constitutes "Public Debt"

At the request of the Special Assistant for Management and Budget, and in light of pending legislation known as the Commonwealth Utilities Financing Act of 2006, H.B. 15-132 or similar proposals, the Office of the Attorney General has analyzed the issue of whether a loan from the Northern Mariana Islands Retirement Fund (NMIRF) to the Commonwealth Utilities Corporation (CUC) may be used by CUC for operating expenses, including the cost of fuel.

This, in turn, implicates two questions of constitutional law. The more specific is whether such expenses are indeed "operating expenses" whose disbursement, if made by "the Commonwealth government or its political subdivisions," would violate the Constitution of the Commonwealth of the Northern Mariana Islands (CNMI), Article X, Section 4, second sentence. The more general is whether a loan from the NMIRF to the CUC would be a "public debt" in the first place, thereby triggering the operating expense prohibition as well as the requirement that such "public debt" receive a two-thirds vote of each house of the legislature.

I. LEGAL ISSUES

The question posed implicates three legal issues:

1. Would the disbursement of NMIRF loan proceeds by CUC for prospective or retroactive fuel costs constitute expenditure on an "operating expense" within the meaning of the Constitution of the CNMI, Article X, Section 4, second sentence?
2. Is CUC included within "the Commonwealth government or its political subdivisions" such that it is subject to the constitutional bar against using public debt for operating expenses?
3. Would a loan from the NMIRF to the CUC constitute a "public debt," thereby being subject to the operating expense prohibition, N.M.I. Const. art. X, § 4, as well as the requirement, N.M.I. Const. art. X, § 3, that such "public debt" receive a two-thirds vote of each house of the legislature?

II. SHORT ANSWERS

1. Yes. An operating expense, such as fuel costs, does not lose its character as an operating, as opposed to capital, expense simply based on when it is paid.
2. No. CUC is not an agency or instrumentality of the CNMI government for the purposes of Article X, Section 4 of the CNMI Constitution.
3. No. A public debt is created by the commitment of the full faith and credit of the Commonwealth, which is undertaken in the proposed statutorily-mandated loan from the NMIRF to the CUC, or the associated taxing authority in support of the borrower's debt, but does not include obligations that involve a substantial contingency, such as loan guarantees where there is a reasonable expectation that the loan will be repaid by the borrower and the guarantee by the Commonwealth will not require the expenditure of public funds. The statutorily required loan provisions provide their own guarantees to the NMIRF, including accounting and revenue restrictions, rate and fee guarantees, and assignment of revenues.

III. ANALYSIS

A. OPERATING EXPENSE

Article X, Section 4 of the Constitution of the CNMI provides in full as follows:

Section 4: Public Debt Limitation. Public indebtedness other than bonds or other obligations of the government payable solely from the revenues derived from a public improvement or undertaking may not be authorized in excess of ten percent of the aggregate assessed valuation of the real property within the Commonwealth. *Public indebtedness may not be authorized for operating expenses of the Commonwealth government* or its political subdivisions.

N.M.I. Const. art. X, § 4 (emphasis added).

The Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands (First NMI Constitutional Convention, Dec. 6, 1976)¹ elaborates on the initial exception for “bonds or

¹ According to the Analysis itself, “The purpose of this memorandum is to explain each section of the Constitution of the Commonwealth of the Northern Mariana Islands and to summarize the intent of the Northern Marianas Constitutional Convention in approving each section. This statement was approved by the Convention on December 6, 1976 with the direction that it be available to the people along with the Constitution for their consideration before the referendum on the Constitution.” Analysis at 1 (preface). While courts have often cited the Analysis in support of rulings, they are not obligated to follow its interpretation of Constitutional provisions. In short, “the Analysis does not have the force of law.” Camacho v. Civil Serv. Comm’n, 666 F.2d 1257, 1264 (9th Cir. 1982)

other obligations of the government payable solely from the revenues derived from a public improvement or undertaking” to the monetary limitation on public debt.²

An exception to this limitation on public debt is revenue bonds or other obligations of the government payable solely from the revenues derived from a public improvement or undertaking. *If the obligation of the Commonwealth does not extend to the general revenues of the Commonwealth, then the limitation with respect to assessed valuation does not apply.* For example, the legislature may create special authorities to run certain utilities or enterprises. These authorities may be empowered by the legislature to obtain financing through debt instruments. Under the restrictions contained in section 3, this general authorization must be made by the affirmative vote of two-thirds of the members of each house of the legislature. Once the legislature gives to an agency or authority the power to incur debt, that power may be exercised administratively without the approval by two-thirds vote of the legislature. If the obligation to repay debt incurred by the utility or enterprise is limited to the revenues derived from the utility or enterprise, then there is no need to measure the amount of the obligation against the assessed valuation of any real property.

Analysis at 140-41 (emphasis added). While this section of the Analysis suggests that under certain circumstances the assessed property valuation does not apply, it says nothing about what is an operating expense.

That is mentioned only in the final paragraph of the Analysis discussing Article X, Section 4.

Public debt may not be authorized for operating expenses of the government or any of its political subdivisions even if the amount of the debt is less than ten percent of the aggregate assessed valuation of real property in the Commonwealth. *Operating expenses are the normal costs of obtaining and delivering government services.* This section does not permit deficit financing of any government operating expenses. All such financing must be from current revenues. This means that the proceeds of all public debt must be earmarked and cannot be made a part of general revenues.

Analysis at 141 (emphasis added). To the extent the government undertakes to provide utility services, and in particular electrical power, the cost of fuel used to generate that power would indisputably be part of “the normal costs of obtaining and delivering government services.”

² While the text of Article X, Section 3 refers to “debt,” and Section 4 refers to “indebtedness,” the section headings and the Analysis conflate the two under the rubric of “debt.” While there may be some differences, the terms “public debt” and “public indebtedness” have been used interchangeably in at least some judicial opinions for over a century. See, e.g., City of Walla Walla v. Walla Walla Water Co., 172 U.S. 1, 19-20 (1898); California Toll Bridge Authority v. Wentworth, 298 P. 485, 487 (Cal. 1931); see also N.M.I. Att’y Gen. Op. 05-19 at 20-21 (Dec. 22, 2005) (same); N.M.I. Att’y Gen. Op. 05-11 at 19 (July 27, 2005) (suggesting indebtedness may be broader). Accordingly, no distinction is made in this opinion.

This is supported by traditional accounting concepts, which distinguish between operating expenses, which are used for the day-to-day running of the activity (including consumable items and personnel costs), and capital expenses, which are used for the purchase or major improvement of a major physical item of personal or real property, and can be amortized or depreciated on a long-term basis. See, e.g., I.R.S. Pub. 535, Business Expenses 3 (2005) (discussing capital expenses); I.R.S. Form 8829, Expenses for Business Use of Your Home, line 25 (2005) (allowable operating expenses).

An operating expense, such as fuel costs, does not lose its character as an operating, as opposed to capital, expense simply based on when or how it is paid. Otherwise, simply by deferring payment of ongoing operating expenses, they could be recharacterized, opening an invitation for abuse that would circumvent constitutional and legislative requirements for fiscal responsibility.³ See also N.M.I. Att’y Gen. Op. 05-11 at 20 (July 27, 2005) (“[P]ower purchasing, like fuel oil purchasing, is an operating expense of the utility — a principal operating expense.”).

Hence, the disbursement of NMIRF loan proceeds by CUC for prospective or retroactive fuel costs would indeed constitute an “operating expense” within the meaning of the Constitution of the CNMI, Article X, Section 4, second sentence.⁴

B. AGENCY OR INSTRUMENTALITY

Article III, Section 15 of the Constitution of the CNMI provides in full as follows:

Section 15: Executive Branch Departments. Executive branch offices, *agencies and instrumentalities* of the Commonwealth government and their respective functions and duties shall be allocated by law among and within not more than fifteen principal departments so as to group them so far as practicable according to major purposes. Regulatory, quasi-judicial and temporary agencies need not be part of a principal department. The functions and duties of the principal departments and of other agencies of the Commonwealth shall be provided by law. The legislature may reallocate offices, *agencies and instrumentalities* among the principal departments and may change their functions and duties. The governor may make changes in the allocation of offices, *agencies and instrumentalities* and in their functions and duties that are necessary for efficient administration. If these changes affect existing law, they shall be set forth in executive orders which shall be submitted to the legislature and shall become effective sixty days after submission, unless specifically modified or disapproved by a majority of members of each house of the legislature.

N.M.I. Const. art. III, § 15 (emphasis added).

³ This opinion does not address operating debts assumed by a third party as a contribution to purchase of an equity share in CUC. Likewise, an outstanding debt that has been reduced to judgment or is paid by court order or stipulation is beyond the scope of this opinion.

⁴ Of course, to the extent that the loan proceeds are used for engine refurbishment or similar capital expenses, that would not constitute a prohibited operating expense.

CUC is not a “political subdivision” of the Commonwealth, as used in the concluding words of the CNMI Constitution, Article X, Section 4. A political subdivision of a state is a division of a state that exists primarily to discharge some function of local government. Black’s Law Dictionary (8th ed. 2004). See also Treas. Reg. § 1.103-1(b) (1972) (“political subdivision” “denotes any division of any State or local government which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit.”). Hence, the political subdivisions of the CNMI are the four Municipalities of Rota, Tinian and Aguiguan, Saipan, and the Northern Islands.

Under Reorganization Plan No. 1 of 2006 (Jan. 27, 2006), CUC was transferred from an autonomous government corporation under a board of directors to an agency component of the Department of Public Works, see Id. § 101, effective Mar. 28, 2006. Id. § 207 (if submitted to the Legislature on date of issuance). Under Reorganization Plan No. 2 of 2006 (May 5, 2006), CUC will be reorganized back to a public corporation, this time under an executive director with an advisory board, see Id. ¶ 2, effective July 4, 2006. Id. ¶ 7. Thus, by the date of the events upon which this Opinion is based, CUC will once again be a Government corporation (assuming acquiescence by the Legislature).

As a public corporation, CUC will change from being an agency component to being an Executive Branch “instrumentality” of the Commonwealth Government. See Marianas Visitors Bureau v. Commonwealth, Civ. No. 94-0516 (N.M.I. Super. Ct. 1994) (non-corporate public body meeting five-point test is “quasi-corporation,” a CNMI instrumentality under the Constitution) (“MVB”), citing Mendrala v. Crown Mortgage Co., 955 F.2d 1132 (7th Cir. 1992). The Government’s Executive Branch includes government corporations, agencies and other instrumentalities. N.M.I. Const. art. III, § 15. The Planning and Budget Act of 1983 describes organizations like CUC as “public corporations,” because created by a specific Commonwealth law. 1 CMC § 7103(n). See MVB at 13. See also Imamura v. Marianas Public Land Corp., Civ. No. 94-0696 (N.M.I. Super. Ct. 19__) (MPLC is government entity under five-point test: no private ownership, government controls through appointment of board members and scope of land transfer, government controls structure, government controls finances, and sole function is to dispose of public lands).

A government corporation may have an identity so separate and distinct from the Government that it can sue the Government for infringing its rights. MVB at 18, citing Note, Municipal Corporation Standing to Sue the State: Rogers v. Brockette, 93 Harv. L. Rev. 586, 591 (1980). This is an inherent part of sue-and-be-sued clauses, however wasteful intergovernmental litigation may be. A corporation is a separate legal entity existing under the authority granted by state law. 4 CMC § 4353; C. Hugh Friedman, Corporations, § 2:37 (2000). As a separate legal entity, the corporation is responsible for its own debts. Friedman, supra § 2:38. If there are losses in the business activity the corporation bears them to the extent of its own resources. Friedman, supra § 2:38. If the separate corporate entity is respected and maintained, the only liability of the shareholders, is the decreased value of the corporation. Friedman, supra § 2:38. The Commonwealth Utilities Corporation is not an agency or instrumentality of the Commonwealth Government, in part, because of the presumed separate nature of the corporate form.

The issue addressed in this Opinion is very similar to that addressed in other recent Attorney General Opinions. The following Opinions are incorporated by reference herein, including their extensive citation to statutory, judicial and scholarly authority:

- AG Opinion 04-08 (USDA Loan Application from the Board of Regents of the Northern Marianas College) (Brown) (USDA loan not a public debt because does not require full faith and credit commitment of CNMI Government and College is public corporation with statutory power to borrow).
- AG Opinion 05-11 (CUC independent power provider (“IPP”) contract for Power Plant 1: Not a Constitutional public debt or public indebtedness)
- AG Opinion 05-19 (La Fiesta: Government Lease of office and retail complex: Not a Constitutional public debt or public indebtedness)

In addition to the above referenced analysis, we see no reason to depart from established Attorney General opinions on the subject. CUC is not an agency or instrumentality of the CNMI government for the purposes of Article X, Section 4 of the CNMI Constitution.

C. PUBLIC DEBT

Article X, Section 3 of the Constitution of the CNMI provides in full as follows:

Section 3: Public Debt Authorization. Public debt may not be authorized or incurred without the affirmative vote of two-thirds of the members of each house of the legislature.

N.M.I. Const. art. X, § 3. In turn, the Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands provides, as to this section, in full:

Section 3: Public Debt Authorization. This section provides that public debt can be authorized or incurred only after an affirmative vote of two-thirds of the total number of members of each house. Public debt means obligations of the Commonwealth government that are fixed, such as bonds, notes, debentures, or other forms of debt. *It does not include obligations that involve a substantial contingency, such as loan guarantees where there is a reasonable expectation that the loan will be repaid by the borrower and guarantee by the Commonwealth will not require the expenditure of public funds.*

Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands at 139 (First NMI Constitutional Convention 1976) (emphasis added).⁵

⁵ It is important to note that “public debt” refers to debt born by the Commonwealth government as a whole. It does not refer to the status of the lending institution or other source of funds. Therefore, this provision would apply to any loan made to CUC by any entity, public or private.

The definition of “public debt” is well covered in prior Attorney General opinions. See, e.g., N.M.I. Att’y Gen. Op. 04-08 (Apr. 12, 2004) (potential loan application to U.S. Department of Agriculture by Northern Marianas College Board of Regents to acquire San Roque campus not public debt because no CNMI government “full faith and credit” commitment and NMC is public corporation with statutory power to borrow); N.M.I. Att’y Gen. Op. 05-11 (July 27, 2005) (CUC 20-year contract to buy output of independent power producer not public debt); N.M.I. Att’y Gen. Op. 05-19 (Dec. 22, 2005) (20-year lease of abandoned potential NMC San Roque campus by Office of the Governor not public debt).

In each of these opinions, it is established as a threshold matter that “public debt” does not mean simply any and all future obligation of a government entity to remit payment, but is applied as a legal term of art. N.M.I. Att’y Gen. Op. 04-08 at 3-4; N.M.I. Att’y Gen. Op. 05-11 at 14, 16-18; N.M.I. Att’y Gen. Op. 05-19 at 8-10. Ultimately, the definition of “public debt” includes a commitment of either the full faith and credit of the Commonwealth, or the associated taxing authority.

This is important because, as a sovereign entity, there is no bankruptcy option for the Commonwealth government. The CNMI cannot file for bankruptcy under federal law the way a municipality can. See generally 11 U.S.C. §§ 901-46 (Chapter 9 of the Bankruptcy Code).⁶ This imposes a greater responsibility on the political branches of government to ensure that the “full faith and credit,” and the associated taxing authority, of the Commonwealth, are safeguarded.

One way of ensuring that the debts of instrumentalities of the Commonwealth government such as public corporations do not acquire “full faith and credit” status of the Commonwealth as a whole, with a concomitant claim on the taxing authority of the Commonwealth, is by ensuring that the debt has its own source of repayment other than the Commonwealth government as a whole. For instance, in the case of the potential loan application to the U.S. Department of Agriculture (USDA) by the Northern Marianas College (NMC) Board of Regents to acquire a new San Roque campus, the dispositive factors were 1) corporate form; 2) accounting and revenue restrictions; 3) rate and fee guarantees; 4) property encumbrance; and 5) assignment of revenues. N.M.I. Att’y Gen. Op. 04-08 at 2 (Apr. 12, 2004). As the cited AG opinion shows, these criteria are consistent with those used by the courts of many jurisdictions to determine whether a government entity had pledged full faith and credit to repay a debt.

⁶ Only a “municipality” can file for relief under Chapter 9. The term “municipality” is defined in the Bankruptcy Code to mean “political subdivision or public agency or instrumentality of a State.” The definition is broad enough to include cities, counties, townships, school districts, and public improvement districts. It also includes revenue-producing bodies that provide services which are paid for by users rather than by general taxes, such as bridge authorities, highway authorities, and gas authorities. http://bankruptcy.findlaw.com/bankruptcy/bankruptcy_overview_chapter_9.html.

Such techniques have been implemented in the draft Commonwealth Utilities Financing Act of 2006, H.B. 15-132. While Section 4 of the bill does state that the loan described in the prior section “shall be accepted as a general obligation of the Commonwealth Government and shall be backed by the full faith and credit of the Commonwealth Government,” this promise is made in the form of a guarantee, a backup to the initial source of payment, the revenues of a \$100 million-per-year utility company. “The Commonwealth Government shall be liable in the event of any failure to make the payments agreed upon.” Id. § 4.

Other provisions of the bill show that the primary source of repayment of the loan to the NMIRF is contemplated from other than the taxing authority of the Commonwealth government.

CUC is required to pledge as security for the loan all revenue derived from charges to consumers for consumption of utility services. Id. § 5.b.(i). CUC is required to adjust its rates within six months to achieve full cost recovery, Id. § 5.b.(ii). Full cost recovery means that the corporation will not rely on government subsidy. CUC must covenant to establish a separate FDIC bank account into which the first \$323,000 of monthly consumer revenues shall be placed, for repayment of the loan to the NMIRF. Id. § 5.c. Failure to comply shall result in a minimum fine of \$10,000. Id. § 8.⁷

As of July 4, 2006, unless disapproved by the Legislature, CUC will again have the corporate form. Reorganization Plan No. 2 of 2006, ¶¶ 2 & 7 (May 5, 2006). Hence, four of the five NMC proposed “USDA loan factors,” see N.M.I. Att’y Gen. Op. 04-08 at 2, will have been satisfied in the proposed bill, items 1,2,3 and 5 — 1) corporate form; 2) accounting and revenue restrictions; 3) rate and fee guarantees; 4) property encumbrance; and 5) assignment of revenues. While there is no real property encumbrance, the NMIRF would be able to sue CUC and levy on any other unencumbered assets.

It is my opinion that under the conditions stated above, repayment of the loan by CUC to the NMIRF can reasonably be expected.

Thus, the Government’s loan guarantee of the NMIRF loan to CUC does not qualify constitutionally as a “public debt,” and is not subject to the two-thirds majority vote requirement of the Constitution.⁸

⁷ The current Section 8 of the Bill mistakenly refers to section 6.c. and should be changed to 5.c.

⁸ If a majority of each house reaches its own constitutional “reasonable expectation that the loan will be repaid by the borrower and guarantee by the Commonwealth will not require the expenditure of public funds,” see Analysis at 139, then the loan would not be a public debt, and the language “vote of at least two-thirds” should be replaced by the language “majority vote”. See Commonwealth Utilities Financing Act of 2006, § 3, H.B. 15-132. It may be appropriate to include this “reasonable expectation” finding (quoting the entire foregoing language from the Analysis), perhaps at the conclusion of Section 4 of the bill.

IV. CONCLUSION

For the foregoing reasons, it is my opinion that the proposed loan from the NMIRF to the CUC does not constitute a "public debt." Accordingly, it is not subject to the "operating expense" prohibition, N.M.I. Const. art. X, § 4, nor the requirement, N.M.I. Const. art. X, § 3, that such a loan receive a two-thirds vote of each house of the legislature.



MATTHEW T. GREGORY
Attorney General

ATTORNEY GENERAL OPINION NO. 06-08

DATE: 07/03/06

TO : Director of Personnel
FROM : Attorney General
SUBJECT : Excepted Service Employees and Application of Governor's Directives in the Mayors' Offices

The Office of Personnel Management has requested a formal legal opinion regarding employees of mayors' offices. Specifically, OPM asks the following questions:

Issue 1: Are employees of mayors' offices excepted service employees and subject to excepted service rules and regulations?

Issue 2: Are mayors' offices subject to and required to comply with Governor's Directives?

**I.
EMPLOYEES OF MAYORS' OFFICES
ARE EXCEPTED SERVICE EMPLOYEES
AND SUBJECT TO EXCEPTED SERVICE RULES AND REGULATIONS**

The legislature has exempted the following from the civil service:

Personnel and staff of the mayors' offices of Rota, Tinian, Saipan and the Northern Islands as defined by the FTE (full-time employee ceilings and established by annual appropriation for those offices).

1 CMC § 8131(a)(12).

Thus, employees of the mayors' offices are excepted service employees and not civil service employees.

The Excepted Service Personnel Regulations "apply to employment of personnel in all excepted service positions within the Commonwealth government," including the Offices of the Mayors. Excepted Service Personnel Regulations, Section 1.B.

Thus, it is my opinion that employees of the mayors' offices are excepted service employees and subject to the Excepted Service Personnel Regulations.

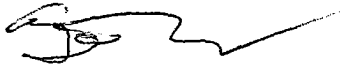
II.
THE OFFICES OF THE MAYORS
ARE GENERALLY SUBJECT TO THE GOVERNOR'S DIRECTIVES

"The executive power of the Commonwealth shall be vested in a governor who shall be responsible for the faithful execution of the laws." N.M.I. Const. art. III, § 1.

"There are in the Commonwealth government as agencies of local government the offices of the mayors, composed of the duly-elected mayors of Saipan, Rota, Tinian and Aguiguan, and the islands north of Saipan." 1 CMC § 5101; see also, N.M.I. Const. art. VI, § 1.

The responsibilities and duties of the mayor are set forth in the Article VI, Section 3 of the N.M.I. Constitution. One responsibility and duty of a mayor is to "serve on the Governor's Council" and to "advise the governor on governmental operations and local matters." N.M.I. Const. art. VI, §§ 3 and 5. See also, 1 CMC § 5101, *et seq.*

Thus, it is my opinion that the offices of the mayor and agencies of local government within the Commonwealth government, are generally subject to the directives of the Governor.



MATTHEW T. GREGORY

ATTORNEY GENERAL OPINION NO. 06-09

DATE: 07/03/06

TO : Director of Personnel
FROM : Attorney General
SUBJECT : Authority to Establish Divisions Within Executive Branch Departments

The Director of Personnel has requested a legal opinion regarding the authority to establish divisions within Executive Branch departments.

Issues

1. Must a division be created by statute or executive order or can it be established by gubernatorial directive or by a department head?
2. Does the creation of a new division where none was created by law constitute a change to existing law that would require that it be set forth in an executive order?
3. Would Public Law 13-1 exempt from the civil service system the head of any program or so-called division or office that was not established by the legislature?

Short Answer

1. A division may be created by (1) the legislature or (2) by the governor or by a department head with the approval of the governor; provided, however, if the creation of a division affects existing law, that proposed creation of a division must be set forth in an executive order and submitted to the legislature in accordance with Article III, § 15 of the N.M.I. Constitution.
2. The creation of a new division within a department is not necessarily a change in existing law and would require a case-by-case analysis to determine whether such a creation constitutes a change in existing law.
3. Public Law 13-1 exempts the stated positions which are established in accordance with Commonwealth law but does not require that the position be established by the legislature.

Analysis

The N.M.I. Constitution provides the following:

Executive branch offices, agencies and instrumentalities of the Commonwealth government and their respective functions and duties shall be allocated by law among and within not more than fifteen principal departments so as to group them so far as practicable according to major purposes.

Regulatory, quasi-judicial and temporary agencies need not be a part of a principal department.

The functions and duties of the principal departments and of other agencies of the Commonwealth shall be provided by law.

The legislature may reallocate offices, agencies and instrumentalities among the principal departments and may change their functions and duties.

The governor may make changes in the allocation of offices, agencies and instrumentalities and in their functions and duties that are necessary for efficient administration. If these changes affect existing law, they shall be set forth in executive orders which shall be submitted to the legislature and shall become effective sixty days after submission, unless specifically modified or disapproved by a majority of the members of each house of the legislature.

N.M.I. Const. art. III, § 15 (paraphrasing added).

By virtue of Executive Order 94-3, the Executive Branch was re-organized and provided that:

(a) **Department Secretaries.** Each department director, except the Attorney General and the Director of Public Safety, is re-designated a secretary. The Director of Public Safety is re-designated the Commissioner Public Safety.

(b) **Division Directors.** Except as otherwise provided in this plan, the major components of a department shall be known as divisions. Every chief of a major component of a department is re-designated a director. For example, the Chief of Labor is re-designated Director of Labor. If the head of a division has a title other than chief, that title may be retained at the discretion of the head of the department, adjusted as necessary to reflect any re-allocation of duties or functions made by this plan.

(c) **Office Chiefs.** Except as otherwise provided in this plan, minor components of a department, whether or not within a division, shall be known as offices. Each office head is re-designated a chief.

(d) **Renaming by Department Heads.** With the approval of the Governor, the head of a department may vary the designation of any component of such department or the title of the head of any such component from the designations and titles provided in subsections (a) through (c) of this section.

Executive Order 94-3, § 106.

Thus, pursuant to Executive Order 94-3, § 106(d), a department head, with the approval of the Governor, may vary the designation of any component of such department. However, this authority is limited by Article III, § 15 of the N.M.I. Constitution. Any proposed change in the designation of any component of a department which affects existing law must be set forth in an executive order and submitted to the legislature in accordance with Article III, § 15 of the N.M.I. Constitution.

Therefore, it is my opinion that a division within a department may be created by (1) the legislature or (2) by the governor or by a department head with the approval of the governor; provided, however, if the creation of a division affects existing law, that proposed creation of a division must be set forth in an executive order and submitted to the legislature in accordance with Article III, § 15 of the N.M.I. Constitution.

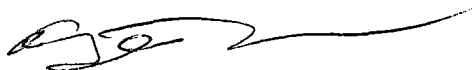
It is also my opinion that the creation of a new division within a department is not necessarily a change in existing law and would require a case-by-case analysis to determine whether such a creation constitutes a change in existing law.

The legislature has enacted Public Law 13-1 which exempts the following positions from the civil service system:

Any official at or above the level of division director, including the principal executive or head and deputy secretary of departments and the principal executive or head of offices, divisions, boards, commissions and councils, and the executive and staff of any Commonwealth liaison office.

1 CMC, § 8131(a)(6).

It is my opinion that Public Law 13-1 exempts the stated positions which are established in accordance with Commonwealth law but does not require that the position be established by the legislature. Whether a stated position is established in accordance with Commonwealth law and, thus, exempt under Public Law 13-1 would require a case-by-case analysis.



MATTHEW T. GREGORY