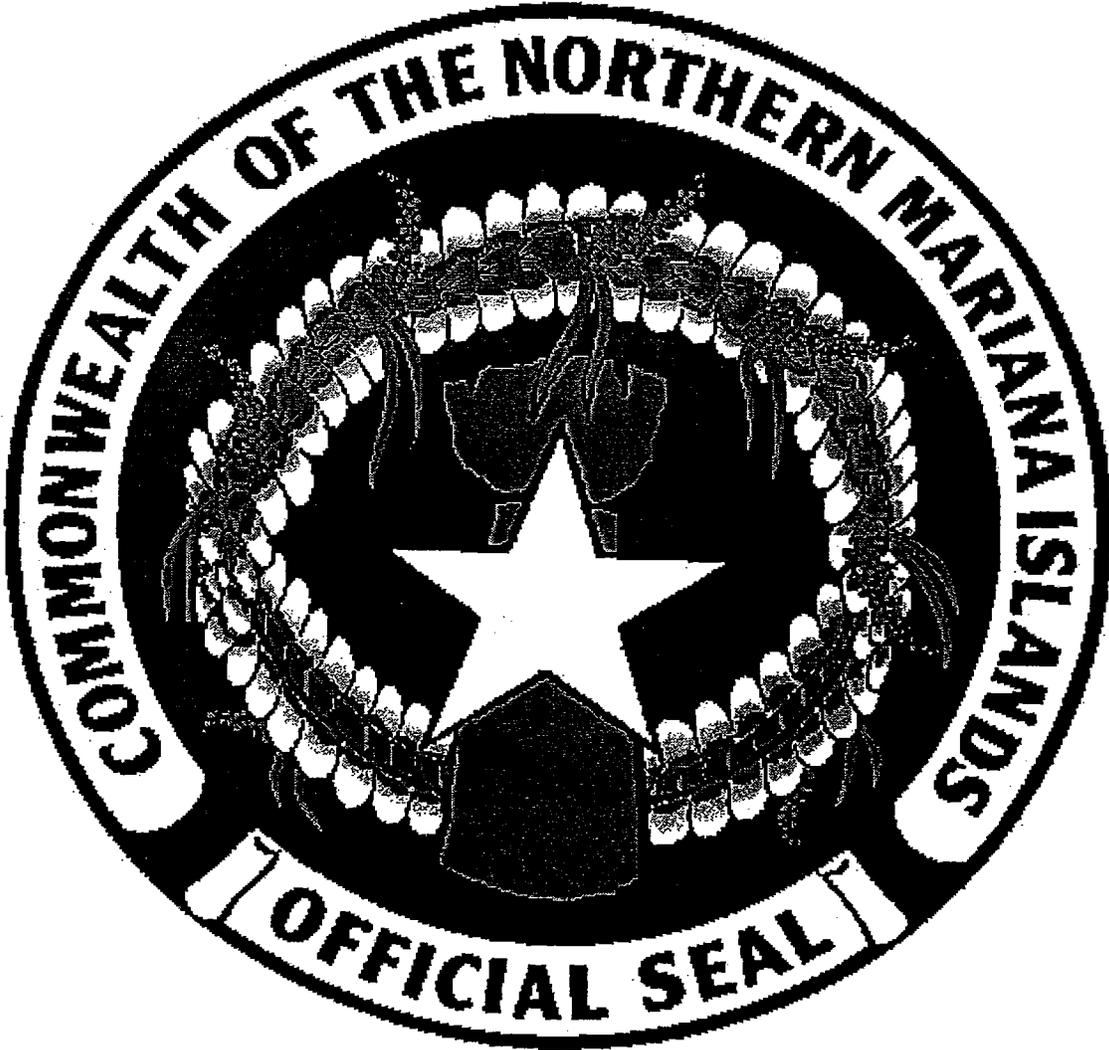
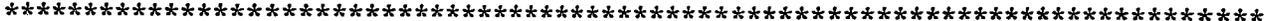


**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS**



**COMMONWEALTH REGISTER
VOLUME 32
NUMBER 06
JUNE 25, 2010**



Please insert the following page in volume 31, No.09 after the table of contents. Discard this sheet.

COMMONWEALTH REGISTER

VOLUME 32
NUMBER 06

June 25, 2010

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CUC's Imminent Generation and Other Failure and
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Authority: Article III, §10 of the CNMI Constitution and 3 CMC §5121
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Subject: Declaration of a State of Disaster Emergency:
CUC's Imminent Generation and other Failure and
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Authority: Article III, §10 of the CNMI Constitution and 3 CMC §5121
Of the CNMI Disaster Relief Act of 1979
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Subject: Declaration of a State of Disaster Emergency:
CUC's Imminent Generation and other Failure and
The need to Prove Immediate Reliable Power,
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Authority: Article III, §10 of the CNMI Constitution and 3 CMC §5121
Of the CNMI Disaster Relief Act of 1979
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Subject: Declaration of a State of Disaster Emergency:
CUC's Imminent Generation and other Failure and
The need to Prove Immediate Reliable Power,
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Authority: Article III, §10 of the CNMI Constitution and 3 CMC §5121
Of the CNMI Disaster Relief Act of 1979
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Number: 2010-06
Subject: Declaration of a State of Disaster Emergency:
CUC's Imminent Generation and other Failure and
The need to Prove Immediate Reliable Power,
Water and Wastewater Services
Authority: Article III, §10 of the CNMI Constitution and 3 CMC §5121
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DIRECTIVE

No. 269 CNMI Energy Steering Committee
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

EXTENSION OF EMERGENCY
Volcanic of Anatahan

WHEREAS, On May 13, 2003, 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

NOW, THEREFORE, I, ELOY S. INOS, by the authority vested in me as Acting Governor, and pursuant to Article III, Section 10 of the Commonwealth Constitution and 3 CMC §5121, and in accordance with the Emergency Management Office, Commonwealth of the Northern Mariana Islands and US Geological Survey, do hereby extend a state of disaster emergency in the Commonwealth with the respect of the island of Anatahan under the same terms and conditions as are contained in the original Declaration.

This Declaration of Emergency shall be 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 a like term, and giving reasons for extending the emergency.

Dated this 26th of May 2010.

ELOY S. INOS
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)**
- Attorney General (Fax: 664-2349)**
- Secretary Of Finance (Fax: 664-1115)**
- Commissioner of Public Safety (Fax: 664-9027)**
- Special Assistant for Management and Budget (Fax: 664-2272)**
- Special Assistant for Programs and Legislative Review (Fax: 664-2313)**
- Press Secretary (Fax: 664-2290)**
- United States Coast Guard (Fax: 236-2968)**





COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

DECLARATION OF EMERGENCY **Submarine Volcanic Eruption South of Sarigan**

I, **BENIGNO R. FITIAL**, by the authority vested in me as Governor, and pursuant to Article III, Section 10 of the Commonwealth Constitution and 3 CMC§5121, do hereby declare a state of disaster emergency in the Commonwealth, and do hereby declare the island of Sarigan as unsafe for human habitation and further do hereby restrict all travel to the said island with exception of scientific expeditions.

I. Basic for the Emergency: Natural Disaster

On May 28, 2010 at approximately 12:06 p.m. the active submarine volcano south of the island of Sarigan erupted. Due to continuing volcanic activity south of Sarigan, base on seismic activity and visual observations, the activity is on-going in the area, presenting a continuing threat of adverse impact in the waters and air space around south of Sarigan island.

II. Remedial Measures

- A.** Sarigan is off limits, Except for Approved CNMI Government personnel, or approved scientific missions, Sarigan shall be off limits and restricted to the general public, Fishermen, tour operators, boat operators and pilots shall not come within (5) Five Nautical miles radius of Lat. 16 degrees 37.139 minutes North and Long. 145 degrees 44.632 minutes East. There shall be no permanent residency allowed on the island of Sarigan. Except for activities of the Department of Public Safety (DPS), the Emergency Management Office (EMO) shall grant written approval, in advance, for any and all government and scientific visits to Sarigan. The Director of the EMO shall consult with the Mayor of the Northern Islands, concerning official government visit to Sarigan so that the Mayor's office is fully informed of the CNMI Government approved activities on the island.
- B.** DPS, in cooperation with EMO and the Mayor of the Northern Islands, shall be responsible within the limits of existing resources and personnel – to enforce the off limits ban. DPS is authorized to cooperate with Federal agencies that might provide enforcement and surveillance assets.

III. Rules and Regulations

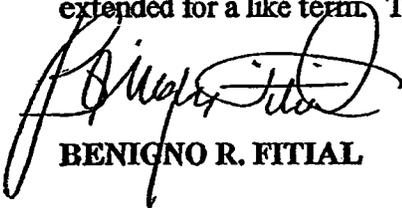
If necessary, the Governor may promulgate reasonable rules and regulations to carry out this Declaration of Emergency.

IV. Severability

If any provision of this Declaration of Disaster and rules and regulations promulgated pursuant thereto, or the application thereof to any person or circumstances is held invalid by a court of law, such invalidity shall not affect the other provisions or application of this Declaration of Disaster.

V. Effective Date of this Declaration

This Declaration shall become effective upon signature by the Acting Governor and shall remain in effect for (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 extended for a like term. The Governor shall give reason for extending the emergency.



BENIGNO R. FITIAL

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)
Attorney General (Fax: 664-2349)
Secretary Of Finance (Fax: 664-1115)
Commissioner of Public Safety (Fax: 664-9027)
Special Assistant for Management and Budget (Fax: 664-2272)
Special Assistant for Programs and Legislative Review (Fax: 664-2313)
Press Secretary (Fax: 664-2290)
United States Coast Guard (236-2968)



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

DECLARATION OF HEALTH EMERGENCY

WHEREAS the Commonwealth is experiencing an increasing rate of deaths among community members that can be attributed to lack of health care; and,

WHEREAS the current systems of health care delivery are overtaxed with less than needed numbers of physicians and nurses available to serve medical needs; and,

WHEREAS the rate of off-island referrals has increased to the point where it poses a fiscal threat to the economic stability of the Executive Branch; and,

WHEREAS the Department of Public Health is unable to address this situation within the existing regulatory structure.

NOW THEREFORE I Benigno R. Fitial do hereby **DECLARE A STATE OF HEALTH EMERGENCY** for the Commonwealth and direct the following action to occur forthwith:

1. Within fifteen (15) days of this Declaration, the Department of Public Health shall submit a written plan to move the Commonwealth from its present "medical emergency" status to an acceptable level of care.

DATED:

10/20/09

BY:

Benigno R. Fitial
Benigno R. Fitial
Governor



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

DECLARATION OF A STATE OF EMERGENCY

WHEREAS, the Commonwealth of the Northern Mariana Islands faces an imminent threat of disruption of water, wastewater, and electrical services ("Public Utilities") due to financial uncertainties;

WHEREAS, disruption of the provision of Public Utilities poses a direct threat to the health and safety of the people of the Northern Mariana Islands, as enumerated in the attached findings which are incorporated herein;

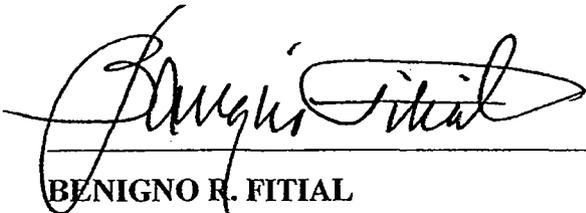
WHEREAS, under Article III § 10 of the Constitution the Governor has the authority and duty to take the necessary steps to respond to emergencies

NOW THEREFORE, a State of Emergency for the Commonwealth of the Northern Mariana Islands is declared due to the imminent incapacity of the Commonwealth Utilities Corporation (CUC) to provide critical power generation service to the CNMI and the extreme, immediate threat such condition poses to the Commonwealth of the Northern Mariana Islands.

In order to meet this imminent threat, the Constitutional authority provided under Article III § 10 is invoked, including, but not limited to, authority to:

1. suspend all statutory or regulatory provisions as required; and
2. the reprogramming of funds necessary to meet this emergency.

Done this 8th day of June, 2010


BENIGNO R. FITIAL

cash, it would buy a month's worth of fuel at a time, which it stored in Mobil's fuel tanks and withdrew as needed. But now CUC buys its fuel from Mobil on roughly a daily basis for Saipan drawn from a pipeline running from Mobil's storage tank to CUC's Power Plant 1, or trucked to Power Plant 4.

6. CUC lacks the funds to buy oil and projects that it will run out of oil within only a few days. CUC is not credit-worthy and has no ability to borrow money. The principal reason CUC lacks the requisite funds is that its largest customers have failed to pay large overdue bills. The largest customer, with the largest overdue bills is the CNMI Government – the Central Government, PSS and NMC. These entities owe CUC a total of \$3,846,989.93, as follows: The Central Government owes \$2,001,604.27; PSS owes \$1,547,693.09; NMC owes \$297,692.57. Each of these entities is overdue in that amount by 60-180 days.

7. The Governor, has wanted to pay these bills, but, given the Government's other responsibilities pursuant to CNMI law, cannot do so without either a specific Legislative appropriation or the power to retask, or "reprogram" funds from other purposes. Further, the Legislature has enacted limits on my legal ability, as Governor, to reprogram funds.

8. The Governor repeatedly asked the Legislature to provide the CNM with the budget that will allow for timely utility bill payments, concurrent with reduced expenditures in other areas so that the CNMI can live within its financial means. Alternatively, the Governor has asked the Legislature for authority to reprogram. The Legislature has failed to provide either.

9. As a result, the CNMI now faces a crisis – electricity will stop within days because the Government has failed to pay CUC for the millions of dollars of electricity, and the oil producing it, which the Government has consumed.

10. CUC has enough diesel fuel for Saipan's power needs through June 08 of this coming week, Tinian through June 18, 2010, and Rota through June 12, 2010.

11. If CUC cannot secure the fuel oil needed for its generators, the following will happen immediately, meaning by Wednesday, June 9:

- a. all power generation on Saipan will cease;
- b. the sewage collection and treatment system will cease;
- c. the Hospital will convert to emergency power, with enough oil for just a day or two. Then its lights and air conditioning will cease, its refrigeration of drugs and medicines will cease, its laboratory will shut down, its treatment of dialysis patients will cease, and the respirators breathing for patients would shut down. The ICU (intensive care unit) and neonatal patients provided with medicines by pumps and electric syringes would lose these treatments. The bodies in the morgue would no longer be refrigerated. Food for patients could no longer be cooked or preserved; and
- d. public safety equipment would cease operating, traffic lights immediately, and communications and jail electric security facilities as soon as stocks of emergency diesel oil ran out; and

- e. those hotels requiring CUC power to produce drinking water through reverse osmosis, to cool their rooms, and to cook their food would have to shut down facilities;
- f. those members of the community who live at home and are at risk – the old, the very young and the very ill – would lose air conditioning and refrigeration.

12. All government offices would close, including those required to process payments and food stamps to our neediest citizens.

13. This situation would be intolerable. It is avoidable – if the Governor had the legal ability to reprogram funds right now, the CNMI Treasury could provide CUC with the funds needed to buy oil immediately.

14. There is no Legislative relief coming. For months the Legislature has failed to approve a budget that provides enough money for the Government to pay its utility bills while providing for other essential government services that are within the Government's financial means. The Legislature has declined to respond to the entreaties of the Administration to avoid this crisis.

15. There is no alternative to providing this relief other than an order from the Governor. Inaction will produce a disaster. A declaration of emergency would provide the Governor with authority to take the necessary steps to avert this crisis.

16. This declaration of emergency is necessary to protect the health and safety of our children, our senior citizens, businesses and all other CNMI residents and visitors.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS



STATE BOARD OF EDUCATION
PUBLIC SCHOOL SYSTEM
P.O. BOX 501370
SAIPAN, MP 96950

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Chairperson

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Francine R. Babana
Student Representative

Teacher Representative

Commissioner of Education
Rita A. Sablan, Ed.D.
coe.ras@cnmipss.org

PUBLIC NOTICE OF EMERGENCY REGULATIONS WHICH ARE AMENDMENTS TO THE RULES & REGULATIONS OF THE PUBLIC SCHOOL SYSTEM

EMERGENCY ADOPTION AND IMMEDIATE EFFECT: The Commonwealth of the Northern Mariana Islands Public School System (“PSS”) finds that:

(1) the attached rules and regulations regarding Certified Personnel Regulations, Section 60-30.2-225 Types of Certification and Requirements shall be adopted immediately on an emergency basis because the public interest so requires, for the reasons stated below (1 CMC § 9104(b), (c); 1 CMC § 9105(b)(2)); and

(2) the same rules and regulations shall be adopted, after a proper notice and comment period, as permanent regulations pursuant to the attached Notice of Proposed Rules and Regulations and the Administrative Procedure Act, 1 CMC § 9104(a).

AUTHORITY: The proposed amendments to PSS regulations are promulgated pursuant to the Board’s authority as provided by Article XV of the CNMI Constitution, Public Law 6-10 and the CNMI Administrative Procedures Act.

The Administrative Procedure Act provides that an agency may adopt an emergency regulation upon fewer than 30 days’ notice if it states its reasons in writing.

(b) If an agency finds that the public interest so requires, or that an imminent peril to the public health, safety, or welfare requires adoption of a regulations upon fewer than 30 days’ notice, and states in writing its reasons for that finding, it may, with the concurrence of the Governor, proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency regulation. The regulations may be effective for a period of not longer than 120 days, but the adoption of an identical regulation under subsections (a)(1) and (a)(2) of this section is not precluded.

Board of Education
Telephone : (670) 237-3010
Fax : (670) 664-3711

www.cnmipss.org

Commissioner of Education
Telephone : (670) 237-3001
Fax : (670) 664-3798

(c) No regulation adopted is valid unless adopted in substantial compliance with this section.....

1 CMC § 9104(b), (c).

THE TERMS AND SUBSTANCE: These Amendments sets forth the revised Types of Certification and Requirements.

THE SUBJECTS AND ISSUES INVOLVED: These rules and regulations:

1. Provides the specific requirements for Basic I Certificate.

ADOPTION OF EMERGENCY REGULATIONS FOR 120 DAYS: The Board of Education has followed the procedures of 1 CMC § 9104(b) to adopt these Proposed Regulations on an emergency basis for 120 days.

REASON FOR EMERGENCY ADOPTION: The Board of Education finds that the public interest requires adoption of these regulations on an emergency basis because changes were made to the Types of Certification and Requirements for Basic I Certificate. In order to effectively recruit new teacher for the following school year, PSS must adopt the changes that have been approved by the Board of Education.

DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Rules and Regulations shall be published in the Commonwealth Register in the section/s on emergency and proposed regulations (*see* 1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district. (1 CMC § 9104(a)(1))

The Board of Education shall take appropriate measures to make these Rules and Regulations known to the persons who may be affected by them (1 CMC § 9105(b)(2)).

IMMEDIATE EFFECT: These emergency rules and regulations become effective immediately upon filing with the Commonwealth Register and delivery to the Governor. (1 CMC § 9105(b)(2))

TO PROVIDE COMMENTS: No comments are required for these emergency rules and regulations. However, the related Notice of Proposed Rules and Regulations will specify comment procedures.

This emergency regulation was approved by the Fiscal, Personnel & Administration Committee Meeting on May 19, 2010 and by the Special Board of Education Meeting on May 26, 2010.

Submitted by:  6/24/2010
Lucia L. Blanco-Maratita, Chairperson
Board of Education
Date

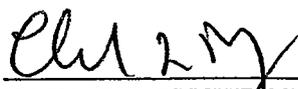
Received by:  06/24/10
^{for} Esther S Fleming
Special Asst. for Administration
Date

Concurred by:  6/25/10
BENIGNO R. FITIAL
Governor
Date

Filed and Recorded by:  06-25-10
ESTHER M. SAN NICOLAS
Commonwealth Register
Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

Dated the 25 day of June, 2010.


EDWARD BUCKINGHAM
Attorney General

60-30.2-225 Types of Certification and Requirements

The Commonwealth shall have five general levels of certification for professionals in the field of education: basic I, specialized, basic II, standard, and professional.

(a) Basic I certificate is a two-year certificate for teachers, librarians, school counselors, related service providers, instructors, and school administrators.

(1) Eligibility Requirements

(i) The basic I certificate requires that teachers, school librarians, school counselors, school administrators and other professional applicants possess either a baccalaureate, masters, or doctoral degree resulting from a course of instruction of at least three and one-half years length at a college or university recognized by U.S. accreditation commissions approved by PSS. An applicant who possesses a baccalaureate, masters or doctoral degree resulting from a course of instruction of at least three and one-half years length at a college or university not accredited from an approved commission shall have his/her transcript of courses evaluated and certified to be equivalent to a degree conferred by accredited schools. The certification and evaluation of program equivalency shall only be conducted by the agencies identified and approved by PSS. The applicant is responsible for the cost of the program equivalency certification. Failure to obtain such certification shall render an applicant disqualified for failure to meet the education requirement(s) of the position.

(ii) A basic instructor certificate may be provided to instructor applicants in specialized areas who submit the required documentation below (§ 60-30.2-225 (iii)(A), (B), (E), and (F)) and meet the minimum requirements as set forth in the PSS classification guidelines.

(iii) Submittal of documentation requirements prior to effective date of employment. Requirements include:

- (A) Complete and signed application form,
- (B) Two passport size photos,
- (C) Official college transcripts,
- (D) Teaching certificate (if any),
- (E) Receipt of payment from PSS Treasurer for certification processing fee, and
- (F) FBI fingerprint submission.
- (G) Effective August 1, 2006: Test result showing that an applicant has taken and passed PRAXIS I and II exams, excluding professionally licensed related services providers. Effective May 26, 2010: Alternatively, proof of passage of a rigorous content knowledge test administered by an individual jurisdiction deemed substantially equivalent to passing the PRAXIS I and II exams (as determined by the Board of Education through their representative, the Coordinator of Certification and Licensure) shall satisfy this requirement for an applicant's initial, two-year Basic I certification. Any renewal of certification or subsequent application for Basic I certification shall require that the applicant show that they have passed the PRAXIS I and II exams.

(2) Education; Certification Course Requirements

Prior to the two-year expiration date of the basic I certificate, the applicant must provide an official transcript or certificate of completion of the basic II certificate courses or applicable certification courses.

(3) Term

The basic I certificate is invalid after its expiration date and shall not be reissued. Requirements must be satisfied to upgrade to the next certification level.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2009-9**

2

3

4

DECLARATION OF A STATE OF DISASTER EMERGENCY:

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CONTINUATION #14

I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the inability of the Commonwealth Utilities Corporation (CUC) to provide critical power generation service to the CNMI and the extreme, immediate and imminent threat such condition poses to the Commonwealth of the Northern Mariana Islands.

This Executive Order is intended to, and does, continue in effect portions of the Governor's preceding disaster emergency declarations on this matter, EO 2009-01 through -08, except as specifically modified. As more fully stated below, this Executive Order shall expire on the 31st day following the date of my signature. The following findings and conclusions further support continuation of the Declaration and issuance of directives.

Caller Box 10007 Saipan, MP 96950 Telephone: (670) 664-2200/2201 Facsimile: (670) 664-2211

1 **FINDINGS**

2
3 I find that:

4
5 1. All findings and conclusions of EO 2009-01 through -08 are incorporated by reference,
6 except as specifically varied in this Executive Order.

7
8 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

9
10 2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers
11 has continued to place CUC operations at risk. Presently CNMI law (PL 16-14) prohibits CUC
12 from hiring any more non-US technical workers than the 19 skilled professionals recently with
13 CUC. CUC has repeatedly asked the Legislature for relief from this statute regulating the
14 Government's workforce, to no avail. Further, errors in wording in the CUC enabling legislation
15 recently re-enacted, PL 16-17, as amended, would bar the Executive Director from day-to-day
16 management of the corporation, effectively shutting CUC down. This EO eliminates these
17 problems while it is in effect.

18
19 3. **Background.** CUC has substantially minimized the risk of losing the services of its owned
20 generating capacity, which losses created intermittent blackouts on portions of its system. It
21 therefore allowed the Aggreko year-long temporary power contract to terminate, as provided in
22 the agreement, effective September 12, 2009. This will save CUC customers at least \$6 million
23 per year in fees. But it still presents risks, as the strategy requires proper operation and
24 maintenance of CUC's owned engines by CUC's technical staff, and the timely securing of
25 materials and supplies.

26
27 4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction
28 of the US District Court and the US EPA, pursuant to two consent, or "stipulated", orders. The
29 first requires the upgrade and smooth functioning in virtually all aspects of CUC's water and
30 wastewater divisions. The second requires CUC to properly eliminate over 400,000 gallons of
31 used oil and to institute measures to avoid uncontrolled buildup of such inventories. Failure to
32 meet the requirements of the federal court orders could subject CUC and the CNMI to
33 substantial fines and charges, and, in the extreme, to a federal takeover of their finances.

34
35 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission (CPUC).
36 The regulator has plenary power over CUC rates, charges, fees, operations and capital
37 investments. CUC's failure to timely and competently meet CPUC orders and other
38 requirements can result in severe rate discipline, and fines and other penalties.

1 6. CUC is the sole electricity supplier to the Government of the CNMI, including all public
2 safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the
3 CNMI's businesses and homes. While some businesses and agencies own backup generators,
4 they are not generally organized to use the backups as permanent power sources; and the diesel
5 oil purchased to run these generators is substantially more expensive than that used for CUC
6 power.

7
8 7. Without CUC electricity:

- 9
- 10 a. most CNMI economic activity would come to a halt, the courts would soon close,
11 much refrigeration and air conditioning would end, and the airports and ports
12 would be forced to rely on emergency generation and the limited oil supply for it;
13
 - 14 b. the CNMI's health and safety would immediately be at risk, since traffic signals
15 and street lighting would cease to function, emergency, fire and police facilities
16 and their communications systems, and the Hospital and island clinics would have
17 to rely on limited oil supplies for emergency generation and then cease
18 functioning, much refrigeration of food and medicines would end, as would air
19 conditioning for the elderly and medically fragile;
20
 - 21 c. the public schools and the Northern Marianas College would close. Other
22 educational institutions would close as their backup oil supplies for emergency
23 generators were exhausted; and
24
 - 25 d. water and sewage treatment would soon end. One of CUC's largest electric
26 customers is the combined CUC Water and Wastewater Divisions. CUC is the
27 sole supplier of electricity for these systems. CUC's water system relies on
28 electricity to maintain the system pressure needed to avoid the backflow of
29 pathogens, to chlorinate, and to pump, store and distribute water supplies. CUC's
30 wastewater system requires electricity to collect, pump, process, treat and
31 discharge sewage. The lack of electricity could result in sewage overflows,
32 contamination of land and water and rendering unsafe CNMI beaches, which are
33 also principal tourist destinations.
34

35
36 **Staffing CUC with the technical experts to permit continued electric service**

37
38 8. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain
39 and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to
40 buy many needed parts to avoid outages. CUC has begun the needed overhaul of PP #1 unit DE-

1 5 in September. In October four other units will undergo required overhaul during the ensuing
2 12-month period.

3
4 9. Adequate technical staff is essential to this work. A major challenge to carrying out this
5 rehabilitation has been finding the trained technicians needed to carry out these rehabilitation
6 projects, and maintain and run the equipment. The technicians must be ready for service when
7 needed and their services must be affordable. Any significant reduction in CUC's present
8 technical workforce could seriously compromise CUC's ability to generate and distribute power.

9
10 10. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit
11 (T & D) is dilapidated and bordering on being unsafe. There is an insufficient number of skilled
12 workers to operate T & D. The linemen must be trained to, and skillful in, meeting US
13 standards.

14
15 11. For example, Saipan's early-September brush with Typhoon Choi-Wan 15W that passed to
16 the north of Saipan, underscored the extreme vulnerability of CUC's power transmission and
17 distribution (T & D) system. Over 150 calls of no- power and line faults were fielded by crews
18 when, for a storm of this size, there should have been no more than a score. Accelerating
19 improvements to the T & D system, with proper staff under an Emergency Order, would allow
20 CUC to "harden" the system in anticipation of a bigger storm event. The alternative, in a more
21 serious storm, is CUC's inability to recover in any reasonable time period.

22
23 12. Further, utility industry safety margins for isolated, island systems typically require a
24 reserve equal to the capacity of the two largest units; in CUC's case this would be another 15
25 MW of load, equivalent to the departed Aggreko temporary units. Meeting this reserve
26 requirement means CUC must have an adequate repair and maintenance staff.

27
28 13. The Legislature, through 3 CMC § 4972(5), as amended by PL 16-14 (Aug. 27, 2008), has
29 limited CUC's ability to hire technical staff; allowing up to 19 foreign workers only. The CUC
30 Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such
31 persons as are necessary for operations, *except as otherwise limited by other law.* 4 CMC §
32 8123(h).

33
34 14. PMIC at PP #4 and Telesource on Tinian, as Independent Power Producers (IPPs), are not
35 subject to the Legislature's limitation on foreign workers.

36
37 15. There are not enough technical specialists at CUC to get the power generation work done,
38 particularly specialists with experience in the type of engines that CUC uses. CUC believes that
39 the vast majority of skill sets must come from non-US personnel.
40

1 16. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding
2 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after
3 interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator
4 candidates were US citizens.

5
6 17. CUC has hired some local staff recently thanks to the aggressive steps of CUC HR and the
7 Executive Director. In 2009 to date CUC has hired 9 US citizens, plus 3 skilled trade
8 technicians, foreign workers who have IR status, and an additional 9 trade technicians, for a total
9 of 21 new workers. But CUC also lost 4 US citizen technical workers, who resigned, this year.

10
11 18. CUC, as of this month, still needs 5 skilled trade technicians for power plant operations and
12 maintenance. As more units begin working after the rehabilitations are largely complete, CUC
13 will need more staff to operate and maintain them.

14
15 19. The impact of an inadequate workforce would be three-fold:

16
17 a. First, there would be a direct negative effect on the existing consumers. There
18 would be brownouts, or area blackouts, with the above-mentioned loss of service.

19
20 b. Second, the power plants would again ~~outage~~, producing more of these outages.

21
22 c. Third, there would be an indirect effect, increasing rates, because small
23 consumers would have to shoulder more of the fixed costs of the CUC system.
24 First, there would be loss of large customers. If the hotels were to become part of
25 the system, they could help pay CUC fixed costs, which would lower everyone
26 else's rates. The hotels need reliable, 24/7 power. But with unreliable power,
27 CUC would be unable to convince large commercial customers, particularly the
28 hotels, to join, or rejoin, its system. Second, would come additional expenses. If
29 CUC fails to meet federal court deadlines for the stipulated orders, the Court
30 could appoint a federal receiver and its consulting team – with all expenses
31 charged to CUC customers. Thus, the indirect effect of an inadequate workforce
32 would be to boost rates.

33
34 20. Rota has recently suffered blackouts from inadequate generator maintenance. The power
35 plant's other facilities and the island's distribution system similarly need the attentions of
36 additional manpower. The present alternative for Rota is akin to Saipan's – purchasing higher
37 cost power from the Rota Resort. Two Rota units must undergo overhaul.

38
39 21. Since EO 2009-8 late last month, and the suspension of the harmful legislative employment
40 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and

1 Rota power generation facilities. Hired were 11 foreign workers. Another 3 foreign workers
2 are awaiting authorization from their current employer to transfer to CUC. CUC needs to
3 continue trying to get to the level of 14 additional, foreign national skilled workers it anticipated
4 last month. Further, CUC needs to be able to hire beyond 14 additional, foreign nationals as the
5 work requires. Otherwise, if CUC had to discharge these workers its staffing levels would
6 return to those which overworked its limited staff. For example, over pay period numbers 2
7 through 11 of the year 2009, CUC accumulated 18,053 hours of overtime from technical
8 employees who each worked 40 or more hours of overtime in a pay period. This condition is
9 extreme, and a repeat can result in inefficiencies and poor work quality. It can lead to dangerous
10 mistakes, producing injury or death.

11
12 22. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The
13 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set
14 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6
15 million-per-year benefit of terminating the Aggreko temporary power contract.

16
17 23. CUC has demonstrated that the required workers are available as nonresident workers, and
18 cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign
19 national workers is necessary to ensure the delivery of uninterrupted power services to the
20 people of the Commonwealth.

21
22
23 **Complying with the federal court order on disposal of used oil**

24
25 24. CUC has taken concrete steps to address the storage and disposal of used oil, consonant
26 with the federal court's Stip Order 2. Federal court Stipulated Order # 2, relates to the used oil
27 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.
28 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an
29 adequate complement of trained technical employees, CUC can meet these requirements.

30
31 25. Recent inspection by the US Coast Guard (USCG) has resulted in the imposition of another
32 cost that was unanticipated even with Stip Order 2. The USCG now requires additional and
33 more stringent measures to contain or eliminate the possibility of any oil reaching the ocean
34 from Power Plants 1, 2 and the power plant in Rota. This requires trained staff.

35
36
37 **Complying with the federal court order on managing the water and wastewater systems**

38
39 26. As long as the Water and Wastewater Divisions can hire competent staff and receive power
40 from the Power Division, they can function.

1
2 27. The U.S. Department of Justice (DoJ), Environment and Natural Resources Division, has
3 sued CUC in federal court to come into compliance with critical water and sewage treatment
4 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) (“Stip Order
5 1”). See also http://www.usdoj.gov/enrd/Consent_Decrees.html. In July 2008 CUC, the CNMI
6 and (in September 2008) the U.S. Environmental Protection Agency (EPA) stipulated to this first
7 of two orders lodged with the U.S. District Court on the date the Complaint was filed. This
8 order requires CUC to implement a series of improvements to its water and wastewater systems
9 that respond to years of neglect, for which it presently lacks the funds and the complete technical
10 capability. CUC must be able to hire the staff to perform the required technical functions.

11
12 28. The Water and Wastewater Divisions cannot carry out their missions without adequate
13 staff. While the bulk of their employees are drawn from local and US populations, their
14 management estimates that at least 4 trained foreign technicians will be required – an
15 instrumentation specialist, a generator repair/rehab specialist with extensive transfer switch
16 experience, a fabrication specialist, with steel/aluminum and strong inert gas welding
17 experience, and an experienced wastewater treatment operator.

18
19 29. CUC also requires a constant supply of electricity to run its water and wastewater treatment
20 systems. CUC has very limited on-site emergency generation capability for only portions of
21 these systems.

22
23
24 **Meeting US District Court and CNMI PUC requirements to produce timely, accurate**
25 **financial reports**

26
27 30. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
28 beginning this month. The IFP must develop over time, becoming more than “interim”. CUC
29 cannot do this unless it has a staff of trained accounting and other financial experts who can
30 gather data, put the data in the required form and generate the IFP and its later versions.

31
32 31. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities
33 Commission (CPUC). The CPUC is charged by statute to oversee carefully CUC’s operations
34 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC’s
35 water and wastewater systems.

36
37 32. In its most recent electric and water/wastewater orders, of September 3, 2009, the CPUC
38 addressed CUC’s inability to deliver complete on-time financial reports, requiring CUC, in
39 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.’s

1 09-1 and 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations at
2 its November meeting.

3
4 33. CUC cannot upgrade its financial and accounting staff unless it has a staff of trained
5 accounting and other financial experts who can gather data, put the data in the required form and
6 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
7 staff with the data required for their oversight.

8
9 34. CUC has lost 2 senior accountants plus a related specialist. The IT and billing department
10 last month was reduced by one staffer, having advertised for a replacement for 4 weeks to no
11 avail. While it appeared that CUC might have to look to employing foreign technical specialists,
12 CUC has just hired back 2 former accountants and anticipates bringing a third person aboard in
13 October. All are US citizens. Nonetheless, CUC must have the flexibility to hire competent
14 professionals as needed.

15
16 35. To summarize: Without properly trained technical staff CUC's ability to supply power is at
17 risk. So is its ability to manage the rest of its systems, including its finances and accounting.
18 CUC's services could not be adequately staffed without last month's immediate lifting of the
19 artificial legislative regulation of CUC's workforce, in EO 2009-08, Directive #10, suspending
20 the limitations on CUC hiring foreign workers. It is obvious that the hiring authority must be
21 continued.

22
23 36. There is no indication that any of the above manpower situation will be resolved in the next
24 month without continuation in effect of this EO and Directive #10.

25
26
27 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

28
29 37. **Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and
30 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors
31 in the position of day-to-day management of the corporation, and requires a complex mix of
32 technical, geographic and other qualifications for Board membership. There is no Board because
33 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot
34 take a critical step toward solvency and the ability to borrow to finance its work.

1 **Forestalling corporate paralysis**

2
3 38. A critical concern is that the CUC Act's constricted scope of authority for the Executive
4 Director, and the complementary daily management by a host of volunteers, would paralyze the
5 corporation. This is particularly worrisome in light of the above-listed tasks before CUC.
6

7 39. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC
8 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and
9 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133
10 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and
11 property), demonstrates that the Executive Director is to be left with little more to do than
12 provide reports to a Board of volunteers who are nonetheless to run CUC on a day-to-day basis.
13 This includes such decision-making as purchasing materials and supplies, signing paychecks and
14 other checks, hiring staff, assigning work crews, connecting customers, deciding on making
15 repairs, collecting debts, complying with the details of federal and CPUC regulatory
16 requirements, and insuring that, on a day-to-day basis, the power and water flow and the sewage
17 is treated.
18

19 40. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
20 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –
21 with or without a Board in place.
22

23 41. No private or public utility company in the United States runs this way – with a group of
24 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in
25 the United States has mandated this form of corporate management for a public utility.
26

27 42. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
28 drafting error, and the People, through their elected representatives, wish their utility company to
29 continue to supply them with essential services at a reasonable cost, meeting industry standards.
30

31
32 **Fixing CUC's technical insolvency**

33
34 43. CUC has been unable to borrow money to run its operations since the inception of this State
35 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books
36 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115
37 million. This situation may be corrected if the Executive Director is recognized to have the
38 authority to correct it.
39

1 44. The booked CDA obligation has rendered CUC nominally insolvent. While CUC is deemed
2 insolvent, CUC cannot borrow money. But CUC must be able to borrow money to bridge the
3 gap between (a) the need to spend money on essential goods and services to provide electricity,
4 and (b) the lagged collection of revenues from the sale of that electricity.

5
6 45. The CPUC, in its September 3 electric order, Docket No. 09-1, approved a CUC-CDA
7 settlement converting the CDA debt to preferred stock. But the deal requires CUC's Board to
8 agree to it.

9
10 46. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
11 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
12 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find
13 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
14 Nonetheless, CUC must continue to function, including borrowing money.

15
16 47. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It
17 also permits him to continue to run CUC, providing power, water and wastewater services, until
18 the remaining members of a properly constituted Board can be identified, confirmed, and
19 convened for business.

20
21
22 **Providing the basis for proper CPUC oversight**

23
24 48. The statutory scheme of utility regulation provides that the utility regulator, the CPUC, will
25 carefully examine CUC activities, particularly financial activities.

26
27 49. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
28 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's
29 error-infused creation of a Board which would run the corporation on a day-to-day basis,
30 becomes much less important than satisfying CPUC requirements.

31
32 50. What becomes very important is CUC's capability to provide the CPUC with accurate and
33 timely financial and accounting information. But such reporting is not possible without a
34 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
35 Executive Director to lead them.

1 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

2
3 51. There is no Legislative relief coming. For months CUC has repeatedly asked the
4 Legislature for such relief, including submission of draft legislation in July. The Legislature has
5 declined to respond. There is no alternative to providing this relief other than an order from the
6 Governor. Inaction will produce a disaster in which CUC is unable to provide its critical
7 community services. Directives # 9 and #10 were designed to avert this crisis. (The other
8 Directives, #1 through #8, are no longer relevant, and have been discontinued.)
9

10 52. This Declaration is necessary to protect the health and safety of our children, our senior
11 citizens, businesses and all other CNMI residents and visitors.
12
13
14

15 **CONCLUSION AND ORDER**

16
17 Therefore, I hereby invoke my authority under Article III, § 10 of the Commonwealth
18 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
19 facing the Commonwealth of the Northern Mariana Islands.
20

21 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the
22 issuance of Executive Directives setting forth the measures to be taken to address the State of
23 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:
24

25 (f) In addition to any other powers conferred upon the Governor by law, the Governor
26 may, during a state of disaster emergency:

27
28 (1) Suspend the provisions of any regulatory statute prescribing the procedures
29 for conduct of the Commonwealth's business, or the orders, rules, or regulations
30 of any Commonwealth activity or agency, if strict compliance with the provision
31 of any such statute, order, rule or regulation would in any way prevent, hinder, or
32 delay necessary action in coping with the emergency;
33

34 (2) Utilize all available resources of the Commonwealth as reasonably necessary
35 to cope with the disaster emergency of the Commonwealth;
36

37 (3) Transfer the direction, personnel, or functions of the Commonwealth
38 departments and agencies or units thereof for the purpose of performing or
39 facilitating emergency services;
40

EO 2009-9

Declaration of Disaster Emergency: CUC Continuation 14

1 3 CMC § 5121(f)(1)-(3).

2
3 By today's disaster emergency declaration, I intend to enable CUC to continue to provide
4 necessary service to the people of the Commonwealth.

5
6 This Declaration of a State of Disaster Emergency shall take effect immediately and all
7 memoranda, directives and other measures taken in accordance with this Declaration shall
8 remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the
9 end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of
10 emergency has been lifted or has been extended for an additional period of thirty (30) days. 1
11 CMC § 7403(a); 3 CMC § 5121(c).

12
13 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the
14 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

15
16
17 **DIRECTIVES**

18 I direct the following:

19 Directive 1: Deleted.

20
21 Directive 2: Deleted.

22
23 Directive 3: Deleted.

24
25 Directive 4: Deleted.

26
27 Directive 5: Deleted.

28
29 Directive 6: Deleted.

30
31 Directive 7: Deleted.

32
33 Directive 8: Deleted.

34
35 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board,
36 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)
37 the confirmation and convening of an operating CUC Board, or (2) the termination of the
38 authority of this order. In particular, the Executive Director shall have full power and authority
39
40

EO 2009-9
Declaration of Disaster Emergency: CUC Continuation 14

1 to agree to swap CDA debt and related obligations for preferred stock and related features and
2 rights.

3
4 Directive 10: The following strike-out-formatted language of the quoted provision of the
5 following statute regulating government employment is, as indicated, suspended immediately:
6

7 (b) Transition exemptions for government employment. . . . (5) Commonwealth
8 Utilities Corporation. Engineers, and professional employees in technical or trade
9 areas may be exempted and CUC may contract with manpower services or
10 directly hire power plant mechanics and utility technicians who may be
11 exempted; ~~provided that direct or manpower hire of foreign national workers shall~~
12 ~~not exceed nineteen (19) employees. This exemption shall expire on September~~
13 ~~30, 2010, and no contract may provide to the contrary.~~
14

15 3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original) That is,
16 the following language is suspended: “provided that direct or manpower hire of foreign national
17 workers shall not exceed nineteen (19) employees. This exemption shall expire on September
18 30, 2010, and no contract may provide to the contrary.”
19

20 The effect of the suspension shall be that CUC shall have the complete power, without regard to
21 citizenship or otherwise lawful immigration status, to hire engineers, professional employees in
22 technical or trade areas, power plant mechanics and utility technicians, either directly or
23 indirectly. These professional employees may include, but shall not be limited to, sanitarians,
24 engineers, accountants, financial experts, information technology specialists, mechanics,
25 electricians, well-drillers, pipefitters, plumbers, wastewater treatment facilities operators, and
26 other trades technicians.
27

28
29 Done this 27th day of September 2009.
30

31
32 
33
34 BENIGNO R. FITIAL
35 Governor
36

0 EO 2009 09 CUC Dis Decl (27Sept09).wpd



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2009-11**

2
3

4 **DECLARATION OF A STATE OF DISASTER EMERGENCY:**

5 **COMMONWEALTH UTILITIES CORPORATION'S**
6 **IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO**
7 **PROVIDE IMMEDIATE RELIABLE POWER, WATER AND WASTEWATER**
8 **SERVICES**

9
10

10 **CONTINUATION #15**

11
12

12 **I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the**
13 **Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth**
14 **Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby**
15 **declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands**
16 **due to the inability of the Commonwealth Utilities Corporation (CUC) to provide critical power**
17 **generation service to the CNMI and the extreme, immediate and imminent threat such condition**
18 **poses to the Commonwealth of the Northern Mariana Islands.**

19
20

20 **This Executive Order is intended to, and does, continue in effect portions of the Governor's**
21 **preceding disaster emergency declarations on this matter, EO 2009-01 through -09, except as**
22 **specifically modified. As more fully stated below, this Executive Order shall expire on the 31st**
23 **day following the date of my signature. The following findings and conclusions further support**
24 **continuation of the Declaration and issuance of directives.**

1 **FINDINGS**

2
3 I find that:

4
5 1. All findings and conclusions of EO 2009-01 through -09 are incorporated by reference,
6 except as specifically varied in this Executive Order.

7
8 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

9
10 2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers
11 has continued to place CUC operations at risk. Presently CNMI law (PL 16-14) prohibits CUC
12 from hiring any more non-US technical workers than the 19 skilled professionals recently with
13 CUC. CUC has repeatedly asked the Legislature for relief from this statute regulating the
14 Government's workforce, to no avail. Further, errors in wording in the CUC enabling legislation
15 recently re-enacted, PL 16-17, as amended, would bar the Executive Director from day-to-day
16 management of the corporation, effectively shutting CUC down. This EO eliminates these
17 problems while it is in effect.

18
19 3. **Background.** CUC has substantially minimized the risk of losing the services of its owned
20 generating capacity, which losses created intermittent blackouts on portions of its system. It
21 therefore allowed the Aggreko year-long temporary power contract to terminate, as provided in
22 the agreement, effective September 12, 2009. This will save CUC customers at least \$6 million
23 per year in fees. But it still presents risks, as the strategy requires proper operation and
24 maintenance of CUC's owned engines by CUC's technical staff, and the timely securing of
25 materials and supplies.

26
27 4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction
28 of the US District Court and the US EPA, pursuant to two consent, or "stipulated", orders. The
29 first requires the upgrade and smooth functioning in virtually all aspects of CUC's water and
30 wastewater divisions. The second requires CUC to properly eliminate over 400,000 gallons of
31 used oil and to institute measures to avoid uncontrolled buildup of such inventories. Failure to
32 meet the requirements of the federal court orders could subject CUC and the CNMI to
33 substantial fines and charges, and, in the extreme, to a federal takeover of their finances.

34
35 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission (CPUC).
36 The regulator has plenary power over CUC rates, charges, fees, operations and capital
37 investments. CUC's failure to timely and competently meet CPUC orders and other
38 requirements can result in severe rate discipline, and fines and other penalties.
39

1 6. CUC is the sole electricity supplier to the Government of the CNMI, including all public
2 safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the
3 CNMI's businesses and homes. While some businesses and agencies own backup generators,
4 they are not generally organized to use the backups as permanent power sources; and the diesel
5 oil purchased to run these generators is substantially more expensive than that used for CUC
6 power.

7
8 7. Without CUC electricity:

- 9
- 10 a. most CNMI economic activity would come to a halt, the courts would soon close,
11 much refrigeration and air conditioning would end, and the airports and ports
12 would be forced to rely on emergency generation and the limited oil supply for it;
 - 13
14 b. the CNMI's health and safety would immediately be at risk, since traffic signals
15 and street lighting would cease to function, emergency, fire and police facilities
16 and their communications systems, and the Hospital and island clinics would have
17 to rely on limited oil supplies for emergency generation and then cease
18 functioning, much refrigeration of food and medicines would end, as would air
19 conditioning for the elderly and medically fragile;
 - 20
21 c. the public schools and the Northern Marianas College would close. Other
22 educational institutions would close as their backup oil supplies for emergency
23 generators were exhausted; and
 - 24
25 d. water and sewage treatment would soon end. One of CUC's largest electric
26 customers is the combined CUC Water and Wastewater Divisions. CUC is the
27 sole supplier of electricity for these systems. CUC's water system relies on
28 electricity to maintain the system pressure needed to avoid the backflow of
29 pathogens, to chlorinate, and to pump, store and distribute water supplies. CUC's
30 wastewater system requires electricity to collect, pump, process, treat and
31 discharge sewage. The lack of electricity could result in sewage overflows,
32 contamination of land and water and rendering unsafe CNMI beaches, which are
33 also principal tourist destinations.
- 34
35

36 **Staffing CUC with the technical experts to permit continued electric service**

37
38 8. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain
39 and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to
40 buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in

1 September. In October four other units have begun required overhaul, which will take 12
2 months. In November, the following work must start, and will last for varying periods of time:
3 The critical replacement of the PP #1 anchor bolts, in order to stop the shifting and vibration that
4 has ruined the plant; foundation repairs to Engines 1 and 8; and, shortly thereafter the
5 replacement of turbochargers and oil water separators. All this work is essential.

6
7 9. Adequate technical staff is essential to this work. A major challenge to carrying out this
8 rehabilitation has been finding the trained technicians needed to carry out these rehabilitation
9 projects, and maintain and run the equipment. The technicians must be ready for service when
10 needed and their services must be affordable. Any significant reduction in CUC's present
11 technical workforce could seriously compromise CUC's ability to generate and distribute power.

12
13 10. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit
14 (T & D) is dilapidated and bordering on being unsafe. There is an insufficient number of skilled
15 workers to operate T & D. The linemen must be trained to, and skillful in, meeting US
16 standards. The critical upcoming projects in T & D include the replacement of the antiquated,
17 rundown and unsafe vehicle fleet; the redesign of T & D using national Rural Utility Service
18 standards; the replacement/installation of insulators, transformers, overcurrent protection,
19 sectionalizers and the installation of efficient LED streetlighting.

20
21 11. For example, Saipan's early-September brush with Typhoon Choi-Wan 15W that passed to
22 the north of Saipan, and typhoon Melor, which passed just north of Saipan in October,
23 underscored the extreme vulnerability of CUC's power transmission and distribution (T & D)
24 system. In September, over 150 calls of no-power and line faults were fielded by crews when,
25 for a storm of this size, there should have been no more than a score. In October, fortunately, the
26 CUC power system avoided a direct hit from a supertyphoon. Accelerating improvements to the
27 T & D system, with proper staff under an Emergency Order, would allow CUC to "harden" the
28 system in anticipation of a bigger storm event. The alternative, in a more serious storm, is
29 CUC's inability to recover in any reasonable time period.

30
31 12. Further, utility industry safety margins for isolated, island systems typically require a
32 reserve equal to the capacity of the two largest units; in CUC's case this would be another 15
33 MW of load, equivalent to the departed Aggreko temporary units. Meeting this reserve
34 requirement means CUC must have an adequate repair and maintenance staff.

35
36 13. The Legislature, through 3 CMC § 4972(5), as amended by PL 16-14 (Aug. 27, 2008), has
37 limited CUC's ability to hire technical staff; allowing up to 19 foreign workers only. The CUC
38 Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such
39 persons as are necessary for operations, *except as otherwise limited by other law.* 4 CMC §
40 8123(h).

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14. PMIC at PP #4 and Telesource on Tinian, as Independent Power Producers (IPPs), are not subject to the Legislature's limitation on foreign workers.

15. There are not enough technical specialists at CUC to get the power generation work done, particularly specialists with experience in the type of engines that CUC uses. CUC believes that the vast majority of skill sets must come from non-US personnel.

16. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator candidates were US citizens.

17. CUC has hired some local staff recently thanks to the aggressive steps of CUC HR, the Executive Director and Directive 10.

18. Therefore, CUC, as of this month, still needs skilled trade technicians for power plant operations and maintenance. The Power Division still needs a trades technician. The Division just hired a welder and is waiting for the paperwork on another trades technician. For Rota, CUC has announced the need for a mechanic-operator and an electrical operator. As more units begin working after the rehabilitations are largely complete, CUC will need more staff to operate and maintain them.

19. The impact of an inadequate workforce would be three-fold:

- a. First, there would be a direct negative effect on the existing consumers. There would be brownouts, or area blackouts, with the above-mentioned loss of service.
- b. Second, the power plants would again degrade, producing more of these outages.
- c. Third, there would be an indirect effect, increasing rates, because small consumers would have to shoulder more of the fixed costs of the CUC system. First, there would be loss of large customers. If the hotels were to become part of the system, they could help pay CUC fixed costs, which would lower everyone else's rates. The hotels need reliable, 24/7 power. But with unreliable power, CUC would be unable to convince large commercial customers, particularly the hotels, to join, or rejoin, its system. Second, would come additional expenses. If CUC fails to meet federal court deadlines for the stipulated orders, the Court could appoint a federal receiver and its consulting team – with all expenses

1 charged to CUC customers. Thus, the indirect effect of an inadequate workforce
2 would be to boost rates.

3
4 20. Rota has recently suffered blackouts from inadequate generator maintenance. The power
5 plant's other facilities and the island's distribution system similarly need the attentions of
6 additional manpower. The present alternative for Rota is akin to Saipan's – purchasing higher
7 cost power from the Rota Resort. Two Rota units must undergo overhaul. Rota's status today is
8 precarious, with only one dependable engine running

9
10 21. Since EO 2009-8 in August, and the suspension of the harmful legislative employment
11 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and
12 Rota power generation facilities. CUC needs to be able to hire the workers it needs when it
13 needs them. Otherwise, if CUC had to discharge these workers its staffing levels would return to
14 those which overworked its limited staff. For example, over pay period numbers 2 through 11 of
15 the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who each
16 worked 40 or more hours of overtime in a pay period. This condition is extreme, and a repeat
17 can result in inefficiencies and poor work quality. It can lead to dangerous mistakes, producing
18 injury or death.

19
20 22. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The
21 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set
22 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6
23 million-per-year benefit of terminating the Aggreko temporary power contract.

24
25 23. CUC has demonstrated that the required workers are available as nonresident workers, and
26 cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign
27 national workers is necessary to ensure the delivery of uninterrupted power services to the
28 people of the Commonwealth.

29
30
31 **Complying with the federal court order on disposal of used oil**

32
33 24. CUC has taken concrete steps to address the storage and disposal of used oil, consonant
34 with the federal court's Stip Order 2. Federal court Stipulated Order # 2, relates to the used oil
35 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.
36 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an
37 adequate complement of trained technical employees, CUC can meet these requirements.

38
39 25. A September inspection by the US Coast Guard (USCG) has resulted in the imposition of
40 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional

1 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean
2 from Power Plants 1, 2 and the power plant in Rota. Further, as of October, CUC faces the
3 following staffing needs in this area: It critically needs the resources to inspect and redesign, the
4 entire fuel storage, pumping and handling system in order to meet the more stringent
5 requirements of today. The clean fuel storage tanks at Lower Base were originally designed for
6 another application. The fuel line from the oil company's terminal is in danger of rupturing
7 during a transfer; the pumping rate has to be reduced to prevent this. This requires trained staff.
8
9

10 **Complying with the federal court order on managing the water and wastewater systems**

11
12 26. As long as the Water and Wastewater Divisions can hire competent staff and receive power
13 from the Power Division, they can function.
14

15 27. The U.S. Department of Justice (DoJ), Environment and Natural Resources Division, has
16 sued CUC in federal court to come into compliance with critical water and sewage treatment
17 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order
18 1"). See also http://www.usdoj.gov/enrd/Consent_Decrees.html. In July 2008 CUC, the CNMI
19 and (in September 2008) the U.S. Environmental Protection Agency (EPA) stipulated to this first
20 of two orders lodged with the U.S. District Court on the date the Complaint was filed. This
21 order requires CUC to implement a series of improvements to its water and wastewater systems
22 that respond to years of neglect, for which it presently lacks the funds and the complete technical
23 capability. CUC must be able to hire the staff to perform the required technical functions.
24

25 28. The Water and Wastewater Divisions cannot carry out their missions without adequate
26 staff. These staff are essential to clean, safe water supplies and removal of stormwater and
27 sewage in a safe, timely manner. While the bulk of their employees are drawn from local and
28 US populations, their management estimates that, as of October, at least 4 trained foreign
29 technicians will be required – an instrumentation specialist, a generator repair/rehab specialist
30 with extensive transfer switch experience, a fabrication specialist, with steel/aluminum and
31 strong inert gas welding experience, and an experienced wastewater treatment operator.
32

33 29. CUC also requires a constant supply of electricity to run its water and wastewater treatment
34 systems. CUC has very limited on-site emergency generation capability for only portions of
35 these systems.
36

37
38 **Meeting US District Court and CNMI PUC requirements to produce timely, accurate**
39 **financial reports**
40

1 30. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
2 beginning in September. The IFP must develop over time, becoming more than "interim". CUC
3 cannot do this unless it has a staff of trained accounting and other financial experts who can
4 gather data, put the data in the required form and generate the IFP and its later versions.

5
6 31. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities
7 Commission (CPUC). The CPUC is charged by statute to oversee carefully CUC's operations
8 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC's
9 water and wastewater systems.

10
11 32. In its most recent electric and water/wastewater orders, of September 3, 2009, the CPUC
12 addressed CUC's inability to deliver complete on-time financial reports, requiring CUC, in
13 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.'s
14 09-1 and 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations at
15 its November meeting.

16
17 33. CUC cannot upgrade its financial and accounting staff unless it has a staff of trained
18 accounting and other financial experts who can gather data, put the data in the required form and
19 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
20 staff with the data required for their oversight.

21
22 34. CUC has lost 2 senior accountants plus a related specialist. The IT and billing department
23 in August was reduced by one staffer, having advertised for a replacement for 4 weeks to no
24 avail. While it appeared that CUC might have to look to employing foreign technical specialists,
25 CUC has hired back 2 former accountants in September and is bringing on a third person aboard
26 in October. All are US citizens. Nonetheless, CUC must have the flexibility to hire competent
27 professionals as needed. CUC is still short-staffed, however, and needs an accounting assistant
28 and a specialist.

29
30 35. To summarize: Without properly trained technical staff CUC's ability to supply power is at
31 risk. So is its ability to manage the rest of its systems, including its finances and accounting.
32 CUC's services could not be adequately staffed without August's lifting of the artificial
33 legislative regulation of CUC's workforce, in EO 2009-08, Directive #10, suspending the
34 limitations on CUC hiring foreign workers. It is obvious that the hiring authority must be
35 continued.

36
37 36. There is no indication that any of the above manpower situation will be resolved in the next
38 month without continuation in effect of this EO and Directive #10.

MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE

37. **Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and the public health. Yet, the recently-renewed statute organizing it places the Board of Directors in the position of day-to-day management of the corporation, and requires a complex mix of technical, geographic and other qualifications for Board membership. There is no Board because it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot take a critical step toward solvency and the ability to borrow to finance its work.

Forestalling corporate paralysis

38. A critical concern is that the CUC Act's constricted scope of authority for the Executive Director, and the complementary daily management by a host of Board volunteers, would paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before CUC.

39. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and property), demonstrates that the Executive Director is to be left with little more to do than provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70 million/year corporation, on a day-to-day basis. This includes such decision-making as purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning work crews, connecting customers, deciding on making repairs, collecting debts, complying with the details of federal and CPUC regulatory requirements, making and funding long-term technical power and water/wastewater plans, and insuring that, on a day-to-day basis, the power and water flow and the sewage is treated.

40. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and a public health care crisis, as corporate activity and the Hospital's operations ground to a halt – with or without a Board in place.

41. No private or public utility company in the United States runs this way – with a group of volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in the United States has mandated this form of corporate management for a public utility.

1 42. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
2 drafting error, and the People, through their elected representatives, wish their utility company to
3 continue to supply them with essential services at a reasonable cost, meeting industry standards.
4

5
6 **Fixing CUC's technical insolvency**

7
8 43. CUC has been unable to borrow money to run its operations since the inception of this State
9 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books
10 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115
11 million. This situation may be corrected if the Executive Director is recognized to have the
12 authority to correct it.

13
14 44. The booked CDA obligation has rendered CUC nominally insolvent. While CUC is deemed
15 insolvent, CUC cannot borrow money. But CUC must be able to borrow money to bridge the
16 gap between (a) the need to spend money on essential goods and services to provide electricity,
17 and (b) the lagged collection of revenues from the sale of that electricity.

18
19 45. The CPUC, in its September 3 electric order, Docket No. 09-1, approved a CUC-CDA
20 settlement converting the CDA debt to preferred stock. But the deal requires CUC's Board to
21 agree to it.

22
23 46. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
24 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
25 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find
26 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
27 Nonetheless, CUC must continue to function, including borrowing money.

28
29 47. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It
30 also permits him to continue to run CUC, providing power, water and wastewater services, until
31 the remaining members of a properly constituted Board can be identified, confirmed, and
32 convened for business.

33
34
35 **Providing the basis for proper CPUC oversight**

36
37 48. The statutory scheme of utility regulation provides that the utility regulator, the CPUC, will
38 carefully examine CUC activities, particularly financial activities.
39

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2 drafting error, and the People, through their elected representatives, wish their utility company to
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38 carefully examine CUC activities, particularly financial activities.
39

1 49. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
2 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's
3 error-infused creation of a Board which would run the corporation on a day-to-day basis,
4 becomes much less important than satisfying CPUC requirements.

5
6 50. What becomes very important is CUC's capability to provide the CPUC with accurate and
7 timely financial and accounting information. But such reporting is not possible without a
8 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
9 Executive Director to lead them.

10
11
12 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

13
14 51. There is no Legislative relief coming. For months CUC has repeatedly asked the
15 Legislature for such relief, including submission of draft legislation in July. The Legislature has
16 declined to respond. There is no alternative to providing this relief other than an order from the
17 Governor. Inaction will produce a disaster in which CUC is unable to provide its critical
18 community services. Directives # 9 and #10 were designed to avert this crisis. (The other
19 Directives, #1 through #8, are no longer relevant, and were discontinued.)

20
21 52. This Declaration is necessary to protect the health and safety of our children, our senior
22 citizens, businesses and all other CNMI residents and visitors.

23
24
25
26 **CONCLUSION AND ORDER**

27
28 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth
29 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
30 facing the Commonwealth of the Northern Mariana Islands.

31
32 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the
33 issuance of Executive Directives setting forth the measures to be taken to address the State of
34 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

35
36 (f) In addition to any other powers conferred upon the Governor by law, the Governor
37 may, during a state of disaster emergency:

38
39 (1) Suspend the provisions of any regulatory statute prescribing the procedures
40 for conduct of the Commonwealth's business, or the orders, rules, or regulations

1 of any Commonwealth activity or agency, if strict compliance with the provision
2 of any such statute, order, rule or regulation would in any way prevent, hinder, or
3 delay necessary action in coping with the emergency;

4
5 (2) Utilize all available resources of the Commonwealth as reasonably necessary
6 to cope with the disaster emergency of the Commonwealth;

7
8 (3) Transfer the direction, personnel, or functions of the Commonwealth
9 departments and agencies or units thereof for the purpose of performing or
10 facilitating emergency services;

11
12 3 CMC § 5121(f)(1)-(3).

13
14 By today's disaster emergency declaration, I intend to enable CUC to continue to provide
15 necessary service to the people of the Commonwealth.

16
17 This Declaration of a State of Disaster Emergency shall take effect immediately and all
18 memoranda, directives and other measures taken in accordance with this Declaration shall
19 remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the
20 end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of
21 emergency has been lifted or has been extended for an additional period of thirty (30) days. 1
22 CMC § 7403(a); 3 CMC § 5121(c).

23
24 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the
25 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

26
27
28 **DIRECTIVES**

29 I direct the following:

30
31
32 Directive 1: Deleted.

33
34 Directive 2: Deleted.

35
36 Directive 3: Deleted.

37
38 Directive 4: Deleted.

39
40 Directive 5: Deleted.

EO 2009-11
Declaration of Disaster Emergency: CUC Continuation 15

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Directive 6: Deleted.

Directive 7: Deleted.

Directive 8: Deleted.

Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board, thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1) the confirmation and convening of an operating CUC Board, or (2) the termination of the authority of this order. In particular, the Executive Director shall have full power and authority to agree to swap CDA debt and related obligations for preferred stock and related features and rights.

Directive 10: The following strike-out-formatted language of the quoted provision of the following statute regulating government employment is, as indicated, suspended immediately:

(b) Transition exemptions for government employment. . . . (5) Commonwealth Utilities Corporation. Engineers, and professional employees in technical or trade areas may be exempted and CUC may contract with manpower services or directly hire power plant mechanics and utility technicians who may be exempted; ~~provided that direct or manpower hire of foreign national workers shall not exceed nineteen (19) employees. This exemption shall expire on September 30, 2010, and no contract may provide to the contrary.~~

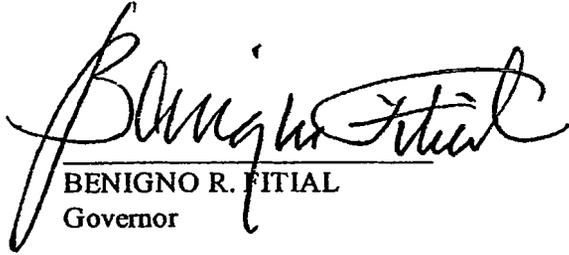
3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original; ~~strikeout is deliberately added~~) That is, the following language is suspended: “provided that direct or manpower hire of foreign national workers shall not exceed nineteen (19) employees. This exemption shall expire on September 30, 2010, and no contract may provide to the contrary.”

EO 2009-11

Declaration of Disaster Emergency: CUC Continuation 15

1 The effect of the suspension shall be that CUC shall have the complete power, without regard to
2 citizenship or otherwise lawful immigration status, to hire engineers, professional employees in
3 technical or trade areas, power plant mechanics and utility technicians, either directly or
4 indirectly. These professional employees may include, but shall not be limited to, sanitarians,
5 engineers, accountants, financial experts, information technology specialists, mechanics,
6 electricians, well-drillers, pipefitters, plumbers, wastewater treatment facilities operators, and
7 other trades technicians.

8
9
10 Done this 27th day of October 2009.

11
12
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14
15
16 
17 BENIGNO R. FITIAL
Governor

EO 2009-11 CUC Dis Decl (27Oct09).wpd



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2009-12**
2
3

4 **DECLARATION OF A STATE OF DISASTER EMERGENCY:**

5 **COMMONWEALTH UTILITIES CORPORATION'S**
6 **IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO**
7 **PROVIDE IMMEDIATE RELIABLE POWER, WATER AND WASTEWATER**
8 **SERVICES**
9

10 **CONTINUATION #16**
11

12 **I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the**
13 **Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth**
14 **Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby**
15 **declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands**
16 **due to the inability of the Commonwealth Utilities Corporation (CUC) to provide critical power**
17 **generation service to the CNMI and the extreme, immediate and imminent threat such condition**
18 **poses to the Commonwealth of the Northern Mariana Islands.**
19

20 **This Executive Order is intended to, and does, continue in effect portions of the Governor's**
21 **preceding disaster emergency declarations on this matter, EO 2009-01 through -09, and -11,**
22 **except as specifically modified. As more fully stated below, this Executive Order shall expire on**
23 **the 31st day following the date of my signature. The following findings and conclusions further**
24 **support continuation of the Declaration and issuance of directives.**

1 **FINDINGS**

2
3 I find that:

4
5 1. All findings and conclusions of EO 2009-01 through -09, and -11 are incorporated by
6 reference, except as specifically varied in this Executive Order.

7
8 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

9
10 2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers
11 has continued to place CUC operations at risk. Presently CNMI law (PL 16-14) prohibits CUC
12 from hiring any more non-US technical workers than the 19 skilled professionals recently with
13 CUC. CUC has repeatedly asked the Legislature for relief from this statute regulating the
14 Government's workforce, to no avail. Further, errors in wording in the CUC enabling legislation
15 recently re-enacted, PL 16-17, as amended, would bar the Executive Director from day-to-day
16 management of the corporation, effectively shutting CUC down. This EO eliminates these
17 problems while it is in effect.

18
19 3. **Background.** CUC has substantially minimized the risk of losing the services of its owned
20 generating capacity, which losses created intermittent blackouts on portions of its system. It
21 therefore allowed the Aggreko year-long temporary power contract to terminate, as provided in
22 the agreement, effective September 12, 2009. This saves CUC customers at least \$6 million per
23 year in fees. But it still presents risks, as the strategy requires proper operation and maintenance
24 of CUC's owned engines by CUC's technical staff, and the timely securing of materials and
25 supplies.

26
27 4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction
28 of the US District Court and the US EPA, pursuant to two consent, or "stipulated", orders. The
29 first requires the upgrade and smooth functioning in virtually all aspects of CUC's water and
30 wastewater divisions. The second requires CUC to properly eliminate over 400,000 gallons of
31 used oil and to institute measures to avoid uncontrolled buildup of such inventories. Failure to
32 meet the requirements of the federal court orders could subject CUC and the CNMI to
33 substantial fines and charges, and, in the extreme, to a federal takeover of their finances.

34
35 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission ("CPUC").
36 The regulator has plenary power over CUC rates, charges, fees, operations and capital
37 investments. CUC's failure to timely and competently meet CPUC orders and other
38 requirements can result in severe rate discipline, and fines and other penalties.

1 6. CUC is the sole electricity supplier to the Government of the CNMI, including all public
2 safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the
3 CNMI's businesses and homes. While some businesses and agencies own backup generators,
4 they are not generally organized to use the backups as permanent power sources; and the diesel
5 oil purchased to run these generators is substantially more expensive than that used for CUC
6 power.

7
8 7. Without CUC electricity:
9

- 10 a. most CNMI economic activity would come to a halt, the courts would soon close,
11 much refrigeration and air conditioning would end, and the airports and ports
12 would be forced to rely on emergency generation and the limited, expensive oil
13 supply for it;
14
- 15 b. the CNMI's health and safety would immediately be at risk, since traffic signals
16 and street lighting would cease to function emergency, fire and police facilities
17 and their communications systems, and the Hospital and island clinics would have
18 to rely on limited oil supplies for emergency generation and then cease
19 functioning, much refrigeration of food and medicines would end, as would air
20 conditioning for the elderly and medically fragile;
21
- 22 c. the public schools and the Northern Marianas College would close. Other
23 educational institutions would close as their backup oil supplies for emergency
24 generators were exhausted; and
25
- 26 d. water and sewage treatment would soon end. One of CUC's largest electric
27 customers is the combined CUC Water and Wastewater Divisions. CUC is the
28 sole supplier of electricity for these systems. CUC's water system relies on
29 electricity to maintain the system pressure needed to avoid the backflow of
30 pathogens, to chlorinate, and to pump, store and distribute water supplies. CUC's
31 wastewater system requires electricity to collect, pump, process, treat and
32 discharge sewage. The lack of electricity could result in sewage overflows,
33 contamination of land and water and rendering unsafe the CNMI's beaches,
34 which are also principal tourist destinations.
35
36

37 **Staffing CUC with the technical experts to permit continued electric service**
38

39 8. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain
40 and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to

1 buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in
2 September. In October four other units began required overhaul, which will take 12 months. In
3 November, the following work must start, and will last for varying periods of time: The critical
4 replacement of the PP #1 anchor bolts, in order to stop the shifting and vibration that has ruined
5 the plant; foundation repairs to Engines 1 and 8; and, shortly thereafter the replacement of
6 turbochargers and oil water separators. All of this work is essential.

7
8 9. Adequate technical staff is essential to this work. A major challenge to carrying out this
9 rehabilitation has been finding the trained technicians needed to carry out these rehabilitation
10 projects, and maintain and run the equipment. The technicians must be ready for service when
11 needed and their services must be affordable. Any significant reduction in CUC's present
12 technical workforce could seriously compromise CUC's ability to generate and distribute power.

13
14 10. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit
15 ("T & D"), including many vehicles, is dilapidated and bordering on being unsafe. There is an
16 insufficient number of skilled workers to operate T & D. The linemen must be trained to, and
17 skillful in, meeting US standards. The critical upcoming projects in T & D include the
18 replacement of the antiquated, rundown and unsafe vehicle fleet; the redesign of T & D using
19 national Rural Utility Service standards; the replacement/installation of insulators, transformers,
20 overcurrent protection, sectionalizers and the installation of efficient LED street lighting.

21
22 11. For example, Saipan's early-September brush with Typhoon Choi-Wan 15W that passed to
23 the north of Saipan, and typhoon Melor, which passed just north of Saipan in October,
24 underscored the extreme vulnerability of CUC's power transmission and distribution (T & D)
25 system. In September, over 150 calls of no- power and line faults were fielded by crews when,
26 for a storm of this size, there should have been no more than a score. In October, fortunately, the
27 CUC power system avoided a direct hit from a supertyphoon. Fortunately, Typhoon Nida, as of
28 this writing, is projected to pass to the south and west of the Marianas. Accelerating
29 improvements to the T & D system ,with proper staff under an Emergency Order, would allow
30 CUC to "harden" the system in anticipation of a bigger storm event. The alternative, in a more
31 serious storm, is CUC's inability to recover in any reasonable time period.

32
33 12. Further, utility industry safety margins for isolated, island systems typically require a
34 reserve equal to the capacity of the two largest units; in CUC's case this would be another 15
35 MW of load, equivalent to the departed Aggreko temporary units. Meeting this reserve
36 requirement means CUC must have an adequate repair and maintenance staff.

37
38 13. The Legislature, through 3 CMC § 4972(5), as amended by PL 16-14 (Aug. 27, 2008), has
39 limited CUC's ability to hire technical staff; allowing up to 19 foreign workers only. The CUC
40 Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such

1 persons as are necessary for operations, *except as otherwise limited by other law*. 4 CMC §
2 8123(h).

3
4 14. PMIC at PP #4 and Telesource on Tinian, as Independent Power Producers (IPPs), are not
5 subject to the Legislature's limitation on foreign workers.

6
7 15. There are not enough technical specialists at CUC to get the power generation work done,
8 particularly specialists with experience in the type of engines that CUC uses. CUC believes that
9 the vast majority of skill sets must come from non-US personnel.

10
11 16. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding
12 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after
13 interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator
14 candidates were US citizens.

15
16 17. CUC has hired some local staff recently thanks to the aggressive steps of CUC HR, the
17 Executive Director and Directive 10.

18
19 18. CUC, as of this month, has found the skilled trade technicians needed for power plant
20 operations and maintenance. For Rota CUC has announced the need for a mechanic-operator
21 and an electrical operator. As more units begin working after the rehabilitations are largely
22 complete, CUC will need more staff to operate and maintain them. For the immediate future,
23 CUC needs to maintain its complement of skilled workers.

24
25 19. The impact of an inadequate workforce would be three-fold:

- 26
27 a. First, there would be a direct negative effect on the existing consumers. There
28 would be brownouts, or area blackouts, with the above-mentioned loss of service.
29
30 b. Second, the power plants would again degrade, producing more of these outages.
31
32 c. Third, there would be an indirect effect, increasing rates over the longer term,
33 because small consumers would have to shoulder more of the fixed costs of the
34 CUC system. First, there would be loss of large customers. By contrast, if the
35 hotels were to become part of the system, they could help pay CUC fixed costs,
36 which would lower everyone else's rates. The hotels need reliable, 24/7 power.
37 But with unreliable power, CUC would be unable to convince large commercial
38 customers, particularly the hotels, to join, or rejoin, its system. Second, would
39 come additional expenses. If CUC fails to meet federal court deadlines for the
40 stipulated orders, the Court could appoint a federal receiver and its consulting

1 team – with all expenses charged to CUC customers. Thus, the indirect effect of
2 an inadequate workforce would be to boost rates.

3
4 20. Rota's status today is precarious and financially un-sustainable. Rota has recently suffered
5 blackouts from inadequate generator maintenance. The power plant's other facilities and the
6 island's distribution system similarly need the attentions of additional manpower. The Rota
7 power plant needs additional generating sets to come on line, as there are only 1.5 dependable
8 sets in the plant. The third of two feeders is powered by a private resort at a cost of
9 \$200,000/month to CUC. The revenues from the customers on this feeder fall far below this
10 cost. CUC is negotiating with a Mainland supplier for a new generating set, with funding from
11 the US Department of the Interior. The present alternative for Rota is akin to Saipan's recent
12 Aggreko situation – purchasing higher cost, reliable power from the Rota Resort.

13
14 21. Since EO 2009-8 in August, and the suspension of the harmful legislative employment
15 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and
16 Rota power generation facilities. CUC needs to be able to hire the workers it needs when it
17 needs them. Otherwise, if CUC had to discharge these workers its staffing levels would return to
18 those which overworked its limited staff. For example, over pay period numbers 2 through 11 of
19 the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who each
20 worked 40 or more hours of overtime in a pay period. This condition is extreme, and a repeat
21 can result in inefficiencies and poor work quality. It can lead to dangerous mistakes, producing
22 injury or death.

23
24 22. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The
25 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set
26 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6
27 million-per-year benefit of terminating the Aggreko temporary power contract.

28
29 23. CUC has demonstrated that the required workers are available as nonresident workers, and
30 cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign
31 national workers is necessary to ensure the delivery of uninterrupted power services to the
32 people of the Commonwealth.

33
34
35 **Complying with the federal court order on disposal of used oil**

36
37 24. CUC has taken concrete steps to address the storage and disposal of used oil, consonant
38 with the federal court's Stip Order 2. Federal court Stipulated Order # 2, relates to the used oil
39 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.
40 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an

1 adequate complement of trained technical employees, CUC has believed that it can meet these
2 requirements.

3
4 25. A September inspection by the US Coast Guard (USCG) has resulted in the imposition of
5 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional
6 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean
7 from Power Plants 1, 2 and the power plant in Rota. Further, as of October, CUC has faced the
8 following staffing needs in this area: It critically needs the resources to inspect and redesign the
9 entire fuel storage, pumping and handling system in order to meet the more stringent
10 requirements of today. The clean fuel storage tanks at Lower Base were originally designed for
11 another application. The fuel line from the oil company's terminal is in danger of rupturing
12 during a transfer; the pumping rate has to be reduced to prevent this. All of this requires trained
13 staff.

14
15 26. Serious deficiencies in the waste oil handling system at Lower Base have come to light in
16 the past month and are being addressed by both CUC and EPA. One deficiency is that the oily
17 water separators are not functioning as such because of the excessive amount of oil (as opposed
18 to water) entering the system. As a result, oil was spilling on to the ground rather than being
19 separated and skimmed off properly. Power Plant #1 has been sealed off to prevent any waste
20 oil from leaving the plant and flowing into the oily water separators. To prevent oil from
21 accumulating uncontained in the plant itself, emergency measures are being taken to store waste
22 oil and to fabricate above ground tanks. The oily water separators, pipes, holding tanks, baffles
23 are being cleaned out so that the entire system can be carefully inspected and re-engineered. All
24 of the additional work is expensive. Regardless of who does the work initially, CUC staff, EPA
25 contractors, or a combination thereof, CUC requires skilled, trained workers for the clean-up.
26 Failure to correct this situation could harm the nearby environment, CUC's ability to generate
27 electricity properly, and the assurances given pursuant to Stip Order 2.

28 29 30 **Complying with the federal court order on managing the water and wastewater systems**

31
32 27. As long as the Water and Wastewater Divisions can hire competent staff and receive power
33 from the Power Division, they can function.

34
35 28. The U.S. Department of Justice ("DoJ"), Environment and Natural Resources Division, has
36 sued CUC in federal court to come into compliance with critical water and sewage treatment
37 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order
38 1"). See also [http://www.usdoj.gov/enrd/Consent Decrees.html](http://www.usdoj.gov/enrd/Consent%20Decrees.html). In July 2008 CUC, the CNMI
39 and (in September 2008) the U.S. Environmental Protection Agency ("EPA") stipulated to this
40 first of two orders lodged with the U.S. District Court on the date the Complaint was filed. This

1 order requires CUC to implement a series of improvements to its water and wastewater systems
2 that respond to years of neglect, for which it presently lacks the funds and the complete technical
3 capability.
4

5 29. The Wastewater Division recently has had to respond to acid damage, which has occurred
6 over 30 years from anaerobic conditions in sewers. This has caused significant damage to
7 cement and metal infrastructure, so that key pipe systems have collapsed. The Division also
8 needs serviceable vehicles to move its workers to and from job sites; presently six vehicles are in
9 such bad shape that they are dangerous.

10
11 30. CUC must be able to hire the staff to perform the required technical functions. The Water
12 and Wastewater Divisions cannot carry out their missions without adequate staff. These staff are
13 essential to producing clean, safe water supplies and removal of stormwater and sewage in a
14 safe, timely manner. While the bulk of CUC employees are drawn from local and US
15 populations, the Division management estimates that, as of November, at least 6 trained
16 technicians will be required – three experienced Level 3 wastewater treatment operators, two
17 Level 3 wastewater collections operators, and an instrumentation /low voltage controls specialist.
18 An experienced Water/Wastewater Division operations manager will also be required.
19

20 31. CUC also requires a constant supply of electricity to run its water and wastewater treatment
21 systems. CUC has very limited on-site emergency generation capability, and for only portions
22 of these systems.
23

24 32. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing
25 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost
26 recovery through the processes of the CNMI Public Utilities Commission.
27
28

29 **Meeting US District Court and CNMI PUC requirements to produce timely, accurate**
30 **financial reports**
31

32 33. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
33 beginning in September. The “IFP” must develop over time, becoming more than “interim”.
34 CUC cannot do this unless it has a staff of trained accounting and other financial experts who
35 can gather data, put the data in the required form and generate the IFP and its later versions.
36

37 34. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities
38 Commission (“CPUC”). The CPUC is charged by statute to oversee carefully CUC’s operations
39 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC’s
40 water and wastewater systems.

1
2 35. In its recent electric and water/wastewater orders, of September 3, 2009, the CPUC
3 addressed CUC's inability to deliver complete on-time financial reports, requiring CUC, in
4 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.'s
5 09-1 and 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations in
6 an order stemming from recent regulatory sessions and its November meeting, and thereafter in
7 March 2010.

8
9 36. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained
10 accounting and other financial experts who can gather data, put the data in the required form and
11 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
12 staff with the data required for their oversight. CUC has obligated itself to provide an updated,
13 compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1,
14 to the US District Court by December 31, 2009.

15
16 37. CUC this year lost 2 senior accountants plus a related specialist. The IT and billing
17 department in August was reduced by one staffer, having advertised for a replacement for 4
18 weeks to no avail. While it appeared that CUC might have to look to employing foreign
19 technical specialists, CUC hired back 2 former accountants in September and brought a third
20 person aboard in October. All are US citizens. Nonetheless, CUC must have the flexibility to
21 hire competent professionals as needed. CUC is still short-staffed, and needs an accounting
22 assistant, an accounting specialist and a Chief Financial Officer.

23
24 38. To summarize: Without properly trained technical staff CUC's ability to supply power is at
25 risk. So is its ability to manage the rest of its systems, including its finances and accounting.
26 CUC's services could not be adequately staffed without August's lifting of the artificial
27 legislative regulation of CUC's workforce, in EO 2009-08, Directive #10, suspending the
28 limitations on CUC hiring foreign workers. It is obvious that the hiring authority must be
29 continued.

30
31 39. There is no indication that any of the above manpower situation will be resolved in the next
32 month without continuing in effect this EO and Directive #10.

33
34
35 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

36
37 40. **Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and
38 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors
39 in the position of day-to-day management of the corporation, and requires a complex mix of
40 technical, geographic and other qualifications for Board membership. There is no Board because

1 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot
2 take a critical step toward solvency and the ability to borrow to finance its work.
3
4

5 **Forestalling corporate paralysis**
6

7 41. A critical concern is that the CUC Act's constricted scope of authority for the Executive
8 Director, and the complementary daily management by a host of Board volunteers, would
9 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before
10 CUC.
11

12 42. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC
13 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and
14 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133
15 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and
16 property), demonstrates that the Executive Director is to be left with little more to do than
17 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70
18 million/year corporation, on a day-to-day basis. This includes such decision-making as
19 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning
20 work crews, connecting customers, deciding on making repairs, collecting debts, complying with
21 the details of federal and CPUC regulatory requirements, making and funding long-term
22 technical power and water/wastewater plans, and insuring that, on a day-to-day basis, the power
23 and water flow and the sewage is treated.
24

25 43. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
26 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –
27 with or without a Board in place.
28

29 44. No private or public utility company in the United States runs this way – with a group of
30 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in
31 the United States has mandated this form of corporate management for a public utility.
32

33 45. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
34 drafting error, and the People, through their elected representatives, wish their utility company to
35 continue to supply them with essential services at a reasonable cost, meeting industry standards.
36
37

Fixing CUC's technical insolvency

46. CUC has been unable to borrow money to run its operations since the inception of this State of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115 million. This situation may be corrected if the Executive Director is recognized to have the authority to correct it.

47. Meanwhile, billings and collections are substantially below the levels required to prudently manage CUC's current operations and provide for system repairs, replacements and upgrades. For example, billings alone for water and wastewater are less than 70% of requirements to run those two systems.

48. The booked CDA obligation has rendered CUC nominally insolvent. While CUC is deemed insolvent, CUC cannot borrow money. But CUC must be able to borrow money to bridge the gap between (a) the need to spend money on essential goods and services to provide electricity, water and sewage service, and (b) the lagged collection of already-determined-insufficient revenues from the sale of those services.

49. The CPUC, in its September 3 electric order, Docket No. 09-1, approved a CUC-CDA settlement converting the CDA debt to preferred stock. But the deal requires CUC's Board to agree to it.

50. There is no Board. CUC has functioned without a Board of Directors, because it has had to. While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no CUC Board yet because, while the staff of the Governor's Office have diligently tried to find Board volunteers who meet the complex statutory qualifications, they have been unable to do so. Nonetheless, CUC must continue to function, including borrowing money.

51. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It also permits him to continue to run CUC, carefully manage cash to pay tens of millions of dollars annually for fuel oil and purchased power, and do all the things necessary to providing power, water and wastewater services, until the remaining members of a properly constituted Board can be identified, confirmed, and convened for business.

1 **Providing the basis for proper CPUC oversight**

2
3 52. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act,
4 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC
5 activities, particularly financial activities.

6
7 53. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
8 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's
9 error-infused creation of a volunteer Board which would run the corporation on a day-to-day
10 basis, becomes much less important than satisfying CPUC requirements.

11
12 54. What becomes very important is CUC's capability to provide the CPUC with accurate and
13 timely financial and accounting information. But such reporting is not possible without a
14 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
15 Executive Director to lead them.

16
17
18 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

19
20 55. There is no Legislative relief coming. For months CUC has repeatedly asked the
21 Legislature for such relief, including submission of draft legislation in July. The Legislature has
22 declined to respond. There is no alternative to providing this relief other than an order from the
23 Governor. Inaction will produce a disaster in which CUC is unable to provide its critical
24 community services. Directives # 9 and #10 were designed to avert this crisis. (The other
25 Directives, #1 through #8, are no longer relevant, and were discontinued.)

26
27 56. This Declaration is necessary to protect the health and safety of our children, our senior
28 citizens, businesses and all other CNMI residents and visitors.

29
30
31 **CONCLUSION AND ORDER**

32
33
34 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth
35 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
36 facing the Commonwealth of the Northern Mariana Islands.

37
38 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the
39 issuance of Executive Directives setting forth the measures to be taken to address the State of
40 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

1
2 (f) In addition to any other powers conferred upon the Governor by law, the Governor
3 may, during a state of disaster emergency:

4
5 (1) Suspend the provisions of any regulatory statute prescribing the procedures
6 for conduct of the Commonwealth's business, or the orders, rules, or regulations
7 of any Commonwealth activity or agency, if strict compliance with the provision
8 of any such statute, order, rule or regulation would in any way prevent, hinder, or
9 delay necessary action in coping with the emergency;

10
11 (2) Utilize all available resources of the Commonwealth as reasonably necessary
12 to cope with the disaster emergency of the Commonwealth;

13
14 (3) Transfer the direction, personnel, or functions of the Commonwealth
15 departments and agencies or units thereof for the purpose of performing or
16 facilitating emergency services;

17
18 3 CMC § 5121(f)(1)-(3).

19
20 By today's disaster emergency declaration, I intend to enable CUC to continue to provide
21 necessary service to the people of the Commonwealth.

22
23 This Declaration of a State of Disaster Emergency shall take effect immediately and all
24 memoranda, directives and other measures taken in accordance with this Declaration shall
25 remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the
26 end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of
27 emergency has been lifted or has been extended for an additional period of thirty (30) days. 1
28 CMC § 7403(a); 3 CMC § 5121(c).

29
30 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the
31 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

32
33
34 **DIRECTIVES**

35
36 I direct the following:

37
38 Directive 1: Deleted.

39
40 Directive 2: Deleted.

EO 2009-12
Declaration of Disaster Emergency: CUC Continuation 16

1 Directive 3: Deleted.

2
3 Directive 4: Deleted.

4
5 Directive 5: Deleted.

6
7 Directive 6: Deleted.

8
9 Directive 7: Deleted.

10
11 Directive 8: Deleted.

12
13 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board,
14 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)
15 the confirmation and convening of an operating CUC Board, or (2) the termination of the
16 authority of this order. In particular, the Executive Director shall have full power and authority
17 to agree to swap CDA debt and related obligations for preferred stock and related features and
18 rights.

19
20 Directive 10: The following strike-out-formatted language of the quoted provision of the
21 following statute regulating government employment is, as indicated, suspended immediately:

22
23 (b) Transition exemptions for government employment. . . . (5) Commonwealth
24 Utilities Corporation. Engineers, and professional employees in technical or trade
25 areas may be exempted and CUC may contract with manpower services or
26 directly hire power plant mechanics and utility technicians who may be
27 exempted; ~~provided that direct or manpower hire of foreign national workers shall~~
28 ~~not exceed nineteen (19) employees. This exemption shall expire on September~~
29 ~~30, 2010, and no contract may provide to the contrary.~~

30
31 3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original; ~~strikeout~~
32 is deliberately added) That is, the following language is suspended: “provided that direct or
33 manpower hire of foreign national workers shall not exceed nineteen (19) employees. This
34 exemption shall expire on September 30, 2010, and no contract may provide to the contrary.”
35

EO 2009-12

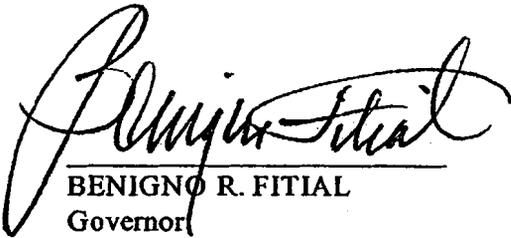
Declaration of Disaster Emergency: CUC Continuation 16

1 The effect of the suspension shall be that CUC shall have the complete power, without regard to
2 citizenship or otherwise lawful immigration status, to hire engineers, professional employees in
3 technical or trade areas, power plant mechanics and utility technicians, either directly or
4 indirectly. These professional employees may include, but shall not be limited to, sanitarians,
5 engineers, accountants, financial experts, information technology specialists, mechanics,
6 electricians, well-drillers, pipefitters, plumbers, wastewater treatment facilities operators, and
7 other trades technicians.

8
9

10 Done this 25th day of November 2009.

11
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17



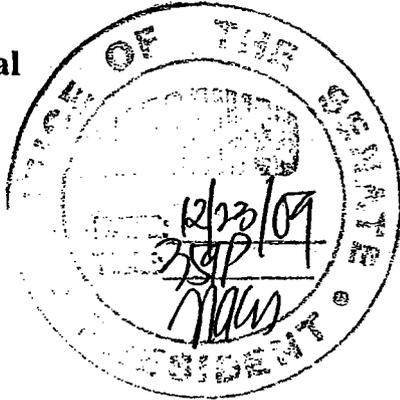
BENIGNO R. FITIAL
Governor

0 EO 2009-12 CUC Dis Decl (25Nov09).wpd



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor



Eloy S. Inos
Lt. Governor

12.23.09
4:15 PM

PEDRO O. TOWAI AS
OFFICE OF THE SPEAR
House of Representatives
16th CNMI Legislature

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EXECUTIVE ORDER 2009-13

DECLARATION OF A STATE OF DISASTER EMERGENCY:

COMMONWEALTH UTILITIES CORPORATION'S
IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO
PROVIDE IMMEDIATE RELIABLE POWER, WATER AND WASTEWATER
SERVICES

CONTINUATION #17

I, ELOY S. INOS, pursuant to the authority vested in me as Acting Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the inability of the Commonwealth Utilities Corporation (CUC) to provide critical power generation service to the CNMI and the extreme, immediate and imminent threat such condition poses to the Commonwealth of the Northern Mariana Islands.

This Executive Order is intended to, and does, continue in effect portions of the Governor's preceding disaster emergency declarations on this matter, EO 2009-01 through -09, and 11-12, except as specifically modified. As more fully stated below, this Executive Order shall expire on the 31st day following the date of my signature. The following findings and conclusions further support continuation of the Declaration and issuance of directives.

1 **FINDINGS**

2
3 I find that:

4
5 1. All findings and conclusions of EO 2009-01 through -09, and 11-12 are incorporated by
6 reference, except as specifically varied in this Executive Order.

7
8 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

9
10 2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers
11 has continued to place CUC operations at risk. Presently CNMI law (PL 16-14) prohibits CUC
12 from hiring any more non-US technical workers than the 19 skilled professionals recently with
13 CUC. CUC has repeatedly asked the Legislature for relief from this statute regulating the
14 Government's workforce, to no avail. Further, errors in wording in the CUC enabling legislation
15 recently re-enacted, PL 16-17, as amended, would bar the Executive Director from day-to-day
16 management of the corporation, effectively shutting CUC down. This EO eliminates these
17 problems while it is in effect.

18
19 3. **Background.** CUC has substantially minimized the risk of losing the services of its owned
20 generating capacity, which losses created intermittent blackouts on portions of its system. It
21 therefore allowed the Aggreko year-long temporary power contract to terminate, as provided in
22 the agreement, effective September 12, 2009. This saves CUC customers at least \$6 million per
23 year in fees. But it still presents risks, as the strategy requires proper operation and maintenance
24 of CUC's owned engines by CUC's technical staff, and the timely securing of materials and
25 supplies.

26
27 4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction
28 of the US District Court and the US EPA, pursuant to two consent, or "stipulated", orders. The
29 first requires the upgrade and smooth functioning in virtually all aspects of CUC's water and
30 wastewater divisions. The second requires CUC to properly eliminate over 400,000 gallons of
31 used oil and to institute measures to avoid uncontrolled buildup of such inventories. Failure to
32 meet the requirements of the federal court orders could subject CUC and the CNMI to
33 substantial fines and charges, and, in the extreme, to a federal takeover of their finances.
34 Presently CUC is "accruing" substantial fines. Most of the fines have not been levied; but they
35 could be. The EPA has, however, levied one fine, in the amount of \$29,000.

36
37 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission ("CPUC").
38 The regulator has plenary power over CUC rates, charges, fees, operations and capital
39 investments. CUC's failure to timely and competently meet CPUC orders and other
40 requirements can result in severe rate discipline, and fines and other penalties. The Commission

1 recently required CUC to meet certain requirements, including the filing of a technically
2 complex rate case by the end of January 2010, or face fines of \$500 per day.

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6. CUC is the sole electricity supplier to the Government of the CNMI, including all public safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the CNMI's businesses and homes. While some businesses and agencies own backup generators, they are not generally organized to use the backups as permanent power sources; and the diesel oil purchased to run these generators is substantially more expensive than that used for CUC power.

7. Without CUC electricity:

- a. most CNMI economic activity would come to a halt, the courts would soon close, much refrigeration and air conditioning would end, and the airports and ports would be forced to rely on emergency generation and the limited, expensive oil supply for it;
- b. the CNMI's health and safety would immediately be at risk, since traffic signals and street lighting would cease to function, emergency, fire and police facilities and their communications systems, and the Hospital and island clinics would have to rely on limited oil supplies for emergency generation and then cease functioning, much refrigeration of food and medicines would end, as would air conditioning for the elderly and medically fragile;
- c. the public schools and the Northern Marianas College would close. Other educational institutions would close as their backup oil supplies for emergency generators were exhausted; and
- d. water and sewage treatment would soon end. One of CUC's largest electric customers is the combined CUC Water and Wastewater Divisions. CUC is the sole supplier of electricity for these systems. CUC's water system relies on electricity to maintain the system pressure needed to avoid the backflow of pathogens, to chlorinate, and to pump, store and distribute water supplies. CUC's wastewater system requires electricity to collect, pump, process, treat and discharge sewage. The lack of electricity could result in sewage overflows, contamination of land and water and rendering unsafe the CNMI's beaches, which are also principal tourist destinations.

Staffing CUC with the technical experts to permit continued electric service

8. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in September. In October four other units began required overhaul, which will take 12 months.

9. In November, the following work started: The critical replacement of the PP #1 anchor bolts, in order to stop the shifting and vibration that has ruined the plant; and foundation repairs to Engines 1 and 8. Shortly thereafter the replacement of turbochargers and oil-water separators is to begin. All of this work is essential.

10. This work has been successful. As of this month, Power Plant 1 Engines 1, 2, 3, 5, 6, 7 are available. Engine 8's critical foundation repair and anchor bolt replacement have been completed. The major engine overhaul is to begin immediately.

11. In effect, CUC management, with generous federal financial assistance, has brought the its generation back from the brink of system failure. There are adequate reserves. If maintained properly, the system can provide the CNMI's citizens and residents with adequate power.

12. Adequate technical staff is essential to this work. A major challenge to carrying out this rehabilitation has been finding the trained technicians needed to carry out these rehabilitation projects, and maintain and run the equipment. The technicians must be ready for service when needed and their services must be affordable. Any significant reduction in CUC's present technical workforce could seriously compromise CUC's ability to generate and distribute power.

13. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit ("T & D"), including many vehicles, is dilapidated and bordering on being unsafe. There is an insufficient number of skilled workers to operate T & D. The linemen must be trained to, and skillful in, meeting US standards. The critical upcoming projects in T & D include the replacement of the antiquated, rundown and unsafe vehicle fleet; the redesign of T & D using national Rural Utility Service standards; the replacement/installation of insulators, transformers, overcurrent protection, sectionalizers and the installation of efficient LED street lighting.

14. For example, Saipan's early-September brush with Typhoon Choi-Wan 15W that passed to the north of Saipan, and typhoon Melor, which passed just north of Saipan in October, underscored the extreme vulnerability of CUC's power transmission and distribution (T & D) system. In September, over 150 calls of no- power and line faults were fielded by crews when, for a storm of this size, there should have been no more than a score. In October, fortunately, the CUC power system avoided a direct hit from a supertyphoon. Fortunately, the typhoon season

1 appears to be ending with no direct hits on the CNMI and our power distribution system.
2 Accelerating improvements to the T & D system ,with proper staff under an Emergency Order,
3 would allow CUC to "harden" the system in anticipation of a bigger storm event. The
4 alternative, in a more serious storm, is CUC's inability to recover in any reasonable time period.
5

6 15. Further, utility industry safety margins for isolated, island systems typically require a
7 reserve equal to the capacity of the two largest generating units; in CUC's case this would be
8 another 15 MW of load, equivalent to the departed Aggreko temporary units. Meeting this
9 reserve requirement means CUC must have an adequate repair and maintenance staff.

10
11 16. The Legislature, through 3 CMC § 4972(5), as amended by PL 16-14 (Aug. 27, 2008), has
12 limited CUC's ability to hire technical staff; allowing up to 19 foreign workers only. The CUC
13 Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such
14 persons as are necessary for operations, *except as otherwise limited by other law*. 4 CMC §
15 8123(h).
16

17 17. PMIC at PP #4 and Telesource on Tinian, as Independent Power Producers (IPPs), are not
18 subject to the Legislature's limitation on foreign workers.
19

20 18. There are not enough technical specialists at CUC to get the power generation work done,
21 particularly specialists with experience in the type of engines that CUC uses. CUC believes that
22 the vast majority of skill sets must come from non-US personnel.
23

24 19. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding
25 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after
26 interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator
27 candidates were US citizens.
28

29 20. CUC has hired some local staff recently thanks to the aggressive steps of CUC HR, the
30 Executive Director and Directive 10.
31

32 21. CUC, as of this month, has completed the hiring of the skilled trade technicians needed on
33 Saipan for power plant operations and maintenance. For Rota, CUC has announced the need for
34 a mechanic-operator and an electrical operator. As more units begin working after the
35 rehabilitations are largely complete, CUC will need more staff to operate and maintain them.
36 For the immediate future, CUC needs to maintain its complement of skilled workers.
37

38 22. The impact of an inadequate workforce would be three-fold:
39

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- 1 a. First, there would be a direct negative effect on the existing consumers. There
2 would be brownouts, or area blackouts, with the above-mentioned loss of service.
3
4 b. Second, the power plants would again degrade, producing more of these outages.
5
6 c. Third, there would be an indirect effect, increasing rates over the longer term,
7 because small consumers would have to shoulder more of the fixed costs of the
8 CUC system. First, there would be loss of large customers. By contrast, if the
9 hotels were to become part of the system, they could help pay CUC fixed costs,
10 which would lower everyone else's rates. The hotels need reliable, 24/7 power.
11 But with unreliable power, CUC would be unable to convince large commercial
12 customers, particularly the hotels, to join, or rejoin, its system. Second, would
13 come additional expenses. If CUC fails to meet federal court deadlines for the
14 stipulated orders, the Court could appoint a federal receiver and its consulting
15 team – with all expenses charged to CUC customers. Thus, the indirect effect of
16 an inadequate workforce would be to boost rates.

17
18 23. Rota's status today is precarious and financially un-sustainable. Rota has recently suffered
19 blackouts from inadequate generator maintenance. The power plant's other facilities and the
20 island's distribution system similarly need the attentions of additional manpower. The Rota
21 power plant needs additional generating sets to come on line, as there are only 1.5 dependable
22 sets in the plant. The third of two feeders is powered by a private resort at a cost of
23 \$200,000/month to CUC. The revenues from the customers on this feeder fall far below this
24 cost. CUC is negotiating with a Mainland supplier for a new generating set, with funding from
25 the US Department of the Interior. The present alternative for Rota is akin to Saipan's recent
26 Aggreko situation – purchasing higher cost, reliable power from the Rota Resort.

27
28 24. Since EO 2009-8 in August, and the suspension of the harmful legislative employment
29 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and
30 Rota power generation facilities. CUC needs to be able to hire the workers it needs when it
31 needs them. Otherwise, if CUC had to discharge these workers its staffing levels would return to
32 those which overworked its limited staff. For example, over pay period numbers 2 through 11 of
33 the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who each
34 worked 40 or more hours of overtime in a pay period. This condition is extreme, and a repeat
35 can result in inefficiencies and poor work quality. It can lead to dangerous mistakes, producing
36 injury or death.

37
38 25. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The
39 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set

1 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6
2 million-per-year benefit of terminating the Aggreko temporary power contract.

3
4 26. CUC has demonstrated that the required workers are available as nonresident workers, and
5 cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign
6 national workers is necessary to ensure the delivery of uninterrupted power services to the
7 people of the Commonwealth.

8
9
10 **Complying with the federal court order on disposal of used oil**

11
12 27. CUC has taken concrete steps to address the storage and disposal of used oil, consonant
13 with the federal court's Stip Order 2. Federal court Stipulated Order 2, relates to the used oil
14 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.
15 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an
16 adequate complement of trained technical employees, CUC has believed that it can meet these
17 requirements.

18
19 28. A September inspection by the US Coast Guard (USCG) has resulted in the imposition of
20 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional
21 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean
22 from Power Plants 1, 2 and the power plant in Rota. Further, as of October, CUC has faced the
23 following staffing needs in this area: It critically needs the resources to inspect and redesign the
24 entire fuel storage, pumping and handling system in order to meet the more stringent
25 requirements of today. The clean fuel storage tanks at Lower Base were originally designed for
26 another application. The fuel line from the oil company's terminal is in danger of rupturing
27 during a transfer; the pumping rate has to be reduced to prevent this. All of this requires trained
28 staff.

29
30 29. Serious deficiencies in the waste oil handling system at Lower Base have come to light in
31 the past months and are being addressed by both CUC and EPA. One deficiency is that the oily
32 water separators are not functioning as such because of the excessive amount of oil (as opposed
33 to water) entering the system. As a result, oil was spilling on to the ground rather than being
34 separated and skimmed off properly. Power Plant #1 has been sealed off to prevent any waste
35 oil from leaving the plant and flowing into the oily water separators. To prevent oil from
36 accumulating uncontained in the plant itself, emergency measures are being taken to store waste
37 oil and to fabricate above-ground tanks. The oily water separators, pipes, holding tanks, and
38 baffles are being cleaned out so that the entire system can be carefully inspected and
39 re-engineered. All of the additional work is expensive. Regardless of who does the work
40 initially, CUC staff, EPA contractors, or a combination thereof, CUC requires skilled, trained

1 workers for the clean-up. Failure to correct this situation could harm the nearby environment,
2 CUC's ability to generate electricity properly, and the assurances given pursuant to Stip Order 2.
3 CUC has begun the process to hire a Oil Technical Manager.
4
5

6 **Complying with the federal court order on managing the water and wastewater systems**
7

8 30. As long as the Water and Wastewater Divisions can hire competent staff and receive power
9 from the Power Division, they can function.
10

11 31. The U.S. Department of Justice ("DoJ"), Environment and Natural Resources Division, has
12 sued CUC in federal court to come into compliance with critical water and sewage treatment
13 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order
14 1"). See also http://www.usdoj.gov/enrd/Consent_Decrees.html. In July 2008 CUC, the CNMI
15 and (in September 2008) the U.S. Environmental Protection Agency ("EPA") stipulated to this
16 first of two orders lodged with the U.S. District Court on the date the Complaint was filed. This
17 order requires CUC to implement a series of improvements to its water and wastewater systems
18 that respond to years of neglect, for which it presently lacks the funds and the complete technical
19 capability.
20

21 32. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater
22 Division must respond to acid damage in the asbestos cement piping system, the product of over
23 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and
24 metal infrastructure, so that key pipe systems have collapsed. December 18 saw the sixth failure
25 in six months. Failures will continue until 10 miles of sewer pipe are replaced. But replacement
26 involves complex excavations, avoiding electric, phone and water utilities, blocking traffic,
27 stopping the infiltration of seawater (which damages treatment plant facilities), and pumping
28 sewage around blocked and excavated areas. The Division has already far exceeded its repair
29 budget.
30

31 33. The Division also needs serviceable vehicles to move its workers to and from job sites.
32 Presently six vehicles are in such bad shape that they are dangerous. The resulting reduced
33 vehicle problem raises costs and hurts service, as staff and materials cannot be brought to job
34 sites on time.
35

36 34. Sewage lift Station failures continue, with most pumping stations having only one of two
37 required pumps installed. CUC has issued a contract to purchase 30 additional pumps, however
38 the lead time between issuance of the contract and pump arrival is over six months, so that CUC
39 is still approximately three months out from pump arrival.
40

1 35. CUC Engineer staff shortages continue to hamper CUC's ability to anticipate and fix
2 technical problems. While CUC's Water/Wastewater Division employs four engineers, the poor
3 condition of the CUC sanitation assets requires at least two more engineers. But, significant
4 engineering resources are already focused on addressing EPA Stip Order I issues. These issues
5 include staffing plans, pre-treatment programs, materials management programs, customer
6 inventory, and cross-connection control programs. Recruitment and retention of engineering
7 staff to meet these challenges is difficult.

8
9 36. CUC must be able to hire the staff to perform the required technical functions. The Water
10 and Wastewater Divisions cannot carry out their missions without adequate staff. These staff are
11 essential to producing clean, safe water supplies and removal of stormwater and sewage in a
12 safe, timely manner. While the bulk of CUC employees are drawn from local and US
13 populations, the Division management estimates that, as of December, at least six trained
14 technicians will be required – three experienced Level 3 wastewater treatment operators, two
15 Level 3 wastewater collections operators, and an instrumentation /low voltage controls specialist.
16 An experienced Water/Wastewater Division operations manager will also be required.

17
18 37. CUC also requires a constant supply of electricity to run its water and wastewater treatment
19 systems. CUC has very limited on-site emergency generation capability, and for only portions
20 of these systems.

21
22 38. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing
23 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost
24 recovery for the water and wastewater systems through the processes of the CNMI Public
25 Utilities Commission.

26
27
28 **Meeting US District Court and CNMI Public Utilities Commission requirements to**
29 **produce timely, accurate financial reports**

30
31 39. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
32 beginning in September, 2009. The "IFP" must develop over time, becoming more than
33 "interim". CUC cannot do this unless it has a staff of trained accounting and other financial
34 experts who can gather data, put the data in the required form and generate the IFP and its later
35 versions.

36
37 40. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities
38 Commission ("CPUC"). The CPUC is charged by statute to oversee carefully CUC's operations
39 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC's
40 water and wastewater systems.

1
2 41. In recent electric and water/wastewater orders, of September 3, 2009, the CPUC addressed
3 CUC's inability to deliver complete on-time financial reports, requiring CUC, in effect, to
4 enhance its staff capability to provide critical regulatory information. (Docket No.'s 09-1 and
5 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations in an order
6 stemming from recent regulatory sessions in March 2010.

7
8 42. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained
9 accounting and other financial experts who can gather data, put the data in the required form and
10 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
11 staff with the data required for their oversight. CUC has obligated itself to provide an updated,
12 compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1,
13 to the US District Court by December 31, 2009. It has also begun the process to hire a Chief
14 Financial Officer.

15
16 43. CUC this year lost 2 senior accountants plus a related specialist. The IT and billing
17 department in August was reduced by one staffer, having advertised for a replacement for 4
18 weeks to no avail. While it appeared that CUC might have to look to employing foreign
19 technical specialists, CUC hired back 2 former accountants in September and brought a third
20 person aboard in October. All are US citizens. Nonetheless, CUC must have the flexibility to
21 hire competent professionals as needed. CUC is still short-staffed, and needs an accounting
22 assistant, an accounting specialist and a Chief Financial Officer.

23
24 44. To summarize: Without properly trained technical staff CUC's ability to supply power is at
25 risk. So is its ability to manage the rest of its systems, including its finances and accounting.
26 CUC's services could not be adequately staffed without August's lifting of the artificial
27 legislative regulation of CUC's workforce, in EO 2009-08, Directive #10, suspending the
28 limitations on CUC hiring foreign workers. It is obvious that the hiring authority must be
29 continued.

30
31 45. There is no indication that any of the above manpower situation will be resolved in the next
32 month without continuing in effect this EO and Directive #10.

33
34
35 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

36
37 46. **Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and
38 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors
39 in the position of day-to-day management of the corporation, and requires a complex mix of
40 technical, geographic and other qualifications for Board membership. There is no Board because

1 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot
2 take a critical step toward solvency and the ability to borrow to finance its work.
3

4
5 **Forestalling corporate paralysis**
6

7 47. A critical concern is that the CUC Act's constricted scope of authority for the Executive
8 Director, and the complementary daily management by a host of Board volunteers, would
9 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before
10 CUC.
11

12 48. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC
13 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and
14 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133
15 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and
16 property), demonstrates that the Executive Director is to be left with little more to do than
17 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70
18 million/year corporation, on a day-to-day basis. This includes such decision-making as
19 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning
20 work crews, connecting customers, deciding on making repairs, collecting debts, complying with
21 the details of federal and CPUC regulatory requirements, making and funding long-term
22 technical power and water/wastewater plans, and insuring that, on a day-to-day basis, the power
23 and water flow and the sewage is treated.
24

25 49. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
26 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –
27 with or without a Board in place. The complex technical problems listed above simply cannot be
28 managed on a day-to-day basis by a group of non-expert volunteers.
29

30 50. No private or public utility company in the United States runs this way – with a group of
31 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in
32 the United States has mandated this form of corporate management for a public utility.
33

34 51. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
35 drafting error, and the People, through their elected representatives, wish their utility company to
36 continue to supply them with essential services at a reasonable cost, meeting industry standards.
37
38

1 **Fixing CUC's technical insolvency**

2
3 52. CUC has been unable to borrow money to run its operations since the inception of this State
4 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books
5 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115
6 million. This situation may be corrected if the Executive Director is recognized to have the
7 authority to correct it.

8
9 53. Meanwhile, billings and collections are substantially below the levels required to prudently
10 manage CUC's current operations and provide for system repairs, replacements and upgrades.
11 For example, billings alone for water and wastewater are less than 70% of requirements to run
12 those two systems.

13
14 54. The booked CDA obligation has rendered CUC nominally insolvent. While CUC is deemed
15 insolvent, CUC cannot borrow money. But CUC must be able to borrow money to bridge the
16 gap between (a) the need to spend money on essential goods and services to provide electricity,
17 water and sewage service, and (b) the lagged collection of already-determined-insufficient
18 revenues from the sale of those services.

19
20 55. The CPUC, in its September 3 electric order, Docket No. 09-1, approved a CUC-CDA
21 settlement converting the CDA debt to preferred stock. But the deal requires CUC's Board to
22 agree to it.

23
24 56. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
25 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
26 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find
27 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
28 Nonetheless, CUC must continue to function, including borrowing money.

29
30 57. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It
31 also permits him to continue to run CUC, carefully manage cash to pay tens of millions of
32 dollars annually for fuel oil and purchased power, and do all the things necessary to providing
33 power, water and wastewater services, until the remaining members of a properly constituted
34 Board can be identified, confirmed, and convened for business.

1 **Providing the basis for proper CPUC oversight**

2
3 58. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act,
4 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC
5 activities, particularly financial activities.

6
7 59. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
8 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's
9 error-infused creation of a volunteer Board which would run the corporation on a day-to-day
10 basis, becomes much less important than satisfying CPUC requirements.

11
12 60. What becomes very important is CUC's capability to provide the CPUC with accurate and
13 timely financial and accounting information. But such reporting is not possible without a
14 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
15 Executive Director to lead them.

16
17
18 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

19
20 61. There is no Legislative relief coming. For months CUC has repeatedly asked the
21 Legislature for such relief, including submission of draft legislation in July. The Legislature has
22 declined to respond. There is no alternative to providing this relief other than an order from the
23 Governor. Inaction will produce a disaster in which CUC is unable to provide its critical
24 community services. Directives # 9 and #10 were designed to avert this crisis. (The other
25 Directives, #1 through #8, are no longer relevant, and were discontinued.)

26
27 62. This Declaration is necessary to protect the health and safety of our children, our senior
28 citizens, businesses and all other CNMI residents and visitors.

29
30
31 **CONCLUSION AND ORDER**

32
33 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth
34 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
35 facing the Commonwealth of the Northern Mariana Islands.

36
37 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the
38 issuance of Executive Directives setting forth the measures to be taken to address the State of
39 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

1 (f) In addition to any other powers conferred upon the Governor by law, the Governor
2 may, during a state of disaster emergency:

3
4 (1) Suspend the provisions of any regulatory statute prescribing the procedures
5 for conduct of the Commonwealth's business, or the orders, rules, or regulations
6 of any Commonwealth activity or agency, if strict compliance with the provision
7 of any such statute, order, rule or regulation would in any way prevent, hinder, or
8 delay necessary action in coping with the emergency;

9
10 (2) Utilize all available resources of the Commonwealth as reasonably necessary
11 to cope with the disaster emergency of the Commonwealth;

12
13 (3) Transfer the direction, personnel, or functions of the Commonwealth
14 departments and agencies or units thereof for the purpose of performing or
15 facilitating emergency services;

16
17 3 CMC § 5121(f)(1)-(3).

18
19 By today's disaster emergency declaration, I intend to enable CUC to continue to provide
20 necessary service to the people of the Commonwealth.

21
22 This Declaration of a State of Disaster Emergency shall take effect immediately and all
23 memoranda, directives and other measures taken in accordance with this Declaration shall
24 remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the
25 end of the thirty (30)-day period, notify the Presiding Officers of the Legislature that the state of
26 emergency has been lifted or has been extended for an additional period of thirty (30) days. 1
27 CMC § 7403(a); 3 CMC § 5121(c).

28
29 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the
30 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

31
32
33 **DIRECTIVES**

34
35 I direct the following:

36
37 Directive 1: Deleted.

38
39 Directive 2: Deleted.

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1 Directive 3: Deleted.

2
3 Directive 4: Deleted.

4
5 Directive 5: Deleted.

6
7 Directive 6: Deleted.

8
9 Directive 7: Deleted.

10
11 Directive 8: Deleted.

12
13 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board,
14 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)
15 the confirmation and convening of an operating CUC Board, or (2) the termination of the
16 authority of this order. In particular, the Executive Director shall have full power and authority
17 to agree to swap CDA debt and related obligations for preferred stock and related features and
18 rights.

19
20 Directive 10: The following strike-out-formatted language of the quoted provision of the
21 following statute regulating government employment is, as indicated, suspended immediately:

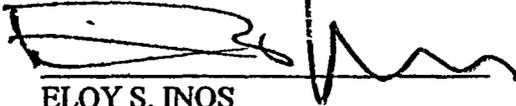
22
23 (b) Transition exemptions for government employment. . . . (5) Commonwealth
24 Utilities Corporation. Engineers, and professional employees in technical or trade
25 areas may be exempted and CUC may contract with manpower services or
26 directly hire power plant mechanics and utility technicians who may be
27 exempted; ~~provided that direct or manpower hire of foreign national workers shall~~
28 ~~not exceed nineteen (19) employees. This exemption shall expire on September~~
29 ~~30, 2010, and no contract may provide to the contrary.~~

30
31 3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original; ~~strikeout~~
32 is deliberately added) That is, the following language is suspended: “provided that direct or
33 manpower hire of foreign national workers shall not exceed nineteen (19) employees. This
34 exemption shall expire on September 30, 2010, and no contract may provide to the contrary.”
35

EO 2009-13
Declaration of Disaster Emergency: CUC Continuation 17

1 The effect of the suspension shall be that CUC shall have the complete power, without regard to
2 citizenship or otherwise lawful immigration status, to hire engineers, professional employees in
3 technical or trade areas, power plant mechanics and utility technicians, either directly or
4 indirectly. These professional employees may include, but shall not be limited to, sanitarians,
5 engineers, accountants, financial experts, information technology specialists, mechanics,
6 electricians, well-drillers, pipefitters, plumbers, wastewater treatment facilities operators, and
7 other trades technicians.

8
9
10 Done this 23rd day of December 2009.

11
12
13 

14
15 ELOY S. INOS
16 Acting Governor
17

EO 2009-13 CUC Dis Decl (23NDec09).wpd



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2010-05**

2

3

4

DECLARATION OF A STATE OF DISASTER EMERGENCY:

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**COMMONWEALTH UTILITIES CORPORATION'S
IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO
PROVIDE IMMEDIATE RELIABLE POWER, WATER AND WASTEWATER
SERVICES**

10

CONTINUATION #22

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I, ELOY S. INOS, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the inability of the Commonwealth Utilities Corporation (CUC) to provide critical power generation service to the CNMI and the extreme, immediate and imminent threat such condition poses to the Commonwealth of the Northern Mariana Islands.

This Executive Order is intended to, and does, continue in effect portions of the Governor's preceding disaster emergency declarations on this matter, EO 2009-01 through -09, and 11-13, and EO 2010-04, except as specifically modified. As more fully stated below, this Executive Order shall expire on the 31st day following the date of my signature. The following findings and conclusions further support continuation of the Declaration and issuance of directives.

EO 2010-05
Declaration of Disaster Emergency: CUC Continuation 22

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Directive 10: The following strike-out-formatted language of the quoted provision of the following statute regulating government employment is, as indicated, suspended Page 20 of 21

1 **FINDINGS**

2
3 I find that:

4
5 1. All findings and conclusions of EO 2009-01 through -09, and 11-13, and EO 2010-01
6 through -04 are incorporated by reference, except as specifically varied in this Executive Order.

7
8
9
10 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

11
12 2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers
13 has continued to place CUC operations at risk. Incipient failures in the CUC water, wastewater
14 and power transmission and distribution networks have underscored the importance of having in
15 place a well-funded and functioning preventive maintenance program. Skilled workers and a
16 responsive support system are key to the success of the operations, particularly of preventive
17 maintenance. Presently CNMI law (PL 16-14) prohibits CUC from hiring any more non-US
18 technical workers than the 19 skilled professionals recently with CUC. CUC has repeatedly
19 asked the Legislature for relief from this statute regulating the Government's workforce, to no
20 avail. Further, errors in wording in the CUC enabling legislation recently re-enacted, PL 16-17,
21 as amended, would bar the Executive Director from day-to-day management of the corporation,
22 effectively shutting CUC down. This EO eliminates these problems while it is in effect.

23
24 3. **Background.** CUC has substantially minimized the risk of losing the services of its owned
25 generating capacity, which losses created intermittent blackouts on portions of its system. It
26 therefore allowed the Aggreko year-long temporary power contract to terminate, as provided in
27 the agreement, effective September 12, 2009. This saves CUC customers at least \$6 million per
28 year in fees. But it still presents risks, as the strategy requires proper operation and maintenance
29 of CUC's owned engines by CUC's technical staff, and the timely securing of materials and
30 supplies.

31
32 4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction
33 of the US District Court and the US EPA, pursuant to two consent, or "stipulated", orders.

- 34
35 a. The first requires the upgrade and smooth functioning in virtually all aspects of
36 CUC's water and wastewater divisions. The second requires CUC to properly
37 eliminate over 400,000 gallons of used oil and to institute measures to avoid
38 uncontrolled buildup of such inventories. Failure to meet the requirements of the
39 federal court orders could subject CUC and the CNMI to substantial fines and
40 charges, and, in the extreme, to a federal takeover of their finances. Presently

1 CUC is “accruing” substantial fines. Most of the fines have not been levied; but
2 they could be. The EPA has, however, levied one fine, in the amount of \$29,000.
3

4 b. On February 24, 2010, the US District Court entered an additional stipulated
5 order. It provided, among other things, that a professionally-developed Interim
6 Financial Plan (“IFP”) would be provided to the US EPA within 30 days, by
7 March 26, 2010. This additional stipulation requires CUC to meet a number of
8 deadlines, each involving the application of technical expertise. CUC has timely
9 filed the IFP. It now has the task of implementing the IFP and meeting these
10 deadlines. Failure to meet these requirements would subject CUC to the
11 described sanctions.
12

13 c. Of concern to CUC are the tight deadlines for Stipulated Order 2 (Oil
14 Management) projects that are funded by a \$4.05 million CIP grant awarded in
15 February, 2010, by the US Department of the Interior’s Office of Insular Affairs.
16 The funding is to assist CUC is disposing of the used waste oil discussed in this
17 Executive Order. Failure to meet the deadlines could subject CUC to additional
18 EPA sanctions.
19

20 d. The coordination of the approvals from the various agencies calls for a responsive
21 procurement system at CUC, including the trained technical staff to implement
22 the system.
23

24 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission (“CPUC”).
25 The regulator has plenary power over CUC rates, charges, fees, operations and capital
26 investments. CUC’s failure to timely and competently meet CPUC orders and other
27 requirements can result in severe rate discipline, and fines and other penalties. For example, the
28 Commission recently required CUC to meet certain requirements, including the filing of a
29 technically complex rate case (Docket No. 10-01) by the end of January 2010, or face fines of
30 \$500 per day.
31

32 6. CUC is the sole electricity supplier to the Government of the CNMI, including all public
33 safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the
34 CNMI’s businesses and homes. While some businesses and agencies own backup generators,
35 they are not generally organized to use the backups as permanent power sources; and the diesel
36 oil purchased to run these generators is substantially more expensive than that used for CUC
37 power.
38

39 7. Without CUC electricity:
40

- 1 a. most CNMI economic activity would come to a halt, the courts would soon close,
2 much refrigeration and air conditioning would end, and the airports and ports
3 would be forced to rely on emergency generation and the limited, expensive oil
4 supply for it;
- 5
- 6 b. the CNMI's health and safety would immediately be at risk, since traffic signals
7 and street lighting would cease to function, emergency, fire and police facilities
8 and their communications systems, and the Hospital and island clinics would have
9 to rely on limited oil supplies for emergency generation and then cease
10 functioning, much refrigeration of food and medicines would end, as would air
11 conditioning for the elderly and medically fragile;
- 12
- 13 c. the public schools and the Northern Marianas College would close. Other
14 educational institutions would close as their backup oil supplies for emergency
15 generators were exhausted; and
- 16
- 17 d. water and sewage treatment would soon end. One of CUC's largest electric
18 customers is the combined CUC Water and Wastewater Divisions. CUC is the
19 sole supplier of electricity for these systems. CUC's water system relies on
20 electricity to maintain the system pressure needed to avoid the backflow of
21 pathogens, to chlorinate, and to pump, store and to distribute water supplies.
22 CUC's wastewater system requires electricity to collect, pump, process, treat and
23 discharge sewage. The lack of electricity could result in sewage overflows,
24 contamination of land and water and rendering unsafe the CNMI's beaches,
25 which are also principal tourist destinations.
- 26
- 27
- 28

29 **Staffing CUC with the technical experts to permit continued electric service**

30

31 8. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain
32 and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to
33 buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in
34 September. In October four other units began required overhaul, which will take 12 months.

35

36 9. In November, the following work started: The critical replacement of the PP #1 anchor
37 bolts, in order to stop the shifting and vibration that has ruined the plant; and foundation repairs
38 to Engines 1 and 8. Shortly thereafter the replacement of turbochargers and oil-water separators
39 began. All of this work is essential.

40

1 10. This work has been successful. Power Plant 1 Engines 1, 2 ,3 , 5, 6, 7 are available. Engine
2 8's critical foundation repair and anchor bolt replacement have been completed. The major
3 engine overhaul is under way.
4

5 11. In effect, CUC management, with generous federal financial assistance, has brought its
6 generation back from the brink of system failure. There are adequate reserves. If maintained
7 properly, the system can provide the CNMI's citizens and residents with adequate power.
8

9 12. Adequate technical staff is essential to this work. A major challenge to carrying out this
10 rehabilitation has been finding the trained technicians needed to carry out these rehabilitation
11 projects, and maintain and run the equipment. The technicians must be ready for service when
12 needed and their services must be affordable. Any significant reduction in CUC's present
13 technical workforce could seriously compromise CUC's ability to generate and distribute power.
14

15 13. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit
16 ("T & D"), including many vehicles, is dilapidated and bordering on being unsafe. There is an
17 insufficient number of skilled workers to operate T & D. The linemen must be trained to, and
18 skillful in, meeting US standards. The critical upcoming projects in T & D include the
19 replacement of the antiquated, rundown and unsafe vehicle fleet; the redesign of T & D using
20 national Rural Utility Service standards; the replacement/installation of insulators, transformers,
21 overcurrent protection, sectionalizers and the installation of efficient LED street lighting.
22

23 14. For example, Saipan's early-September brush with Typhoon Choi-Wan 15W that passed to
24 the north of Saipan, and typhoon Melor, which passed just north of Saipan in October,
25 underscored the extreme vulnerability of CUC's power transmission and distribution (T & D)
26 system. In September, over 150 calls of no- power and line faults were fielded by crews when,
27 for a storm of this size, there should have been no more than a score. In October, fortunately, the
28 CUC power system avoided a direct hit from a supertyphoon. Fortunately, the typhoon season
29 ended with no direct hits on the CNMI and our power distribution system. Accelerating
30 improvements to the T & D system ,with proper staff under an Emergency Order, would allow
31 CUC to "harden" the system in anticipation of a bigger storm event. The alternative, in a more
32 serious storm, is CUC's inability to recover in any reasonable time period. The year 2010 will
33 see a new typhoon season.
34

35 15. Further, utility industry safety margins for isolated, island systems typically require a
36 reserve equal to the capacity of the two largest generating units; in CUC's case this would be
37 another 15 MW of load, equivalent to the departed Aggreko temporary units. Meeting this
38 reserve requirement means CUC must have an adequate repair and maintenance staff.
39

1 16. The Legislature, through 3 CMC § 4972(5), as amended by PL 16-14 (Aug. 27, 2008), has
2 limited CUC's ability to hire technical staff, allowing up to 19 foreign workers only. The CUC
3 Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such
4 persons as are necessary for operations, *except as otherwise limited by other law*. 4 CMC §
5 8123(h).

6
7 17. PMIC at PP #4 and Telesource on Tinian, as Independent Power Producers (IPPs), are not
8 subject to the Legislature's limitation on foreign workers.

9
10 18. There are not enough technical specialists at CUC to get the power generation work done,
11 particularly specialists with experience in the type of engines that CUC uses. CUC believes that
12 the vast majority of skill sets must come from non-US personnel.

13
14 19. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding
15 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after
16 interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator
17 candidates were US citizens.

18
19 20. CUC has hired some local staff in time thanks to the aggressive steps of CUC HR, the
20 Executive Director and Directive 10.

21
22 21. CUC has completed the hiring of the skilled trade technicians needed on Saipan for power
23 plant operations and maintenance. For Rota, CUC announced the need for a mechanic-operator
24 and an electrical operator. As more units begin working after the rehabilitations are largely
25 complete, CUC will need more staff to operate and maintain them. For the immediate future,
26 CUC needs to maintain its complement of skilled workers.

27
28 22. With generous grant funding and the use of in-house technical specialists and outside
29 contractors, CUC has undertaken substantial rehabilitation of its power system. Future projects
30 include replacing turbochargers, conserving and reclaiming used lube and waste oil, retrofitting
31 streetlights with low-wattage LED's, and restoring power generation on Rota. Even if
32 contractors do the work, CUC technical staff must research and prepare bid documents, review
33 technical proposals, and oversee the work.

34
35 23. The bottom line on CUC's technical work has been a substantial increase in reliability,
36 specifically the availability of CUC's generation. CUC's transmission and distribution has
37 similarly improved – January 2010 saw 10 hours 44 minutes of outages, April saw one minute.
38 It has been critical to this latter improvement that CUC had the skilled, trained work force to
39 maintain power lines.
40

1 24. But even as power becomes more reliable, CUC must reduce its distribution losses from the
2 reported level of 8%. With world oil prices increasing CUC's power costs, such losses already
3 account roughly for \$4.8 million, which CNMI customers must cover. CUC requires a team of
4 skilled technicians to find and eliminate power theft and line losses.
5
6

7 25. The impact of an inadequate workforce would be four-fold:
8

- 9 a. First, there would be a direct negative effect on the existing consumers. There
10 would be brownouts, or area blackouts, with the above-mentioned loss of service.
11
12 b. Second, the power plants would again degrade, producing more of these outages.
13
14 c. Third, there would be an indirect effect, increasing rates over the longer term,
15 because small consumers would have to shoulder more of the fixed costs of the
16 CUC system. First, there would be loss of large customers. By contrast, if the
17 hotels were to become part of the system, they could help pay CUC fixed costs,
18 which would lower everyone else's rates. The hotels need reliable, 24/7 power.
19 But with unreliable power, CUC would be unable to convince large commercial
20 customers, particularly the hotels, to join, or rejoin, its system. Second, would
21 come additional expenses. If CUC fails to meet federal court deadlines for the
22 stipulated orders, the Court could appoint a federal receiver and its consulting
23 team – with all expenses charged to CUC customers. Thus, the indirect effect of
24 an inadequate workforce would be to boost rates.
25
26 d. Fourth, with the recovery of the world economy, advise CUC experts, oil prices
27 can be expected to rise. If CUC's generators become less efficient, because
28 technical staff are unavailable to maintain CUC's engines' efficiency, that much
29 more oil would be needed to generate a given amount of electricity. The price
30 rise will thereby harm CUC's customers and electricity-dependent services with
31 higher rates.
32

33 26. Rota's status today is precarious and financially un-sustainable. Rota has suffered blackouts
34 from inadequate generator maintenance. The power plant's other facilities and the island's
35 distribution system similarly need the attentions of additional manpower. The Rota power plant
36 needs additional generating sets to come on line, as there are only 1.5 dependable sets in the
37 plant. The third of two feeders is powered by a private resort at a cost of \$200,000/month to
38 CUC. The revenues from the customers on this feeder fall far below this cost. CUC has
39 negotiated with a Mainland supplier for a new generating set, with funding from the US
40 Department of the Interior. The present alternative for Rota is akin to Saipan's recent Aggreko
41 situation – purchasing higher cost, reliable power from the Rota Resort.

1
2 27. Since EO 2009-8 in August, and the suspension of the harmful legislative employment
3 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and
4 Rota power generation facilities. CUC needs to be able to hire the workers it needs when it
5 needs them. Otherwise, if CUC had to discharge these workers, its staffing levels would return
6 to those which overworked its limited staff. For example, over pay period numbers 2 through 11
7 of the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who
8 each worked 40 or more hours of overtime in a pay period. This condition is extreme, and a
9 repeat can result in inefficiencies and poor work quality. It can lead to dangerous mistakes,
10 producing injury or death.

11
12 28. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The
13 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set
14 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6
15 million-per-year benefit of terminating the Aggreko temporary power contract.

16
17 29. CUC points out that the power distribution system is highly vulnerable because, like the
18 sewer system, so much of the maintenance and replacement was deferred for one reason or
19 another over the past 20 years. Since 1995, 26 villages on Saipan were identified as needing
20 major improvements to the power lines; only five have seen those improvements. Power T & D
21 fails in bits and pieces. One of the big pieces that failed in February 2010 was one of 12
22 termination cables on the Kiya Substation (Transformer One). A power outage to the southern
23 parts of Saipan lasted from one to five hours. CUC management states that the excellent
24 response from the crews in both Power Generation and Power T & D demonstrated the
25 importance of having skilled workers. The top two engineers were non-residents. Without this
26 EO in place, given present statutes, it is unlikely CUC would be able to secure the services of
27 such valuable individuals.

28
29 30. The extended dry season this year (see below) means that vegetation must be cleared away
30 from the lines early and often. Brush fires can damage the power lines, telephone facilities, and
31 television cables. Meanwhile, CUC crews must replace failing insulator bolts and failing
32 switches in order to avoid distribution-related power outages.

33
34 31. CUC has demonstrated that the required workers are available as nonresident workers, and
35 cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign
36 national workers is necessary to ensure the delivery of uninterrupted power services to the
37 people of the Commonwealth.

38
39
40
41 **Complying with the federal court order on disposal of used oil**

1 32. CUC has taken concrete steps to address the storage and disposal of used oil, consonant
2 with the federal court's Stip Order 2. Federal court Stipulated Order 2 relates to the used oil
3 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.
4 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an
5 adequate complement of trained technical employees, complemented by expert contractors, CUC
6 believes that it can meet these requirements.

7
8 33. A September inspection by the US Coast Guard (USCG) has resulted in the imposition of
9 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional
10 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean
11 from Power Plants 1, 2 and the power plant on Rota. Further, as of October, CUC has faced the
12 following staffing needs in this area: It critically needs the resources to inspect and redesign the
13 entire fuel storage, pumping and handling system in order to meet the more stringent
14 requirements of today. The clean fuel storage tanks at Lower Base were originally designed for
15 another application. The fuel line from the oil company's terminal is in danger of rupturing
16 during a transfer; the pumping rate has to be reduced to prevent this. All of this requires trained
17 CUC staff.

18
19 34. Serious deficiencies in the waste oil handling system at Lower Base have come to light in
20 the past months and are being addressed by both CUC and EPA. One deficiency is that the oily
21 water separators are not functioning as such because of the excessive amount of oil (as opposed
22 to water) entering the system. As a result, oil was spilling onto the ground rather than being
23 separated and skimmed off properly. Power Plant #1 has been sealed off to prevent any waste
24 oil from leaving the plant and flowing into the oily water separators. To prevent oil from
25 accumulating uncontained in the plant itself, emergency measures have been taken to store waste
26 oil and to fabricate above-ground tanks. The oily water separators, pipes, holding tanks, and
27 baffles are being cleaned out so that the entire system can be carefully inspected and
28 re-engineered. All of the additional work is expensive. Regardless of who does the work
29 initially, CUC staff, EPA contractors, or a combination thereof, CUC requires skilled, trained
30 workers for the clean-up. Failure to correct this situation could harm the nearby environment,
31 CUC's ability to generate electricity properly, and the assurances given pursuant to Stip Order 2.
32 CUC has begun the process to hire an Oil Technical Manager.

33
34 35. Incinerators play a crucial role in helping CUC meet Stip Order 2. The two incinerators at
35 Lower Base (Power Plants 1 and 2) are now operating, and burning about 1000 gallons of used
36 oil per day. This is double the rate from January. This EO has permitted Power Generation the
37 flexibility of hiring skilled non-residents to not only repair and overhaul the generating sets, but
38 fix such important auxiliary equipment as the incinerators.
39

1 36. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court
2 for the Mariana Islands which is highly critical of the progress in CUC's efforts to comply with
3 Stip Order 2's requirements to solve the used oil situation. Since that report CUC has contracted
4 with the GRESCO firm to remove waste oil from Tank 104. The EPA has strongly urged CUC
5 to accelerate the removal, bringing the "empty" date forward from October 2010 to June 2010.
6 EPA has also required CUC to purchase and install special double-walled "iso" tanks for use in
7 the project.

8
9
10
11 **Complying with the federal court order on managing the water and wastewater systems**

12
13 37. As long as the Water and Wastewater Divisions can hire competent staff and receive power
14 from the Power Division, they can function.

15
16 38. The U.S. Department of Justice ("DoJ"), Environment and Natural Resources Division, has
17 sued CUC in federal court to come into compliance with critical water and sewage treatment
18 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order
19 1"). See also http://www.usdoj.gov/enrd/Consent_Decrees.html. In July 2008 CUC, the CNMI
20 and (in September 2008) the U.S. Environmental Protection Agency ("EPA") stipulated to this
21 first of two orders lodged with the U.S. District Court on the date the Complaint was filed. This
22 order requires CUC to implement a series of improvements to its water and wastewater systems
23 that respond to years of neglect, for which it presently lacks the funds and the complete technical
24 capability.

25
26 39. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater
27 Division must respond to acid damage in the asbestos cement piping system, the product of over
28 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and
29 metal infrastructure, so that key pipe systems have collapsed. December 18 saw the sixth failure
30 in six months. Failures will continue until 10 miles of sewer pipe are replaced. But replacement
31 involves complex excavations, avoiding electric, phone and water utilities, blocking traffic,
32 stopping the infiltration of seawater (which damages treatment plant facilities), and pumping
33 sewage around blocked and excavated areas. The Division has already far exceeded its repair
34 budget.

35
36 40. Providing and improving water service presents new challenges. With DEQ's classification
37 of Rota's cave-based domestic water as "surface water" CUC has had to expand water quality
38 monitoring and testing, requiring more manpower and more equipment. In May CUC
39 experienced failures in water pipes as the Cross-Island road project's contractors' equipment
40 broke pipes, requiring CUC staff to be pulled from other jobs, with required equipment, to
41 address the emergency.

1
2 41. Sewer line collapses are not uncommon, typically the result of pipe thinning. CUC
3 investigates and undertakes repairs. Without this EO, says CUC, procurement for such repair
4 work would constitute a significant impediment.

5
6 42. The Sadog Tasi Wastewater Treatment Plant is undergoing long-planned rehabilitation.
7 But, without such redundant equipment as a clarifier, CUC must devote extra resources to the
8 facility while the contractor repairs the only unit. Such work has to be conducted within strict
9 parameters by properly trained technicians to prevent contamination of the environment.

10
11 43. The Division also needs serviceable vehicles to move its workers to and from job sites.
12 Presently six vehicles are in such bad shape that they are dangerous. The resulting reduced
13 vehicle problem raises costs and hurts service, as staff and materials cannot be brought to job
14 sites on time.

15
16 44. Sewage lift station failures continue, requiring CUC crews to install newly received pumps.
17 Approximately 17 of the 45 CUC sewage lift station are in poor condition and require significant
18 rehabilitation. CUC anticipates an EPA grant for the rehabilitation of these lift stations. But
19 that construction will not occur for approximately one year.

20
21 45. CUC engineer staff shortages continue to hamper CUC's ability to anticipate and fix
22 technical problems. While CUC's Water/Wastewater Division employs four engineers, the poor
23 condition of the CUC sanitation assets requires at least two more engineers. But, significant
24 engineering resources are already focused on addressing EPA Stip Order 1 issues. These issues
25 include staffing plans, pre-treatment programs, materials management programs, customer
26 inventory, and cross-connection control programs. CUC water and wastewater engineers are the
27 lead with several on-going construction projects, which also stretches the limited engineering
28 resources, including the Well Isolation Project, Sadog Tasi Sewer Plant Rehabilitation, and
29 Agingan Sewage Treatment Plant Rehabilitation. Recruitment and retention of engineering staff
30 to meet these challenges is difficult.

31
32
33 46. Incipient failures include the failure of 98 submersible pumps in the water system over a
34 period of twelve months. Higher grade stainless steel grates have to be specified that are resistant
35 to pitting. The pitting causes the grates to fail and consequently the pump motors. CUC will
36 need to purchase higher quality equipment, rather than the cheap units that fail prematurely.

37
38 47. CUC must be able to hire the staff to perform the required technical functions. The Water
39 and Wastewater Divisions cannot carry out their missions without adequate staff. These staff are
40 essential to producing clean, safe water supplies and removal of stormwater and sewage in a
41 safe, timely manner. While the bulk of CUC employees are drawn from local and US

1 populations, the Division management estimates that at least six trained technicians will be
2 required – three experienced Level 3 wastewater treatment operators, two Level 3 wastewater
3 collections operators, and an instrumentation /low voltage controls specialist. An experienced
4 Water/Wastewater Division operations manager will be required. CUC has also announced a
5 vacancy of the position for Deputy Director for Water and Wastewater. Seven candidates will be
6 reviewed and evaluated by a team which includes the Executive Director.

7
8 48. There are special reasons why the water system must be adequately staffed and maintained
9 this year. This is an El Nino year. According to the Pacific ENSO bulletin forecast, February 1,
10 2010, the CNMI dry season will bring below normal rainfalls and will extend to June 2010.

11 CUC must now go into an emergency mode, conserving water, accelerating water line
12 replacements, and locating and repairing leaks. There will be greater danger of fires this
13 coming year, but less water available to fight them.

14
15 49. CUC also requires a constant supply of electricity to run its water and wastewater treatment
16 systems. CUC has very limited on-site emergency generation capability, and for only portions
17 of these systems.

18
19 50. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing
20 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost
21 recovery for the water and wastewater systems through the processes of the CNMI Public
22 Utilities Commission (“CPUC”) CUC filed a wastewater rate increase request, complete with
23 hundreds of pages of written expert witness testimony and technical support on January 31,
24 2010. The case is in the prehearing, discovery phase. The Commission is scheduled to address
25 the filing in May.

26
27 51. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court
28 for the Mariana Islands which is highly critical of the progress in CUC’s efforts to comply with
29 Stip Order 2’s requirements to solve the water and wastewater situations. A hearing before the
30 Court resulted in the additional stipulated order addressed elsewhere in this Executive Order.

31
32
33
34 **Meeting US District Court and CNMI Public Utilities Commission requirements to**
35 **produce timely, accurate financial reports**

36
37 52. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
38 beginning in September, 2009. The “IFP” must develop over time, becoming more than
39 “interim”. CUC cannot do this unless it has a staff of trained accounting and other financial
40 experts who can gather data, put the data in the required form and generate the IFP and its later
41 versions.

1
2 53. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities
3 Commission (“CPUC”). The CPUC is charged by statute to oversee carefully CUC’s operations
4 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC’s
5 water and wastewater systems.
6

7 54. In electric and water/wastewater orders, of September 3 and November 20, 2009, the CPUC
8 addressed CUC’s inability to deliver complete on-time financial reports, requiring CUC, in
9 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.’s
10 09-1 and 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations
11 during this year, including in the current rate case, Docket No. 10-01. CUC’s Executive Director
12 is a lead witness in the case, having filed written testimony (on January 31, 2010) and
13 supplemental testimony (on April 1, 2010).
14

15 55. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained
16 accounting and other financial experts who can gather data, put the data in the required form and
17 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
18 staff with the data required for their oversight. CUC has obligated itself to provide an updated,
19 compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1,
20 to the US District Court, and most recently, according to the February 24, 2010, additional
21 stipulated order.
22

23 56. CUC’s procurement system is lengthy and complex. A relic of other decades, with their
24 own challenges, it requires extensive experience in specifications and procurement process, and
25 often must be coordinated with the CNMI’s separate procurement procedures, adding months to
26 processes that must respond to the immediate challenges outlined in this Executive Order.
27

28 57. CUC last year lost 2 senior accountants plus a related specialist. The IT and billing
29 department in August was reduced by one staffer, having advertised for a replacement for 4
30 weeks to no avail. While it appeared that CUC might have to look to employing foreign
31 technical specialists, CUC hired back 2 former accountants in September and brought a third
32 person aboard in October. All are US citizens. Nonetheless, CUC must have the flexibility to
33 hire competent professionals as needed. CUC is still short-staffed, and needs an accounting
34 assistant, and an accounting specialist. On February 17, 2010, CUC’s new Chief Financial
35 Officer reported for duty.
36

37 58. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court
38 for the Mariana Islands which was highly critical of the progress in CUC’s efforts to comply
39 with Stip Order 2’s requirements to provide timely and complete financial and other operating
40 reports and plans.

1
2 59. To summarize: Without properly trained technical staff CUC's ability to supply power is at
3 risk. So is its ability to manage the rest of its systems, including its complex procurement, its
4 finances and accounting. CUC's services could not be adequately staffed without August's
5 lifting of the artificial legislative regulation of CUC's workforce, in EO 2009-08, Directive #10,
6 suspending the limitations on CUC hiring foreign workers. It is obvious that the hiring authority
7 must be continued.

8
9 60. There is no indication that any of the above manpower situation will be resolved in the next
10 month without continuing in effect this EO and Directive #10.

11
12
13 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

14
15 61. **Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and
16 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors
17 in the position of day-to-day management of the corporation, and requires a complex mix of
18 technical, geographic and other qualifications for Board membership. There is no Board because
19 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot
20 take a critical step toward solvency and the ability to borrow to finance its work.

21
22
23 **Forestalling corporate paralysis**

24
25 62. A critical concern is that the CUC Act's constricted scope of authority for the Executive
26 Director, and the complementary daily management by a host of Board volunteers, would
27 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before
28 CUC.

29
30 63. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC
31 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and
32 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133
33 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and
34 property), demonstrates that the Executive Director is to be left with little more to do than
35 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70
36 million/year corporation, on a day-to-day basis. This includes such decision-making as
37 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning
38 work crews, connecting customers, deciding on making repairs, collecting debts, complying with
39 the details of federal and CPUC regulatory requirements, making and funding long-term
40 technical power and water/wastewater plans, overseeing filings with the CPUC, including rate

1 cases, and insuring that, on a day-to-day basis, the power and water flow and the sewage is
2 treated.

3
4 64. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
5 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –
6 with or without a Board in place. The complex technical problems listed above simply cannot be
7 managed on a day-to-day basis by a group of non-expert volunteers. For example, the Executive
8 Director must be available to renegotiate CUC's fuel oil contract this month, and insure that
9 supplies reach Tinian and Rota, as well as Saipan. Also, as a key witness in CPUC Docket 10-
10 01 the Executive Director must be enabled to testify in favor of the requested rate increase in
11 order to fully present the required evidence.

12
13 65. No private or public utility company in the United States runs this way – with a group of
14 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in
15 the United States has mandated this form of corporate management for a public utility.

16
17 66. CUC has applied for and become eligible for millions of dollars of US ARRA grants,
18 which can substantially benefit the CNMI's infrastructure and create jobs. CUC has been
19 awarded \$11 million in grants from the EPA. But developing the grant requests and
20 implementing the grants requires management attention and expertise, part of a professionally-
21 run business organization. CUC has placed three of five ARRA grants out for bid, so that these
22 benefits can start flowing. CUC must evaluate its needs, and hire and contract for the needed
23 technical specialists to manage the grant-funded projects. This requires a corporate structure
24 capable of making and sustaining important decisions.

25
26 67. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
27 drafting error, and the People, through their elected representatives, wish their utility company to
28 continue to supply them with essential services at a reasonable cost, meeting industry standards.

29
30
31 **Fixing CUC's technical insolvency**

32
33 68. CUC has been unable to borrow money to run its operations since the inception of this State
34 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books
35 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115
36 million. This situation may be corrected if the Executive Director is recognized to have the
37 authority to correct it.

38
39 69. Meanwhile, billings and collections are substantially below the levels required to prudently
40 manage CUC's current operations and provide for system repairs, replacements and upgrades.

1 For example, billings alone for water and wastewater are less than 70% of requirements to run
2 those two systems.

3

4 70. The booked CDA obligation has rendered CUC nominally insolvent. While CUC is deemed
5 insolvent, CUC cannot borrow money. But CUC must be able to borrow money to bridge the
6 gap between (a) the need to spend money on essential goods and services to provide electricity,
7 water and sewage service, and (b) the lagged collection of already-determined-insufficient
8 revenues from the sale of those services.

9

10 71. The CPUC, in its September 3 electric order, Docket No. 09-1, approved a CUC-CDA
11 settlement converting the CDA debt to preferred stock. But the deal has required CUC's Board
12 to agree to it.

13

14 72. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
15 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
16 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find
17 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
18 Nonetheless, CUC must continue to function, including borrowing money.

19

20 73. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It
21 also permits him to continue to run CUC, carefully manage cash to pay tens of millions of
22 dollars annually for fuel oil and purchased power, and do all the things necessary to providing
23 power, water and wastewater services, until the remaining members of a properly constituted
24 Board can be identified, confirmed, and convened for business. In February 2010 the Executive
25 Director delivered to CDA management the stock certificates required for the debt-equity
26 conversion. CUC has received the fully executed copy of the Stipulated Notice of Dismissal
27 (with prejudice) in CDA v. CUC, Superior Court Civil Action No. 01-0248D (4/21/2010), which
28 the CPUC has required that CDA provide to make effective the conversion of the CDA debt to
29 preferred equity. CUC has sought Public Utilities Commission final approval. Soon, CUC must
30 be able to demonstrate to the financial community that it is properly managed, so that it can
31 borrow and pay back long term capital.

32

33

34 **Providing the basis for proper CPUC oversight**

35

36 74. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act,
37 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC
38 activities, particularly financial activities.

39

40 75. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
41 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's

1 error-infused creation of a volunteer Board which would run the corporation on a day-to-day
2 basis, becomes much less important than satisfying CPUC requirements.

3
4 76. What becomes very important is CUC's capability to provide the CPUC with accurate and
5 timely financial and accounting information. But such reporting is not possible without a
6 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
7 Executive Director to lead them.

8
9
10 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

11
12 77. There is no Legislative relief coming. For months CUC has repeatedly asked the
13 Legislature for such relief, including submission of draft legislation in July. The Legislature has
14 declined to respond. There is no alternative to providing this relief other than an order from the
15 Governor. Inaction will produce a disaster in which CUC is unable to provide its critical
16 community services. Directives # 9 and #10 were designed to avert this crisis. (The other
17 Directives, #1 through #8, are no longer relevant, and were discontinued.)

18
19 78. This Declaration is necessary to protect the health and safety of our children, our senior
20 citizens, businesses and all other CNMI residents and visitors.

21
22
23
24 **CONCLUSION AND ORDER**

25
26 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth
27 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
28 facing the Commonwealth of the Northern Mariana Islands.

29
30 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the
31 issuance of Executive Directives setting forth the measures to be taken to address the State of
32 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

33
34 (f) In addition to any other powers conferred upon the Governor by law, the Governor
35 may, during a state of disaster emergency:

- 36
37 (1) Suspend the provisions of any regulatory statute prescribing the procedures
38 for conduct of the Commonwealth's business, or the orders, rules, or regulations
39 of any Commonwealth activity or agency, if strict compliance with the provision
40 of any such statute, order, rule or regulation would in any way prevent, hinder, or
41 delay necessary action in coping with the emergency;

1
2 (2) Utilize all available resources of the Commonwealth as reasonably necessary
3 to cope with the disaster emergency of the Commonwealth;

4
5 (3) Transfer the direction, personnel, or functions of the Commonwealth
6 departments and agencies or units thereof for the purpose of performing or
7 facilitating emergency services;

8
9 3 CMC § 5121(f)(1)-(3).

10
11 By today's disaster emergency declaration, I intend to enable CUC to continue to provide
12 necessary service to the people of the Commonwealth.

13
14 This Declaration of a State of Disaster Emergency shall take effect immediately and all
15 memoranda, directives and other measures taken in accordance with this Declaration shall
16 remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the
17 end of the thirty (30)-day period, notify the Presiding Officers of the Legislature that the state of
18 emergency has been lifted or has been extended for an additional period of thirty (30) days. 1
19 CMC § 7403(a); 3 CMC § 5121(c).

20
21 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the
22 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

23
24
25 **DIRECTIVES**

26
27 I direct the following:

28
29 Directive 1: Deleted.

30
31 Directive 2: Deleted.

32
33 Directive 3: Deleted.

34
35 Directive 4: Deleted.

36
37 Directive 5: Deleted.

38
39 Directive 6: Deleted.

40

EO 2010-05
Declaration of Disaster Emergency: CUC Continuation 22

1 Directive 7: Deleted.

2
3 Directive 8: Deleted.

4
5 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board,
6 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)
7 the confirmation and convening of an operating CUC Board, or (2) the termination of the
8 authority of this order. In particular, the Executive Director shall have full power and authority
9 to agree to swap CDA debt and related obligations for preferred stock and related features and
10 rights.

11
12 Directive 10: The following strike-out-formatted language of the quoted provision of the
13 following statute regulating government employment is, as indicated, suspended immediately:

14
15 (b) Transition exemptions for government employment. . . . (5) Commonwealth
16 Utilities Corporation. Engineers, and professional employees in technical or trade
17 areas may be exempted and CUC may contract with manpower services or
18 directly hire power plant mechanics and utility technicians who may be
19 exempted; ~~provided that direct or manpower hire of foreign national workers shall~~
20 ~~not exceed nineteen (19) employees. This exemption shall expire on September~~
21 ~~30, 2010, and no contract may provide to the contrary.~~

22
23 3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original; ~~strikeout~~
24 ~~is deliberately added~~) That is, the following language is suspended: “provided that direct or
25 manpower hire of foreign national workers shall not exceed nineteen (19) employees. This
26 exemption shall expire on September 30, 2010, and no contract may provide to the contrary.”
27

EO 2010-05

Declaration of Disaster Emergency: CUC Continuation 22

1 The effect of the suspension shall be that CUC shall have the complete power, without regard to
2 citizenship or otherwise lawful immigration status, to hire engineers, professional employees in
3 technical or trade areas, power plant mechanics and utility technicians, either directly or
4 indirectly. These professional employees may include, but shall not be limited to, sanitarians,
5 engineers, accountants, financial experts, information technology specialists, mechanics,
6 electricians, well-drillers, pipefitters, plumbers, wastewater treatment facilities operators, and
7 other trades technicians.
8
9

10 Done this 23rd day of May, 2010.
11

12
13
14 

15 ELOY S. INOS
16 Acting Governor
17

0 EO 2010-05 CUC Dis Decl (23May10).wpd



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2010-06**

2

3

4

DECLARATION OF A STATE OF DISASTER EMERGENCY:

5

COMMONWEALTH UTILITIES CORPORATION'S

6

IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO

7

PROVIDE IMMEDIATE RELIABLE POWER, WATER AND WASTEWATER

8

SERVICES

9

10 **CONTINUATION #23**

11

12

I, **BENIGNO R. FITIAL**, pursuant to the authority vested in me as Governor of the

13

Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth

14

Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby

15

declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands

16

due to the inability of the Commonwealth Utilities Corporation (CUC) to provide critical power

17

generation service to the CNMI and the extreme, immediate and imminent threat such condition

18

poses to the Commonwealth of the Northern Mariana Islands.

19

20

This Executive Order is intended to, and does, continue in effect portions of the Governor's

21

preceding disaster emergency declarations on this matter, EO 2009-01 through -09, and 11-13,

22

and EO 2010-04, except as specifically modified. As more fully stated below, this Executive

23

Order shall expire on the 31st day following the date of my signature. The following findings

24

and conclusions further support continuation of the Declaration and issuance of directives.

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Directive 10: The following strike-out-formatted language of the quoted provision of the following statute regulating government employment is, as indicated, suspended Page 21 of 22

1 **FINDINGS**

2
3 I find that:

4
5 1. All findings and conclusions of EO 2009-01 through -09, and 11-13, and EO 2010-01
6 through -05 are incorporated by reference, except as specifically varied in this Executive Order.

7
8
9
10 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

11
12 2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers
13 has continued to place CUC operations at risk. Incipient failures in the CUC water, wastewater
14 and power transmission and distribution networks have underscored the importance of having in
15 place a well-funded and functioning preventive maintenance program. Skilled workers and a
16 responsive support system are key to the success of the operations, particularly of preventive
17 maintenance. Presently CNMI law (PL 16-14) prohibits CUC from hiring any more non-US
18 technical workers than the 19 skilled professionals recently with CUC. CUC has repeatedly
19 asked the Legislature for relief from this statute regulating the Government's workforce, to no
20 avail. Further, errors in wording in the CUC enabling legislation recently re-enacted, PL 16-17,
21 as amended, would bar the Executive Director from day-to-day management of the corporation,
22 effectively shutting CUC down. This EO eliminates these problems while it is in effect.

23
24 3. **Background.** CUC has substantially minimized the risk of losing the services of its owned
25 generating capacity, which losses created intermittent blackouts on portions of its system. It
26 therefore allowed the Aggreko year-long temporary power contract to terminate, as provided in
27 the agreement, effective September 12, 2009. This saves CUC customers at least \$6 million per
28 year in fees. But it still presents risks, as the strategy requires proper operation and maintenance
29 of CUC's owned engines by CUC's technical staff, and the timely securing of materials and
30 supplies.

31
32 4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction
33 of the US District Court and the US EPA, pursuant to two consent, or "stipulated", orders.

- 34
35 a. The first requires the upgrade and smooth functioning in virtually all aspects of
36 CUC's water and wastewater divisions. The second requires CUC to properly
37 eliminate over 400,000 gallons of used oil and to institute measures to avoid
38 uncontrolled buildup of such inventories. Failure to meet the requirements of the
39 federal court orders could subject CUC and the CNMI to substantial fines and
40 charges, and, in the extreme, to a federal takeover of their finances. Presently
41 CUC is "accruing" substantial fines. Most of the fines have not been levied; but

- 1 they could be. The EPA has, however, levied two fines, in the amount of \$29,000
2 and \$140,000 (June 2010 letter).
3
- 4 b. On February 24, 2010, the US District Court entered an additional stipulated
5 order. It provided, among other things, that a professionally-developed Interim
6 Financial Plan (“IFP”) would be provided to the US EPA within 30 days, by
7 March 26, 2010. This additional stipulation requires CUC to meet a number of
8 deadlines, each involving the application of technical expertise. CUC has timely
9 filed the IFP. It now has the task of implementing the IFP and meeting these
10 deadlines. Failure to meet these requirements would subject CUC to the
11 described sanctions.
12
- 13 c. Of concern to CUC are the tight deadlines for Stipulated Order 2 (Oil
14 Management) projects that are funded by a \$4.05 million CIP grant awarded in
15 February, 2010, by the US Department of the Interior’s Office of Insular Affairs.
16 The funding is to assist CUC is disposing of the used waste oil discussed in this
17 Executive Order. Failure to meet the deadlines could subject CUC to additional
18 EPA sanctions.
19
- 20 d. The coordination of the approvals from the various agencies calls for a responsive
21 procurement system at CUC, including the trained technical staff to implement
22 the system.
23
- 24 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission (“CPUC”).
25 The regulator has plenary power over CUC rates, charges, fees, operations and capital
26 investments. CUC’s failure to timely and competently meet CPUC orders and other
27 requirements can result in severe rate discipline, and fines and other penalties. For example, the
28 Commission required CUC to meet certain requirements, including the filing of a technically
29 complex rate case (Docket No. 10-01) by the end of January 2010, or face fines of \$500 per day.
30
- 31 6. CUC is the sole electricity supplier to the Government of the CNMI, including all public
32 safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the
33 CNMI’s businesses and homes. While some businesses and agencies own backup generators,
34 they are not generally organized to use the backups as permanent power sources; and the diesel
35 oil purchased to run these generators is substantially more expensive than that used for CUC
36 power.
37
- 38 7. Without CUC electricity:
39
- 40 a. most CNMI economic activity would come to a halt, the courts would soon close,
41 much refrigeration and air conditioning would end, and the airports and ports

1 would be forced to rely on emergency generation and the limited, expensive oil
2 supply for it;

3
4 b. the CNMI's health and safety would immediately be at risk, since traffic signals
5 and street lighting would cease to function, emergency, fire and police facilities
6 and their communications systems, and the Hospital and island clinics would have
7 to rely on limited oil supplies for emergency generation and then cease
8 functioning, much refrigeration of food and medicines would end, as would air
9 conditioning for the elderly and medically fragile;

10
11 c. the public schools and the Northern Marianas College would close. Other
12 educational institutions would close as their backup oil supplies for emergency
13 generators were exhausted; and

14
15 d. water and sewage treatment would soon end. One of CUC's largest electric
16 customers is the combined CUC Water and Wastewater Divisions. CUC is the
17 sole supplier of electricity for these systems. CUC's water system relies on
18 electricity to maintain the system pressure needed to avoid the backflow of
19 pathogens, to chlorinate, and to pump, store and to distribute water supplies.
20 CUC's wastewater system requires electricity to collect, pump, process, treat and
21 discharge sewage. The lack of electricity could result in sewage overflows,
22 contamination of land and water and rendering unsafe the CNMI's beaches,
23 which are also principal tourist destinations.



27 **Staffing CUC with the technical experts to permit continued electric service**

28
29 8. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain
30 and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to
31 buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in
32 September. In October four other units began required overhaul, which will take 12 months.

33
34 9. In November, the following work started: The critical replacement of the PP #1 anchor
35 bolts, in order to stop the shifting and vibration that has ruined the plant; and foundation repairs
36 to Engines 1 and 8. Shortly thereafter the replacement of turbochargers and oil-water separators
37 began. All of this work is essential.

38
39 10. This work has been successful. Power Plant 1 Engines 1, 2, 3, 5, 6, 7 are available. Engine
40 8's critical foundation repair and anchor bolt replacement have been completed. The major
41 engine overhaul is under way.

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11. In effect, CUC management, with generous federal financial assistance, has brought its generation back from the brink of system failure. There are adequate reserves. If maintained properly, the system can provide the CNMI's citizens and residents with adequate power.

12. Adequate technical staff is essential to this work. A major challenge to carrying out this rehabilitation has been finding the trained technicians needed to carry out these rehabilitation projects, and maintain and run the equipment. The technicians must be ready for service when needed and their services must be affordable. Any significant reduction in CUC's present technical workforce could seriously compromise CUC's ability to generate and distribute power.

13. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit ("T & D"), including many vehicles, is dilapidated and bordering on being unsafe. There is an insufficient number of skilled workers to operate T & D. The linemen must be trained to, and skillful in, meeting US standards. Fortunately, a federal DOI/OIA grant has paid for some lineman training in June. The critical upcoming projects in T & D include the replacement of the antiquated, rundown and unsafe vehicle fleet; the redesign of T & D using national Rural Utility Service standards; the replacement/installation of insulators, transformers, overcurrent protection, sectionalizers and the installation of efficient LED street lighting.

14. For example, Saipan's early-September 2009 brush with Typhoon Choi-Wan 15W that passed to the north of Saipan, and typhoon Melor, which passed just north of Saipan in October, underscored the extreme vulnerability of CUC's power transmission and distribution (T & D) system. In September, over 150 calls of no- power and line faults were fielded by crews when, for a storm of this size, there should have been no more than a score. Fortunately, last year's typhoon season ended with no direct hits on the CNMI and our power distribution system. Accelerating improvements to the T & D system, with proper staff under an Emergency Order, would allow CUC to "harden" the system in anticipation of a bigger storm event. The alternative, in a more serious storm, is CUC's inability to recover in any reasonable time period. The year 2010 will see a new typhoon season.

15. Nonetheless, for the second month in a row, outages due to Power Transmission & Distribution were extremely low: May saw only 11 minutes; April just one minute. These are the lowest such figures in the last seven years, reflecting an extraordinary accomplishment for an understaffed, overworked CUC work group.

16. Further, utility industry safety margins for isolated, island systems typically require a reserve equal to the capacity of the two largest generating units; in CUC's case this would be another 15 MW of load, equivalent to the departed Aggreko temporary units. Meeting this reserve requirement means CUC must have an adequate repair and maintenance staff.

1 17. The Legislature, through 3 CMC § 4972(5), as amended by PL 16-14 (Aug. 27, 2008), has
2 limited CUC's ability to hire technical staff; allowing up to 19 foreign workers only. The CUC
3 Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such
4 persons as are necessary for operations, *except as otherwise limited by other law*. 4 CMC §
5 8123(h).

6
7 18. PMIC at PP #4 and Telesource on Tinian, and the Rota Resort on Rota, as Independent
8 Power Producers (IPPs), are not subject to the Legislature's limitation on foreign workers.

9
10 19. There are not enough technical specialists at CUC to get the power generation work done,
11 particularly specialists with experience in the type of engines that CUC uses. CUC believes that
12 the vast majority of skill sets must come from non-US personnel.

13
14 20. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding
15 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after
16 interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator
17 candidates were US citizens.

18
19 21. CUC has hired some local staff in time thanks to the aggressive steps of CUC HR, the
20 Executive Director and Directive 10.

21
22 22. CUC has completed the hiring of the skilled trade technicians needed on Saipan for power
23 plant operations and maintenance. For Rota, CUC announced the need for a mechanic-operator
24 and an electrical operator. As more units begin working after the rehabilitations are largely
25 complete, CUC will need more staff to operate and maintain them. For the immediate future,
26 CUC needs to maintain its complement of skilled workers.

27
28 23. With generous grant funding and the use of in-house technical specialists and outside
29 contractors, CUC has undertaken substantial rehabilitation of its power system. Future projects
30 include replacing turbochargers, conserving and reclaiming used lube and waste oil, retrofitting
31 streetlights with low-wattage LED's, and restoring power generation on Rota. Even if
32 contractors do the work, CUC technical staff must research and prepare bid documents, review
33 technical proposals, and oversee the work.

34
35 24. The bottom line on CUC's technical work has been a substantial increase in reliability,
36 specifically the availability of CUC's generation. CUC's transmission and distribution has
37 similarly improved – January 2010 saw 10 hours 44 minutes of outages, April saw one minute.
38 It has been critical to this latter improvement that CUC had the skilled, trained work force to
39 maintain power lines.
40

1 25. But even as power becomes more reliable, CUC must reduce its distribution losses from the
2 reported level of 8%. With world oil prices increasing CUC's power costs, such losses already
3 account roughly for \$4.8 million, which CNMI customers must cover. CUC requires a team of
4 skilled technicians to find and eliminate power theft and line losses.

5
6 ¶

7 26. The impact of an inadequate workforce would be four-fold:

- 8
- 9 a. First, there would be a direct negative effect on the existing consumers. There
10 would be brownouts, or area blackouts, with the above-mentioned loss of service.
 - 11
 - 12 b. Second, the power plants would again degrade, producing more of these outages.
 - 13
 - 14 c. Third, there would be an indirect effect, increasing rates over the longer term,
15 because small consumers would have to shoulder more of the fixed costs of the
16 CUC system. First, there would be loss of large customers. By contrast, if the
17 hotels were to become part of the system, they could help pay CUC fixed costs,
18 which would lower everyone else's rates. The hotels need reliable, 24/7 power.
19 But with unreliable power, CUC would be unable to convince large commercial
20 customers, particularly the hotels, to join, or rejoin, its system. Second, would
21 come additional expenses. If CUC fails to meet federal court deadlines for the
22 stipulated orders, the Court could appoint a federal receiver and its consulting
23 team -- with all expenses charged to CUC customers. Thus, the indirect effect of
24 an inadequate workforce would be to boost rates.
 - 25
 - 26 d. Fourth, with the recovery of the world economy, advise CUC experts, oil prices
27 can be expected to rise. If CUC's generators become less efficient, because
28 technical staff are unavailable to maintain CUC's engines' efficiency, that much
29 more oil would be needed to generate a given amount of electricity. The price
30 rise will thereby harm CUC's customers and electricity-dependent services with
31 higher rates.
 - 32

33 27. Rota's status today is precarious and financially un-sustainable. Rota has suffered blackouts
34 from inadequate generator maintenance. The power plant's other facilities and the island's
35 distribution system similarly need the attentions of additional manpower. The Rota power plant
36 needed additional generating sets to come on line, as there are only 1.5 dependable sets in the
37 plant. The third of two feeders was, until June 2010, powered by the Rota Resort private resort
38 at a cost of \$200,000/month to CUC. The revenues from the customers on this feeder fall far
39 below this cost. CUC has negotiated with a Mainland supplier for a new generating set, with
40 funding from the US Department of the Interior. The alternative for Rota was akin to Saipan's
41 recent Aggreko situation -- purchasing higher cost, reliable power from the Rota Resort.

1 Therefore, in June 2010, two 0.9 MW Cummins generating sets were transported from Power
2 Plant 4 on Saipan to Rota in order to augment the power generation. These two generating sets
3 should be commissioned by July 1, 2010.
4

5 28. Since EO 2009-8 in August, and the suspension of the harmful legislative employment
6 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and
7 Rota power generation facilities. CUC needs to be able to hire the workers it needs when it
8 needs them. Otherwise, if CUC had to discharge these workers, its staffing levels would return
9 to those which overworked its limited staff. For example, over pay period numbers 2 through 11
10 of the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who
11 each worked 40 or more hours of overtime in a pay period. This condition is extreme, and a
12 repeat can result in inefficiencies and poor work quality. It can lead to dangerous mistakes,
13 producing injury or death.
14

15 29. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The
16 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set
17 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6
18 million-per-year benefit of terminating the Aggreko temporary power contract.
19

20 30. CUC points out that the power distribution system is highly vulnerable because, like the
21 sewer system, so much of the maintenance and replacement was deferred for one reason or
22 another over the past 20 years. Since 1995, 26 villages on Saipan were identified as needing
23 major improvements to the power lines; only five have seen those improvements. Power T & D
24 fails in bits and pieces. One of the big pieces that failed in February 2010 was one of 12
25 termination cables on the Kiya Substation (Transformer One). A power outage to the southern
26 parts of Saipan lasted from one to five hours. CUC management states that the excellent
27 response from the crews in both Power Generation and Power T & D demonstrated the
28 importance of having skilled workers. The top two engineers were non-residents. Without this
29 EO in place, given present statutes, it is unlikely CUC would be able to secure the services of
30 such valuable individuals.
31

32 31. The extended dry season this year (see below) means that vegetation must be cleared away
33 from the lines early and often. Brush fires can damage the power lines, telephone facilities, and
34 television cables. Meanwhile, CUC crews must replace failing insulator bolts and failing
35 switches in order to avoid distribution-related power outages.
36

37 32. CUC has demonstrated that the required workers are available as nonresident workers, and
38 cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign
39 national workers is necessary to ensure the delivery of uninterrupted power services to the
40 people of the Commonwealth.
41

1
2 **■**
3 **Complying with the federal court order on disposal of used oil**
4

5 33. CUC has taken concrete steps to address the storage and disposal of used oil, consonant
6 with the federal court's Stip Order 2. Federal court Stipulated Order 2 relates to the used oil
7 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.
8 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an
9 adequate complement of trained technical employees, complemented by expert contractors, CUC
10 believes that it can meet these requirements.

11
12 34. A September inspection by the US Coast Guard (USCG) has resulted in the imposition of
13 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional
14 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean
15 from Power Plants 1, 2 and the power plant on Rota. Further, as of October, CUC has faced the
16 following staffing needs in this area: It critically needs the resources to inspect and redesign the
17 entire fuel storage, pumping and handling system in order to meet the more stringent
18 requirements of today. The clean fuel storage tanks at Lower Base were originally designed for
19 another application. The fuel line from the oil company's terminal is in danger of rupturing
20 during a transfer; the pumping rate has to be reduced to prevent this. All of this requires trained
21 CUC staff.

22
23 35. Serious deficiencies in the waste oil handling system at Lower Base have come to light in
24 the past months and are being addressed by both CUC and EPA. One deficiency is that the oily
25 water separators are not functioning as such because of the excessive amount of oil (as opposed
26 to water) entering the system. As a result, oil was spilling onto the ground rather than being
27 separated and skimmed off properly. Power Plant #1 has been sealed off to prevent any waste
28 oil from leaving the plant and flowing into the oily water separators. To prevent oil from
29 accumulating uncontained in the plant itself, emergency measures have been taken to store waste
30 oil and to fabricate above-ground tanks. The oily water separators, pipes, holding tanks, and
31 baffles are being cleaned out so that the entire system can be carefully inspected and
32 re-engineered. All of the additional work is expensive. Regardless of who does the work
33 initially, CUC staff, EPA contractors, or a combination thereof, CUC requires skilled, trained
34 workers for the clean-up. Failure to correct this situation could harm the nearby environment,
35 CUC's ability to generate electricity properly, and the assurances given pursuant to Stip Order 2.
36 CUC has begun the process to hire an Oil Technical Manager.

37
38 36. Incinerators play a crucial role in helping CUC meet Stip Order 2. The two incinerators at
39 Lower Base (Power Plants 1 and 2) are now operating, and burning about 1000 gallons of used
40 oil per day. This is double the rate from January. This EO has permitted Power Generation the

1 flexibility of hiring skilled non-residents to not only repair and overhaul the generating sets, but
2 fix such important auxiliary equipment as the incinerators.

3
4 37. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court
5 for the Mariana Islands which is highly critical of the progress in CUC's efforts to comply with
6 Stip Order 2's requirements to solve the used oil situation. Since that report CUC has contracted
7 with the GRESCO firm to remove waste oil from Tank 104. The EPA has strongly urged CUC
8 to accelerate the removal, bringing the "empty" date forward from October 2010 to June 2010.
9 EPA has also required CUC to purchase and install special double-walled "iso" tanks for use in
10 the project.

11
12
13 Ⓜ

14 **Complying with the federal court order on managing the water and wastewater systems**

15
16 38. As long as the Water and Wastewater Divisions can hire competent staff and receive power
17 from the Power Division, they can function.

18
19 39. The U.S. Department of Justice ("DoJ"), Environment and Natural Resources Division, has
20 sued CUC in federal court to come into compliance with critical water and sewage treatment
21 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order
22 1"). See also http://www.usdoj.gov/enrd/Consent_Decrees.html. In July 2008 CUC, the CNMI
23 and (in September 2008) the U.S. Environmental Protection Agency ("EPA") stipulated to this
24 first of two orders lodged with the U.S. District Court on the date the Complaint was filed. This
25 order requires CUC to implement a series of improvements to its water and wastewater systems
26 that respond to years of neglect, for which it presently lacks the funds and the complete technical
27 capability.

28
29 40. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater
30 Division must respond to acid damage in the asbestos cement piping system, the product of over
31 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and
32 metal infrastructure, so that key pipe systems have collapsed. December 18 saw the sixth failure
33 in six months. Failures will continue until 10 miles of sewer pipe are replaced. But replacement
34 involves complex excavations, avoiding electric, phone and water utilities, blocking traffic,
35 stopping the infiltration of seawater (which damages treatment plant facilities), and pumping
36 sewage around blocked and excavated areas. The Division has already far exceeded its repair
37 budget.

38
39 41. Providing and improving water service presents new challenges. With DEQ's classification
40 of Rota's cave-based domestic water as "surface water" CUC has had to expand water quality
41 monitoring and testing, requiring more manpower and more equipment. In May CUC

1 experienced failures in water pipes as the Cross-Island road project's contractors' equipment
2 broke pipes, requiring CUC staff to be pulled from other jobs, with required equipment, to
3 address the emergency. A substantial section of the As Terlaje sewer line collapsed, requiring an
4 emergency procurement to hire an outside firm to make the repair.

5
6 42. Sewer line collapses are not uncommon, typically the result of pipe thinning. CUC
7 investigates and undertakes repairs. Without this EO, says CUC, procurement for such repair
8 work would constitute a significant impediment.

9
10 43. The Sadog Tasi Wastewater Treatment Plant is undergoing long-planned rehabilitation.
11 But, without such redundant equipment as a clarifier, CUC must devote extra resources to the
12 facility while the contractor repairs the only unit. Such work has to be conducted within strict
13 parameters by properly trained technicians to prevent contamination of the environment.

14
15 44. The Division also needs serviceable vehicles to move its workers to and from job sites.
16 Presently six vehicles are in such bad shape that they are dangerous. The resulting reduced
17 vehicle problem raises costs and hurts service, as staff and materials cannot be brought to job
18 sites on time.

19
20 45. Sewage lift station failures continue, requiring CUC crews to install newly received pumps.
21 Approximately 17 of the 45 CUC sewage lift station are in poor condition and require significant
22 rehabilitation. CUC anticipates an EPA grant for the rehabilitation of these lift stations. But
23 that construction will not occur for approximately one year.

24
25 46. CUC engineer staff shortages continue to hamper CUC's ability to anticipate and fix
26 technical problems. While CUC's Water/Wastewater Division employs four engineers, the poor
27 condition of the CUC sanitation assets requires at least two more engineers. But, significant
28 engineering resources are already focused on addressing EPA Stip Order 1 issues. These issues
29 include staffing plans, pre-treatment programs, materials management programs, customer
30 inventory, and cross-connection control programs. CUC water and wastewater engineers are the
31 lead with several on-going construction projects, which also stretches the limited engineering
32 resources, including the Well Isolation Project, Sadog Tasi Sewer Plant Rehabilitation, and
33 Aingan Sewage Treatment Plant Rehabilitation. Recruitment and retention of engineering staff
34 to meet these challenges is difficult.

35 Ⓜ
36 47. Incipient failures include the failure of 98 submersible pumps in the water system over a
37 period of twelve months. Higher grade stainless steel grates have to be specified that are resistant
38 to pitting. The pitting causes the grates to fail and consequently the pump motors. CUC will
39 need to purchase higher quality equipment, rather than the cheap units that fail prematurely.
40

1 48. CUC must be able to hire the staff to perform the required technical functions. The Water
2 and Wastewater Divisions cannot carry out their missions without adequate staff. These staff are
3 essential to producing clean, safe water supplies and removal of stormwater and sewage in a
4 safe, timely manner. While the bulk of CUC employees are drawn from local and US
5 populations, the Division management estimates that at least six trained technicians will be
6 required – three experienced Level 3 wastewater treatment operators, two Level 3 wastewater
7 collections operators, and an instrumentation /low voltage controls specialist. An experienced
8 Water/Wastewater Division operations manager will be required. CUC requires a chemist to
9 meet federal requirements, but has been unable to find a qualified one in the local population, or
10 a cost-effective professional from the US Mainland; a foreign hire has been identified, however.
11 CUC has also announced a vacancy of the position for Deputy Director for Water and
12 Wastewater. Seven candidates will be reviewed and evaluated by a team which includes the
13 Executive Director.
14

15 49. There are special reasons why the water system must be adequately staffed and maintained
16 this year. This is an El Nino year. As predicted in the Pacific ENSO bulletin forecast back in
17 February 1, 2010, the CNMI dry season has brought below normal rainfalls and will extend to
18 June 2010. CUC has gone into an emergency mode, conserving water, accelerating water line
19 replacements, and locating and repairing leaks. There has been greater danger of fires this
20 coming year, but less water available to fight them. For Capital Hill, the drought and a tank
21 rehabilitation project required that the distribution system in this area be reconfigured in June
22 2010 in order to supply water at least two hours per day to Wireless Ridge. Upper reaches of
23 Navy Hill were without water for several days until leaks were repaired. Unfortunately, the
24 leaks were noted several months before, but lack of manpower and funds prevented the
25 pressurization required for leak repair.
26

27 50. CUC also requires a constant supply of electricity to run its water and wastewater treatment
28 systems. CUC has very limited on-site emergency generation capability, and for only portions
29 of these systems.
30

31 51. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing
32 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost
33 recovery for the water and wastewater systems through the processes of the CNMI Public
34 Utilities Commission (“CPUC”). CUC filed a wastewater rate increase request, complete with
35 hundreds of pages of written expert witness testimony and technical support on January 31,
36 2010. The case is in the prehearing, discovery phase. The Commission addressed the filing in
37 May, authorizing a June 21, 2010, rate increase in wastewater rates and full cost recovery for the
38 electric costs of the water and wastewater divisions.
39

40 52. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court
41 for the Mariana Islands which is highly critical of the progress in CUC’s efforts to comply with

1 Stip Order 2's requirements to solve the water and wastewater situations. A hearing before the
2 Court resulted in the additional stipulated order addressed elsewhere in this Executive Order.

3
4
5 ■
6 **Meeting US District Court and CNMI Public Utilities Commission requirements to**
7 **produce timely, accurate financial reports**

8
9 53. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
10 beginning in September, 2009. The "IFP" must develop over time, becoming more than
11 "interim". CUC cannot do this unless it has a staff of trained accounting and other financial
12 experts who can gather data, put the data in the required form and generate the IFP and its later
13 versions.

14
15 54. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities
16 Commission ("CPUC"). The CPUC is charged by statute to oversee carefully CUC's operations
17 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC's
18 water and wastewater systems.

19
20 55. In electric and water/wastewater orders, of September 3 and November 20, 2009, the CPUC
21 addressed CUC's inability to deliver complete on-time financial reports, requiring CUC, in
22 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.'s
23 09-1 and 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations
24 during this year, including in the current rate case, Docket No. 10-01. CUC's Executive Director
25 was a lead witness in the case, having filed written testimony (on January 31, 2010) and
26 supplemental testimony (on April 1, 2010).

27
28 56. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained
29 accounting and other financial experts who can gather data, put the data in the required form and
30 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
31 staff with the data required for their oversight. CUC has obligated itself to provide an updated,
32 compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1,
33 to the US District Court, and most recently, according to the February 24, 2010, additional
34 stipulated order.

35
36 57. CUC's procurement system is lengthy and complex. A relic of other decades, with their
37 own challenges, it requires extensive experience in specifications and procurement process, and
38 often must be coordinated with the CNMI's separate procurement procedures, adding months to
39 processes that must respond to the immediate challenges outlined in this Executive Order.
40

1 58. CUC last year lost 2 senior accountants plus a related specialist. The IT and billing
2 department in August was reduced by one staffer, having advertised for a replacement for 4
3 weeks to no avail. While it appeared that CUC might have to look to employing foreign
4 technical specialists, CUC hired back 2 former accountants in September and brought a third
5 person aboard in October. All are US citizens. Nonetheless, CUC must have the flexibility to
6 hire competent professionals as needed. CUC is still short-staffed, and needs an accounting
7 assistant, and an accounting specialist. On February 17, 2010, CUC's new Chief Financial
8 Officer reported for duty.

9
10 59. CUC's decades-old financial system accounting computer failed repeatedly during the last
11 two months, including for a complete week. Already-overcommitted finance and accounting staff
12 were required to put in days of extra time in hand-recording customer payments and hand-
13 generating bills.

14
15 60. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court
16 for the Mariana Islands which was highly critical of the progress in CUC's efforts to comply
17 with Stip Order 2's requirements to provide timely and complete financial and other operating
18 reports and plans.

19
20 61. To summarize: Without properly trained technical staff CUC's ability to supply power is at
21 risk. So is its ability to manage the rest of its systems, including its complex procurement, its
22 finances and accounting. CUC's services could not be adequately staffed without August's
23 lifting of the artificial legislative regulation of CUC's workforce, in EO 2009-08, Directive #10,
24 suspending the limitations on CUC hiring foreign workers. It is obvious that the hiring authority
25 must be continued.

26
27 62. There is no indication that any of the above manpower situation will be resolved in the next
28 month without continuing in effect this EO and Directive #10.

29
30 ☐
31 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

32
33 63. **Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and
34 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors
35 in the position of day-to-day management of the corporation, and requires a complex mix of
36 technical, geographic and other qualifications for Board membership. There is no Board because
37 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot
38 take a critical step toward solvency and the ability to borrow to finance its work.

39
40 ☐

1 **Forestalling corporate paralysis**
2

3 64. A critical concern is that the CUC Act's constricted scope of authority for the Executive
4 Director, and the complementary daily management by a host of Board volunteers, would
5 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before
6 CUC.
7

8 65. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC
9 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and
10 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133
11 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and
12 property), demonstrates that the Executive Director is to be left with little more to do than
13 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70
14 million/year corporation, on a day-to-day basis. This includes such decision-making as
15 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning
16 work crews, connecting customers, deciding on making repairs, collecting debts, complying with
17 the details of federal and CPUC regulatory requirements, making and funding long-term
18 technical power and water/wastewater plans, overseeing filings with the CPUC, including rate
19 cases, and insuring that, on a day-to-day basis, the power and water flow and the sewage is
20 treated.
21

22 66. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
23 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –
24 with or without a Board in place. The complex technical problems listed above simply cannot be
25 managed on a day-to-day basis by a group of non-expert volunteers. For example, the Executive
26 Director must be available to renegotiate CUC's fuel oil contract this month, and insure that
27 supplies reach Tinian and Rota, as well as Saipan. Also, as a key witness in CPUC Docket 10-
28 01 the Executive Director must be enabled to testify in favor of the requested rate increase in
29 order to fully present the required evidence.
30

31 67. No private or public utility company in the United States runs this way – with a group of
32 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in
33 the United States has mandated this form of corporate management for a public utility.
34

35 68. CUC has applied for and become eligible for millions of dollars of US ARRA grants,
36 which can substantially benefit the CNMI's infrastructure and create jobs. CUC has been
37 awarded \$11 million in grants from the EPA. But developing the grant requests and
38 implementing the grants requires management attention and expertise, part of a professionally-
39 run business organization. CUC has placed three of five ARRA grants out for bid, so that these
40 benefits can start flowing. CUC must evaluate its needs, and hire and contract for the needed

1 technical specialists to manage the grant-funded projects. This requires a corporate structure
2 capable of making and sustaining important decisions.

3
4 69. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
5 drafting error, and the People, through their elected representatives, wish their utility company to
6 continue to supply them with essential services at a reasonable cost, meeting industry standards.

7
8  **Fixing CUC's technical insolvency**

9
10
11 70. CUC has been unable to borrow money to run its operations since the inception of this State
12 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books
13 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115
14 million. This situation may be corrected if the Executive Director is recognized to have the
15 authority to correct it. Part of this situation, the CDA relationship, has been corrected precisely
16 because the Executive Director was empowered by this Executive Order to do so.

17
18 71. Meanwhile, billings and collections are substantially below the levels required to prudently
19 manage CUC's current operations and provide for system repairs, replacements and upgrades.
20 For example, billings alone for water and wastewater are less than 70% of requirements to run
21 those two systems. This will change as the PUC's June rate increase takes effect.

22
23 72. The booked CDA obligation rendered CUC nominally insolvent. While CUC was deemed
24 insolvent, CUC cannot borrow money. But CUC must be able to borrow money to bridge the
25 gap between (a) the need to spend money on essential goods and services to provide electricity,
26 water and sewage service, and (b) the lagged collection of already-determined-insufficient
27 revenues from the sale of those services.

28
29 73. The CPUC, in its September 3, 2009, electric order, Docket No. 09-1, approved a CUC-
30 CDA settlement converting the CDA debt to preferred stock. But the deal has required CUC's
31 Board to agree to it.

32
33 74. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
34 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
35 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find
36 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
37 Nonetheless, CUC must continue to function, including borrowing money.

38
39 75. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It
40 also permits him to continue to run CUC, carefully manage cash to pay tens of millions of
41 dollars annually for fuel oil and purchased power, and do all the things necessary to providing

1 power, water and wastewater services, until the remaining members of a properly constituted
2 Board can be identified, confirmed, and convened for business. In February 2010 the Executive
3 Director delivered to CDA management the stock certificates required for the debt-equity
4 conversion. CUC has received the fully executed copy of the Stipulated Notice of Dismissal
5 (with prejudice) in CDA v. CUC, Superior Court Civil Action No. 01-0248D (4/21/2010), which
6 the CPUC has required that CDA provide to make effective the conversion of the CDA debt to
7 preferred equity. CUC has sought Public Utilities Commission final approval. The Commission
8 provided that approval in the rate order authorized at its May 28, 2010, business meeting. Soon,
9 CUC must be able to demonstrate to the financial community that it is properly managed, so that
10 it can borrow and pay back long term capital.



12 **Providing the basis for proper CPUC oversight**

13
14
15 76. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act,
16 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC
17 activities, particularly financial activities.

18
19 77. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
20 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's
21 error-infused creation of a volunteer Board which would run the corporation on a day-to-day
22 basis, becomes much less important than satisfying CPUC requirements.

23
24 78. What becomes very important is CUC's capability to provide the CPUC with accurate and
25 timely financial and accounting information. But such reporting is not possible without a
26 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
27 Executive Director to lead them.



29 **Addressing a critical financial challenge**

30
31
32 79. CUC faced a financial crisis this past month. It was critically short of funds to buy oil.
33 Without oil CUC would be forced to shut down its generation, bringing the economy of the
34 CNMI to a halt, and endangering health and welfare as electricity-dependent operations ceased —
35 sewage treatment, water pumping, traffic lights and security lighting, air conditioning for the
36 elderly, infants, and other medically fragile persons, and equipment at the CNMI's Hospital and
37 health clinics. The principal reason for the shortage was the Government's failure to pay
38 millions of dollars of utility bills. The Government was in arrears about four months on its bills.
39 Only by eliminating restrictions on the Governor's power to reprogram funds to address this
40 issue was crisis averted.

1 80. CUC only had a day or two's worth of purchased oil to power its system because it lacked
2 the funds to buy oil from its sole, cash-only supplier.

3
4 81. The Executive Director was required to spend substantial time on a concentrated basis
5 interacting with high CNMI government officials as well as developing contingency plans for
6 the orderly shut-down of the CUC system.

7
8 82. Fortunately, the Administration was able to develop a multi-stage plan to enable the
9 payment of enough CNMI Government bills, and the reprogramming of CUC funds to forestall
10 disaster. The Government is still, however, about two months in arrears on its bills.

11
12 83. In order to facilitate this solution, the Governor issued a Declaration of Disaster Emergency
13 (June 8, 2010).

14
15 84. Development of this temporary financial rescue plan would not have been possible without
16 the dedicated, focused effort of a properly empowered Executive Director. Such financial
17 conditions may continue unless the Government, and other large CUC customers, can be brought
18 current, and remain current, on their bills. This may present a challenge for CUC, given the
19 stressed financial conditions of the Commonwealth. A properly empowered Executive Director
20 will be required to address this challenge.



23 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

24
25 85. There is no Legislative relief coming. For months CUC has repeatedly asked the
26 Legislature for such relief, including submission of draft legislation in July. The Legislature has
27 declined to respond. There is no alternative to providing this relief other than an order from the
28 Governor. Inaction will produce a disaster in which CUC is unable to provide its critical
29 community services. Directives # 9 and #10 were designed to avert this crisis. (The other
30 Directives, #1 through #8, are no longer relevant, and were discontinued.)

31
32 86. This Declaration is necessary to protect the health and safety of our children, our senior
33 citizens, businesses and all other CNMI residents and visitors.



37 **CONCLUSION AND ORDER**

38
39 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth
40 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
41 facing the Commonwealth of the Northern Mariana Islands.

1 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the
2 issuance of Executive Directives setting forth the measures to be taken to address the State of
3 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

4
5 (f) In addition to any other powers conferred upon the Governor by law, the Governor
6 may, during a state of disaster emergency:

7
8 (1) Suspend the provisions of any regulatory statute prescribing the procedures
9 for conduct of the Commonwealth's business, or the orders, rules, or regulations
10 of any Commonwealth activity or agency, if strict compliance with the provision
11 of any such statute, order, rule or regulation would in any way prevent, hinder, or
12 delay necessary action in coping with the emergency;

13
14 (2) Utilize all available resources of the Commonwealth as reasonably necessary
15 to cope with the disaster emergency of the Commonwealth;

16
17 (3) Transfer the direction, personnel, or functions of the Commonwealth
18 departments and agencies or units thereof for the purpose of performing or
19 facilitating emergency services;

20
21 3 CMC § 5121(f)(1)-(3).

22
23 By today's disaster emergency declaration, I intend to enable CUC to continue to provide
24 necessary service to the people of the Commonwealth.

25
26 This Declaration of a State of Disaster Emergency shall take effect immediately and all
27 memoranda, directives and other measures taken in accordance with this Declaration shall
28 remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the
29 end of the thirty (30)-day period, notify the Presiding Officers of the Legislature that the state of
30 emergency has been lifted or has been extended for an additional period of thirty (30) days. 1
31 CMC § 7403(a); 3 CMC § 5121(c).

32
33 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the
34 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

1 **DIRECTIVES**

2
3 I direct the following:

4
5 Directive 1: Deleted.

6
7 Directive 2: Deleted.

8
9 Directive 3: Deleted.

10
11 Directive 4: Deleted.

12
13 Directive 5: Deleted.

14
15 Directive 6: Deleted.

16
17 Directive 7: Deleted.

18
19 Directive 8: Deleted.

20
21 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board,
22 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)
23 the confirmation and convening of an operating CUC Board, or (2) the termination of the
24 authority of this order. In particular, the Executive Director shall have full power and authority
25 to agree to swap CDA debt and related obligations for preferred stock and related features and
26 rights.

27
28 Directive 10: The following strike-out-formatted language of the quoted provision of the
29 following statute regulating government employment is, as indicated, suspended immediately:

30
31 (b) Transition exemptions for government employment. . . . (5) Commonwealth
32 Utilities Corporation. Engineers, and professional employees in technical or trade
33 areas may be exempted and CUC may contract with manpower services or
34 directly hire power plant mechanics and utility technicians who may be
35 exempted; ~~provided that direct or manpower hire of foreign national workers shall~~
36 ~~not exceed nineteen (19) employees. This exemption shall expire on September~~
37 ~~30, 2010, and no contract may provide to the contrary.~~

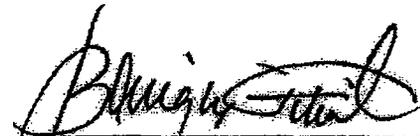
38
39 3 CMC § 4972(b)(5), as most recently amended by PL 16-14, (Underlining in original; ~~strikeout~~
40 is deliberately added) That is, the following language is suspended: “provided that direct or

Executive Order 2010-06
June 2010

1 manpower hire of foreign national workers shall not exceed nineteen (19) employees. This
2 exemption shall expire on September 30, 2010, and no contract may provide to the contrary.”
3

4 The effect of the suspension shall be that CUC shall have the complete power, without regard to
5 citizenship or otherwise lawful immigration status, to hire engineers, professional employees in
6 technical or trade areas, power plant mechanics and utility technicians, either directly or
7 indirectly. These professional employees may include, but shall not be limited to, sanitarians,
8 engineers, accountants, financial experts, information technology specialists, mechanics,
9 electricians, well-drillers, pipefitters, plumbers, wastewater treatment facilities operators, and
10 other trades technicians.
11

12
13 Done this 22nd day of June, 2010.
14

15
16
17
18
19 
20 BENIGNO R. FITIAL
21 Governor
22
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26
27

0 EO 2010-06 CUC Disband (22Jun10) Governor.wpd



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

DIRECTIVE NO. 269

DATE : **MAR 25 2010**

TO : **All Department & Activity Heads**

FROM : **Governor**

SUBJECT : **CNMI Energy Steering Committee**

WHEREAS, the 2008 energy crisis in the CNMI focused attention on the need to develop alternatives to the Commonwealth's near-100% reliance on fossil fuels: and

WHEREAS, energy security is key to the CNMI's future economic development and sustainability, and proper long-term planning is required to achieve energy security: and

WHEREAS, the process of developing a long-term Strategic Energy Plan for the CNMI should involve a broad range of stakeholders, including the CNMI Government, the private sector, the community, and appropriate federal agency partners that may be able to provide technical and financial assistance: and

WHEREAS, an Energy Steering Committee made up of a broad range of stakeholders is the appropriate vehicle for developing and implementing such a Plan: and

WHEREAS, the Energy Steering Committee will tap into the expertise that resides within the CNMI's energy, business, scientific, academic, community, and governmental sectors while providing a mechanism for considering new ideas to incorporate into the CNMI's Strategic Energy Plan, allowing the CNMI to speak with a single, unified voice on energy issues: and

WHEREAS, the basis for the CNMI Energy Steering Committee was laid at the CNMI Energy Summit on June 22, 2009, as part of the Pacific Islands Environment Conference on Saipan, with participation from a broad range of stakeholders within local and federal government, the CNMI Legislature, the private sector, community-based organizations, and others; and

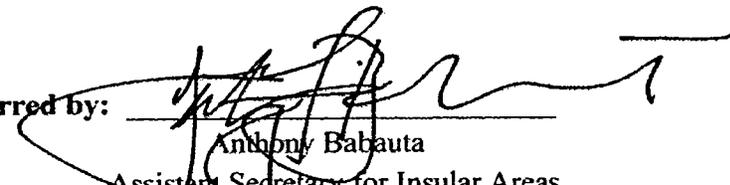
WHEREAS, the CNMI Energy Steering Committee, under the guidance of the Energy Division of the Department of Public Works, has developed a draft vision, mission, goals, and organizational structure to appropriately develop a comprehensive, long-term Strategic Energy Plan for the CNMI;

NOW THEREFORE, in order to give the CNMI Energy Steering Committee the full support of the Executive Branch, it is hereby **ORDERED**:

That all Departments, Divisions, Offices, Government Corporations, Boards and Commissions of the CNMI Government shall appoint a representative from their respective offices to participate in meetings and activities of the CNMI Energy Steering Committee (ESC) necessary to carry out the ESC's mission as requested by the ESC's Executive Committee.

DONE this 25th day of MARCH, 2010.


BENIGNO R. FITIAL
Governor

Concurred by: 
Anthony Babauta
Assistant Secretary for Insular Areas