



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Timothy P. Villagomez**  
Lieutenant Governor

## **EXECUTIVE ORDER 2009-01**

### **DECLARATION OF A STATE OF DISASTER EMERGENCY: COMMONWEALTH UTILITIES CORPORATION'S IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO PROVIDE IMMEDIATE RELIABLE POWER DURING REPAIRS**

#### **CONTINUATION #6**

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 my preceding disaster emergency declarations on this matter, EO 2008-10, -13, -17, -20 through -22. 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.

I find that:

1. All findings and conclusions of EO 2008-10, -13, -17, -20 through -22 are incorporated by reference.
2. CUC's contractor, Aggreko, has commissioned approximately 15 MW of temporary, diesel-fired power generators, pursuant to CUC contract # CUC-PG-08-CO16. This generation has meant the difference between rolling blackouts and generally continuous electric service to CUC customers. Because unforeseen technical issues have arisen periodically, there have been some forced outages. Although the Aggreko installation is professionally managed, events can occur which require the attention of non-CUC personnel, including security, pipe-fitters, and the related personnel, materials and supplies. Other issues may arise that will require rapid attention by CUC contractors and the securing of materials and supplies.
3. Although CUC desires to comply in advance with environmental and land use regulations, the lack of permits and the permitting process would have postponed or eliminated the in-service date and uninterrupted service provided by the Aggreko power generating equipment. In particular, taking Aggreko's units off line, while undergoing the time and expense of computer modeling of the emissions of Lower Base power plants, would have triggered renewed rolling blackouts for Saipan. Eliminating the declaration would place CUC, Aggreko, and their employees and contractors, in the position of violating CNMI environmental regulations, thereby effecting a shut-down of this required 15 MW of capacity.
4. The CUC is facing additional challenges due to the failure of its electric production and distribution facilities. In particular, the transformer feeding the Chalan Kiya distribution transformer requires immediate maintenance. Its failure could plunge the south end of Saipan into lengthy blackouts, including the water wells in the Airport area and the Agingan Point sewage treatment facilities. CUC suffered 30 hours of distribution system failures during December, one of which created a one-hour blackout to the entire island of Saipan on December 22. During January, to date, Saipan has experienced 22 hours of partial blackouts and one 4-hour whole-island blackout.
5. CUC has determined that its Tank 104 used oil facility is structurally unsound and must be emptied of its used oil in advance of severe weather, particularly a serious typhoon, to avoid any potential harm to the Commonwealth's waters, including the Lagoon. Further, there are 2,800 sealed barrels of used oil nearby which must also be removed. The removal must comply with federal environmental law. CUC lacks the internal capability to carry out the removal and must

contract for these services. A related concern is the effect on the structural integrity of Tank 104 which drawing down its contents will create; suggesting that the proper plan and contractor are critical. In the meantime, CUC is trying to reduce its 2800 drums of used oil through incineration.

6. CUC continues to occasionally lose generation capacity, which creates intermittent blackouts on portions of its system. During the month of November CUC lost more than 4 MW to scheduled maintenance at Power Plant #4 and forced outages at Power Plant #1. The Island of Saipan lost power on January 10 when poorly maintained protective devices in the distribution system failed, and protective relays at Power Plant #1's busbar also failed, thereby exposing the generators to a transient, causing the generators' own relays to trip. CUC knows that these devices can protect its capacity and the customers' equipment, and that proper equipment can manage such issues in seconds, but it lacks the equipment and the manpower for a proper protective system. CUC continues to rehabilitate Power Plant #1 engine/unit No. 7 with their own staff and are preparing units 5 and 1 for rehab by ordering the parts and services required. Meanwhile CUC tries to maintain the operating units to adequately meet load. CUC has lacked the funds to buy all needed parts to avoid such outages, and lacked the contractors or in-house staff to carry out complete maintenance and repair. There is no indication that this situation will be resolved in the next month.

7. The water/wastewater division has been negatively impacted during the past month, and no relief is in sight for the next month: CUC cannot serve all of its customers because it lacks water pumps, for which a request for quotations is pending. Sewage lines have been blocked by customers flushing grease and oil, and CUC lacks the proper equipment to remove the blockages. CUC lacks sewage pipes, so that there are gaps in its sewage transport system. The transfer switches that keep the wastewater system's pumps going are largely inoperable, due to age, lack of maintenance or deliberate damage. The two wastewater treatment plants have been effectively compromised due to age and lack of maintenance. Hundreds of recently-installed water meters which were to allow CUC to properly bill for actual usage have failed due to their insufficiency for humid, saline climates. While the well-respected supplier, Severn-Trent, has agreed to replace the failed meters, this replacement will take time. There is no indication that this situation will be resolved in the next month.

8. The U.S. Department of Justice (DoJ), Environment and Natural Resources Division has sued CUC in federal court to come into compliance with critical water and sewage treatment requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D.N.M.I. filed Nov. 19, 2008), *comment period extended to Jan. 31, 2009* (Order of Dec. 23, 2008), *as reported in 73 Fed. Reg. 80427* (No. 251; 12/31/2008). *See also* [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). In July 2008 CUC, the CNMI and (in September 2008) the U.S. Environmental Protection Agency

(EPA) stipulated to two orders lodged with the U.S. District Court on the date the Complaint was filed. These orders require CUC to implement a series of improvements to its water and wastewater systems that respond to years of neglect, for which it presently lacks the funds and the complete technical capability. CUC requires a constant supply of electricity to run its water and wastewater treatment systems. CUC has very limited on-site emergency generation capability for only portions of these systems. CUC's ability to buy and install needed parts and materials rests on its ability to continue to generate revenue; it cannot afford to shut down or lose the revenues from any of its services. While CUC intends to do everything it can to comply with the federal requirements, there is no indication that this situation will be resolved in the next month.

9. CUC faces additional, critical challenges in the water/wastewater area. Failures of key aspects of the systems could harm our people and our ability to meet our commitments to the EPA and the federal district court. As of this writing, 16 pumps are out of service at CUC water wells. CUC staff are trying to diagnose the problems and develop immediate solutions. Also, during January, the wastewater collection mains and laterals failed at over 20 points due primarily to grease, bundles of rags, and other debris. While some materials come from users, other materials have entered through pipe failure. Pipe failures result from age (some over 30 years old) and undue corrosion. For instance, the iron pipe for the main pumping station to the Agingan Point Wastewater Treatment Plant failed completely after only six years of service. Sewage lift stations are vulnerable. While CUC staff are working hard to fix these problems, CUC lacks the manpower or available funding to fully address these conditions. Present water rates cannot fund the electricity required to run the combined system, let alone the needed fixes.

10. The Commonwealth Public Utility Commission (CPUC), upon the stipulation of its consulting staff, Georgetown Consulting Group, and CUC, issued a partial rate case opinion and order on December 19. *Investigation of the Commonwealth Utilities Corporation's Electric Rate Structure and Related Matters*, Decision and Order (CPUC Dec. 19, 2008). The order, in effect, freezes CUC's rates for three-to-six months, including CUC's fuel clause rates. The order provides for collection of revenue to cover: diesel oil purchases at a delivered price of 17 cents/kwh; some volatility in the market for CUC's sole fuel, diesel oil; development of a 30-day inventory fuel "cushion"; and development of a restricted reserve to be used solely to improve the efficiency of CUC's power plants. If the Commission order's estimated oil price rate is too low, CUC could be prevented from purchasing needed supplies and material, including oil, during the period between the perceived price rise and the entry of a CPUC emergency order. Such a contingency would impede CUC's ability to power all of its generators, including the generators of its three IPPs, Telesource, PMIC and Aggreko, and to begin steps to meet the above-referenced federal consent order. CUC must continue to pay cash for oil, often weekly. CUC will not begin to develop cash reserves pursuant to the rate order until 45 days after the first month's new fuel rate levels are in effect.

11. The CPUC order also provides for the Commission's advance review and approval of CUC procurements in excess of \$350,000 and for each year's aggregate capital budget. The order provides that currently active procurements will not be affected by the advance approval requirement. In some circumstances such advance review and approval could impede CUC's resolution of an emergency.

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

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

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

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

- (1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of the Commonwealth's business, or the orders, rules, or regulations of any Commonwealth activity or agency, if strict compliance with the provision of any such statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;
- (2) Utilize all available resources of the Commonwealth as reasonably necessary to cope with the disaster emergency of the Commonwealth;
- (3) Transfer the direction, personnel, or functions of the Commonwealth departments and agencies or units thereof for the purpose of performing or facilitating emergency services;

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3 CMC § 5121(f)(1)-(3).

I direct:

**Directive 1:** CUC shall comply with CUC Procurement Regulations and the CNMI Procurement Regulations applicable to CUC, except as follows:

Upon a finding by the CUC Executive Director that such compliance is not feasible for purposes of responding to the State of Disaster Emergency, the CUC Procurement Regulations and the CNMI Procurement Regulations applicable to CUC, if any, are suspended as to such CUC procurements. CUC must fully document all such procurement activity for Executive, PUC, Public Auditor, and Legislative review.

**Directive 2:** The Commonwealth Public Utility Commission Act of 2006, Pub. L. 15-35, as amended, and the new CUC Act, Pub. L. 16-17, are hereby suspended insofar as they would require the PUC's advance review or approval of CUC contracts and other measures relating to the supply of power or the operation and maintenance of CUC's system during the State of Disaster Emergency.

**Directive 3:** CUC is specifically empowered to execute any wholesale generation power contract it has negotiated with an independent power producer for a period of two years or less.

**Directive 4:** All regulatory statutes and regulations relating to the Agrekko temporary wholesale generation power contract, # CUC-PG-08-CO16, which CUC determines in writing will interfere with the deployment, in-service dates, and/or operation of the temporary power production facilities, are hereby suspended, except that CUC must within 30 days provide to me in writing its plan for compliance, and a copy of each agency's permits or a complete explanation why compliance has not yet been achieved and how it will be achieved.

**Directive 5:** CUC shall notify as soon as possible by email after each procurement governed by Directive 1, at least the following persons, advising of at least the following matters:

a: Persons: The Governor, President of the Senate, Speaker of the House, Public Auditor; and

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b: Matters: Subject of the procurement; contractors and/or suppliers; amounts involved; the extent to which competitive bids or proposals were used; and short description of the reason for the action.

Directive 6: CUC shall procure as soon as practicable the necessary technical expertise and other labor, parts and materials to remedy the failings of its Chalan Kiya-related distribution facilities.

Directive 7: CUC shall procure with all deliberate speed the contractors necessary to remove used oil from Tank 104 and the hundreds of nearby barrels; and, in particular, shall take every measure to insure that a typhoon shall not cause any of that oil to pollute the Lagoon.

As stated in EO 2008-10, Pub. L. 16-9 removed substantial impediments to CUC's securing by contract immediate, reliable, and cost-effective temporary power from an independent, non-utility power producer. That law amends the Commonwealth PUC Act of 2006, specifically requiring a gubernatorial declaration of disaster emergency pursuant to 3 CMC § 5121, so that CUC might sign an emergency wholesale power generation contract for two years or less without pre-review of the PUC or the PUC's issuance of a certificate of convenience and necessity. Each of these PUC decisions would have taken so long to investigate and make that the conditions discussed above may have developed in the meantime.

I determined that, if CUC could immediately execute such a contract, it could quickly have temporary replacement generators placed into service and then shut down the dangerous Power Plant #1 engines. By disaster declaration EO-2008-10 I intended to enable CUC, within the definitions of Pub. L. 16-9, to sign a power contract with the appropriate "person".

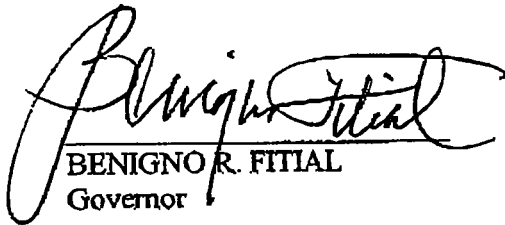
By today's disaster emergency declaration, I intend to enable CUC, within the intent of Pub. L. 16-9, to continue to implement the temporary power contract which it signed. The purpose is to make the electric system as reliable as practicable, as soon as practicable, during the period of repair of CUC's generators. I also intend that government leaders be kept informed as to the operation of the temporary power equipment into service.

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This Declaration of a State of Disaster Emergency shall take effect immediately and all memoranda, directives and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of emergency has been lifted or has been extended for an additional period of thirty (30) days. A comprehensive report on the exercise of my constitutional authority shall be transmitted to the presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

Done this 30<sup>th</sup> day of January 2009.

  
BENIGNO R. FITIAL  
Governor

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