



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Eloy S. Inos**  
Lt. Governor

## **EXECUTIVE ORDER 2009-04**

### **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 #9**

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 the Governor's preceding disaster emergency declarations on this matter, EO 2008-10, -13, -17, -20 through -22., and EO 2009-01 through -03, 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.

I find that:

1. All findings and conclusions of EO 2008-10, -13, -17, -20 through -22 and of EO 2009-01 through -03 are incorporated by reference, except as specifically varied in this Executive Order. The narrative paragraphs of this EO address improvements in the circumstances that gave rise to the preceding orders.
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. While CUC must continue to rely on Aggreko's generation, the facility's output has been reliable and of high quality.
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 trigger 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. There is no indication that any of the above situation will be resolved in the next month.
4. CUC faces additional challenges due to the failure of its electric distribution facilities. However, some of these challenges have been met, and some of the conditions have been moderated.
  - a. In particular, the transformer feeding the Chalan Kiya distribution transformer still requires immediate maintenance. Its failure could plunge the south end of Saipan into lengthy blackouts, including the prison, the Courthouse and Public Safety offices, water wells in the Airport area and the Agingan Point sewage treatment facilities. CUC is trying to settle matters with the vendor and get the facility fixed as soon as possible. CUC expects to have resolved the following in the next month: a contract and repair plan should be in place. Due to the time

required to mobilize off island men and materials, the work may not be done in the next month, however. Until the repair work is done on the backup unit, therefore, the risk of a half-island outage remains.

- b. The distribution system lacked airbrake switches and reclosures on each of its 7 circuits, or feeders, so that small feeder faults tripped breakers at Power Plant #1, bringing large parts of the system off-line. The new equipment has been specified and has been procured, with some arriving already. The new equipment is being installed to avoid these problems. (See below, paragraph 6.)
- c. During January Saipan experienced 22 hours of partial blackouts and one 4-hour whole-island blackout. The situation has markedly improved. In February Saipan experienced 23 hours of partial field outages, but no whole island blackout. Some of the outages were necessary, scheduled outages. Virtually all of these outages were due to deteriorated power distribution hardware. Thus, CUC has achieved relatively good generation system reliability. It has developed a plan to upgrade the distribution system, and, with increasingly stable revenues, is implementing the plan.
- d. Also, the service trucks were failure-prone, interfering with service and repair of other facilities. CUC has instituted a repair and maintenance plan to increase service vehicle reliability, including a series of qualified vehicle repair contracts and increased employee responsibility for their vehicles.

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.

- a. 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. This situation will continue to challenge CUC well past the next month.
- b. CUC is taking concrete steps to resolve this situation, in compliance with the federal stipulated order in *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). See also <http://www.usdoj.gov/enrd/Consent>

Decreases.html. It has undertaken an emergency, competitive procurement for expert oil-issue-related environmental consulting firms to help it timely and competently meet the requirements of the first 90 days' deliverables in Stip Order 2. It is incinerating oil stored in drums and has provided drums to Island businesses which can properly burn the oil to make power. It is developing plans for "secondary containment", typically berms, for the oil drums.

6. CUC has substantially minimized the risk of losing generation capacity, which has created intermittent blackouts on portions of its system.

- a. 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. (See above, paragraph 4.b.) CUC is repairing the distribution system equipment and taking steps to increase the manpower needed for a proper protective system. (See below, paragraphs 6.c and 9.c, on manpower.)
- b. CUC continues to rehabilitate Power Plant #1 engine/units No.'s 5 and 1. The rehab of engine No. 7 by CUC staff has been completed. CUC tries to maintain and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to buy needed parts to avoid outages. But, in spite of advertising locally, CUC lacks the contractors or in-house staff to carry out complete maintenance and repair.
- c. A major challenge to carrying out this rehabilitation will be finding as soon as possible the 8 more mechanics and 8 more operators who are needed to carry out this project and run the equipment. They must be ready for service when needed and they must be affordable. But there is a shortage of such US professionals with experience with CUC's type of engines. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding all the qualified candidates. CUC has identified 16 potential new staff after interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator candidates are US citizens, one. Presently CNMI law (PL 16-14) prohibits CUC from hiring any more non-US technical workers than the 19 skilled professionals presently with CUC. CUC plans to ask the Legislature for relief from this statute regulating the Government's workforce. In the meantime CUC is concerned that any significant reduction in its present technical workforce, as by the feared swine flu pandemic, could seriously compromise CUC's ability to generate and distribute power.

- d. CUC is presently operating with 60 MW of power generation to meet the recently experienced peak loads of about 40 MW. PP #1 offers 25 MW and PP #2 offers 6 MW. The PP #1 capacity includes units 6 and 8, which are undergoing maintenance that allows them to be brought on line from standby, for emergency purposes. Utility industry safety margins for isolated, island systems, typically require a reserve equal to the capacity of the two largest units; in CUC's case this would be another 15 MW of load. The independent power producers provide as follows: PP #4 generates 14 MW and Aggreko generates 15 MW. This means that PP #4 and the Aggreko units are essential to meeting Saipan load of about 40 MW plus the reserve margin.
- e. There is no indication that any of the above situation will be resolved in the next month.

7. The water/wastewater division has been negatively impacted during the past month, and has experienced some improvements in the past month:

- a. CUC is providing more water to more people than ever before. Three wells are down, however, due to salinity and heat. As fresh water supplies decreased with the dry season, the pumps had to operate in more difficult conditions, which caused the failures. CUC has bottomed out on the fresh water supplies in some of the aquifers. While some water supplies have been compromised, if the rains resume soon there will be adequate water.
- b. CUC has installed 2,000 new Severn-Trent smart meters, manufactured for the CNMI's environment. Another 3,500 are on order, with 2,000 due for delivery in early May.
- c. The water well drill rig has been out of service, awaiting parts and service, scheduled to come in mid-May. The rig's unavailability continues to impede CUC's ability to expand service.
- d. The two wastewater treatment plants have been effectively compromised due to age and lack of maintenance. While the Agingan Point treatment plant waits for delivery of drive components so that staff can repair the non-functioning clarifier, staff have fabricated drives from a junked 20-year old unit. The solids inventory has stabilized, but the plant is still operating outside of limits for BOD and enterococci. The Sadog Tasi Plant's solids handling equipment still awaits proper parts, so, in the meantime the staff jury-rigged treatment equipment from scrap material. Tons of biosolids still must be processed later. The aeration system is

compromised by large leaks. The bids for the projected rehab of Sadog Tasi were twice the amount of CUC's projected budget, requiring a halt to the project schedule, and a continuing search for more funds. 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. NMI Mar. 11, 2009) ("Stip Order 1"). 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. Continued electric service revenues are critical, because the Commonwealth Public Utilities Commission has determined that CUC presently runs its water/wastewater system at a \$7 million per year loss. 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. Nonetheless, the Water and Wastewater Division has continued to meet Stip Order 1 deliverables within the prescribed time frame.

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.

- a. As of this writing, three different pumps are out of service at CUC water wells. See above.
- b. Materials have entered the wastewater collection pipes 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. Approximately 60 miles of force and gravity sewer mains have been compromised by naturally occurring hydrogen sulfide gas. This means holes throughout and 200-foot section collapse in San Jose last month. While this collapse was fixed, other collapses are likely.

- c. There are no backup pumps for sewage transport, but they have been ordered. The backup generators in the wastewater treatment plants have failed and do not function. CUC has put out a work order for assessment and potential repair of the generators. The only cost-effective responses were from foreign nationals, one of whom who had an excellent track record in assessment and repair. But local law prohibited the hire.
- d. While CUC staff are working hard to fix these problems, CUC lacks the manpower or available funding to fully address these conditions.
- e. New water rates, set by the Commonwealth Public Utilities Commission, only partially provide for full cost recovery, due to the potential "rate shock" effect of full cost rates. Due to billing lag, those rates do not produce meaningful revenues for 60 days, or until June collections.

10. The CPUC issued a partial electric rate case opinion and order on December 19, 2008. *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 electric rates for three-to-six months, including CUC's fuel clause rates. There are escape valve provisions of the order, but these have not yet been tested. In its most recent LEAC order, of April 2, 2009, in the same docket, the Commission modestly reduced rates in order to reflect, among other things, the lowered world price of oil.

- a. 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 orders. CUC must continue to pay cash for oil, often weekly.
- b. CUC has begun to develop cash reserves pursuant to the new rates from the December and April rate orders. CUC's and the CPUC's developing regulatory relationship has addressed funding required personnel, material and supplies while CUC takes steps to enhance efficiency and accountability. The preceding EO 2009-03 clarified the broad scope of the CPUC's power and authority, and the limited reasons for restrictions during this disaster emergency. The revised, clarifying language of the EO continues in this EO.

11. The CPUC's Contract Protocol Order of December 19, 2008, agreed to by CUC, 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, particularly if the 35-day approval period were observed (para. 2(c)); however, due to continued interaction between CUC and the CPUC it is thought that the two agencies will be able to communicate on all but the most sudden of emergencies.

12. 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 must be corrected.

- a. That booked obligation has rendered CUC nominally insolvent. While CUC is deemed insolvent, CUC cannot borrow money.
- b. But CUC must be able to borrow money to bridge the need to spend money with the lagged collection of revenues. While the CPUC, in its oversight of CUC, has begun to address improvements in CUC's finances, sound business practices require that CUC be able to borrow money.
- c. Further CUC has functioned without a Board of Directors, because it has had to. While CUC's enabling act, now 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 statutory qualifications, they have been unable to do so. Nonetheless, CUC must continue to function, including it must be able to resolve the CDA relationship to allow it to borrow money.
- d. The Legislature has fully authorized CUC to settle the matter with CDA. CUC has come to an agreement to eliminate the CDA debt, converting the debt to preferred stock, forgiving some of the principal, postponing interest payments and giving CDA a Board of Directors seat.
- e. CUC and CDA wish to immediately present a stipulation to the CPUC embodying these and the other settlement conditions, for that regulatory body's approval.
- f. But CDA has required that CUC's *Board* accept the deal. Therefore, it is critical that CUC be able to sign the deal with the authority of a Board. My directive

below provides such authority to the Executive Director. It also permits him to continue to run CUC, providing power, water and wastewater services, until the remaining members of a Board can be identified, confirmed, and convened for business.

13. 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;

3 CMC § 5121(f)(1)-(3).

I direct:

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Declaration of Disaster Emergency: CUC Continuation 9

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

Upon a written 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, CPUC, 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, as amended, and orders issued under either are suspended insofar as they would require the CPUC's advance approval of CUC contracts and other procurement measures which: (1) relate to the supply of power or the operation and maintenance of CUC's system during the State of Disaster Emergency; and (2) are in an amount of less than \$350,000. Except that the \$350,000 limitation on the suspension shall itself be lifted if the following takes place: the CUC Executive Director makes a written finding that such compliance is not feasible for purposes of responding to an emergency. Thereafter, within three days, or as soon thereafter as emergency conditions allow, the Executive Director shall file details of the procurement activity with the CPUC.

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 Aggreko 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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Declaration of Disaster Emergency: CUC Continuation 9

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.

Directive 8: Reserved.

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.

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 CPUC or the CPUC's issuance of a certificate of convenience and necessity. Each of these CPUC 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".

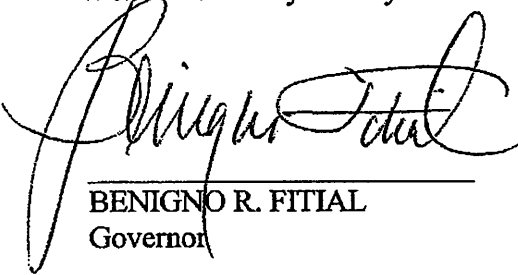
EO 2009-04

Declaration of Disaster Emergency: CUC Continuation 9

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.

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 1<sup>st</sup> day of May 2009.



BENIGNO R. FITIAL  
Governor

0 Exec Ord 2009-04 CUC Disaster Emergency continuation 9 (1May09).wpd



# Commonwealth of the Northern Mariana Islands OFFICE OF THE GOVERNOR

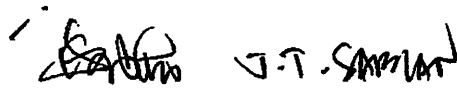
## ACKNOWLEDGMENT OF RECEIPT OF HAND-DELIVERED DOCUMENT(S)

### DOCUMENT (s) DESCRIPTION:

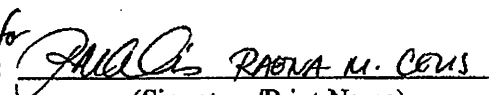
1. Transmitting EXECUTIVE ORDER #2009-04 Continuation #9:  
Declaration of a State of Disaster Emergency: Commonwealth Utilities Corporation's Imminent Generation and other failure and the need to provide immediate reliable power during repairs.

Received by:   
(Signature/Print Name)  
**Senate President**

5/1/09  
Date/Time

Received by:  J.T. SERRANO  
(Signature/Print Name)  
**Speaker of the House**

05/01/09 1:17pm  
Date/Time

Received by:  RAONA M. CRUZ  
(Signature/Print Name)  
**Office of Programs & Legislative Review**

5/1/09 3:30  
Date/Time