



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

EXECUTIVE ORDER 2009-07

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 #12

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Lt. Governor

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 -06, 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 -06 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 Executive Order, and the relevant directives, will remain effective until Aggreko has completely demobilized in September.

a. 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.

b. 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. With the Aggreko contract fee running at roughly \$500,000 per month, and contract advance notice requirements mandating that CUC tell Aggreko whether to stay or leave, CUC approaches a key deadline of September 12. While CUC's customers would benefit from saving the monthly fee, the decision to terminate the Aggreko contact was not final, until recently.

c. A shortage of manpower forced by legislation limiting skilled foreign workers, shipping delays for delivery of parts, and ongoing unplanned technical issues complicated the CUC decision. For instance, since March 2009, CUC has been trying to hire 16 new employees, consisting of 8 mechanics and 8 power plant operators. CUC vigorously recruited locally, but, as of today, only 4 qualified operators and 1 mechanic have been hired. At the same time CUC has since lost 3 mechanics and 1 operator, who resigned for various reasons. While CUC may be able to bring on entry-level trade assistants, it still needs 16 qualified technical employees to make the production system work right.

d. However, CUC has determined that it should be able to produce from its owned units by September 12 at least 55 MW. This would give CUC a reserve of 15 MW, the minimum needed to reliably manage the system. CUC gave Aggreko notice on June 12, 2009, that the contract will not be extended.

- e. This decision to rely on CUC's own generation, at a substantial cost savings for the people of the CNMI, is safe as long as CUC can employ the staff required to manage its system. Aggreko was not bound by the artificial US-only hiring decision presently mandated by CNMI legislation. It is rational to expect that CNMI law will change to permit the islands' key industry to operate rationally, and hire the people essential to providing critical electric, water and wastewater services.
- f. Until Aggreko ends service, the CUC environmental conditions discussed below will be in effect

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 shutdown 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. The progress made by CUC's distribution team warrants removing distribution system concerns from this Executive Order. In sum, the Chalan Kiya backup transformer for half of Saipan has been repaired, causes of many wide outages are being addressed with the installation of replacement parts and right-of-way clearing, and the Kagman and Dandan homestead systems are being reinforced. Faulty vehicles remain a problem, but a solvable one.

5. CUC has taken concrete steps to address the storage and disposal of used oil, consonant with the federal court's Stip Order 2. The progress made in this area warrants removing this concern from the scope of this Executive Order. Federal court Stipulated Order # 2, relates to the used oil from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). See also http://www.usdoj.gov/enrd/Consent_Decrees.html. CUC over the years has built up a storage of approximately 466,000 gallons of used oil within various facilities. Improper maintenance over the last 15 years of the plant and improper protection of the related pipeline and tank structures have rendered many of the tanks, including Tank 104, 101, and 102, a threat to the lagoon and shoreline of Saipan, and to the water table. 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. CUC's used oil manager reports that US EPA has accepted CUC's first report (April 24, 2009) with conditions and some requests for modification. CUC is awaiting EPA's response to draft requests for qualifications and invitations for bids (RFQ/IFB) for contractors to perform used oil transfers, tank cleaning and tank integrity inspection. A draft IFB for "Removal and Safe Disposal of Used Oils: Tanks and Barrels Stored, Power Plant 1" that includes Tank 104, has been submitted to EPA for review.

6. CUC has substantially minimized the risk of losing generation capacity, which has created intermittent blackouts on portions of its system. It therefore advised Aggreko in June that the temporary power contract will not be extended past its September termination date. This will save CUC customers at least \$6 million per year in fees. But it presents risks, as the strategy requires proper operation and maintenance of CUC's owned engines by CUC's technical staff.

a. CUC continues to 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 needed parts to avoid outages.

b. 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. Only two of the operator candidates are US citizens. 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, could seriously compromise CUC's ability to generate and distribute power.

c. 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 5 MW. This means that PP #4 and the Aggreko units are essential to meeting Saipan load of about 40

MW plus the reserve margin. But the Aggreko units, and their operators, will be gone by the end of September.

d. A new, avoidable power crisis is approaching. Generation and proper distribution and supply of power is at risk without increasing the specialized staff required to adequately operate and maintain the equipment and machinery. This is because the Legislature, through 3 CMC §4972(5), as amended by PL 16-14 (Aug. 27, 2008), has limited CUC's ability to hire technical staff, up to 19 foreign workers only. The CUC Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such persons as are necessary for operations, *except as otherwise limited by other law.* 4 CMC § 8123(h).

e. There are not enough technical specialists at CUC to get the power generation work done. CUC believes that the vast majority of skill sets must come from non-US personnel.

f. CUC has hired some local staff recently thanks to the aggressive steps of CUC HR and the Executive Director. CUC hired six US citizens and 2 foreign workers who have IR status – a total of 8 workers. But CUC also lost technical workers – one more technician recently resigned, bringing the total to four this year. CUC is, thus, net four, and still needs 12 more skilled workers for power plant operations and maintenance. However as more units begin working after the rehabilitations are largely complete in September, CUC will need more staff to operate and maintain them.

g. The impact of an inadequate workforce will be three-fold. First, there will be a direct effect on the existing consumers: There will be brownouts, or area blackouts. Second, the power plants will again degrade, producing more outages. Third, there will be an indirect effect, on rates. CUC will be unable to convince large commercial customers, particularly the hotels, to join its system. The hotels need reliable, 24/7 power. If the hotels were to become part of the system, they could help pay CUC fixed costs, which would lower everyone else's rates. Further, the failure to meet federal court deadlines could result in appointment of a federal receiver and consulting team – all charged to CUC customers. Thus, the indirect effect of an inadequate workforce will be to boost rates.

h. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. None of the independent generators – Aggreko, PMIC and Telesource – operates under these limits. If the Legislature fails to act on the CUC request, it will effectively set the stage for loss of service and higher rates. It will thereby reverse the \$6 million-per-year benefit of terminating the Aggreko temporary power contract.

- i. Rota is now suffering blackouts from inadequate generator maintenance. The power plant's other facilities and the island's distribution system similarly need the attentions of additional manpower. The present alternative for Rota is akin to Saipan's – purchasing higher cost power from the Rota Resort.
- j. CUC has lost 2 senior accountants plus a related specialist in the last 30 days, with a federally-mandated interim financial plan due in September. The IT and billing department is down to one staffer, having advertised for 4 weeks to no avail.
- k. To summarize: CUC's ability to supply power is at risk. While the utility company's owned hardware looks to be ready for Aggreko's September departure, the generation and power distribution services will not be adequately staffed without an immediate lifting of the artificial legislative regulation of CUC's workforce. Water and wastewater services will be compromised if new professional staff cannot be hired. CUC **MUST** have the staff required to adequately operate and maintain its equipment and machinery, or higher costs and loss of service will follow.
- l. There is no indication that any of the above situations 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. The progress made in this area warrants removing this concern from the scope of this Executive Order, except for issues relating to proper staffing of the division.

- a. CUC is providing more water to more people than ever before, due in-part to the return of the wet weather season. Regular pumping activities continued to drain the fresh water supplies in many of the aquifers last month. There are still chronic leaks in the system, due in part to iron and steel materials that have corroded underground, and due in part to their having exceeded their design life. Leaks are difficult to detect because of the porous nature of the local geology. Otherwise-US-acceptable ductile iron pipe is not compatible with Saipan's saline CUC water and high salinity in groundwater where pipes are installed at or below sea level. As a result, CUC is not yet at adequate water supplies.
- b. CUC has installed over 2,000 new Severn-Trent smart meters, manufactured for the CNMI's environment. An additional 3,300 were expected to arrive during June, but have not yet arrived. Then, another 1,500 are expected to arrive in December. Once all of the replacement meters have arrived and been

installed, water conservation will be enhanced. A 4-person crew has been tasked with installing these meters.

c. The well drilling staff drilled one new water well during July; and pump testing is being performed. Depending on the pump test and water quality results, the well could be placed into service during September.

d. The two wastewater treatment plants have been effectively compromised due to age and lack of maintenance.

i. The Agingan Point plant is generating effluent at near-environmental-permit performance levels. The lack of staffing, proper equipment and spare parts threatens recent gains. While the treatment plant waits delivery of drive components so that staff can repair the non-functioning clarifier, belt press, and pumps, staff have fabricated drives from a junked 20-year old unit. CUC staff have rebuilt non-functional equipment with spare parts. The solids inventory has stabilized, but the plant is still operating just outside of limits for BOD and enterococci.

ii. The Seadog Tarsi Plant's solids handling equipment continues to await proper parts, so, in the meantime the staff jury-rigged treatment equipment from scrap material. Tons of bios lids still must be processed later. The aeration system is compromised by large leaks. The bids for the projected rehab of Seadog Tarsi were twice the amount of CUC's projected budget, requiring a halt to the project schedule, and a continuing search for more funds. CUC plans to use ARRA stimulus funds to complement about \$550,000 in DOI-administered compact funds identified last year, and address the issue. Presently, CUC's Wastewater Division deems the plant to be "marginally operable."

iii. CUC is severely in need of additional engineers to meet water and wastewater project and program workload issues. A detailed workload assessment shows that 3 additional engineers are needed, particularly to meet requirements of Stip Order 1 (see below). The staff shortage has limited troubleshooting of water system leaks, and wastewater collection failures. It also puts CUC in danger of failing to meet 25 discrete Stip Order requirements, from developing financial and technical plans to implementing technical plans.

iv. 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. 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. 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, which have only recently begun. Partially adequate wastewater rates are still before the Commission for review. While this rate relief is important, CUC will continue to work with the PUC to develop rates that fully pay the costs of safely operating CUC's water and wastewater systems.

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. The Commission will be revisiting CUC rates, fees, charges and operations at its early-September meeting. 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.

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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 ; 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.

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Declaration of Disaster: That booked obligation has rendered CUC nominally insolvent. While CUC is deemed insolvent, CUC cannot borrow money.

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 ; 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. 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.

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.

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 have settled the matter. CUC has petitioned the Commission for approval of the settlement. The matter should be heard by the PUC at its early September meeting.

f. But CDA required that CUC's Board accept the deal. Therefore, it is critical that CUC sign the deal with the authority of a Board. My directive below has provided 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. CUC is approaching a crisis due to its lack of qualified trained and professional staff, addressed above. The crisis will produce an inability to generate power; and to meet federal legal requirements. Action is needed immediately to forestall disaster.

a. The CNMI Legislature has subjected CUC to its broad restriction against the CNMI Government's employing foreign workers. 3 CMC § 4972(b)(5), as enacted by Public Law 15-108 and most recently amended by Public Law 16-14.

b. While they have created difficulties for CUC in the past, the restriction will shortly cause a disaster. CUC's contract with Aggreko for temporary electric power generation expires in September 2009, eliminating a 15-MW security cushion for CUC power generation. Soon CUC will have to insure that its power plants are operating properly and ready to generate upon demand, until the remaining members of a Board can be identified, confirmed, and convened for business.

c. But CUC does not have sufficient staff levels to operate and maintain the Saipan and Rota power generation facilities. It will take at least a month to hire qualified staff. CUC's electric power rehabilitation of the main power plant facilities requires 16 additional skilled workers who are familiar with the engines at the plants and can commence work with the engines immediately.

d. Presently CUC is overworking its technical staff. Over pay period numbers 2 through 11 of the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who have each worked 40 or more hours of overtime in a pay period. This condition is extreme. Such excessive hours result in inefficiencies and poor work quality, and can lead to dangerous mistakes. Workers cannot continue to perform adequately.

e. CUC has taken extra measures to recruit staff, but has been unable to fill these positions with permanent residents or citizen employees possessing the education, training and experience required.

f. CUC is also subject to the two federal Stip Orders, which demand technical performance on dozens of timelines, with no excuses for CUC's inability to find qualified workers. Performance is required for the water, wastewater and oil disposal functions discussed in this Executive Order.

g. CUC has only about a month left to solve this critical staffing problem, which is due solely to the Legislative prohibition. The required workers are

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available as nonresident workers, and cost-effectively so. It will take a few weeks to advertise positions, interview and hire.

- h. Thus, relief from the prohibition of hiring foreign national workers is necessary to ensure the delivery of uninterrupted power, water, and wastewater services to the people of the Commonwealth.
- i. There is no more time period. For several months the legislature has been advised of CUC's personnel shortfalls. On July 7, CUC submitted a proposed bill that if effected would give CUC the required relief to fill professional, engineering, technical, and trade positions. The Legislature has not passed the bill despite CUC's request for immediate legislation. There is no alternative to providing this immediate relief other than an order from the Governor. Inaction will produce a disaster in which CUC is unable to provide its critical community services.

14. 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;

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- (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:

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.

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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

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: Reserved.

Directive 7: Reserved.

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Directive 8: Reserved.

Directive 9: CUC shall notify as soon as possible by email after each procurement

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.

b: Matters: Subject of the procurement; contractors and/or suppliers; amounts

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

Direct (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.~~

business of CUC, pending the earlier of either (1) the confirmation and convening of an operating CUC Board, or (2) the

3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original) 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."

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

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

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".

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. 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".

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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. 1 CMC § 7403(a); 3 CMC § 5121(c). 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 30th day of July 2009.

BENIGNO R. FITIAL
Governor

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. 1 CMC § 7403(a); 3 CMC § 5121(c). 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 30th day of July 2009.

BENIGNO R. FITIAL
Governor