



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2009-08**

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DECLARATION OF A STATE OF DISASTER EMERGENCY:

5 **COMMONWEALTH UTILITIES CORPORATION'S**
6 **IMMINENT GENERATION AND OTHER FAILURE AND THE NEED**
7 **TO PROVIDE IMMEDIATE RELIABLE POWER DURING REPAIRS**

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CONTINUATION #13

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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.

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20 This Executive Order is intended to, and does, continue in effect the Governor's preceding
21 disaster emergency declarations on this matter, EO 2008-10, -13, -17, -20 through -22., and EO
22 2009-01 through -07, 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.

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I find that:

1. All findings and conclusions of EO 2008-10, -13, -17, -20 through -22 and of EO 2009-01 through -07 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 3 qualified operators have been hired. At the same time CUC lost another 3 plant employees, 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.
- g. Starting on August 31, all of Aggreko's 18 generators will be shut off. The CUC system will be adjusted through September 11, when the Aggreko gensets will be disconnected from CUC's system. Thereafter, the Aggreko installation will be removed, the site returned to at least as good a condition as when Aggreko began operation, and CUC will generate its own power.

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 in this area warrants removing this concern from the scope of this Executive Order.

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").

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. CUC will begin the overhaul of PP #1 unit DE-5 on September 7. In October four other units will undergo overhaul during the ensuing 12-month period.
 - 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. 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. 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 after August 31: PP #4 generates 14 MW. PP #4, as an IPP, is not subject to the Legislature's limitation on foreign workers.
 - 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. Two Rota units will undergo overhaul.
- j. CUC has lost 2 senior accountants plus a related specialist, 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. But, with the suspension of the ban on new foreign workers from EO-12, CUC is taking steps to hire needed staff at the power plants and elsewhere in the company.

- 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. As a result of the July Directive #10, suspending the limitations on CUC hiring foreign workers, CUC has been able to hire qualified technical employees.
- l. There is no indication that any of the above manpower situation will be resolved in the next month without continuation in effect of this EO and Directive #10. See below. However, the Aggreko situation should resolve after Aggreko leaves and the site is decommissioned.

7. The water/wastewater progress warrants removing this concern from the scope of this Executive Order, except for issues relating to proper staffing of the Divisions and, particularly, meeting the requirements of the federal Stipulated Order #1. While the Divisions face important challenges, these do not rise to the level of disaster emergency alone. As long as the Divisions can hire competent staff and receive power from the Power Division, they can function.

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 as it relates to Aggreko will be resolved before Aggreko leaves and the site decommissioned 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 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. In its most recent LEAC order, of April 2, 2009, the Commonwealth Public Utilities Commission modestly reduced electric 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.

11. 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 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.

g. The CDA matter is before the Commission on its September 3, 2009, agenda.

h. Once the Aggreko matter has been resolved, and the Commission acts on the CDA matter, I will need to examine the scope of the Executive Director's authority and the tasks before him in order to determine whether to terminate this Executive Order and its directives, notably Directive #9.

13. As described above, 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.

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 less than a month left to solve this critical staffing problem, which is due solely to the Legislative prohibition. The required workers are 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 Legislative relief coming. For months CUC has repeatedly asked the Legislature for such relief. CUC submitted a bill in July. The Legislature has declined to respond. There is no alternative to providing this relief other than an order from the Governor. Inaction will produce a disaster in which CUC is unable to provide its critical community services.
- j. My Directive # 10 was designed to avert this crisis. Once the Aggreko matter has been resolved, I will need to examine the CUC employment situation and the affected statute to determine whether to terminate this Executive Order and its directives.

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;
- (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.

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.

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.

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

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Declaration of Disaster Emergency: CUC Continuation 13

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.”

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”.

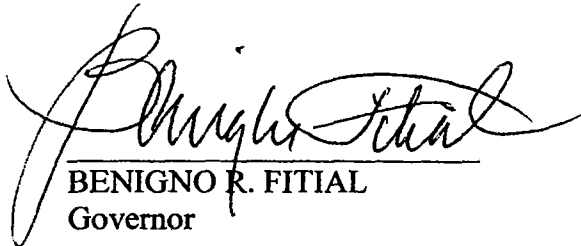
By today’s disaster emergency declaration, I intend to enable CUC, within the intent of Pub. L. 16-9, to continue to implement the temporary power contract which it signed. The purpose is to make the electric system as reliable as practicable, as soon as practicable, during the period of repair of CUC’s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

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Declaration of Disaster Emergency: CUC Continuation 13

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 28th day of August 2009.



BENIGNO R. FITIAL
Governor

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