



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Eloy S. Inos**  
Lt. Governor

1     **EXECUTIVE ORDER 2009-13**

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

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**COMMONWEALTH UTILITIES CORPORATION'S**

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**IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO**

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**PROVIDE IMMEDIATE RELIABLE POWER, WATER AND WASTEWATER**

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**SERVICES**

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**CONTINUATION #17**

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I, ELOY S. INOS, pursuant to the authority vested in me as Acting Governor of the

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

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

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

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

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

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poses to the Commonwealth of the Northern Mariana Islands.

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

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preceding disaster emergency declarations on this matter, EO 2009-01 through -09, and 11-12,

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except as specifically modified. As more fully stated below, this Executive Order shall expire on

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the 31st day following the date of my signature. The following findings and conclusions further

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support continuation of the Declaration and issuance of directives.

1 **FINDINGS**

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3 I find that:

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

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8 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

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

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

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

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

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

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

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7. Without CUC electricity:

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

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

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

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

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

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

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

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

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

1 appears to be ending with no direct hits on the CNMI and our power distribution system.  
2 Accelerating improvements to the T & D system ,with proper staff under an Emergency Order,  
3 would allow CUC to "harden" the system in anticipation of a bigger storm event. The  
4 alternative, in a more serious storm, is CUC's inability to recover in any reasonable time period.  
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6 15. Further, utility industry safety margins for isolated, island systems typically require a  
7 reserve equal to the capacity of the two largest generating units; in CUC's case this would be  
8 another 15 MW of load, equivalent to the departed Aggreko temporary units. Meeting this  
9 reserve requirement means CUC must have an adequate repair and maintenance staff.  
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11 16. The Legislature, through 3 CMC § 4972(5), as amended by PL 16-14 (Aug. 27, 2008), has  
12 limited CUC's ability to hire technical staff; allowing up to 19 foreign workers only. The CUC  
13 Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such  
14 persons as are necessary for operations, *except as otherwise limited by other law*. 4 CMC §  
15 8123(h).  
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17 17. PMIC at PP #4 and Telesource on Tinian, as Independent Power Producers (IPPs), are not  
18 subject to the Legislature's limitation on foreign workers.  
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20 18. There are not enough technical specialists at CUC to get the power generation work done,  
21 particularly specialists with experience in the type of engines that CUC uses. CUC believes that  
22 the vast majority of skill sets must come from non-US personnel.  
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24 19. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding  
25 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after  
26 interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator  
27 candidates were US citizens.  
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29 20. CUC has hired some local staff recently thanks to the aggressive steps of CUC HR, the  
30 Executive Director and Directive 10.  
31

32 21. CUC, as of this month, has completed the hiring of the skilled trade technicians needed on  
33 Saipan for power plant operations and maintenance. For Rota, CUC has announced the need for  
34 a mechanic-operator and an electrical operator. As more units begin working after the  
35 rehabilitations are largely complete, CUC will need more staff to operate and maintain them.  
36 For the immediate future, CUC needs to maintain its complement of skilled workers.  
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38 22. The impact of an inadequate workforce would be three-fold:  
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- 1           a.     First, there would be a direct negative effect on the existing consumers. There  
2                     would be brownouts, or area blackouts, with the above-mentioned loss of service.  
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- 4           b.     Second, the power plants would again degrade, producing more of these outages.  
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- 6           c.     Third, there would be an indirect effect, increasing rates over the longer term,  
7                     because small consumers would have to shoulder more of the fixed costs of the  
8                     CUC system. First, there would be loss of large customers. By contrast, if the  
9                     hotels were to become part of the system, they could help pay CUC fixed costs,  
10                    which would lower everyone else's rates. The hotels need reliable, 24/7 power.  
11                    But with unreliable power, CUC would be unable to convince large commercial  
12                    customers, particularly the hotels, to join, or rejoin, its system. Second, would  
13                    come additional expenses. If CUC fails to meet federal court deadlines for the  
14                    stipulated orders, the Court could appoint a federal receiver and its consulting  
15                    team – with all expenses charged to CUC customers. Thus, the indirect effect of  
16                    an inadequate workforce would be to boost rates.  
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18     23. Rota's status today is precarious and financially un-sustainable. Rota has recently suffered  
19     blackouts from inadequate generator maintenance. The power plant's other facilities and the  
20     island's distribution system similarly need the attentions of additional manpower. The Rota  
21     power plant needs additional generating sets to come on line, as there are only 1.5 dependable  
22     sets in the plant. The third of two feeders is powered by a private resort at a cost of  
23     \$200,000/month to CUC. The revenues from the customers on this feeder fall far below this  
24     cost. CUC is negotiating with a Mainland supplier for a new generating set, with funding from  
25     the US Department of the Interior. The present alternative for Rota is akin to Saipan's recent  
26     Aggreko situation – purchasing higher cost, reliable power from the Rota Resort.  
27

28     24. Since EO 2009-8 in August, and the suspension of the harmful legislative employment  
29     restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and  
30     Rota power generation facilities. CUC needs to be able to hire the workers it needs when it  
31     needs them. Otherwise, if CUC had to discharge these workers its staffing levels would return to  
32     those which overworked its limited staff. For example, over pay period numbers 2 through 11 of  
33     the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who each  
34     worked 40 or more hours of overtime in a pay period. This condition is extreme, and a repeat  
35     can result in inefficiencies and poor work quality. It can lead to dangerous mistakes, producing  
36     injury or death.  
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38     25. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The  
39     Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set

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

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

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

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

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

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

1 workers for the clean-up. Failure to correct this situation could harm the nearby environment,  
2 CUC's ability to generate electricity properly, and the assurances given pursuant to Stip Order 2.  
3 CUC has begun the process to hire a Oil Technical Manager.  
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6 **Complying with the federal court order on managing the water and wastewater systems**  
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8 **30. As long as the Water and Wastewater Divisions can hire competent staff and receive power**  
9 **from the Power Division, they can function.**

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

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

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

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36 **34. Sewage lift Station failures continue, with most pumping stations having only one of two**  
37 **required pumps installed. CUC has issued a contract to purchase 30 additional pumps, however**  
38 **the lead time between issuance of the contract and pump arrival is over six months, so that CUC**  
39 **is still approximately three months out from pump arrival.**  
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1 35. CUC Engineer staff shortages continue to hamper CUC's ability to anticipate and fix  
2 technical problems. While CUC's Water/Wastewater Division employs four engineers, the poor  
3 condition of the CUC sanitation assets requires at least two more engineers. But, significant  
4 engineering resources are already focused on addressing EPA Stip Order I issues. These issues  
5 include staffing plans, pre-treatment programs, materials management programs, customer  
6 inventory, and cross-connection control programs. Recruitment and retention of engineering  
7 staff to meet these challenges is difficult.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot  
2 take a critical step toward solvency and the ability to borrow to finance its work.  
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5 **Forestalling corporate paralysis**  
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7 47. A critical concern is that the CUC Act's constricted scope of authority for the Executive  
8 Director, and the complementary daily management by a host of Board volunteers, would  
9 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before  
10 CUC.  
11

12 48. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC  
13 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and  
14 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133  
15 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and  
16 property), demonstrates that the Executive Director is to be left with little more to do than  
17 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70  
18 million/year corporation, on a day-to-day basis. This includes such decision-making as  
19 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning  
20 work crews, connecting customers, deciding on making repairs, collecting debts, complying with  
21 the details of federal and CPUC regulatory requirements, making and funding long-term  
22 technical power and water/wastewater plans, and insuring that, on a day-to-day basis, the power  
23 and water flow and the sewage is treated.  
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25 49. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and  
26 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –  
27 with or without a Board in place. The complex technical problems listed above simply cannot be  
28 managed on a day-to-day basis by a group of non-expert volunteers.  
29

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29  
30  
31 **CONCLUSION AND ORDER**

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

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

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

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

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

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

16  
17 3 CMC § 5121(f)(1)-(3).

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

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

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

31  
32  
33 **DIRECTIVES**

34  
35 I direct the following:

36  
37 Directive 1: Deleted.

38  
39 Directive 2: Deleted.

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

1 Directive 3: Deleted.

2  
3 Directive 4: Deleted.

4  
5 Directive 5: Deleted.

6  
7 Directive 6: Deleted.

8  
9 Directive 7: Deleted.

10  
11 Directive 8: Deleted.

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

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

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

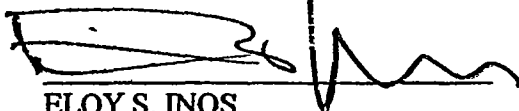
30  
31 3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original; ~~strikeout~~  
32 is deliberately added) That is, the following language is suspended: “provided that direct or  
33 manpower hire of foreign national workers shall not exceed nineteen (19) employees. This  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

EO 2009-13

Declaration of Disaster Emergency: CUC Continuation 17

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

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

11  
12  
13 

14  
15 ELOY S. INOS  
16 Acting Governor  
17

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