



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2010-01**

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3
4 **DECLARATION OF A STATE OF DISASTER EMERGENCY:**

5 COMMONWEALTH UTILITIES CORPORATION'S
6 IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO
7 PROVIDE IMMEDIATE RELIABLE POWER, WATER AND WASTEWATER
8 SERVICES

9
10 **CONTINUATION #18**

11
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.

19
20 This Executive Order is intended to, and does, continue in effect portions of the Governor's
21 preceding disaster emergency declarations on this matter, EO 2009-01 through -09, and 11-13,
22 except as specifically modified. As more fully stated below, this Executive Order shall expire on
23 the 31st day following the date of my signature. The following findings and conclusions further
24 support continuation of the Declaration and issuance of directives.

1 **FINDINGS**

2
3 I find that:

4
5 1. All findings and conclusions of EO 2009-01 through -09, and 11-13 are incorporated by
6 reference, except as specifically varied in this Executive Order.

7
8 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

9
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.

18
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.

26
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.

36
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.
3

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

10
11 7. Without CUC electricity:

- 12
- 13 a. most CNMI economic activity would come to a halt, the courts would soon close,
14 much refrigeration and air conditioning would end, and the airports and ports
15 would be forced to rely on emergency generation and the limited, expensive oil
16 supply for it;
17
 - 18 b. the CNMI's health and safety would immediately be at risk, since traffic signals
19 and street lighting would cease to function, emergency, fire and police facilities
20 and their communications systems, and the Hospital and island clinics would have
21 to rely on limited oil supplies for emergency generation and then cease
22 functioning, much refrigeration of food and medicines would end, as would air
23 conditioning for the elderly and medically fragile;
24
 - 25 c. the public schools and the Northern Marianas College would close. Other
26 educational institutions would close as their backup oil supplies for emergency
27 generators were exhausted; and
28
 - 29 d. water and sewage treatment would soon end. One of CUC's largest electric
30 customers is the combined CUC Water and Wastewater Divisions. CUC is the
31 sole supplier of electricity for these systems. CUC's water system relies on
32 electricity to maintain the system pressure needed to avoid the backflow of
33 pathogens, to chlorinate, and to pump, store and distribute water supplies. CUC's
34 wastewater system requires electricity to collect, pump, process, treat and
35 discharge sewage. The lack of electricity could result in sewage overflows,
36 contamination of land and water and rendering unsafe the CNMI's beaches,
37 which are also principal tourist destinations.
38
39

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. 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 under way.

11. In effect, CUC management, with generous federal financial assistance, has brought 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 have ended 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.
5

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.
10

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).
16

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.
19

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.
23

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.
28

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 has completed the hiring of the skilled trade technicians needed on Saipan for power
33 plant operations and maintenance. For Rota, CUC has announced the need for a
34 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.
37

38 22. The impact of an inadequate workforce would be three-fold:
39

- 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.
3
4 b. Second, the power plants would again degrade, producing more of these outages.
5
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.
17

18 23. Rota's status today is precarious and financially un-sustainable. Rota has suffered blackouts
19 from inadequate generator maintenance. The power plant's other facilities and the island's
20 distribution system similarly need the attentions of additional manpower. The Rota power plant
21 needs additional generating sets to come on line, as there are only 1.5 dependable sets in the
22 plant. The third of two feeders is powered by a private resort at a cost of \$200,000/month to
23 CUC. The revenues from the customers on this feeder fall far below this cost. CUC has
24 negotiated with a Mainland supplier for a new generating set, with funding from the US
25 Department of the Interior. The present alternative for Rota is akin to Saipan's recent Aggreko
26 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.
37

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.

3
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**

11
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.

18
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.

29
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 onto 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 have been 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 an Oil Technical Manager.
4

5
6 **Complying with the federal court order on managing the water and wastewater systems**
7

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.

10
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. 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.
20

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.
30

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.
35

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 two months out from pump arrival.
40

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 1 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.

8
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 at least six trained technicians will be
14 required – three experienced Level 3 wastewater treatment operators, two Level 3 wastewater
15 collections operators, and an instrumentation /low voltage controls specialist. An experienced
16 Water/Wastewater Division operations manager will also be required.

17
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.

21
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. Their rate case presentation will be filed by the end of January.

26
27
28 **Meeting US District Court and CNMI Public Utilities Commission requirements to**
29 **produce timely, accurate financial reports**

30
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.

36
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.

1
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.

7
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. It has also begun the process to hire a Chief Financial Officer.

14
15 43. CUC last year lost 2 senior accountants plus a related specialist. The IT and billing
16 department in August was reduced by one staffer, having advertised for a replacement for 4
17 weeks to no avail. While it appeared that CUC might have to look to employing foreign
18 technical specialists, CUC hired back 2 former accountants in September and brought a third
19 person aboard in October. All are US citizens. Nonetheless, CUC must have the flexibility to
20 hire competent professionals as needed. CUC is still short-staffed, and needs an accounting
21 assistant, an accounting specialist and a Chief Financial Officer.

22
23 44. To summarize: Without properly trained technical staff CUC's ability to supply power is at
24 risk. So is its ability to manage the rest of its systems, including its finances and accounting.
25 CUC's services could not be adequately staffed without August's lifting of the artificial
26 legislative regulation of CUC's workforce, in EO 2009-08, Directive #10, suspending the
27 limitations on CUC hiring foreign workers. It is obvious that the hiring authority must be
28 continued.

29
30 45. There is no indication that any of the above manpower situation will be resolved in the next
31 month without continuing in effect this EO and Directive #10.

32
33 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

34
35 46. **Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and
36 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors
37 in the position of day-to-day management of the corporation, and requires a complex mix of
38 technical, geographic and other qualifications for Board membership. There is no Board because
39

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.
3
4

5 **Forestalling corporate paralysis**
6

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, overseeing filings with the CPUC, including rate
23 cases, and insuring that, on a day-to-day basis, the power and water flow and the sewage is
24 treated.
25

26 49. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
27 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –
28 with or without a Board in place. The complex technical problems listed above simply cannot be
29 managed on a day-to-day basis by a group of non-expert volunteers.
30

31 50. No private or public utility company in the United States runs this way – with a group of
32 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in
33 the United States has mandated this form of corporate management for a public utility.
34

35 51. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
36 drafting error, and the People, through their elected representatives, wish their utility company to
37 continue to supply them with essential services at a reasonable cost, meeting industry standards.
38
39

1 **Fixing CUC's technical insolvency**

2
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.

8
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:
40

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.

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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.~~

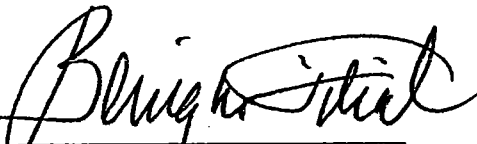
30
31 3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original; ~~strikeout~~
32 ~~is deliberately added~~) That is, the following language is suspended: “~~provided that direct or~~
33 ~~manpower hire of foreign national workers shall not exceed nineteen (19) employees. This~~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

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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 January, 2010.

11
12
13
14 
15 _____
16 BENIGNO R. FITIAL,
17 Governor

0 EO 2010-01 CUC Dis Decl (23Jan10).wpd