



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Eloy S. Inos**  
Lt. Governor

1     **EXECUTIVE ORDER 2010-02**  
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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 #19**  
11

12    I, ELOY S. INOS, pursuant to the authority vested in me as Acting 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    and EO 2010-01, 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 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, and EO 2010-01 are  
6 incorporated by 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. Incipient failures in the CUC water, wastewater  
12 and power transmission and distribution networks have underscored the importance of having in  
13 place a well-funded and functioning preventive maintenance program. Skilled workers and a  
14 responsive support system are key to the success of the operations, particularly of preventive  
15 maintenance. Presently CNMI law (PL 16-14) prohibits CUC from hiring any more non-US  
16 technical workers than the 19 skilled professionals recently with CUC. CUC has repeatedly  
17 asked the Legislature for relief from this statute regulating the Government's workforce, to no  
18 avail. Further, errors in wording in the CUC enabling legislation recently re-enacted, PL 16-17,  
19 as amended, would bar the Executive Director from day-to-day management of the corporation,  
20 effectively shutting CUC down. This EO eliminates these problems while it is in effect.

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

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

1 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission ("CPUC").  
2 The regulator has plenary power over CUC rates, charges, fees, operations and capital  
3 investments. CUC's failure to timely and competently meet CPUC orders and other  
4 requirements can result in severe rate discipline, and fines and other penalties. The Commission  
5 recently required CUC to meet certain requirements, including the filing of a technically  
6 complex rate case by the end of January 2010, or face fines of \$500 per day.

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

14  
15 7. Without CUC electricity:

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

1                   contamination of land and water and rendering unsafe the CNMI's beaches,  
2                   which are also principal tourist destinations.  
3  
4

5                   **Staffing CUC with the technical experts to permit continued electric service**  
6

7                   8. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain  
8                   and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to  
9                   buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in  
10                  September. In October four other units began required overhaul, which will take 12 months.  
11

12                 9. In November, the following work started: The critical replacement of the PP #1 anchor  
13                 bolts, in order to stop the shifting and vibration that has ruined the plant; and foundation repairs  
14                 to Engines 1 and 8. Shortly thereafter the replacement of turbochargers and oil-water separators  
15                 is to begin. All of this work is essential.  
16

17                 10. This work has been successful. Power Plant 1 Engines 1, 2, 3, 5, 6, 7 are available. Engine  
18                 8's critical foundation repair and anchor bolt replacement have been completed. The major  
19                 engine overhaul is under way.  
20

21                 11. In effect, CUC management, with generous federal financial assistance, has brought its  
22                 generation back from the brink of system failure. There are adequate reserves. If maintained  
23                 properly, the system can provide the CNMI's citizens and residents with adequate power.  
24

25                 12. Adequate technical staff is essential to this work. A major challenge to carrying out this  
26                 rehabilitation has been finding the trained technicians needed to carry out these rehabilitation  
27                 projects, and maintain and run the equipment. The technicians must be ready for service when  
28                 needed and their services must be affordable. Any significant reduction in CUC's present  
29                 technical workforce could seriously compromise CUC's ability to generate and distribute power.  
30

31                 13. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit  
32                 ("T & D"), including many vehicles, is dilapidated and bordering on being unsafe. There is an  
33                 insufficient number of skilled workers to operate T & D. The linemen must be trained to, and  
34                 skillful in, meeting US standards. The critical upcoming projects in T & D include the  
35                 replacement of the antiquated, rundown and unsafe vehicle fleet; the redesign of T & D using  
36                 national Rural Utility Service standards; the replacement/installation of insulators, transformers,  
37                 overcurrent protection, sectionalizers and the installation of efficient LED street lighting.  
38

39                 14. For example, Saipan's early-September brush with Typhoon Choi-Wan 15W that passed to  
40                 the north of Saipan, and typhoon Melor, which passed just north of Saipan in October,

1 underscoring the extreme vulnerability of CUC's power transmission and distribution (T & D)  
2 system. In September, over 150 calls of no- power and line faults were fielded by crews when,  
3 for a storm of this size, there should have been no more than a score. In October, fortunately, the  
4 CUC power system avoided a direct hit from a supertyphoon. Fortunately, the typhoon season  
5 appears to have ended with no direct hits on the CNMI and our power distribution system.  
6 Accelerating improvements to the T & D system, with proper staff under an Emergency Order,  
7 would allow CUC to "harden" the system in anticipation of a bigger storm event. The  
8 alternative, in a more serious storm, is CUC's inability to recover in any reasonable time period.

9  
10 15. Further, utility industry safety margins for isolated, island systems typically require a  
11 reserve equal to the capacity of the two largest generating units; in CUC's case this would be  
12 another 15 MW of load, equivalent to the departed Aggreko temporary units. Meeting this  
13 reserve requirement means CUC must have an adequate repair and maintenance staff.

14  
15 16. The Legislature, through 3 CMC § 4972(5), as amended by PL 16-14 (Aug. 27, 2008), has  
16 limited CUC's ability to hire technical staff, allowing up to 19 foreign workers only. The CUC  
17 Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such  
18 persons as are necessary for operations, *except as otherwise limited by other law.* 4 CMC §  
19 8123(h).

20  
21 17. PMIC at PP #4 and Telesource on Tinian, as Independent Power Producers (IPPs), are not  
22 subject to the Legislature's limitation on foreign workers.

23  
24 18. There are not enough technical specialists at CUC to get the power generation work done,  
25 particularly specialists with experience in the type of engines that CUC uses. CUC believes that  
26 the vast majority of skill sets must come from non-US personnel.

27  
28 19. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding  
29 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after  
30 interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator  
31 candidates were US citizens.

32  
33 20. CUC has hired some local staff recently thanks to the aggressive steps of CUC HR, the  
34 Executive Director and Directive 10.

35  
36 21. CUC has completed the hiring of the skilled trade technicians needed on Saipan for power  
37 plant operations and maintenance. For Rota, CUC has announced the need for a  
38 mechanic-operator and an electrical operator. As more units begin working after the  
39 rehabilitations are largely complete, CUC will need more staff to operate and maintain them.  
40 For the immediate future, CUC needs to maintain its complement of skilled workers.

1  
2 22. The impact of an inadequate workforce would be three-fold:  
3

- 4 a. First, there would be a direct negative effect on the existing consumers. There  
5 would be brownouts, or area blackouts, with the above-mentioned loss of service.  
6  
7 b. Second, the power plants would again degrade, producing more of these outages.  
8  
9 c. Third, there would be an indirect effect, increasing rates over the longer term,  
10 because small consumers would have to shoulder more of the fixed costs of the  
11 CUC system. First, there would be loss of large customers. By contrast, if the  
12 hotels were to become part of the system, they could help pay CUC fixed costs,  
13 which would lower everyone else's rates. The hotels need reliable, 24/7 power.  
14 But with unreliable power, CUC would be unable to convince large commercial  
15 customers, particularly the hotels, to join, or rejoin, its system. Second, would  
16 come additional expenses. If CUC fails to meet federal court deadlines for the  
17 stipulated orders, the Court could appoint a federal receiver and its consulting  
18 team – with all expenses charged to CUC customers. Thus, the indirect effect of  
19 an inadequate workforce would be to boost rates.  
20

21 23. Rota's status today is precarious and financially un-sustainable. Rota has suffered blackouts  
22 from inadequate generator maintenance. The power plant's other facilities and the island's  
23 distribution system similarly need the attentions of additional manpower. The Rota power plant  
24 needs additional generating sets to come on line, as there are only 1.5 dependable sets in the  
25 plant. The third of two feeders is powered by a private resort at a cost of \$200,000/month to  
26 CUC. The revenues from the customers on this feeder fall far below this cost. CUC has  
27 negotiated with a Mainland supplier for a new generating set, with funding from the US  
28 Department of the Interior. The present alternative for Rota is akin to Saipan's recent Aggreko  
29 situation – purchasing higher cost, reliable power from the Rota Resort.  
30

31 24. Since E0 2009-8 in August, and the suspension of the harmful legislative employment  
32 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and  
33 Rota power generation facilities. CUC needs to be able to hire the workers it needs when it  
34 needs them. Otherwise, if CUC had to discharge these workers its staffing levels would return to  
35 those which overworked its limited staff. For example, over pay period numbers 2 through 11 of  
36 the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who each  
37 worked 40 or more hours of overtime in a pay period. This condition is extreme, and a repeat  
38 can result in inefficiencies and poor work quality. It can lead to dangerous mistakes, producing  
39 injury or death.  
40

1 25. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The  
2 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set  
3 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6  
4 million-per-year benefit of terminating the Aggreko temporary power contract.

5  
6 26. CUC points out that the power distribution system is highly vulnerable because, like the  
7 sewer system, so much of the maintenance and replacement was deferred for one reason or  
8 another over the past 20 years. Since 1995, 26 villages on Saipan were identified as needing  
9 major improvements to the power lines; only five have seen those improvements. Power T & D  
10 fails in bits and pieces. One of the big pieces that failed in February 2010 was one of 12  
11 termination cables on the Kiya Substation (Transformer One). A power outage to the southern  
12 parts of Saipan lasted from one to five hours. CUC management states that the excellent  
13 response from the crews in both Power Generation and Power T & D demonstrated the  
14 importance of having skilled workers. The top two engineers were non-residents. Without this  
15 EO in place, given present statutes, it is unlikely CUC would be able to secure the services of  
16 such valuable individuals.

17  
18 27. The extended dry season this year (see below) means that vegetation must be cleared away  
19 from the lines early and often. Brush fires can damage the power lines, telephone facilities, and  
20 television cables. Meanwhile, CUC crews must replace failing insulator bolts and failing  
21 switches in order to avoid distribution-related power outages.

22  
23 28. CUC has demonstrated that the required workers are available as nonresident workers, and  
24 cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign  
25 national workers is necessary to ensure the delivery of uninterrupted power services to the  
26 people of the Commonwealth.

### 27 28 29 **Complying with the federal court order on disposal of used oil**

30  
31 29. CUC has taken concrete steps to address the storage and disposal of used oil, consonant  
32 with the federal court's Stip Order 2. Federal court Stipulated Order 2 relates to the used oil  
33 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.  
34 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an  
35 adequate complement of trained technical employees, CUC has believed that it can meet these  
36 requirements.

37  
38 30. A September inspection by the US Coast Guard (USCG) has resulted in the imposition of  
39 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional  
40 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean

1 from Power Plants 1, 2 and the power plant in Rota. Further, as of October, CUC has faced the  
2 following staffing needs in this area: It critically needs the resources to inspect and redesign the  
3 entire fuel storage, pumping and handling system in order to meet the more stringent  
4 requirements of today. The clean fuel storage tanks at Lower Base were originally designed for  
5 another application. The fuel line from the oil company's terminal is in danger of rupturing  
6 during a transfer; the pumping rate has to be reduced to prevent this. All of this requires trained  
7 staff.

8  
9 31. Serious deficiencies in the waste oil handling system at Lower Base have come to light in  
10 the past months and are being addressed by both CUC and EPA. One deficiency is that the oily  
11 water separators are not functioning as such because of the excessive amount of oil (as opposed  
12 to water) entering the system. As a result, oil was spilling onto the ground rather than being  
13 separated and skimmed off properly. Power Plant #1 has been sealed off to prevent any waste  
14 oil from leaving the plant and flowing into the oily water separators. To prevent oil from  
15 accumulating uncontained in the plant itself, emergency measures have been taken to store waste  
16 oil and to fabricate above-ground tanks. The oily water separators, pipes, holding tanks, and  
17 baffles are being cleaned out so that the entire system can be carefully inspected and  
18 re-engineered. All of the additional work is expensive. Regardless of who does the work  
19 initially, CUC staff, EPA contractors, or a combination thereof, CUC requires skilled, trained  
20 workers for the clean-up. Failure to correct this situation could harm the nearby environment,  
21 CUC's ability to generate electricity properly, and the assurances given pursuant to Stip Order 2.  
22 CUC has begun the process to hire an Oil Technical Manager.

23  
24 32. Incinerators play a crucial role in helping CUC meet Stip Order 2. The two incinerators at  
25 Lower Base (Power Plants 1 and 2) are now operating, and burning about 1000 gallons of used  
26 oil per day. This is double the rate from January. This EO has permitted Power Generation the  
27 flexibility of hiring skilled non-residents to not only repair and overhaul the generating sets, but  
28 fix such important auxiliary equipment as the incinerators.

29  
30 33. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court  
31 for the Mariana Islands which is highly critical of the progress in CUC's efforts to comply with  
32 Stip Order 2's requirements to solve the used oil situation.

### 33 34 35 **Complying with the federal court order on managing the water and wastewater systems**

36  
37 34. As long as the Water and Wastewater Divisions can hire competent staff and receive power  
38 from the Power Division, they can function.

39

1 35. The U.S. Department of Justice (“DoJ”), Environment and Natural Resources Division, has  
2 sued CUC in federal court to come into compliance with critical water and sewage treatment  
3 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) (“Stip Order  
4 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  
5 and (in September 2008) the U.S. Environmental Protection Agency (“EPA”) stipulated to this  
6 first of two orders lodged with the U.S. District Court on the date the Complaint was filed. This  
7 order requires CUC to implement a series of improvements to its water and wastewater systems  
8 that respond to years of neglect, for which it presently lacks the funds and the complete technical  
9 capability.

10  
11 36. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater  
12 Division must respond to acid damage in the asbestos cement piping system, the product of over  
13 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and  
14 metal infrastructure, so that key pipe systems have collapsed. December 18 saw the sixth failure  
15 in six months. Failures will continue until 10 miles of sewer pipe are replaced. But replacement  
16 involves complex excavations, avoiding electric, phone and water utilities, blocking traffic,  
17 stopping the infiltration of seawater (which damages treatment plant facilities), and pumping  
18 sewage around blocked and excavated areas. The Division has already far exceeded its repair  
19 budget.

20  
21 37. A sewer collapse occurred again in Chalan Kanoa this past month. This was the result of  
22 pipe thinning. The cost to repair the affected section is about \$90,000. Without this EO, says  
23 CUC, procurement would be even more difficult than it already is, with the contract to replace  
24 the sewer section taking months rather than days to consummate.

25  
26 38. The Sadog Tasi Wastewater Treatment Plant is being prepared by CUC wastewater crews  
27 in anticipation of a rehabilitation contract already awarded. Such preliminary work has to be  
28 conducted within strict parameters by properly trained technicians to prevent contamination of  
29 the environment.

30  
31 39. 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 40. 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 41. 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 42. Incipient failures include the failure of 98 submersible pumps in the water system over a  
10 period of twelve months. Higher grade stainless steel grates have to be specified that are resistant  
11 to pitting. The pitting causes the grates to fail and consequently the pump motors. CUC will  
12 need to purchase higher quality equipment, rather than the cheap units that fail prematurely.

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

22  
23 44. There are special reasons why the water system must be adequately staffed and maintained  
24 this year. This is an El Nino year. According to the Pacific ENSO bulletin forecast, February 1,  
25 2010, the CNMI dry season will bring below normal rainfalls and will extend to June 2010.

26 CUC must now go into an emergency mode, conserving water, accelerating water line  
27 replacements, and locating and repairing leaks. There will be greater danger of fires this  
28 coming year, but less water available to fight them.

29  
30 45. CUC also requires a constant supply of electricity to run its water and wastewater treatment  
31 systems. CUC has very limited on-site emergency generation capability, and for only portions  
32 of these systems.

33  
34 46. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing  
35 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost  
36 recovery for the water and wastewater systems through the processes of the CNMI Public  
37 Utilities Commission ("CPUC"). CUC filed a wastewater rate increase request, complete with  
38 hundreds of pages of written expert witness testimony and technical support on January 31,  
39 2010. The case is in the prehearing, discovery phase. The Commission is scheduled to address  
40 the filing in April.

1  
2  
3 47. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court  
4 for the Mariana Islands which is highly critical of the progress in CUC's efforts to comply with  
5 Stip Order 2's requirements to solve the water and wastewater situations.  
6

7  
8 **Meeting US District Court and CNMI Public Utilities Commission requirements to**  
9 **produce timely, accurate financial reports**  
10

11 48. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,  
12 beginning in September, 2009. The "IFP" must develop over time, becoming more than  
13 "interim". CUC cannot do this unless it has a staff of trained accounting and other financial  
14 experts who can gather data, put the data in the required form and generate the IFP and its later  
15 versions.  
16

17 49. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities  
18 Commission ("CPUC"). The CPUC is charged by statute to oversee carefully CUC's operations  
19 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC's  
20 water and wastewater systems.  
21

22 50. In electric and water/wastewater orders, of September 3 and November 20, 2009, the CPUC  
23 addressed CUC's inability to deliver complete on-time financial reports, requiring CUC, in  
24 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.'s  
25 09-1 and 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations  
26 during this year.  
27

28 51. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained  
29 accounting and other financial experts who can gather data, put the data in the required form and  
30 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting  
31 staff with the data required for their oversight. CUC has obligated itself to provide an updated,  
32 compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1,  
33 to the US District Court.  
34

35 52. CUC last year lost 2 senior accountants plus a related specialist. The IT and billing  
36 department in August was reduced by one staffer, having advertised for a replacement for 4  
37 weeks to no avail. While it appeared that CUC might have to look to employing foreign  
38 technical specialists, CUC hired back 2 former accountants in September and brought a third  
39 person aboard in October. All are US citizens. Nonetheless, CUC must have the flexibility to  
40 hire competent professionals as needed. CUC is still short-staffed, and needs an accounting

1 assistant, and an accounting specialist. On February 17, 2010, CUC's new Chief Financial  
2 Officer reported for duty.

3  
4 53. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court  
5 for the Mariana Islands which is highly critical of the progress in CUC's efforts to comply with  
6 Stip Order 2's requirements to provide timely and complete financial and other operating reports  
7 and plans.

8  
9 54. To summarize: Without properly trained technical staff CUC's ability to supply power is at  
10 risk. So is its ability to manage the rest of its systems, including its finances and accounting.  
11 CUC's services could not be adequately staffed without August's lifting of the artificial  
12 legislative regulation of CUC's workforce, in EO 2009-08, Directive #10, suspending the  
13 limitations on CUC hiring foreign workers. It is obvious that the hiring authority must be  
14 continued.

15  
16 55. There is no indication that any of the above manpower situation will be resolved in the next  
17 month without continuing in effect this EO and Directive #10.

18  
19  
20 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

21  
22 56. **Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and  
23 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors  
24 in the position of day-to-day management of the corporation, and requires a complex mix of  
25 technical, geographic and other qualifications for Board membership. There is no Board because  
26 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot  
27 take a critical step toward solvency and the ability to borrow to finance its work.

28  
29  
30 **Forestalling corporate paralysis**

31  
32 57. A critical concern is that the CUC Act's constricted scope of authority for the Executive  
33 Director, and the complementary daily management by a host of Board volunteers, would  
34 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before  
35 CUC.

36  
37 58. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC  
38 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and  
39 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133  
40 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and

1 property), demonstrates that the Executive Director is to be left with little more to do than  
2 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70  
3 million/year corporation, on a day-to-day basis. This includes such decision-making as  
4 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning  
5 work crews, connecting customers, deciding on making repairs, collecting debts, complying with  
6 the details of federal and CPUC regulatory requirements, making and funding long-term  
7 technical power and water/wastewater plans, overseeing filings with the CPUC, including rate  
8 cases, and insuring that, on a day-to-day basis, the power and water flow and the sewage is  
9 treated.

10  
11 59. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and  
12 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –  
13 with or without a Board in place. The complex technical problems listed above simply cannot be  
14 managed on a day-to-day basis by a group of non-expert volunteers.

15  
16 60. No private or public utility company in the United States runs this way – with a group of  
17 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in  
18 the United States has mandated this form of corporate management for a public utility.

19  
20 61. I can only conclude that the legislation's extraordinary structure for CUC is the result of a  
21 drafting error, and the People, through their elected representatives, wish their utility company to  
22 continue to supply them with essential services at a reasonable cost, meeting industry standards.

23  
24  
25 **Fixing CUC's technical insolvency**

26  
27 62. CUC has been unable to borrow money to run its operations since the inception of this State  
28 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books  
29 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115  
30 million. This situation may be corrected if the Executive Director is recognized to have the  
31 authority to correct it.

32  
33 63. Meanwhile, billings and collections are substantially below the levels required to prudently  
34 manage CUC's current operations and provide for system repairs, replacements and upgrades.  
35 For example, billings alone for water and wastewater are less than 70% of requirements to run  
36 those two systems.

37  
38 64. The booked CDA obligation has rendered CUC nominally insolvent. While CUC is deemed  
39 insolvent, CUC cannot borrow money. But CUC must be able to borrow money to bridge the  
40 gap between (a) the need to spend money on essential goods and services to provide electricity,

1 water and sewage service, and (b) the lagged collection of already-determined-insufficient  
2 revenues from the sale of those services.

3  
4 65. The CPUC, in its September 3 electric order, Docket No. 09-1, approved a CUC-CDA  
5 settlement converting the CDA debt to preferred stock. But the deal requires CUC's Board to  
6 agree to it.

7  
8 66. There is no Board. CUC has functioned without a Board of Directors, because it has had to.  
9 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no  
10 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find  
11 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.  
12 Nonetheless, CUC must continue to function, including borrowing money.

13  
14 67. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It  
15 also permits him to continue to run CUC, carefully manage cash to pay tens of millions of  
16 dollars annually for fuel oil and purchased power, and do all the things necessary to providing  
17 power, water and wastewater services, until the remaining members of a properly constituted  
18 Board can be identified, confirmed, and convened for business. In February 2010 the Executive  
19 Director delivered to CDA management the stock certificates required for the debt-equity  
20 conversion.

21  
22  
23 **Providing the basis for proper CPUC oversight**

24  
25 68. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act,  
26 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC  
27 activities, particularly financial activities.

28  
29 69. This extensive oversight satisfies the policy need for a body of arms-length, well-informed  
30 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's  
31 error-infused creation of a volunteer Board which would run the corporation on a day-to-day  
32 basis, becomes much less important than satisfying CPUC requirements.

33  
34 70. What becomes very important is CUC's capability to provide the CPUC with accurate and  
35 timely financial and accounting information. But such reporting is not possible without a  
36 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered  
37 Executive Director to lead them.

1 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

2  
3 71. There is no Legislative relief coming. For months CUC has repeatedly asked the  
4 Legislature for such relief, including submission of draft legislation in July. The Legislature has  
5 declined to respond. There is no alternative to providing this relief other than an order from the  
6 Governor. Inaction will produce a disaster in which CUC is unable to provide its critical  
7 community services. Directives # 9 and #10 were designed to avert this crisis. (The other  
8 Directives, #1 through #8, are no longer relevant, and were discontinued.)  
9

10 72. This Declaration is necessary to protect the health and safety of our children, our senior  
11 citizens, businesses and all other CNMI residents and visitors.  
12  
13

14 **CONCLUSION AND ORDER**

15  
16 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth  
17 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat  
18 facing the Commonwealth of the Northern Mariana Islands.  
19

20 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the  
21 issuance of Executive Directives setting forth the measures to be taken to address the State of  
22 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:  
23

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

26  
27 (1) Suspend the provisions of any regulatory statute prescribing the procedures  
28 for conduct of the Commonwealth's business, or the orders, rules, or regulations  
29 of any Commonwealth activity or agency, if strict compliance with the provision  
30 of any such statute, order, rule or regulation would in any way prevent, hinder, or  
31 delay necessary action in coping with the emergency;  
32

33 (2) Utilize all available resources of the Commonwealth as reasonably necessary  
34 to cope with the disaster emergency of the Commonwealth;

35  
36 (3) Transfer the direction, personnel, or functions of the Commonwealth  
37 departments and agencies or units thereof for the purpose of performing or  
38 facilitating emergency services;  
39

40 3 CMC § 5121(f)(1)-(3).

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

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

10  
11 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the  
12 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

13  
14  
15 **DIRECTIVES**

16  
17 I direct the following:

18  
19 Directive 1: Deleted.

20  
21 Directive 2: Deleted.

22  
23 Directive 3: Deleted.

24  
25 Directive 4: Deleted.

26  
27 Directive 5: Deleted.

28  
29 Directive 6: Deleted.

30  
31 Directive 7: Deleted.

32  
33 Directive 8: Deleted.

34  
35 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board,  
36 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)  
37 the confirmation and convening of an operating CUC Board, or (2) the termination of the  
38 authority of this order. In particular, the Executive Director shall have full power and authority  
39 to agree to swap CDA debt and related obligations for preferred stock and related features and  
40 rights.

EO 2010-02  
Declaration of Disaster Emergency: CUC Continuation 19

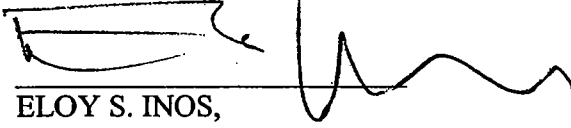
1 Directive 10: The following strike-out-formatted language of the quoted provision of the  
2 following statute regulating government employment is, as indicated, suspended immediately:  
3

4 (b) Transition exemptions for government employment. . . . (5) Commonwealth  
5 Utilities Corporation. Engineers, and professional employees in technical or trade  
6 areas may be exempted and CUC may contract with manpower services or  
7 directly hire power plant mechanics and utility technicians who may be  
8 exempted; ~~provided that direct or manpower hire of foreign national workers shall~~  
9 ~~not exceed nineteen (19) employees. This exemption shall expire on September~~  
10 ~~30, 2010, and no contract may provide to the contrary.~~  
11

12 3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original; ~~strikeout~~  
13 ~~is deliberately added~~) That is, the following language is suspended: “~~provided that direct or~~  
14 ~~manpower hire of foreign national workers shall not exceed nineteen (19) employees. This~~  
15 ~~exemption shall expire on September 30, 2010, and no contract may provide to the contrary.~~”  
16

17 The effect of the suspension shall be that CUC shall have the complete power, without regard to  
18 citizenship or otherwise lawful immigration status, to hire engineers, professional employees in  
19 technical or trade areas, power plant mechanics and utility technicians, either directly or  
20 indirectly. These professional employees may include, but shall not be limited to, sanitarians,  
21 engineers, accountants, financial experts, information technology specialists, mechanics,  
22 electricians, well-drillers, pipefitters, plumbers, wastewater treatment facilities operators, and  
23 other trades technicians.  
24

25  
26 Done this 22nd day of February, 2010.

27  
28  
29  
30 

31  
32 ELOY S. INOS,  
33 Acting Governor

0 EO 2010-02 CUC Dis Decl (22Feb10).wpd