



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

EXECUTIVE ORDER 2010-04

DECLARATION OF A STATE OF DISASTER EMERGENCY:

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

CONTINUATION #21

I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the inability of the Commonwealth Utilities Corporation (CUC) to provide critical power generation service to the CNMI and the extreme, immediate and imminent threat such condition poses to the Commonwealth of the Northern Mariana Islands.

This Executive Order is intended to, and does, continue in effect portions of the Governor's preceding disaster emergency declarations on this matter, EO 2009-01 through -09, and 11-13, and EO 2010-03, except as specifically modified. As more fully stated below, this Executive

Order shall expire on the 31st day following the date of my signature. The following findings and conclusions further support continuation of the Declaration and issuance of directives.

FINDINGS

I find that:

1. All findings and conclusions of EO 2009-01 through -09, and 11-13, and EO 2010-01 through -03 are incorporated by reference, except as specifically varied in this Executive Order.

MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION

2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers has continued to place CUC operations at risk. Incipient failures in the CUC water, wastewater and power transmission and distribution networks have underscored the importance of having in place a well-funded and functioning preventive maintenance program. Skilled workers and a responsive support system are key to the success of the operations, particularly of preventive maintenance. Presently CNMI law (PL 16-14) prohibits CUC from hiring any more non-US technical workers than the 19 skilled professionals recently with CUC. CUC has repeatedly asked the Legislature for relief from this statute regulating the Government's workforce, to no avail. Further, errors in wording in the CUC enabling legislation recently re-enacted, PL 16-17, as amended, would bar the Executive Director from day-to-day management of the corporation, effectively shutting CUC down. This EO eliminates these problems while it is in effect.

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

4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction of the US District Court and the US EPA, pursuant to two consent, or "stipulated", orders.

- a. The first requires the upgrade and smooth functioning in virtually all aspects of CUC's water and wastewater divisions. The second requires CUC to properly eliminate over 400,000 gallons of used oil and to institute measures to avoid uncontrolled buildup of such inventories. Failure to meet the requirements of the federal court orders could subject CUC and the CNMI to substantial fines

and charges, and, in the extreme, to a federal takeover of their finances. Presently CUC is “accruing” substantial fines. Most of the fines have not been levied; but they could be. The EPA has, however, levied one fine, in the amount of \$29,000.

- b. On February 24, 2010, the US District Court entered an additional stipulated order. It provided, among other things, that a professionally-developed Interim Financial Plan (“IFP”) would be provided to the US EPA within 30 days, by March 26, 2010. This additional stipulation requires CUC to meet a number of deadlines, each involving the application of technical expertise. CUC has timely filed the IFP. It now has the task of implementing the IFP and meeting these deadlines. Failure to meet these requirements would subject CUC to the described sanctions.
- c. Of concern to CUC are the tight deadlines for Stipulated Order 2 (Oil Management) projects that are funded by a \$4.05 million CIP grant awarded in February, 2010, by the US Department of the Interior’s Office of Insular Affairs. The funding is to assist CUC is disposing of the used waste oil discussed in this Executive Order. Failure to meet the deadlines could subject CUC to additional EPA sanctions.
- d. The coordination of the approvals from the various agencies calls for a responsive procurement system at CUC, including the trained technical staff to implement the system.

5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission (“CPUC”). The regulator has plenary power over CUC rates, charges, fees, operations and capital investments. CUC’s failure to timely and competently meet CPUC orders and other requirements can result in severe rate discipline, and fines and other penalties. For example, the Commission recently required CUC to meet certain requirements, including the filing of a technically complex rate case (Docket No. 10-01) by the end of January 2010, or face fines of \$500 per day.

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.

7. Without CUC electricity:

- 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 to 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.

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 began. 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 ended with no direct hits on the CNMI and our power distribution system. Accelerating improvements to the T & D system, with proper staff under an Emergency Order, would allow CUC to "harden" the system in anticipation of a bigger storm event. The alternative, in a more serious storm, is CUC's inability to recover in any reasonable time period. The year 2010 will see a new typhoon season.

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

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

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

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

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

20. CUC has hired some local staff in time thanks to the aggressive steps of CUC HR, the Executive Director and Directive 10.

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

22. The impact of an inadequate workforce would be four-fold:

- a. First, there would be a direct negative effect on the existing consumers. There would be brownouts, or area blackouts, with the above-mentioned loss of service.

- b. Second, the power plants would again degrade, producing more of these outages.
- c. Third, there would be an indirect effect, increasing rates over the longer term, because small consumers would have to shoulder more of the fixed costs of the CUC system. First, there would be loss of large customers. By contrast, if the hotels were to become part of the system, they could help pay CUC fixed costs, which would lower everyone else's rates. The hotels need reliable, 24/7 power. But with unreliable power, CUC would be unable to convince large commercial customers, particularly the hotels, to join, or rejoin, its system. Second, would come additional expenses. If CUC fails to meet federal court deadlines for the stipulated orders, the Court could appoint a federal receiver and its consulting team – with all expenses charged to CUC customers. Thus, the indirect effect of an inadequate workforce would be to boost rates.
- d. Fourth, with the recovery of the world economy, advise CUC experts, oil prices can be expected to rise. If CUC's generators become less efficient, because technical staff are unavailable to maintain CUC's engines' efficiency, that much more oil would be needed to generate a given amount of electricity. The price rise will thereby harm CUC's customers and electricity-dependent services with higher rates.

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

24. Since EO 2009-8 in August, and the suspension of the harmful legislative employment restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and Rota power generation facilities. CUC needs to be able to hire the workers it needs when it needs them. Otherwise, if CUC had to discharge these workers, its staffing levels would return to those which overworked its limited staff. For example, over pay period numbers 2 through 11 of the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who each worked 40 or more hours of overtime in a pay period. This condition is extreme, and a repeat

can result in inefficiencies and poor work quality. It can lead to dangerous mistakes, producing injury or death.

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

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

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

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

Complying with the federal court order on disposal of used oil

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

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

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

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

33. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court for the Mariana Islands which is highly critical of the progress in CUC's efforts to comply with Stip Order 2's requirements to solve the used oil situation. Since that report CUC has contracted with the GRESCO firm to remove waste oil from Tank 104. The EPA has strongly urged CUC to accelerate the removal, bringing the "empty" date forward from October 2010 to

June 2010. EPA has also required CUC to purchase and install special double-walled "iso" tanks for use in the project.

Complying with the federal court order on managing the water and wastewater systems

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

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

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

37. A sewer collapse occurred again in Chalan Kanoa in February. This was the result of pipe thinning. The cost to repair the affected section is about \$90,000, as CUC must typically replace the 200-foot run between manholes. In March the sewer (collection) line running down As Terlaje sprang a leak, and flowed intermittently on the swale alongside the main road. CUC investigated and undertook repairs. Without this EO, says CUC, procurement for such repair work would be even more difficult than it already is, with the contract to replace sewer section taking months rather than days to consummate.

38. The Sadog Tasi Wastewater Treatment Plant is being prepared by CUC wastewater crews in anticipation of a rehabilitation contract already awarded. Such preliminary work has to

be conducted within strict parameters by properly trained technicians to prevent contamination of the environment.

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

40. Sewage lift station failures continue, with most pumping stations having only one of two required pumps installed. CUC has issued a contract to purchase 30 additional pumps, however the lead time between issuance of the contract and pump arrival is over six months, so that CUC still awaits the ordered pumps.

41. CUC engineer staff shortages continue to hamper CUC's ability to anticipate and fix technical problems. While CUC's Water/Wastewater Division employs four engineers, the poor condition of the CUC sanitation assets requires at least two more engineers. But, significant engineering resources are already focused on addressing EPA Stip Order issues. These issues include staffing plans, pre-treatment programs, materials management programs, customer inventory, and cross-connection control programs. Recruitment and retention of engineering staff to meet these challenges is difficult.

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

43. CUC must be able to hire the staff to perform the required technical functions. The Water and Wastewater Divisions cannot carry out their missions without adequate staff. These staff are essential to producing clean, safe water supplies and removal of stormwater and sewage in a safe, timely manner. While the bulk of CUC employees are drawn from local and US populations, the Division management estimates that at least six trained technicians will be required – three experienced Level 3 wastewater treatment operators, two Level 3 wastewater collections operators, and an instrumentation /low voltage controls specialist. An experienced Water/Wastewater Division operations manager will be required. CUC has also announced a vacancy of the position for Deputy Director for Water and Wastewater. Seven candidates will be reviewed and evaluated by a team which includes the Executive Director.

44. There are special reasons why the water system must be adequately staffed and maintained this year. This is an El Nino year. According to the Pacific ENSO bulletin forecast, February 1, 2010, the CNMI dry season will bring below normal rainfalls and will extend to June 2010. CUC must now go into an emergency mode, conserving water, accelerating water line replacements, and locating and repairing leaks. There will be greater danger of fires this coming year, but less water available to fight them.

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

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

47. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court for the Mariana Islands which is highly critical of the progress in CUC's efforts to comply with Stip Order 2's requirements to solve the water and wastewater situations. A hearing before the Court resulted in the additional stipulated order addressed elsewhere in this Executive Order.

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

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

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

50. In electric and water/wastewater orders, of September 3 and November 20, 2009, the CPUC addressed CUC's inability to deliver complete on-time financial reports, requiring CUC, in effect, to enhance its staff capability to provide critical regulatory information. (Docket No.'s 09-1 and 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations during this year, including in the current rate case, Docket No. 10-01. CUC's Executive Director is a lead witness in the case, having filed written testimony (on January 31, 2010) and supplemental testimony (on April 1, 2010).

51. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained accounting and other financial experts who can gather data, put the data in the required form and generate the required reports and filings with the CPUC, as well as provide the CPUC consulting staff with the data required for their oversight. CUC has obligated itself to provide an updated, compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1, to the US District Court, and most recently, according to the February 24, 2010, additional stipulated order.

52. CUC's procurement system is lengthy and complex. A relic of other decades, with their own challenges, it requires extensive experience in specifications and procurement process, and often must be coordinated with the CNMI's separate procurement procedures, adding months to processes that must respond to the immediate challenges outlined in this Executive Order.

53. CUC last year lost 2 senior accountants plus a related specialist. The IT and billing department in August was reduced by one staffer, having advertised for a replacement for 4 weeks to no avail. While it appeared that CUC might have to look to employing foreign technical specialists, CUC hired back 2 former accountants in September and brought a third person aboard in October. All are US citizens. Nonetheless, CUC must have the flexibility to hire competent professionals as needed. CUC is still short-staffed, and needs an accounting assistant, and an accounting specialist. On February 17, 2010, CUC's new Chief Financial Officer reported for duty.

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

55. To summarize: Without properly trained technical staff CUC's ability to supply power is at risk. So is its ability to manage the rest of its systems, including its complex procurement, its finances and accounting. CUC's services could not be adequately staffed without August's lifting of the artificial legislative regulation of CUC's workforce, in EO 2009-08, Directive #10,

suspending the limitations on CUC hiring foreign workers. It is obvious that the hiring authority must be continued.

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

MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE

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

Forestalling corporate paralysis

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

59. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and property), demonstrates that the Executive Director is to be left with little more to do than provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70 million/year corporation, on a day-to-day basis. This includes such decision-making as purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning work crews, connecting customers, deciding on making repairs, collecting debts, complying with the details of federal and CPUC regulatory requirements, making and funding long-term technical power and water/wastewater plans, overseeing filings with the CPUC, including rate cases, and insuring that, on a day-to-day basis, the power and water flow and the sewage is treated.

60. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and a public health care crisis, as corporate activity and the Hospital's operations ground to a halt – with or without a Board in place. The complex technical problems listed above simply cannot be managed on a day-to-day basis by a group of non-expert volunteers. For example, the Executive Director must be available to renegotiate CUC's fuel oil contract this month, and insure that supplies reach Tinian and Rota, as well as Saipan. Also, as a key witness in CPUC Docket 10-01 the Executive Director must be enabled to testify in favor of the requested rate increase in order to fully present the required evidence.

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

62. CUC has applied for and become eligible for millions of dollars of US ARRA grants, which can substantially benefit the CNMI's infrastructure and create jobs. CUC has been awarded \$11 million in grants from the EPA. But developing the grant requests and implementing the grants requires management attention and expertise, part of a professionally-run business organization. CUC has placed three of five ARRA grants out for bid, so that these benefits can start flowing. CUC must evaluate its needs, and hire and contract for the needed technical specialists to manage the grant-funded projects. This requires a corporate structure capable of making and sustaining important decisions.

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

Fixing CUC's technical insolvency

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

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

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

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

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

69. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It also permits him to continue to run CUC, carefully manage cash to pay tens of millions of dollars annually for fuel oil and purchased power, and do all the things necessary to providing power, water and wastewater services, until the remaining members of a properly constituted Board can be identified, confirmed, and convened for business. In February 2010 the Executive Director delivered to CDA management the stock certificates required for the debt-equity conversion. CUC has just received the fully executed copy of the Stipulated Notice of Dismissal (with prejudice) in CDA v. CUC, Superior Court Civil Action No. 01-0248D (4/21/2010), which the CPUC has required that CDA provide to make effective the conversion of the CDA debt to preferred equity. Soon, CUC must be able to demonstrate to the financial community that it is properly managed, so that it can borrow and pay back long term capital.

Providing the basis for proper CPUC oversight

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

71. This extensive oversight satisfies the policy need for a body of arms-length, well-informed citizens to watchdog the activities of this, the Commonwealth's key resource.

Thus, the statute's error-infused creation of a volunteer Board which would run the corporation on a day-to-day basis, becomes much less important than satisfying CPUC requirements.

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

CRISIS FROM THE LACK OF LEGISLATIVE ACTION

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

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

CONCLUSION AND ORDER

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

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

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

(1) Suspend the provisions of any regulatory statute prescribing the procedures for conduct of the Commonwealth's business, or the orders, rules, or regulations of any Commonwealth activity or agency, if strict compliance with the provision

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of any such statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;

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

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

3 CMC § 5121(f)(1)-(3).

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

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

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

DIRECTIVES

I direct the following:

Directive 1: Deleted.

Directive 2: Deleted.

Directive 3: Deleted.

Directive 4: Deleted.

Directive 5: Deleted.

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Directive 6: Deleted.

Directive 7: Deleted.

Directive 8: Deleted.

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

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

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

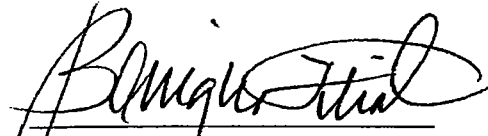
3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original; strikeout is deliberately added) That is, the following language is suspended: “provided that direct or manpower hire of foreign national workers shall not exceed nineteen (19) employees. This exemption shall expire on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

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

Done this 23rd day of April, 2010.



BENIGNO R. FITIAL
Governor