



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2010-06**

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DECLARATION OF A STATE OF DISASTER EMERGENCY:

5

COMMONWEALTH UTILITIES CORPORATION'S

6

IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO

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PROVIDE IMMEDIATE RELIABLE POWER, WATER AND WASTEWATER

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SERVICES

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10 **CONTINUATION #23**

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I, **BENIGNO R. FITIAL**, pursuant to the authority vested in me as Governor of the

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

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

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

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

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

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poses to the Commonwealth of the Northern Mariana Islands.

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

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preceding disaster emergency declarations on this matter, EO 2009-01 through -09, and 11-13,

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and EO 2010-04, except as specifically modified. As more fully stated below, this Executive

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Order shall expire on the 31st day following the date of my signature. The following findings

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and conclusions further support continuation of the Declaration and issuance of directives.

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 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board, Page 21 of 22

 Directive 10: The following strike-out-formatted language of the quoted provision of the following statute
 regulating government employment is, as indicated, suspended Page 21 of 22

1 **FINDINGS**

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3 I find that:

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5 1. All findings and conclusions of EO 2009-01 through -09, and 11-13, and EO 2010-01
6 through -05 are incorporated by reference, except as specifically varied in this Executive Order.

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10 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

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

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

31
32 4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction
33 of the US District Court and the US EPA, pursuant to two consent, or "stipulated", orders.

- 34
35 a. The first requires the upgrade and smooth functioning in virtually all aspects of
36 CUC's water and wastewater divisions. The second requires CUC to properly
37 eliminate over 400,000 gallons of used oil and to institute measures to avoid
38 uncontrolled buildup of such inventories. Failure to meet the requirements of the
39 federal court orders could subject CUC and the CNMI to substantial fines and
40 charges, and, in the extreme, to a federal takeover of their finances. Presently
41 CUC is "accruing" substantial fines. Most of the fines have not been levied; but

- 1 they could be. The EPA has, however, levied two fines, in the amount of \$29,000
2 and \$140,000 (June 2010 letter).
3
- 4 b. On February 24, 2010, the US District Court entered an additional stipulated
5 order. It provided, among other things, that a professionally-developed Interim
6 Financial Plan (“IFP”) would be provided to the US EPA within 30 days, by
7 March 26, 2010. This additional stipulation requires CUC to meet a number of
8 deadlines, each involving the application of technical expertise. CUC has timely
9 filed the IFP. It now has the task of implementing the IFP and meeting these
10 deadlines. Failure to meet these requirements would subject CUC to the
11 described sanctions.
12
- 13 c. Of concern to CUC are the tight deadlines for Stipulated Order 2 (Oil
14 Management) projects that are funded by a \$4.05 million CIP grant awarded in
15 February, 2010, by the US Department of the Interior’s Office of Insular Affairs.
16 The funding is to assist CUC is disposing of the used waste oil discussed in this
17 Executive Order. Failure to meet the deadlines could subject CUC to additional
18 EPA sanctions.
19
- 20 d. The coordination of the approvals from the various agencies calls for a responsive
21 procurement system at CUC, including the trained technical staff to implement
22 the system.
23
- 24 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission (“CPUC”).
25 The regulator has plenary power over CUC rates, charges, fees, operations and capital
26 investments. CUC’s failure to timely and competently meet CPUC orders and other
27 requirements can result in severe rate discipline, and fines and other penalties. For example, the
28 Commission required CUC to meet certain requirements, including the filing of a technically
29 complex rate case (Docket No. 10-01) by the end of January 2010, or face fines of \$500 per day.
30
- 31 6. CUC is the sole electricity supplier to the Government of the CNMI, including all public
32 safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the
33 CNMI’s businesses and homes. While some businesses and agencies own backup generators,
34 they are not generally organized to use the backups as permanent power sources; and the diesel
35 oil purchased to run these generators is substantially more expensive than that used for CUC
36 power.
37
- 38 7. Without CUC electricity:
39
- 40 a. most CNMI economic activity would come to a halt, the courts would soon close,
41 much refrigeration and air conditioning would end, and the airports and ports

1 would be forced to rely on emergency generation and the limited, expensive oil
2 supply for it;

3
4 b. the CNMI's health and safety would immediately be at risk, since traffic signals
5 and street lighting would cease to function, emergency, fire and police facilities
6 and their communications systems, and the Hospital and island clinics would have
7 to rely on limited oil supplies for emergency generation and then cease
8 functioning, much refrigeration of food and medicines would end, as would air
9 conditioning for the elderly and medically fragile;

10
11 c. the public schools and the Northern Marianas College would close. Other
12 educational institutions would close as their backup oil supplies for emergency
13 generators were exhausted; and

14
15 d. water and sewage treatment would soon end. One of CUC's largest electric
16 customers is the combined CUC Water and Wastewater Divisions. CUC is the
17 sole supplier of electricity for these systems. CUC's water system relies on
18 electricity to maintain the system pressure needed to avoid the backflow of
19 pathogens, to chlorinate, and to pump, store and to distribute water supplies.
20 CUC's wastewater system requires electricity to collect, pump, process, treat and
21 discharge sewage. The lack of electricity could result in sewage overflows,
22 contamination of land and water and rendering unsafe the CNMI's beaches,
23 which are also principal tourist destinations.



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

28
29 8. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain
30 and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to
31 buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in
32 September. In October four other units began required overhaul, which will take 12 months.

33
34 9. In November, the following work started: The critical replacement of the PP #1 anchor
35 bolts, in order to stop the shifting and vibration that has ruined the plant; and foundation repairs
36 to Engines 1 and 8. Shortly thereafter the replacement of turbochargers and oil-water separators
37 began. All of this work is essential.

38
39 10. This work has been successful. Power Plant 1 Engines 1, 2, 3, 5, 6, 7 are available. Engine
40 8's critical foundation repair and anchor bolt replacement have been completed. The major
41 engine overhaul is under way.

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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. Fortunately, a federal DOI/OIA grant has paid for some lineman training in June. 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 2009 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. Fortunately, last year's 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. Nonetheless, for the second month in a row, outages due to Power Transmission & Distribution were extremely low: May saw only 11 minutes; April just one minute. These are the lowest such figures in the last seven years, reflecting an extraordinary accomplishment for an understaffed, overworked CUC work group.

16. 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.

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

6
7 18. PMIC at PP #4 and Telesource on Tinian, and the Rota Resort on Rota, as Independent
8 Power Producers (IPPs), are not subject to the Legislature's limitation on foreign workers.

9
10 19. There are not enough technical specialists at CUC to get the power generation work done,
11 particularly specialists with experience in the type of engines that CUC uses. CUC believes that
12 the vast majority of skill sets must come from non-US personnel.

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

18
19 21. CUC has hired some local staff in time thanks to the aggressive steps of CUC HR, the
20 Executive Director and Directive 10.

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

27
28 23. With generous grant funding and the use of in-house technical specialists and outside
29 contractors, CUC has undertaken substantial rehabilitation of its power system. Future projects
30 include replacing turbochargers, conserving and reclaiming used lube and waste oil, retrofitting
31 streetlights with low-wattage LED's, and restoring power generation on Rota. Even if
32 contractors do the work, CUC technical staff must research and prepare bid documents, review
33 technical proposals, and oversee the work.

34
35 24. The bottom line on CUC's technical work has been a substantial increase in reliability,
36 specifically the availability of CUC's generation. CUC's transmission and distribution has
37 similarly improved – January 2010 saw 10 hours 44 minutes of outages, April saw one minute.
38 It has been critical to this latter improvement that CUC had the skilled, trained work force to
39 maintain power lines.
40

1 25. But even as power becomes more reliable, CUC must reduce its distribution losses from the
2 reported level of 8%. With world oil prices increasing CUC's power costs, such losses already
3 account roughly for \$4.8 million, which CNMI customers must cover. CUC requires a team of
4 skilled technicians to find and eliminate power theft and line losses.

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6 □

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

- 8
- 9 a. First, there would be a direct negative effect on the existing consumers. There
10 would be brownouts, or area blackouts, with the above-mentioned loss of service.
 - 11
 - 12 b. Second, the power plants would again degrade, producing more of these outages.
 - 13
 - 14 c. Third, there would be an indirect effect, increasing rates over the longer term,
15 because small consumers would have to shoulder more of the fixed costs of the
16 CUC system. First, there would be loss of large customers. By contrast, if the
17 hotels were to become part of the system, they could help pay CUC fixed costs,
18 which would lower everyone else's rates. The hotels need reliable, 24/7 power.
19 But with unreliable power, CUC would be unable to convince large commercial
20 customers, particularly the hotels, to join, or rejoin, its system. Second, would
21 come additional expenses. If CUC fails to meet federal court deadlines for the
22 stipulated orders, the Court could appoint a federal receiver and its consulting
23 team -- with all expenses charged to CUC customers. Thus, the indirect effect of
24 an inadequate workforce would be to boost rates.
 - 25
 - 26 d. Fourth, with the recovery of the world economy, advise CUC experts, oil prices
27 can be expected to rise. If CUC's generators become less efficient, because
28 technical staff are unavailable to maintain CUC's engines' efficiency, that much
29 more oil would be needed to generate a given amount of electricity. The price
30 rise will thereby harm CUC's customers and electricity-dependent services with
31 higher rates.
 - 32

33 27. Rota's status today is precarious and financially un-sustainable. Rota has suffered blackouts
34 from inadequate generator maintenance. The power plant's other facilities and the island's
35 distribution system similarly need the attentions of additional manpower. The Rota power plant
36 needed additional generating sets to come on line, as there are only 1.5 dependable sets in the
37 plant. The third of two feeders was, until June 2010, powered by the Rota Resort private resort
38 at a cost of \$200,000/month to CUC. The revenues from the customers on this feeder fall far
39 below this cost. CUC has negotiated with a Mainland supplier for a new generating set, with
40 funding from the US Department of the Interior. The alternative for Rota was akin to Saipan's
41 recent Aggreko situation -- purchasing higher cost, reliable power from the Rota Resort.

1 Therefore, in June 2010, two 0.9 MW Cummins generating sets were transported from Power
2 Plant 4 on Saipan to Rota in order to augment the power generation. These two generating sets
3 should be commissioned by July 1, 2010.
4

5 28. Since EO 2009-8 in August, and the suspension of the harmful legislative employment
6 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and
7 Rota power generation facilities. CUC needs to be able to hire the workers it needs when it
8 needs them. Otherwise, if CUC had to discharge these workers, its staffing levels would return
9 to those which overworked its limited staff. For example, over pay period numbers 2 through 11
10 of the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who
11 each worked 40 or more hours of overtime in a pay period. This condition is extreme, and a
12 repeat can result in inefficiencies and poor work quality. It can lead to dangerous mistakes,
13 producing injury or death.
14

15 29. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The
16 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set
17 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6
18 million-per-year benefit of terminating the Aggreko temporary power contract.
19

20 30. CUC points out that the power distribution system is highly vulnerable because, like the
21 sewer system, so much of the maintenance and replacement was deferred for one reason or
22 another over the past 20 years. Since 1995, 26 villages on Saipan were identified as needing
23 major improvements to the power lines; only five have seen those improvements. Power T & D
24 fails in bits and pieces. One of the big pieces that failed in February 2010 was one of 12
25 termination cables on the Kiya Substation (Transformer One). A power outage to the southern
26 parts of Saipan lasted from one to five hours. CUC management states that the excellent
27 response from the crews in both Power Generation and Power T & D demonstrated the
28 importance of having skilled workers. The top two engineers were non-residents. Without this
29 EO in place, given present statutes, it is unlikely CUC would be able to secure the services of
30 such valuable individuals.
31

32 31. The extended dry season this year (see below) means that vegetation must be cleared away
33 from the lines early and often. Brush fires can damage the power lines, telephone facilities, and
34 television cables. Meanwhile, CUC crews must replace failing insulator bolts and failing
35 switches in order to avoid distribution-related power outages.
36

37 32. CUC has demonstrated that the required workers are available as nonresident workers, and
38 cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign
39 national workers is necessary to ensure the delivery of uninterrupted power services to the
40 people of the Commonwealth.
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Complying with the federal court order on disposal of used oil

33. 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.

34. 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.

35. 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.

36. 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

1 flexibility of hiring skilled non-residents to not only repair and overhaul the generating sets, but
2 fix such important auxiliary equipment as the incinerators.

3
4 37. 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 solve the used oil situation. Since that report CUC has contracted
7 with the GRESCO firm to remove waste oil from Tank 104. The EPA has strongly urged CUC
8 to accelerate the removal, bringing the "empty" date forward from October 2010 to June 2010.
9 EPA has also required CUC to purchase and install special double-walled "iso" tanks for use in
10 the project.

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13 **☐**

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

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

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19 39. The U.S. Department of Justice ("DoJ"), Environment and Natural Resources Division, has
20 sued CUC in federal court to come into compliance with critical water and sewage treatment
21 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order
22 1"). See also http://www.usdoj.gov/enrd/Consent_Decrees.html. In July 2008 CUC, the CNMI
23 and (in September 2008) the U.S. Environmental Protection Agency ("EPA") stipulated to this
24 first of two orders lodged with the U.S. District Court on the date the Complaint was filed. This
25 order requires CUC to implement a series of improvements to its water and wastewater systems
26 that respond to years of neglect, for which it presently lacks the funds and the complete technical
27 capability.

28
29 40. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater
30 Division must respond to acid damage in the asbestos cement piping system, the product of over
31 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and
32 metal infrastructure, so that key pipe systems have collapsed. December 18 saw the sixth failure
33 in six months. Failures will continue until 10 miles of sewer pipe are replaced. But replacement
34 involves complex excavations, avoiding electric, phone and water utilities, blocking traffic,
35 stopping the infiltration of seawater (which damages treatment plant facilities), and pumping
36 sewage around blocked and excavated areas. The Division has already far exceeded its repair
37 budget.

38
39 41. Providing and improving water service presents new challenges. With DEQ's classification
40 of Rota's cave-based domestic water as "surface water" CUC has had to expand water quality
41 monitoring and testing, requiring more manpower and more equipment. In May CUC

1 experienced failures in water pipes as the Cross-Island road project's contractors' equipment
2 broke pipes, requiring CUC staff to be pulled from other jobs, with required equipment, to
3 address the emergency. A substantial section of the As Terlaje sewer line collapsed, requiring an
4 emergency procurement to hire an outside firm to make the repair.

5
6 42. Sewer line collapses are not uncommon, typically the result of pipe thinning. CUC
7 investigates and undertakes repairs. Without this EO, says CUC, procurement for such repair
8 work would constitute a significant impediment.

9
10 43. The Sadog Tasi Wastewater Treatment Plant is undergoing long-planned rehabilitation.
11 But, without such redundant equipment as a clarifier, CUC must devote extra resources to the
12 facility while the contractor repairs the only unit. Such work has to be conducted within strict
13 parameters by properly trained technicians to prevent contamination of the environment.

14
15 44. The Division also needs serviceable vehicles to move its workers to and from job sites.
16 Presently six vehicles are in such bad shape that they are dangerous. The resulting reduced
17 vehicle problem raises costs and hurts service, as staff and materials cannot be brought to job
18 sites on time.

19
20 45. Sewage lift station failures continue, requiring CUC crews to install newly received pumps.
21 Approximately 17 of the 45 CUC sewage lift station are in poor condition and require significant
22 rehabilitation. CUC anticipates an EPA grant for the rehabilitation of these lift stations. But
23 that construction will not occur for approximately one year.

24
25 46. CUC engineer staff shortages continue to hamper CUC's ability to anticipate and fix
26 technical problems. While CUC's Water/Wastewater Division employs four engineers, the poor
27 condition of the CUC sanitation assets requires at least two more engineers. But, significant
28 engineering resources are already focused on addressing EPA Stip Order 1 issues. These issues
29 include staffing plans, pre-treatment programs, materials management programs, customer
30 inventory, and cross-connection control programs. CUC water and wastewater engineers are the
31 lead with several on-going construction projects, which also stretches the limited engineering
32 resources, including the Well Isolation Project, Sadog Tasi Sewer Plant Rehabilitation, and
33 Agingan Sewage Treatment Plant Rehabilitation. Recruitment and retention of engineering staff
34 to meet these challenges is difficult.

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

1 48. CUC must be able to hire the staff to perform the required technical functions. The Water
2 and Wastewater Divisions cannot carry out their missions without adequate staff. These staff are
3 essential to producing clean, safe water supplies and removal of stormwater and sewage in a
4 safe, timely manner. While the bulk of CUC employees are drawn from local and US
5 populations, the Division management estimates that at least six trained technicians will be
6 required – three experienced Level 3 wastewater treatment operators, two Level 3 wastewater
7 collections operators, and an instrumentation /low voltage controls specialist. An experienced
8 Water/Wastewater Division operations manager will be required. CUC requires a chemist to
9 meet federal requirements, but has been unable to find a qualified one in the local population, or
10 a cost-effective professional from the US Mainland; a foreign hire has been identified, however.
11 CUC has also announced a vacancy of the position for Deputy Director for Water and
12 Wastewater. Seven candidates will be reviewed and evaluated by a team which includes the
13 Executive Director.
14

15 49. There are special reasons why the water system must be adequately staffed and maintained
16 this year. This is an El Nino year. As predicted in the Pacific ENSO bulletin forecast back in
17 February 1, 2010, the CNMI dry season has brought below normal rainfalls and will extend to
18 June 2010. CUC has gone into an emergency mode, conserving water, accelerating water line
19 replacements, and locating and repairing leaks. There has been greater danger of fires this
20 coming year, but less water available to fight them. For Capital Hill, the drought and a tank
21 rehabilitation project required that the distribution system in this area be reconfigured in June
22 2010 in order to supply water at least two hours per day to Wireless Ridge. Upper reaches of
23 Navy Hill were without water for several days until leaks were repaired. Unfortunately, the
24 leaks were noted several months before, but lack of manpower and funds prevented the
25 pressurization required for leak repair.
26

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

31 51. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing
32 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost
33 recovery for the water and wastewater systems through the processes of the CNMI Public
34 Utilities Commission (“CPUC”). CUC filed a wastewater rate increase request, complete with
35 hundreds of pages of written expert witness testimony and technical support on January 31,
36 2010. The case is in the prehearing, discovery phase. The Commission addressed the filing in
37 May, authorizing a June 21, 2010, rate increase in wastewater rates and full cost recovery for the
38 electric costs of the water and wastewater divisions.
39

40 52. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court
41 for the Mariana Islands which is highly critical of the progress in CUC’s efforts to comply with

1 Stip Order 2's requirements to solve the water and wastewater situations. A hearing before the
2 Court resulted in the additional stipulated order addressed elsewhere in this Executive Order.

3
4
5 ¶
6 **Meeting US District Court and CNMI Public Utilities Commission requirements to**
7 **produce timely, accurate financial reports**

8
9 53. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
10 beginning in September, 2009. The "IFP" must develop over time, becoming more than
11 "interim". CUC cannot do this unless it has a staff of trained accounting and other financial
12 experts who can gather data, put the data in the required form and generate the IFP and its later
13 versions.

14
15 54. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities
16 Commission ("CPUC"). The CPUC is charged by statute to oversee carefully CUC's operations
17 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC's
18 water and wastewater systems.

19
20 55. In electric and water/wastewater orders, of September 3 and November 20, 2009, the CPUC
21 addressed CUC's inability to deliver complete on-time financial reports, requiring CUC, in
22 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.'s
23 09-1 and 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations
24 during this year, including in the current rate case, Docket No. 10-01. CUC's Executive Director
25 was a lead witness in the case, having filed written testimony (on January 31, 2010) and
26 supplemental testimony (on April 1, 2010).

27
28 56. 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, and most recently, according to the February 24, 2010, additional
34 stipulated order.

35
36 57. CUC's procurement system is lengthy and complex. A relic of other decades, with their
37 own challenges, it requires extensive experience in specifications and procurement process, and
38 often must be coordinated with the CNMI's separate procurement procedures, adding months to
39 processes that must respond to the immediate challenges outlined in this Executive Order.
40

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

9
10 59. CUC's decades-old financial system accounting computer failed repeatedly during the last
11 two months, including for a complete week. Already-overcommitted finance and accounting staff
12 were required to put in days of extra time in hand-recording customer payments and hand-
13 generating bills.

14
15 60. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court
16 for the Mariana Islands which was highly critical of the progress in CUC's efforts to comply
17 with Stip Order 2's requirements to provide timely and complete financial and other operating
18 reports and plans.

19
20 61. To summarize: Without properly trained technical staff CUC's ability to supply power is at
21 risk. So is its ability to manage the rest of its systems, including its complex procurement, its
22 finances and accounting. CUC's services could not be adequately staffed without August's
23 lifting of the artificial legislative regulation of CUC's workforce, in EO 2009-08, Directive #10,
24 suspending the limitations on CUC hiring foreign workers. It is obvious that the hiring authority
25 must be continued.

26
27 62. There is no indication that any of the above manpower situation will be resolved in the next
28 month without continuing in effect this EO and Directive #10.

29
30 ☐
31 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

32
33 63. **Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and
34 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors
35 in the position of day-to-day management of the corporation, and requires a complex mix of
36 technical, geographic and other qualifications for Board membership. There is no Board because
37 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot
38 take a critical step toward solvency and the ability to borrow to finance its work.

39
40 ☐

1 **Forestalling corporate paralysis**

2
3 64. A critical concern is that the CUC Act's constricted scope of authority for the Executive
4 Director, and the complementary daily management by a host of Board volunteers, would
5 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before
6 CUC.

7
8 65. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC
9 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and
10 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133
11 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and
12 property), demonstrates that the Executive Director is to be left with little more to do than
13 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70
14 million/year corporation, on a day-to-day basis. This includes such decision-making as
15 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning
16 work crews, connecting customers, deciding on making repairs, collecting debts, complying with
17 the details of federal and CPUC regulatory requirements, making and funding long-term
18 technical power and water/wastewater plans, overseeing filings with the CPUC, including rate
19 cases, and insuring that, on a day-to-day basis, the power and water flow and the sewage is
20 treated.

21
22 66. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
23 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –
24 with or without a Board in place. The complex technical problems listed above simply cannot be
25 managed on a day-to-day basis by a group of non-expert volunteers. For example, the Executive
26 Director must be available to renegotiate CUC's fuel oil contract this month, and insure that
27 supplies reach Tinian and Rota, as well as Saipan. Also, as a key witness in CPUC Docket 10-
28 01 the Executive Director must be enabled to testify in favor of the requested rate increase in
29 order to fully present the required evidence.

30
31 67. 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 68. CUC has applied for and become eligible for millions of dollars of US ARRA grants,
36 which can substantially benefit the CNMI's infrastructure and create jobs. CUC has been
37 awarded \$11 million in grants from the EPA. But developing the grant requests and
38 implementing the grants requires management attention and expertise, part of a professionally-
39 run business organization. CUC has placed three of five ARRA grants out for bid, so that these
40 benefits can start flowing. CUC must evaluate its needs, and hire and contract for the needed

1 technical specialists to manage the grant-funded projects. This requires a corporate structure
2 capable of making and sustaining important decisions.

3
4 69. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
5 drafting error, and the People, through their elected representatives, wish their utility company to
6 continue to supply them with essential services at a reasonable cost, meeting industry standards.

7
8  **Fixing CUC's technical insolvency**

9
10
11 70. CUC has been unable to borrow money to run its operations since the inception of this State
12 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books
13 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115
14 million. This situation may be corrected if the Executive Director is recognized to have the
15 authority to correct it. Part of this situation, the CDA relationship, has been corrected precisely
16 because the Executive Director was empowered by this Executive Order to do so.

17
18 71. Meanwhile, billings and collections are substantially below the levels required to prudently
19 manage CUC's current operations and provide for system repairs, replacements and upgrades.
20 For example, billings alone for water and wastewater are less than 70% of requirements to run
21 those two systems. This will change as the PUC's June rate increase takes effect.

22
23 72. The booked CDA obligation rendered CUC nominally insolvent. While CUC was deemed
24 insolvent, CUC cannot borrow money. But CUC must be able to borrow money to bridge the
25 gap between (a) the need to spend money on essential goods and services to provide electricity,
26 water and sewage service, and (b) the lagged collection of already-determined-insufficient
27 revenues from the sale of those services.

28
29 73. The CPUC, in its September 3, 2009, electric order, Docket No. 09-1, approved a CUC-
30 CDA settlement converting the CDA debt to preferred stock. But the deal has required CUC's
31 Board to agree to it.

32
33 74. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
34 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
35 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find
36 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
37 Nonetheless, CUC must continue to function, including borrowing money.

38
39 75. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It
40 also permits him to continue to run CUC, carefully manage cash to pay tens of millions of
41 dollars annually for fuel oil and purchased power, and do all the things necessary to providing

1 power, water and wastewater services, until the remaining members of a properly constituted
2 Board can be identified, confirmed, and convened for business. In February 2010 the Executive
3 Director delivered to CDA management the stock certificates required for the debt-equity
4 conversion. CUC has received the fully executed copy of the Stipulated Notice of Dismissal
5 (with prejudice) in CDA v. CUC, Superior Court Civil Action No. 01-0248D (4/21/2010), which
6 the CPUC has required that CDA provide to make effective the conversion of the CDA debt to
7 preferred equity. CUC has sought Public Utilities Commission final approval. The Commission
8 provided that approval in the rate order authorized at its May 28, 2010, business meeting. Soon,
9 CUC must be able to demonstrate to the financial community that it is properly managed, so that
10 it can borrow and pay back long term capital.

11 □

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

13
14
15 76. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act,
16 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC
17 activities, particularly financial activities.

18
19 77. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
20 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's
21 error-infused creation of a volunteer Board which would run the corporation on a day-to-day
22 basis, becomes much less important than satisfying CPUC requirements.

23
24 78. What becomes very important is CUC's capability to provide the CPUC with accurate and
25 timely financial and accounting information. But such reporting is not possible without a
26 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
27 Executive Director to lead them.

28 □

29 **Addressing a critical financial challenge**

30
31
32 79. CUC faced a financial crisis this past month. It was critically short of funds to buy oil.
33 Without oil CUC would be forced to shut down its generation, bringing the economy of the
34 CNMI to a halt, and endangering health and welfare as electricity-dependent operations ceased —
35 sewage treatment, water pumping, traffic lights and security lighting, air conditioning for the
36 elderly, infants, and other medically fragile persons, and equipment at the CNMI's Hospital and
37 health clinics. The principal reason for the shortage was the Government's failure to pay
38 millions of dollars of utility bills. The Government was in arrears about four months on its bills.
39 Only by eliminating restrictions on the Governor's power to reprogram funds to address this
40 issue was crisis averted.

1 80. CUC only had a day or two's worth of purchased oil to power its system because it lacked
2 the funds to buy oil from its sole, cash-only supplier.

3
4 81. The Executive Director was required to spend substantial time on a concentrated basis
5 interacting with high CNMI government officials as well as developing contingency plans for
6 the orderly shut-down of the CUC system.

7
8 82. Fortunately, the Administration was able to develop a multi-stage plan to enable the
9 payment of enough CNMI Government bills, and the reprogramming of CUC funds to forestall
10 disaster. The Government is still, however, about two months in arrears on its bills.

11
12 83. In order to facilitate this solution, the Governor issued a Declaration of Disaster Emergency
13 (June 8, 2010).

14
15 84. Development of this temporary financial rescue plan would not have been possible without
16 the dedicated, focused effort of a properly empowered Executive Director. Such financial
17 conditions may continue unless the Government, and other large CUC customers, can be brought
18 current, and remain current, on their bills. This may present a challenge for CUC, given the
19 stressed financial conditions of the Commonwealth. A properly empowered Executive Director
20 will be required to address this challenge.

21
22 **☐**

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

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

31
32 86. This Declaration is necessary to protect the health and safety of our children, our senior
33 citizens, businesses and all other CNMI residents and visitors.

34
35
36 **☐**

37 **CONCLUSION AND ORDER**

38
39 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth
40 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
41 facing the Commonwealth of the Northern Mariana Islands.

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

4
5 (f) In addition to any other powers conferred upon the Governor by law, the Governor
6 may, during a state of disaster emergency:

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

13
14 (2) Utilize all available resources of the Commonwealth as reasonably necessary
15 to cope with the disaster emergency of the Commonwealth;

16
17 (3) Transfer the direction, personnel, or functions of the Commonwealth
18 departments and agencies or units thereof for the purpose of performing or
19 facilitating emergency services;

20
21 3 CMC § 5121(f)(1)-(3).

22
23 By today's disaster emergency declaration, I intend to enable CUC to continue to provide
24 necessary service to the people of the Commonwealth.

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

32
33 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the
34 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

1 **DIRECTIVES**

2
3 I direct the following:

4
5 Directive 1: Deleted.

6
7 Directive 2: Deleted.

8
9 Directive 3: Deleted.

10
11 Directive 4: Deleted.

12
13 Directive 5: Deleted.

14
15 Directive 6: Deleted.

16
17 Directive 7: Deleted.

18
19 Directive 8: Deleted.

20
21 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board,
22 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)
23 the confirmation and convening of an operating CUC Board, or (2) the termination of the
24 authority of this order. In particular, the Executive Director shall have full power and authority
25 to agree to swap CDA debt and related obligations for preferred stock and related features and
26 rights.

27
28 Directive 10: The following strike-out-formatted language of the quoted provision of the
29 following statute regulating government employment is, as indicated, suspended immediately:

30
31 (b) Transition exemptions for government employment. . . . (5) Commonwealth
32 Utilities Corporation. Engineers, and professional employees in technical or trade
33 areas may be exempted and CUC may contract with manpower services or
34 directly hire power plant mechanics and utility technicians who may be
35 exempted; ~~provided that direct or manpower hire of foreign national workers shall~~
36 ~~not exceed nineteen (19) employees. This exemption shall expire on September~~
37 ~~30, 2010, and no contract may provide to the contrary.~~

38
39 3 CMC § 4972(b)(5), as most recently amended by PL 16-14, (Underlining in original; ~~strikeout~~
40 is deliberately added) That is, the following language is suspended: “provided that direct or

Executive Order 2010-06
June 2010

1 manpower hire of foreign national workers shall not exceed nineteen (19) employees. This
2 exemption shall expire on September 30, 2010, and no contract may provide to the contrary.”
3

4 The effect of the suspension shall be that CUC shall have the complete power, without regard to
5 citizenship or otherwise lawful immigration status, to hire engineers, professional employees in
6 technical or trade areas, power plant mechanics and utility technicians, either directly or
7 indirectly. These professional employees may include, but shall not be limited to, sanitarians,
8 engineers, accountants, financial experts, information technology specialists, mechanics,
9 electricians, well-drillers, pipefitters, plumbers, wastewater treatment facilities operators, and
10 other trades technicians.
11

12 Done this 22nd day of June, 2010.
13

14
15
16
17
18
19 
20 BENIGNO R. FITIAL
21 Governor
22
23
24
25
26
27

0 EO 2010-06 CUC Disband (22Jun10) Governor.wpd