



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

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EXECUTIVE ORDER 2010-09

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 #25

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 2010-01 through -06, and -08, 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

1	following findings and conclusions further support continuation of the Declaration and issuance	
2	of directives.	
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1  
2 **FINDINGS**

3  
4 I find that:

5  
6 1. All **findings and** conclusions of EO 2009-01 through -09, and 11-13, and EO **2010-01**  
7 through -06, and -08 are incorporated by reference, except as specifically **varied in this**  
8 Executive Order.

9  
10 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**  
11

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

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

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

- 35  
36 a. The first requires the upgrade and smooth **functioning** in virtually all aspects of  
37 CUC's water and wastewater divisions. The second requires CUC to properly  
38 eliminate over 400,000 gallons of used oil and to institute measures to avoid  
39 uncontrolled buildup of such inventories. Failure to meet the requirements of the  
40 federal court orders could subject CUC and the CNMI to **substantial** fines and  
41 charges, and, in the extreme, to a federal takeover of their **finances**. Presently

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CUC is “accruing” substantial fines. Most of the **fines** have not been levied; but they could be. The EPA has, however, **levied** two **fines**, in the amount of **\$29,000** and **\$140,000** (June 2010 letter).

- 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 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:

- 1 a. most CNMI economic activity would come to a halt, the courts would soon close,  
2 much **refrigeration** and air **conditioning** would end, **and** the airports and ports  
3 would be forced to rely on emergency generation and the limited, expensive oil  
4 supply for it;  
5  
6 b. the CNMI's health and safety would immediately be at risk, since **traffic signals**  
7 and street lighting would cease to **function**, emergency, fire and police facilities  
8 and their communications systems, and the Hospital and island clinics would have  
9 to rely on limited oil supplies for emergency generation and then cease  
10 **functioning**, much **refrigeration** of food and **medicines** would end, as would air  
11 conditioning for the elderly and medically fragile;  
12  
13 c. the **public** schools and the Northern Marianas College would close. Other  
14 educational institutions would close as their backup oil supplies for emergency  
15 generators were exhausted, and  
16  
17 d. water and sewage treatment would soon end. One of **CUC's** largest electric  
18 customers is the combined CUC Water and Wastewater Divisions. CUC is the  
19 sole supplier of electricity for these systems. **CUC's** water system relies on  
20 electricity to maintain the system pressure needed to avoid the **backflow** of  
21 pathogens, to chlorinate, **and** to pump, store and to **distribute** water **supplies**.  
22 CUC's wastewater system requires electricity to **collect**, pump, process, treat and  
23 discharge sewage. The lack of electricity could result in sewage overflows,  
24 contamination of land and water and rendering unsafe the **CNMI's** beaches,  
25 which are also **principal** tourist destinations.

26  
27 8. As discussed below, CUC is currently advertising for about 20 vacancies, including the  
28 Executive Director, the Water Distribution Manager, the Wastewater Manager, five engineers, a  
29 **general** counsel, an internal auditor, a grants writer and/or a grants specialist, two wastewater  
30 level 2 treatment operators, two wastewater **level 2 collection** operators, **and** two water treatment  
31 **/distribution** levels 1 and 2 operators for Rota. CUC also seeks to renew 18 **technical** and  
32 professional **contracts** for non-US citizens. Without these positions **filled** CUC's operations  
33 would be severely compromised.

34  
35 **Staffing CUC with the technical experts to permit continued electric service**  
36

37  
38 9. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain  
39 and rehabilitate the operating units to adequately meet load. CUC has secured federal **funds** to  
40 buy many needed parts to avoid outages. CUC began the needed **overhaul** of PP #1 unit DE-5 in

1 September 2009. In October four other **units** began required overhaul, which will take 12  
2 months.

3  
4 10. In November 2009, the following **work** started: The critical replacement of the PP #1  
5 anchor bolts, in order to stop the **shifting** and **vibration** that has ruined the **plant**; and foundation  
6 repairs to Engines 1 and 8. Shortly thereafter the replacement of turbochargers **and** oil-water  
7 separators began. All of this work is **essential**.

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

12  
13 12. In **effect**, CUC management, with generous federal financial **assistance**, has brought its  
14 generation back **from** the brink of system failure. There are adequate reserves. If maintained  
15 properly, the system can provide the CNMI's citizens and residents with adequate power.

16  
17 13. Adequate technical **staff** is essential to this work. A **major** challenge to **carrying** out this  
18 rehabilitation has been finding the **trained** technicians **needed** to carry out these rehabilitation  
19 projects, and **maintain** and **run** the equipment. The technicians must be ready for **service** when  
20 needed and **their** services **must** be affordable. Any **significant** reduction in CUC's present  
21 technical workforce could seriously compromise **CUC's** ability to generate and distribute power.

22  
23 14. With respect to **CUC's** lines, **equipment** used by **CUC's** **Transmission and Distribution** unit  
24 ("T & D"), **including** many vehicles, is dilapidated and bordering on being unsafe. There is **an**  
25 insufficient number of skilled workers to operate T & D. The **linemen** must be trained to, and  
26 **skilled** in, meeting US standards. **Fortunately**, a federal **DOUOIA** grant paid for **some** lineman  
27 training in June. The critical upcoming projects in T & D include the replacement of the  
28 antiquated, rundown and unsafe vehicle fleet; the redesign of T & D **using** **national** Rural Utility  
29 Service standards; the **replacement/installation** of insulators, transformers, **overcurrent**  
30 protection, **sectionalizers** and the installation of efficient LED street lighting.

31  
32 15. For example, **Saipan's** early-September 2009 brush with Typhoon Choi-Wan 15W that  
33 passed to **the** north of Saipan, and typhoon **Melor**, which passed just north of Saipan in October  
34 2009, **underscored** the extreme vulnerability of **CUC's** power transmission and **distribution**  
35 system. In September 2009, over **150** calls of no-power and line **faults** were fielded by crews  
36 when, **for** a storm of this size, there should have been no more than a score. Fortunately, last  
37 year's typhoon season ended with no direct hits on the CNMI and **the** power **distribution** system.  
38 Accelerating improvements to the T & D **system**, with proper staff under an Emergency Order,  
39 would allow CUC to "harden" the **system** in anticipation of a bigger storm event. The  
40 alternative, in a more serious storm, is CUC's inability to recover in any reasonable time period.  
41 The year 2010 will see a new typhoon season.

1  
2 16. Nonetheless, outages due to Power Transmission & Distribution were extremely low: May  
3 saw **only** 11 minutes; April just one minute. These are the lowest such figures in the last seven  
4 years, reflecting an extraordinary **accomplishment** for an understaffed, overworked CUC work  
5 **group**.

6  
7  
8 17. Further, utility industry safety margins for isolated, island systems typically require a  
9 reserve equal to the capacity of the two largest generating units. In **CUC's** case this would be  
10 another 15 MW of load, equivalent to the departed Aggreko temporary units. Meeting this  
11 reserve requirement **means** CUC must have **an** adequate repair and maintenance **staff**.

12  
13 18. The Legislature, through PL 17-1 (Mar. **22, 2010**), has limited CUC's ability to hire  
14 technical **staff**, eliminating prior statutory permission to hire up to 19 foreign workers, and  
15 reinstating a **moratorium** on the Government's **hiring** foreign nationals, even if needed for  
16 highly technical positions for which no local or Mainland citizens are available. The CUC Act,  
17 as subsequently re-enacted by PL 16-17 (Oct **1, 2008**), provides that CUC shall hire such persons  
18 as are necessary for operations, except as otherwise **limited by other law**. **4 CMC § 8123(b)**.

19  
20 19. **PMIC** at PP #4 and **Telesource** on Tinian, and the Rota Resort on Rota, as Independent  
21 Power Producers (**IPPs**), are not subject to the Legislature's **limitation** or prohibition on foreign  
22 workers. Nor are **consulting firms** that provide **specialty** utility industry **services**.

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

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

32  
33 22. CUC has hired some local staff in time thanks to the **aggressive** steps of CUC HR, the  
34 Executive Director and earlier versions of Directive 10.

35  
36 23. CUC **has** hired **skilled** trade technicians needed on **Saipan** for power plant operations and  
37 maintenance. For Rota, CUC announced the need for a mechanic-operator and an **electrical**  
38 operator. As more **units begin** working after the rehabilitations are largely complete, CUC **will**  
39 need more staff to operate and maintain them. For the foreseeable future, CUC needs to  
40 **maintain** its complement of skilled workers. In the meantime, CUC continues to work with the  
41 Northern Marianas Trade Institute (**WMTI**) to **find local** trainees, part of a multi-year

1 apprenticeship **program**. CUC has about a dozen of these trainees, but requires **fully trained**,  
2 experienced technicians to keep the power plants **running**.

3  
4 24. With generous grant funding and the use of in-house technical specialists and outside  
5 contractors, **CUC** has undertaken substantial rehabilitation of its power **system**. Future projects  
6 include replacing turbochargers, conserving and reclaiming used lube and waste oil, **retrofitting**  
7 streetlights with low-wattage **LED's**, and **restoring** power generation and adequate distribution  
8 on Rota. Even **if contractors** do the work, CUC **technical staff must** research **and** prepare bid  
9 documents, review technical proposals, and oversee the work.

10  
11 25. The **bottom** line on **CUC's technical** work has been a substantial increase in reliability,  
12 **specifically** the availability of **CUC's** generation. **CUC's** transmission and **distribution** has  
13 similarly improved – January 2010 **saw** 10 hours 44 minutes of outages, April 2010 **saw one**  
14 minute. It was **critical** to this latter improvement that CUC had the skilled, trained work force to  
15 maintain power lines.

16  
17 26. But even as power **becomes** more reliable, CUC must reduce **its distribution** losses **from** the  
18 reported level of 8%. **With** world oil prices increasing CUC's power costs, such losses **already**  
19 account roughly for \$4.8 million, which CNMI customers must cover. **CUC** requires a team of  
20 skilled technicians to **find** and **eliminate** power theft and line losses.



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

- 24  
25 a. **First**, there would be a direct negative effect on the existing **consumers**. There  
26 would be brownouts, or area blackouts, with the above-mentioned loss of service.  
27  
28 b. Second, the power plants would again degrade, producing more of these outages.  
29  
30 c. Third, there would be an **indirect** effect, increasing rates over the longer term,  
31 because small **consumers** would have to shoulder more of the fixed **costs** of the  
32 CUC system. First, there would be loss of large customers. By contrast, if the  
33 hotels were to become part of the system, **they** could help pay CUC fixed **costs**,  
34 which **would** lower everyone else's rates. The hotels need reliable, 2417 power.  
35 But with unreliable power, CUC would be unable to convince large commercial  
36 customers, particularly the hotels, to join, or rejoin, its system. Second, would  
37 come **additional** expenses. If CUC fails to meet federal court deadlines for the  
38 stipulated orders, the Court could appoint a federal receiver and its consulting  
39 team – with all expenses charged to CUC customers. The EPA has already  
40 **imposed** stipulated order penalties; it recently required the payment of a **\$140,000**

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~~penalty~~. 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-dependentservices with higher rates.

28. 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 needed additional generating sets to come on he e, as there are only 1.5 dependablesets in the plant. The third of two feeders was, until June 2010, powered by the Rota Resort, a private resort, at a cost of \$200,000/month to CUC. The revenues to CUC 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 alternative for Rota was akin to Saipan's recent Aggreko situation - purchasing higher cost, reliable power from the Rota Resort. Therefore, in June 2010, two 0.9 MW Cummins generating sets were transported from Power Plant 4 on Saipan to Rota in order to augment the power generation. These two generating sets should be commissioned by the end of July, 2010.

29. 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.

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

31. 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

1 major improvements to the power lines; only five have seen those improvements. Power T & D  
2 fails in bits and pieces. One of the big pieces that failed in February 2010 was one of 12  
3 termination cables on the Kiya Substation (Transformer One). A power outage to the southern  
4 parts of Saipan lasted from one to five hours. CUC management states that the excellent  
5 response from the crews in both Power Generation and Power T & D demonstrated the  
6 importance of having skilled workers. The top two engineers were non-residents. Without this  
7 EO in place, given present statutes, it is unlikely CUC would be able to secure the services of  
8 such valuable individuals.

9  
10 32. The extended dry season this year (see below) means that vegetation must be cleared away  
11 from the lines early and often. Brush fires can damage the power lines, telephone facilities, and  
12 television cables. Meanwhile, CUC crews must replace falling insulator bolts and falling  
13 switches in order to avoid distribution-related power outages.

14  
15 33. CUC has demonstrated that the required workers are available as nonresident workers, and  
16 cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign  
17 national workers is necessary to ensure the delivery of uninterrupted power services to the  
18 people of the Commonwealth.



#### 20 **Complying with the federal court order on disposal of used oil**

21  
22  
23 34. CUC has taken concrete steps to address the storage and disposal of used oil, consonant  
24 with the federal court's Stip Order 2. Federal court Stipulated Order 2 relates to the used oil  
25 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.  
26 USA v. CUC & CNMI, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an  
27 adequate complement of trained technical employees, complemented by expert contractors, CUC  
28 believes that it can meet the Stip Order requirements. On August 12, 2010, the Court issued the  
29 Second Joint Stipulation ("SJS"), which replaced many otherwise unattainable deadlines, but  
30 provided other deadlines and stiff penalties for a host of technical and management positions.  
31 The SJS also provided for firm dates for reporting on the use of grant funds, on the progress of  
32 secondary containment facilities, providing a facilities response plan ("FRP"), and cleaning out  
33 Tank 104.

34  
35 35. A September 2009 inspection by the US Coast Guard (USCG) resulted in the imposition of  
36 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional  
37 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean  
38 from Power Plants 1, 2 and the power plant on Rota. Further, as of October 2009, CUC has  
39 faced the following staffing needs in this area: It critically needs the resources to inspect and  
40 redesign the entire fuel storage, pumping and handling system in order to meet the more  
41 stringent requirements of today. The clean fuel storage tanks at Lower Base were originally

1 designed for another application. The **fuel line from the oil** company's terminal is **in** danger of  
2 rupturing during a transfer; **the pumping rate** has to be reduced to prevent this. Fixing **all** of this  
3 requires trained CUC **staff**.

4  
5 36. Serious deficiencies in the waste oil handling system at Lower Base have come to light in  
6 the past months and are being addressed by both CUC and EPA. One deficiency is that the oily  
7 water separators are not **functioning** as such because of the excessive amount of oil (as opposed  
8 to water) entering the system. As a result, **oil** was spilling onto the ground rather than **being**  
9 separated and skimmed off properly. Power Plant #1 has been sealed off to prevent any waste  
10 oil **from** leaving the plant and flowing into the oily water separators. To prevent oil **from**  
11 accumulating **uncontained** in the plant itself; **emergency measures** have been taken to store waste  
12 oil and to **fabricate** above-ground tanks. **The** oily water separators, pipes, holding **tanks**, and  
13 baffles are being cleaned out so that the entire system can be **carefully** inspected and  
14 re-engineered. All of the additional work is expensive. Regardless of who does the work  
15 initially, CUC staff, EPA contractors, or a combination thereof, CUC requires skilled, trained  
16 workers for the clean-up. Failure to **correct** this situation could harm the nearby environment,  
17 **CUC's** ability to generate electricity properly, and the **assurances** given pursuant to Stip Order 2.  
18 CUC has hired an Oil Technical Manager.

19  
20 37. Incinerators play a crucial role in helping CUC meet Stip Order 2. The two incinerators at  
21 Lower Base (Power Plants 1 and 2) are now operating, and burning **about 10000 gallons** of used  
22 oil per day. One had to be taken out of service due to mechanical issues, is being repaired by a  
23 contractor, and the contractor's work **must** be approved by the Deputy Director for Power  
24 Systems, a non-US-citizen. This EO has permitted Power Generation the **flexibility** of **hiring**  
25 skilled non-US-citizens to not **only** repair and overhaul the generating sets, but to **fix** and  
26 supervise such important auxiliary equipment as the **incinerators**.

27  
28 38. Nonetheless, the EPA on February 18, 2010, **filed** a **status** report with the US District Court  
29 for the Northern Mariana Islands which is highly **critical** of **the** progress in **CUC's** efforts to  
30 comply with Stip Order 2's requirements to **solve** the **used** oil situation. Since that report CUC  
31 has contracted with the **GRESKO firm** to remove waste **oil from** Tank 104. The EPA **has**  
32 strongly urged CUC to accelerate the removal, bringing the **"empty"** date forward from October  
33 2010 to July 30, 2010. CUC found two additional special double-walled **"ISO"** **tanks** for use in  
34 the project, to add capacity to the contractor's six **tanks**. As a **result**, GRESKO transferred just  
35 under 180,000 gallons of used oil to **Guam** by July 15.

36  
37 39. Presently CUC is in process on these specific efforts to comply with **Stip** Order 2's  
38 requirements, with federal **finding** authorized: Technical Manager sought for oil position;  
39 secondary containment (new and repair) has received permits and NEPA clearance, and  
40 construction has begun; oil disposal for Saipan's **Tank** 104; oil transfer pipeline for Luwer Base  
41 design work commenced, construction contract under review by CPUC, with a target in-service

1 date of February 24, 2011; oil handling and training commenced, used oil sampling laboratory in  
2 California contracted; used oil tank ~~system~~ integrity testing and ~~cleanout's~~ RFP published; oil-  
3 water separators in ~~planning~~ stage; used oil transfer and solid waste disposal for Saipan and Rota  
4 are in ~~planning~~ stage; ~~facility~~ response plan ("FRP") for oil spills is in negotiation stage with a  
5 new ~~Saipan-based~~ firm.  
6  
7

8   
9 **Complying with the federal court order on managing the water and wastewater systems**

10  
11 40. As long as ~~the~~ Water and Wastewater Divisions can hire competent staff and receive power  
12 from the Power Division, ~~they~~ can function.  
13

14 41. The U.S. Department of Justice ("DoJ"), Environment and ~~Natural~~ Resources Division, has  
15 sued CUC in federal court to come into compliance with critical water and sewage treatment  
16 requirements. USA v. CUC & CNMI, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order  
17 1"). See also [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). In July 2008 CUC, the CNMI  
18 and (in September 2008) the U.S. Environmental Protection Agency ("EPA") stipulated to this  
19 first of two orders lodged with the U.S. District Court on ~~the~~ date the Complaint was filed. This  
20 order requires CUC to implement a series of improvements to its water and wastewater systems  
21 that respond to years of neglect, for which it presently lacks the funds and the complete technical  
22 capability. On August 12, 2010, the Court issued the Second Joint Stipulation ("SJS"), which  
23 replaced many otherwise unattainable deadlines, but provided other deadlines and stiff penalties  
24 for a host of technical and management positions. The SJS also provided for firm dates for an  
25 Interim Financial Plan, Reorganization Plan, full metering and billing, a complete chlorination  
26 and disinfection program, the hiring of qualified operators in direct responsible charge ("DRC"),  
27 and procedures to generate the scope of work for CUC's Master Plan.  
28

29 42. 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 system have collapsed. December 18, 2009, saw the sixth  
33 failure in six months. Failures will continue until 10 miles of sewer pipe are replaced. But  
34 replacement involves complex excavations, avoiding electric, phone and water utilities, blocking  
35 traffic, stopping the infiltration of seawater (which damages treatment plant facilities), and  
36 pumping sewage around blocked and excavated areas. The Division has already far exceeded its  
37 repair budget;  
38

39 43. 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 2010, 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. In addition, a substantial **section** of the As **Terlaje** sewer line collapsed,  
4 requiring an emergency procurement to **hire** an outside **firm** to make the repair.  
5

6 44. 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 45. 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**. Due to  
14 equipment malfunctions, **sludge** is not pressed, which may have produced unacceptably high  
15 July levels of enterococci in effluents **from** both the Sadog Tasi and Agingan **Point** treatment  
16 plants.  
17

18 46. The Division **also** needs serviceable vehicles to move its workers to and **from** job sites.  
19 Presently six **vehicles are** in such bad shape that they are dangerous. The resulting reduced  
20 vehicle problem raises costs and hurts **service**, as staff and materials cannot be brought to job  
21 sites on **time**.  
22

23 47. Sewage lift station **failures** continue, requiring CUC crews to **install** newly received pumps.  
24 Approximately 17 of the 45 CUC sewage **lift** station are **in** poor condition and require **significant**  
25 rehabilitation. CUC anticipates an EPA grant for the rehabilitation of these lift stations. But  
26 that construction **will** not occur for approximately one year. **In** July there was a sewer blockage  
27 in the CK and Susupe areas, and CUC lacked the equipment to repair it; its usual **contractor** also  
28 suffered equipment problems.  
29

30 48. CUC engineer staff shortages continue to hamper **CUC's** ability to anticipate and **fix**  
31 technical problem. While **CUC's Water/Wastewater** Division **employs four** engineers, the poor  
32 condition of the CUC sanitation assets requires at least two more engineers. But, **significant**  
33 engineering resources are already focused on addressing EPA **Stip** Order **issues**. These issues  
34 **include staffing** plans, pre-treatment programs, **materials** management programs, customer  
35 inventory, and cross-connection control **programs**. CUC water and wastewater engineers are the  
36 lead with several on-going construction projects, which **also** stretches the limited engineering  
37 resources, including the Well Isolation Project, Sadog Tasi Sewer Plant **Rehabilitation**, and  
38 Agingan Sewage Treatment Plant Rehabilitation. Recruitment and retention of engineering staff  
39 to **meet** these challenges is **difficult**.  
40

1 49. Incipient **failures** include the **failure** of 98 submersible pumps in the water system over a  
2 period of twelve months. Higher grade stainless **steel** grates have to be **specified** that are resistant  
3 to **pitting**. The pitting causes the grates to **fail** and consequently the pump **motors**. CUC will  
4 need to purchase higher quality equipment, rather than the cheap units that **fail** prematurely.  
5

6 50. CUC must be able to hire the staff to perform the required **technical** functions. The Water  
7 and Wastewater Divisions cannot **carry** out their **missions** without adequate staff. **These staff** are  
8 essential to producing clean, safe water supplies and removal of stormwater and sewage in a  
9 safe, timely manner. While the bulk of CUC employees are drawn **from** local **and** US  
10 populations, the Division management estimates that at least six trained technicians **will** be  
11 required – three experienced Level 3 wastewater **treatment** operators, **two** Level 3 wastewater  
12 collections operators, and **an** instrumentation **/low** voltage controls **specialist**. An experienced  
13 **Water/Wastewater** Division operations **manager** will be required. CUC requires a **chemist** to  
14 meet federal requirements, but has been unable to find a qualified one in the **local** population, or  
15 a cost-effective professional from the US Mainland; a foreign hire has been identified, however.  
16 CUC has also announced a vacancy of the position for Deputy **Director** for Water and  
17 Wastewater. Seven candidates will be reviewed and **evaluated** by a team which includes the  
18 Executive Director.  
19

20 51. There are special reasons why the water system must be adequately **staffed** and maintained  
21 this year. This **was** an **El Nino** year, and water was relatively scarce. As predicted in the Pacific  
22 ENSO bulletin forecast back in February 1, 2010, the CNMI dry season **brought** below normal  
23 **rainfalls** into June 2010. CUC went into an emergency mode, **conserving water**, accelerating  
24 water line replacements, and locating and repairing leaks. There was greater danger of fires this  
25 year, with less water available to fight **them**. For Capital Hill, the drought and a tank  
26 rehabilitation project required that the distribution system in this area be **reconfigured** in **June**  
27 2010 in order to **supply** water at least two hours per day to Wireless Ridge. Upper reaches of  
28 **Navy Hill** were without water for several **days until** leaks were repaired. **With** the rainy season  
29 the aquifers are only slowly replenished. As a result **Garapan** is seeing in July fewer hours of  
30 water service. Unfortunately, the **leaks** were noted several months before, but lack of manpower  
31 and funds prevented the pressurization required for **leak** repair. In July the **Kagman** booster  
32 pump failed, and until it is replaced the **Papago** area will see less water delivered.  
33

34 52. For its water and wastewater businesses, CUC has tried to hire water and wastewater  
35 **certified** operators. There has not been enough interest by qualified professionals. But CUC  
36 must hire such technical **staff** in order to comply with stiff EPA requirements, as expressed in the  
37 latest version of the Stipulated Orders.  
38

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

1  
2 54. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing  
3 **collapsing** sewer lines. CUC has hired a consulting team to assist it in achieving **full** cost  
4 recovery for the water and wastewater systems **through** the processes of the CNMI Public  
5 Utilities Commission ("CPUC"). CUC **filed** a wastewater rate increase request, complete with  
6 hundreds of pages of written expert witness testimony and technical support, on January 31,  
7 2010. The Commission addressed the filing in May, authorizing a June 21,2010, rate increase in  
8 wastewater rates and **full** cost recovery for the electric costs of the water **and** wastewater  
9 **divisions**.

10  
11 55. Nonetheless, the EPA on July 21,2010, filed a status **report** with the US District Court for  
12 the Northern Mariana Islands which is highly critical of the progress in **CUC's** efforts to comply  
13 with Stip Order **1's** requirements to solve the water and wastewater situations. It included a  
14 statement that tests in June and July each showed violation of the maximum contaminant level  
15 **drinking** water standard for total **coliform** bacteria. (7-21-10 Status Report, p 6 **¶** 5) A hearing  
16 before the Court is scheduled for August 4,2010. The prior status hearing resulted in the  
17 additional stipulated order addressed elsewhere **m this** Executive Order.

18  
19  
20 **Ⓜ**  
21 **Meeting US District Court and CNMI Public Utilities Commission requirements to**  
22 **produce timely, accurate financial reports**

23  
24 56. The federal Stip Orders require CUC to produce and carry out an **Interim** Financial Plan,  
25 beginning in September, 2009. The "IFP" must develop over time, becoming more **than**  
26 "interim" CUC cannot do this unless it has a staff of trained accounting and other financial  
27 experts who can gather data, put the data in the required form and generate the IFP and its later  
28 versions.

29  
30 57. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities  
31 Commission( "**CPUC**" ). The CPUC is charged by statute to oversee **carefully CUC's** operations  
32 and capital expenditures, and to develop rates that **fully** pay the costs of safely operating **CUC's**  
33 water and wastewater systems.

34  
35 58. In electric and **water/wastewater** orders, of September 3 and November 20,2009, the CPUC  
36 addressed **CUC's** inability to deliver complete on-time financial reports, requiring CUC, in  
37 **effect**, to enhance its staff capability to provide critical regulatory **information**. (Docket No.'s  
38 09-1 and 09-2.) The Commission revisited CUC rates, fees, charges and operations during this  
39 year, **including** in the recent rate case, Docket No. 10-01. **CUC's** Executive Director was a lead  
40 witness in the case, having filed written testimony (on January 31,2010) and supplemental  
41 testimony (on April 1,2010).

1  
2 59. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained  
3 **accounting** and other **financial** experts who **can** gather data, put the data in the required form and  
4 generate **the** required reports and filings with the CPUC, as well as provide the CPUC consulting  
5 staff with the data required for their oversight. CUC has obligated itself to provide an updated,  
6 compliant Interim Financial Plan and an organizational evaluation, **both** pursuant to Stip Order 1,  
7 to the US District Court, and most recently, according to the February 24,2010, additional  
8 stipulated'order. CUC submitted **an** IFP on March 26,2010. But EPA has yet to approve it.  
9

10 60. CUC's procurement **system** is lengthy and complex. A relic of other decades, with their  
11 own **challenges**, it requires extensive **technical** experience **m specifications** and the procurement  
12 process, and often must be coordinated with the **CNMI's** separate procurement procedures,  
13 adding **months** to processes that must respond to the **immediate** challenges outlined in this  
14 Executive Order.  
15

16 61. CUC last year lost 2 senior accountants plus a related specialist. The IT and billing  
17 department in August 2009 was reduced by one **staffer**, **having** advertised for a replacement for 4  
18 weeks to no **avail**. While it appeared **that** CUC might have to look to employing **foreign**  
19 **technical specialists**, CUC hired back 2 former accountants in September 2009 and brought a  
20 third person aboard in October. All are US citizens. Nonetheless, CUC **must** have the flexibility  
21 to hire competent professionals as needed. CUC is still short-staffed, and **needs** an accounting  
22 assistant, and an accounting specialist. On February 17,2010, CUC's new Chief Financial  
23 Officer reported for duty.  
24

25 62. **CUC's** decades-old **financial** and **accounting** system computer failed repeatedly **during** the  
26 last three months, **including** for a complete **week**. **Already-over-committed finance** and  
27 **accounting** staff were required to put in **days** of extra time in hand-recording customer payments  
28 and hand-generating bills. It failed again this week, on July 19.  
29

30 63. Nonetheless, the EPA on **February** 18,2010, **filed** a **status** report with the US District Court  
31 for the Northern Mariana Islands which **was** highly critical of the progress in **CUC's** efforts to  
32 comply with Stip Order **2's** requirements to provide timely and complete financial and other  
33 operating reports and plans.  
34

35 64. To summarize: Without properly trained technical **staff** **CUC's** ability to supply power is at  
36 **risk**. So is its **ability** to **manage** the rest of its systems, **including** its complex procurement, its  
37 **finances** and accounting. CUC's services could not be adequately staffed without the lifting of  
38 the artificial legislative regulation of CUC's workforce, in EO **2009-08**, Directive **#10**,  
39 suspending the limitations on CUC **hiring foreign** workers. It is obvious that the hiring authority  
40 must be continued.  
41

1 65. In fact, during July - September 2010 over 18 CUC employment contracts for non-citizen,  
2 technical specialists will require renewal. Failure to timely renew could cripple CUC's efforts to  
3 provide service and meet federal requirements. There is no indication that any of the above  
4 manpower situation will be resolved in the next month without continuing in effect this EO and  
5 Directive #10.  
6

7   
8 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**  
9

10 66. Summary. CUC is a \$70 million-per-year business, critical to the CNMI's economy and  
11 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors  
12 in the position of day-to-day management of the corporation, and requires a complex mix of  
13 technical, geographic and other qualifications for Board membership. There is no Board because  
14 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot  
15 take a critical step toward solvency and the ability to borrow to finance its work.  
16

17   
18 **Forestalling corporate paralysis**  
19

20 67. A critical concern is that the CUC Act's constricted scope of authority for the Executive  
21 Director, and the complementary daily management by a host of Board volunteers, would  
22 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before  
23 CUC.  
24

25 68. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC  
26 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and  
27 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133  
28 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and  
29 property), demonstrates that the Executive Director is to be left with little more to do than  
30 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70  
31 million/year corporation, on a day-to-day basis. This includes such decision-making as  
32 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning  
33 work crews, connecting customers, deciding on making repairs, collecting debts, complying with  
34 the details of federal and CPUC regulatory requirements, making and funding long-term  
35 technical power and water/wastewater plans, overseeing filings with the CPUC, including rate  
36 cases, and insuring that, on a day-to-day basis, the power and water flow and the sewage is  
37 treated.  
38

39 69. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and  
40 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt -  
41 with or without a Board in place. The complex technical problems Listed above simply cannot be  
42 managed on a day-to-day basis by a group of non-expert volunteers. For example, the Executive

1 Director had to be available to renegotiate CUC's ~~fuel~~ oil contract this year, and ~~insure~~ that ~~fuel~~  
2 supplies reached Tinian and Rota, as well as Saipan. Also, as a key witness in the recent CPUC  
3 Docket 10-01, and in future rate cases, the Executive Director must be enabled to **testify** in favor  
4 of the requested rate increase in order to **fully** present the required evidence.  
5

6 70. No private or public utility company in the United States runs this way – with a group of  
7 volunteers **managing** a \$70-million **corporation's** day-to-day operations. No other legislature in  
8 the United States has mandated this form of corporate management for a public utility.  
9

10 71. CUC has applied for and become eligible for millions of dollars of US ARRA grants,  
11 which can substantially benefit the CNMI's **infrastructure** and create jobs. CUC has been  
12 awarded \$11 million in grants **from** the EPA. But developing the grant requests **and**  
13 **implementing** the grants requires management attention and expertise, part of a professionally-  
14 run business organization. CUC has **placed** ARRA grants out for bid, so **that** these benefits can  
15 start flowing. CUC **must** evaluate its needs, and hire and contract for the needed technical  
16 specialists to manage the grant-funded projects. This requires a corporate structure capable of  
17 making and sustaining important decisions.  
18

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



#### 24 **Fixing CUC's technical insolvency**

25

26 73. CUC has **been** unable to borrow money to run its operations **since** the inception of **this** State  
27 of Disaster Emergency due to (a) its poor **financial** condition and (b) the existence on its books  
28 of a liability to the Commonwealth Development Authority ("**CDA**") of **approximately** \$115  
29 million. **This** situation **may** be corrected if the Executive Director is recognized to have the  
30 **authority** to correct it. Part of this situation, the **CDA** relationship, **has been** corrected precisely  
31 **because** the Executive Director **was** empowered by this Executive Order to do so.  
32

33 74. Meanwhile, billings and collections are substantially below the levels required to prudently  
34 manage CUC's **current** operations **and** provide for system repairs, replacements and upgrades.  
35 For example, billings alone for water and wastewater are less than 70% of requirements to run  
36 those two systems. **This will** change as the PUC's June 2010 rate **increase** takes effect.  
37

38 75. The booked **CDA** obligation rendered CUC **nominally** insolvent. **While** CUC was deemed  
39 insolvent, CUC could not borrow money. But CUC must be able to borrow money to bridge the  
40 gap between (a) the need to spend money on essential goods and **services** to provide electricity,

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

3  
4 76. The CPUC, in its September 3, 2009, **electric** order, Docket No. 09-1, approved a CUC-  
5 CDA settlement converting the CDA debt to **preferred** stock. But the **deal** has required **CUC's**  
6 Board to **agree** to it.

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

13  
14 78. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It  
15 also permits him to **continue** to run CUC, carefully manage cash to pay tens of **millions** of  
16 dollars **annually** for **fuel** oil and purchased power, and do all the things necessary to providing  
17 power, water and wastewater services, until the remaining **members** of a properly constituted  
18 Board can be identified, confirmed, and convened for business. In February 2010 the Executive  
19 Director delivered to CDA management the stock **certificates** required for the debt-equity  
20 conversion. **CUC** has received the **fully** executed **copy** of the Stipulated Notice of Dismissal  
21 (with prejudice) in CDA v. CUC, Superior Court Civil Action No. 01-0248D (4/21/2010), which  
22 the CPUC has required that CDA provide to make **effective** the conversion of the CDA debt to  
23 preferred equity. CUC has sought Public Utilities Commission **final** approval. The **Commission**  
24 provided that approval in the rate order authorized at its May 28, 2010, **business** meeting. Soon,  
25 CUC must be able to demonstrate to the financial **community** that it is properly managed, so that  
26 it can borrow and pay **back** **long term** capital



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

30  
31 79. The broad and comprehensive statutory scheme of utility **regulation** in the **Public** Utility Act,  
32 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, **will** **carefully** examine CUC  
33 activities, particularly financial activities.

34  
35 80. **This** extensive oversight satisfies the policy need for a body of arms-length, well-informed  
36 citizens to watchdog the activities of this, the Commonwealth's key resource. **Thus**, the statute's  
37 error-infused creation of a volunteer Board which would run the corporation on a day-to-day  
38 basis, **becomes** much less important than **satisfying** CPUC requirements.

39  
40 81. What becomes very important is **CUC's** **capability** to provide the **CPUC** with accurate and  
41 timely financial and accounting information. But such reporting is not possible without a

1 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered  
2 Executive Director to lead them.

3  
4 a

5 Addressing a critical financial challenge

6  
7 82. CUC faced a financial crisis in June 2010. It was critically short of funds to buy oil.  
8 Without oil CUC would be forced to shut down its generation, bringing the economy of the  
9 CNMI to a halt, and endangering health and welfare as electricity-dependent operations ceased –  
10 sewage treatment, water pumping, traffic lights and security lighting, air conditioning for the  
11 elderly, infants, and other medically fragile persons, and equipment at the CNMI's Hospital and  
12 health clinics. The principal reason for the shortage was the Government's failure to pay  
13 millions of dollars of utility bills. The Government was in arrears about four months on its bills.  
14 Only by eliminating restrictions on the Governor's power to reprogram funds to address this  
15 issue was crisis averted.

16  
17 83. CUC only had a day or two's worth of purchased oil to power its system because it lacked  
18 the funds to buy oil from its sole, cash-only supplier.

19  
20 84. The Executive Director was required to spend substantial time on a concentrated basis  
21 interacting with high CNMI government officials as well as developing contingency plans for  
22 the orderly shutdown of the CUC system.

23  
24 85. Fortunately, the Administration was able to develop a multi-stage plan to enable the  
25 payment of enough CNMI Government bills, and the reprogramming of CUC funds to forestall  
26 disaster. The Government is still, however, about two months in arrears on its bills.

27  
28 86. In order to facilitate this solution, the Governor issued a Declaration of Disaster Emergency  
29 (June 8, 2010).

30  
31 87. Development of this temporary financial rescue plan would not have been possible without  
32 the dedicated, focused effort of a properly empowered Executive Director. Such financial  
33 conditions may continue unless the Government, and other large CUC customers, can be brought  
34 current, and remain current, on their bills. This may present a challenge for CUC, given the  
35 stressed financial conditions of the Commonwealth. A properly empowered Executive Director  
36 will be required to address this challenge.

37  
38 88. On May 11, 2010, CUC submitted to EPA a draft organization evaluation and  
39 reorganization plan. But on June 14, 2010, the EPA assessed CUC a \$140,000 penalty for  
40 failing to submit timely such a plan. EPA has yet to approve a master plan for CUC. In a July  
41 1, 2010, official letter EPA stated its belief that CUC still lacked the technical capability to put

1 together "adequate" submissions. Importantly, CUC requires a **functioning** management,  
2 **including** a properly empowered Executive Director to forestall any such additional EPA  
3 punitive action.  
4

5   
6 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

7  
8 89. There is no Legislative relief coming. For months CUC has repeatedly asked the  
9 **Legislature** for such relief, **including** submission of draft legislation in July. **The** Legislature has  
10 declined to **respond**. There is no alternative to providing this relief other than an order from the  
11 Governor. Inaction will produce a disaster in **which** CUC **is unable** to provide its critical  
12 **community services**. Directives # 9 and #10 were **designed to avert** this crisis. (The **other**  
13 Directives, #1 through #8, are no longer relevant, and were discontinued.)  
14

15 90. This Declaration is necessary to protect the health and safety of our children, our senior  
16 citizens, businesses and all other CNMI residents and visitors.  
17

18   
19 **CONCLUSION AND ORDER**

20  
21 Therefore, I hereby **invoke** my authority under Article III, § 10, of the **Commonwealth**  
22 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat  
23 **facing** the Commonwealth of the Northern Mariana Islands.  
24

25  
26 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the  
27 issuance of Executive Directives setting forth the measures to be taken to **address** the State of  
28 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:  
29

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

32  
33 (1) Suspend the provisions of any regulatory statute prescribing the procedures  
34 for conduct of the Commonwealth's business, or the orders, rules, or regulations  
35 of **any** Commonwealth activity or agency, if strict compliance with the provision  
36 of any such statute, order, rule or regulation would in **any** way prevent, hinder, or  
37 delay necessary action in coping with the emergency;

38  
39 (2) Utilize all available resources of the Commonwealth **as** reasonably necessary  
40 to cope with the disaster emergency of the Commonwealth;  
41

1 (3) Transfer the **direction**, personnel, or **functions** of the Commonwealth  
2 departments and agencies or **units** thereof for the purpose of performing or  
3 **facilitating** emergency services;  
4

5 3 CMC § 5121(f)(1)-(3).  
6

7 By today's disaster emergency declaration, I intend to enable CUC to continue to provide  
8 necessary service to the people of the Commonwealth.  
9

10 This Declaration of a **State** of Disaster Emergency shall take **effect** immediately ~~and~~ **all**  
11 memoranda, directives and other **measures** taken in accordance with this **Declaration shall**  
12 **remain in effect** for thirty (30) days **from the date of this** Executive Order unless I, prior to the  
13 end of the thirty (30)-day period, **notify** the Presiding Officers of the Legislature that the state of  
14 emergency has been lifted or has been extended for an additional period of thirty (30) days. 1  
15 CMC § 7403(a); 3 CMC § 5121(c).  
16

17 A comprehensive report on the exercise of my constitutional authority ~~shall~~ be **transmitted** to the  
18 **presiding** officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).  
19

## 20 **DIRECTIVES**

21 I direct the following:  
22

23 Directive 1: Deleted.  
24

25 Directive 2: **Deleted**.  
26

27 Directive 3: Deleted.  
28

29 Directive 4: Deleted.  
30

31 Directive 5: Deleted.  
32

33 Directive 6: Deleted.  
34

35 Directive 7: Deleted.  
36

37 Directive 8: Deleted.  
38  
39  
40

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

7  
8 Directive 10: The following strike-out-formatted language of the quoted provisions of the  
9 following statute regulating government employment is, **as** indicated, suspended immediately

10  
11 § 4532. Exemptions.

12  
13 Persons **other** than citizens and **permanent** residents **may** be exempted from the  
14 employment restriction in 3 CMC §4531 and employed within ~~the following government~~  
15 entities and **positions, on a case by case basis:**

16  
17 ~~(a) Department of Public Health. United States or Canadian board-certified physicians~~  
18 ~~and dentists licensed to practice in the Commonwealth;~~

19 ~~(b) Department of Commerce. Temporary or part-time employees as needed for censuses~~  
20 ~~and statistical surveys;~~

21 ~~(c) Government translators. Approved foreign national translators for: the Department of~~  
22 ~~Labor, the Office of the Attorney General, the Office of the Public Defender, the~~  
23 ~~Department of Public Safety, the Commonwealth Superior Court, the Commonwealth~~  
24 ~~Supreme Court, and the Marianas Visitors Authority. The Attorney General **shall**~~  
25 establish guidelines for the approval of foreign national translators for the Executive  
26 Branch. The Supreme Court may establish guidelines for the approval of foreign national  
27 translators **for** the Judiciary.

28  
29  
30 3 CMC § 4532, as **most** recently amended by PL 17-1. (Strikeout is **deliberately** added) That is,  
31 the **following language** is suspended: "the **following**", "on a case by **case** basis" and the  
32 following listing:

33  
34 " (a) Department of Public Health. United States or Canadian **board-certified** physicians  
35 and dentists licensed **to** practice in **the** Commonwealth.

36 " (b) Department of Commerce. Temporary or part-time **employees** as needed for censuses  
37 and statistical surveys.

38 " (c) Government translators. Approved foreign national translators for: the Department of  
39 Labor, the Office of the Attorney **General**, the Office of the Public Defender, the Department of  
40 Public Safety, the Commonwealth Superior Court, the Commonwealth Supreme Court, and the  
41 Marianas Visitors Authority."

1 I further suspend and delete the "moratorium" of sec. 4601:  
2

3 § 4601. Moratorium.  
4

5 ~~There is hereby enacted a moratorium on the hiring of foreign national workers;~~  
6 ~~as defined in 3 CMC §4911. This moratorium shall be read in conjunction with~~  
7 ~~Section 4532 of Chapter 2 of this part, and said moratorium shall be strictly~~  
8 ~~construed and adhered to by all agencies and instrumentalities of the~~  
9 ~~Commonwealth government.~~

10  
11 3 CMC § 4601 as most recently amended by PL 17-1. **(Strikeout is deliberately added)** ~~That~~ is,  
12 the following language is suspended immediately: "There is hereby enacted a moratorium on the  
13 hiring of foreign national workers, as defined in 3 CMC §4911. This moratorium ~~shall~~ be read in  
14 conjunction with Section 4532 of Chapter 2 of this part, and said moratorium shall be strictly  
15 construed and adhered to by **all agencies and** instrumentalities of the **Commonwealth**  
16 **govement.**"  
17

18 I hereby direct that the effect of the suspension of the indicated language shall be that CUC shall  
19 have the complete power, without regard to citizenship or otherwise **lawful** immigration status,  
20 to hire **engineers**, professional employees in technical or trade areas, power plant mechanics and  
21 utility **technicians**, either directly or indirectly. I ~~further~~ direct that ~~these~~ **professional** employees  
22 may **include**, but shall not be limited to, sanitarians, engineers, accountants, **financial** experts,  
23 **information** technology specialists, mechanics, electricians, **well-drillers, pipefitters, plumbers,**  
24 wastewater treatment **facilities** operators, laboratory specialists and other trades technicians and  
25 their professional managers.  
26

1 I further direct **generally** that the suspension of the language for **specified** agencies and the  
2 **specified** positions shall not be held as a limitation as to unnamed agencies and instrumentalities,  
3 but shall continue to permit other government entities to continue to fill needed positions,  
4 particularly in the areas of health care, census and translation/interpretation. Additionally,  
5 suspension of the term "on a case by case basis" **shall** permit government entities, including,  
6 notably, CUC, to develop **programs** and procedures that **avoid the** delays inherent in creating or  
7 obtaining case-by-case reviews and approvals. Finally, suspension of the moratorium is not  
8 intended to impede the **efforts** of CNMI agencies and **instrumentalities** in **lawfully** identifying  
9 and filling positions with **qualified** citizens and legal residents.

10  
11  
12 Done this 21<sup>st</sup> day of August, 2010.

13  
14  
15  
16  
17  
18   
19 BENIGNO R. FITIAL  
Governor

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