



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2010-10**

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DECLARATION OF A STATE OF DISASTER EMERGENCY:

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

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CONTINUATION #26

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 through -09, except as specifically modified. As more fully stated below, this Executive Order shall expire on the 31st day following the date of my

1 **EXECUTIVE ORDER 2010-10**

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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

10 **CONTINUATION #26**

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signature. The following findings and conclusions further support continuation of the
Declaration and issuance 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 through -09 are incorporated by reference, except as specifically varied in
8 this Executive Order.

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10 Ⓜ

11 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

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 any more 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 re-enacted, 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

1 CUC is “accruing” substantial fines. Most of the fines have not been levied; but
2 they could be. The EPA has, however, levied two fines, in the amount of \$29,000
3 and \$140,000 (June 2010 letter).
4

5 b. On February 24, 2010, the US District Court entered an additional stipulated
6 order. It provided, among other things, that a professionally-developed Interim
7 Financial Plan (“IFP”) would be provided to the US EPA within 30 days, by
8 March 26, 2010. This additional stipulation requires CUC to meet a number of
9 deadlines, each involving the application of technical expertise. CUC has timely
10 filed the IFP. It now has the task of implementing the IFP and meeting these
11 deadlines. Failure to meet these requirements would subject CUC to the
12 described sanctions.
13

14 c. Of concern to CUC are the tight deadlines for Stipulated Order 2 (Oil
15 Management) projects that are funded by a \$4.05 million CIP grant awarded in
16 February, 2010, by the US Department of the Interior’s Office of Insular Affairs.
17 The funding is to assist CUC is disposing of the used waste oil discussed in this
18 Executive Order. Failure to meet the deadlines could subject CUC to additional
19 EPA sanctions.
20

21 d. The coordination of the approvals from the various agencies calls for a responsive
22 procurement system at CUC, including the trained technical staff to implement
23 the system.
24

25 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission (“CPUC”).
26 The regulator has plenary power over CUC rates, charges, fees, operations and capital
27 investments. CUC’s failure to timely and competently meet CPUC orders and other
28 requirements can result in severe rate discipline, and fines and other penalties. For example, the
29 Commission required CUC to meet certain requirements, including the filing of a technically
30 complex rate case (Docket No. 10-01) by the end of January 2010, or face fines of \$500 per day.
31 CUC must also file an additional, complex electric power rate case by October 3, 2010.
32

33 6. CUC is the sole electricity supplier to the Government of the CNMI, including all public
34 safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the
35 CNMI’s businesses and homes. While some businesses and agencies own backup generators,
36 they are not generally organized to use the backups as permanent power sources; and the diesel
37 oil purchased to run these generators is substantially more expensive than that used for CUC
38 power.
39

40 7. Without CUC electricity:
41

- 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.



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

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 skillful in, meeting US standards. Fortunately, a federal DOI/OIA 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 17. Further, utility industry safety margins for isolated, island systems typically require a
8 reserve equal to the capacity of the two largest generating units. In CUC's case this would be
9 another 15 MW of load, equivalent to the departed Aggreko temporary units. Meeting this
10 reserve requirement means CUC must have an adequate repair and maintenance staff.

11
12 18. The Legislature, through PL 17-1 (Mar. 22, 2010), has limited CUC's ability to hire
13 technical staff; eliminating prior statutory permission to hire up to 19 foreign workers, and
14 reinstating a moratorium on the Government's hiring foreign nationals, even if needed for
15 highly technical positions for which no local or Mainland citizens are available. The CUC Act,
16 as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such persons
17 as are necessary for operations, *except as otherwise limited by other law.* 4 CMC § 8123(h).

18
19 19. PMIC at PP #4 and Telesource on Tinian, and the Rota Resort on Rota, as Independent
20 Power Producers (IPPs), are not subject to the Legislature's limitation or prohibition on foreign
21 workers. Nor are consulting firms that provide specialty utility industry services.

22
23 20. There are not enough technical specialists at CUC to get the power generation work done,
24 particularly specialists with experience in the type of engines that CUC uses. CUC believes that
25 the vast majority of skill sets must come from non-US personnel.

26
27 21. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding
28 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after
29 interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator
30 candidates were US citizens.

31
32 22. CUC has hired some local staff in time thanks to the aggressive steps of CUC HR, the
33 Executive Director and earlier versions of Directive 10.

34
35 23. CUC has hired skilled trade technicians needed on Saipan for power plant operations and
36 maintenance. For Rota, CUC announced the need for a mechanic-operator and an electrical
37 operator. As more units begin working after the rehabilitations are largely complete, CUC will
38 need more staff to operate and maintain them. For the foreseeable future, CUC needs to
39 maintain its complement of skilled workers. In the meantime, CUC continues to work with the
40 Northern Marianas Trade Institute ("NMTI") 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.

21
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, 24/7 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

1 penalty. Thus, the indirect effect of an inadequate workforce would be to boost
2 rates.

- 3
4 d. Fourth, with the recovery of the world economy, advise CUC experts, oil prices
5 can be expected to rise. If CUC's generators become less efficient, because
6 technical staff are unavailable to maintain CUC's engines' efficiency, that much
7 more oil would be needed to generate a given amount of electricity. The price
8 rise will thereby harm CUC's customers and electricity-dependent services with
9 higher rates. (Fortunately, as of mid-September, CUC's consultants and staff
10 have determined, with PUC experts, that oil prices should remain flat for the next
11 six months.)

12
13 28. Rota's status today is precarious and financially un-sustainable. Rota has suffered blackouts
14 from inadequate generator maintenance. The power plant's other facilities and the island's
15 distribution system similarly need the attentions of additional manpower. The Rota power plant
16 needed additional generating sets to come on line, as there are only 1.5 dependable sets in the
17 plant. The third of two feeders was, until June 2010, powered by the Rota Resort, a private
18 resort, at a cost of \$200,000/month to CUC. The revenues to CUC from the customers on this
19 feeder fall far below this cost. CUC has negotiated with a Mainland supplier for a new
20 generating set, with funding from the US Department of the Interior. The alternative for Rota
21 was akin to Saipan's recent Aggreko situation – purchasing higher cost, reliable power from the
22 Rota Resort. Therefore, in June 2010, two 0.9 MW Cummins generating sets were transported
23 from Power Plant 4 on Saipan to Rota in order to augment the power generation. These two
24 generating sets were commissioned by the end of July, 2010.

25
26 29. Since E0 2009-8 in August, and the suspension of the harmful legislative employment
27 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and
28 Rota power generation facilities. CUC needs to be able to hire the workers it needs when it
29 needs them. Otherwise, if CUC had to discharge these workers, its staffing levels would return
30 to those which overworked its limited staff. For example, over pay period numbers 2 through 11
31 of the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who
32 each worked 40 or more hours of overtime in a pay period. This condition is extreme, and a
33 repeat can result in inefficiencies and poor work quality. It can lead to dangerous mistakes,
34 producing injury or death.

35
36 30. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The
37 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set
38 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6
39 million-per-year benefit of terminating the Aggreko temporary power contract.

40

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

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

17
18 33. CUC has demonstrated that the required workers are available as nonresident workers, and
19 cost-effectively so. In the last two months it was able to renew the contracts for approximately
20 two dozen essential foreign expert workers, thereby sustaining the integrity of CUC's systems.
21 Thus, continued relief from the legislative prohibition of hiring foreign national workers is
22 necessary to ensure the delivery of uninterrupted power services to the people of the
23 Commonwealth.



25
26 **Complying with the federal court order on disposal of used oil**

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

39
40 35. A September 2009 inspection by the US Coast Guard (USCG) resulted in the imposition of
41 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional

1 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean
2 from Power Plants 1, 2 and the power plant on Rota. Further, as of October 2009, CUC has
3 faced the following staffing needs in this area: It critically needs the resources to inspect and
4 redesign the entire fuel storage, pumping and handling system in order to meet the more
5 stringent requirements of today. The clean fuel storage tanks at Lower Base were originally
6 designed for another application. The fuel line from the oil company's terminal is in danger of
7 rupturing during a transfer; the pumping rate has to be reduced to prevent this. Fixing all of this
8 requires trained CUC staff.

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

24
25 37. Incinerators play a crucial role in helping CUC meet Stip Order 2. The two incinerators at
26 Lower Base (Power Plants 1 and 2) are now operating, and burning about 1000 gallons of used
27 oil per day. One had to be taken out of service due to mechanical issues, is being repaired by a
28 contractor, and the contractor's work must be approved by the Deputy Director for Power
29 Systems, a non-US-citizen. This EO has permitted Power Generation the flexibility of hiring
30 skilled non-US-citizens to not only repair and overhaul the generating sets, but to fix and
31 supervise such important auxiliary equipment as the incinerators.

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

41

1 39. Presently CUC is in process on these specific efforts to comply with Stip Order 2's
2 requirements, with federal funding authorized: Technical Manager secured for the oil disposal
3 management position; secondary containment (new and repair) has received permits and NEPA
4 clearance, and construction has begun; oil disposal for Saipan's Tank 104; oil transfer pipeline
5 for Lower Base design work commenced, construction contract under review by CPUC, with a
6 target in-service date of February 24, 2011; oil handling and training commenced; used oil
7 sampling laboratory in California contracted; used oil tank system integrity testing and
8 cleanout's RFP published; oil-water separators in planning stage; used oil transfer and solid
9 waste disposal for Saipan and Rota are in planning stage; the section of the facility response plan
10 ("FRP") which provides services for oil spills from a new Saipan-based firm has been executed
11 and awaits the final signatures.
12
13



15 **Complying with the federal court order on managing the water and wastewater systems**
16

17 40. As long as the Water and Wastewater Divisions can hire competent staff and receive power
18 from the Power Division, they can function.
19

20 41. The U.S. Department of Justice ("DoJ"), Environment and Natural Resources Division, has
21 sued CUC in federal court to come into compliance with critical water and sewage treatment
22 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order
23 1"). *See also* http://www.usdoj.gov/enrd/Consent_Decrees.html. In July 2008 CUC, the CNMI
24 and (in September 2008) the U.S. Environmental Protection Agency ("EPA") stipulated to this
25 first of two orders lodged with the U.S. District Court on the date the Complaint was filed. This
26 order requires CUC to implement a series of improvements to its water and wastewater systems
27 that respond to years of neglect, for which it presently lacks the funds and the complete technical
28 capability. On August 12, 2010, the Court issued the Second Joint Stipulation ("SJS"), which
29 replaced many otherwise unattainable deadlines, but provided other deadlines and stiff penalties
30 for a host of technical and management positions. The SJS also provided for firm dates for an
31 Interim Financial Plan, Reorganization Plan, full metering and billing, a complete chlorination
32 and disinfection program, the hiring of qualified operators in direct responsible charge ("DRC"),
33 and procedures to generate the scope of work for CUC's Master Plan.
34

35 42. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater
36 Division must respond to acid damage in the asbestos cement piping system, the product of over
37 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and
38 metal infrastructure, so that key pipe systems have collapsed. Replacement involves complex
39 excavations, avoiding electric, phone and water utilities, blocking traffic, stopping the infiltration
40 of seawater (which damages treatment plant facilities), and pumping sewage around blocked and

1 excavated areas. The Division has already far exceeded its repair budget. Without this EO, says
2 CUC, procurement for such repair work would constitute a significant impediment.

3
4 43. Providing and improving water service presents new challenges. With DEQ's classification
5 of Rota's cave-based domestic water as "surface water" CUC has had to expand water quality
6 monitoring and testing, requiring more manpower and more equipment. In May 2010, CUC
7 experienced failures in water pipes as the Cross-Island road project's contractors' equipment
8 broke pipes, requiring CUC staff to be pulled from other jobs, with required equipment, to
9 address the emergency. In addition, a substantial section of the As Terlaje sewer line collapsed,
10 requiring an emergency procurement to hire an outside firm to make the repair.

11
12 44. The Sadog Tasi Wastewater Treatment Plant is undergoing long-planned rehabilitation.
13 But, without such redundant equipment as a clarifier, CUC must devote extra resources to the
14 facility while the contractor repairs the only unit. Such work has to be conducted within strict
15 parameters by properly trained technicians to prevent contamination of the environment. Due to
16 equipment malfunctions, sludge is not pressed, which may have produced unacceptably high
17 July levels of enterococci in effluents from both the Sadog Tasi and Avingan Point treatment
18 plants.

19
20 45. The Division also needs serviceable vehicles to move its workers to and from job sites.
21 Presently six vehicles are in such bad shape that they are dangerous. The resulting reduced
22 vehicle problem raises costs and hurts service, as staff and materials cannot be brought to job
23 sites on time. Starting in September, CUC has had to rent vehicles in order to get its crews to
24 trouble areas.

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

32
33 47. CUC engineer staff shortages continue to hamper CUC's ability to anticipate and fix
34 technical problems. While CUC's Water/Wastewater Division employs four engineers, the poor
35 condition of the CUC sanitation assets requires at least two more engineers. But, significant
36 engineering resources are already focused on addressing EPA Stip Order 1 issues. These issues
37 include staffing plans, pre-treatment programs, materials management programs, customer
38 inventory, and cross-connection control programs. CUC water and wastewater engineers are the
39 lead with several on-going construction projects, which also stretches the limited engineering
40 resources, including the Well Isolation Project, Sadog Tasi Sewer Plant Rehabilitation, and

1 Agingan Sewage Treatment Plant Rehabilitation. Recruitment and retention of engineering staff
2 to meet these challenges is difficult.

3 □

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

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

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

36
37 51. Recently CUC suffered severe setbacks in its ability to supply water and to develop a
38 system for 24/7 water supply. For example, CUC has not been able to serve San Jose under
39 standard "Water Watch" scheduled valve opening practice. There had to be a second opening of
40 the Kannat Tabla tank in mid-September in order to provide San Jose two hours of water in one
41 week. But this second opening of Kannat Tabla for San Jose created conditions that would

1 impede opening the next day from the Kannat Tabla tank for Chalan LauLau and Southern
2 Garapan. Also, September has seen system water leaks, and pump and motor failures. CUC
3 nearly failed to provide water to the Tanapag School on the first day of classes, and to the San
4 Roque and Oleai Schools in mid-September.

5
6 a

7 52. Put simply, Saipan does not have enough water. Pump and motor problems perpetuate the
8 problem. There are 13 pumps down, including four big ones (over 30 hp). But CUC's water
9 system in mid-September experienced several pump/motor failures.

10
11 53. Meanwhile, CUC must install meters to meet the requirements of federal Stipulated Order
12 #1, the PUC, and its own need for system revenue.

13
14 54. CUC lacks water staff and recently lost staff. CUC's water & wastewater workforce is
15 shrinking. It takes a long time to recruit. Sadly, one of CUC's "Water Watch" supervisors died
16 suddenly in mid-September. Skeleton crews are handling system repairs. Having access to
17 foreign skilled and semi-skilled technicians and trades people is critical, as with CUC's Power
18 Division's generation operations. CUC's foreign contract employees have good formal training
19 and education, and they show up to work religiously, in order to provide the services our
20 population requires.

21
22 55. For its water and wastewater businesses, CUC has tried to hire water and wastewater
23 certified operators. There has not been enough interest by qualified professionals. But CUC
24 must hire such technical staff in order to comply with stiff EPA requirements, as expressed in the
25 latest version of the Stipulated Orders.

26
27 56. 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 57. 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 Commission addressed the filing in May, authorizing a June 21, 2010, rate increase in
37 wastewater rates and full cost recovery for the electric costs of the water and wastewater
38 divisions.

39
40 58. Nonetheless, the EPA on July 21, 2010, filed a status report with the US District Court for
41 the Northern Mariana Islands which was highly critical of the progress of CUC's efforts to

1 comply with Stip Order 1's requirements to solve the water and wastewater situations. It
2 included a statement that tests in June and July each showed violation of the maximum
3 contaminant level drinking water standard for total coliform bacteria. (7-21-10 Status Report, p
4 6 fn 5) The Court held a hearing which began on August 5, 2010, and continued on for five days
5 until a Second Joint Stipulation ("SJS") was reached and executed by the DOJ/EPA, CUC and
6 the Attorney General on behalf of the CNMI.

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

12
13 59. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
14 beginning in September, 2009. The "IFP" must develop over time, becoming more than
15 "interim". CUC cannot do this unless it has a staff of trained accounting and other financial
16 experts who can gather data, put the data in the required form and generate the IFP and its later
17 versions. EPA has reviewed CUC's most recent version of the IFP. CUC must submit its final
18 IFP on or before November 30, 2010.

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

24
25 61. In electric and water/wastewater orders, of September 3 and November 20, 2009, the CPUC
26 addressed CUC's inability to deliver complete on-time financial reports, requiring CUC, in
27 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.'s
28 09-1 and 09-2.) The Commission revisited CUC rates, fees, charges and operations during this
29 year, including in the recent rate case, Docket No. 10-01. CUC's Executive Director was a lead
30 witness in the case, having filed written testimony (on January 31, 2010) and supplemental
31 testimony (on April 1, 2010).

32
33 62. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained
34 accounting and other financial experts who can gather data, put the data in the required form and
35 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
36 staff with the data required for their oversight. CUC has obligated itself to provide an updated,
37 compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1,
38 to the US District Court, and most recently, according to the August 12, 2010, SJS. EPA has yet
39 to approve it.
40

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

6
7 64. CUC last year lost 2 senior accountants plus a related specialist. The IT and billing
8 department in August 2009 was reduced by one staffer, having advertised for a replacement for 4
9 weeks to no avail. While it appeared that CUC might have to look to employing foreign
10 technical specialists, CUC hired back 2 former accountants in September 2009 and brought a
11 third person aboard in October. All are US citizens. Nonetheless, CUC must have the flexibility
12 to hire competent professionals as needed. CUC is still short-staffed, and needs an accounting
13 assistant, and an accounting specialist. On February 17, 2010, CUC's new Chief Financial
14 Officer reported for duty.

15
16 65. CUC's decades-old financial and accounting system computer failed repeatedly during the
17 last three months, including for a complete week. Already-over-committed finance and
18 accounting staff were required to put in days of extra time in hand-recording customer payments
19 and hand-generating bills. It failed again in August.

20
21 66. Nonetheless, the EPA on July 21, 2010, filed a status report with the US District Court for
22 the Northern Mariana Islands which was highly critical of the progress in CUC's efforts to
23 comply with Stip Order 2's requirements to provide timely and complete financial and other
24 operating reports and plans.

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

32
33 68. In fact, during July - September 2010 over 18 CUC employment contracts for non-citizen,
34 technical specialists have required renewal. Failure to timely renew could have crippled CUC's
35 efforts to provide service and meet federal requirements. There is no indication that any of the
36 above manpower situation will be resolved in the next month without continuing in effect this
37 EO and Directive #10.



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

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



9 **Forestalling corporate paralysis**

10
11 70. A critical concern is that the CUC Act's constricted scope of authority for the Executive
12 Director, and the complementary daily management by a host of Board volunteers, would
13 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before
14 CUC.

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

29
30 72. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
31 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –
32 with or without a Board in place. The complex technical problems listed above simply cannot be
33 managed on a day-to-day basis by a group of non-expert volunteers. For example, the Executive
34 Director had to be available to renegotiate CUC's fuel oil contract this year, and insure that fuel
35 supplies reached Tinian and Rota, as well as Saipan. Also, as a key witness in the recent CPUC
36 Docket 10-01, and in future rate cases, the Executive Director must be enabled to testify in favor
37 of the requested rate increase in order to fully present the required evidence.

38
39 73. No private or public utility company in the United States runs this way – with a group of
40 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in
41 the United States has mandated this form of corporate management for a public utility.

1
2 74. CUC has applied for and become eligible for millions of dollars of US ARRA grants,
3 which can substantially benefit the CNMI's infrastructure and create jobs. CUC has been
4 awarded \$11 million in grants from the EPA. But developing the grant requests and
5 implementing the grants requires management attention and expertise, part of a professionally-
6 run business organization. CUC has placed ARRA grants out for bid, so that these benefits can
7 start flowing. CUC must evaluate its needs, and hire and contract for the needed technical
8 specialists to manage the grant-funded projects. This requires a corporate structure capable of
9 making and sustaining important decisions.

10
11 75. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
12 drafting error, and the People, through their elected representatives, wish their utility company to
13 continue to supply them with essential services at a reasonable cost, meeting industry standards.

14
15 □

16 **Fixing CUC's technical insolvency**

17
18 76. CUC has been unable to borrow money to run its operations since the inception of this State
19 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books
20 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115
21 million. This situation may be corrected if the Executive Director is recognized to have the
22 authority to correct it. Part of this situation, the CDA relationship, has been corrected precisely
23 because the Executive Director was empowered by this Executive Order to do so.

24
25 77. Meanwhile, billings and collections are substantially below the levels required to prudently
26 manage CUC's current operations and provide for system repairs, replacements and upgrades.
27 For example, billings alone for water and wastewater are less than 70% of requirements to run
28 those two systems. This has changed slowly as the PUC's June 2010 rate increase takes effect.
29 CUC's cash position continues to be perilous.

30
31 78. The booked CDA obligation rendered CUC nominally insolvent. While CUC was deemed
32 insolvent, CUC could not borrow money. But CUC must be able to borrow money to bridge the
33 gap between (a) the need to spend money on essential goods and services to provide electricity,
34 water and sewage service, and (b) the lagged collection of already-determined-insufficient
35 revenues from the sale of those services. Recent improvements in CUC finances, including the
36 issuance of audit reports, have been insufficient to allow CUC to go to market.

37
38 79. The CPUC, in its September 3, 2009, electric order, Docket No. 09-1, approved a CUC-
39 CDA settlement converting the CDA debt to preferred stock. But the deal has required CUC's
40 Board to agree to it.

1 80. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
2 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
3 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find
4 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
5 Nonetheless, CUC must continue to function, including borrowing money.
6

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



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

23
24 82. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act,
25 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC
26 activities, particularly financial activities.
27

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

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



39 **Addressing a critical financial challenge**

40
41 85. CUC faced a financial crisis in June 2010. It was critically short of funds to buy oil.
42 Without oil CUC would be forced to shut down its generation, bringing the economy of the

1 CNMI to a halt, and endangering health and welfare as electricity-dependent operations ceased –
2 sewage treatment, water pumping, traffic lights and security lighting, air conditioning for the
3 elderly, infants, and other medically fragile persons, and equipment at the CNMI’s Hospital and
4 health clinics. The principal reason for the shortage was the Government’s failure to pay
5 millions of dollars of utility bills. The Government was in arrears about four months on its bills.
6 Only by eliminating restrictions on the Governor’s power to reprogram funds to address this
7 issue was crisis averted.

8
9 86. CUC only had a day or two’s worth of purchased oil to power its system because it lacked
10 the funds to buy oil from its sole, cash-only supplier.

11
12 87. The Executive Director was required to spend substantial time on a concentrated basis
13 interacting with high CNMI government officials as well as developing contingency plans for
14 the orderly shut-down of the CUC system.

15
16 88. Fortunately, the Administration was able to develop a multi-stage plan to enable the
17 payment of enough CNMI Government bills, and the reprogramming of CUC funds to forestall
18 disaster. The Government is still, however, about two months in arrears on its bills.

19
20 89. In order to facilitate this solution, the Governor issued a Declaration of Disaster Emergency
21 (June 8, 2010).

22
23 90. Development of this temporary financial rescue plan would not have been possible without
24 the dedicated, focused effort of a properly empowered Executive Director. Such financial
25 conditions may continue unless the Government, and other large CUC customers, can be brought
26 current, and remain current, on their bills. This may present a challenge for CUC, given the
27 stressed financial conditions of the Commonwealth. A properly empowered Executive Director
28 will be required to address this challenge.

29
30 91. On May 11, 2010, CUC submitted to EPA a draft organization evaluation and
31 reorganization plan. But on June 14, 2010, the EPA assessed CUC a \$140,000 penalty for
32 failing to submit timely such a plan. EPA has yet to approve a master plan for CUC. In a July
33 1, 2010, official letter EPA stated its belief that CUC still lacked the technical capability to put
34 together “adequate” submissions. Importantly, CUC requires a functioning management,
35 including a properly empowered Executive Director to forestall any such additional EPA
36 punitive action.

37
38

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

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

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

13
14 ☐
15 **CONCLUSION AND ORDER**

16
17 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth
18 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
19 facing the Commonwealth of the Northern Mariana Islands.
20

21 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the
22 issuance of Executive Directives setting forth the measures to be taken to address the State of
23 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:
24

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

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

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

36
37 (3) Transfer the direction, personnel, or functions of the Commonwealth
38 departments and agencies or units thereof for the purpose of performing or
39 facilitating emergency services;
40

41 3 CMC § 5121(f)(1)-(3).

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

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

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

13
14
15 **DIRECTIVES**

16 I direct the following:

17
18 Directive 1: Deleted.

19
20 Directive 2: Deleted.

21
22 Directive 3: Deleted.

23
24 Directive 4: Deleted.

25
26 Directive 5: Deleted.

27
28 Directive 6: Deleted.

29
30 Directive 7: Deleted.

31
32 Directive 8: Deleted.

33
34
35 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board,
36 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)
37 the confirmation and convening of an operating CUC Board, or (2) the termination of the
38 authority of this order. In particular, the Executive Director shall have full power and authority
39 to agree to swap CDA debt and related obligations for preferred stock and related features and
40 rights.

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

3
4 § 4532. Exemptions.

5
6 Persons other than citizens and permanent residents may be exempted from the
7 employment restriction in 3 CMC §4531 and employed within the following government
8 entities and positions, on a case by case basis:

- 9
10 ~~(a) Department of Public Health. United States or Canadian board-certified physicians~~
11 ~~and dentists licensed to practice in the Commonwealth.~~
12 ~~(b) Department of Commerce. Temporary or part-time employees as needed for censuses~~
13 ~~and statistical surveys.~~
14 ~~(c) Government translators. Approved foreign national translators for: the Department of~~
15 ~~Labor, the Office of the Attorney General, the Office of the Public Defender, the~~
16 ~~Department of Public Safety, the Commonwealth Superior Court, the Commonwealth~~
17 ~~Supreme Court, and the Marianas Visitors Authority. The Attorney General shall~~
18 ~~establish guidelines for the approval of foreign national translators for the Executive~~
19 ~~Branch. The Supreme Court may establish guidelines for the approval of foreign national~~
20 ~~translators for the Judiciary.~~

21
22
23 3 CMC § 4532, as most recently amended by PL 17-1. (Strikeout is deliberately added) That is,
24 the following language is suspended: "the following", " on a case by case basis" and the
25 following listing:

- 26
27 " (a) Department of Public Health. United States or Canadian board-certified physicians
28 and dentists licensed to practice in the Commonwealth.
29 " (b) Department of Commerce. Temporary or part-time employees as needed for censuses
30 and statistical surveys.
31 " (c) Government translators. Approved foreign national translators for: the Department of
32 Labor, the Office of the Attorney General, the Office of the Public Defender, the Department of
33 Public Safety, the Commonwealth Superior Court, the Commonwealth Supreme Court, and the
34 Marianas Visitors Authority."

35
36 I further suspend and delete the "moratorium" of sec. 4601:

37
38 § 4601. Moratorium.

39
40 There is hereby enacted a moratorium on the hiring of foreign national workers,
41 as defined in 3 CMC §4911. This moratorium shall be read in conjunction with

1 ~~Section 4532 of Chapter 2 of this part, and said moratorium shall be strictly~~
2 ~~construed and adhered to by all agencies and instrumentalities of the~~
3 ~~Commonwealth government.~~
4

5 3 CMC § 4601 as most recently amended by PL 17-1. (Strikeout is deliberately added) That is,
6 the following language is suspended immediately: “There is hereby enacted a moratorium on the
7 hiring of foreign national workers, as defined in 3 CMC §4911. This moratorium shall be read in
8 conjunction with Section 4532 of Chapter 2 of this part, and said moratorium shall be strictly
9 construed and adhered to by all agencies and instrumentalities of the Commonwealth
10 government.”
11

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

21 I further direct generally that the suspension of the language for specified agencies and the
22 specified positions shall not be held as a limitation as to unnamed agencies and instrumentalities,
23 but shall continue to permit other government entities to continue to fill needed positions,
24 particularly in the areas of health care, census and translation/interpretation. Additionally,
25 suspension of the term “on a case by case basis” shall permit government entities, including,
26 notably, CUC, to develop programs and procedures that avoid the delays inherent in creating or
27 obtaining case-by-case reviews and approvals. Finally, suspension of the moratorium is not
28 intended to impede the efforts of CNMI agencies and instrumentalities in lawfully identifying
29 and filling positions with qualified citizens and legal residents.
30

31
32 Done this 20th day of September, 2010.
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39 BENIGNO R. FITIAL,
 Governor

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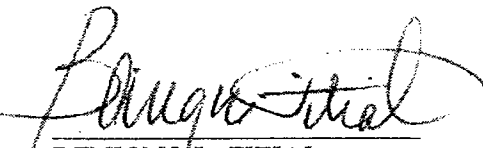
1 Section 4532 of Chapter 2 of this part, and said moratorium shall be strictly
2 construed and adhered to by all agencies and instrumentalities of the
3 Commonwealth government;
4

5 3 CMC § 4601 as most recently amended by PL 17-1. (Strikeout is deliberately added) That is,
6 the following language is suspended immediately: "There is hereby enacted a moratorium on the
7 hiring of foreign national workers, as defined in 3 CMC §4911. This moratorium shall be read in
8 conjunction with Section 4532 of Chapter 2 of this part, and said moratorium shall be strictly
9 construed and adhered to by all agencies and instrumentalities of the Commonwealth
10 government."

11
12 I hereby direct that the effect of the suspension of the indicated language shall be that CUC shall
13 have the complete power, without regard to citizenship or otherwise lawful immigration status,
14 to hire engineers, professional employees in technical or trade areas, power plant mechanics and
15 utility technicians, either directly or indirectly. I further direct that these professional employees
16 may include, but shall not be limited to, sanitarians, engineers, accountants, financial experts,
17 information technology specialists, mechanics, electricians, well-drillers, pipefitters, plumbers,
18 wastewater treatment facilities operators, laboratory specialists and other trades technicians and
19 their professional managers.
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21 I further direct generally that the suspension of the language for specified agencies and the
22 specified positions shall not be held as a limitation as to unnamed agencies and instrumentalities,
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29 and filling positions with qualified citizens and legal residents.
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37 BENIGNO R. FITIAL
38 Governor
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