



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Eloy S. Inos**  
Lt. Governor

1     **EXECUTIVE ORDER 2010-16**  
2  
3

4             **DECLARATION OF A STATE OF DISASTER EMERGENCY:**

5             COMMONWEALTH UTILITIES CORPORATION'S  
6             IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO  
7             PROVIDE IMMEDIATE RELIABLE POWER, WATER AND WASTEWATER  
8             SERVICES  
9

10            **CONTINUATION #27**  
11

12            I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the  
13            Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth  
14            Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby  
15            declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands  
16            due to the inability of the Commonwealth Utilities Corporation (CUC) to provide critical power  
17            generation service to the CNMI and the extreme, immediate and imminent threat such condition  
18            poses to the Commonwealth of the Northern Mariana Islands.  
19

20            This Executive Order is intended to, and does, continue in effect portions of the Governor's  
21            preceding disaster emergency declarations on this matter, EO 2009-01 through -09, and 11-13,  
22            and EO 2010-01 through -06, and -08 through -10, except as specifically modified. As more  
23            fully stated below, this Executive Order shall expire on the 31st day following the date of my

Page 1 of 27

Caller Box 10007 Saipan, MP 96950 Telephone: (670) 664-2200/2201 Facsimile: (670) 664-2211

signature. The following findings and conclusions further support continuation of the Declaration and issuance of directives.

**Table of Contents**

DECLARATION OF A STATE OF DISASTER EMERGENCY:.....	<u>Page 1 of 27</u>
FINDINGS.....	<u>Page 3 of 27</u>
MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION.....	<u>Page 3 of 27</u>
Summary.....	<u>Page 3 of 27</u>
Background.....	<u>Page 3 of 27</u>
Staffing CUC with the technical experts to permit continued electric service.....	<u>Page 5 of 27</u>
Complying with the federal court order on disposal of used oil.....	<u>Page 10 of 27</u>
Complying with the federal court order on managing the water and wastewater systems.....	<u>Page 12 of 27</u>
Meeting US District Court and CNMI Public Utilities Commission requirements to produce timely, accurate financial reports.....	<u>Page 17 of 27</u>
MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE.....	<u>Page 19 of 27</u>
Forestalling corporate paralysis.....	<u>Page 19 of 27</u>
Fixing CUC's technical insolvency.....	<u>Page 20 of 27</u>
Providing the basis for proper CPUC oversight.....	<u>Page 21 of 27</u>
Addressing a critical financial challenge.....	<u>Page 22 of 27</u>
CRISIS FROM THE LACK OF LEGISLATIVE ACTION.....	<u>Page 23 of 27</u>
CONCLUSION AND ORDER.....	<u>Page 23 of 27</u>
DIRECTIVES.....	<u>Page 24 of 27</u>
Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board.....	<u>Page 25 of 27</u>
Directive 10: The following strike-out-formatted language of the quoted provisions of the following statute regulating government employment is, as indicated, suspended.....	<u>Page 25 of 27</u>

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 -10 are incorporated by reference, except as specifically varied in  
8 this Executive Order.



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.  
34



35  
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 at least 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. But hiring qualified technical experts  
34 from the pool of US citizens and permanent residents is extremely difficult due to the CNMI's  
35 competitive disadvantages, including salary/benefit packages and the distance from the  
36 Mainland. For instance, in October 2010 the top candidate for Manager of Drinking Water &  
37 Wastewater turned down CUC's offer. The targeted recruit for the Health, Safety and  
38 Environment Officer also turned down a CUC offer. The challenge to CUC is that it is  
39 recruiting for positions from a US labor pool in which the targeted candidates are already  
40 gainfully employed, as opposed to the other professionals in other segments of the US economy.

1 For instance, one of CUC's own local employees, a supervisor in Wastewater, moved to Oregon  
2 early in 2010 and was soon hired by the local wastewater & water district.

3  
4 23. CUC has hired skilled trade technicians needed on Saipan for power plant operations and  
5 maintenance. For Rota, CUC announced the need for a mechanic-operator and an electrical  
6 operator. As more units begin working after the rehabilitations are largely complete, CUC will  
7 need more staff to operate and maintain them. For the foreseeable future, CUC needs to  
8 maintain its complement of skilled workers. In the meantime, CUC continues to work with the  
9 Northern Marianas Trade Institute ("NMTI") to find local trainees, part of a multi-year  
10 apprenticeship program. CUC has about a dozen of these trainees, but requires fully trained,  
11 experienced technicians to keep the power plants running.

12  
13 24. With generous grant funding and the use of in-house technical specialists and outside  
14 contractors, CUC has undertaken substantial rehabilitation of its power system. Future projects  
15 include replacing turbochargers, conserving and reclaiming used lube and waste oil, retrofitting  
16 streetlights with low-wattage LED's, and restoring power generation and adequate distribution  
17 on Rota. Even if contractors do the work, CUC technical staff must research and prepare bid  
18 documents, review technical proposals, and oversee the work.

19  
20 25. The bottom line on CUC's technical work has been a substantial increase in reliability,  
21 specifically the availability of CUC's generation. CUC's transmission and distribution has  
22 similarly improved – January 2010 saw 10 hours 44 minutes of outages, April 2010 saw one  
23 minute. It was critical to this latter improvement that CUC had the skilled, trained work force to  
24 maintain power lines.

25  
26 26. But even as power becomes more reliable, CUC must reduce its distribution losses from the  
27 reported level of 8%. With world oil prices increasing CUC's power costs, such losses already  
28 account roughly for \$4.8 million annually, which CNMI customers must cover. CUC requires a  
29 team of skilled technicians to find and eliminate power theft and line losses. CUC is assembling  
30 two electrical crews from power generation to help Power T & D with Operation Sweep. The  
31 electrical crews will also help with the electrical wiring or re-wiring and make it easier for the  
32 meter technicians to perform their job of meter installation. CUC crews are also speeding up the  
33 installation of watt hour meters for all water and wastewater facilities, as ordered by the CPUC  
34 All of this activity will cut costs and/or properly allocate them, removing pressure on rates.

35  
36 Ⓜ

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

- 38  
39 a. First, there would be a direct negative effect on the existing consumers. There  
40 would be brownouts, or area blackouts, with the above-mentioned loss of service.

- 1           b.       Second, the power plants would again degrade, producing more of these outages.  
2  
3           c.       Third, there would be an indirect effect, increasing rates over the longer term,  
4               because small consumers would have to shoulder more of the fixed costs of the  
5               CUC system. First, there would be loss of large customers. By contrast, if the  
6               hotels were to become part of the system, they could help pay CUC fixed costs,  
7               which would lower everyone else's rates. The hotels need reliable, 24/7 power.  
8               But with unreliable power, CUC would be unable to convince large commercial  
9               customers, particularly the hotels, to join, or rejoin, its system. Second, would  
10              come additional expenses. If CUC fails to meet federal court deadlines for the  
11              stipulated orders, the Court could appoint a federal receiver and its consulting  
12              team – with all expenses charged to CUC customers. The EPA has already  
13              imposed stipulated order penalties; it recently required the payment of a \$140,000  
14              penalty. Thus, the indirect effect of an inadequate workforce would be to boost  
15              rates.  
16  
17           d.       Fourth, with the recovery of the world economy, advise CUC experts, oil prices  
18               can be expected to rise. If CUC's generators become less efficient, because  
19               technical staff are unavailable to maintain CUC's engines' efficiency, that much  
20               more oil would be needed to generate a given amount of electricity. The price  
21               rise will thereby harm CUC's customers and electricity-dependent services with  
22               higher rates. (Fortunately, in mid-September, CUC's consultants and staff  
23               determined, with PUC experts, that oil prices should remain flat for the next six  
24               months, leaving LEAC fuel rates unchanged.)  
25

26       28. Rota's status today is precarious and financially un-sustainable. Rota has suffered blackouts  
27       from inadequate generator maintenance. The power plant's other facilities and the island's  
28       distribution system similarly need the attentions of additional manpower. The Rota power plant  
29       needed additional generating sets to come on line, as there are only 1.5 dependable sets in the  
30       plant. The third of two feeders was, until June 2010, powered by the Rota Resort, a private  
31       resort, at a cost of \$200,000/month to CUC. The revenues to CUC from the customers on this  
32       feeder fall far below this cost. CUC has negotiated with a Mainland supplier for a new  
33       generating set, with funding from the US Department of the Interior. The alternative for Rota  
34       was akin to Saipan's recent Aggreko situation – purchasing higher cost, reliable power from the  
35       Rota Resort. Therefore, in June 2010, two 0.9 MW Cummins generating sets were transported  
36       from Power Plant 4 on Saipan to Rota in order to augment the power generation. These two  
37       generating sets were commissioned by the end of July, 2010.  
38

39       29. Since E0 2009-8 in August, and the suspension of the harmful legislative employment  
40       restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and  
41       Rota power generation facilities. CUC needs to be able to hire the workers it needs when it

1 needs them. Otherwise, if CUC had to discharge these workers, its staffing levels would return  
2 to those which overworked its limited staff. For example, over pay period numbers 2 through 11  
3 of the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who  
4 each worked 40 or more hours of overtime in a pay period. This condition is extreme, and a  
5 repeat can result in inefficiencies and poor work quality. It can lead to dangerous mistakes,  
6 producing injury or death.

7  
8 30. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The  
9 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set  
10 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6  
11 million-per-year benefit of terminating the Aggreko temporary power contract.

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

24  
25 32. The extended dry season this year (see below) means that vegetation must be cleared away  
26 from the lines early and often. Brush fires can damage the power lines, telephone facilities, and  
27 television cables. Meanwhile, CUC crews must replace failing insulator bolts and failing  
28 switches in order to avoid distribution-related power outages.

29  
30 33. CUC has demonstrated that the required workers are available as nonresident workers, and  
31 cost-effectively so. In the last two months it was able to renew the contracts for approximately  
32 two dozen essential foreign expert workers, thereby sustaining the integrity of CUC's systems.  
33 Thus, continued relief from the legislative prohibition of hiring foreign national workers is  
34 necessary to ensure the delivery of uninterrupted power services to the people of the  
35 Commonwealth.



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

39  
40 34. CUC has taken concrete steps to address the storage and disposal of used oil, consonant  
41 with the federal court's Stip Order 2. Federal court Stipulated Order 2 relates to the used oil

1 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.  
2 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) (“Stip Order 2”). With an  
3 adequate complement of trained technical employees, complemented by expert contractors, CUC  
4 believes that it can meet the Stip Order requirements. On August 12, 2010, the Court issued the  
5 Second Joint Stipulation (“SJS”), which replaced many otherwise unattainable deadlines, but  
6 provided other deadlines and stiff penalties for a host of technical and management positions.  
7 The SJS also provided for firm dates for reporting on the use of grant funds, on the progress of  
8 secondary containment facilities, providing a facilities response plan (“FRP”), and cleaning out  
9 Tank 104.

10  
11 35. A September 2009 inspection by the US Coast Guard (USCG) resulted in the imposition of  
12 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional  
13 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean  
14 from Power Plants 1, 2 and the power plant on Rota. Further, as of October 2009, CUC has  
15 faced the following staffing needs in this area: It critically needs the resources to inspect and  
16 redesign the entire fuel storage, pumping and handling system in order to meet the more  
17 stringent requirements of today. The clean fuel storage tanks at Lower Base were originally  
18 designed for another application. The fuel line from the oil company's terminal is in danger of  
19 rupturing during a transfer; the pumping rate has to be reduced to prevent this. Fixing all of this  
20 requires trained CUC staff.

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

36  
37 37. Incinerators play a crucial role in helping CUC meet Stip Order 2. The two incinerators at  
38 Lower Base (Power Plants 1 and 2) are now operating, and burning about 1000 gallons of used  
39 oil per day. One had to be taken out of service due to mechanical issues, is being repaired by a  
40 contractor, and the contractor's work must be approved by the Deputy Director for Power  
41 Systems, a non-US-citizen. This EO has permitted Power Generation the flexibility of hiring

1 skilled non-US-citizens to not only repair and overhaul the generating sets, but to fix and  
2 supervise such important auxiliary equipment as the incinerators.

3  
4 38. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court  
5 for the Northern Mariana Islands which is highly critical of the progress in CUC's efforts to  
6 comply with Stip Order 2's requirements to solve the used oil situation. Since that report CUC  
7 has contracted with the GRESCO firm to remove waste oil from Tank 104. The EPA has  
8 strongly urged CUC to accelerate the removal, bringing the "empty" date forward from October  
9 2010 to July 30, 2010. CUC found two additional special double-walled "ISO" tanks for use in  
10 the project, to add capacity to the contractor's six tanks. As a result, GRESCO transferred just  
11 under 180,000 gallons of used oil to Guam by July 15.

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



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

28  
29 40. As long as the Water and Wastewater Divisions can hire competent staff and receive power  
30 from the Power Division, they can function.

31  
32 41. The U.S. Department of Justice ("DoJ"), Environment and Natural Resources Division, has  
33 sued CUC in federal court to come into compliance with critical water and sewage treatment  
34 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order  
35 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  
36 and (in September 2008) the U.S. Environmental Protection Agency ("EPA") stipulated to this  
37 first of two orders lodged with the U.S. District Court on the date the Complaint was filed. This  
38 order requires CUC to implement a series of improvements to its water and wastewater systems  
39 that respond to years of neglect, for which it presently lacks the funds and the complete technical  
40 capability. On August 12, 2010, the Court issued the Second Joint Stipulation ("SJS"), which  
41 replaced many otherwise unattainable deadlines, but provided other deadlines and stiff penalties

1 for a host of technical and management positions. The SJS also provided for firm dates for an  
2 Interim Financial Plan, Reorganization Plan, full metering and billing, a complete chlorination  
3 and disinfection program, the hiring of qualified operators in direct responsible charge (“DRC”),  
4 and procedures to generate the scope of work for CUC’s Master Plan.

5  
6 42. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater  
7 Division must respond to acid damage in the asbestos cement piping system, the product of over  
8 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and  
9 metal infrastructure, so that key pipe systems have collapsed. Replacement involves complex  
10 excavations, avoiding electric, phone and water utilities, blocking traffic, stopping the infiltration  
11 of seawater (which damages treatment plant facilities), and pumping sewage around blocked and  
12 excavated areas. The Division has already far exceeded its repair budget. Without this EO, says  
13 CUC, procurement for such repair work would constitute a significant impediment.

14  
15 43. Providing and improving water service presents new challenges. With DEQ’s classification  
16 of Rota’s cave-based domestic water as “surface water” CUC has had to expand water quality  
17 monitoring and testing, requiring more manpower and more equipment. In May 2010, CUC  
18 experienced failures in water pipes as the Cross-Island road project’s contractors’ equipment  
19 broke pipes, requiring CUC staff to be pulled from other jobs, with required equipment, to  
20 address the emergency. In addition, a substantial section of the As Terlaje sewer line collapsed,  
21 requiring an emergency procurement to hire an outside firm to make the repair. As of October  
22 15, 2010, repair work has reached 90 % completion.

23  
24 44. The Sadog Tasi Wastewater Treatment Plant is undergoing long-planned rehabilitation.  
25 But, without such redundant equipment as a clarifier, CUC must devote extra resources to the  
26 facility while the contractor repairs the only unit. Such work has to be conducted within strict  
27 parameters by properly trained technicians to prevent contamination of the environment. Due to  
28 equipment malfunctions, sludge is not pressed, which may have produced unacceptably high  
29 recent levels of enterococci in effluents from both the Sadog Tasi and Agingan Point treatment  
30 plants.

31  
32 45. The Division also needs serviceable vehicles to move its workers to and from job sites.  
33 Presently six vehicles are in such bad shape that they are dangerous. The resulting reduced  
34 vehicle problem raises costs and hurts service, as staff and materials cannot be brought to job  
35 sites on time. Starting in September 2010, CUC has had to rent vehicles in order to get its crews  
36 to trouble areas. Even more alarming is that during the past month both of the CUC-owned  
37 backhoes (one for Water Operations, and one for Wastewater Operations) have been broken,  
38 gone out of service, and await repair parts. CUC has had to rent backhoes for simply performing  
39 routine water and wastewater operations functions on a daily basis during the past month.

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

7  
8 47. CUC engineer staff shortages continue to hamper CUC's ability to anticipate and fix  
9 technical problems. CUC's Water/Wastewater Division needed to add engineers to its staff of  
10 three engineers, in order to fix the poor condition of the CUC sanitation assets. Significant  
11 engineering resources have been focused on addressing EPA Stip Order issues. These issues  
12 include staffing plans, pre-treatment programs, materials management programs, customer  
13 inventory, and cross-connection control programs. CUC water and wastewater engineers are the  
14 lead professionals on several on-going construction projects, which also stretches the limited  
15 engineering resources. These include the Well Isolation Project, Sadog Tasi Sewer Plant  
16 Rehabilitation, and Agingan Sewage Treatment Plant Rehabilitation. Recruitment and retention  
17 of engineering staff to meet these challenges is difficult.

18  
19 48. Nonetheless, CUC engineering and operations departments hired 4 new engineers this past  
20 month, with one engineer assigned to the wastewater projects grants and construction  
21 management, one assigned to design, one to water operations, and one to wastewater operations.  
22 However, given the extensive engineering department workload three more engineer staff  
23 members are still needed. CUC has just hired another, with the employee scheduled to arrive in  
24 January 2011.

25 □  
26 49. Incipient failures include the failure of 98 submersible pumps in the water system over a  
27 period of twelve months. Higher grade stainless steel grates have to be specified that are resistant  
28 to pitting. The pitting causes the grates to fail, and consequently the pump motors fail. CUC  
29 has had to purchase higher quality equipment, rather than the cheap units that fail prematurely.  
30 Motor protection continues to be challenging. During September 2010 one of the newly  
31 installed 30 HP motors with the higher grade stainless steel was damaged by an apparent lightning  
32 strike after only a month's operation.

33  
34 50. CUC must be able to hire the staff to perform the required technical functions. The Water  
35 and Wastewater Divisions cannot carry out their missions without adequate staff. These staff are  
36 essential to producing clean, safe water supplies and removal of stormwater and sewage in a  
37 safe, timely manner. While the bulk of CUC employees are drawn from local and US  
38 populations, the Division management estimates that at least six trained technicians will be  
39 required – three experienced Level 3 wastewater treatment operators, two Level 3 wastewater  
40 collections operators, and an instrumentation /low voltage controls specialist. CUC lacks  
41 enough experienced plumbers and pipe-fitters. Skilled pipe-fitters are needed to repair failing

1 CUC piping and related infrastructure, such as valves and hydrants. An experienced  
2 Water/Wastewater Division operations manager is required. CUC requires a chemist to meet  
3 federal requirements, but has been unable to find a qualified one in the local population, or a  
4 cost-effective professional from the US Mainland; a foreign hire has been identified, however.  
5 CUC announced a vacancy of the position for Deputy Director for Water and Wastewater.  
6 Seven candidates were reviewed and evaluated. The best candidate, however, declined CUC's  
7 offer, as described above. CUC's challenge is to meet the terms and working conditions of  
8 Mainland competitors.

9  
10 51. There are special reasons why the water system must be adequately staffed and maintained  
11 this year. This was an El Nino year, and water was relatively scarce. As predicted in the Pacific  
12 ENSO bulletin forecast back in February 1, 2010, the CNMI dry season brought below normal  
13 rainfalls into June 2010. CUC went into an emergency mode, conserving water, accelerating  
14 water line replacements, and locating and repairing leaks. There was greater danger of fires this  
15 year, with less water available to fight them. For Capital Hill, the drought and a tank  
16 rehabilitation project required that the distribution system in this area be reconfigured in June  
17 2010 in order to supply water at least two hours per day to Wireless Ridge. Upper reaches of  
18 Navy Hill were without water for several days until leaks were repaired. With the rainy season  
19 the aquifers are only slowly replenished. As a result Garapan is seeing in July fewer hours of  
20 water service. Unfortunately, the leaks were noted several months before, but lack of manpower  
21 and funds prevented the pressurization required for leak repair. In July the Kagman booster  
22 pump failed, and until it is replaced the Papago area will see less water delivered.

23  
24 52. Recently CUC suffered severe setbacks in its ability to supply water and to develop a  
25 system for 24/7 water supply. For example, CUC has not been able to serve San Jose under  
26 standard "Water Watch" scheduled valve opening practice. There had to be a second opening of  
27 the Kannat Tabla tank in mid-September 2010 in order to provide San Jose two hours of water in  
28 one week. But this second opening of Kannat Tabla for San Jose created conditions that would  
29 impede opening the next day from the Kannat Tabla tank for Chalan LauLau and Southern  
30 Garapan. Also, September 2010 has seen system water leaks, and pump and motor failures.  
31 CUC nearly failed to provide water to the Tanapag School on the first day of classes, and to the  
32 San Roque and Oleai Schools in mid-September 2010.

33  
34 53. CUC continues to suffer an unprecedented number of waterline breaks and resultant water  
35 leaks. During one day in September 2010 there were six new leaks reported which required  
36 repair crews to work significant overtime. All repair work was performed using rental backhoes,  
37 as CUC's backhoes were broken. CUC professionals consider that the number of leaks the  
38 company experiences to be excessive, particularly because CUC does not provide 24 hour water  
39 and does not properly pressurize the water system.

40  
41 [☐](#)

1 54. Put simply, Saipan does not have enough water. CUC professionals categorize much of the  
2 Saipan water distribution system as “fatigued”. The do not believe that the number of breaks in  
3 the system will decline in the foreseeable future. Pump and motor problems perpetuate the  
4 problem. There are 13 pumps down in October 2010, including four big ones (over 30 hp). But  
5 CUC’s water system in mid-September 2010 experienced several pump/motor failures.  
6

7 55. Meanwhile, CUC must install meters to meet the requirements of federal Stipulated Order  
8 #1, the PUC, and its own need for system revenue. Water metering and billing of customer  
9 water usage by volume continues to be a challenge for CUC. The water meters installed in the  
10 Saipan water system over the past five years have experienced nearly complete failure. (Nearly  
11 10,000 water meters by serial number have been reported to the Water Task Force (“WTF”) by  
12 CUC as failed. The WTF, in turn, has reported these meters to the manufacturer for warranty  
13 purposes. While CUC has made huge strides in the past month with replacing approximately  
14 1,000 broken meters with warranty supplied meters, and reducing the number of customers  
15 whose water bills are *not* based on consumption (from 4,490 to 3,462), there are still many  
16 customer meters to address. Compounding the challenge, CUC recently experienced nearly 400  
17 water meter failures of the warranty meters provided by the manufacturer as replacement meters.  
18 The manufacturer has begun to indicate opposition to providing more replacements.  
19

20 56. CUC lacks water staff and recently lost staff. CUC’s water & wastewater workforce is  
21 shrinking. It takes a long time to recruit. Sadly, one of CUC’s “Water Watch” supervisors died  
22 suddenly in mid-September 2010. Skeleton crews are handling system repairs. Having access to  
23 foreign skilled and semi-skilled technicians and trades people is critical, as with CUC’s Power  
24 Division’s generation operations. CUC’s foreign contract employees have good formal training  
25 and education, and they show up to work religiously, in order to provide the services our  
26 population requires.  
27

28 57. For its water and wastewater businesses, CUC has tried to hire water and wastewater  
29 certified operators. There has not been enough interest by qualified professionals. But CUC  
30 must hire such technical staff in order to comply with stiff EPA requirements, as expressed in the  
31 latest version of the Stipulated Orders. Those professionals whom CUC can identify – more  
32 likely these are foreign nationals – do not necessarily have the skill sets needed to actually  
33 perform the skilled hands-on tasks of operating a utility. Thus, CUC will be looking for  
34 plumber/pipefitters and mechanics (including a master who is skilled in maintaining and fixing  
35 hydraulic systems on heavy equipment), specialized electricians and others. Having these skills  
36 in-house, instead of at contracted local shops can save enormous amounts of money, as well.  
37 While in the long run, these CUC needs provide opportunities for locals who wish to stay on our  
38 islands, CUC’s needs, including the federal requirements, are immediate.  
39

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

4  
5 59. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing  
6 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost  
7 recovery for the water and wastewater systems through the processes of the CNMI Public  
8 Utilities Commission ("CPUC"). CUC filed a wastewater rate increase request, complete with  
9 hundreds of pages of written expert witness testimony and technical support, on January 31,  
10 2010. The Commission addressed the filing in May, authorizing a June 21, 2010, rate increase in  
11 wastewater rates and full cost recovery for the electric costs of the water and wastewater  
12 divisions.

13  
14 60. Nonetheless, the EPA on July 21, 2010, filed a status report with the US District Court for  
15 the Northern Mariana Islands which was highly critical of the progress of CUC's efforts to  
16 comply with Stip Order 1's requirements to solve the water and wastewater situations. It  
17 included a statement that tests in June and July each showed violation of the maximum  
18 contaminant level drinking water standard for total coliform bacteria. (7-21-10 Status Report, p  
19 6 fn 5) The Court held a hearing which began on August 5, 2010, and continued on for five days  
20 until a Second Joint Stipulation ("SJS") was reached and executed by the DOJ/EPA, CUC and  
21 the Attorney General on behalf of the CNMI.

22  
23 Ⓐ  
24 **Meeting US District Court and CNMI Public Utilities Commission requirements to**  
25 **produce timely, accurate financial reports**  
26

27  
28 61. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,  
29 beginning in September, 2009. The "IFP" must develop over time, becoming more than  
30 "interim". CUC cannot do this unless it has a staff of trained accounting and other financial  
31 experts who can gather data, put the data in the required form and generate the IFP and its later  
32 versions. EPA is reviewing CUC's most recent version of the IFP. CUC must submit its final  
33 IFP on or before November 30, 2010.

34  
35 62. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities  
36 Commission ("CPUC"). The CPUC is charged by statute to oversee carefully CUC's operations  
37 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC's  
38 water and wastewater systems.

39  
40 63. In electric and water/wastewater orders, of September 3 and November 20, 2009, the CPUC  
41 addressed CUC's inability to deliver complete on-time financial reports, requiring CUC, in

1 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.'s  
2 09-1 and 09-2.) The Commission revisited CUC rates, fees, charges and operations during this  
3 year, including in the recent rate case, Docket No. 10-01. CUC's Executive Director was a lead  
4 witness in the case, having filed written testimony (on January 31, 2010) and supplemental  
5 testimony (on April 1, 2010).

6  
7 64. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained  
8 accounting and other financial experts who can gather data, put the data in the required form and  
9 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting  
10 staff with the data required for their oversight. CUC has obligated itself to provide an updated,  
11 compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1,  
12 to the US District Court, and most recently, according to the August 12, 2010, SJS. EPA has yet  
13 to approve it.

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

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

29  
30 67. CUC's decades-old financial and accounting system computer failed repeatedly during the  
31 last three months, including for a complete week. Already-over-committed finance and  
32 accounting staff were required to put in days of extra time in hand-recording customer payments  
33 and hand-generating bills. It failed again in August.

34  
35 68. Nonetheless, the EPA on July 21, 2010, filed a status report with the US District Court for  
36 the Northern Mariana Islands which was highly critical of the progress in CUC's efforts to  
37 comply with Stip Order 2's requirements to provide timely and complete financial and other  
38 operating reports and plans.

39  
40 69. To summarize: Without properly trained technical staff CUC's ability to supply power is at  
41 risk. So is its ability to manage the rest of its systems, including its complex procurement, its

1 finances and accounting. CUC's services could not be adequately staffed without the lifting of  
2 the artificial legislative regulation of CUC's workforce, in EO 2009-08, Directive #10,  
3 suspending the limitations on CUC hiring foreign workers. It is obvious that the hiring authority  
4 must be continued.

5  
6 70. In fact, during July - September 2010 over 18 CUC employment contracts for non-citizen,  
7 technical specialists required renewal. Failure to timely renew could have crippled CUC's  
8 efforts to provide service and meet federal requirements. More such contracts must be executed.  
9 There is no indication that any of the above manpower situation will be resolved in the next  
10 month without continuing in effect this EO and Directive #10.

11  
12   
13 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

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

21  
22   
23 **Forestalling corporate paralysis**

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

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

1  
2 74. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and  
3 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –  
4 with or without a Board in place. The complex technical problems listed above simply cannot be  
5 managed on a day-to-day basis by a group of non-expert volunteers. For example, the Executive  
6 Director had to be available to renegotiate CUC's fuel oil contract this year, and insure that fuel  
7 supplies reached Tinian and Rota, as well as Saipan. Also, as a key witness in the recent CPUC  
8 Docket 10-01, and in future rate cases, the Executive Director must be enabled to testify in favor  
9 of the requested rate increase in order to fully present the required evidence.

10  
11 75. No private or public utility company in the United States runs this way – with a group of  
12 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in  
13 the United States has mandated this form of corporate management for a public utility.

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

23  
24 77. I can only conclude that the legislation's extraordinary structure for CUC is the result of a  
25 drafting error, and the People, through their elected representatives, wish their utility company to  
26 continue to supply them with essential services at a reasonable cost, meeting industry standards.



29 **Fixing CUC's technical insolvency**

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

37  
38 79. Meanwhile, billings and collections are substantially below the levels required to prudently  
39 manage CUC's current operations and provide for system repairs, replacements and upgrades.  
40 For example, billings alone for water and wastewater are less than 70% of requirements to run

1 those two systems. This has changed slowly as the PUC's June 2010 rate increase takes effect.  
2 CUC's cash position continues to be perilous.

3  
4 80. The booked CDA obligation rendered CUC nominally insolvent. While CUC was deemed  
5 insolvent, CUC could not borrow money. But CUC must be able to borrow money to bridge the  
6 gap between (a) the need to spend money on essential goods and services to provide electricity,  
7 water and sewage service, and (b) the lagged collection of already-determined-insufficient  
8 revenues from the sale of those services. Recent improvements in CUC finances, including the  
9 issuance of audit reports, have been insufficient to allow CUC to go to market.

10  
11 81. The CPUC, in its September 3, 2009, electric order, Docket No. 09-1, approved a CUC-  
12 CDA settlement converting the CDA debt to preferred stock. But the deal has required CUC's  
13 Board to agree to it.

14  
15 82. There is no Board. CUC has functioned without a Board of Directors, because it has had to.  
16 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no  
17 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find  
18 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.  
19 Nonetheless, CUC must continue to function, including borrowing money.

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



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

37  
38 84. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act,  
39 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC  
40 activities, particularly financial activities.

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

5  
6 86. What becomes very important is CUC's capability to provide the CPUC with accurate and  
7 timely financial and accounting information. But such reporting is not possible without a  
8 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered  
9 Executive Director to lead them.



12 **Addressing a critical financial challenge**

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

23  
24 88. CUC only had a day or two's worth of purchased oil to power its system because it lacked  
25 the funds to buy oil from its sole, cash-only supplier.

26  
27 89. The Executive Director was required to spend substantial time on a concentrated basis  
28 interacting with high CNMI government officials as well as developing contingency plans for  
29 the orderly shut-down of the CUC system.

30  
31 90. Fortunately, the Administration was able to develop a multi-stage plan to enable the  
32 payment of enough CNMI Government bills, and the reprogramming of CUC funds to forestall  
33 disaster. The Government is still, however, about two months in arrears on its bills.

34  
35 91. In order to facilitate this solution, the Governor issued a Declaration of Disaster Emergency  
36 (June 8, 2010).

37  
38 92. Development of this temporary financial rescue plan would not have been possible without  
39 the dedicated, focused effort of a properly empowered Executive Director. Such financial  
40 conditions may continue unless the Government, and other large CUC customers, can be brought  
41 current, and remain current, on their bills. This may present a challenge for CUC, given the

1 stressed financial conditions of the Commonwealth. A properly empowered Executive Director  
2 will be required to address this challenge.

3  
4 93. On May 11, 2010, CUC submitted to EPA a draft organization evaluation and  
5 reorganization plan. But on June 14, 2010, the EPA assessed CUC a \$140,000 penalty for  
6 failing to submit timely such a plan. EPA has yet to approve a master plan for CUC. In a July  
7 1, 2010, official letter EPA stated its belief that CUC still lacked the technical capability to put  
8 together “adequate” submissions. Importantly, CUC requires a functioning management,  
9 including a properly empowered Executive Director to forestall any such additional EPA  
10 punitive action.



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

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

21  
22 95. This Declaration is necessary to protect the health and safety of our children, our senior  
23 citizens, businesses and all other CNMI residents and visitors.



27 **CONCLUSION AND ORDER**

28  
29 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth  
30 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat  
31 facing the Commonwealth of the Northern Mariana Islands.

32  
33 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the  
34 issuance of Executive Directives setting forth the measures to be taken to address the State of  
35 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

36  
37 (f) In addition to any other powers conferred upon the Governor by law, the Governor  
38 may, during a state of disaster emergency:

39  
40 (1) Suspend the provisions of any regulatory statute prescribing the procedures  
41 for conduct of the Commonwealth’s business, or the orders, rules, or regulations  
42 of any Commonwealth activity or agency, if strict compliance with the provision

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

3  
4 (2) Utilize all available resources of the Commonwealth as reasonably necessary  
5 to cope with the disaster emergency of the Commonwealth;

6  
7 (3) Transfer the direction, personnel, or functions of the Commonwealth  
8 departments and agencies or units thereof for the purpose of performing or  
9 facilitating emergency services;

10  
11 3 CMC § 5121(f)(1)-(3).

12  
13 By today's disaster emergency declaration, I intend to enable CUC to continue to provide  
14 necessary service to the people of the Commonwealth.

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

22  
23 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the  
24 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

25  
26  
27 **DIRECTIVES**

28  
29 I direct the following:

30  
31 Directive 1: Deleted.

32  
33 Directive 2: Deleted.

34  
35 Directive 3: Deleted.

36  
37 Directive 4: Deleted.

38  
39 Directive 5: Deleted.

40  
41 Directive 6: Deleted.

1 Directive 7: Deleted.

2  
3 Directive 8: Deleted.

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

11  
12 Directive 10: The following strike-out-formatted language of the quoted provisions of the  
13 following statute regulating government employment is, as indicated, suspended immediately:

14  
15 § 4532. Exemptions.

16  
17 Persons other than citizens and permanent residents may be exempted from the  
18 employment restriction in 3 CMC §4531 and employed within ~~the following~~ government  
19 entities and positions; ~~on a case by case basis:~~

- 20  
21 ~~(a) Department of Public Health. United States or Canadian board-certified physicians~~  
22 ~~and dentists licensed to practice in the Commonwealth.~~  
23 ~~(b) Department of Commerce. Temporary or part-time employees as needed for censuses~~  
24 ~~and statistical surveys.~~  
25 ~~(c) Government translators. Approved foreign national translators for: the Department of~~  
26 ~~Labor, the Office of the Attorney General, the Office of the Public Defender, the~~  
27 ~~Department of Public Safety, the Commonwealth Superior Court, the Commonwealth~~  
28 ~~Supreme Court, and the Marianas Visitors Authority. The Attorney General shall~~  
29 ~~establish guidelines for the approval of foreign national translators for the Executive~~  
30 ~~Branch. The Supreme Court may establish guidelines for the approval of foreign national~~  
31 ~~translators for the Judiciary.~~

32  
33  
34 3 CMC § 4532, as most recently amended by PL 17-1. (Strikeout is deliberately added) That is,  
35 the following language is suspended: “the following”, “ on a case by case basis” and the  
36 following listing:

- 37  
38 “ (a) Department of Public Health. United States or Canadian board-certified physicians  
39 and dentists licensed to practice in the Commonwealth.  
40 “ (b) Department of Commerce. Temporary or part-time employees as needed for censuses  
41 and statistical surveys.

1 “ (c) Government translators. Approved foreign national translators for: the Department of  
2 Labor, the Office of the Attorney General, the Office of the Public Defender, the Department of  
3 Public Safety, the Commonwealth Superior Court, the Commonwealth Supreme Court, and the  
4 Marianas Visitors Authority.”

5  
6 I further suspend and delete the "moratorium" of sec. 4601:

7  
8 § 4601. Moratorium.

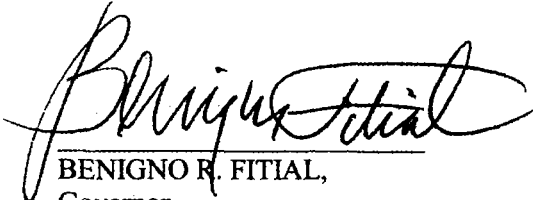
9  
10 ~~There is hereby enacted a moratorium on the hiring of foreign national workers,~~  
11 ~~as defined in 3 CMC §4911. This moratorium shall be read in conjunction with~~  
12 ~~Section 4532 of Chapter 2 of this part, and said moratorium shall be strictly~~  
13 ~~construed and adhered to by all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

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

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

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 Done this 20<sup>th</sup> day of October, 2010.

12  
13  
14  
15  
16  
17  
18   
19 BENIGNO R. FITIAL,  
Governor

0 EO 2010-16 CUC Dis Decl (20Oct10) Governor copy.wpd