



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2010-18**

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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 #29

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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.

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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, -08 through -10, and 16-17, except as specifically modified. As more fully stated below, this Executive Order shall expire on the 31st day following the date of

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

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47

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, and 16-17 are incorporated by reference, except as specifically
8 varied in 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 (3 CMC § 4532, as most recently amended by PL 17-1)
19 prohibits CUC from hiring any more non-US technical workers than the skilled professionals
20 recently with CUC. CUC has repeatedly asked the Legislature for relief from this statute
21 regulating the Government's workforce, to no avail. Further, errors in wording in the CUC
22 enabling legislation recently re-enacted, PL 16-17, as amended, would bar the Executive
23 Director from day-to-day management of the corporation, effectively shutting CUC down. This
24 EO eliminates these problems while it is in effect.

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

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

- 36
37
38 a. The first requires the upgrade and smooth functioning in virtually all aspects of
39 CUC's water and wastewater divisions. The second requires CUC to properly
40 eliminate over 400,000 gallons of used oil and to institute measures to avoid
41 uncontrolled buildup of such inventories. Failure to meet the requirements of the

- 1 federal court orders could subject CUC and the CNMI to substantial fines and
2 charges, and, in the extreme, to a federal takeover of their finances. Presently
3 CUC is “accruing” substantial fines. Most of the fines have not been levied; but
4 they could be. The EPA has, however, levied two fines, in the amount of \$29,000
5 and \$140,000 (June 2010 letter).
6
- 7 b. On February 24, 2010, the US District Court entered an additional stipulated
8 order. It provided, among other things, that a professionally-developed Interim
9 Financial Plan (“IFP”) would be provided to the US EPA within 30 days, by
10 March 26, 2010. The final version of that document must be filed by November
11 30, 2010. This additional stipulation requires CUC to meet a number of
12 deadlines, each involving the application of technical expertise. CUC has timely
13 filed the IFP. It now has the task of implementing the IFP and meeting these
14 deadlines. Failure to meet these requirements would subject CUC to the
15 described sanctions.
16
- 17 c. Of concern to CUC are the tight deadlines for Stipulated Order 2 (Oil
18 Management) projects that are funded by a \$4.05 million CIP grant awarded in
19 February, 2010, by the US Department of the Interior’s Office of Insular Affairs.
20 The funding is to assist CUC in disposing of the used waste oil discussed in this
21 Executive Order. Failure to meet the deadlines could subject CUC to additional
22 EPA sanctions.
23
- 24 d. The coordination of the approvals from the various agencies calls for a responsive
25 procurement system at CUC, including the trained technical staff to implement
26 the system.
27
- 28 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission (“CPUC”).
29 The regulator has plenary power over CUC rates, charges, fees, operations and capital
30 investments. CUC’s failure to timely and competently meet CPUC orders and other
31 requirements can result in severe rate discipline, and fines and other penalties. For example, the
32 Commission required CUC to meet certain requirements, including the filing of a technically
33 complex rate case (Docket No. 10-01) by the end of January 2010, or face fines of \$500 per day.
34 CUC was required to file an additional, complex electric power rate case in the fall of 2010. It
35 filed the case on November 10, 2010.
36
- 37 6. CUC is the sole electricity supplier to the Government of the CNMI, including all public
38 safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the
39 CNMI’s businesses and homes. While some businesses and agencies own backup generators,
40 they are not generally organized to use the backups as permanent power sources; and the diesel

1 oil purchased to run these generators is substantially more expensive than that used for CUC
2 power.

3
4 7. Without CUC electricity:

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

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

39
40 Ⓐ

1 **Staffing CUC with the technical experts to permit continued electric service**
2

3 9. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain
4 and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to
5 buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in
6 September 2009. In October 2009 four other units began required overhaul, a 12-month
7 program.
8

9 10. In November 2009, the following work started: The critical replacement of the PP #1
10 anchor bolts, in order to stop the shifting and vibration that has ruined the plant; and foundation
11 repairs to Engines 1 and 8. Shortly thereafter the replacement of turbochargers and oil-water
12 separators began. All of this work has been essential.
13

14 11. This work has been successful. Power Plant 1 Engines 1, 2, 3, 5, 6, 7 are available. Engine
15 8's critical foundation repair and anchor bolt replacement have been completed. The major
16 engine overhaul is under way, to finish by the end of 2010..
17

18 12. In effect, CUC management, with generous federal financial assistance, has brought its
19 generation back from the brink of system failure. There are adequate reserves. If maintained
20 properly, the system can provide the CNMI's citizens and residents with adequate power.
21

22 13. Adequate technical staff is essential to this work. A major challenge to carrying out this
23 rehabilitation has been finding the trained technicians needed to carry out these rehabilitation
24 projects, and maintain and run the equipment. The technicians must be ready for service when
25 needed and their services must be affordable. Any significant reduction in CUC's present
26 technical workforce could seriously compromise CUC's ability to generate and distribute power.
27 Therefore, in November 2010 management interviewed 5 more foreign trade technicians to
28 replace technicians who had resigned or were terminated. Also, CUC hired 7 trade assistants, all
29 US citizens, who were converted from contract to career service employee trade technicians.
30

31 14. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit
32 ("T & D"), including many vehicles, is dilapidated and unsafe. There is an insufficient number
33 of skilled workers to operate T & D. The linemen must be trained to, and skillful in, meeting US
34 standards. Fortunately, a federal DOI/OIA grant paid for some *lineman training* in June. The
35 critical upcoming projects in T & D include the replacement of the antiquated, rundown and
36 unsafe vehicle fleet; the redesign of T & D using national Rural Utility Service standards; the
37 replacement/installation of insulators, transformers, overcurrent protection, sectionalizers and
38 the installation of efficient LED street lighting.
39

40 15. For example, Saipan's early-September 2009 brush with Typhoon Choi-Wan 15W that
41 passed to the north of Saipan, and typhoon Melor, which passed just north of Saipan in October

1 2009, underscored the extreme vulnerability of CUC's power transmission and distribution
2 system. In September 2009, over 150 calls of no- power and line faults were fielded by crews
3 when, for a storm of this size, there should have been no more than a score. Fortunately, last
4 year's typhoon season ended with no direct hits on the CNMI and the power distribution system.
5 Accelerating improvements to the T & D system ,with proper staff under an Emergency Order,
6 would allow CUC to "harden" the system in anticipation of a bigger storm event. The
7 alternative, in a more serious storm, is CUC's inability to recover in any reasonable time period.
8 The year 2010 has seen no problems of concern from the typhoon season.
9

10 16. In 2010 outages due to Power Transmission & Distribution have been extremely low: May
11 saw only 11 minutes; April just one minute. These are the lowest such figures in the last seven
12 years, reflecting an extraordinary accomplishment for an understaffed, overworked CUC work
13 group.
14

15 17. Utility industry safety margins for isolated, island systems typically require a reserve equal
16 to the capacity of the two largest generating units. In CUC's case this would be another 15 MW
17 of load, equivalent to the departed Aggreko temporary units. Meeting this reserve requirement
18 means CUC must have an adequate repair and maintenance staff.
19

20 18. The Legislature, through PL 17-1 (Mar. 22, 2010), has limited CUC's ability to hire
21 technical staff; eliminating prior statutory permission to hire up to 19 foreign workers, and
22 reinstating a moratorium on the Government's hiring of foreign nationals, even if needed for
23 highly technical positions for which no local or Mainland citizens are available. The CUC Act,
24 as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such persons
25 as are necessary for operations, *except as otherwise limited by other law.* 4 CMC § 8123(h).
26

27 19. PMIC at PP #4 and Telesource on Tinian, and the Rota Resort on Rota, as Independent
28 Power Producers (IPPs), are not subject to the Legislature's limitation or prohibition on foreign
29 workers. Nor are consulting firms that provide specialty utility industry services.
30

31 20. There are not enough US-citizen or US-resident technical specialists at CUC to get the
32 power generation work done, particularly specialists with experience in the type of engines that
33 CUC uses. CUC believes that the vast majority of skill sets must come from non-US personnel.
34

35 21. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding
36 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after
37 interviews - 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator
38 candidates were US citizens.
39

40 22. CUC has hired some local staff in time thanks to the aggressive steps of CUC HR, the
41 Executive Director and earlier versions of Directive 10. But hiring qualified technical experts

1 from the pool of US citizens and permanent residents is extremely difficult due to the CNMI's
2 competitive disadvantages, including salary/benefit packages and the distance from the
3 Mainland. For instance, in October 2010 the top candidate for Manager of Drinking Water &
4 Wastewater turned down CUC's offer. The targeted recruit for the Health, Safety and
5 Environment Officer also turned down a CUC offer. Last month, November 2010, CUC's Oil
6 Manager resigned. The challenge to CUC is that it is recruiting for positions from a US labor
7 pool in which the targeted candidates are already gainfully employed, as opposed to the other
8 professionals in other segments of the US economy. For instance, one of CUC's own local
9 employees, a supervisor in Wastewater, moved to Oregon early in 2010 and was soon hired by
10 the local wastewater & water district.

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

20
21 24. With generous grant funding and the use of in-house technical specialists and outside
22 contractors, CUC has undertaken substantial rehabilitation of its power system. Future projects
23 include replacing turbochargers, conserving and reclaiming used lube and waste oil, retrofitting
24 streetlights with low-wattage LED's, and restoring power generation and adequate distribution
25 on Rota. Even if contractors do the work, CUC technical staff must research and prepare bid
26 documents, review technical proposals, and oversee the work.

27
28 25. The bottom line on CUC's technical work has been a substantial increase in reliability,
29 specifically the availability of CUC's generation. CUC's transmission and distribution has
30 similarly improved – January 2010 saw 10 hours 44 minutes of outages, April 2010 saw one
31 minute. It was critical to this latter improvement that CUC had the skilled, trained work force to
32 maintain power lines.

33
34 26. But even as power becomes more reliable, CUC must employ technical experts to reduce its
35 distribution losses (electricity that CUC "loses", and does not bill to identified customers, means
36 that all customers must pay for it). With world oil prices increasing CUC's power costs, such
37 losses have accounted roughly for \$4.8 million annually, which CNMI customers must cover.
38 CUC requires a team of skilled technicians to find and eliminate power theft and line losses.
39 CUC has assembled electrical crews from power generation to help Power T & D with Operation
40 Sweep. The electrical crews also help with the electrical wiring or re-wiring and make it easier
41 for the meter technicians to perform their job of meter installation. CUC crews are also speeding

1 up the installation of Watt-hour meters for all water and wastewater facilities, as ordered by the
2 CPUC.

3
4 27. All of this activity will cut costs and/or properly allocate them, removing pressure on rates.
5 For example, line losses continue to fall. For year 2009 CUC's power utility consultant recently
6 found that the line losses were 15%. But for calendar year 2010 through October the losses
7 dropped to 10%. One reason is that CUC's staff technical experts determined the proper charges
8 for many commercial customers, correcting meter multipliers. Secondly, Operation Sweep
9 began in earnest in February 2010. Operation Sweep audited the Watt-hour meters and service
10 connections to the densely populated and commercial areas of Saipan. Of the 1,000 services
11 inspected, 100 were found to have tampered meters or bypasses. CUC corrected all of these
12 immediately. The police and attorney general's office are pursuing prosecution of power theft.
13

14 ☐

15 28. The impact of an inadequate workforce would be five-fold:

- 16
17 a. First, there would be a direct negative effect on the existing consumers. There
18 would be brownouts, or area blackouts, with the above-mentioned loss of service.
19
20 b. Second, the power plants would again degrade, producing more of these outages.
21
22 c. Third, there would be an indirect effect, increasing rates over the longer term,
23 because small consumers would have to shoulder more of the fixed costs of the
24 CUC system. First, there would be loss of large customers. By contrast, if the
25 hotels were to become part of the system, they could help pay CUC fixed costs,
26 which would lower everyone else's rates. The hotels need reliable, 24/7 power.
27 But with unreliable power, CUC would be unable to convince large commercial
28 customers, particularly the hotels, to join, or rejoin, its system. Second, would
29 come additional expenses. If CUC fails to meet federal court deadlines for the
30 stipulated orders, the Court could appoint a federal receiver and its consulting
31 team – with all expenses charged to CUC customers. The EPA has already
32 imposed stipulated order penalties; it recently required the payment of a \$140,000
33 penalty. Thus, the indirect effect of an inadequate workforce would be to boost
34 rates.
35
36 d. Fourth, the loss of CUC's technical experts would shut down, or, at least, cripple
37 the company's increasingly successful efforts to cut losses, particularly theft of
38 service.
39
40 e. Fifth, with the recovery of the world economy, advise CUC experts, oil prices can
41 be expected to rise. If CUC's generators become less efficient, because technical

1 staff are unavailable to maintain CUC's engines' efficiency, that much more oil
2 would be needed to generate a given amount of electricity. The price rise will
3 thereby harm CUC's customers and electricity-dependent services with higher
4 rates. (Unfortunately, the mid-September 2010 CUC and CPUC experts'
5 estimates of flat oil prices over the following six months has proven optimistic, so
6 that LEAC fuel rates are presently about 10% below costs.)
7

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

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

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

36 32. CUC points out that the power distribution system is highly vulnerable because, like the
37 sewer system, so much of the maintenance and replacement was deferred for one reason or
38 another over the past 20 years. Since 1995, 26 villages on Saipan were identified as needing
39 major improvements to the power lines; only five have seen those improvements. Power T & D
40 fails in bits and pieces. One of the big pieces that failed in February 2010 was one of 12
41 termination cables on the Kiya Substation (Transformer One). A power outage to the southern

1 parts of Saipan lasted from one to five hours. CUC management states that the excellent
2 response from the crews in both Power Generation and Power T & D demonstrated the
3 importance of having skilled workers. The top two engineers were non-residents. Without this
4 EO in place, given present statutes, it is unlikely CUC would be able to secure the services of
5 such valuable individuals.

6
7 33. The extended dry season this year (see below) meant that vegetation needed to be cleared
8 away from the lines early and often. Brush fires can damage the power lines, telephone
9 facilities, and television cables. Tree-trimming was also necessary to protect lines from the
10 effects of high winds. Meanwhile, CUC crews must replace failing insulator bolts and failing
11 switches in order to avoid distribution-related power outages.

12
13 34. CUC has demonstrated that the required workers are available as nonresident workers, and
14 cost-effectively so. In the last months it was able to renew the contracts for approximately two
15 dozen essential foreign expert workers, thereby sustaining the integrity of CUC's systems. Thus,
16 continued relief from the legislative prohibition of hiring foreign national workers is necessary to
17 ensure the delivery of uninterrupted power services to the people of the Commonwealth.



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

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

33
34 36. A September 2009 inspection by the US Coast Guard (USCG) resulted in the imposition of
35 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional
36 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean
37 from Power Plants 1, 2 and the power plant on Rota. Further, since October 2009, CUC has
38 faced the following staffing needs in this area: It critically needs the resources to inspect and
39 redesign the entire fuel storage, pumping and handling system in order to meet the more
40 stringent requirements of today. The clean fuel storage tanks at Lower Base were originally
41 designed for another application. The fuel line from the oil company's terminal is in danger of

1 rupturing during a transfer; the pumping rate has to be reduced to prevent this. Fixing all of this
2 requires trained CUC staff.

3
4 37. Serious deficiencies in the waste oil handling system at Lower Base have come to light in
5 the past year and are being addressed by both CUC and EPA. One deficiency is that the oily
6 water separators were not functioning as such because of the excessive amount of oil (as
7 opposed to water) entering the system. As a result, oil was spilling onto the ground rather than
8 being separated and skimmed off properly. Power Plant #1 has been sealed off to prevent any
9 waste oil from leaving the plant and flowing into the oily water separators. To prevent oil from
10 accumulating uncontained in the plant itself, emergency measures have been taken to store waste
11 oil and to fabricate above-ground tanks. The oily water separators, pipes, holding tanks, and
12 baffles are being cleaned out so that the entire system can be carefully inspected and
13 re-engineered. All of the additional work is expensive. Regardless of who does the work
14 initially, CUC staff, EPA contractors, or a combination thereof, CUC requires skilled, trained
15 workers for the clean-up. Failure to correct this situation could harm the nearby environment,
16 CUC's ability to generate electricity properly, and the assurances given pursuant to Stip Order 2.
17 CUC hired an Oil Technical Manager, but he turned in his resignation in November 2010.

18
19 38. Incinerators play a crucial role in helping CUC meet Stip Order 2. After substantial
20 progress in removing and incinerating Tank 104 oil in the year 2010, the rate dropped
21 substantially, as the remaining oil proved to be more like grease. This EO has permitted Power
22 Generation the flexibility of hiring skilled non-US-citizens to not only repair and overhaul the
23 generating sets, but to fix and supervise such important auxiliary equipment as the incinerators.
24 CUC technical staff, with EPA help, solved the slowdown.

25
26 39. The EPA on February 18, 2010, filed a status report with the US District Court for the
27 Northern Mariana Islands which was highly critical of the progress in CUC's efforts to comply
28 with Stip Order 2's requirements to solve the used oil situation. Since that report CUC has
29 contracted with the GRESCO firm to remove waste oil from Tank 104. The EPA strongly urged
30 CUC to accelerate the removal. CUC found two additional special double-walled "ISO" tanks
31 for use in the project, to add capacity to the contractor's six tanks. As a result, GRESCO
32 transferred just under 180,000 gallons of used oil to Guam by July 15. But, with success came
33 additional technical difficulties, as the remaining 70,000 gallons of oil became more
34 concentrated, and grease-like, and, therefore, increasingly difficult to pump out. However, after
35 CUC engineers tested methods of incineration, with EPA help, the incineration resumed at a
36 faster pace, and CUC believes that it will clean the tank out by February 2011.

37
38 40. Presently CUC is in process on these specific efforts to comply with Stip Order 2's
39 requirements, with federal funding authorized: Technical Manager secured for the oil disposal
40 management position; secondary containment (new and repair) has received permits and NEPA
41 clearance, and construction has begun; oil disposal for Saipan's Tank 104; oil transfer pipeline

1 for Lower Base design work commenced, construction contract under review by CPUC, with a
2 target in-service date of February 24, 2011; oil handling and training commenced; used oil
3 sampling laboratory in California contracted; used oil tank system integrity testing and
4 cleanout's RFP published; oil-water separators in planning stage; the section of the facility
5 response plan ("FRP") which provides services for oil spills from a new Saipan-based firm has
6 been executed and approved by the CPUC.



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

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

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

29
30 43. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater
31 Division must respond to acid damage in the asbestos cement piping system, the product of over
32 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and
33 metal infrastructure, so that key pipe systems have collapsed. Replacement involves complex
34 excavations, avoiding electric, phone and water utilities, blocking traffic, stopping the infiltration
35 of seawater (which damages treatment plant facilities), and pumping sewage around blocked and
36 excavated areas. The Division has already far exceeded its repair budget. Without this EO, says
37 CUC, procurement for such repair work would constitute a significant impediment.

38
39 44. Providing and improving water service presents new challenges. With DEQ's classification
40 of Rota's cave-based domestic water as "surface water" CUC has had to expand water quality
41 monitoring and testing, requiring more manpower and more equipment. In May 2010, CUC

1 experienced failures in water pipes as the Cross-Island road project's contractors' equipment
2 broke pipes, requiring CUC staff to be pulled from other jobs, with required equipment, to
3 address the emergency. In addition, a substantial section of the As Terlaje sewer line collapsed,
4 requiring an emergency procurement to hire an outside firm to make the repair. As of October
5 15, 2010, repair work reached 90 % completion.

6
7 45. The Sadog Tasi Wastewater Treatment Plant is undergoing long-planned rehabilitation.
8 But, without such redundant equipment as a clarifier, CUC must devote extra resources to the
9 facility while the contractor repairs the only unit. Such work has to be conducted within strict
10 parameters by properly trained technicians to prevent contamination of the environment. Due to
11 equipment malfunctions, sludge is not pressed, which may have produced unacceptably high
12 recent levels of enterococci in effluents from both the Sadog Tasi and Agingan Point treatment
13 plants.

14
15 46. The Division also needs serviceable vehicles to move its workers to and from job sites.
16 Presently six vehicles are in such bad shape that they are dangerous. The resulting reduced
17 vehicle problem raises costs and hurts service, as staff and materials cannot be brought to job
18 sites on time. Starting in September 2010, CUC has had to rent vehicles in order to get its crews
19 to trouble areas. Even more alarming is that during the past months both of the CUC-owned
20 backhoes (one for Water Operations, and one for Wastewater Operations) have been broken,
21 gone out of service, and await repair parts. CUC has had to rent backhoes for simply performing
22 routine water and wastewater operations functions on a daily basis during the past month.

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

30
31 48. CUC engineer staff shortages continue to hamper CUC's ability to anticipate and fix
32 technical problems. CUC's Water/Wastewater Division needed to add engineers to its staff of
33 three engineers, in order to fix the poor condition of the CUC sanitation assets. Significant
34 engineering resources have been focused on addressing EPA Stip Order issues. These issues
35 include staffing plans, pre-treatment programs, materials management programs, customer
36 inventory, and cross-connection control programs. CUC water and wastewater engineers are the
37 lead professionals on several on-going construction projects, which also stretches the limited
38 engineering resources. These include the Well Isolation Project, Sadog Tasi Sewer Plant
39 Rehabilitation, and Agingan Sewage Treatment Plant Rehabilitation. Recruitment and retention
40 of engineering staff to meet these challenges is difficult.

41

1 49. Nonetheless, CUC engineering and operations departments hired 4 new engineers these past
2 months, with one engineer assigned to the wastewater projects grants and construction
3 management, one assigned to design, one to water operations, and one to wastewater operations.
4 However, given the extensive engineering department workload many more engineer staff
5 members are still needed. CUC has just hired another, with the employee scheduled to arrive in
6 January 2011.

7 █
8 50. Incipient failures include the failure of 98 submersible pumps in the water system over a
9 period of 12 months. Higher grade stainless steel grates have to be specified that are resistant to
10 pitting. The pitting causes the grates to fail, and consequently the pump motors fail. CUC has
11 had to purchase higher quality equipment, rather than the cheap units that fail prematurely.
12 Motor protection continues to be challenging. During September 2010 one of the newly
13 installed 30 HP motors with the higher grade stainless steel was damaged by an apparent lighting
14 strike after only a month's operation.

15
16 51. CUC must be able to hire the staff to perform the required technical functions. But CUC
17 has found that, regardless of salary levels, a nationwide shortage of such techs requires that it
18 look overseas. The Water and Wastewater Divisions cannot carry out their missions without
19 adequate staff; the EPA requires adequate technical staff. These staff are essential to producing
20 clean, safe water supplies and removal of stormwater and sewage in a safe, timely manner.
21 While the bulk of CUC employees are drawn from local and US populations, the Division
22 management estimates that at least six trained technicians will be required – three experienced
23 Level 3 wastewater treatment operators, two Level 3 wastewater collections operators, and an
24 instrumentation /low voltage controls specialist. CUC lacks enough experienced plumbers and
25 pipe-fitters. Skilled pipe-fitters are needed to repair failing CUC piping and related
26 infrastructure, such as valves and hydrants. An experienced Water/Wastewater Division
27 operations manager is required. CUC requires a chemist to meet federal requirements, but has
28 been unable to find a qualified one in the local population, or a cost-effective professional from
29 the US Mainland. CUC announced a vacancy of the position for Deputy Director for Water and
30 Wastewater, and has been interviewing candidates. CUC was required to hire this professional
31 soon in order to meet EPA requirements.

32
33 52. There have been special reasons why the water system had to be adequately staffed and
34 maintained this year. This was an El Nino year, and water was relatively scarce. As predicted in
35 the Pacific ENSO bulletin forecast back in February 1, 2010, the CNMI dry season brought
36 below normal rainfalls into June 2010. CUC went into an emergency mode, conserving water,
37 accelerating water line replacements, and locating and repairing leaks. There was greater danger
38 of fires this year, with less water available to fight them. For Capital Hill, the drought and a tank
39 rehabilitation project required that the distribution system in this area be reconfigured in June
40 2010 in order to supply water at least two hours per day to Wireless Ridge. Upper reaches of
41 Navy Hill were without water for several days until leaks were repaired. With the rainy season

1 the aquifers are only slowly replenished. As a result Garapan saw fewer hours of water service.
2 Unfortunately, the leaks were noted several months before, but lack of manpower and funds
3 prevented the pressurization required for leak repair. In July the Kagman booster pump failed,
4 and until it is replaced the Papago area will see less water delivered.

5
6 53. Recently CUC suffered severe setbacks in its ability to supply water and to develop a
7 system for 24/7 water supply. For example, CUC has not been able to serve San Jose under
8 standard "Water Watch" scheduled valve opening practice. There had to be a second opening of
9 the Kannat Tabla tank in mid-September 2010 in order to provide San Jose two hours of water in
10 one week. But this second opening of Kannat Tabla for San Jose created conditions that would
11 impede opening the next day from the Kannat Tabla tank for Chalan LauLau and Southern
12 Garapan. Also, September 2010 saw system water leaks, and pump and motor failures. CUC
13 nearly failed to provide water to the Tanapag School on the first day of classes, and to the San
14 Roque and Oleai Schools in mid-September 2010.

15
16 54. CUC continues to suffer an unprecedented number of waterline breaks and resultant water
17 leaks.

- 18
19 a. During one day in September 2010 there were six new leaks reported which
20 required repair crews to work significant overtime. All repair work was
21 performed using rental backhoes, as CUC's backhoes were broken.
22
23 b. A 16" PVC waterline ruptured on As Terlaje Hill on the morning of October 23,
24 2010, at approximately 4:00 am. An entire length of 16" PVC piping ruptured,
25 resulting in the loss of the Kannat Tabla Tank water volume contents, and
26 producing significant damage to the As Terlaje Hill Roadway. The water rupture
27 resulted in a cost to CUC of approximately \$100,000, of which asphalt repair
28 alone was over \$87,000. The specific cause of the waterline rupture has not been
29 determined, but CUC believes it was likely a result of improper installation and
30 fatigued infrastructure.
31
32 c. CUC professionals consider that the number of leaks the company experiences to
33 be excessive, particularly because CUC does not provide 24-hour water and does
34 not properly pressurize the water system. These leak repair projects stress
35 CUC's limited staff and finances.



38 55. Put simply, Saipan does not have enough water. CUC professionals categorize much of the
39 Saipan water distribution system as "fatigued". They do not believe that the number of breaks in
40 the system will decline in the foreseeable future. Pump and motor problems perpetuate the

1 problem. There were 13 pumps down in October 2010, including four big ones (over 30 hp).
2 CUC's water system in mid-September 2010 experienced several pump/motor failures.
3

4 56. Meanwhile, CUC must install meters to meet the requirements of federal Stipulated Order
5 #1, the CPUC, and its own need for system revenue. Water metering and billing of customer
6 water usage by volume continues to be a challenge for CUC. The water meters installed in the
7 Saipan water system over the past five years have experienced nearly complete failure. Nearly
8 10,000 water meters by serial number have been reported to the Water Task Force ("WTF") by
9 CUC as failed. The WTF, in turn, has reported these meters to the manufacturer for warranty
10 purposes. While CUC has made huge strides in the past months with replacing approximately
11 1,000 broken meters with warranty supplied meters, and reducing the number of customers
12 whose water bills are *not* based on consumption to 3,117 (as of Nov. 13, 2010), there are still
13 many customer meters to address. Compounding the challenge, CUC recently experienced
14 nearly 400 water meter failures of the warranty meters provided by the manufacturer as
15 replacement meters. The manufacturer has begun to indicate opposition to providing more
16 replacements.
17

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

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

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

1 60. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing
2 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost
3 recovery for the water and wastewater systems through the processes of the CPUC. CUC filed a
4 wastewater rate increase request, complete with hundreds of pages of written expert witness
5 testimony and technical support, on January 31, 2010. The Commission addressed the filing on
6 May 28, 2010, authorizing a June 21, 2010, rate increase in wastewater rates and full cost
7 recovery for the electric costs of the water and wastewater divisions.

8
9 61. Nonetheless, the EPA on July 21, 2010, filed a status report with the US District Court for
10 the Northern Mariana Islands which was highly critical of the progress of CUC's efforts to
11 comply with Stip Order 1's requirements to solve the water and wastewater situations. It
12 included a statement that tests in June and July each showed violation of the maximum
13 contaminant level drinking water standard for total coliform bacteria. (7-21-10 Status Report, p
14 6 fn 5) The Court held a hearing which began on August 5, 2010, and continued for five days
15 until a Second Joint Stipulation ("SJS") was reached and executed by the DOJ/EPA, CUC and
16 the Attorney General on behalf of the CNMI.

17
18
19 ☐
20 **Meeting US District Court and CNMI Public Utilities Commission requirements to**
21 **produce timely, accurate financial reports**

22
23 62. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
24 beginning in September, 2009. The "IFP" must develop over time, becoming more than
25 "interim". CUC cannot do this unless it has a staff of trained accounting and other financial
26 experts who can gather data, put the data in the required form and generate the IFP and its later
27 versions. EPA is reviewing CUC's most recent version of the IFP. CUC was required to submit
28 its final IFP on or before November 30, 2010.

29
30 63. Further, CUC is comprehensively regulated by the CPUC. The CPUC is charged by statute
31 to oversee carefully CUC's operations and capital expenditures, and to develop rates that fully
32 pay the costs of safely operating CUC's water and wastewater systems.

33
34 64. In electric and water/wastewater orders, of September 3 and November 20, 2009, the CPUC
35 addressed CUC's inability to deliver complete on-time financial reports, requiring CUC, in
36 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.'s
37 09-1 and 09-2.) The Commission revisited CUC rates, fees, charges and operations during this
38 year, including in the recent rate case, Docket No. 10-01. CUC's Executive Director was a lead
39 witness in the case, having filed written testimony (on January 31, 2010) and supplemental
40 testimony (on April 1, 2010).

41

1 65. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained
2 accounting and other financial experts who can gather data, put the data in the required form and
3 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
4 staff with the data required for their oversight. CUC has obligated itself to provide an updated,
5 compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1,
6 to the US District Court, and most recently, according to the August 12, 2010, SJS. CUC filed
7 its IFP by November 30, 2010. EPA has yet to approve it.

8
9 66. CUC's procurement system is lengthy and complex. A relic of other decades, with their
10 own challenges, it requires extensive technical experience in specifications and the procurement
11 process, and often must be coordinated with the CNMI's separate procurement procedures,
12 adding months to processes that must respond to the immediate challenges outlined in this
13 Executive Order.

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

23
24 68. CUC's decades-old financial and accounting system computer failed repeatedly during the
25 second half of 2010, including for a complete week. Already-over-committed finance and
26 accounting staff were required to put in days of extra time in hand-recording customer payments
27 and hand-generating bills. CUC bought a reconditioned replacement, which awaits proper
28 software. CUC lacks the in-house expertise to generate the software. Further, in order to
29 "query" its system for CPUC-required financial reports, CUC must depend on its IT manager, a
30 foreign national who programs in SQL.

31
32 69. Nonetheless, the EPA on July 21, 2010, filed a status report with the US District Court for
33 the Northern Mariana Islands which was highly critical of the progress in CUC's efforts to
34 comply with Stip Order 2's requirements to provide timely and complete financial and other
35 operating reports and plans.

36
37 70. To summarize: Without properly trained technical staff CUC's ability to supply power is at
38 risk. So is its ability to manage the rest of its systems, including its complex procurement, its
39 finances and accounting. CUC's services could not be adequately staffed without the lifting of
40 the artificial legislative regulation of CUC's workforce, in Directive #10, suspending the

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

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

9
10 72. As an example of the criticality of this Executive Order's providing CUC with the authority
11 to hire foreign workers and the Executive Director with the power and authority to manage CUC,
12 the US District Court reviewed CUC's compliance in a hearing held on December 9, 2010,
13 observing that CUC had met 35 of 36 milestones, including the timely filing of its IFP, a highly
14 positive performance. Without the authority provided by the continuing Executive Order
15 virtually none, if any, of those accomplishments would have been possible, due to the lack of in-
16 house technical expertise and the inability of management to order and supervise the compliance
17 activities.

18
19 ■
20 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

21
22 73. **Summary:** CUC is a \$70 million-per-year business, critical to the CNMI's economy and
23 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors
24 in the position of day-to-day management of the corporation, and requires a complex mix of
25 technical, geographic and other qualifications for Board membership. There is no Board because
26 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot
27 take a critical step toward solvency and the ability to borrow to finance its work.

28
29 ■
30 **Forestalling corporate paralysis**

31
32 74. A critical concern is that the CUC Act's constricted scope of authority for the Executive
33 Director, and the complementary daily management by a host of Board volunteers, would
34 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before
35 CUC.

36
37 75. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC
38 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and
39 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133
40 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and
41 property), demonstrates that the Executive Director is to be left with little more to do than
42 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70

1 million/year corporation, on a day-to-day basis. This includes such decision-making as
2 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning
3 work crews, connecting customers, deciding on making repairs, collecting debts, complying with
4 the details of federal Stipulated Orders and CPUC regulatory requirements, making and funding
5 long-term technical power and water/wastewater plans, overseeing filings with the CPUC,
6 including rate cases, and insuring that, on a day-to-day basis, the power and water flow and the
7 sewage is treated.

8
9 76. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
10 a public health care crisis, as corporate activity and the CNMI's only hospital's operations
11 ground to a halt – with or without a Board in place. The complex technical problems listed
12 above simply cannot be managed on a day-to-day basis by a group of non-expert volunteers. For
13 example, the Executive Director had to be available to renegotiate CUC's fuel oil contract last
14 year, and insure that fuel supplies reached Tinian and Rota, as well as Saipan. Also, as a key
15 witness in the recent CPUC dockets, and in future rate cases, the Executive Director must be
16 enabled to testify in favor of the requested rate increase in order to fully present the required
17 evidence. Finally, the Executive Director's hiring and role was mandated by the US District
18 Court in the Stipulated Orders.

19
20 77. No private or public utility company in the United States runs this way – with a group of
21 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in
22 the United States has mandated this form of corporate management for a public utility.

23
24 78. CUC has applied for and become eligible for millions of dollars of US ARRA and
25 Department of the Interior grants, which can substantially benefit the CNMI's infrastructure,
26 help meet US EPA and Stipulated Order requirements, and create jobs needed in the CNMI's
27 stressed economy. CUC has been awarded \$11 million in grants from the EPA. But developing
28 the grant requests and implementing the grants requires management attention and expertise, part
29 of a professionally-run business organization. CUC has placed its grants out for bid, so that
30 these benefits can start flowing. CUC must evaluate its needs, and hire and contract for the
31 needed technical specialists to manage the grant-funded projects. This requires a corporate
32 structure capable of making and sustaining important decisions.

33
34 79. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
35 drafting error, and the People, through their elected representatives, wish their utility company to
36 continue to supply them with essential power, water and wastewater services at a reasonable
37 cost, meeting industry standards.
38

1
2 **Fixing CUC's technical insolvency**
3

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

10
11 81. Meanwhile, billings and collections are substantially below the levels required to prudently
12 manage CUC's current operations and provide for system repairs, replacements and upgrades.
13 For example, billings alone for water and wastewater were less than 70% of requirements to run
14 those two systems. This has changed slowly as the CPUC's June 2010 rate increase takes effect.
15 CUC's cash position continues to be perilous.

16
17 82. The booked CDA obligation rendered CUC nominally insolvent. While CUC was deemed
18 insolvent, CUC could not borrow money. But CUC must be able to borrow money to bridge the
19 gap between (a) the need to spend money on essential goods and services to provide electricity,
20 water and sewage service, and (b) the lagged collection of revenues from the sale of those
21 services. Recent improvements in CUC finances, including the issuance of audit reports, have
22 been insufficient to allow CUC to go to market.

23
24 83. The CPUC, in its September 3, 2009, electric order, Docket No. 09-1, approved a CUC-
25 CDA settlement converting the CDA debt to preferred stock. But the deal has required CUC's
26 Board to agree to it.

27
28 84. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
29 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
30 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find
31 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
32 Nonetheless, CUC must continue to function, including borrowing money.

33
34 85. Directive # 9 provides the required authority to the Executive Director. It also permits him
35 to continue to run CUC, carefully manage cash to pay tens of millions of dollars annually for
36 fuel oil and purchased power, and do all the things necessary to providing power, water and
37 wastewater services, until the remaining members of a properly constituted Board can be
38 identified, confirmed, and convened for business. Without a fully empowered Executive
39 Director, CUC would be unable to attain financial and operational health. For example:
40

- 1 a. In February 2010 the Executive Director delivered to CDA management the stock
2 certificates required for the debt-equity conversion. CUC has received the fully
3 executed copy of the Stipulated Notice of Dismissal (with prejudice) in CDA v.
4 CUC, Superior Court Civil Action No. 01-0248D (4/21/2010), which the CPUC
5 has required that CDA provide to make effective the conversion of the CDA debt
6 to preferred equity. CUC sought CPUC final approval. The Commission
7 provided that approval in the rate order authorized at its May 28, 2010, business
8 meeting. Soon, CUC must be able to demonstrate to the financial community that
9 it is properly managed, so that it can borrow and pay back long term capital.
10
11 b. On May 28, 2010, the CPUC issued a rate increase order that was critically
12 required to return CUC's water and wastewater operations to financial health.
13 The Executive Director oversaw and approved of the complex rate request and
14 approved the resulting stipulation supporting the rate order.
15
16 c. On November 10, 2010, CUC filed a petition with the CPUC for an electric side
17 rate increase which, if granted, would support in critical part CUC's securing \$15
18 million in long term financing. The debt would pay for necessary equipment and
19 construction, including measures required by the US District Court and the EPA
20 in the federal Stipulated Orders. For example, Power Plant #1 has no more spare
21 parts, the roof of Power Plant 1's control room leaks, presenting the potential for
22 shorting out critical control instruments, CUC's power poles and their insulator
23 pins have degraded, are shorting out, and must be replaced, and CUC's vehicle
24 fleet is failing, must be replaced, and is unsafe to the point where recently a wheel
25 broke free of a moving truck. The Executive Director oversaw and approved the
26 filing and served as CUC's lead expert witness.
27
28 d. CUC has approached the US Department of Agriculture ("USDA") to determine
29 whether CUC can borrow approximately \$15 million at highly attractive rates.
30 This funding will be necessary to provide CUC with the additional equipment and
31 other installations necessary to provide its services. Without an adequate staff of
32 technical professionals and without an executive director with the power to run
33 the company, the USDA will not provide such funding.
34



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

37
38 86. 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.
41

1 87. 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 88. 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.

10
11 ¶

12 **Addressing a critical financial challenge**

13
14 89. 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 90. 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 91. 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 92. 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 once again over two months in arrears on its bills.)

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

37
38 94. 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 95. 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. The EPA required the hiring of a new Executive Director by
9 October 29, 2010; this was accomplished. But EPA disapproved of a CUC “Reorganization
10 Plan” by its letter of November 5, 2010.

11
12 96. Importantly, CUC requires a functioning management, including a properly empowered
13 Executive Director, to forestall additional EPA punitive action.

14
15 ▣

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

17
18 97. There is no Legislative relief coming. For months CUC has repeatedly asked the
19 Legislature for such relief, including submission of draft legislation in July 2010. The
20 Legislature has declined to respond. There is no alternative to providing this relief other than an
21 order from the Governor. Inaction will produce a disaster in which CUC is unable to provide its
22 critical community services. Directives # 9 and #10 were designed to avert this crisis. (The
23 other Directives, #1 through #8, are no longer relevant, and were discontinued.)

24
25 98. This Declaration is necessary to protect the health and safety of our children, our senior
26 citizens, businesses and all other CNMI residents and visitors.

27
28
29 ▣

30 **CONCLUSION AND ORDER**

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

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

39
40 (f) In addition to any other powers conferred upon the Governor by law, the Governor
41 may, during a state of disaster emergency:

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

6
7 (2) Utilize all available resources of the Commonwealth as reasonably necessary
8 to cope with the disaster emergency of the Commonwealth;

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

13
14 3 CMC § 5121(f)(1)-(3).

15
16 By today's disaster emergency declaration, I intend to enable CUC to continue to provide
17 necessary service to the people of the Commonwealth.

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

25
26 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the
27 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

28
29
30 **DIRECTIVES**

31 I direct the following:

32
33 Directive 1: Deleted.

34
35 Directive 2: Deleted.

36
37 Directive 3: Deleted.

38
39 Directive 4: Deleted.

40
41

1 Directive 5: Deleted.

2
3 Directive 6: Deleted.

4
5 Directive 7: Deleted.

6
7 Directive 8: Deleted.

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

15
16 Directive 10: The following strike-out-formatted language of the quoted provisions of the
17 following statute regulating government employment is, as indicated, suspended immediately:

18
19 § 4532. Exemptions.

20
21 Persons other than citizens and permanent residents may be exempted from the
22 employment restriction in 3 CMC §4531 and employed within the following government
23 entities and positions, on a case by case basis:

24
25 ~~(a) Department of Public Health: United States or Canadian board-certified physicians~~
26 ~~and dentists licensed to practice in the Commonwealth.~~

27 ~~(b) Department of Commerce: Temporary or part-time employees as needed for censuses~~
28 ~~and statistical surveys.~~

29 ~~(c) Government translators. Approved foreign national translators for: the Department of~~
30 ~~Labor, the Office of the Attorney General, the Office of the Public Defender, the~~
31 ~~Department of Public Safety, the Commonwealth Superior Court, the Commonwealth~~
32 ~~Supreme Court, and the Marianas Visitors Authority. The Attorney General shall~~
33 ~~establish guidelines for the approval of foreign national translators for the Executive~~
34 ~~Branch. The Supreme Court may establish guidelines for the approval of foreign national~~
35 ~~translators for the Judiciary.~~

36
37
38 3 CMC § 4532, as most recently amended by PL 17-1. (Strikeout is deliberately added) That is,
39 the following language is suspended: “the following”, “ on a case by case basis” and the
40 following listing:

1 “ (a) Department of Public Health. United States or Canadian board-certified physicians
2 and dentists licensed to practice in the Commonwealth.

3 “ (b) Department of Commerce. Temporary or part-time employees as needed for censuses
4 and statistical surveys.

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

9
10 I further suspend and delete the "moratorium" of sec. 4601:

11
12 § 4601. Moratorium.

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

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

26
27 I hereby direct that the effect of the suspension of the indicated language shall be that CUC shall
28 have the complete power, without regard to citizenship or otherwise lawful immigration status,
29 to hire engineers, professional employees in technical or trade areas, power plant mechanics and
30 utility technicians, either directly or indirectly. I further direct that these professional employees
31 may include, but shall not be limited to, sanitarians, engineers, accountants, financial experts,
32 information technology specialists, mechanics, electricians, well-drillers, pipefitters, plumbers,
33 wastewater treatment facilities operators, laboratory specialists and other trades technicians and
34 their professional managers.
35

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

11
12 Done this 19th day of December, 2010.



BENIGNO R. FITIAL