



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2011-01**
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 #30
11

12 I, ELOY S. INOS, pursuant to the authority vested in me as Acting 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 and water and wastewater service to the CNMI and the extreme, immediate and
18 imminent threat such condition 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, -08 through -10, and 16-19, except as specifically modified. As
23 more fully stated below, this Executive Order shall expire on the 31st day following the date of

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

3
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46

1 **FINDINGS**

2
3 I find that:

4
5 1. All findings and conclusions of EO 2009-01 through -09, and 11-13, and EO 2010-01
6 through -06, and -08 through -10, and 16-19 are incorporated by reference, except as specifically
7 varied in this Executive Order.
8
9

10 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

11
12 2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers
13 has continued to place CUC operations at risk. Incipient failures in the CUC water, wastewater
14 and power transmission and distribution networks have underscored the importance of having in
15 place a well-funded and functioning preventive maintenance program. Skilled workers and a
16 responsive support system are key to the success of the operations, particularly of preventive
17 maintenance. Presently CNMI law (3 CMC § 4532, as most recently amended by PL 17-1)
18 prohibits CUC from hiring any more non-US technical workers than the skilled professionals
19 recently with CUC. CUC has repeatedly asked the Legislature for relief from this statute
20 regulating the Government’s workforce, to no avail. Further, errors in wording in the CUC
21 enabling legislation recently re-enacted in PL 16-17, as amended, would bar the Executive
22 Director from day-to-day management of the corporation, effectively shutting CUC down. This
23 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 sets of consent, or “stipulated”, orders.
35

- 36 a. The first requires the upgrade and smooth functioning in virtually all
37 aspects of CUC’s water and wastewater divisions. The second requires CUC to
38 properly eliminate over 400,000 gallons of used oil and to institute measures to
39 avoid uncontrolled buildup of such inventories. Failure to meet the requirements
40 of the federal court orders could subject CUC and the CNMI to substantial fines
41 and 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
6 stipulated order, and on August 12, 2010, the US District Court entered a further
7 stipulated order. It provided, among other things, that a professionally-developed
8 Interim Financial Plan (“IFP”) would be provided to the US EPA by November
9 30, 2010. This additional stipulation requires CUC to meet a number of
10 deadlines, each involving the application of technical expertise. CUC timely filed
11 the IFP, but EPA on January 15, 2011 disapproved the submission. Failure to
12 meet IFP requirements would subject CUC to the described sanctions.
13

14 c. Of concern to CUC is the number of Stipulated Order 2 (“SO2”) (Oil
15 Management) projects which need to be done which do not have funding. There
16 is a \$4.05 million CIP grant awarded in February, 2010, by the US Department of
17 the Interior’s Office of Insular Affairs. The funding is to assist CUC in disposing
18 of the used waste oil discussed in this Executive Order. However, CUC has
19 identified a need for approximately an additional \$10 million dollars to complete
20 all SO2 projects. Failure to meet the deadlines could subject CUC to additional
21 EPA sanctions.
22

23 d. The coordination of the approvals from the various agencies calls for a
24 responsive procurement system at CUC, including the trained technical staff to
25 implement the system.
26

27 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission (“CPUC”).
28 The regulator has plenary power over CUC rates, charges, fees, operations and capital
29 investments. CUC’s failure to timely and competently meet CPUC orders and other
30 requirements can result in severe rate discipline, and fines and other penalties. For example, the
31 Commission required CUC to meet certain requirements, including the filing of a technically
32 complex rate case (Docket No. 10-01) by the end of January 2010, or face fines of \$500 per day.
33 CUC was required to file an additional, complex electric power rate case in the fall of 2010. It
34 filed the case on November 10, 2010.
35

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

1
2 7. Without CUC electricity:
3

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

30 8. CUC requires employees with specialized training. There are many non US citizens whom
31 CUC needs to retain on technical and professional contracts. Without these positions filled
32 CUC's operations would be severely compromised.
33

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

36
37 9. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain
38 and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to
39 buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in
40 September 2009. In October 2009 four other units began required overhaul, a 12-month
41 program.

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

7 11. This work has been successful. Power Plant 1 Engines 1, 2, 3, 5, 6, 7 are available. Engine
8 8's critical foundation repair and anchor bolt replacement have been completed. The major
9 engine overhaul is under way, to finish by the end of 2010.
10

11 12. In effect, CUC management, with generous federal financial assistance, has brought its
12 generation back from the brink of system failure. However, CUC still lacks adequate reserves. If
13 maintained properly, the system can provide the CNMI's citizens and residents with adequate
14 power, but at this time, CUC lacks the financial ability to buy all the parts it needs.
15

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

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

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

1 alternative, in a more serious storm, is CUC's inability to recover in any reasonable time period.
2 The year 2010 has seen no problems of concern from the typhoon season so far.
3

4 16. In 2010, outages due to Power Transmission & Distribution have been extremely low: May
5 saw only 11 minutes; April just one minute. These are the lowest such figures in the last seven
6 years, reflecting an extraordinary accomplishment for an understaffed, overworked CUC work
7 group.
8

9 17. Utility industry safety margins for isolated, island systems typically require a reserve equal
10 to the capacity of the two largest generating units. In CUC's case this would be another 15 MW
11 of load, equivalent to the departed Aggreko temporary units. Meeting this reserve requirement
12 means CUC must have an adequate repair and maintenance staff.
13

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

21 19. PMIC at PP #4 and Telesource on Tinian, and the Rota Resort on Rota, as Independent
22 Power Producers (IPPs), are not subject to the Legislature's limitation or prohibition on foreign
23 workers. Nor are consulting firms that provide specialty utility industry services.
24

25 20. There are not enough US-citizen or US-resident technical specialists at CUC to get the
26 power generation work done, particularly specialists with experience in the type of engines that
27 CUC uses. CUC believes that the vast majority of skill sets must come from non-US personnel.
28

29 21. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding
30 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after
31 interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator
32 candidates were US citizens.
33

34 22. CUC has hired some local staff in time thanks to the aggressive steps of CUC HR, the
35 Executive Director and earlier versions of Directive 10. But hiring qualified technical experts
36 from the pool of US citizens and permanent residents is extremely difficult due to the CNMI's
37 competitive disadvantages, including salary/benefit packages and the distance from the
38 Mainland. For instance, in October 2010 the top candidate for Manager of Drinking Water &
39 Wastewater turned down CUC's offer. The targeted recruit for the Health, Safety and
40 Environment Officer also turned down a CUC offer. In November 2010, CUC's Oil Manager
41 resigned, effective December 17, 2010. The challenge to CUC is that it is recruiting for positions

1 from a US labor pool in which the targeted candidates are already gainfully employed, as
2 opposed to the other professionals in other segments of the US economy. For instance, one of
3 CUC's own local employees, a supervisor in Wastewater, moved to Oregon early in 2010 and
4 was soon hired by the local wastewater & water district.
5

6 23. CUC has hired skilled trade technicians needed on Saipan for power plant operations and
7 maintenance. For Rota, CUC announced the need for a mechanic-operator and an electrical
8 operator. As more units begin working after the power plant rehabilitations are largely complete,
9 CUC will need more staff to operate and maintain them. For the foreseeable future, CUC needs
10 to maintain its complement of skilled workers. In the meantime, CUC continues to work with
11 the Northern Marianas Trade Institute ("NMTI") to find local trainees, part of a multi-year
12 apprenticeship program. CUC has had about a dozen of these trainees, but requires fully trained,
13 experienced technicians to keep the power plants running. In addition, CUC has made ongoing
14 attempts to train its own current employees to move up to more advanced technical positions by
15 gaining certifications necessary through classes and training for taking the tests required, but so
16 far CUC has not met with success.
17

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

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

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

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

11
12 28. The impact of an inadequate workforce would be five-fold:
13

- 14 a. First, there would be a direct negative effect on the existing consumers.
15 There would be brownouts, or area blackouts, with the above-mentioned loss of
16 service.
17
- 18 b. Second, the power plants would again degrade, producing more of these
19 outages.
20
- 21 c. Third, there would be an indirect effect, increasing rates over the longer
22 term, because small consumers would have to shoulder more of the fixed costs of
23 the CUC system. First, there would be loss of large customers. By contrast, if the
24 hotels were to become part of the system, they could help pay CUC fixed costs,
25 which would lower everyone else's rates. The hotels need reliable, 24/7 power.
26 But with unreliable power, CUC would be unable to convince large commercial
27 customers, particularly the hotels, to join, or rejoin, its system. Second, would
28 come additional expenses. If CUC fails to meet federal court deadlines for the
29 stipulated orders, the Court could appoint a federal receiver and its consulting
30 team – with all expenses charged to CUC customers. The EPA has already
31 imposed stipulated order penalties; it required the payment of a \$140,000 penalty
32 in the summer of 2010. Thus, the indirect effect of an inadequate workforce
33 would be to boost rates.
34
- 35 d. Fourth, the loss of CUC's technical experts would shut down, or, at least,
36 cripple the company's increasingly successful efforts to cut losses, particularly
37 theft of service.
38
- 39 e. Fifth, with the recovery of the world economy, oil prices can be expected
40 to rise. This has already happened, resulting in CUC's emergency petition on
41 December 30, 2010 to the CPUC due to a million dollar loss which was, in turn,

1 due to rises in world oil prices. If CUC's generators become less efficient,
2 because technical staff are unavailable to maintain CUC's engines' efficiency that
3 much more oil would be needed to generate a given amount of electricity. The
4 price rise will thereby harm CUC's customers and electricity-dependent services
5 with higher rates.
6

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

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

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

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

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

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

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

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

19
20 35. CUC has taken concrete steps to address the storage and disposal of used oil, consonant
21 with the federal court's Stipulated Order 2 ("SO2"). Federal court Stipulated Order 2 relates to
22 the used oil from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC
23 transformers. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order
24 2"). With an adequate complement of trained technical employees, complemented by expert
25 contractors, CUC believes that it can meet the SO2 requirements. On August 12, 2010, the Court
26 issued the Second Joint Stipulation ("SJS"), which replaced many otherwise unattainable
27 deadlines, but provided other deadlines and stiff penalties for a host of technical and management
28 positions. The SJS also provided for firm dates for reporting on the use of grant funds, on the
29 progress of secondary containment facilities, providing a facilities response plan ("FRP"), and
30 cleaning out Tank 104. As of January 12, 2011, CUC has completely emptied used oil out of
31 Tank 104, 107 and 108, for a total of almost 400,000.00 gallons of used oil. CUC encountered
32 difficulties with sludge which delayed the project. The problem was solved by CUC's top power
33 generation engineer, who is a non-resident worker, in tandem with the contractor. Without the
34 assistance of at least two non-resident worker engineers at the power plant, CUC would not have
35 been able to succeed.
36

37 36. A September 2009 inspection by the US Coast Guard (USCG) resulted in the imposition of
38 another cost that was unanticipated even with SO2. The USCG now requires additional and
39 more stringent measures to contain or eliminate the possibility of any oil reaching the ocean from
40 Power Plants 1, 2 and the power plant on Rota. Further, since October 2009, CUC has faced the
41 following staffing needs in this area: It critically needs the resources to inspect and redesign the

1 entire fuel storage, pumping and handling system in order to meet the more stringent
2 requirements of today. The clean fuel storage tanks at Lower Base were originally designed for
3 another application. The fuel line from the oil company's terminal is in danger of rupturing
4 during a transfer; the pumping rate has to be reduced to prevent this. Fixing all of this requires
5 trained CUC staff.

6
7
8 **Complying with the federal court order on managing the water and wastewater systems**
9

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

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

27
28 39. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater
29 Division must respond to acid damage in the asbestos cement piping system, the product of over
30 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and
31 metal infrastructure, so that key pipe systems have collapsed. Replacement involves complex
32 excavations, avoiding electric, phone and water utilities, blocking traffic, stopping the infiltration
33 of seawater (which damages treatment plant facilities), and pumping sewage around blocked and
34 excavated areas. The Division has already far exceeded its repair budget. Without this EO, says
35 CUC, procurement for such repair work would constitute a significant impediment.

36
37 40. Providing and improving water service presents new challenges. With DEQ's classification
38 of Rota's cave-based domestic water as "surface water" CUC has had to expand water quality
39 monitoring and testing, requiring more manpower and more equipment. In May 2010, CUC
40 experienced failures in water pipes as the Cross-Island road project's contractors' equipment
41 broke pipes, requiring CUC staff to be pulled from other jobs, with required equipment, to

1 address the emergency. In addition, a substantial section of the As Terlaje sewer line collapsed,
2 requiring an emergency procurement to hire an outside firm to make the repair. As of October
3 15, 2010, repair work reached 90 % completion.
4

5 41. Sewage lift station failures continue, requiring CUC crews to install newly received pumps.
6 Approximately 17 of the 45 CUC sewage lift station are in poor condition and require significant
7 rehabilitation. CUC anticipates an EPA grant for the rehabilitation of these lift stations. But that
8 construction will not occur for approximately one year. In July there was a sewer blockage in the
9 CK and Susupe areas, and CUC lacked the equipment to repair it; its usual contractor also
10 suffered equipment problems.
11

12 42. CUC engineer staff shortages continue to hamper CUC's ability to anticipate and fix
13 technical problems. CUC's Water/Wastewater Division needed to add engineers to its staff of
14 three engineers, in order to fix the poor condition of the CUC sanitation assets. CUC has finally
15 been able to add engineers, some of whom are non-resident workers. Significant engineering
16 resources have been focused on addressing EPA Stip Order 1 issues, including staffing plans, pre-
17 treatment programs, materials management programs, customer inventory, and cross-connection
18 control programs. It was crucial to fill these engineering positions, which are highly technical
19 and require specialized knowledge and training. CUC water and wastewater engineers are the
20 lead professionals on several on-going construction projects, which also stretches the limited
21 engineering resources. These include the Well Isolation Project, Sadog Tasi Sewer Plant
22 Rehabilitation, and Agingan Sewage Treatment Plant Rehabilitation. Recruitment and retention
23 of engineering staff to meet these challenges is difficult, and without the non-resident worker
24 engineers, CUC could not have filled all the positions required.
25

26 43. Incipient failures include the failure of 98 submersible pumps in the water system over a
27 period of 12 months. Higher grade stainless steel grates have to be specified that are resistant to
28 pitting. The pitting causes the grates to fail, and consequently the pump motors fail. CUC has
29 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 installed
31 30 HP motors with the higher grade stainless steel was damaged by an apparent lightning strike
32 after only a month's operation.
33

34 CUC must be able to hire the staff to perform the required technical functions. But CUC has
35 found that, regardless of salary levels, a nationwide shortage of such technical professionals
36 requires that it look overseas. The Water and Wastewater Divisions cannot carry out their
37 missions without adequate staff; the EPA requires adequate technical staff. These staff are
38 essential to producing clean, safe water supplies and removal of storm water and sewage in a
39 safe, timely manner. While the bulk of CUC employees are drawn from local and US
40 populations, the Division management estimates that at least six trained technicians will be
41 required – three experienced Level 3 wastewater treatment operators, two Level 3 wastewater

1 collections operators, and an instrumentation /low voltage controls specialist. CUC lacks enough
2 experienced plumbers and pipe-fitters. Skilled pipe-fitters are needed to repair failing CUC
3 piping and related infrastructure, such as valves and hydrants. An experienced
4 Water/Wastewater Division operations manager is required. CUC requires a chemist to meet
5 federal requirements, but has been unable to find a qualified one in the local population, or a
6 cost-effective professional from the US Mainland.

7
8 44. There have been special reasons why the water system had to be adequately staffed and
9 maintained this year. This was an El Nino year, and water was relatively scarce. As predicted in
10 the Pacific ENSO bulletin forecast back in February 1, 2010, the CNMI dry season brought
11 below normal rainfalls into June 2010. CUC went into an emergency mode, conserving water,
12 accelerating water line replacements, and locating and repairing leaks. There was greater danger
13 of fires this year, with less water available to fight them. For Capital Hill, the drought and a tank
14 rehabilitation project required that the distribution system in this area be reconfigured in June
15 2010 in order to supply water at least two hours per day to Wireless Ridge. Upper reaches of
16 Navy Hill were without water for several days until leaks were repaired. With the rainy season
17 the aquifers are only slowly replenished. As a result Garapan saw fewer hours of water service.
18 Unfortunately, the leaks were noted several months before, but lack of manpower and funds
19 prevented the pressurization required for leak repair. In July the Kagman booster pump failed,
20 and until it is replaced the Papago area will see less water delivered.

21
22 45. Recently CUC suffered severe setbacks in its ability to supply water and to develop a system
23 for 24/7 water supply. For example, CUC has not been able to serve San Jose under standard
24 "Water Watch" scheduled valve opening practice. There had to be a second opening of the
25 Kannat Tabla tank in mid-September 2010 in order to provide San Jose two hours of water in one
26 week. But this second opening of Kannat Tabla for San Jose created conditions that would
27 impede opening the next day from the Kannat Tabla tank for Chalan LauLau and Southern
28 Garapan. Also, September 2010 saw system water leaks, and pump and motor failures. CUC
29 nearly failed to provide water to the Tanapag School on the first day of classes, and to the San
30 Roque and Oleai Schools in mid-September 2010.

31
32 46. CUC continues to suffer an unprecedented number of waterline breaks and resultant water
33 leaks.

34
35 a. During one day in September 2010 there were six new leaks reported
36 which required repair crews to work significant overtime. All repair work was
37 performed using rental backhoes, as CUC's backhoes were broken.

38
39 b. A 16" PVC waterline ruptured on As Terlaje Hill on the morning of
40 October 23, 2010, at approximately 4:00 am. An entire length of 16" PVC piping
41 ruptured, resulting in the loss of the Kannat Tabla Tank water volume contents,

1 and producing significant damage to the As Terlaje Hill Roadway. The water
2 rupture resulted in a cost to CUC of approximately \$100,000, of which asphalt
3 repair alone was over \$87,000. The specific cause of the waterline rupture has
4 not been determined, but CUC believes it was likely a result of improper
5 installation and fatigued infrastructure.
6

- 7 c. CUC professionals consider that the number of leaks the company
8 experiences to be excessive, particularly because CUC does not provide 24-hour
9 water and does not properly pressurize the water system. These leak repair
10 projects stress CUC's limited staff and finances.
11

12 47. Put simply, Saipan does not have enough water. CUC professionals categorize much of the
13 Saipan water distribution system as "fatigued". The do not believe that the number of breaks in
14 the system will decline in the foreseeable future. Pump and motor problems perpetuate the
15 problem. There were 13 pumps down in October 2010, including four big ones (over 30 hp).
16 CUC's water system in mid-September 2010 experienced several pump/motor failures.
17

18 48. Meanwhile, CUC must install meters to meet the requirements of federal Stipulated Order 1,
19 the CPUC, and its own need for system revenue. Water metering and billing of customer water
20 usage by volume continues to be a challenge for CUC. The water meters installed in the Saipan
21 water system over the past five years have experienced nearly complete failure. Nearly 10,000
22 water meters by serial number have been reported to the Water Task Force ("WTF") by CUC as
23 failed. The WTF, in turn, has reported these meters to the manufacturer for warranty purposes.
24 While CUC has made huge strides in the past months with replacing approximately 68% of all of
25 the failed meters as well as reducing the number of customers whose water bills are *not* based on
26 consumption (as of Jan. 2, 2011), there are still many customer meters to address. Compounding
27 the challenge, CUC recently experienced nearly 400 water meter failures of the warranty meters
28 provided by the manufacturer as replacement meters. The manufacturer has begun to indicate
29 opposition to providing more replacements.
30

31 49. CUC lacks water staff and recently lost staff. CUC's water & wastewater workforce is
32 shrinking. It takes a long time to recruit. Sadly, one of CUC's "Water Watch" supervisors died
33 suddenly in mid-September 2010. In addition, a United States hire for Division Manager of
34 Water and Wastewater failed to appear as promised, and CUC was forced to terminate his
35 contract. Skeleton crews are handling system repairs. Having access to foreign skilled and semi-
36 skilled technicians and trades people is critical, as with CUC's Power Division's generation
37 operations. CUC's foreign contract employees have good formal training and education, and
38 they have been scrupulously dependable in providing the services our population requires.
39

40 50. For its water and wastewater businesses, CUC has tried to hire water and wastewater
41 certified operators. There has not been enough interest by qualified professionals. But CUC

1 must hire such technical staff in order to comply with stiff EPA requirements, as expressed in the
2 latest version of the Stipulated Orders. Those professionals whom CUC can identify – more
3 likely these are foreign nationals – do not necessarily have the skill sets needed to actually
4 perform the skilled hands-on tasks of operating a utility. Thus, CUC will be looking for
5 plumber/pipefitters and mechanics (including a master who is skilled in maintaining and fixing
6 hydraulic systems on heavy equipment), specialized electricians and others. Having these skills
7 in-house, instead of at contracted local shops can save enormous amounts of money as well.
8 While in the long run these CUC needs provide opportunities for locals who wish to stay on our
9 islands, CUC’s needs, including the federal requirements, are immediate. CUC has utilized local
10 resources wherever possible, including the Marianas Trade Institute, but these hires do not have
11 the types of technical skill required and must be trained for the tasks CUC is able to have them
12 perform.

13
14 51. CUC also requires a constant supply of electricity to run its water and wastewater treatment
15 systems. CUC has very limited on-site emergency generation capability, and for only portions of
16 these systems.

17
18 52. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing
19 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost
20 recovery for the water and wastewater systems through the processes of the CPUC. CUC filed a
21 wastewater rate increase request, complete with hundreds of pages of written expert witness
22 testimony and technical support, on January 31, 2010. The Commission addressed the filing on
23 May 28, 2010, authorizing a June 21, 2010, rate increase in wastewater rates and full cost
24 recovery for the electric costs of the water and wastewater divisions. CUC also has filed an
25 electric base rate increase request on November 10, 2010, which is set to be heard in March,
26 2011.

27
28 **Meeting US District Court and CNMI Public Utilities Commission requirements to**
29 **produce timely, accurate financial reports**
30

31 53. The federal Stipulated Orders require CUC to produce and carry out an Interim Financial
32 Plan, beginning in September, 2009. The “IFP” must develop over time, becoming more than
33 “interim”. CUC cannot do this unless it has a staff of trained accounting and other financial
34 experts who can gather data, put the data in the required form and generate the IFP and its later
35 versions. EPA has disapproved CUC’s most recent version of the IFP, submitted on November
36 30, 2010.

37
38 54. Further, CUC is comprehensively regulated by the CPUC. The CPUC is charged by statute
39 to oversee carefully CUC’s operations and capital expenditures, and to develop rates that fully
40 pay the costs of safely operating CUC’s water and wastewater systems.
41

1 55. In electric and water/wastewater orders, of September 3 and November 20, 2009, the CPUC
2 addressed CUC's inability to deliver complete on-time financial reports, requiring CUC, in
3 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.'s
4 09-1 and 09-2.) The Commission revisited CUC rates, fees, charges and operations during this
5 year, including in the recent rate case, Docket No. 10-01. CUC's Executive Director was a lead
6 witness in the case, having filed written testimony (on January 31, 2010) and supplemental
7 testimony (on April 1, 2010).
8

9 56. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained
10 accounting and other financial experts who can gather data, put the data in the required form and
11 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
12 staff with the data required for their oversight. CUC has obligated itself to provide an updated,
13 compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1,
14 to the US District Court, and most recently, according to the August 12, 2010, SJS. In addition,
15 CUC is required to submit reports detailing federal grants it has applied for and received,
16 including all drawdowns. CUC requires grant officers who have accounting skills to track and
17 apply for these grants. CUC has made one local hire as a senior grants officer, and one non-
18 resident worker as a grants officer, who is a skilled accountant. CUC needs these skills to
19 comply with the Stipulated Order grant reporting requirements.
20

21 57. 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 2009. All are US citizens. Nonetheless, CUC must have the
26 flexibility to hire competent professionals as needed. CUC is still short-staffed, and needs an
27 accounting assistant, and an accounting specialist. On February 17, 2010, CUC's new Chief
28 Financial Officer reported for duty.
29

30 58. CUC's decades-old financial and accounting system computer failed repeatedly during the
31 second half of 2010, 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. CUC bought a reconditioned replacement, which awaits proper
34 software. CUC lacks the in-house expertise to generate the software. Further, in order to
35 "query" its system for CPUC-required financial reports, CUC must depend on its IT manager, a
36 foreign national who programs in SQL.
37

38 59. Nonetheless, the EPA on July 21, 2010, filed a status report with the US District Court for
39 the Northern Mariana Islands which was highly critical of the progress in CUC's efforts to
40 comply with SO1's requirements to provide timely and complete financial and other operating
41 reports and plans.

1
2 60. To summarize: Without properly trained technical staff, CUC's ability to supply power is at
3 risk. So is its ability to manage the rest of its systems, including its complex procurement, its
4 finances and accounting. CUC's services could not be adequately staffed without the lifting of
5 the artificial legislative regulation of CUC's workforce, in Directive #10, suspending the
6 limitations on CUC hiring foreign workers. The statute would force CUC as a government
7 agency to only hire United States and local residents of the CNMI. However, there are simply
8 not the trained and technically proficient individuals residing on island who can fill all of the
9 positions CUC needs, and CUC has found that the expense and uncertainty involved in hiring
10 individuals from the mainland cannot be justified to its customers, the people of the CNMI, when
11 there are foreign nationals present in the CNMI who are qualified to do the work CUC needs. It
12 is obvious that the hiring authority must be continued.
13

14 61. In fact, during July - September 2010 over 18 CUC employment contracts for non-citizen,
15 technical specialists required renewal. Failure to timely renew could have crippled CUC's efforts
16 to provide service and meet federal requirements. More such contracts must be executed. There
17 is no indication that any of the above manpower situations will be resolved in the next month
18 without continuing in effect this EO and Directive #10.
19

20 62. As an example of the criticality of this Executive Order's providing CUC with the authority
21 to hire foreign workers and the Executive Director with the power and authority to manage CUC,
22 the US District Court reviewed CUC's compliance in a hearing held on December 9, 2010,
23 observing that CUC had met 35 of 36 milestones, including the timely filing of its IFP, a highly
24 positive performance. Without the authority provided by the continuing Executive Order
25 virtually none, if any, of those accomplishments would have been possible, due to the lack of in-
26 house technical expertise and the inability of management to order and supervise the compliance
27 activities.
28

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

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

39 **Forestalling corporate paralysis** 40

41 64. A critical concern is that the CUC Act's constricted scope of authority for the Executive
42 Director, and the complementary daily management by a host of Board volunteers, would

1 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before
2 CUC.
3

4 65. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC
5 §§ 8131 (Bd qualifications), 8134 (Bd approval of all “allocations” of money and property), and
6 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133
7 (limited E.D. functions listed), and 8134 (Bd approval of all “allocations” of money and
8 property), demonstrates that the Executive Director is to be left with little more to do than
9 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70
10 million/year corporation, on a day-to-day basis. This includes such decision-making as
11 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning
12 work crews, connecting customers, deciding on making repairs, collecting debts, complying with
13 the details of federal Stipulated Orders and CPUC regulatory requirements, making and funding
14 long-term technical power and water/wastewater plans, overseeing filings with the CPUC,
15 including rate cases, and insuring that, on a day-to-day basis, the power and water flow and the
16 sewage is treated.
17

18 66. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
19 a public health care crisis, as corporate activity and the CNMI’s only hospital’s operations
20 ground to a halt – with or without a Board in place. The complex technical problems listed
21 above simply cannot be managed on a day-to-day basis by a group of non-expert volunteers. For
22 example, the Executive Director had to be available to renegotiate CUC’s fuel oil contract last
23 year, and insure that fuel supplies reached Tinian and Rota, as well as Saipan. Also, as a key
24 witness in the recent CPUC dockets, and in future rate cases, the Executive Director must be
25 enabled to testify in favor of the requested rate increase in order to fully present the required
26 evidence. Finally, the Executive Director’s hiring and role was mandated by the US District
27 Court in the Stipulated Orders.
28

29 67. No private or public utility company in the United States runs this way – with a group of
30 volunteers managing a \$70-million corporation’s day-to-day operations. No other legislature in
31 the United States has mandated this form of corporate management for a public utility.
32

33 68. CUC has applied for and become eligible for millions of dollars of US ARRA and
34 Department of the Interior grants, which can substantially benefit the CNMI’s infrastructure, help
35 meet US EPA and Stipulated Order requirements, and create jobs needed in the CNMI’s stressed
36 economy. CUC has been awarded \$11 million in grants from the EPA. But developing the
37 grant requests and implementing the grants requires management attention and expertise, part of
38 a professionally-run business organization. CUC has placed its grants out for bid, so that these
39 benefits can start flowing. CUC must evaluate its needs, and hire and contract for the needed
40 technical specialists to manage the grant-funded projects. This requires a corporate structure
41 capable of making and sustaining important decisions.

1
2 69. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
3 drafting error, and the People, through their elected representatives, wish their utility company to
4 continue to supply them with essential power, water and wastewater services at a reasonable cost,
5 meeting industry standards. Even if this structure were not an error, I have been unable to locate
6 the required number of qualified persons to serve as volunteers on a CUC Board, and until this is
7 possible, there can be no CUC Board. Without a Board in place, I still must provide for the
8 continued operations of CUC under the Stipulated Orders and CPUC requirements.
9

10 **Fixing CUC's technical insolvency**

11
12 70. CUC has been unable to borrow money to run its operations since the inception of this State
13 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books of
14 a liability to the Commonwealth Development Authority ("CDA") of approximately \$145
15 million. This situation may be corrected if the Executive Director is recognized to have the
16 authority to correct it. Part of this situation, the CDA relationship, has been corrected precisely
17 because the Executive Director was empowered by this Executive Order to do so. This situation
18 was remedied with a stock swap, authorized by the Executive Director, so that CUC could move
19 forward financially.
20

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

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

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

38 74. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
39 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
40 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find

1 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
2 Nonetheless, CUC must continue to function, including borrowing money.
3

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

- 10
11 a. In February 2010 the Executive Director delivered to CDA management
12 the stock certificates required for the debt-equity conversion. CUC has received
13 the fully executed copy of the Stipulated Notice of Dismissal (with prejudice) in
14 CDA v. CUC, Superior Court Civil Action No. 01-0248D (4/21/2010), which the
15 CPUC has required that CDA provide to make effective the conversion of the
16 CDA debt to preferred equity. CUC sought CPUC final approval. The
17 Commission provided that approval in the rate order authorized at its May 28,
18 2010, business meeting. Soon, CUC must be able to demonstrate to the financial
19 community that it is properly managed, so that it can borrow and pay back long
20 term capital.
21
- 22 b. On May 28, 2010, the CPUC issued a rate increase order that was critically
23 required to return CUC's water and wastewater operations to financial health.
24 The Executive Director oversaw and approved of the complex rate request and
25 approved the resulting stipulation supporting the rate order.
26
- 27 c. On November 10, 2010, CUC filed a petition with the CPUC for an
28 electric side rate increase which, if granted, would support in critical part CUC's
29 securing \$15 million in long term financing. The debt would pay for necessary
30 equipment and construction, including measures required by the US District Court
31 and the EPA in the federal Stipulated Orders. For example, Power Plant #1 has
32 no more spare parts, the roof of Power Plant 1's control room leaks, presenting the
33 potential for shorting out critical control instruments, CUC's power poles and
34 their insulator pins have degraded, are shorting out, and must be replaced, and
35 CUC's vehicle fleet is failing, must be replaced, and is unsafe to the point where
36 recently a wheel broke free of a moving truck. The Executive Director oversaw
37 and approved the filing and served as CUC's lead expert witness.
38
- 39 d. On December 30, 2010, CUC made a further application for an emergency
40 increase in the levelized energy adjustment clause ("LEAC"). The LEAC
41 provides the way for CUC to collect the revenues needed to pay for its sole fuel,

1 oil. Without the oil CUC could not produce electricity. Due to the volatility and
2 recent increases in the world oil markets, the price of fuel has been rising
3 precipitously. The Executive Director needed to act quickly to remedy a multi-
4 million-dollar under-recovery of fuel costs so that CUC could continue to
5 purchase fuel.
6

- 7 e. CUC has approached the US Department of Agriculture (“USDA”) to
8 determine whether CUC can borrow approximately \$15 million at highly
9 attractive rates. This funding will be necessary to provide CUC with the
10 additional equipment and other installations necessary to provide its services.
11 Without an adequate staff of technical professionals and without an executive
12 director with the power to run the company, the USDA will not provide such
13 funding.
14
15

16 **Providing the basis for proper CPUC oversight**
17

18 76. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act,
19 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC
20 activities, particularly financial activities.
21

22 77. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
23 citizens to watchdog the activities of this, the Commonwealth’s key resource. Thus, the CUC
24 statute’s creation of a volunteer Board which would run the corporation on a day-to-day basis,
25 becomes much less important than satisfying CPUC requirements.
26

27 78. What becomes very important is CUC’s capability to provide the CPUC with accurate and
28 timely financial and accounting information. But such reporting is not possible without a
29 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
30 Executive Director to lead them.
31

32 **Addressing a critical financial challenge**
33

34 79. CUC faced a financial crisis in June 2010. It was critically short of funds to buy oil.
35 Without oil CUC would be forced to shut down its generation, bringing the economy of the
36 CNMI to a halt, and endangering health and welfare as electricity-dependent operations ceased –
37 sewage treatment, water pumping, traffic lights and security lighting, air conditioning for the
38 elderly, infants, and other medically fragile persons, and equipment at the CNMI’s Hospital and
39 health clinics. The principal reason for the shortage was the Government's failure to pay millions
40 of dollars of utility bills. The Government was in arrears about four months on its bills. Only by
41 eliminating restrictions on the Governor's power to reprogram funds to address this issue was
42 crisis averted. The financial crisis has continued, and once more CUC is facing the possibility

1 that it cannot purchase fuel, in part due to the Government's inability to pay its utility bills. The
2 current arrears are approximately 90-120 days. CUC continues to face the same issues as it did
3 this past summer.

4
5 80. This past summer, CUC only had a day or two's worth of purchased oil to power its system
6 because it lacked the funds to buy oil from its sole, cash-only supplier.

7
8 81. The Executive Director was required to spend substantial time on a concentrated basis
9 interacting with high CNMI government officials as well as developing contingency plans for the
10 orderly shut-down of the CUC system at that time.

11
12 82. Fortunately, the Administration was able to develop a multi-stage plan to enable the
13 payment of enough CNMI Government bills, and the reprogramming of CUC funds to forestall
14 disaster.

15
16 83. In order to facilitate this solution, the Governor issued a Declaration of Disaster Emergency
17 (June 8, 2010).

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

25
26 85. On May 11, 2010, CUC submitted to EPA a draft organization evaluation and
27 reorganization plan. But on June 14, 2010, the EPA assessed CUC a \$140,000 penalty for failing
28 to submit timely such a plan. The EPA required the hiring of a new Executive Director by
29 October 29, 2010; this was accomplished. But EPA disapproved of a CUC "Reorganization
30 Plan" by its letter of November 5, 2010.

31
32 86. Importantly, CUC requires a functioning management, including a properly empowered
33 Executive Director, to forestall additional EPA punitive action.

34
35
36 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

37
38 87. There is no Legislative relief coming. For months CUC has repeatedly asked the
39 Legislature for such relief, including submission of draft legislation in July 2010. The
40 Legislature has declined to respond. There is no alternative to providing this relief other than an
41 order from the Governor. Inaction will produce a disaster in which CUC is unable to provide its

1 critical community services. Directives # 9 and #10 were designed to avert this crisis. (The
2 other Directives, #1 through #8, are no longer relevant, and were discontinued.)
3

4 88. This Declaration is necessary to protect the health and safety of our children, our senior
5 citizens, businesses and all other CNMI residents and visitors.
6

7
8 **CONCLUSION AND ORDER**
9

10 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth
11 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
12 facing the Commonwealth of the Northern Mariana Islands.
13

14 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the
15 issuance of Executive Directives setting forth the measures to be taken to address the State of
16 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:
17

18 (f) In addition to any other powers conferred upon the Governor by law, the Governor
19 may, during a state of disaster emergency:
20

21 (1) Suspend the provisions of any regulatory statute prescribing the procedures
22 for conduct of the Commonwealth's business, or the orders, rules, or regulations
23 of any Commonwealth activity or agency, if strict compliance with the provision
24 of any such statute, order, rule or regulation would in any way prevent, hinder, or
25 delay necessary action in coping with the emergency;
26

27 (2) Utilize all available resources of the Commonwealth as reasonably necessary
28 to cope with the disaster emergency of the Commonwealth;
29

30 (3) Transfer the direction, personnel, or functions of the Commonwealth
31 departments and agencies or units thereof for the purpose of performing or
32 facilitating emergency services;
33

34 3 CMC § 5121(f)(1)-(3).
35

36 By today's disaster emergency declaration, I intend to enable CUC to continue to provide
37 necessary service to the people of the Commonwealth.
38

39 This Declaration of a State of Disaster Emergency shall take effect immediately and all
40 memoranda, directives and other measures taken in accordance with this Declaration shall remain
41 in effect for thirty (30) days from the date of this Executive Order unless I, prior to the end of the

1 thirty (30)-day period, notify the Presiding Officers of the Legislature that the state of emergency
2 has been lifted or has been extended for an additional period of thirty (30) days. 1 CMC §
3 7403(a); 3 CMC § 5121(c).
4

5 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the
6 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).
7

8
9 **DIRECTIVES**

10
11 I direct the following:

12
13 Directive 1: Deleted.

14
15 Directive 2: Deleted.

16
17 Directive 3: Deleted.

18
19 Directive 4: Deleted.

20
21 Directive 5: Deleted.

22
23 Directive 6: Deleted.

24
25 Directive 7: Deleted.

26
27 Directive 8: Deleted.

28
29 **Directive 9:** The Executive Director of CUC shall have all the powers of the CUC Board,
30 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)
31 the confirmation and convening of an operating CUC Board, or (2) the termination of the
32 authority of this order. In particular, the Executive Director shall have been, and shall continue
33 to be, properly empowered with full power and authority to swap CDA debt and related
34 obligations for preferred stock and related features and rights, and to make important financial
35 decisions for the CUC.
36

1 **Directive 10:** The following strike-out-formatted language of the quoted provisions of the
2 following statute regulating government employment is, as indicated, suspended immediately¹:
3

4 § 4532. Exemptions.
5

6 Persons other than citizens and permanent residents may be exempted from the
7 employment restriction in 3 CMC §4531 and employed within the following government
8 entities and positions, on a case by case basis:
9

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

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

14 ~~(c) Government translators. Approved foreign national translators for: the Department of
15 Labor, the Office of the Attorney General, the Office of the Public Defender, the
16 Department of Public Safety, the Commonwealth Superior Court, the Commonwealth
17 Supreme Court, and the Marianas Visitors Authority. The Attorney General shall
18 establish guidelines for the approval of foreign national translators for the Executive
19 Branch. The Supreme Court may establish guidelines for the approval of foreign national
20 translators for the Judiciary.~~
21
22

23 3 CMC § 4532, as most recently amended by PL 16-26. (Strikeout is deliberately added) That is,
24 the following language is suspended: “the following,” “on a case by case basis,” and the
25 following listing:
26

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

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

31 “ (c) Government translators. Approved foreign national translators for: the Department of
32 Labor, the Office of the Attorney General, the Office of the Public Defender, the Department of
33 Public Safety, the Commonwealth Superior Court, the Commonwealth Supreme Court, and the
34 Marianas Visitors Authority.”
35

¹ The "moratorium" of sec. 4601 was repealed by PL 17-1, Section 5, Amendment of Title 3, at letter N.(page 9). Therefore, the striking of the moratorium previously referred to in this Executive Order under Directive 10 is no longer included in Continuation 30.

Executive Order 2011-01
January 2011

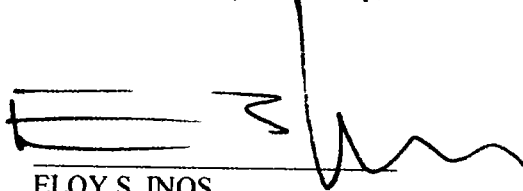
1 I hereby direct that the effect of the suspension of the indicated language shall be that CUC shall
2 have the complete power, without regard to citizenship or otherwise lawful immigration status, to
3 hire engineers, professional employees in technical or trade areas, power plant mechanics and
4 utility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

10 I further direct generally that the suspension of the language for specified agencies and the
11 specified positions shall not be held as a limitation as to unnamed agencies and instrumentalities,
12 but shall continue to permit other government entities to continue to fill needed positions,
13 particularly in the areas of health care and translation/interpretation.
14

15 As a result of my change to 3 CMC § 4532, CUC shall have the full power and authority to hire,
16 retain and fire staff. CUC shall not be required to provide any attendant forms, advertising, or
17 other administrative or regulatory requirements which the CNMI Department of Labor would
18 otherwise require under the Nonresident Workers' Act, and the CNMI Department of Labor shall
19 neither impede, terminate nor change the employment authorization of any foreign national
20 employed, or sought to be employed, by CUC on the basis of his or her status as a foreign
21 national or on the basis of the way the hiring was accomplished by CUC.
22

23 The CNMI Department of Labor's power and responsibility for alien registration, health, or
24 similar tracking documentation which the Department of Labor ordinarily requires from an
25 employer when a foreign national is employed in the CNMI shall be unaffected by this Directive.
26 A foreign national employed by CUC shall register and obtain proper identification from the
27 CNMI Department of Labor as otherwise set forth by statute, subject to the Department's
28 expeditious processing.
29
30

31 Done this 18th day of January, 2011.
32
33

34 
35
36

37 ELOY S. INOS
38 Acting Governor
39

CUC Dis Decl Cont 30 (18 Jan 11) Governor copy: wpd

0 EO 2010-18