



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2011-03**

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 #31

11

12 I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the

13 Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth

14 Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby

15 declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands

16 due to the inability of the Commonwealth Utilities Corporation ("CUC") to provide critical

17 power 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. 16-19, and EO 2011-01 except as specifically

23 modified. As more fully stated below, this Executive Order shall expire on the 31st day

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

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

3

4 **Table of Contents**

5

6 DECLARATION OF A STATE OF DISASTER EMERGENCY.....Page 1 of 27

7

8 FINDINGS.....Page 3 of 27

9

10 MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION.....Page 3 of 27

11

12 Summary.....Page 3 of 27

13

14 Background.....Page 3 of 27

15

16 Staffing CUC with the technical experts to permit continued electric service.....Page 5 of 27

17

18 Complying with the federal court order on disposal of used oil.....Page 11 of 27

19

20 Complying with the federal court order on managing the water and wastewater systems.....Page 12 of 27

21

22 Meeting US District Court and CNMI Public Utilities Commission requirements to produce
23 timely, accurate financial reports.....Page 17 of 27

24

25 MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE.....Page 19 of 27

26

27 Forestalling corporate paralysis.....Page 19 of 27

28

29 Fixing CUC's technical insolvency.....Page 20 of 27

30

31 Providing the basis for proper CPUC oversight.....Page 22 of 27

32

33 Addressing a critical financial challenge.....Page 23 of 27

34

35 CRISIS FROM THE LACK OF LEGISLATIVE ACTION.....Page 24 of 27

36

37 CONCLUSION AND ORDER.....Page 24 of 27

38

39 DIRECTIVES.....Page 25 of 27

40

41 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board.....Page 26 of 27

42

43 Directive 10: The following strike-out-formatted language of the quoted provisions of the
44 following statute regulating government employment is, as indicated, suspendedPage 26 of 27

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, 16-19, and EO 2011-01 are incorporated by reference, except
7 as specifically varied in this Executive Order.
8

9 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

10
11 2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers
12 has continued to place CUC operations at risk. Incipient failures in the CUC water, wastewater
13 and power transmission and distribution networks have underscored the importance of having in
14 place a well-funded and functioning preventive maintenance program. Skilled workers and a
15 responsive support system are key to the success of the operations, particularly of preventive
16 maintenance. Presently CNMI law (3 CMC § 4532, as most recently amended by PL 17-1)
17 prohibits CUC from hiring any more non-US technical workers than the skilled professionals
18 recently with CUC. CUC has repeatedly asked the Legislature for relief from this statute
19 regulating the Government’s workforce, to no avail. Further, errors in wording in the CUC
20 enabling legislation recently re-enacted in PL 16-17, as amended, would bar the Executive
21 Director from day-to-day management of the corporation, effectively shutting CUC down. This
22 EO eliminates these problems while it is in effect.
23

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

32 4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction
33 of the U.S. District Court and the U.S. Environmental Protection Agency (“EPA”), pursuant to
34 two sets of consent, or “stipulated”, orders.
35

- 36 a. The first requires the upgrade and smooth functioning in virtually all aspects of
37 CUC’s water and wastewater divisions. The second requires CUC to properly
38 eliminate over 400,000 gallons of used oil and to institute measures to avoid
39 uncontrolled buildup of such inventories. Failure to meet the requirements of the
40 federal court orders could subject CUC and the CNMI to substantial fines and
41 charges, and, in the extreme, to a federal takeover of their finances. Presently
42 CUC is “accruing” substantial fines. Most of the fines have not been levied; but

1 they could be. The EPA has, however, levied two fines, in the amount of \$29,000
2 and \$140,000 (June 2010 letter).
3

4 b. On February 24, 2010, the U.S. District Court entered an additional stipulated
5 order, and on August 12, 2010, the U.S. District Court entered a further stipulated
6 order. It provided, among other things, that a professionally-developed Interim
7 Financial Plan ("IFP") would be provided to the U.S. EPA by November 30,
8 2010. This additional stipulation requires CUC to meet a number of deadlines,
9 each involving the application of technical expertise. CUC timely filed the IFP,
10 but EPA on January 15, 2011 disapproved the submission. Failure to meet IFP
11 requirements would subject CUC to the described sanctions.
12

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

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

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

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

1 7. Without CUC electricity:
2

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

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

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

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

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

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

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

15 13. Adequate technical staff is essential to this work. A major challenge to carrying out this
16 rehabilitation has been finding the trained technicians needed to carry out these rehabilitation
17 projects, and maintain and run the equipment. The technicians must be ready for service when
18 needed and their services must be affordable. Any significant reduction in CUC's present
19 technical workforce could seriously compromise CUC's ability to generate and distribute power.
20 Therefore, in November 2010, management interviewed five more foreign trade technicians to
21 replace technicians who had resigned or were terminated. Also, CUC hired seven trade
22 assistants, all US-citizens, who were converted from contract to career service employee trade
23 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. United States citizens with the necessary skills are not readily available in the CNMI,
28 and it is costly to recruit from the United States. CUC believes that the vast majority of skill sets
29 must therefore come from non-US personnel.
30

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

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

1 Environment Officer also turned down a CUC offer. In November 2010, CUC’s Oil Manager
2 resigned, effective December 17, 2010. The challenge to CUC is that it is recruiting for positions
3 from a US labor pool in which the targeted candidates are already gainfully employed, as
4 opposed to the other professionals in other segments of the US economy. For instance, one of
5 CUC’s own local employees, a supervisor in Wastewater, moved to Oregon early in 2010 and
6 was soon hired by the local wastewater & water district.

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

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

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

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

1 speeding up the installation of Watt-hour meters for all water and wastewater facilities, as
2 ordered by the 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 began
9 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 28. The impact of an inadequate workforce would be five-fold:
15

- 16 a. First, there would be a direct negative effect on the existing consumers. There
17 would be brownouts, or area blackouts, with the above-mentioned loss of service.
18
- 19 b. Second, the power plants would again degrade, producing more of these outages.
20
- 21 c. Third, there would be an indirect effect, increasing rates over the longer term,
22 because small consumers would have to shoulder more of the fixed costs of the
23 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, cripple
36 the company's increasingly successful efforts to cut losses, particularly theft of
37 service.
38
- 39 e. Fifth, with the recovery of the world economy, oil prices can be expected to rise.
40 This has already happened, resulting in CUC's emergency petition on December
41 30, 2010 to the CPUC due to a million dollar loss which was, in turn, due to rises

1 in world oil prices. If CUC's generators become less efficient, because technical
2 staff are unavailable to maintain CUC's engines' efficiency, that much more oil
3 would be needed to generate a given amount of electricity. The price rise will
4 thereby harm CUC's customers and electricity-dependent services with higher
5 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 Stipulated Orders
10 require further work on the Rota facility to comply with EPA mandates, which include proper
11 Spill Prevention, Control, and Countermeasure ("SPCC") inspections, tank work and
12 environmental clean-up and reporting. If CUC can utilize its own trained personnel in Rota, this
13 will save money for rate payers. The Rota power plant needed additional generating sets to come
14 on line, as there are only 1.5 dependable sets in the plant. The third of two feeders was, until
15 June 2010, powered by the Rota Resort, a private resort, at a cost of \$200,000/month to CUC.
16 The revenues to CUC from the customers on this feeder fall far below this cost. CUC has
17 negotiated with a Mainland supplier for a new generating set, with funding from the U.S.
18 Department of the Interior. The alternative for Rota was akin to Saipan's recent Aggreko
19 situation – purchasing higher cost, reliable power from the Rota Resort. Therefore, in June
20 2010, two 0.9 MW Cummins generating sets were transported from Power Plant 4 on Saipan to
21 Rota in order to augment the power generation. These two generating sets were commissioned
22 by the end of July, 2010.
23

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

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

39 32. CUC points out that the power distribution system is highly vulnerable because, like the
40 sewer system, so much of the maintenance and replacement was deferred for one reason or
41 another over the past 20 years. Since 1995, 26 villages on Saipan were identified as needing

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

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

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

21
22 **Complying with the federal court order on disposal of used oil**

23
24 35. CUC has taken concrete steps to address the storage and disposal of used oil, consonant
25 with the federal court's Stipulated Order 2 ("SO2"). Federal court Stipulated Order 2 relates to
26 the used oil from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC
27 transformers. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order
28 2"). With an adequate complement of trained technical employees, complemented by expert
29 contractors, CUC believes that it can meet the SO2 requirements. On August 12, 2010, the Court
30 issued the Second Joint Stipulation ("SJS"), which replaced many otherwise unattainable
31 deadlines, but provided other deadlines and stiff penalties for a host of technical and management
32 positions. The SJS also provided for firm dates for reporting on the use of grant funds, on the
33 progress of secondary containment facilities, providing a facilities response plan ("FRP"), and
34 cleaning out Tank 104. As of January 23, 2011, CUC has completely emptied used oil, sludge
35 and oily water out of Tank 104, for a total of almost 400,000 gallons of used oil, as well as
36 cleaned it in readiness for an American Petroleum Institute (API) 653 inspection. In addition,
37 CUC has completed repair work for Tank 106 and plans to commission the tank after a final
38 integrity inspection. CUC had initially encountered difficulties with sludge which substantially
39 delayed the Tank 104 project. The problem was solved by CUC's top power generation
40 engineer, who is a non-resident worker, in tandem with the contractor. Without the assistance of

1 at least two non-resident worker engineers at the power plant, CUC would not have been able to
2 succeed.

3
4 36. A September 2009 inspection by the U.S. Coast Guard (“USCG”) resulted in the imposition
5 of another cost that was unanticipated even with SO₂. The USCG now requires additional and
6 more stringent measures to contain or eliminate the possibility of any oil reaching the ocean from
7 Power Plants 1, 2 and the power plant on Rota. Further, since October 2009, CUC has faced the
8 following staffing needs in this area: It critically needs the resources to inspect and redesign the
9 entire fuel storage, pumping and handling system in order to meet the more stringent
10 requirements of today. The clean fuel storage tanks at Lower Base were originally designed for
11 another application. The fuel line from the oil company's terminal is in danger of rupturing
12 during a transfer; the pumping rate has to be reduced to prevent this. Fixing all of this requires
13 trained CUC staff.

14
15 **Complying with the federal court order on managing the water and wastewater systems**

16
17 37. As long as the Water and Wastewater Divisions can hire competent staff and receive power
18 from the Power Division, they can function.

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

34
35 39. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater
36 Division must respond to acid damage in the asbestos cement piping system, the product of over
37 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and
38 metal infrastructure, so that key pipe systems have collapsed. Replacement involves complex
39 excavations, avoiding electric, phone and water utilities, blocking traffic, stopping the infiltration
40 of seawater (which damages treatment plant facilities), and pumping sewage around blocked and

1 excavated areas. The Division has already far exceeded its repair budget. Without this EO, says
2 CUC, procurement for such repair work would constitute a significant impediment.
3

4 40. Providing and improving water service presents new challenges. With DEQ's classification
5 of Rota's cave-based domestic water as "surface water" CUC has had to expand water quality
6 monitoring and testing, requiring more manpower and more equipment. In May 2010, CUC
7 experienced failures in water pipes as the Cross-Island road project's contractors' equipment
8 broke pipes, requiring CUC staff to be pulled from other jobs, with required equipment, to
9 address the emergency. In addition, a substantial section of the As Terlaje sewer line collapsed,
10 requiring an emergency procurement to hire an outside firm to make the repair. As of October
11 15, 2010, repair work reached 90% completion.
12

13 41. Sewage lift station failures continue, requiring CUC crews to install newly received pumps.
14 Approximately 17 of the 45 CUC sewage lift station are in poor condition and require significant
15 rehabilitation. CUC anticipates an EPA grant for the rehabilitation of these lift stations. But that
16 construction will not occur for approximately one year. In July there was a sewer blockage in the
17 CK and Susupe areas, and CUC lacked the equipment to repair it; its usual contractor also
18 suffered equipment problems.
19

20 42. CUC engineer staff shortages continue to hamper CUC's ability to anticipate and fix
21 technical problems. CUC's Water/Wastewater Division needed to add engineers to its staff of
22 three engineers, in order to fix the poor condition of the CUC sanitation assets. CUC has finally
23 been able to add engineers to its Water/Wastewater Division, one of whom is a non-resident
24 worker. Significant engineering resources have been focused on addressing EPA Stip Order
25 1 issues, including staffing plans, pre-treatment programs, materials management programs,
26 customer inventory, and cross-connection control programs. It was crucial to fill these
27 engineering positions, which are highly technical and require specialized knowledge and training.
28 CUC water and wastewater engineers are the lead professionals on several on-going construction
29 projects. These include the Well Isolation Project, Sadog Tasi Sewer Plant Rehabilitation, and
30 Agingan Sewage Treatment Plant Rehabilitation. Recruitment and retention of engineering staff
31 to meet these challenges is difficult, and without the non-resident worker engineers, CUC could
32 not have filled all the positions required.
33

34 43. Incipient failures include the failure of 98 submersible pumps in the water system over a
35 period of 12 months. Higher grade stainless steel grates have to be specified that are resistant to
36 pitting. The pitting causes the grates to fail, and consequently the pump motors fail. CUC has
37 had to purchase higher quality equipment, rather than the cheap units that fail prematurely.
38 Motor protection continues to be challenging. During September 2010, one of the newly
39 installed 30 HP motors with the higher grade stainless steel was damaged by an apparent
40 lightning strike after only a month's operation.
41

1 CUC must be able to hire the staff to perform the required technical functions. But CUC has
2 found that, regardless of salary levels, a nationwide shortage of such technical professionals
3 requires that it look to non-US citizens. The Water and Wastewater Divisions cannot carry out
4 their missions without adequate staff; the EPA requires adequate technical staff. These staff are
5 essential to producing clean, safe water supplies and removal of storm water and sewage in a
6 safe, timely manner. While the bulk of CUC employees are drawn from local and US
7 populations, the Division management estimates that at least six trained technicians will be
8 required – three experienced Level 3 wastewater treatment operators, two Level 3 wastewater
9 collections operators, and an instrumentation /low voltage controls specialist. CUC lacks enough
10 experienced plumbers and pipe-fitters. Skilled pipe-fitters are needed to repair failing CUC
11 piping and related infrastructure, such as valves and hydrants. An experienced
12 Water/Wastewater Division operations manager is required. CUC requires a chemist to meet
13 federal requirements, but has been unable to find a qualified one in the local population, or a
14 cost-effective professional from the US Mainland.

15
16 44. There have been special reasons why the water system had to be adequately staffed and
17 maintained this year. This was an El Nino year, and water was relatively scarce. As predicted in
18 the Pacific ENSO bulletin forecast back in February 1, 2010, the CNMI dry season brought
19 below normal rainfalls into June 2010. CUC went into an emergency mode, conserving water,
20 accelerating water line replacements, and locating and repairing leaks. There was greater danger
21 of fires this year, with less water available to fight them. For Capitol Hill, the drought and a tank
22 rehabilitation project required that the distribution system in this area be reconfigured in June
23 2010 in order to supply water at least two hours per day to Wireless Ridge. Upper reaches of
24 Navy Hill were without water for several days until leaks were repaired. With the rainy season
25 the aquifers are only slowly replenished. As a result Garapan saw fewer hours of water service.
26 Unfortunately, the leaks were noted several months before, but lack of manpower and funds
27 prevented the pressurization required for leak repair. In July the Kagman booster pump failed,
28 and until it is replaced the Papago area will see less water delivered.

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

39
40 46. CUC continues to suffer an unprecedented number of waterline breaks and resultant water
41 leaks.

- 1 a. During one day in September 2010, there were six new leaks reported which
2 required repair crews to work significant overtime. All repair work was
3 performed using rental backhoes, as CUC's backhoes were broken.
4
- 5 b. A 16" PVC waterline ruptured on As Terlaje Hill on the morning of October 23,
6 2010, at approximately 4:00 am. An entire length of 16" PVC piping ruptured,
7 resulting in the loss of the Kannat Tabla Tank water volume contents, and
8 producing significant damage to the As Terlaje Hill Roadway. The water rupture
9 resulted in a cost to CUC of approximately \$100,000, of which asphalt repair
10 alone was over \$87,000. The specific cause of the waterline rupture has not been
11 determined, but CUC believes it was likely a result of improper installation and
12 fatigued infrastructure.
13
- 14 c. CUC professionals consider that the number of leaks the company experiences to
15 be excessive, particularly because CUC does not provide 24-hour water and does
16 not properly pressurize the water system. These leak repair projects stress CUC's
17 limited staff and finances.
18

19 47. Put simply, Saipan does not have enough water. CUC professionals categorize much of the
20 Saipan water distribution system as "fatigued". They do not believe that the number of breaks in
21 the system will decline in the foreseeable future. Pump and motor problems perpetuate the
22 problem. There were 13 pumps down in October 2010, including four big ones (over 30 hp).
23 CUC's water system in mid-September 2010 experienced several pump/motor failures.
24

25 48. Meanwhile, CUC must install meters to meet the requirements of federal Stipulated Order 1,
26 the CPUC, and its own need for system revenue. Water metering and billing of customer water
27 usage by volume continues to be a challenge for CUC. The water meters installed in the Saipan
28 water system over the past five years have experienced nearly complete failure. Nearly 10,000
29 water meters by serial number have been reported to the Water Task Force ("WTF") by CUC as
30 failed. The WTF, in turn, has reported these meters to the manufacturer for warranty purposes.
31 While CUC has made huge strides in the past months with replacing approximately 68% of all of
32 the failed meters as well as reducing the number of customers whose water bills are *not* based on
33 consumption (as of Jan. 2, 2011), there are still many customer meters to address. Compounding
34 the challenge, CUC recently experienced nearly 400 water meter failures of the warranty meters
35 provided by the manufacturer as replacement meters. The manufacturer has begun to indicate
36 opposition to providing more replacements.
37

38 49. During the first week of March, CUC will be taking delivery of 12 new Itron handheld
39 devices for meter reading. The Itron representative will also be here for one week of training.
40 This means that for the first time in a long time, all the meter readers will have a handheld
41 device. Currently, CUC has only 4 of the original 12 devices purchased many years ago still in

1 service. This is expected to result in a significant improvement in meter reading accuracy, since
2 information like meter number, prior read, notes, etc. will be available to the meter readers in the
3 field. Also, the reads data will be electronically fed into the billing system.
4

5 50. CUC lacks water staff and recently lost staff. CUC's Water and Wastewater workforce is
6 shrinking. It takes a long time to recruit. Sadly, one of CUC's "Water Watch" supervisors died
7 suddenly in mid-September 2010. In addition, a United States hire for Division Manager of
8 Water and Wastewater failed to appear as promised, and CUC was forced to terminate his
9 contract. Skeleton crews are handling system repairs. Having access to foreign skilled and semi-
10 skilled technicians and trades people is critical, as with CUC's Power Division's generation
11 operations. CUC's foreign contract employees have good formal training and education, and
12 they have been scrupulously dependable in providing the services our population requires.
13

14 51. For its water and wastewater businesses, CUC has tried to hire water and wastewater
15 certified operators. There has not been enough interest by qualified professionals. But CUC
16 must hire such technical staff in order to comply with stiff EPA requirements, as expressed in the
17 latest version of the Stipulated Orders. Those professionals whom CUC can identify – more
18 likely these are foreign nationals – do not necessarily have the skill sets needed to actually
19 perform the skilled hands-on tasks of operating a utility. Thus, CUC will be looking for
20 plumber/pipefitters and mechanics (including a master who is skilled in maintaining and fixing
21 hydraulic systems on heavy equipment), specialized electricians and others. Having these skills
22 in-house, instead of at contracted local shops can save enormous amounts of money as well.
23 While in the long run these CUC needs provide opportunities for locals who wish to stay on our
24 islands, CUC's needs, including the federal requirements, are immediate. CUC has utilized local
25 resources wherever possible, including the Marianas Trade Institute, but these hires do not have
26 the types of technical skill required and must be trained for the tasks CUC is able to have them
27 perform.
28

29 52. CUC also requires a constant supply of electricity to run its water and wastewater treatment
30 systems. CUC has very limited on-site emergency generation capability, and for only portions of
31 these systems.
32

33 53. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing
34 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost
35 recovery for the water and wastewater systems through the processes of the CPUC. CUC filed a
36 wastewater rate increase request, complete with hundreds of pages of written expert witness
37 testimony and technical support, on January 31, 2010. The Commission addressed the filing on
38 May 28, 2010, authorizing a June 21, 2010, rate increase in wastewater rates and full cost
39 recovery for the electric costs of the water and wastewater divisions. CUC also has filed an
40 electric base rate increase request on November 10, 2010, which is set to be heard in March,
41 2011.

1 **Meeting US District Court and CNMI Public Utilities Commission requirements to**
2 **produce timely, accurate financial reports**
3

4 54. The federal Stipulated Orders require CUC to produce and carry out an Interim Financial
5 Plan, beginning in September, 2009. The “IFP” must develop over time, becoming more than
6 “interim”. CUC cannot do this unless it has a staff of trained accounting and other financial
7 experts who can gather data, put the data in the required form and generate the IFP and its later
8 versions. EPA has disapproved CUC’s most recent version of the IFP, submitted on November
9 30, 2010.

10
11 55. Further, CUC is comprehensively regulated by the CPUC. The CPUC is charged by statute
12 to oversee carefully CUC’s operations and capital expenditures, and to develop rates that fully
13 pay the costs of safely operating CUC’s water and wastewater systems.
14

15 56. In electric and water/wastewater orders, of September 3 and November 20, 2009, the CPUC
16 addressed CUC’s inability to deliver complete on-time financial reports, requiring CUC, in
17 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.’s
18 09-1 and 09-2.) The Commission revisited CUC rates, fees, charges and operations during this
19 year, including in the recent rate case, Docket No. 10-01. CUC’s Executive Director was a lead
20 witness in the case, having filed written testimony (on January 31, 2010) and supplemental
21 testimony (on April 1, 2010).
22

23 57. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained
24 accounting and other financial experts who can gather data, put the data in the required form and
25 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
26 staff with the data required for their oversight. CUC has obligated itself to provide an updated,
27 compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1,
28 to the U.S. District Court, and most recently, according to the August 12, 2010, SJS. In addition,
29 CUC is required to submit reports detailing federal grants it has applied for and received,
30 including all drawdowns. CUC requires grant officers who have accounting skills to track and
31 apply for these grants. CUC has made one local hire as a senior grants officer, and one non-
32 resident worker as a grants officer, who is a skilled accountant. CUC needs these skills to
33 comply with the Stipulated Order grant reporting requirements.
34

35 58. CUC last year lost two senior accountants plus a related specialist. The IT and Billing
36 department in August 2009 was reduced by one staffer, having advertised for a replacement for 4
37 weeks to no avail. While it appeared that CUC might have to look to employing foreign
38 technical specialists, CUC hired back two former accountants in September 2009 and brought a
39 third person aboard in October 2009. All are US citizens. Nonetheless, CUC must have the
40 flexibility to hire competent professionals as needed. CUC is still short-staffed, and needs an
41 accounting assistant, and an accounting specialist. On February 17, 2010, CUC’s new Chief

1 Financial Officer reported for duty. CUC was finally able to hire accountants for the Accounting
2 department and for the Billing department (to help with catching/resolving billing errors). There
3 were no qualified local applicants for this position.
4

5 59. CUC's decades-old financial and accounting system computer failed repeatedly during the
6 second half of 2010, including for a complete week. Already-over-committed finance and
7 accounting staff were required to put in days of extra time in hand-recording customer payments
8 and hand-generating bills. CUC bought a reconditioned replacement, which awaits proper
9 software. CUC lacks the in-house expertise to generate the software. Further, in order to
10 "query" its system for CPUC-required financial reports, CUC must depend on its IT manager, a
11 foreign national who programs in SQL. CUC has finally been able to hire one qualified citizen
12 for its Information Technology department, and two foreign nationals.
13

14 60. Nonetheless, the EPA on July 21, 2010, filed a status report with the U.S. District Court for
15 the Northern Mariana Islands which was highly critical of the progress in CUC's efforts to
16 comply with SO1's requirements to provide timely and complete financial and other operating
17 reports and plans.
18

19 61. To summarize: Without properly trained technical staff, CUC's ability to supply power is at
20 risk. So is its ability to manage the rest of its systems, including its complex procurement, its
21 finances and accounting. CUC's services could not be adequately staffed without the lifting of
22 the artificial legislative regulation of CUC's workforce, in Directive #10, suspending the
23 limitations on CUC hiring foreign workers. The statute would force CUC as a government
24 agency to only hire United States and local residents of the CNMI. However, there are simply
25 not the trained and technically proficient individuals residing on island who can fill all of the
26 positions CUC needs, and CUC has found that the expense and uncertainty involved in hiring
27 individuals from the mainland cannot be justified to its customers, the people of the CNMI, when
28 there are foreign nationals present in the CNMI who are qualified to do the work CUC needs. It
29 is obvious that the hiring authority must be continued.
30

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

37 63. As an example of the criticality of this Executive Order's providing CUC with the authority
38 to hire foreign workers and the Executive Director with the power and authority to manage CUC,
39 the U.S. District Court reviewed CUC's compliance in a hearing held on December 9, 2010,
40 observing that CUC had met 35 of 36 milestones, including the timely filing of its IFP, a highly
41 positive performance. The Court held further status hearings on January 5, 2011 and February

1 15, 2011 and praised CUC for fully emptying and cleaning Tank 104. Without the authority
2 provided by the continuing Executive Order virtually none, if any, of those accomplishments
3 would have been possible, due to the lack of in-house technical expertise and the inability of
4 management to order and supervise the compliance activities.
5

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

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

15 **Forestalling corporate paralysis**
16

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

22 66. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC
23 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and
24 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133
25 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and
26 property), demonstrates that the Executive Director is to be left with little more to do than
27 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70
28 million/year corporation, on a day-to-day basis. This includes such decision-making as
29 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning
30 work crews, connecting customers, deciding on making repairs, collecting debts, complying with
31 the details of federal Stipulated Orders and CPUC regulatory requirements, making and funding
32 long-term technical power and water/wastewater plans, overseeing filings with the CPUC,
33 including rate cases, and insuring that, on a day-to-day basis, the power and water flow and the
34 sewage is treated.
35

36 67. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
37 a public health care crisis, as corporate activity and the CNMI's only hospital's operations
38 ground to a halt – with or without a Board in place. The complex technical problems listed
39 above simply cannot be managed on a day-to-day basis by a group of non-expert volunteers. For
40 example, the Executive Director had to be available to renegotiate CUC's fuel oil contract last
41 year, and insure that fuel supplies reached Tinian and Rota, as well as Saipan. Also, as a key
42 witness in the recent CPUC dockets, and in future rate cases, the Executive Director must be

1 enabled to testify in favor of the requested rate increase in order to fully present the required
2 evidence. Finally, the Executive Director's hiring and role was mandated by the U.S. District
3 Court in the Stipulated Orders.
4

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

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

19 70. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
20 drafting error, and the People, through their elected representatives, wish their utility company to
21 continue to supply them with essential power, water and wastewater services at a reasonable cost,
22 meeting industry standards. Even if this structure were not an error, I have been unable to locate
23 the required number of qualified persons to serve as volunteers on a CUC Board, and until this is
24 possible, there can be no CUC Board. Without a Board in place, I still must provide for the
25 continued operations of CUC under the Stipulated Orders and CPUC requirements.
26

27 **Fixing CUC's technical insolvency**

28

29 71. CUC has been unable to borrow money to run its operations since the inception of this State
30 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books of
31 a liability to the Commonwealth Development Authority ("CDA") of approximately \$145
32 million. This situation may be corrected if the Executive Director is recognized to have the
33 authority to correct it. Part of this situation, the CDA relationship, has been corrected precisely
34 because the Executive Director was empowered by this Executive Order to do so. This situation
35 was remedied with a stock swap, authorized by the Executive Director, so that CUC could move
36 forward financially.
37

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

1 those two systems. This has changed slowly as the CPUC's June 2010 rate increase takes effect.
2 CUC's cash position continues to be perilous.
3

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

10
11 74. The CPUC, in its September 3, 2009, electric order, Docket No. 09-1, approved a CUC-
12 CDA settlement converting the CDA debt to preferred stock. But the deal has required CUC's
13 Board to agree to it.
14

15 75. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
16 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
17 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find
18 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
19 Nonetheless, CUC must continue to function, including borrowing money.
20

21 76. Directive #9 provides the required authority to the Executive Director. It also permits him
22 to continue to run CUC, carefully manage cash to pay tens of millions of dollars annually for fuel
23 oil and purchased power, and do all the things necessary to providing power, water and
24 wastewater services, until the remaining members of a properly constituted Board can be
25 identified, confirmed, and convened for business. Without a fully empowered Executive
26 Director, CUC would be unable to attain financial and operational health. For example:
27

- 28 a. In February 2010, the Executive Director delivered to CDA management the stock
29 certificates required for the debt-equity conversion. CUC has received the fully
30 executed copy of the Stipulated Notice of Dismissal (with prejudice) in CDA v.
31 CUC, Superior Court Civil Action No. 01-0248D (4/21/2010), which the CPUC
32 has required that CDA provide to make effective the conversion of the CDA debt
33 to preferred equity. CUC sought CPUC final approval. The Commission
34 provided that approval in the rate order authorized at its May 28, 2010, business
35 meeting. Soon, CUC must be able to demonstrate to the financial community that
36 it is properly managed, so that it can borrow and pay back long term capital.
37
- 38 b. On May 28, 2010, the CPUC issued a rate increase order that was critically
39 required to return CUC's water and wastewater operations to financial health.
40 The Executive Director oversaw and approved of the complex rate request and
41 approved the resulting stipulation supporting the rate order.

- 1 c. On November 10, 2010, CUC filed a petition with the CPUC for an electric side
2 rate increase which, if granted, would support in critical part CUC's securing \$15
3 million in long term financing. The debt would pay for necessary equipment and
4 construction, including measures required by the U.S. District Court and the EPA
5 in the federal Stipulated Orders. For example, Power Plant #1 has no more spare
6 parts, the roof of Power Plant 1's control room leaks, presenting the potential for
7 shorting out critical control instruments, CUC's power poles and their insulator
8 pins have degraded, are shorting out, and must be replaced, and CUC's vehicle
9 fleet is failing, must be replaced, and is unsafe to the point where recently a wheel
10 broke free of a moving truck. The Executive Director oversaw and approved the
11 filing and served as CUC's lead expert witness.
12
- 13 d. On December 30, 2010, CUC made a further application for an emergency
14 increase in the levelized energy adjustment clause ("LEAC"). The LEAC
15 provides the way for CUC to collect the revenues needed to pay for its sole fuel,
16 oil. Without the oil CUC could not produce electricity. Due to the volatility and
17 recent increases in the world oil markets, the price of fuel has been rising
18 precipitously. The Executive Director needed to act quickly to remedy a multi-
19 million-dollar under-recovery of fuel costs so that CUC could continue to
20 purchase fuel.
21
- 22 e. CUC has approached the U.S. Department of Agriculture ("USDA") to determine
23 whether CUC can borrow approximately \$15 million at highly attractive rates.
24 This funding will be necessary to provide CUC with the additional equipment and
25 other installations necessary to provide its services. Without an adequate staff of
26 technical professionals and without an executive director with the power to run
27 the company, the USDA will not provide such funding.
28

29 **Providing the basis for proper CPUC oversight**
30

31 77. The broad and comprehensive statutory scheme of utility regulation in the Public Utility
32 Act, 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine
33 CUC activities, particularly financial activities.
34

35 78. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
36 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the CUC
37 statute's creation of a volunteer Board which would run the corporation on a day-to-day basis,
38 becomes much less important than satisfying CPUC requirements.
39

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

1 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
2 Executive Director to lead them.
3

4 **Addressing a critical financial challenge**
5

6 80. CUC faced a financial crisis in June 2010. It was critically short of funds to buy oil.
7 Without oil CUC would be forced to shut down its generation, bringing the economy of the
8 CNMI to a halt, and endangering health and welfare as electricity-dependent operations ceased –
9 sewage treatment, water pumping, traffic lights and security lighting, air conditioning for the
10 elderly, infants, and other medically fragile persons, and equipment at the CNMI's Hospital and
11 health clinics. The principal reason for the shortage was the Government's failure to pay millions
12 of dollars of utility bills. The Government was in arrears about four months on its bills. Only by
13 eliminating restrictions on the Governor's power to reprogram funds to address this issue was
14 crisis averted. The financial crisis has continued, and once more CUC is facing the possibility
15 that it cannot purchase fuel, in part due to the Government's inability to pay its utility bills. The
16 current arrears are approximately 90-120 days. CUC continues to face the same issues as it did
17 this past summer.
18

19 81. This past summer, CUC only had a day or two's worth of purchased oil to power its system
20 because it lacked the funds to buy oil from its sole, cash-only supplier.
21

22 82. The Executive Director was required to spend substantial time on a concentrated basis
23 interacting with high CNMI government officials as well as developing contingency plans for the
24 orderly shut-down of the CUC system at that time.
25

26 83. Fortunately, the Administration was able to develop a multi-stage plan to enable the
27 payment of enough CNMI Government bills, and the reprogramming of CUC funds to forestall
28 disaster.
29

30 84. In order to facilitate this solution, the Governor issued a Declaration of Disaster Emergency
31 (June 8, 2010).
32

33 85. Development of this temporary financial rescue plan would not have been possible without
34 the dedicated, focused effort of a properly empowered Executive Director. Such financial
35 conditions may continue unless the Government, and other large CUC customers, can be brought
36 current, and remain current, on their bills. This may present a challenge for CUC, given the
37 stressed financial conditions of the Commonwealth. A properly empowered Executive Director
38 will be required to address this challenge, which CUC again faces.
39

40 86. On May 11, 2010, CUC submitted to EPA a draft organization evaluation and
41 reorganization plan. But on June 14, 2010, the EPA assessed CUC a \$140,000 penalty for failing

1 to submit timely such a plan. The EPA required the hiring of a new Executive Director by
2 October 29, 2010; this was accomplished. But EPA disapproved of a CUC "Reorganization
3 Plan" by its letter of November 5, 2010.
4

5 87. Importantly, CUC requires a functioning management, including a properly empowered
6 Executive Director, to forestall additional EPA punitive action.
7

8 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION** 9

10 88. There is no Legislative relief coming. For months CUC has repeatedly asked the
11 Legislature for such relief, including submission of draft legislation in July 2010. The
12 Legislature has declined to respond. There is no alternative to providing this relief other than an
13 order from the Governor. Inaction will produce a disaster in which CUC is unable to provide its
14 critical community services. Directives # 9 and #10 were designed to avert this crisis. (The
15 other Directives, #1 through #8, are no longer relevant, and were discontinued.)
16

17 89. This Declaration is necessary to protect the health and safety of our children, our senior
18 citizens, businesses and all other CNMI residents and visitors.
19

20 **CONCLUSION AND ORDER** 21

22 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth
23 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
24 facing the Commonwealth of the Northern Mariana Islands.
25

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

30 (f) In addition to any other powers conferred upon the Governor by law, the Governor
31 may, during a state of disaster emergency:
32

33 (1) Suspend the provisions of any regulatory statute prescribing the procedures
34 for conduct of the Commonwealth's business, or the orders, rules, or regulations
35 of any Commonwealth activity or agency, if strict compliance with the provision
36 of any such statute, order, rule or regulation would in any way prevent, hinder, or
37 delay necessary action in coping with the emergency;
38

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

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

5 3 CMC § 5121(f)(1)-(3).
6

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

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

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

20
21 **DIRECTIVES**
22

23 I direct the following:
24

25 Directive 1: Deleted.
26

27 Directive 2: Deleted.
28

29 Directive 3: Deleted.
30

31 Directive 4: Deleted.
32

33 Directive 5: Deleted.
34

35 Directive 6: Deleted.
36

37 Directive 7: Deleted.
38

39 Directive 8: Deleted.
40

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

9 **Directive 10:** The following strike-out-formatted language of the quoted provisions of the
10 following statute regulating government employment is, as indicated, suspended immediately¹:
11

12 § 4532. Exemptions.

13
14 Persons other than citizens and permanent residents may be exempted from the
15 employment restriction in 3 CMC §4531 and employed within the following government
16 entities and positions, on a case by case basis:
17

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

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

22 ~~(c) Government translators. Approved foreign national translators for: the Department of
23 Labor, the Office of the Attorney General, the Office of the Public Defender, the
24 Department of Public Safety, the Commonwealth Superior Court, the Commonwealth
25 Supreme Court, and the Marianas Visitors Authority. The Attorney General shall
26 establish guidelines for the approval of foreign national translators for the Executive
27 Branch. The Supreme Court may establish guidelines for the approval of foreign national
28 translators for the Judiciary.~~
29

30 3 CMC § 4532, as most recently amended by PL 16-26. (Strikeout is deliberately added) That
31 is, the following language is suspended: “the following,” “on a case by case basis,” and the
32 following listing:
33

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

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

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.

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

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

15 I further direct generally that the suspension of the language for specified agencies and the
16 specified positions shall not be held as a limitation as to unnamed agencies and instrumentalities,
17 but shall continue to permit other government entities to continue to fill needed positions,
18 particularly in the areas of health care and translation/interpretation.
19

20 As a result of my change to 3 CMC § 4532, CUC shall have the full power and authority to hire,
21 retain and fire staff. CUC shall not be required to provide any attendant forms, advertising, or
22 other administrative or regulatory requirements which the CNMI Department of Labor would
23 otherwise require under the Nonresident Workers' Act. and the CNMI Department of Labor shall
24 neither impede, terminate nor change the employment authorization of any foreign national
25 employed, or sought to be employed, by CUC on the basis of his or her status as a foreign
26 national or on the basis of the way the hiring was accomplished by CUC.
27

28 The CNMI Department of Labor's power and responsibility for alien registration, health, or
29 similar tracking documentation which the Department of Labor ordinarily requires from an
30 employer when a foreign national is employed in the CNMI shall be unaffected by this Directive.
31 A foreign national employed by CUC shall register and obtain proper identification from the
32 CNMI Department of Labor as otherwise set forth by statute, subject to the Department's
33 expeditious processing.
34

35 Done this 17th day of February, 2011.
36

37
38
39 
40 BENIGNO R. FITIAL
41 Governor