



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lieutenant Governor

EXECUTIVE ORDER NO. 2012-07

SUBJECT: DECLARATION OF A STATE OF DISASTER EMERGENCY: COMMONWEALTH UTILITIES CORPORATION'S IMMINENT FAILURE AND THE NEED TO PROVIDE IMMEDIATE RELIABLE POWER, WATER, AND WASTEWATER SERVICES.

AUTHORITY: I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the imminent threat of the inability of the Commonwealth Utilities Corporation ("CUC") to provide critical power generation, water, and wastewater services to the CNMI and considering the harm such condition would pose to the Commonwealth of the Northern Mariana Islands.

Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the issuance of Executive Directives setting forth the measures to be taken to address the State of Disaster Emergency pursuant to 3 CMC § 5121(f) (1-3), which states:

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

- (1) Suspend the provisions of any regulatory statute prescribing the procedures for the conduct of the Commonwealth's business, or the orders, rules, or regulations of any Commonwealth activity or agency, if strict compliance with the provision of any such statute, order, rule or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;
- (2) Utilize all available resources of the Commonwealth as reasonably necessary to cope with the disaster emergency of the Commonwealth;
- (3) Transfer the direction, personnel, or functions of the Commonwealth departments and agencies or units thereof for the purpose of performing or facilitating emergency services.

Page | 1

WHEREAS, ON MAY 18, 2012, THROUGH EXECUTIVE ORDER 2012-05, I issued a Declaration of a State of Disaster Emergency regarding the Commonwealth Utilities Corporation's imminent failure and the need to provide immediate reliable power, water, and wastewater services.

WHEREAS, I FIND THAT CUC IS FACING a continuing cash shortage which threatens to halt power, water, and wastewater services to the CNMI because of the lack of funds available for CUC to buy diesel fuel and lube oil for its operation. In addition, I find that in order to give relief to customers, renewable energy projects must be implemented. I also find that in order to continue operations, CUC must be able to retain specialized technical employees who are not U.S. citizens and its executive power must be empowered to act in place of the Board until it can be constituted.

WHEREAS, CUC CANNOT PROCURE PROJECTS from competitive off-island bidders because the Board of Professional Licensing does not have the quorum required to issue licenses or certificates of authorization, which are prerequisites to bidding on CUC projects. Because the order in federal district court case *United States v CUC et al.*, No. 08-0051, requires CUC to cure certain infrastructure issues in a timely manner, bidding on current infrastructure issues is an imminent concern. Without the ability to accept bids from off-island bidders, CUC may not be able to obtain the skilled services required to make such repairs. Furthermore, by limiting the bidding pool to those who already have licenses in the CNMI, bidding is likely to be subject to false inflation, which would further tax CUC's budget.

WHEREAS, CUC IS THE SOLE ELECTRICITY SUPPLIER to the Government of the CNMI, including all public safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the CNMI's businesses and homes. While some businesses and agencies own backup generators, they are not generally organized to use the backups as permanent power sources and the diesel oil purchased to run these generators is substantially more expensive than that used for CUC power.

WHEREAS, WITHOUT CUC ELECTRICITY:

- (1) Most CNMI economic activity would come to a halt, much refrigeration and air conditioning would end, and the airports and ports would be forced to rely on emergency generation on the limited, expensive oil supply for it;
- (2) The CNMI's health and safety would immediately be at risk because traffic signals and street lighting would cease to function; emergency, fire, police facilities and their communications systems, and the hospital and island clinics would have to rely on limited oil supplies for emergency generation and then cease functioning; and much refrigeration of food and medicines would end, as would air conditioning for the elderly and sick;
- (3) The public schools and the Northern Marianas College would close. Other educational institutions would close as their backup oil supplies for emergency generators were exhausted; and
- (4) Water and sewage treatment would soon end. One of CUC's largest electric customers is the combined CUC Water and Wastewater Divisions. CUC is the

Page | 2

sole supplier of electricity for these systems. CUC's water system relies on electricity to maintain the system pressure needed to prevent the backflow of pathogens, to chlorinate, and to pump, store, and distribute water supplies. CUC's wastewater system requires electricity to collect, pump, process, treat, and discharge sewage. The lack of electricity could result in sewage overflows, contaminating land and water and rendering unsafe the CNMI's beaches, which are also principal tourist destinations.

WHEREAS, THERE EXISTS A CASH CRISIS:

- (1) CUC is owed over \$8 million by the cash-strapped central government, the public school system ("PSS"), and the Commonwealth Healthcare Corporation ("CHC"). CUC is owed over \$4 million by residential users and is facing \$2.6 million in accounts payable to vendors who have, in good faith, provided materials and other services;
- (2) The people of the Commonwealth and its government are going through severe economically distressed times. In the past fiscal year alone, the budget of the government fell from \$120 million to a little over \$100 million. This has put a severe strain on the government to meet its obligation.
- (3) CUC often only has days' worth of purchased diesel fuel to power its system because it lacks the funds to buy oil from its sole, cash-only supplier. CUC has no credit or other means to buy fuel than the revenue it collects from its customers;
- (4) A unified government approach is necessary to reconcile and resolve the fiscal crises of the government with the fiscal crises of CUC. This can only be achieved through an emergency declaration.

WHEREAS, THERE EXISTS A RENEWABLE ENERGY CRISIS:

- (1) CUC has gone through the RFP process for several renewable energy projects which would bring some relief to high utility rates, which are based on record-high oil prices;
- (2) These contracts must be brought to completion as soon as possible or the customers of CUC will continue to suffer from high oil prices.

WHEREAS, THERE EXISTS A TECHNICAL WORKER CRISIS:

- (1) CUC faces a manpower crisis. Skilled workers and a responsive support system are key to the success of the operation, particularly for preventative maintenance. At present, CNMI law at 3 CMC §§ 4531 and 4532 prohibits CUC from hiring any more non-U.S. technical workers;
- (2) CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction of the U.S. District Court and the U.S. Environmental Protection Agency ("EPA"), pursuant to two sets of consent, or "Stipulated Orders." Failure to meet the requirements of the federal court orders could

Page | 3

subject CUC and the CNMI to substantial fines and charges and, in the extreme, to a federal takeover of their finances;

- (3) CUC requires employees with specialized training. There are many non-U.S. citizens whom CUC needs to retain on technical and professional contracts. Without these positions filled, CUC operations would be severely compromised;
- (4) Adequate technical staff is essential to CUC's rehabilitation work. A major challenge to carrying out this rehabilitation has been finding the trained technicians needed to carry out these rehabilitation projects and to maintain and run the equipment. The technicians must be ready for service when needed and their services must be affordable. Any significant reduction in CUC's present technical workforce could seriously compromise CUC's ability to generate and distribute power;
- (5) The legislature, through P.L. 17-1 (Mar. 22, 2010), has limited CUC's ability to hire technical staff, eliminating prior statutory permission to hire up to nineteen foreign workers and reinstating a moratorium on the government's hiring of foreign nationals, even if needed for highly technical positions for which no local or mainland citizens are available. The CUC Act, as subsequently reenacted by P.L. 16-17 (Oct. 1, 2008), provides that CUC shall hire such persons as are necessary for operations, *except as otherwise limited by other law.* 4 CMC § 8123(h);
- (6) There are not enough U.S. citizen or U.S. resident technical specialists at CUC to perform the power generation work, particularly specialists with experience in the type of engines that CUC uses. U.S. citizens with the necessary skills are not readily available in the CNMI and it is costly to recruit from the United States. CUC believes that the vast majority of skill sets, considering its cash restrictions, must come from non-U.S. personnel. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding enough qualified candidates;
- (7) CUC has made on-going attempts to train its own current employees to move up to more advanced technical positions by gaining, through classes and training, the certifications that are needed for taking the required tests. However, there are other positions which require certification that it has been unable to fill from within;
- (8) The bottom line on CUC's technical work has been a substantial increase in reliability, specifically the availability of CUC's generation. CUC's transmission and distribution have similarly improved—January 2010 saw 10 hours and 44 minutes of outages; April 2010 saw one minute. It was critical to this latter improvement that CUC had the skilled, trained work force to maintain power lines;
- (9) The impact of an inadequate workforce would be five-fold:

- a. First, there would be a direct deterioration of service to existing customers. There would be brownouts or area blackouts with the above-mentioned loss of service.
 - b. Second, the power plants would again degrade, producing more of these outages.
 - c. Third, there would be an indirect effect, increasing rates over the longer term, because small consumers would have to shoulder more of the fixed costs of the CUC system. First, there would be loss of large customers. By contrast, if the hotels were to become part of the system, they could help pay CUC fixed costs, which would lower everyone else's rates. Hotels, businesses, and our residents need reliable, 24/7 power. With unreliable power, CUC would be unable to convince large commercial customers, particularly hotels, to join or rejoin its system. Second, if CUC fails to meet federal court deadlines for the Stipulated Orders, the Court could appoint a federal receiver and its consulting team, with all expenses charged to CUC customers.
 - d. Fourth, the loss of CUC's technical experts would shut down or, at least, cripple the company's increasingly successful efforts to cut losses, particularly theft of service.
 - e. Fifth, with the recovery of the world economy, oil prices can be expected to rise. If CUC's generators become less efficient because technical staff are unavailable to maintain CUC's engines' efficiency, that much more oil would be needed to generate a given amount of electricity. The price rise will thereby harm CUC's customers and electricity-dependent services with higher rates.
- (10) CUC has demonstrated that the required workers are available locally as nonresident workers, and cost-effectively so. CUC's renewal of contracts for approximately two dozen essential foreign expert workers was necessary to sustain the integrity of CUC's systems. Thus, continued relief from the legislative prohibition on hiring foreign national workers is necessary to ensure the delivery of uninterrupted power services to the people of the Commonwealth.

WHEREAS, A BOARD OF DIRECTORS DOES NOT EXIST:

- (1) There is no Board of Directors. CUC has functioned without a Board because it has had to. While CUC's enabling act, reenacted as P.L. 16-17, as amended, authorizes a Board, there is no CUC Board yet because, while the staff of the Governor's Office have diligently tried to find Board volunteers who meet the complex statutory qualifications, they have been unable to do so. Nonetheless, CUC must continue to function.
- (2) Without a Board in place, I still must provide for the continued operations of CUC. The Director needs to be able to negotiate with federal and other agencies.

WHEREAS, BY THIS RENEWAL OF THE DISASTER EMERGENCY DECLARATION, I intend to enable CUC to continue to provide necessary services to the people of the Commonwealth. This Declaration is necessary to protect the health and safety of our children, our senior citizens, businesses, and all other CNMI residents and visitors.

NOW, THEREFORE, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat facing the Commonwealth of the Northern Mariana Islands including, but not limited to, the authority to:

1. Suspend all statutory or regulatory provisions as required; and
2. The reprogramming of funds necessary to meet this emergency.

It is hereby **ORDERED** that:

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

Under authority of this Declaration and with the goal of mitigating or ameliorating the above described crises, I immediately direct the following:

DIRECTIVE 1: I hereby assume all of the executive power of the CUC which shall include any and all powers vested in the board of Directors and the Executive Director. This executive authority shall be exercised either by me or by my designated Executive Director.

DIRECTIVE 2: All provisions in Title 4 of the Commonwealth Code and P.L. 17-34 that concern PUC regulation of CUC and its actions, and potentially, any oversight of renewable energy contracts are suspended under this Order.

DIRECTIVE 3: Section 4531 of Title 3 of the Commonwealth Code is hereby suspended as to CUC as follows:

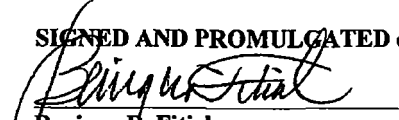
The following strike-out formatted language of the quoted provisions of the following statute regulating government employment is, as indicated, suspended immediately:

3 CMC §4531. Restrictions on Government Employment
~~Employment by departments, agencies, and all other instrumentalities of the Commonwealth government is limited to citizens and permanent residents; provided that the government may enter into contracts with foreign nationals for services performed outside of the Commonwealth.~~

As a result of my suspension of 3 CMC § 4531, CUC shall have the full power and authority to retain staff which may include employees other than citizens and permanent residents of the United States.

The above described Directives are in no way meant as the limits of my actions or authority under this Emergency Declaration. Accordingly, I reserve the right under this Emergency Declaration to issue any and all directives necessary to prevent, mitigate or ameliorate the adverse effects of the emergency.

SIGNED AND PROMULGATED on this 16th day of June 2012.



Benigno R. Fitial
Governor
Commonwealth of the Northern Mariana Islands