



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lieutenant Governor

EXECUTIVE ORDER NO. 2013-02

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.

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, 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 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.

WHEREAS, THERE EXISTS A FINANCIAL CRISIS:

- (1) CUC is owed approximately \$14 million by the public school system ("PSS") and the Commonwealth Healthcare Corporation ("CHC") and is owed over millions more by residential users;
- (2) There is conflict and potential conflict between CUC and government agencies over money owed and other issues. Such conflict drains resources especially if it results in the parties going to court. Interagency cooperation and oversight is vital to ensure that government agencies can continue its operations without draining CUC's remaining resources.
- (3) The people of the Commonwealth and its government are going through severe economically distressed times. This has put a severe strain on the government to meet its obligation.
- (4) 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;
- (5) 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 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 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) 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);
- (5) 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;
- (6) The impact of an inadequate workforce is substantial. 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. Second, the power plants would again degrade, producing more of these outages. Third, 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.
- (7) CUC's renewal of contracts and hiring of foreign expert workers is 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 threats 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 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:

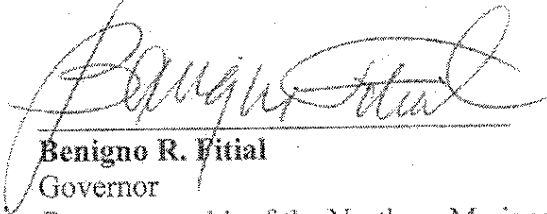
3 CMC §4531. Restrictions on Government Employment

~~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 18TH day of January 2013.



Benigno R. Fitial

Governor

Commonwealth of the Northern Mariana Islands