



## COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Eloy S. Inos**  
Governor

**Jude U. Hofschneider**  
Lieutenant Governor

### EXECUTIVE ORDER NO. 2014-06

**SUBJECT:** DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY

**AUTHORITY:** I, ELOY S. INOS, 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 PL 18-4, § 104 of the Homeland Security and Emergency Management Act of 2013, do hereby declare a State of Significant 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 community, environment, and critical infrastructure of the Commonwealth of the Northern Mariana Islands.

**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 fuel 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 fuel 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 \$20 million by the public school system ("PSS") and the Commonwealth Healthcare Corporation ("CHC") and is owed millions more by residential users.
- (2) Although the commonwealth economy has recently improved, the improvement is only marginal and the economy and the government's finances are still fragile. This government strains to meet its obligations.
- (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;

**WHEREAS, THERE EXISTS A DIESEL FUEL SUPPLY CRISIS:**

- (1) The current high cost of diesel fuel represents over 70% of the rate that CUC customers pay for electricity. There is now a required need for CUC to obtain diesel fuel at the lowest competitive pricing possible through a public competitive procurement process.
- (2) The current diesel fuel supply contract ends on April 30, 2014. CUC is not able to procure a realistically competitive proposal from more than one vendor for the supply of diesel fuel prior to May 1, 2014 unless the amount it owes to its current diesel fuel supply vendor of approximately \$6.57 million dollars is paid off upon the termination of the current fuel supply contract.
- (3) The failure of CUC to pay off its obligation to the current diesel fuel supply vendor at the end of the contract in the event another vendor is awarded the contract through a competitive procurement process would result in approximately \$6.57 million dollars in customer account security deposits being utilized, and thus, would have to be replenished from revenues that are already strained to cover normal and routine operating and maintenance expenses, debt service and other requirements in the normal course of business.
- (4) The failure to procure a contract for the supply of diesel fuel to CUC prior to May 1, 2014 through a competitive proposal process would result in CUC

executing a diesel fuel supply contract with its current vendor at non-competitive prices which in turn would be injurious to, and not be in the best interest of, the government, businesses and residents of the CNMI who depend on and pay for the power generated by engines using the diesel fuel to be supplied under such contract.

(5) The ability of CUC to administer a competitive procurement process to procure a multi-year contract for the supply of diesel fuel at competitive pricing prior to May 1, 2014 is not currently possible based on a December 19, 2008, Order of the Commonwealth Public Utilities Commission (“CPUC”) which requires the approval of the Commission before such competitive procurement process for the fuel supply contract can begin.

(6) In February 2014, CUC filed a request for the approval of a proposed Request for Proposals (“RFP”) for CUC’s fuel supply contract with the Commission. However, after three revisions to the RFP the Consultants for the Commission have not recommended approval of the RFP or placed it before the Commission for its approval. Furthermore, the Consultants for the Commission have indicated to CUC that CUC should again revise the proposed RFP before they would consider recommending approval of the RFP to the Commission or placing before the Commission for approval. The Consultants for the Commission also suggested further conferencing for the purpose of reviewing outstanding discovery requests related to the proposed terms and conditions contained in the RFP. The Consultants also felt that CUC should file a separate petition with the Commission for it to address and approve the repayment of the existing vendor obligation at the end of the contract. It is not clear that all of these RFP related processes, which have been advised by the Consultants for the Commission on behalf of the Commission, can be completed in time for CUC to administer and complete a competitive procurement process to procure a multi-year contract for the supply of diesel fuel at competitive pricing prior to May 1, 2014.

**WHEREAS, BY THIS DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY, 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, and to allow CUC to administer and complete a competitive procurement process for the express purpose of procuring a multi-year contract for the supply of diesel fuel to CUC at competitive pricing prior to May 1, 2014.**

**NOW, THEREFORE, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and PL 18-4 § 104(c), to take all necessary measures to address the 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. Utilize all available resources of the Commonwealth government and its political subdivisions as reasonably necessary to respond to the emergency.

It is hereby **ORDERED** that:

This Declaration of a State of Significant Emergency 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, terminate the declaration of a state of significant emergency. PL 18-4, § 104(g)

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

**DIRECTIVE 1:** A portion of the provision contained in Section 8411(d) of Title 4 of the Commonwealth Code [formerly 4 CMC § 8409(d)] is hereby suspended as to CUC and its immediate ability to procure a diesel fuel supply contract as follows:

The following strike-out formatted language of the quoted provisions of the following statute regulating approval of a CUC contractual agreement is, as indicated, suspended immediately:

**4 CMC § 8411(d). General Powers and Duties.**

Review and approve or disapprove any divestiture of capital or ~~contractual agreement~~ which may increase rates and charges to the consumer.

**DIRECTIVE 2:** A portion of the provision contained in Section 8123(e) of Title 4 of the Commonwealth Code is hereby suspended as to CUC and its immediate ability to procure a diesel fuel supply contract as follows:

The following strike-out formatted language of the quoted provisions of the following statute regulating borrowing power for CUC is, as indicated, suspended immediately:

**4 CMC § 8123(e). Commonwealth Utility Corporation: Powers.**

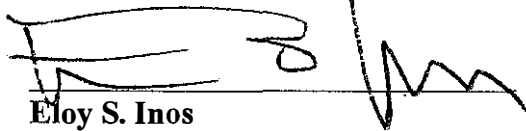
Borrow money from any public or private source, either within the Commonwealth or the United States, or in any other country, and to give security in connection with such borrowing, ~~provided that any borrowing in excess of \$500,000 shall be approved by law.~~

As a result of my suspension of 4 CMC §§ 8411(d) and 8123(e), CUC shall have the full power and authority to administer and complete a competitive procurement process for the express purpose of procuring and executing a multi-year contract for the supply of diesel fuel to CUC at competitive pricing prior to May 1, 2014, without the need for CPUC to approve either the terms and language of the proposed RFP for the procurement of the supply of diesel fuel, or the procurement and negotiation process, or the terms and language of the diesel

fuel contract which is executed as a result of the diesel fuel supply RFP procurement process.

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

**SIGNED AND PROMULGATED** on this 15<sup>TH</sup> day of April, 2014.



**Eloy S. Inos**  
Governor  
Commonwealth of the Northern Mariana Islands