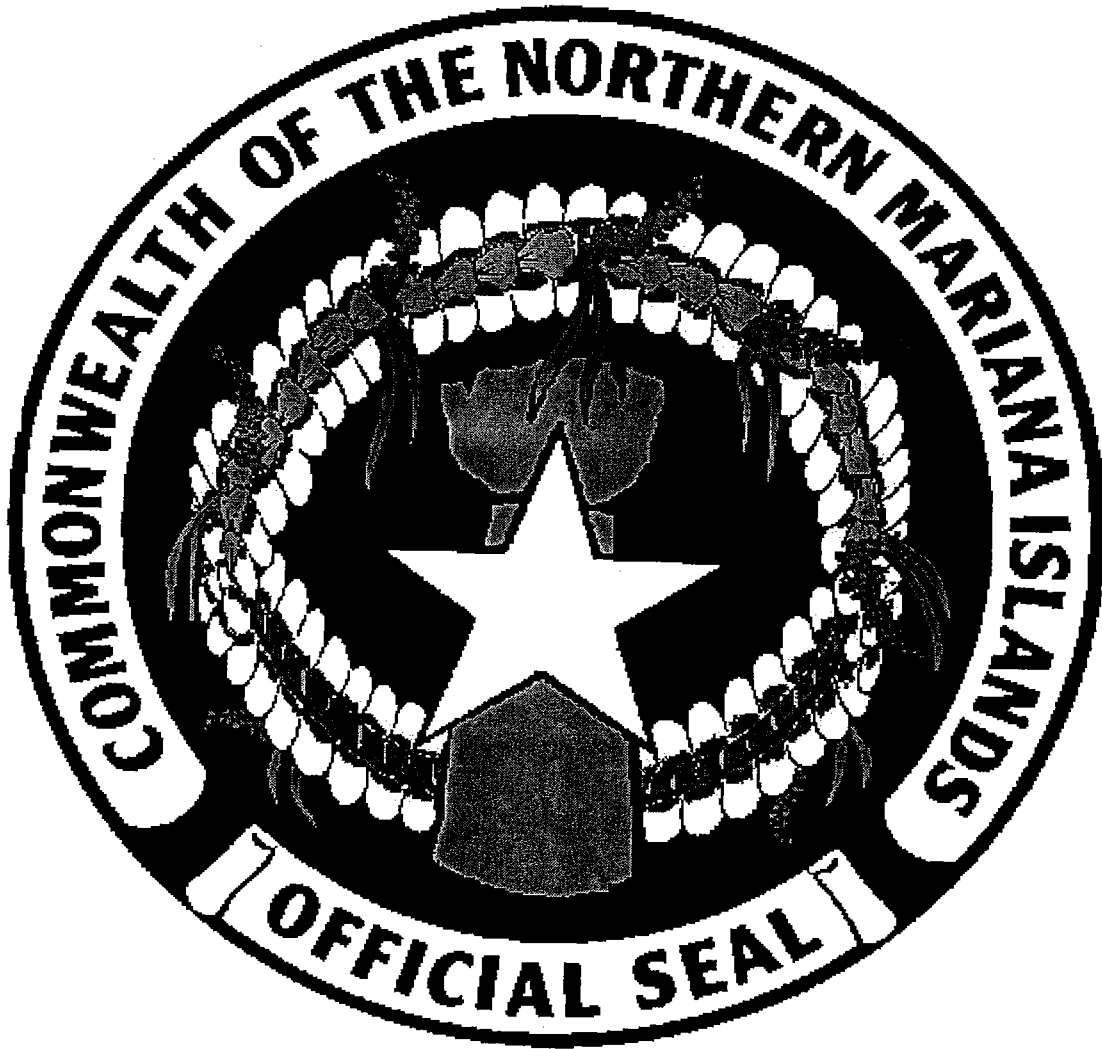


**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS**



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**COMMONWEALTH REGISTER  
VOLUME 33  
NUMBER 05  
MAY 23, 2011**

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# COMMONWEALTH REGISTER

VOLUME 33

NUMBER 05

MAY 23, 2011

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**BOARD OF PROFESSIONAL LICENSING**  
**Commonwealth of the Northern Mariana Islands**

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**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION**  
**OF REGULATIONS FOR**  
**REAL PROPERTY APPRAISERS**

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER  
AS PROPOSED AMENDMENTS TO THE REGULATIONS  
Volume 33, No. 04, pgs. 031539-031546, March 23, 2011

Regulations of the Real Property Appraisers: NMIAC Title 125, §125-40.

ADOPTION OF THE PROPOSED AMENDMENTS TO THE REGULATIONS FOR REAL PROPERTY APPRAISERS: The Board of Professional Licensing hereby adopts the above-referenced regulations as permanent regulations, which were published in the Commonwealth Register at pages 031539-031546 in Volume 33, No. 04 on March 23, 2011, pursuant to the procedures of the Administrative Procedure Act, 1 CMC §9104(a). The Board of Professional Licensing announced that it intended to adopt them as permanent and now does so. The Board of Professional Licensing certifies by signature below that, as published, such adopted amendments to the regulations for Real Property Appraisers are a true, complete and correct copy and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The prior publication was as stated above. The Board of Professional Licensing adopts the regulations for Real Property Appraisers as final as of the date of signing below.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None.

AUTHORITY: The Chairman of the Board of Professional Licensing is empowered with the authority to promulgate, adopt and amend regulations.

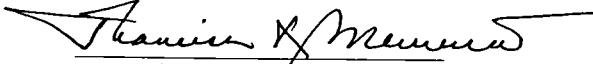
EFFECTIVE DATE: Pursuant to the APA, 1 CMC §9105(b), these adopted amendments to the Regulations for Real Property Appraisers are effective 10 days after compliance with the APA, 1 CMC §9102 and 9104(a) or (b), which in this instance is 10 days after publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC §9104(a)(2), the agency received no comments on the proposed amendments to the regulations for Real Property Appraisers. Upon this adoption of the amendments, the agency if requested to do so by any interested person, within 30 days of adoption, will issue a concise statement of the principal reasons for and against its adoption.

ATTORNEY GENERAL APPROVAL for modified regulations. The adopted amendments to the regulations for Real Property Appraisers were approved for promulgation by the CNMI Attorney General in the above cited pages of the Commonwealth Register, pursuant to 1 CMC §2153(3) (to review and approve as to form and legal sufficiency all rules and regulations to be promulgated by any department or agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).


I declare under penalty of perjury that the foregoing is true and correct copy and that this declaration was executed on the 28<sup>th</sup> day of April, 2011, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and Ordered by:

  
Francisco Q. Guerrero  
Chairman

04/28/11  
Date

Filed and Recorded by:

  
Esther M. San Nicolas  
Commonwealth Register

05.17.2011  
Date



# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Eloy S. Inos**  
Lt. Governor

1     **EXECUTIVE ORDER 2011-01**  
2  
3

4             **DECLARATION OF A STATE OF DISASTER EMERGENCY:**  
5             COMMONWEALTH UTILITIES CORPORATION'S  
6             IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO  
7             PROVIDE IMMEDIATE RELIABLE POWER, WATER AND WASTEWATER  
8             SERVICES  
9

10    CONTINUATION #30  
11

12    I, ELOY S. INOS, pursuant to the authority vested in me as Acting Governor of the  
13    Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth  
14    Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby  
15    declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands  
16    due to the inability of the Commonwealth Utilities Corporation (CUC) to provide critical power  
17    generation and water and wastewater service to the CNMI and the extreme, immediate and  
18    imminent threat such condition poses to the Commonwealth of the Northern Mariana Islands.  
19

20    This Executive Order is intended to, and does, continue in effect portions of the Governor's  
21    preceding disaster emergency declarations on this matter, EO 2009-01 through -09, and 11-13,  
22    and EO 2010-01 through -06, -08 through -10, and 16-19, except as specifically modified. As  
23    more fully stated below, this Executive Order shall expire on the 31st day following the date of

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

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

3  
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45  
46

1       **FINDINGS**

2  
3       I find that:

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

10       **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

11  
12       2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers  
13 has continued to place CUC operations at risk. Incipient failures in the CUC water, wastewater  
14 and power transmission and distribution networks have underscored the importance of having in  
15 place a well-funded and functioning preventive maintenance program. Skilled workers and a  
16 responsive support system are key to the success of the operations, particularly of preventive  
17 maintenance. Presently CNMI law (3 CMC § 4532, as most recently amended by PL 17-1)  
18 prohibits CUC from hiring any more non-US technical workers than the skilled professionals  
19 recently with CUC. CUC has repeatedly asked the Legislature for relief from this statute  
20 regulating the Government’s workforce, to no avail. Further, errors in wording in the CUC  
21 enabling legislation recently re-enacted in PL 16-17, as amended, would bar the Executive  
22 Director from day-to-day management of the corporation, effectively shutting CUC down. This  
23 EO eliminates these problems while it is in effect.  
24

25       3. **Background.** CUC has substantially minimized the risk of losing the services of its owned  
26 generating capacity, which losses created intermittent blackouts on portions of its system. It  
27 therefore allowed the Aggreko year-long temporary power contract to terminate, as provided in  
28 the agreement, effective September 12, 2009. This saves CUC customers at least \$6 million per  
29 year in fees. But it still presents risks, as the strategy requires proper operation and maintenance  
30 of CUC’s owned engines by CUC’s technical staff, and the timely securing of materials and  
31 supplies.  
32

33       4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction  
34 of the US District Court and the US EPA, pursuant to two sets of consent, or “stipulated”, orders.  
35

- 36           a.           The first requires the upgrade and smooth functioning in virtually all  
37 aspects of CUC’s water and wastewater divisions. The second requires CUC to  
38 properly eliminate over 400,000 gallons of used oil and to institute measures to  
39 avoid uncontrolled buildup of such inventories. Failure to meet the requirements  
40 of the federal court orders could subject CUC and the CNMI to substantial fines  
41 and charges, and, in the extreme, to a federal takeover of their finances. Presently



1 CUC is “accruing” substantial fines. Most of the fines have not been levied; but  
2 they could be. The EPA has, however, levied two fines, in the amount of \$29,000  
3 and \$140,000 (June 2010 letter).  
4

5 b. On February 24, 2010, the US District Court entered an additional  
6 stipulated order, and on August 12, 2010, the US District Court entered a further  
7 stipulated order. It provided, among other things, that a professionally-developed  
8 Interim Financial Plan (“IFP”) would be provided to the US EPA by November  
9 30, 2010. This additional stipulation requires CUC to meet a number of  
10 deadlines, each involving the application of technical expertise. CUC timely filed  
11 the IFP, but EPA on January 15, 2011 disapproved the submission. Failure to  
12 meet IFP requirements would subject CUC to the described sanctions.  
13

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

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

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

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

1  
2 7. Without CUC electricity:  
3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

26 43. Incipient failures include the failure of 98 submersible pumps in the water system over a  
27 period of 12 months. Higher grade stainless steel grates have to be specified that are resistant to  
28 pitting. The pitting causes the grates to fail, and consequently the pump motors fail. CUC has  
29 had to purchase higher quality equipment, rather than the cheap units that fail prematurely.  
30 Motor protection continues to be challenging. During September 2010 one of the newly installed  
31 30 HP motors with the higher grade stainless steel was damaged by an apparent lightning strike  
32 after only a month's operation.  
33

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 57. CUC last year lost 2 senior accountants plus a related specialist. The IT and billing  
22 department in August 2009 was reduced by one staffer, having advertised for a replacement for 4  
23 weeks to no avail. While it appeared that CUC might have to look to employing foreign  
24 technical specialists, CUC hired back 2 former accountants in September 2009 and brought a  
25 third person aboard in October 2009. All are US citizens. Nonetheless, CUC must have the  
26 flexibility to hire competent professionals as needed. CUC is still short-staffed, and needs an  
27 accounting assistant, and an accounting specialist. On February 17, 2010, CUC's new Chief  
28 Financial Officer reported for duty.  
29

30 58. CUC's decades-old financial and accounting system computer failed repeatedly during the  
31 second half of 2010, including for a complete week. Already-over-committed finance and  
32 accounting staff were required to put in days of extra time in hand-recording customer payments  
33 and hand-generating bills. CUC bought a reconditioned replacement, which awaits proper  
34 software. CUC lacks the in-house expertise to generate the software. Further, in order to  
35 "query" its system for CPUC-required financial reports, CUC must depend on its IT manager, a  
36 foreign national who programs in SQL.  
37

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

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

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

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

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

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

### 39 **Forestalling corporate paralysis** 40

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

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

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

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

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

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



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

10 **Fixing CUC's technical insolvency**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 **Addressing a critical financial challenge**  
33

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

1 that it cannot purchase fuel, in part due to the Government's inability to pay its utility bills. The  
2 current arrears are approximately 90-120 days. CUC continues to face the same issues as it did  
3 this past summer.  
4

5 80. This past summer, CUC only had a day or two's worth of purchased oil to power its system  
6 because it lacked the funds to buy oil from its sole, cash-only supplier.  
7

8 81. The Executive Director was required to spend substantial time on a concentrated basis  
9 interacting with high CNMI government officials as well as developing contingency plans for the  
10 orderly shut-down of the CUC system at that time.  
11

12 82. Fortunately, the Administration was able to develop a multi-stage plan to enable the  
13 payment of enough CNMI Government bills, and the reprogramming of CUC funds to forestall  
14 disaster.  
15

16 83. In order to facilitate this solution, the Governor issued a Declaration of Disaster Emergency  
17 (June 8, 2010).  
18

19 84. Development of this temporary financial rescue plan would not have been possible without  
20 the dedicated, focused effort of a properly empowered Executive Director. Such financial  
21 conditions may continue unless the Government, and other large CUC customers, can be brought  
22 current, and remain current, on their bills. This may present a challenge for CUC, given the  
23 stressed financial conditions of the Commonwealth. A properly empowered Executive Director  
24 will be required to address this challenge, which CUC again faces.  
25

26 85. On May 11, 2010, CUC submitted to EPA a draft organization evaluation and  
27 reorganization plan. But on June 14, 2010, the EPA assessed CUC a \$140,000 penalty for failing  
28 to submit timely such a plan. The EPA required the hiring of a new Executive Director by  
29 October 29, 2010; this was accomplished. But EPA disapproved of a CUC "Reorganization  
30 Plan" by its letter of November 5, 2010.  
31

32 86. Importantly, CUC requires a functioning management, including a properly empowered  
33 Executive Director, to forestall additional EPA punitive action.  
34  
35

### 36 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION** 37

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

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

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

7  
8 **CONCLUSION AND ORDER**  
9

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

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

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

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

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

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

34 3 CMC § 5121(f)(1)-(3).  
35

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

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

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

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

8  
9 **DIRECTIVES**

10  
11 I direct the following:

12  
13 Directive 1: Deleted.

14  
15 Directive 2: Deleted.

16  
17 Directive 3: Deleted.

18  
19 Directive 4: Deleted.

20  
21 Directive 5: Deleted.

22  
23 Directive 6: Deleted.

24  
25 Directive 7: Deleted.

26  
27 Directive 8: Deleted.

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

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

4 § 4532. Exemptions.  
5

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

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

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

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

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

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

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

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

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

Executive Order 2011-01  
January 2011

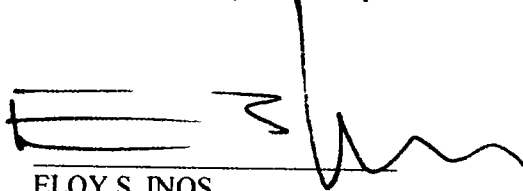
1 I hereby direct that the effect of the suspension of the indicated language shall be that CUC shall  
2 have the complete power, without regard to citizenship or otherwise lawful immigration status, to  
3 hire engineers, professional employees in technical or trade areas, power plant mechanics and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

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

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

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

31 Done this 18<sup>th</sup> day of January, 2011.  
32  
33

34   
35  
36

37 ELOY S. INOS  
38 Acting Governor  
39

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

0 EO 2010-18





# COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Eloy S. Inos**  
Lt. Governor

## EXECUTIVE ORDER NO. 2011 - 02

**SUBJECT:** Project Brabu Advisory Council as a Strategic Prevention Framework State Incentive Grant (SPF SIG) Requirement

**WHEREAS**, our community recognizes the need to improve the quality of life of our people; and

**WHEREAS**, we share a vision that defines who we are as a people and our desired outcome for good health and long life, and a health care system that meets the basic needs of our people, including prevention efforts to create a healthier CNMI; and

**WHEREAS**, current CNMI data and related information indicate that youth and adults are engaging in behaviors that place them at risk of developing serious health problems as a result of tobacco, alcohol, and illicit drug use, as well as life-threatening behaviors such as suicide and violence against others; and

**WHEREAS**, The Department of Public Health: Community Guidance Center applied through the Office of the Governor and has received a Strategic Prevention Framework State Incentive Grant (SPF SIG) from the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Prevention (CSAP), to fund "Project Brabu" and will comply with CSAP and SAMHSA guidelines, including the following duties:

1. Forming of a SPF SIG Advisory Council appointed by the Governor to advise, develop, and implement the requirements, goals, and objectives of the SPF SIG.
2. Initiating the necessary process for building and strengthening a cohesive substance abuse prevention and early intervention system to better serve the specific needs of the Northern Mariana Island community;
3. Developing a strategic planning process that will be utilized to address the rate of alcohol, tobacco and other drug (ATOD) use and addiction among our community and other Pacific Island community members as well;
4. Identifying substance abuse prevention needs of the CNMI's children, youth, and their families; and
5. Promoting interagency collaboration for the development and implementation of prevention services and programs.

**WHEREAS**, The Department of Public Health: Community Guidance Center is the lead agency for the administration of the SIG and the implementation of the proposal. In relation to Project Brabu, the CGC Director, also the Project Brabu Director, oversees the SPF SIG requirements, appoints and supervises the State Epidemiological Workgroup (SEW) Lead Coordinator and the Evidence-based Interventions (EBI) Workgroup Coordinator, provides direct supervision of Project Brabu staff, serves as the primary contact of Project Brabu to

1 | Page

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

the State Project Officer and the Grants Management Specialist, and directs Project Brabu activities to accomplish the SPF SIG purposes and goals.

**WHEREAS**, an Advisory Council was established to comply with SPF SIG to provide guidance in the planning and implementation of the primary goals of the Strategic Prevention Framework State Incentive Grant outlined below:

- 1) Build Prevention Capacity and Infrastructure in the CNMI;
- 2) Prevent the Initiation of and Reduce Substance Abuse, including Childhood and Underage Drinking
- 3) Reduce Substance Abuse-related Problems, and
- 4) Evaluate All Project Activities;

**WHEREAS**, the Advisory Council's duties include the following:

- a) To advise and guide the implementation of Project Brabu at each SPF step throughout the 5-year grant period;
- b) To review and provide final recommendations to the Identified Priority Need(s) that the Project will focus primarily on, the Project Brabu Strategic Plan, the Funding Mechanism, the Funding Allocation, and the Evidence-based Criteria that will be used to approve community implementation plans;
- c) To participate and make final recommendations in the entire selection process of sub grant applications and sub-recipient communities to receive SPF SIG funds;
- d) To prepare an annual report to the Governor regarding Project Brabu's progress towards fulfilling the grant purposes and goals, requirements, and meeting community prevention needs;
- e) To adhere to the following listed Articles and sub sections below:

## **ARTICLE I      MEMBERSHIP**

### **Section 1 – Membership**

The Governor shall appoint all members of the SPF SIG Advisory Council, composed of required membership indicated by the SPF SIG and recommended membership from the DPH: CGC, and shall designate one member to serve as the Chairperson. The Chairperson and membership shall work with the SEW and the EBI Workgroup to collaboratively and effectively meet SPF SIG goals, objectives, and requirements.

Membership shall be limited to ten (10). In addition to those agencies and organizations stipulated in the SPF SIG requirements for Advisory Council membership, membership shall also include, by recommendation of the Project Brabu Director, representatives of public and/or private schools, drug-free coalitions, faith-based organizations, and youth organizations.

## **Section 2 – Term**

Members shall serve until the expiration of the SPF SIG Term (five years), until a member voluntarily resigns, or is removed by the Governor, either directly or pursuant to a recommendation by the SPF SIG Advisory Council. The council may make nominations to the Governor's office for consideration in filling any member vacancy. An individual who is appointed to fill a member vacancy serves under the same conditions as set forth herein. Any member who misses two meetings with an unexcused absence shall be removed accordingly. An absence is considered unexcused when a member fails to notify the Chairperson at least a week in advance or at the earliest possible time of an absence. Any emergency situations that arise should be relayed to the Chairperson at the earliest time possible. Members should ensure that for planned absences, assigned proxies are aware of the meeting details.

## **Section 3 – Duties**

Members shall serve on the SPF SIG Advisory Council to fulfill the obligations and terms of the SPF SIG on behalf of the CNMI and the DPH. Members shall attend all regularly scheduled meetings. Members shall serve in other capacities from time to time as detailed herein this Executive Order.

## **Section 4 – Voting**

Each member of the council shall have one (1) vote. A member may designate an individual from the same agency/organization to serve as proxy in the event a member knows he or she will be absent from a meeting in which a vote is taking place. The proxy designation must be submitted to the Chairperson in writing on a form to be provided by assigned Project staff before a formal call to order of a designated meeting. A proxy will be allowed to exercise voting privileges for the member whom they are representing. A proxy will not be permitted to exercise a member's voting privilege when members are required to participate in grant reviews or voting on grant determinations. Members are urged to designate a consistent proxy to ensure that the individual is aware of the SPF Advisory Council functions, duties, and responsibilities. In the event that a member is absent and voting is to be conducted, electronic communication shall be permitted. Members and proxies shall abstain from any vote in which they know that they have a business or personal conflict. Only members or proxies may vote in connection with activities of the SPF SIG Advisory Council, the State Epidemiological Workgroup (SEW), Evidence-based Intervention (EBI) Workgroup, or any other committee. The State Project Officer under the Center for Substance Abuse Prevention (CSAP) shall be a non-voting member.

## **ARTICLE II MEETINGS**

Meetings shall be held every third (3<sup>rd</sup>) Wednesday of the month every other month for the first six months and quarterly thereafter for the first year unless otherwise called for urgent or specific purposes by the Chairperson. There will be a minimum of four (4) regularly scheduled meetings for subsequent years. An agenda of the meetings will be prepared by the Chairperson and/or assigned Project staff and sent to members at least a week prior to scheduled meetings. Minutes shall be prepared by the assigned Project staff and sent to members at least a week prior to scheduled meetings.

A quorum shall consist of a simple majority of the membership of the SPF SIG Advisory Council. All decisions shall be made by consensus of those members present. Meeting attendance via electronic communication shall be permitted. It shall be noted on official record that the Member is present via electronic communication.

Membership duties and functions, inclusive of voting and decision making, shall apply to the member participating via electronic communication.

Rules and parliamentary procedures according to *Roberts's Rules of Order* shall govern all meetings.

### **ARTICLE III OFFICERS**

#### **Section 1 – Duties of the Chairperson**

The Chairperson shall serve at the pleasure of the Governor. A vacancy of the Chairperson shall be filled by the Governor before the next scheduled SPF SIG Advisory Council meeting.

The Chairperson shall preside over all meetings of the SPF SIG Advisory Council. The Chairperson shall also communicate with the Office of the Governor and the DPH regarding the activities of the SPF SIG Advisory Council. An annual report is to be submitted formally to the Governor's Office to reflect progress, accomplishments, barriers, and proposed solutions to overcome such barriers.

#### **Section 2 - Duties of the Vice Chairperson**

The Vice Chairperson shall be elected by the Advisory Council. A vacancy of Vice Chairperson shall be filled by the next scheduled Advisory Council meeting through official nomination and voting process among the Advisory Council membership.

The Vice Chairperson shall assume the roles and duties of the Chairperson described herein in the absence of the Chairperson.

### **ARTICLE IV WORKGROUPS**

#### **Section 1 – Workgroups**

The SPF SIG Advisory Council shall work collaboratively with the two required workgroups, the Evidence-based Interventions (EBI) Workgroup and the State Epidemiological Workgroup (SEW).

Team Leader for the Evidence-based Practices/Programs (EBP) shall be the Prevention Specialist and/or assigned Project staff. Team Leader for the Epidemiological Workgroup shall be the Epidemiological Lead Coordinator.

The SPF SIG Advisory Council may create additional subcommittee/workgroups to further the purposes of the SPF SIG Advisory Council.

**WHEREAS**, the successful implementation of the five-year SPF SIG will have a significant impact at the community level, ultimately resulting in sustainable levels of prevention and early intervention services that are relevant and appropriate for the diverse cultural communities in the CNMI.

**NOW, THEREFORE**, to conduct Council's Duties, it is hereby ordered:

1. The Strategic Prevention Framework State Incentive Grant (SPF SIG) Advisory Council membership shall consist of one (1) ex-officio representing the Center for Substance Abuse Prevention, Federal Government Project Officer and no more than nine (9) members appointed by the Governor, representing the following organizations, with the Chairperson appointed by the Governor:

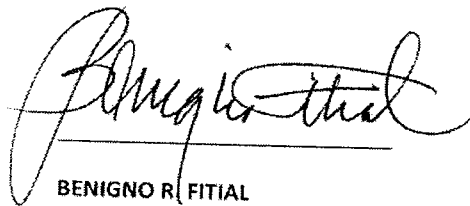
- a. Criminal Justice Planning Agency, Office of the Governor
- b. Department of Public Health
- c. Education Representative
- d. Department of Public Safety
- e. Community Representative
- f. CNMI Legislature
- g. Saipan Chamber of Commerce
- h. Faith-based Organization representative
- i. CNMI Substance Abuse Prevention Coalition
- j. Center for Substance Abuse Prevention (Government Project Officer) – ex-officio role

The original members for the SPF SIG Advisory Council are Jerome Ierome (Chairman), Criminal Justice Planning Agency; Margaret Aidan, Department of Public Health; Jonas Barcinas, Education Representative/Public School System; Jose Saures, Department of Public Safety; Claudio Norita, Community Representative; Senator Ralph Torres (Vice Chairman), CNMI Legislature/Senate; James Arenovski, Saipan Chamber of Commerce; Fr. Jesse Reyes, Faith-based Organization/Diocese of Chalan Kanoa; Crispin Sablan, CNMI Substance Abuse Prevention Coalition; and Damaris Richardson, Center for Substance Abuse Prevention.

2. The Advisory Council shall have a Chairperson, appointed by the CNMI Governor, and a Vice Chairperson, elected by the Advisory Council, on the first official meeting of the council;
3. Subcommittees shall be created as required and necessary to meet the goals of Project Brabu, including chairperson(s) for subcommittees to be appointed by the Chairman as needed.

I, **BENIGNO R. FITIAL**, GOVERNOR OF THE CNMI, by virtue of the authority vested in me by the Constitution and laws of the Commonwealth do hereby order:

**SIGNED AND PROMULGATED, THIS 16<sup>th</sup> day of FEBRUARY, 2011.**



**BENIGNO R. FITIAL**  
GOVERNOR OF THE CNMI



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

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44 following statute regulating government employment is, as indicated, suspended .....Page 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 ("NMTI") 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 SO<sub>2</sub>. 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](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 immediately<sup>1</sup>:  
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.

---

<sup>1</sup> 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 17<sup>th</sup> day of February, 2011.  
36

37  
38  
39   
40 BENIGNO R. FITIAL  
41 Governor





## COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Eloy S. Inos**  
Lieutenant Governor

### EXECUTIVE ORDER NO. 2011-04

#### DECLARATION OF STATE OF EMERGENCY

**WHEREAS**, the Commonwealth of the Northern Mariana Islands faces an imminent threat of the disruption of critical medical services on the island of Rota due to the termination of services from the existing nursing services provider; and

**WHEREAS**, the disruption of the provision of nursing services on the island of Rota poses a direct threat to the health and safety of the people of the Northern Mariana Islands; and

**WHEREAS**, Article III §10 of the Constitution grants the Governor the authority and duty to take the necessary steps to respond to emergencies.

**NOW THEREFORE**, a State of Emergency for the Commonwealth of the Northern Mariana Islands is declared due to the imminent threat of the disruption of critical medical services on the island of Rota and the extreme, immediate threat such condition poses to the public.

In order to meet this imminent threat, the Constitutional authority provided under Article III §10 is invoked, including, but not limited to, authority to:

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

Done this 15<sup>TH</sup> day of MARCH 2011.

A handwritten signature in black ink, appearing to read "Eloy S. Inos", written over a horizontal line.

ELOY S. INOS  
Acting Governor  
Commonwealth of the Northern Mariana Islands

Caller Box 10007 Saipan, MP 96950 Telephone: (670) 664-2200 /2300 Facsimile: (670) 664-2211/2311



## COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**Benigno R. Fitial**  
Governor

**Eloy S. Inos**  
Lt. Governor

### **EXECUTIVE ORDER NO. 2011-05**

**SUBJECT:** Relative to transferring the responsibility for the administration and operation of the juvenile detention facility or facilities from the Department of Community and Cultural Affairs to the Department of Corrections.

**AUTHORITY:** "The Governor may make changes in the allocation of offices, agencies and instrumentalities and in their functions and duties that are necessary for efficient administration." CNMI Constitution, Article III, Section 15.

**WHEREAS,** Public Law 16-47 (PL 16-47) known as the Juvenile Justice Act of 2008 (the Act) governs juveniles detained in secure facilities and requires that secure facilities provide secure confinement, discipline and treatment of detained juveniles,

**WHEREAS,** Section 4(a) of the Act Designates the Division of Youth Services (DYS) of the Department of Community and Cultural Affairs (DCCA) as the agency responsible for the services and programs for juveniles falling within the jurisdiction of the Act,

**WHEREAS,** under Section 4(b) of the Act, "DYS shall be responsible for the administration and operation of the juvenile detention facility or facilities,"

**WHEREAS,** Section 15 of the Act delineates the purposes of a juvenile detention center,

**WHEREAS,** Section 16 of the Act delineates the minimum standards for the detention of juveniles provided for in the Act,

**WHEREAS,** Sections 26-34 of the Act delineates further legislative parameters for the administration and operation of secure juvenile detention facilities,

**WHEREAS,** in response to growing demands of the CNMI and its residents, the DCCA has taken on the responsibility for numerous human services type activities including, but not limited to: the Office on Aging, the Nutrition Assistance Program, the Commonwealth Council for Arts and Culture, the Division of Sports and Recreation, the Historic Preservation Office, and the Chamorro/Carolinian Language Policy Commission,

**WHEREAS,** the CNMI requested the Management Analysis Incorporated (MAI) to conduct an organizational review of the DCCA and to make recommendations for improved DCCA

operational efficiency, improvement in the current DCCA level of service, assurances that all local and federal laws and regulations are being complied with, and to produce cost savings,

**WHEREAS**, the CNMI entered into a Consent Decree with the U. S. Department of Justice in *United States of America v. Commonwealth of the Northern Mariana Islands, et al.*, Civil Case No. CV 99-0017 to meet federal correctional standards at CNMI correctional facilities including the Juvenile Detention Unit (JDU) operated by DCCA,

**WHEREAS**, the Department of Corrections' (DOC) management staff has a particular expertise in management of correctional facilities, is aware of the Consent Decree requirements and understands federal correctional standards,

**WHEREAS**, DOC has an internal investigative unit to investigate allegations of employee misconduct and the JDU has no such internal investigative unit,

**WHEREAS**, based on feedback from employees and management, its observations, expertise and analysis, MAI recommends that as part of a DCCA reorganization, the management and control of the JDU be transferred to DOC,

**WHEREAS**, because both the JDU and DOC have a rehabilitation focus, there is an opportunity for shared resources,

**NOW, THEREFORE**, to comply with the mandate of the Constitution and to promote efficient administration, it is hereby

**ORDERED:**

That the following provisions shall constitute a transfer of the JDU from the management and control of DCCA to the management and control of DOC:

DOC Commissioner in conjunction with the DYS Director shall be responsible for the services and programs for juveniles falling within the jurisdiction of the Act pursuant to Section 4(a) of the Act.

DYS shall relinquish responsibility for the administration and operation of the juvenile detention facility or facilities as prescribed in Section 4(b) of the Act; and DOC shall assume responsibility for the administration and operation of the juvenile detention facility or facilities as prescribed in Section 4(b) of the Act.

In the performance of its duties pursuant to Section 4(b) of the Act, DOC shall conform to the requirements of the Act in its entirety. DOC shall pay particular attention to Section 15 (Juvenile Detention Centers); Section 16 (Standards for Detention); Section 26 (Secure Facilities); Section 27 (Term of Commitment – Review After Commitment); Section 28 (Release from Custody of DYS); Section 29 (Review of Programs for Juveniles – Certification); Section 30 (Program Records as Property of Department – Control of Records); Section 31 (Restitution to Victims of Juvenile Offenders – Duties of Department); Section 32 (Distribution and Reporting Requirements for Commonwealth, Other Public and Private Contract Facilities); Section 33 (Reports by Department) and Section 34 (Compensation – Amount – Crediting Account of Juvenile – Juveniles not Employees – Accountability of Other Than Restitution Funds).

All records and property (including office equipment) of the JDU used primarily in the administration of the JDU, all the personnel used in the administration of the JDU (including employees whose chief duties relate to such administration) are hereby transferred to DOC. All personnel transferred pursuant to this Executive Order shall maintain their current positions and status in the classified civil service or in the excepted service as the case may be. The Office of Personnel shall ensure an orderly transfer of personnel.

The unexpended balances of appropriations, allocations, allotments, or other funds available for the use of the JDU on the effective date of the transfer are transferred to DOC on the effective date of this transfer. In the transfer of such funds, an amount may be included for the liquidation of obligations incurred prior to the transfer. Any portion of such balances not so transferred may be reprogrammed by the Governor. Subsequent to the transfer, JDU operations shall be reflected in the annual DOC budget.

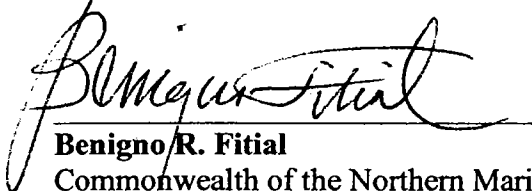
I have designated the Criminal Justice Planning Agency (CJPA) as the State Compliance Monitoring Authority for the Juvenile Justice and Delinquency Prevention Act in Executive Order No. 2010-07. Recognizing that the JDU is the recipient of federal funds from certain grants and the recipient of certain equipment from certain grant, I am tasking the CJPA to monitor the transfer I am directing in this executive order. CJPA is to ensure that no federal funds or federally purchased equipment are jeopardized as a result of this transfer; and that there is strict compliance with grant requirements during and after the transfer. CJPA is to consult with the DCCA Secretary and the DOC Commissioner to that extent.

While I am transferring the administration and management functions of the JDU to DOC, physical plants of the JDU and DOC shall remain separate and distinct entities. There shall be no comingling of the JDU juvenile population and the DOC adult population.

I anticipate a cooperative spirit between DCCA and DOC. There shall be regular communication between the DOC Commissioner, and or his designees and the DCCA Secretary and or his designees to ensure a smooth transition. This communication and cooperation shall extend beyond the transfer with the ultimate goal of optimal efficiency in the operations of the JDU. That is in the best interest of the juveniles and people of our Commonwealth.

This plan shall become effective immediately and remain in effect unless sixty days after submission to the Legislature, it is specifically modified or disapproved by a majority of the members of each house of the Legislature.

SIGNED AND PROMULGATED on this 27<sup>th</sup> day of April, 2011.



**Benigno R. Fitial**  
Commonwealth of the Northern Mariana Islands

# 171

**DIRECTIVE**

**DATE:** February 9, 1996

**TO :** All Department & Activity Heads  
**FROM :** Governor  
**SUBJECT :** Deduction for Government Sponsored Facilities

A Government employee or individual who is authorized to travel outside his or her place of employment on official government business is afforded per diem at the rate established for that destination. Per diem is established to defray expenses for lodging, meals, and incidentals. However, in the event that government sponsored facilities for lodging and/or meals become available, then the traveler is only entitled to receive 15% of the original per diem for that destination for incidental expenses. For each of the sponsored facilities that the government provides, and are used during these trips, the following percentages of deductions shall apply accordingly:

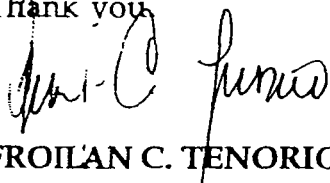
- |    |           |     |
|----|-----------|-----|
| 1. | Lodging   | 50% |
| 2. | Breakfast | 5%  |
| 3. | Lunch     | 10% |
| 4. | Dinner    | 20% |

For example, the residence of the Washington Representative is a government sponsored facility. If a traveler resides with the Washington Representative, then he/she shall be deducted 50% for lodging. If during the stay, he is hosted to breakfast by the Washington Representative, then 5% shall be deducted accordingly.

Effective immediately, travelers shall note on their Travel Vouchers whenever a government sponsored facility is provided so that appropriate deduction(s) can be applied. Failure to state on your Travel Voucher these benefits when provided is a fraud punishable in accordance with applied laws.

Your cooperation is greatly appreciated.

Thank you



FROILAN C. TENORIO

# DIRECTIVE

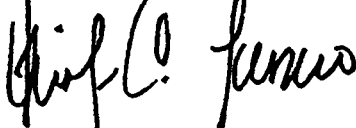
DATE: FEB 9 1996  
No. 172

TO : All Department and Activity Heads  
FROM : Governor  
SUBJ. : Employee "Break Time"

It has come to my attention that employees who smoke are now spending an inordinate amount of time away from their work places in pursuit of their habit. The intent of my Directive No. 168, banning smoking in the work place, was to make the work place a more healthy and enjoyable environment for all to be at, not away from.

Our employee regulations do not address employee break time. In the absence of such, the U.S. Fair Labor Standards Act provides that employees who work "normal" hours should be provided a 15-minute break each work session, i.e., each morning and each afternoon. I believe this is fair.

I hereby direct that all employees be given a 15-minute break each work session, which is the equivalent of each morning and afternoon, to be used as the employee sees fit. Employees who smoke will not be further accommodated.



FROILAN C. TENORIO

# DIRECTIVE

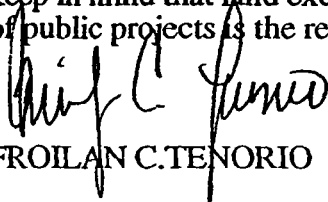
DATE: MAR 07 1996  
NO. 173

TO : Secretary of Public Works  
FROM : Governor  
SUBJECT : Acquisition of Private Land for Public Developments

It has come to my attention that there is a lack of coordination between Public Works and the Division of Public Lands in the acquisition of private land for public purposes, and the exchange of public lands for such private lands. It appears that the practice has been for Public Works to go through the entire process, up to the point of exchange, and then bring Public Lands into the transaction for the purpose of providing the land to be used for the exchange.

As you know, the Division of Public Lands has a staff whose job it is to handle land exchanges. It is Public Lands' responsibility to handle land exchanges. Therefore, it would be preferable for Public Lands to participate, from early in the process, in any transaction which involves a land exchange. This will allow for better compliance with the applicable regulations, improved coordination between Public Works staff and the Land Exchange staff of Public Lands, and more consistent treatment of land exchanges. Furthermore, the division of Land Registration and Survey also should be notified so that their staff may assist.

Therefore, effective immediately, whenever Public Works determines that it will need to acquire an interest in private land for a public purpose, Public Works shall immediately notify the Divisions of Public Lands, and Land Registration and Survey, of the proposed transaction. Public Works shall also involve the Division of Public Lands in the process of negotiating such transactions, and drawing up the necessary agreement and other documents. In allocating responsibilities, Public Works should keep in mind that land exchanges are the responsibility of the Division of Public Lands. Construction of public projects is the responsibility of Public Works.



FROILAN C.TENORIO

cc: Secretary of Lands & Natural Resources  
Director of Public Lands  
Director of Land Registration & Survey

*Rec'd 5/11/96*

## DIRECTIVE

DATE: MAR 18 1996  
NO. 174

TO : Secretary of Commerce  
FROM : Governor  
SUBJECT : Prohibition on the Issuance  
of Letters of Invitation

Problems involving abuse of investor opportunities here in the CNMI are widespread and require immediate attention. This is particularly true of citizens from the People's Republic of China. Therefore, I hereby direct the Department of Commerce to immediately cease issuing all Letters of Invitation to potential investors from the People's Republic of China.

This prohibition will remain in effect until an appropriate system can be implemented to properly issue Letters of Invitation to true Chinese investors, while restricting access to the CNMI of those who would exploit Commonwealth investment opportunities. Any executive branch agency, official or employee violating this prohibition will face immediate disciplinary action.



FROILAN C. TENORIO

cc: All Department and Activity Heads



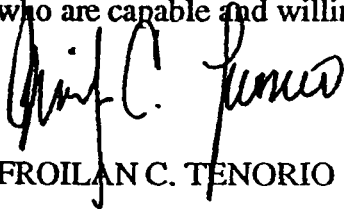
**DIRECTIVE**DATE: APR 4<sup>TH</sup> 1996  
No. 175

**TO** : All Department and Activity Heads  
**FROM** : Governor  
**SUBJ.** : Executive Branch Office Hours

It has come to my attention that many Executive Branch offices that directly serve the public are closed during the "lunch hour". I don't know how it came to be that such offices are closed at a time of day that might be just the time of highest demand to serve the public. I do not want to hear again that a member of our public could not, for example, pick up or file a tax form, renew a drivers license or register a vehicle, obtain or review a public land document, or otherwise get some other basic matter resolved during the lunch hour.

Since the standard government workday runs from 7:30 a.m. to 4:30 p.m. (with an hour set aside for lunch), there is no reason that government offices cannot rotate staff at lunch to serve the public. Lunch hours can be staggered and personnel can and should be cross-trained so that no person is indispensable to the *basic* operation of an office. If banks, restaurants and other privately owned establishments can stay open continuously during the business day, there is no reason that the government cannot also stay open. Therefore, these hours will be increased - *immediately*, unless each office, seeking an exemption from this directive, can justify otherwise.

The government exists to serve the public and serve it we will or I will make sure that people are hired who are capable and willing to do the job.



FROILAN C. TENORIO

# DIRECTIVE

DATE: APR 8<sup>TH</sup> 1996  
No. 176


TO : All Department and Activity Heads  
FROM : Acting Governor  
SUBJ. : Revocation of Directive #161 on Austerity Measures

More than a year ago, on April 9, 1995, Governor Tenorio issued Directive #161, on austerity measures.

That directive suspended all within-grade increases, conversions, merit increases, and new hiring. It also required that all travel authorizations be approved by the Special Assistant for Management & Budget, and limited new professional service contracts.

One year later, it appears that the Directive has served its purpose. The government's financial situation has improved significantly, and we anticipate running a small surplus this year. The need for severe austerity measures has passed.

Effective today, Directive #161 is hereby revoked in its entirety.

  
JESUS C. BORJA

**DIRECTIVE**DATE: JUN 4 1996  
No. 177

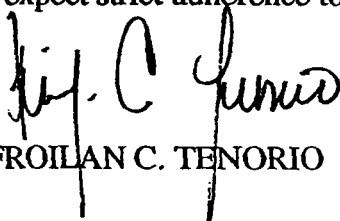
**TO** : All Department and Activity Heads  
**FROM** : Governor  
**SUBJ.** : Solicitation on Executive Branch Property

In the absence of a law to control solicitation in Executive Branch facilities, the following is established as the controlling policy of this Administration. This policy is in large part a continuation of the policy established by the prior Guerrero Administration. Please see that a copy of this directive is provided to each of your employees and posted at all prominent places for visitors to see.

The practice of selling or soliciting for the sale of goods, merchandise, raffle tickets or other similar items within or upon the premises where the Executive Branch is conducting business is disruptive to the work environment and thus causes an adverse impact on the Executive Branch's ability to provide efficient and effective public service. Therefore, effective immediately, no Executive Branch employee shall engage in any solicitation during working hours and on any Executive Branch premises or during any function sanctioned by the Executive Branch. An exception is granted for staff engaged in authorized activities such as the employee credit union, solicitation for donations for humanitarian reasons or the CNMI branch of the Red Cross, and token solicitation for floral remembrances, retirement gifts and similar purposes for Executive Branch employees.

Solicitation by vendors and others (including all sales of raffle tickets and merchandise) is strictly prohibited during working hours and on any Executive Branch premises or during any functions sanctioned by the Executive Branch. An exception is granted, however, for authorized vending machines located on Executive Branch premises and, on an office-by-office basis (as determined by the department or activity head) to vendors selling lunch/food items. Such authorization is granted to vendors selling lunch/food items to employees in the Administration Building.

I expect strict adherence to this directive.



FROILAN C. TENORIO

# DIRECTIVE

DATE: JUL 5<sup>th</sup> 1996  
No. 178

**TO :** All Department and Activity Heads

**FR :** Governor

**RE :** Drug and Alcohol Workplace Policy

The Commonwealth Government faces an enormous challenge in addressing the drug and alcohol abuse in our community. I am requiring all agencies to adopt and implement a drug and alcohol policy for the following reasons;

1. Every CNMI Government employee has the right to a safe and healthy workplace.
2. As public servants we must be responsible and accountable for our taxpayers' funds.
3. The 1988 Drug Free Workplace Act is applicable in the CNMI, and we must be compliant.

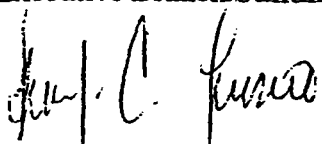
Therefore, all Offices of the Executive Branch of Government shall have adopted a written Drug and Alcohol Workplace Policy, as soon as possible, but at the latest by November 30, 1996.

Further, the written policy must be developed and implemented in coordination with my Special Assistant for Drugs & Substance Abuse, Richard Pierce, following the "Fit For Work" policy mandated by this Office.

Each Executive Branch Agency and Department shall schedule as soon as possible, with the Office of the Special Assistant for Drugs and Substance Abuse, the following sessions;

1. Policy Implementation
2. Supervisory Training
3. Employee Awareness
4. Train-the-Trainer

There shall be no exceptions to this directive. This directive shall be prominently posted in every Executive Branch building and facility.



FROILAN C. TENORIO

xc: Speaker of House  
Senate President  
Chief Justice  
Presiding Judge, Superior Court  
All Mayors  
Chairman, Board of Education; Commissioner, PSS  
Chairman, NMC Board of Regents; President, NMC  
Chairman, All Municipal Councils  
Resident Representative to the U.S.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

FROILAN C. TENORIO  
Governor

JESUS C. BORJA  
Lt. Governor

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

**DIRECTIVE** No. 179

**TO** : All Departments and Activity Heads

**Date:** JUL 29 1996

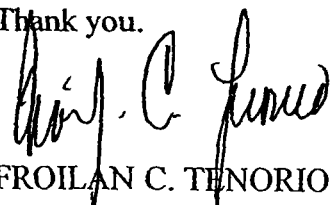
**FROM** : Governor

**SUBJECT** : Computer Equipment Justification

The Department of Finance will now require that a justification and automation plan be submitted with each acquisition of computer, equipment, computer software, communications equipment, and computer services over \$10,000.00 in any fiscal year. This is to ensure compatibility with the Department of Finance plan to integrate the Financial Management System (FMS) with all departments and agencies. The goal for the Department of Finance is to develop an information technology system that will better serve the public at the lowest possible cost.

Please contact the Director of Electronic Data Processing Division (EDP) at 664-1400 for more information.

Thank you.

  
FROILAN C. TENORIO

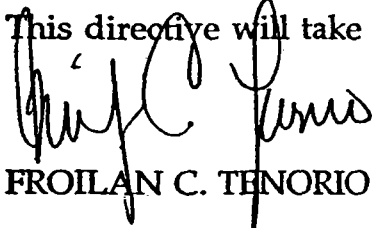
# DIRECTIVE

DATE: AUG 15 1996  
No. 180

**TO :** All Department and Activity Heads  
**FR :** Governor  
**RE :** Approval of Amendments for International Travel

Approval of any and all amendments for international travel previously approved by the Governor or Acting Governor is hereby delegated to the Special Assistant for Administration.

This directive will take effect immediately.



FROILAN C. TENORIO