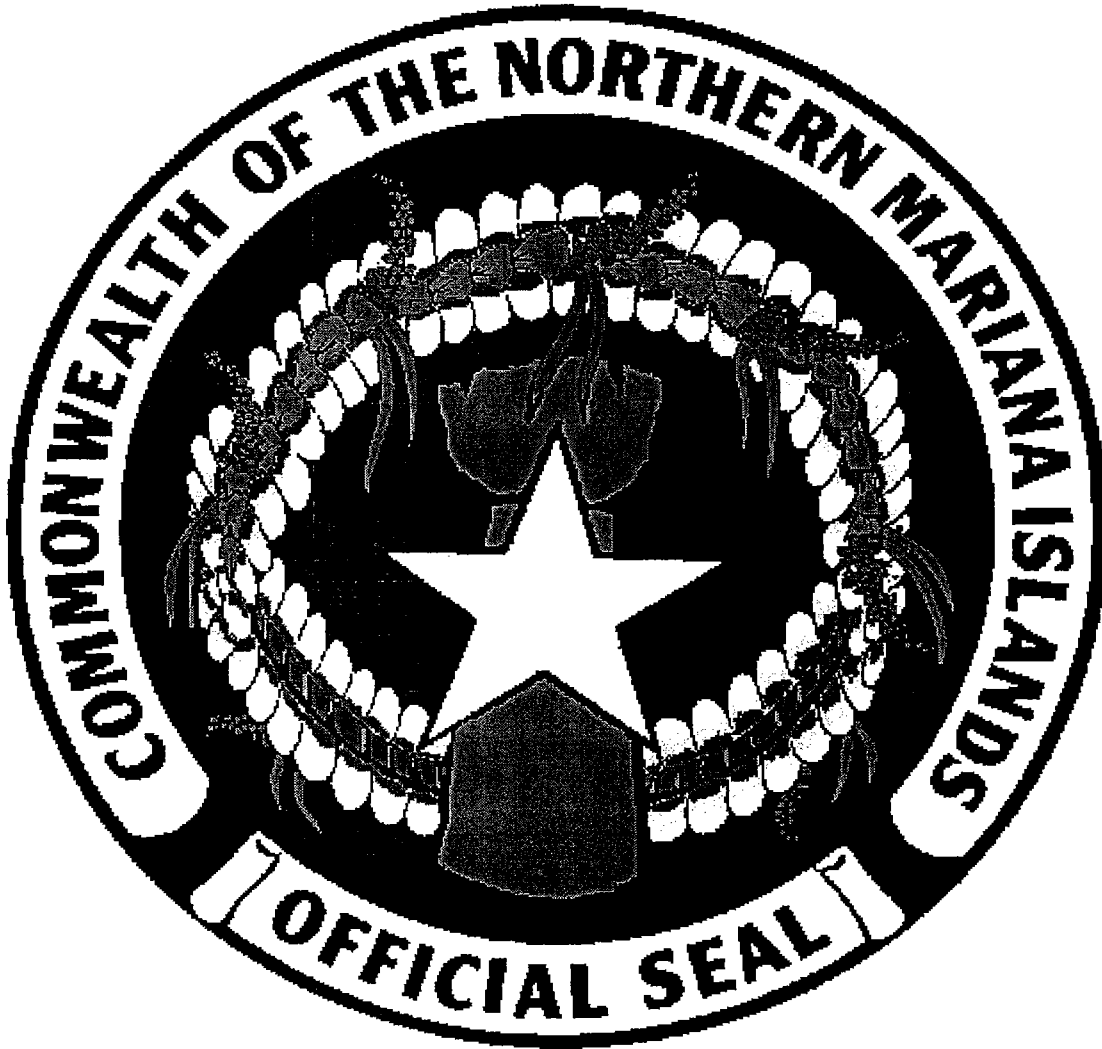


**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS**



**COMMONWEALTH REGISTER
VOLUME 32
NUMBER 10
OCTOBER 22, 2010**



Commonwealth of the Northern Mariana Islands
OFFICE OF THE ATTORNEY GENERAL
2nd Floor Hon. Juan A. Sablan Building
Caller Box 10007 Capital Hill
Saipan, MP 96950-8907

MEMORANDUM

To : All Subscribers and Recipients of the Commonwealth Register
From : Commonwealth Register
Date : October 22, 2010
Subject : **Directives and Executive Orders Previously Issued and Never Published**

This month's publication of Directives previously issued and never published begins with Directive No. 036 thru 070.

Directives 270 thru 272 were issued this year, 2010.

It has also been brought to my attention that there are Executive Orders (E.O.) previously issued and never published. Therefore, with this month's publication Executive Orders 2009-09 thru 2009-13 are included. Other E.O.'s will be published in the coming months.

COMMONWEALTH REGISTER

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NUMBER 10

OCTOBER 22, 2010

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

EXTENSION OF EMERGENCY Volcanic of Anatahan

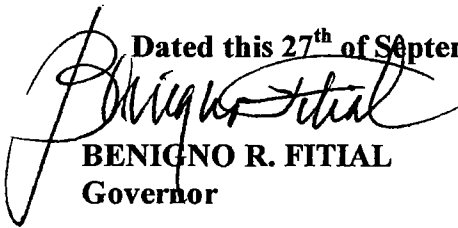
WHEREAS, On May 13, 2003, a Declaration of Emergency was issued with respect to volcanic activity on the island of Anatahan; and

WHEREAS, said Declaration declared the island of Anatahan as unsafe for human habitation and restricted all travel to said island with the exception of scientific expeditions; and

NOW, THEREFORE, I, BENIGNO R. FITIAL, by the authority vested in me as Governor, and pursuant to Article III, Section 10 of the Commonwealth Constitution and 3 CMC §5121, and in accordance with the Emergency Management Office, Commonwealth of the Northern Mariana Islands and US Geological Survey, do hereby extend a state of disaster emergency in the Commonwealth with the respect of the island of Anatahan under the same terms and conditions as are contained in the original Declaration.

This Extension of Emergency shall remain in effect for thirty (30) days, unless the Governor shall, prior to the end of the 30-day period, notify the Presiding Officers of the Legislature that the state of emergency has been revoked or further extended for a like term, and giving reasons for extending the emergency.

Dated this 27th of September 2010.



BENIGNO R. FITIAL
Governor

Cc: Lt. Governor (Fax: 664-2311)
Senate President (Fax: 664-8803)
House Speaker (Fax: 664-8900)
Mayor of the Northern Islands (Fax: 664-2710)
Executive Assistant for Carolinian Affairs (Fax: 235-5088)
Attorney General (Fax: 664-2349)
Secretary Of Finance (Fax: 664-1115)
Commissioner of Public Safety (Fax: 664-9027)
Special Assistant for Management and Budget (Fax: 664-2272)
Special Assistant for Programs and Legislative Review (Fax: 664-2313)
Press Secretary (Fax: 664-2290)
United States Coast Guard (236-2968)

**Government Life and Health Insurance Program
Commonwealth of the Northern Mariana Islands**

Richard S. Villagomez, Administrator
1st Floor, Honorable Lorenzo I. Deleon Guerrero Retirement Fund Building, Isa Drive, Capital Hill
P.O. Box 501247 CK, Saipan, MP 96950-1247
Tel. No. (670) 322-3863~10; Fax No. (670) 664-8080; E-mail: administrator01@nmiretirement.com

**PUBLIC NOTICE OF EMERGENCY REGULATIONS
WHICH ARE AMENDMENTS TO THE RULES AND REGULATIONS OF THE
GOVERNMENT LIFE AND HEALTH INSURANCE PROGRAM**

PROMULGATION OF EMERGENCY RULES AND REGULATIONS: The Board of Trustees ("Board") of the Northern Mariana Islands Retirement Fund ("NMIRF"), Commonwealth of the Northern Mariana Islands, adopts the attached emergency amendments to the Rules and Regulations Governing the Government Life and Health Insurance Program ("GLHIP"), pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(b). These amendments implement new health insurance premiums and shall be effective immediately upon publication. Employees will have revised premiums deducted from the pay period beginning November 7, 2010 and retirees from their benefits pay period beginning November 1, 2010.

AUTHORITY: The Board has statutory power to promulgate and effect the GLHIP Rules and Regulations pursuant to 1 CMC §§ 8315, 8421-27. *See also* NMIAC § 110-30.1-1401.

THE TERMS AND SUBSTANCE: The GLHIP is underwritten exclusively by the CNMI Government to provide life and health insurance for the benefit of the CNMI Government employees and retirees. GLHIP is designed to allow a cost sharing between employee/retirees and their employers/NMIRF.

The Board finds that, pursuant to § 9104(b), the public interest and imminent peril to the public health and welfare requires the adoption, on an emergency basis, of amendments to the rates for health insurance under the GLHIP, as published in the Commonwealth Register, Volume 19, Number 08, dated August 15, 1997 and Volume 19, Number 10, dated October 15, 1997 (effective October 25, 1997), respectively; and as further amended as published in the Commonwealth Register Volume 23, Number 11, dated November 23, 2001; and as further amended and adopted in Volume 24, Number 06, dated June 17, 2002 and Volume 24, Number 10, dated October 30, 2002 (effective November 9, 2002), respectively; and as further amended as emergency as published in the Commonwealth Register Volume 25, Number 04,, dated April 30, 2003; and as further amended and adopted as published in the Commonwealth Register Volume 25, Number 06, dated July 15, 2003 and Volume 25, Number 07, dated August 22, 2003 (effective September 1, 2003), respectively; and as further amended and adopted as published in the Commonwealth Register Volume 28, Number 05, dated May 19, 2006 and Volume 28, Number 06, dated June 19, 2006 (effective June 29, 2006), respectively; and as further amended and adopted as published in the Commonwealth Register Volume 28, Number 08, dated August 24, 2006, and Volume 28, Number 10, dated October 30, 2006 (effective November 9, 2006), respectively; and as further amended and adopted as published in the Commonwealth Register Volume 29, Number 07, dated July 18, 2007 and Volume 29, Number 08, dated August 17, 2007 (effective August 27, 2007), respectively; and as further amended and adopted as published in the Commonwealth Register Volume 29, Number 11, dated November 19, 2007 and Volume 29, Number 12, dated December 18, 2007 (effective December 28, 2007), respectively; and as further amended and adopted as emergency as published in the Commonwealth Register Volume 31, Number 10, dated October 29, 2009 and Volume

31, Number 12, dated December 22, 2009 (effective January 1, 2010), respectively; and as further amended and adopted as published in the Commonwealth Register Volume 32, Number 05, dated May 21, 2010 and Volume 32, Number 07, dated July 15, 2010 (effective July 25, 2010), respectively.


The Board further finds that the public interest and this imminent peril to the public health and welfare mandates adoption of these emergency amendments to the Rules and Regulations Governing the GLHIP upon fewer than thirty (30) days notice, and that these amendments shall become effective immediately after filing with the Commonwealth Register and shall remain effective for a period of 120 days, unless sooner adopted as permanent regulations.

THE SUBJECTS AND ISSUES INVOLVED: These rules and regulations:

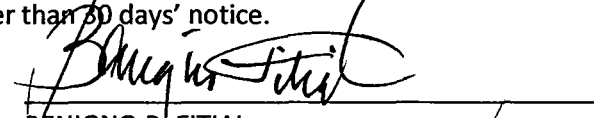
1. Provide for the renewal premiums set by Aetna Global Benefits, the Carrier of the Health Insurance portion of the GLHIP, effective from the November 1, 2010. Open Enrollment Period is scheduled also from November 1, 2010 through November 30, 2010. Nevertheless, the normal Notice and Comment Period for promulgation of regulations is unavailable, as the earliest possible regulatory adoption would be November 15 2010 – fully 15 days following the requisite effective date of the premium change, and thus amendment of the Rules and Regulations under non-emergency procedures would risk the health, safety, and welfare of thousands of members who would be potentially uninsured during that 15 day period. This “window of uninsurable risk,” will dissipate upon promulgation of these Emergency Regulations.
2. Recognize that failure to immediately implement these Rules and Regulations could result in:
 - Confusion to enrollees regarding premiums and the necessity to make retroactive adjustments to deductions;
 - Confusion in accounting of government agencies and entities regarding the amounts to be deducted for employee premiums;
 - Confusion in accountability of government agencies and entities regarding the enrollment procedures of existing and new enrollees;
 - Duplication of efforts should the Rules and Regulations be implemented at a later date, resulting in additional costs and **further deterioration of the fragile financial condition of the Program and risk of jeopardizing termination by Carrier;**
 - Enrollees risking the inability to receive the proper and necessary medical treatment for which the Program was designed to provide; and
 - Potential liability for the Program and Government for failing to act.
3. Implement Revised Chart of Bi-weekly and Semi-monthly Premium Contributions (NMIAC § 110-30.1-870).
4. The adoption of these emergency amendments to the Rules and Regulations Governing the GLHIP will **effectuate critical changes** to the GLHIP, **crucial to the survival of the Program**, the public interest, and serve the best interests of the members and the public.

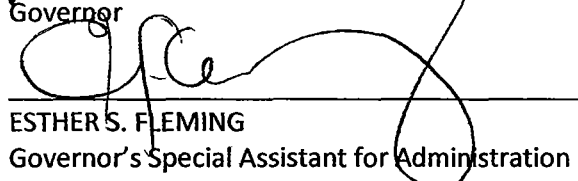
EMERGENCY REGULATIONS IN EFFECT FOR 120 DAYS: The Board has followed the procedures of 1 CMC § 9104(b) and (c) to adopt these emergency amendments to regulations, which shall be in effect immediately upon publication and remain in effect for 120 days.


DIRECTIONS FOR FILING AND PUBLICATION: These Emergency Amendments to Rules and Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (pursuant to 1 CMC § 9102(a)(1)).

Submitted by: 
SIXTO K. IGISOMAR
Chairman, Board of Trustees NMIRF
Date 10/19/10

Pursuant to 1 CMC § 9104(b), the Governor concurs that the public interest requires adoption of these regulations upon fewer than 30 days' notice.

Concurrence by: 
BENIGNO R. FITIAL
Governor
Date 10/20/10

Received by: 
ESTHER S. FLEMING
Governor's Special Assistant for Administration
Date 10/20/10

Filed and Recorded by: 
ESTHER M. SAN NICOLAS
Commonwealth Register
Date 10.20.10

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) the Emergency Amendments to Rules and Regulations attached hereto have been reviewed and approved as to form by the CNMI Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

Dated this 10th day of Oct., 2010.


EDWARD T. BUCKINGHAM
Attorney General

**EMERGENCY AMENDMENTS TO THE RULES AND REGULATIONS
GOVERNING THE GOVERNMENT LIFE AND HEALTH INSURANCE PROGRAM**

Amendments to ARTICLE 10 – Premiums, Section 10.15: [Codified as NMIAC § 110-30.1-870]

Article 10, section 15 is hereby repealed and replaced with the following: (prior rates are indicated by strikethrough for informational purposes only and are not intended to be included in the new Article 10.15)

10.15 The Chart below details the bi-weekly and semi-monthly Contributions required from Subscribers and the Government/NMI Retirement Fund, and the total Premium, beginning the Effective Date of this Plan Document, which Effective Date is November 1, 2010.

The Government/NMI Retirement Fund Contribution to Premiums for Subscribers enrolling under the Single, Couple not including Domestic Partner, or Family not including a Domestic Partner will be fifty percent (50%). The Government/NMI Retirement Fund Contribution to Premiums for Subscribers enrolling under the Couple including Domestic Partner or the Family including a Domestic Partner represent a contribution toward fifty percent (50%) of the cost for the Subscriber and Dependents other than the Domestic Partner only. The Subscriber will be required to contribute one hundred percent (100%) of the Premium for the Domestic Partner.

The Government/NMI Retirement Fund shall not pay a Contribution toward the premium of any carrier not competitively selected as the exclusive carrier(s) for the Government Life and Health Insurance Plan.

**Contribution Rates
Rates Effective: Pay Period Starting November 7, 2010;
Benefits Pay Period Starting November 1, 2010**

| Type of Enrollment | Enrollment Code # | Contribution Distribution | Active Bi-Weekly | Retiree Semi-Monthly |
|--|-------------------|---------------------------|---|---|
| Single | 1 | Government Contribution | \$ 64.72 \$ 85.87 | \$ 70.11 \$ 93.02 |
| | | Subscriber Contribution | \$ 64.72 \$ 85.87 | \$ 70.11 \$ 93.02 |
| | | Total Premium | \$129.44 \$171.74 | \$140.22 \$186.04 |
| Couple, not including a Domestic Partner | 2 | Government Contribution | \$132.68 \$176.02 | \$143.73 \$190.69 |
| | | Subscriber Contribution | \$132.68 \$176.02 | \$143.73 \$190.69 |
| | | Total Premium | \$265.36 \$352.04 | \$287.46 \$381.38 |
| Couple, including a Domestic Partner | 2-A | Government Contribution | \$ 64.72 \$ 85.87 | \$ 70.11 \$ 93.02 |
| | | Subscriber Contribution | \$200.64 \$266.17 | \$217.35 \$288.36 |
| | | Total Premium | \$265.36 \$352.04 | \$287.46 \$381.38 |

| | | | | |
|--|-----|-------------------------|---|---|
| Family, not including a Domestic Partner | 3 | Government Contribution | \$207.10 \$274.77 | \$224.36 \$297.66 |
| | | Subscriber Contribution | \$207.10 \$274.77 | \$224.36 \$297.66 |
| | | Total Premium | \$414.20 \$549.54 | \$448.72 \$595.32 |
| Family, including a Domestic Partner | 3-A | Government Contribution | \$142.38 \$188.90 | \$154.25 \$204.64 |
| | | Subscriber Contribution | \$271.82 \$360.64 | \$294.47 \$390.68 |
| | | Total Premium | \$414.20 \$549.54 | \$448.72 \$595.32 |

Enrollees' premium rates may vary from time to time. In the event an increase in premiums is necessary, notice of the increase will be promulgated in the Commonwealth Register pursuant to the Administrative Procedures Act.



Commonwealth of the Northern Mariana Islands Coastal Resources Management

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Tel.(670)664-8300
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Benigno R. Fitial, Governor
Eloy S. Inos, Lt. Governor

Rita C. Chong
Administrator

PUBLIC NOTICE OF EMERGENCY REGULATIONS WHICH ARE AMENDMENTS TO THE RULES & REGULATIONS OF COASTAL RESOURCES MANAGEMENT OFFICE (CRMO)

EMERGENCY ADOPTION AND IMMEDIATE EFFECT: The Commonwealth of the Northern Mariana Islands Coastal Resources Management Office finds that:

- 1) The attached rules and regulations NMIAC § 15-10-310(d)(4)(iii) shall be adopted immediately on an emergency basis because the public interest so requires, for the reasons stated below 1 CMC § 9104(b), (c); 1 CMC § 9105 (b)(2); and
- 2) The same rules and regulations shall be adopted, after a proper notice and comment period, as permanent regulations pursuant to the attached Notice of Proposed Rules and Regulations and the Administrative Procedure Act, 1 CMC § 9104(a).

AUTHORITY: The proposed amendments to CRM regulations are promulgated pursuant to the CRM authority as provided by 2 CMC § 1531(d), Moratorium on Seaweed, Sea Grasses, and Sea Cucumber, 2 CMC 5601(b), and the CNMI Administrative Procedure Act 1 CMC § 9104(b); and in conjunction with CRMO policies outlined in 2 CMC § 1511 pursuant to 2 CMC § 1512(1).

The Administrative Procedure Act provides that an agency may adopt an emergency regulation upon fewer than 30 days' notice if it states its reasons in writing.

(b) If an agency finds that the public interest so requires, or that an imminent peril to the public health, safety, or welfare requires adoption of a regulations upon fewer than 30 days' notice, and states in writing its reasons for that finding, it may, with the concurrence of the Governor, proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency regulation. The regulations may be effective for a period of not longer than 120 days, but the adoption of an identical regulation under subsection (a)(1) and (a)(2) of this section is not precluded.

(c) No regulation adopted is valid unless adopted in substantial compliance with this section . . . 1 CMC § 9104(b), (c).

THE TERMS AND SUBSTANCE: The purpose of these regulations is to provide guidance on the safe removal of seagrass to preserve our beaches which will aid in the attraction of tourism, a key economic component of the CNMI.

THE SUBJECTS AND ISSUES INVOLVED: Regulation subsection 15-10-310(d)(4)(iii) sets forth the regulations and procedures required for mitigated seagrass removal.

ADOPTION OF EMERGENCY REGULATIONS FOR 120 DAYS: The CRMO has followed the procedures of 1 CMC § 9104(b) to adopt these Proposed Regulations on an emergency basis for 120 days.

REASON FOR EMERGENCY ADOPTION: The CRMO finds that the public interest requires adoption of these regulations on an emergency basis because the statute permits removal of seagrass and this amendment to the CRM regulations will serve to issue strict guidance for mitigated sea grass removal. Sea grass is an essential ecological component to preserving our beachfront and therefore the CNMI economy through tourism. Without the presence of sea grass, one severe storm could effectively serve to wash out the beach in its entirety. Additional considerations of vital sea grass functions are that they effectively serve to:

- Act as nursery areas for juvenile fishes that will be eventually caught as adults by our local fishermen or enjoyed by tourists as they snorkel or dive in our waters.
- Improve water quality by trapping sediments brought to the lagoon by soil erosion and storm drainage helping to provide the clear waters so important to our tourist industry.
- Provide an important habitat for fish, crustaceans and mollusks that are caught by our local fishermen and enjoyed by local and tourist snorkelers in the lagoon.
- Act as an important food source, in addition to the organisms they host, for many commercially and recreationally important marine creatures including the endangered and threatened species of sea turtles.
- Stabilize the seafloor and this helps to reduce erosion on the beaches so important to our residents and visitors.

Without consideration of these factors or rules regarding mitigation of sea grass removal, our tourism which is a vital component to the CNMI economy is in jeopardy.

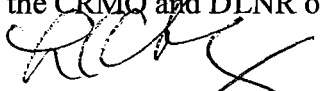
DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Rules and Regulations shall be published in the Commonwealth Register in the section/s on emergency and proposed regulations (see 1 CMC § 9102 (a)(1) and posted in convenient places in the civic center and in local government offices in each senatorial district. (1 CMC § 9104(a)(1))

The Coastal Resources Management Office shall take appropriate measures to make these Rules and Regulations known to the persons who may be affected by them (1 CMC § 9105(b)(2)).

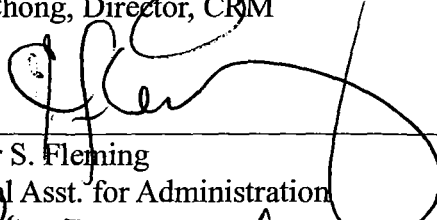
IMMEDIATE EFFECT: These emergency rules and regulations become effective immediately upon filing with the Commonwealth Register and delivery to the Governor. (1 CMC § 9105(b)(2)).

TO PROVIDE COMMENTS: No comments are required for these emergency rules and regulations. However, the related Notice of Proposed Rules and Regulations will specify comment procedures.

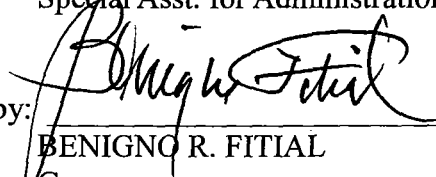
This emergency regulation was approved first by the CRMO on Monday October 4, 2010 and then by Department of Lands and Natural Resources ("DLNR") on Oct. 7, 2010 after a consultation meeting between the CRMO and DLNR on October 7, 2010.

Submitted by: 
Rita Chong, Director, CRM


Date October 20, 2010

Received by: 
Esther S. Fleming
Special Asst. for Administration

Date 10/20/10

Concurred by: 
BENIGNO R. FITIAL
Governor

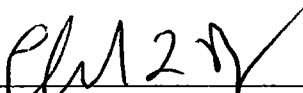
Date 10/21/10

Filed and
Recorded by: 
ESTHER M. SAN NICOLAS
Commonwealth Register

10.22.10
Date

Pursuant to 1 CMC §2153 (e) (AG approval of regulations to be promulgated as to form and 1 CMC § 9104 (a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published (1 CMC § 2153 (f) (publication of rules and regulations)).

Dated the 22 day of October, 2010.


EDWARD T. BUCKINGHAM
Attorney General



Commonwealth of the Northern Mariana Islands Coastal Resources Management

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Benigno R. Fitial, Governor
Eloy S. Inos, Lt. Governor

Rita C. Chong
Administrator

§ 15-10-310 SPECIFIC CRITERIA, AREAS OF PARTICULAR CONCERN

(d) Wetland and Mangrove APC; Use priorities

(4) UNACCEPTABLE:

(iii) reduction in the area of seagrass habitat by direct actions associated with a permitted project.

(A) Application. The following seagrass management guidelines will be applied to all projects requiring a CRM permit unless CRM agency officials in writing and with concurrence by CRMO Director grant an exception. An exception may only be granted when the applicant can demonstrate that there will be no significant impact on scenic, historical, coastal, biological and water resources. However, no exception may be granted unless otherwise provided for in subsection (B).

(B) Seagrass Habitat Modification

(1) Scope of Regulations: The seagrass habitat modification regulations herein prescribed apply to all coasts of the Commonwealth.

(2) (I) To the extent practicable, reduction in the area of seagrass habitat by direct actions associated with a permitted project shall be avoided.

(II) In the event that reduction in the area of seagrass habitat by direct actions associated with a permitted project are unavoidable, the following shall apply:

(a) Enhalus acoroides beds shall be transplanted to an appropriate, equivalent habitat. The transplanted stands will be monitored for survival semi-annually for a period of no less than one year. If transplantation is equivalent off site mitigation is not practicable, equivalent off or on site mitigation will be performed at a value ratio of 1:5 (seagrass destruction: mitigation).

(b) Halodule spp. and Halophila spp. beds shall be either transplanted to an appropriate, equivalent habitat or equivalent off or on site mitigation will be performed at a value ratio of 1:3 (seagrass destruction: mitigation). If transplantation is conducted, the transplanted stands will be monitored for survival semi-annually for a period of no less than one year.

(c) In the case of safe swimming zones designated by Division of Public Safety in front of hotels pursuant to § 15-20-401, up to 50% of a given swimming zone may be cleared,

as authorized by Public Law 15-41, with the requirements sections (II)(a) and (b) of this subsection applying to this activity. In the event that 50% or more of a given swimming zone is naturally barren of seagrass, no further removal is permitted. No permit for the removal of seagrass will be issued unless a hotel swimming zone is properly demarcated with appropriate buoys pursuant to Department of Public safety designation and in consultation with the CRMO, Marianas Visitor Bureau and adjacent land owners pursuant to § 15-20-405. Under no circumstances will motorized removal of sea grass of any kind be permitted in a safe swimming zone.

(iii) In the event that seagrass removal directly adjacent to the Shoreline APC is linked to coastal erosion, the permitted entity shall be wholly responsible for mitigation of the effects linked to the removal.

**Government Life and Health Insurance Programs
Commonwealth of the Northern Mariana Islands**

Richard S. Villagomez, Administrator

1st Floor, Honorable Lorenzo I. Deleon Guerrero Retirement Fund Building, Isa Drive, Capital Hill
P.O. Box 501247 CK, Saipan, MP 96950-1247
Tel. No. (670) 322-3863~10; Fax No. (670) 664-8080; E-mail: administrator01@nmiretirement.com

**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION AS PERMANENT, THE EMERGENCY
AMENDMENTS TO THE RULES AND REGULATIONS GOVERNING
THE GOVERNMENT LIFE AND HEALTH INSURANCE PROGRAMS**

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS EMERGENCY REGULATIONS

Volume 32, Number 07, pp 030550-030553, on July 15, 2010

Regulations of the Government Life and Health Insurance Programs: ARTICLE 3 – Eligibility: Section 3.06; ARTICLE 21 – Life Insurance Coverage; ARTICLE 22- Governing Laws; and ARTICLE 23 – Amendments and Effective Date.

ADOPTION OF EMERGENCY REGULATIONS AS PERMANENT: The Northern Mariana Islands Retirement Fund Board of Trustees (“Board”), HEREBY ADOPTS AS PERMANENT regulations the Emergency Regulations relating to life insurance which were published in the Commonwealth Register at pages 030550 to 030553 in Volume 32, Number 07 on July 15, 2010, pursuant to the procedures of the Administrative Procedures Act, 1 CMC § 9104(a).

PRIOR PUBLICATION: The prior publication was as stated above.

MODIFICATIONS FROM EMERGENCY REGULATIONS, IF ANY: The Emergency Regulations are adopted as permanent without modification.

AUTHORITY: The Board is authorized by 1 CMC § 8315(f) to adopt rules and regulations as necessary for the performance of its duties and administration of its operations, including the administration of the Government Life and Health Insurance Programs pursuant to 1 CMC §§ 8421-27.

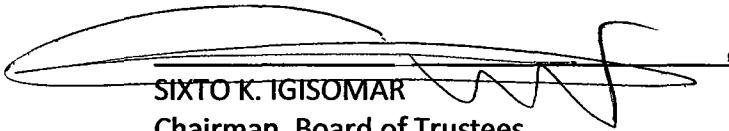
EFFECTIVE DATE: These regulations are currently in effect as emergency regulations through November 15, 2010, unless sooner adopted as permanent. Pursuant to the APA, 1 CMC § 9105(b), the adoption of the emergency regulations as permanent is effective 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the Board states that it received no written or oral submissions respecting the emergency regulations, and therefore adopts the emergency regulations as permanent without change.

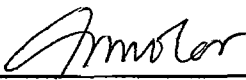
ATTORNEY GENERAL APPROVAL for modification regulations: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC § 2153(e) (reviewed and approved, as to form and legal sufficiency) and are hereby being adopted without change or modification.

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 19th day of October, 2010, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:


SIXTO K. IGISOMAR
Chairman, Board of Trustees
Northern Mariana Islands Retirement Fund

**Filed and
Recorded by:**


ESTHER M. SAN NICOLAS
Commonwealth Register

10.20.10
Date



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lieutenant Governor

EXECUTIVE ORDER 2010-11

DECLARATION OF A STATE OF EMERGENCY:

PURSUANT TO ARTICLE III, SECTION 9(a) OF THE NORTHERN MARIANA ISLANDS CONSTITUTION, IF NO APPROPRIATIONS ACT IS IN EFFECT ON OCTOBER 1, 2010, THE GOVERNMENT OF THE NORTHERN MARIANA ISLANDS MAY NOT, ACCORDING TO LAW, DRAW FUNDS FROM THE GENERAL FUND WITH THE EXCEPTION OF CERTAIN ESSENTIAL SERVICES AND SUCH A RESTRICTION CONSTITUTES A STATE OF EMERGENCY FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

I, BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10, of the Commonwealth Constitution, do hereby declare a State of Emergency for the Commonwealth of the Northern Mariana Islands, as no balanced budget for Fiscal Year 2011 was in effect at 12:00 a.m., on October 1, 2010, and this has triggered the provisions of Art. III, Sec. (9)(a), and the Commonwealth government is now
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constitutionally forbidden from drawing monies from the general fund except for “essential services.” The complete text of Legislative Initiative 16-11 is as follows:

“If a balanced budget is not approved before the first day of the fiscal year, no money shall be drawn from the General Fund, provided that certain government services and employees shall remain available as provided by law in order to deliver services essential to the health, safety, and welfare of the people of the Commonwealth and to protect against damage to and destruction of property; provided further, that if the governor does not submit a detailed and balanced budget to the legislature by April 1st, the governor’s salary shall be suspended until such time that detailed and balanced budget is submitted to the legislature and if the legislature does not pass a balanced budget by October 1st, the legislators’s (sic) salaries shall be suspended until such time that a balanced budget is passed by the legislature.”

This Executive Order is intended to, and does, invoke my emergency powers to determine and operate the government’s essential services under the Commonwealth’s Constitution, and to declare what those services entail and include. This Executive Order shall expire on the 31st day following the date of my signature unless I have reason to extend, and act to extend, this Executive Order, or appropriations are passed by the legislature, and approved by me, which constitute a balanced budget for Fiscal Year 2011, whichever occurs first.

I. FINDINGS

I find that:

1. No appropriations bill or bills were passed by the legislature and approved by me which would constitute a balanced budget for Fiscal Year 2011 within the meaning of Art. III, Sec. 9(a). Therefore, no balanced budget was in effect as of 12:00 a.m. on October 1, 2010.
2. The Constitution of the Northern Mariana Islands, at Article III, Section 9(a), requires the government of the Commonwealth to have enacted into law a

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balanced budget which is in effect by October 1st of each fiscal year, or all but essential government services will be curtailed

3. As the Legislature has not determined “essential services,” it falls to the Governor to determine which services of the government are “essential.”
4. Where the Governor is required to respond to an emergency and where the essential services necessary to respond to such an emergency are not defined, the Governor may determine the scope of such services.

II. AUTHORITY TO ACT

The Constitution of the Commonwealth of the Northern Mariana Islands provides that if a balanced budget is not approved such that it becomes law before the first day of a new fiscal year, which occurs on October 1st of each year, funds may not be drawn from the treasury of the Commonwealth until a balanced budget becomes law. Certain governmental services are exempted from this prohibition and such services, which are deemed to be ‘essential’ government services, will continue to be provided even if no balanced budget appropriations bill is signed into or has become law. Since there is no legislative definition of the term ‘essential’ the Governor, under Art. III, Section 10, is empowered to determine which government services are “essential.”

The suspension of governmental services due to the failure to enact a balanced budget, with the prohibition on expenditures from the General Fund of the Treasury, creates a serious governmental emergency in that some ordinary and necessary government services will be suspended during the absence of a balanced budget. As such, the Governor may, under the emergency powers provided by Art. III, Sec. 10, operate the government in such a manner as to insure the health, safety, and welfare of the people; prevent damage to and destruction of property; maintain civil order, and determine which

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governmental services are essential. Those services, and the designated employees providing such services, shall continue to be paid out of the General Fund. All other services and expenditures, including salaries of non-essential employees and members of the Legislature, shall be suspended until such time as a balanced budget appropriations bill is enacted into law.

III. BACKGROUND

During the 2009 General Election, 59% of Commonwealth voters passed House Legislative Initiative 16-11 and amended the language of Article III, Section 9, of the Constitution concerning the creation of a balanced budget. The stated purpose of this amendment was to prohibit the expenditure of governmental funds from the Treasury except by appropriations made by law. This amendment was necessary because the CNMI Government has previously failed to pass a balanced budget and this failure has contributed to a \$170 million dollar budget deficit. This deficit is in violation of Article X, Section 6, of the Constitution of the Commonwealth of the Northern Mariana Islands.

Accordingly, Legislative Initiative 16-11 imposed penalties to ensure a budget would be passed and in effect by the first day of the fiscal year on October 1st of each year. The penalties include the suspension of government services, except for those deemed to be "essential." This was done in order to ensure that funds are not drawn from the General Fund if such funds are not appropriated pursuant to a balanced budget.

As stated in Legislative Initiative 16-11, the balanced budget must be approved prior to the first day of the fiscal year. Once an appropriations act is transmitted to the Governor, it can be signed into law, vetoed or become law if it is not signed or vetoed. As of the date of this Executive Order, no such appropriations bill has been transmitted to the Governor's office for action.

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Pursuant to Article III, Section 9(a) of the constitutional amendment, if a balanced budget is not enacted into law by the first day of the fiscal year:

“no money shall be drawn from the General Fund, provided that certain government services and employees shall remain available as provided by law in order to deliver services essential to the health, safety, and welfare of the people of the Commonwealth and to protect against damage to and destruction of property.”

Thus, during a period of suspension of governmental services pending the passage of a balanced budget, those services that are deemed to be “essential” will be provided. However, Art. III, Section 9(a), does not state which services are “essential,” other than “as provided by law.” Consequently, as the legislature has not enacted a statutory definition of the term “essential services,” nor otherwise “provided by law” which services will continue during a no-budget period, the duty to clarify this term falls to the Governor under his Constitutional emergency powers.

IV. DIRECTIVES

I direct the following:

Directive 1: The following functions are deemed to be ‘essential’ to governmental services during the period following October 1, 2010:

- **TIMEKEEPERS FOR ALL BRANCHES, DEPARTMENTS, AGENCIES, ETC.** – 1 timekeeper for each branch, department, agency, shall report on **OCTOBER 12, 2010 only** to process timesheets for payroll due on October 22, 2010.
- **Board of Parole**
 - 2 Parole officers
- **Commonwealth Ports Authority (ALL)**
- **Commonwealth Utilities Corporation (ALL)**
- **Department of Commerce**
 - Secretary of Commerce

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- **Department of Community and Cultural Affairs**
 - Child Protection Unit
 - Assistant Social Worker
 - Social Worker
 - Supervisor
 - Division of Youth Services (Juvenile Probation & Secured Custody)
 - Adolescent Counselor
 - Juvenile Correction Officer
 - Juvenile Correction Workers
 - Social Worker I, II, III
 - Emergency Shelter/Foster Care Unit
 - Caretaker
 - Community Development Officer
 - Community Development Trainee
 - Juvenile Correction Worker
 - Social worker
 - Family Support Services Supervisor
 - Juvenile Probation Unit/Community Based Supervision
 - Social Workers
 - Rota DYS
 - Social Workers
 - Tinian DYS
 - Social Worker
- **Department of Corrections**
 - Corrections Cadets
 - Corrections Captain
 - Corrections Lieutenant
 - Corrections Officers I, II, III
 - Corrections Sergeant
 - Custodial Worker II
 - Secretary of Corrections
- **Department of Finance Saipan**
 - Division of Customs Seaport Compliance Section
 - Inspector I, II
 - Lieutenant
 - Warrant Officer
 - Division of Customs Seaport
 - Customs Trainee
 - Inspector I, II, III
 - Lieutenant
 - Warrant Officer
 - Division of Customs Airport
 - Customs Trainee
 - Inspector I, II, III
 - Lieutenant
 - Warrant Officer
 - Division of Customs, Drug Task Force will be *ON-CALL*
 - Electronic Data Processing

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- Computer Operator 1 will be *ON-CALL*
- Computer Programmer will be *ON-CALL*
- Network Administrator 1 will be *ON-CALL*
- K-9 Units
 - Bomb dog handler will be *ON-CALL*
 - Drug dog handler will be *ON-CALL*
 - Senior Instructor/Supervisor will be *ON-CALL*
- Postal Services
 - Custom Trainee
 - Inspector I, II
 - Warrant Officer
- Revenue and Tax Collections Branch
 - Revenue Technician I, II
 - Revenue Officer I, II
 - Revenue Enforcement Officer III
- Treasury
 - Treasurer
 - Accountant II
- **Department of Finance, Division of Customs Rota passenger, luggage, cargo, and container inspection activities only.**
- **Department of Lands and Natural Resources**
 - Quarantine: (Saipan, Tinian, and Rota) passenger, luggage, cargo, and container inspection activities **only**.
 - Inspector trainees
 - Inspector I, II
 - Officer I, II
 - DOA Animal Health:
 - Animal Health Officer II (should also assume duties of Animal Health Specialist during the shutdown)
 - Fish and Wildlife (Saipan, Tinian, and Rota: federally funded positions **only** and the following)
 - Conservation Officers I, II, III
 - Parks and Recreation (Saipan, Tinian, Rota)
 - Equipment Operator I, II, III
 - Gardener
 - General Maintenance
 - Grounds Maintenance Coordinator
 - Grounds Maintenance Foreman I
 - Grounds Maintenance Supervisor
 - Nurseryman
 - Trades Helper
 - Trades Technician I
 - Tradesman
- **Department of Public Health Saipan**
 - Secretary of DPH
 - Biomedical
 - Trades Specialist I (1 on duty, 1 on call)
 - Business Office

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- Eligibility Worker I, II,
- Clinic Operations (FCC)
 - Clinical Attendant III
 - Staff Nurse
- Communication
 - Communications Operator I, II
- Dietary
 - Cook I, II, III
 - Food Service Supervisor I, II
- EEG
 - EEG Technician
- Emergency Room
 - Clerk II
 - Licensed Practical Nurse
 - Staff Nurse
- Health Information
 - Medical Records Technician I, II
 - Medical Transcriptionist
- Hemodialysis
 - Hemodialysis Technician
 - Licensed Practical Nurse
 - Nursing Assistant
 - Staff Nurse
- Housekeeping
 - Custodial Worker I
- Intensive Care Unit
 - Staff Nurse
- Labor and Delivery
 - Manager, Nursing Unit
 - Midwife
 - Nurse Midwife
 - Staff Nurse
- Laboratory
 - Clinical Laboratory Scientist
 - Clinical Laboratory Technician
 - Phlebotomist Trainee
 - Phlebotomist I, II
- Materials Management
 - Medical Supply Officer
 - Medical Supply Specialist II, IV
 - Warehouseman III
- Medical Surgery
 - Licensed Practical Nurse
 - Nursing Assistant
 - Staff Nurse
- Medical Referral Guam
 - Med Ref Assistant
 - Med Ref Officer

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- Supply Specialist
- Medical Referral Honolulu
 - Administrative Officer/Fiscal Officer
 - Med Ref Assistant (limit to 2 per shift)
- Medical Referral Saipan
 - Med Ref Assistant (limit to 2 per shift)
- Mental Health Division
 - Clinical Psychologist
 - Nursing Assistant
- Neonatal Intensive Care Unit
 - Head Nurse
 - Staff Nurse
- Nursing Administration
 - Director of Nursing
 - Hospital Nursing Supervisor
 - Nurse Practitioner
- Obstetrics Unit
 - Licensed Practical Nurse
 - Nursing Assistant
 - Staff Nurse I, II
- Operating Room
 - Manager, Nursing Unit
 - Nursing Assistant
 - Staff Nurse
- Pediatrics
 - Licensed Practical Nurse
 - Nursing Assistant
 - Staff Nurse
- Pharmacy
 - Manager, Inpatient Pharmacy Service
 - Pharmacist
 - Pharmacy Specialist
- Physical Therapy
 - Clinical Attendant I
 - Physical Therapist Technician
 - Staff Physical Therapist
- Physicians (ALL)
- Plant Operations
 - Engineer Technician II
 - Medical Supply Technician
 - Trades Helper
 - Trades Specialist II
 - Trades Technician I, II
- Psychiatric Unit
 - Licensed Practical Nurse
 - Manager, Nursing Unit
 - Nursing Assistant
 - Staff Nurse

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- Public Health Division
 - Licensed Practical Nurse
 - Medical Records Assistant
 - Nurse Practitioner
 - Registered Nurse
- Radiology
 - Manager, Radiology Services
 - Radiography Technician
 - Ultrasonographer
 - X Ray Technician II, III
- Respiratory Therapy
 - Respiratory Therapist
- Security
 - Security Guard II
- Social Services
 - Social Worker II, III
- Women's Clinic
 - Clinical Attendant I
 - Clinical Attendant Coordinator
 - Licensed Practical Nurse
 - Staff Nurse
- **Department of Public Health (Rota Health Center)**
 - Biomedical
 - Clinical Attendant II
 - Cook I, II, III
 - Housekeeping
 - Licensed Practical Nurse
 - Maintenance
 - Medical Records Technician
 - Medical Referral
 - Nursing Assistant
 - Pharmacy
 - Physicians
 - Radiology Technician
 - Trades Specialist
 - Ultrasonography Technician
- **Department of Public Health (Tinian Health Center)**
 - Cashier/Accounting
 - Dental Assistant
 - Dentist
 - Family Nurse Practitioner
 - Housekeeping
 - Laboratory Technician
 - Maintenance
 - Medical Records
 - Physician
 - Physician Assistant
 - Pharmacy

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- Radiology
- Staff Nurse
- **Department of Public Lands**
 - Ranger I, II for Managaha Operations **only**.
- **Department of Public Safety Saipan**
 - Commissioner of DPS
 - Boating Safety Unit will be *ON-CALL*
 - Criminal Investigation Bureau will be *ON-CALL*
 - Emergency Dispatch section
 - Dispatchers
 - Fire Division (No more than 9 total firefighters per shift)
 - Firefighters I, II, III
 - Lieutenants
 - Wild land Firefighters
 - Sworn Officers except for CIB
- **Department of Public Safety Rota** excluding administrative personnel
- **Department of Public Safety Tinian** excluding administrative personnel
- **Department of Public Works**
 - Solid Waste Management Division:
 - Accounting Technician I
 - Trades helper
 - Tradesman
 - Equipment Operator II, III, IV
 - Technical Services (only those dealing with Federal Highways projects)
 - Civil/Highway Branch Manager
 - Highway Administrator
 - Highway Cad Designer
 - Highway Engineer I, II, III
 - Highway Inspector
- **Emergency Management Office**
 - Communications Operators
 - Response and Recovery will be *ON-CALL*
- **Northern Marianas College (ALL)**
- **Office of the Attorney General:**
 - Attorneys
- **Office of Adult Probation**
 - Probation Officers
- **Office of Governor and Lieutenant Governor**
 - Assistant Legislative Affairs Officer will be *ON-CALL*
 - Executive Assistant to the Governor
 - Governor's Press Secretary
 - Legal Counsel
 - Special Assistant to the Administration
 - Special Assistant for Management and Budget
 - Special Assistant for Programs and Legislative Review will be *ON-CALL*
- **Public Defender's Office**
 - Attorneys

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- **Public School System (ALL)**
- **Tinian Liaison Office**
 - Medical Attendant
 - Tinian Liaison Officer

Directive 2: Secretaries of the Employees included in these essential governmental services shall identify, by name, the names of the employees who shall perform these essential services and forward such names to the Office of Personnel Management and Department of Finance not later than five (5) days following this Executive Order.

Directive 3: Employees identified as performing essential services based on Directive 2, above, shall receive their regular pay and benefits for the duration of this Executive Order.

Directive 4: The following agencies are exempt from the suspension of government services as they are completely funded by federal programs and have no impact on general fund resources:

- **Coastal Resources Management**
- **Commonwealth Development Authority**
- **Department of Commerce**
 - CNMI ARRA Office
 - Military Integration and Management Committee
- **Department of Community and Cultural Affairs**
 - Nutrition Assistance Program
- **Division of Environmental Quality**
- **Department of Public Health**
 - Project Brabu
 - Women, Infant, Children program (Saipan, Tinian, and Rota)
- **Department of Public Works**
 - Energy Division
- **Joeten Kiyu Public Library Outreach**
 - Bookmobile Assistant
 - Homework Assistant
 - IT Assistant

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• Northern Marianas Housing Corporation

Signed this 30th Day of SEPTEMBER 2010, at 2:23 o'clock, PM . m.


BENIGNO R. FITIAL
Governor

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lieutenant Governor

EXECUTIVE ORDER 2010-12

AMENDMENT TO EXECUTIVE ORDER 2010-11.

Executive Order 2010-11, which declared a State of Emergency in the Commonwealth due to the lack of a balanced budget being in effect on October 1, 2010, is hereby amended by adding the following to the list of essential services found in Section IV-DIRECTIVES, Directive 1:


NORTHERN MARIANA ISLANDS RETIREMENT FUND

- Member Services:
 - Member Services Manager
 - Benefits Technician – 2 personnel
- Accounting Department:
 - Accountant Supervisor
 - Accountant
- General Administrative Services:
 - Benefits Analyst
 - Benefits Technician
- Investment Division:
 - Technical Financial Analyst
- Information Technology:
 - Systems Administrator
- Management:
 - Administrator
 - Legal Counsel

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This Amendment is necessary and takes effect immediately to ensure that the Retirement Fund continues to furnish services, including, but not limited to, pension payments, manual benefits checks, automatic benefits payments, pension checks, Government Health and Life Insurance (GHLIP) coverage, and other essential services to its members during this crisis.

SIGNED this 2nd day of October, 2010.



BENIGNO R. FITIAL
GOVERNOR



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lieutenant Governor

EXECUTIVE ORDER 2010-13

AMENDMENT TO EXECUTIVE ORDER 2010-11 and 12.

Executive Order 2010-11, amended by Executive Order 2010-12, which declared a State of Emergency in the Commonwealth due to the lack of a balanced budget being in effect on October 1, 2010, is hereby further amended by adding the following to the list of essential services found in Section IV-DIRECTIVES, Directive 1:

- **Board of Parole**
 - Chief of Parole
- **Capital Improvements Project**
 - Contracting Officer Technical Representative
- **Commonwealth Election Commission**
 - Executive Director
 - Administrative Officer III
 - Election Registration Clerk
- **Criminal Justice Planning Agency**
 - Executive Director
 - Federally Funded positions only
- **Department of Commerce**
 - Deputy Secretary will be *ON-CALL*
 - Enforcement of Underage Drinking Laws (federally funded positions)
 - Small Business Development Committee (manager)
- **Department of Community and Cultural Affairs**
 - Secretary of DCCA

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- Child Care Development Fund Program[CCDF]/ (Child Care Subsidy Program) ALL.
- Office on Aging Rota
 - Cook III (federally funded)
 - Driver (1 only)
- Office on Aging Saipan
 - Cook II (1 only)
 - Cook III (federally funded)
 - Driver (1 only)
- Office on Aging Tinian
 - Cook III (1 local funded, 1 federally funded)
- **Department of Finance**
 - Secretary of Finance
 - Secretary of Finance Office (2 personnel)
 - Executive Secretary
 - Technical Financial Analyst I
 - Finance and Accounting Rota
 - Tax Technician I, II
 - Finance and Accounting Tinian
 - Accountant I
 - Revenue Officer I
 - Finance and Accounting Division Saipan
 - Accounts Payable (2 personnel)
 - ❖ Accountant II, III, IV
 - ❖ Accounting Technician II
 - EDP (from On-call status to on-duty status)
 - ❖ Computer Operator I
 - ❖ Computer Programmer
 - ❖ Network Administrator I
 - Federal Programs
 - ❖ Accountant II, III, IV
 - Operations (1 personnel)
 - ❖ Acting Director of Finance & Accounting
 - ❖ Accountant IV
 - Payroll
 - ❖ Account Clerk I
 - ❖ Accountant III, IV
 - Travel (1 personnel only and will be on ON-CALL status)
 - ❖ Accountant II, III, IV
 - Procurement and Supply will be *ON-CALL*
 - Director
 - Admin. Branch – Administrative Officer II (1 personnel)
 - Procurement Branch – Supply Specialist II (1 personnel)

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- Property /Warehouse Branch – Supply Specialist I (1 personnel)
- Status Technical Branch – Supply Specialist II (1 personnel)
- Revenue and Taxation
 - Compliance Branch
 - ❖ Manager
 - ❖ Revenue agent I
 - ❖ Tax technician I, II
 - Enforcement Branch
 - ❖ Business License Officer (1 personnel)
 - ❖ Enforcement Branch Manager
 - ❖ Revenue Enforcement Technician (1 personnel)
 - Examination Branch
 - ❖ Manager
 - ❖ Revenue Agent II, III (2 personnel)
- Treasury Division
 - Accountant III
 - Accounting Technician
 - Administrative Assistant (Cashier)
- **Department of Lands and Natural Resources**
 - Secretary of DLNR
 - DOA Animal Health
 - Animal Health Specialist
 - Parks and Recreation Division
 - Director
- **Department of Public Health (Saipan)**
 - Deputy Secretary of Hospital Administration will be *ON-CALL*
 - Bureau of Environmental Health
 - Disease Control Enforcement Technician II
 - Environmental Health Inspector I
 - Environmental Health Officer
 - Environmental Health Specialist I, II
 - Environmental Health Technician I, II, III
 - Epidemiologist
- **Department of Public Health (Rota Health Center)**
 - Environmental Health Technician II
- **Department of Public Health (Tinian Health Center)**
 - Environmental Health Technician I
 - Medical Referral Assistant
 - Medical Supply Officer
 - Social Services Division
- **Department of Public Safety**
 - Bureau of Motor Vehicles

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- Chief of BMV
- Driver's license technician (1 only personnel daily)
- Vehicle registration technician (1 only personnel daily)
- **Department of Public Works**
 - Secretary of Public Works
 - Executive Secretary
 - Building Safety Code
 - Building Inspector
 - Building Permit Specialist
 - Roads and Grounds
 - Account Clerk II
 - Equipment Operator I, II, III, IV
 - Grounds Maintenance Foreman II
 - Trades Helper
 - Trades Specialist I
- **Emergency Management Office**
 - Director
- **Marianas Visitors Authority**
 - Managing Director
 - Accountant I (only during processing of payroll)
 - Chief Accountant (only during processing of payroll)
 - Deputy Managing Director (only during processing of payroll)
 - Marketing Specialist I (Korean Market)
 - Marketing Specialist III (Japan Market)
- **Office of the Attorney General**
 - Executive Assistant to the Attorney General
 - Victim Advocate
- **Office of the Governor**
 - Assistant Legislative Affairs Officer from on call status to on-duty
 - Governor's Chauffeur
 - Special Assistant for Programs and Legislative review from on call status to on-duty
- **Office of Homeland Security**
 - Special Assistant, Office of Homeland Security
 - Federally funded positions
- **Office of Management and Budget**
 - Budget Analyst IV
- **Office of Public Auditor**
 - Auditor (1 only and will be *ON-CALL*)
- **Office of Personnel Management – Rota**
 - Personnel Specialist II
- **Office of Personnel Management - Saipan**

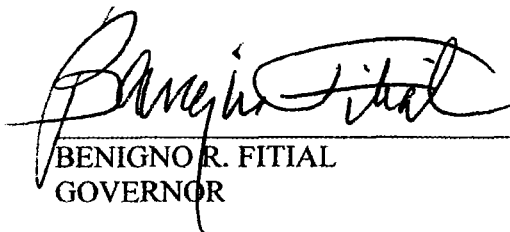
Caller Box 10007 Saipan, MP 96950 Telephone: (670) 664-2200 /2300 Facsimile: (670) 664-2211/2311

- Director
- Alcohol and Drug free Workplace Coordinator
- Chief, Employment Employee Relations
- Personnel Specialist I (EER Section)
- Personnel Specialist III (Classification and Compensation section)
- **Public Defender's Office**
 - Legal Assistant I, II
- **Veteran's Affairs Office**
 - Assistant Veterans Affairs Officer
- **Workforce Investment Agency**
 - Executive Director

Department heads are required to comply with Section IV-DIRECTIVES,
Directive 2 as detailed.

This Amendment is necessary and takes effect October 5, 2010 in light of the
continuing shutdown to ensure that essential services related to health, safety, and welfare
of the people of the CNMI remain functioning.

SIGNED this 4th day of October, 2010.


BENIGNO R. FITIAL
GOVERNOR



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lieutenant Governor

EXECUTIVE ORDER 2010-14

AMENDMENT TO EXECUTIVE ORDER 2010-11, 12, and 13.

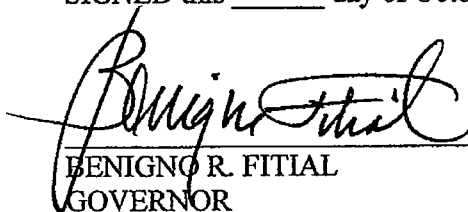
Executive Order 2010-11, amended by Executive Order 2010-12 and 13, which declared a State of Emergency in the Commonwealth due to the lack of a balanced budget being in effect on October 1, 2010, is hereby further amended by adding the following to the list of essential services found in Section IV-DIRECTIVES, Directive 1:

- **Department of Public Lands**
 - Secretary, DPL
 - Administrative Assistant/accountant (1 personnel)
 - Accountant I (1 personnel)
 - Accountant III/ Acting Accounting Manager (1 personnel)

Department heads are required to comply with Section IV-DIRECTIVES, Directive 2 as detailed.

This Amendment is necessary and takes effect October 5, 2010 in light of the continuing shutdown to ensure that essential services related to health, safety, and welfare of the people of the CNMI remain functioning.

SIGNED this 5th day of October, 2010.


BENIGNO R. FITIAL
GOVERNOR

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
Lieutenant Governor

EXECUTIVE ORDER 2010-15

AMENDMENT TO EXECUTIVE ORDER 2010-11, 12, 13, and 14.

Executive Order 2010-11, amended by Executive Order 2010-12, 13, and 14, which declared a State of Emergency in the Commonwealth due to the lack of a balanced budget being in effect on October 1, 2010, is hereby further amended by adding the following to the list of essential services found in Section IV-DIRECTIVES, Directive 1:

- **Department of Public Health Saipan**
 - Medicaid Division
 - Accounting Technician I
 - Accountant I
 - Eligibility Worker II
 - Medicaid Administrator
 - Administrative Assistant
 - Vital Statistics Division
 - Statistics Specialist IV will be ON-CALL
- **Scholarship Office**
 - Scholarship Administrator (October 7, 8, 12, and 13 only)

Department heads are required to comply with Section IV-DIRECTIVES, Directive 2 as detailed.

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

This Amendment is necessary and takes effect October 7, 2010 in light of the continuing shutdown to ensure that essential services related to health, safety, and welfare of the people of the CNMI remain functioning.

SIGNED this 6th day of October, 2010.


BENIGNO R. FITIAL
GOVERNOR



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2010-16**
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 #27**
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 power
17 generation service to the CNMI and the extreme, immediate and imminent threat such condition
18 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, and -08 through -10, except as specifically modified. As more
23 fully stated below, this Executive Order shall expire on the 31st day following the date of my

Page 1 of 27

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

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

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1
2 **FINDINGS**

3
4 I find that:

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



11 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

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

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 stipulated
6 order. It provided, among other things, that a professionally-developed Interim
7 Financial Plan (“IFP”) would be provided to the US EPA within 30 days, by
8 March 26, 2010. This additional stipulation requires CUC to meet a number of
9 deadlines, each involving the application of technical expertise. CUC has timely
10 filed the IFP. It now has the task of implementing the IFP and meeting these
11 deadlines. Failure to meet these requirements would subject CUC to the
12 described sanctions.
13

14 c. Of concern to CUC are the tight deadlines for Stipulated Order 2 (Oil
15 Management) projects that are funded by a \$4.05 million CIP grant awarded in
16 February, 2010, by the US Department of the Interior’s Office of Insular Affairs.
17 The funding is to assist CUC is disposing of the used waste oil discussed in this
18 Executive Order. Failure to meet the deadlines could subject CUC to additional
19 EPA sanctions.
20

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

25 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission (“CPUC”).
26 The regulator has plenary power over CUC rates, charges, fees, operations and capital
27 investments. CUC’s failure to timely and competently meet CPUC orders and other
28 requirements can result in severe rate discipline, and fines and other penalties. For example, the
29 Commission required CUC to meet certain requirements, including the filing of a technically
30 complex rate case (Docket No. 10-01) by the end of January 2010, or face fines of \$500 per day.
31 CUC must also file an additional, complex electric power rate case by October 3, 2010.
32

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

40 7. Without CUC electricity:
41

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

26
27 8. As discussed below, CUC is currently advertising for about 20 vacancies, including the
28 Executive Director, the Water Distribution Manager, the Wastewater Manager, five engineers, a
29 general counsel, an internal auditor, a grants writer and/or a grants specialist, two wastewater
30 level 2 treatment operators, two wastewater level 2 collection operators, and two water treatment
31 /distribution levels 1 and 2 operators for Rota. CUC also seeks to renew 18 technical and
32 professional contracts for non-US citizens. Without these positions filled CUC's operations
33 would be severely compromised.
34



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

37
38 9. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain
39 and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to
40 buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in

1 September 2009. In October four other units began required overhaul, which will take at least 12
2 months.

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

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

12
13 12. In effect, CUC management, with generous federal financial assistance, has brought its
14 generation back from the brink of system failure. There are adequate reserves. If maintained
15 properly, the system can provide the CNMI's citizens and residents with adequate power.

16
17 13. Adequate technical staff is essential to this work. A major challenge to carrying out this
18 rehabilitation has been finding the trained technicians needed to carry out these rehabilitation
19 projects, and maintain and run the equipment. The technicians must be ready for service when
20 needed and their services must be affordable. Any significant reduction in CUC's present
21 technical workforce could seriously compromise CUC's ability to generate and distribute power.

22
23 14. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit
24 ("T & D"), including many vehicles, is dilapidated and bordering on being unsafe. There is an
25 insufficient number of skilled workers to operate T & D. The linemen must be trained to, and
26 skillful in, meeting US standards. Fortunately, a federal DOI/OIA grant paid for some lineman
27 training in June. The critical upcoming projects in T & D include the replacement of the
28 antiquated, rundown and unsafe vehicle fleet; the redesign of T & D using national Rural Utility
29 Service standards; the replacement/installation of insulators, transformers, overcurrent
30 protection, sectionalizers and the installation of efficient LED street lighting.

31
32 15. For example, Saipan's early-September 2009 brush with Typhoon Choi-Wan 15W that
33 passed to the north of Saipan, and typhoon Melor, which passed just north of Saipan in October
34 2009, underscored the extreme vulnerability of CUC's power transmission and distribution
35 system. In September 2009, over 150 calls of no-power and line faults were fielded by crews
36 when, for a storm of this size, there should have been no more than a score. Fortunately, last
37 year's typhoon season ended with no direct hits on the CNMI and the power distribution system.
38 Accelerating improvements to the T & D system, with proper staff under an Emergency Order,
39 would allow CUC to "harden" the system in anticipation of a bigger storm event. The
40 alternative, in a more serious storm, is CUC's inability to recover in any reasonable time period.
41 The year 2010 will see a new typhoon season.

1
2 16. Nonetheless, outages due to Power Transmission & Distribution were extremely low: May
3 saw only 11 minutes; April just one minute. These are the lowest such figures in the last seven
4 years, reflecting an extraordinary accomplishment for an understaffed, overworked CUC work
5 group.

6
7 17. Further, utility industry safety margins for isolated, island systems typically require a
8 reserve equal to the capacity of the two largest generating units. In CUC's case this would be
9 another 15 MW of load, equivalent to the departed Aggreko temporary units. Meeting this
10 reserve requirement means CUC must have an adequate repair and maintenance staff.

11
12 18. The Legislature, through PL 17-1 (Mar. 22, 2010), has limited CUC's ability to hire
13 technical staff; eliminating prior statutory permission to hire up to 19 foreign workers, and
14 reinstating a moratorium on the Government's hiring foreign nationals, even if needed for
15 highly technical positions for which no local or Mainland citizens are available. The CUC Act,
16 as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such persons
17 as are necessary for operations, *except as otherwise limited by other law*. 4 CMC § 8123(h).

18
19 19. PMIC at PP #4 and Telesource on Tinian, and the Rota Resort on Rota, as Independent
20 Power Producers (IPPs), are not subject to the Legislature's limitation or prohibition on foreign
21 workers. Nor are consulting firms that provide specialty utility industry services.

22
23 20. There are not enough technical specialists at CUC to get the power generation work done,
24 particularly specialists with experience in the type of engines that CUC uses. CUC believes that
25 the vast majority of skill sets must come from non-US personnel.

26
27 21. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding
28 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after
29 interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator
30 candidates were US citizens.

31
32 22. CUC has hired some local staff in time thanks to the aggressive steps of CUC HR, the
33 Executive Director and earlier versions of Directive 10. But hiring qualified technical experts
34 from the pool of US citizens and permanent residents is extremely difficult due to the CNMI's
35 competitive disadvantages, including salary/benefit packages and the distance from the
36 Mainland. For instance, in October 2010 the top candidate for Manager of Drinking Water &
37 Wastewater turned down CUC's offer. The targeted recruit for the Health, Safety and
38 Environment Officer also turned down a CUC offer. The challenge to CUC is that it is
39 recruiting for positions from a US labor pool in which the targeted candidates are already
40 gainfully employed, as opposed to the other professionals in other segments of the US economy.

1 For instance, one of CUC's own local employees, a supervisor in Wastewater, moved to Oregon
2 early in 2010 and was soon hired by the local wastewater & water district.

3
4 23. CUC has hired skilled trade technicians needed on Saipan for power plant operations and
5 maintenance. For Rota, CUC announced the need for a mechanic-operator and an electrical
6 operator. As more units begin working after the rehabilitations are largely complete, CUC will
7 need more staff to operate and maintain them. For the foreseeable future, CUC needs to
8 maintain its complement of skilled workers. In the meantime, CUC continues to work with the
9 Northern Marianas Trade Institute ("NMTI") to find local trainees, part of a multi-year
10 apprenticeship program. CUC has about a dozen of these trainees, but requires fully trained,
11 experienced technicians to keep the power plants running.

12
13 24. With generous grant funding and the use of in-house technical specialists and outside
14 contractors, CUC has undertaken substantial rehabilitation of its power system. Future projects
15 include replacing turbochargers, conserving and reclaiming used lube and waste oil, retrofitting
16 streetlights with low-wattage LED's, and restoring power generation and adequate distribution
17 on Rota. Even if contractors do the work, CUC technical staff must research and prepare bid
18 documents, review technical proposals, and oversee the work.

19
20 25. The bottom line on CUC's technical work has been a substantial increase in reliability,
21 specifically the availability of CUC's generation. CUC's transmission and distribution has
22 similarly improved – January 2010 saw 10 hours 44 minutes of outages, April 2010 saw one
23 minute. It was critical to this latter improvement that CUC had the skilled, trained work force to
24 maintain power lines.

25
26 26. But even as power becomes more reliable, CUC must reduce its distribution losses from the
27 reported level of 8%. With world oil prices increasing CUC's power costs, such losses already
28 account roughly for \$4.8 million annually, which CNMI customers must cover. CUC requires a
29 team of skilled technicians to find and eliminate power theft and line losses. CUC is assembling
30 two electrical crews from power generation to help Power T & D with Operation Sweep. The
31 electrical crews will also help with the electrical wiring or re-wiring and make it easier for the
32 meter technicians to perform their job of meter installation. CUC crews are also speeding up the
33 installation of watt hour meters for all water and wastewater facilities, as ordered by the CPUC
34 All of this activity will cut costs and/or properly allocate them, removing pressure on rates.

35
36 Ⓜ

37 27. The impact of an inadequate workforce would be four-fold:

- 38
39 a. First, there would be a direct negative effect on the existing consumers. There
40 would be brownouts, or area blackouts, with the above-mentioned loss of service.

- 1 b. Second, the power plants would again degrade, producing more of these outages.
2
3 c. Third, there would be an indirect effect, increasing rates over the longer term,
4 because small consumers would have to shoulder more of the fixed costs of the
5 CUC system. First, there would be loss of large customers. By contrast, if the
6 hotels were to become part of the system, they could help pay CUC fixed costs,
7 which would lower everyone else's rates. The hotels need reliable, 24/7 power.
8 But with unreliable power, CUC would be unable to convince large commercial
9 customers, particularly the hotels, to join, or rejoin, its system. Second, would
10 come additional expenses. If CUC fails to meet federal court deadlines for the
11 stipulated orders, the Court could appoint a federal receiver and its consulting
12 team – with all expenses charged to CUC customers. The EPA has already
13 imposed stipulated order penalties; it recently required the payment of a \$140,000
14 penalty. Thus, the indirect effect of an inadequate workforce would be to boost
15 rates.
16
17 d. Fourth, with the recovery of the world economy, advise CUC experts, oil prices
18 can be expected to rise. If CUC's generators become less efficient, because
19 technical staff are unavailable to maintain CUC's engines' efficiency, that much
20 more oil would be needed to generate a given amount of electricity. The price
21 rise will thereby harm CUC's customers and electricity-dependent services with
22 higher rates. (Fortunately, in mid-September, CUC's consultants and staff
23 determined, with PUC experts, that oil prices should remain flat for the next six
24 months, leaving LEAC fuel rates unchanged.)
25

26 28. Rota's status today is precarious and financially un-sustainable. Rota has suffered blackouts
27 from inadequate generator maintenance. The power plant's other facilities and the island's
28 distribution system similarly need the attentions of additional manpower. The Rota power plant
29 needed additional generating sets to come on line, as there are only 1.5 dependable sets in the
30 plant. The third of two feeders was, until June 2010, powered by the Rota Resort, a private
31 resort, at a cost of \$200,000/month to CUC. The revenues to CUC from the customers on this
32 feeder fall far below this cost. CUC has negotiated with a Mainland supplier for a new
33 generating set, with funding from the US Department of the Interior. The alternative for Rota
34 was akin to Saipan's recent Aggreko situation – purchasing higher cost, reliable power from the
35 Rota Resort. Therefore, in June 2010, two 0.9 MW Cummins generating sets were transported
36 from Power Plant 4 on Saipan to Rota in order to augment the power generation. These two
37 generating sets were commissioned by the end of July, 2010.
38

39 29. Since E0 2009-8 in August, and the suspension of the harmful legislative employment
40 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and
41 Rota power generation facilities. CUC needs to be able to hire the workers it needs when it

1 needs them. Otherwise, if CUC had to discharge these workers, its staffing levels would return
2 to those which overworked its limited staff. For example, over pay period numbers 2 through 11
3 of the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who
4 each worked 40 or more hours of overtime in a pay period. This condition is extreme, and a
5 repeat can result in inefficiencies and poor work quality. It can lead to dangerous mistakes,
6 producing injury or death.

7
8 30. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The
9 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set
10 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6
11 million-per-year benefit of terminating the Aggreko temporary power contract.

12
13 31. CUC points out that the power distribution system is highly vulnerable because, like the
14 sewer system, so much of the maintenance and replacement was deferred for one reason or
15 another over the past 20 years. Since 1995, 26 villages on Saipan were identified as needing
16 major improvements to the power lines; only five have seen those improvements. Power T & D
17 fails in bits and pieces. One of the big pieces that failed in February 2010 was one of 12
18 termination cables on the Kiya Substation (Transformer One). A power outage to the southern
19 parts of Saipan lasted from one to five hours. CUC management states that the excellent
20 response from the crews in both Power Generation and Power T & D demonstrated the
21 importance of having skilled workers. The top two engineers were non-residents. Without this
22 EO in place, given present statutes, it is unlikely CUC would be able to secure the services of
23 such valuable individuals.

24
25 32. The extended dry season this year (see below) means that vegetation must be cleared away
26 from the lines early and often. Brush fires can damage the power lines, telephone facilities, and
27 television cables. Meanwhile, CUC crews must replace failing insulator bolts and failing
28 switches in order to avoid distribution-related power outages.

29
30 33. CUC has demonstrated that the required workers are available as nonresident workers, and
31 cost-effectively so. In the last two months it was able to renew the contracts for approximately
32 two dozen essential foreign expert workers, thereby sustaining the integrity of CUC's systems.
33 Thus, continued relief from the legislative prohibition of hiring foreign national workers is
34 necessary to ensure the delivery of uninterrupted power services to the people of the
35 Commonwealth.



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

39
40 34. CUC has taken concrete steps to address the storage and disposal of used oil, consonant
41 with the federal court's Stip Order 2. Federal court Stipulated Order 2 relates to the used oil

1 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.
2 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) (“Stip Order 2”). With an
3 adequate complement of trained technical employees, complemented by expert contractors, CUC
4 believes that it can meet the Stip Order requirements. On August 12, 2010, the Court issued the
5 Second Joint Stipulation (“SJS”), which replaced many otherwise unattainable deadlines, but
6 provided other deadlines and stiff penalties for a host of technical and management positions.
7 The SJS also provided for firm dates for reporting on the use of grant funds, on the progress of
8 secondary containment facilities, providing a facilities response plan (“FRP”), and cleaning out
9 Tank 104.

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

21
22 36. Serious deficiencies in the waste oil handling system at Lower Base have come to light in
23 the past year and are being addressed by both CUC and EPA. One deficiency is that the oily
24 water separators are not functioning as such because of the excessive amount of oil (as opposed
25 to water) entering the system. As a result, oil was spilling onto the ground rather than being
26 separated and skimmed off properly. Power Plant #1 has been sealed off to prevent any waste
27 oil from leaving the plant and flowing into the oily water separators. To prevent oil from
28 accumulating uncontained in the plant itself, emergency measures have been taken to store waste
29 oil and to fabricate above-ground tanks. The oily water separators, pipes, holding tanks, and
30 baffles are being cleaned out so that the entire system can be carefully inspected and
31 re-engineered. All of the additional work is expensive. Regardless of who does the work
32 initially, CUC staff, EPA contractors, or a combination thereof, CUC requires skilled, trained
33 workers for the clean-up. Failure to correct this situation could harm the nearby environment,
34 CUC's ability to generate electricity properly, and the assurances given pursuant to Stip Order 2.
35 CUC has hired an Oil Technical Manager.

36
37 37. Incinerators play a crucial role in helping CUC meet Stip Order 2. The two incinerators at
38 Lower Base (Power Plants 1 and 2) are now operating, and burning about 1000 gallons of used
39 oil per day. One had to be taken out of service due to mechanical issues, is being repaired by a
40 contractor, and the contractor's work must be approved by the Deputy Director for Power
41 Systems, a non-US-citizen. This EO has permitted Power Generation the flexibility of hiring

1 skilled non-US-citizens to not only repair and overhaul the generating sets, but to fix and
2 supervise such important auxiliary equipment as the incinerators.

3
4 38. Nonetheless, the EPA on February 18, 2010, filed a status report with the US District Court
5 for the Northern Mariana Islands which is highly critical of the progress in CUC's efforts to
6 comply with Stip Order 2's requirements to solve the used oil situation. Since that report CUC
7 has contracted with the GRESCO firm to remove waste oil from Tank 104. The EPA has
8 strongly urged CUC to accelerate the removal, bringing the "empty" date forward from October
9 2010 to July 30, 2010. CUC found two additional special double-walled "ISO" tanks for use in
10 the project, to add capacity to the contractor's six tanks. As a result, GRESCO transferred just
11 under 180,000 gallons of used oil to Guam by July 15.

12
13 39. Presently CUC is in process on these specific efforts to comply with Stip Order 2's
14 requirements, with federal funding authorized: Technical Manager secured for the oil disposal
15 management position; secondary containment (new and repair) has received permits and NEPA
16 clearance, and construction has begun; oil disposal for Saipan's Tank 104; oil transfer pipeline
17 for Lower Base design work commenced, construction contract under review by CPUC, with a
18 target in-service date of February 24, 2011; oil handling and training commenced; used oil
19 sampling laboratory in California contracted; used oil tank system integrity testing and
20 cleanout's RFP published; oil-water separators in planning stage; used oil transfer and solid
21 waste disposal for Saipan and Rota are in planning stage; the section of the facility response plan
22 ("FRP") which provides services for oil spills from a new Saipan-based firm has been executed
23 and awaits the final signatures.



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

28
29 40. As long as the Water and Wastewater Divisions can hire competent staff and receive power
30 from the Power Division, they can function.

31
32 41. The U.S. Department of Justice ("DoJ"), Environment and Natural Resources Division, has
33 sued CUC in federal court to come into compliance with critical water and sewage treatment
34 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order
35 1"). See also http://www.usdoj.gov/enrd/Consent_Decrees.html. In July 2008 CUC, the CNMI
36 and (in September 2008) the U.S. Environmental Protection Agency ("EPA") stipulated to this
37 first of two orders lodged with the U.S. District Court on the date the Complaint was filed. This
38 order requires CUC to implement a series of improvements to its water and wastewater systems
39 that respond to years of neglect, for which it presently lacks the funds and the complete technical
40 capability. On August 12, 2010, the Court issued the Second Joint Stipulation ("SJS"), which
41 replaced many otherwise unattainable deadlines, but provided other deadlines and stiff penalties

1 for a host of technical and management positions. The SJS also provided for firm dates for an
2 Interim Financial Plan, Reorganization Plan, full metering and billing, a complete chlorination
3 and disinfection program, the hiring of qualified operators in direct responsible charge (“DRC”),
4 and procedures to generate the scope of work for CUC’s Master Plan.

5
6 42. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater
7 Division must respond to acid damage in the asbestos cement piping system, the product of over
8 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and
9 metal infrastructure, so that key pipe systems have collapsed. Replacement involves complex
10 excavations, avoiding electric, phone and water utilities, blocking traffic, stopping the infiltration
11 of seawater (which damages treatment plant facilities), and pumping sewage around blocked and
12 excavated areas. The Division has already far exceeded its repair budget. Without this EO, says
13 CUC, procurement for such repair work would constitute a significant impediment.

14
15 43. Providing and improving water service presents new challenges. With DEQ’s classification
16 of Rota’s cave-based domestic water as “surface water” CUC has had to expand water quality
17 monitoring and testing, requiring more manpower and more equipment. In May 2010, CUC
18 experienced failures in water pipes as the Cross-Island road project’s contractors’ equipment
19 broke pipes, requiring CUC staff to be pulled from other jobs, with required equipment, to
20 address the emergency. In addition, a substantial section of the As Terlaje sewer line collapsed,
21 requiring an emergency procurement to hire an outside firm to make the repair. As of October
22 15, 2010, repair work has reached 90 % completion.

23
24 44. The Sadog Tasi Wastewater Treatment Plant is undergoing long-planned rehabilitation.
25 But, without such redundant equipment as a clarifier, CUC must devote extra resources to the
26 facility while the contractor repairs the only unit. Such work has to be conducted within strict
27 parameters by properly trained technicians to prevent contamination of the environment. Due to
28 equipment malfunctions, sludge is not pressed, which may have produced unacceptably high
29 recent levels of enterococci in effluents from both the Sadog Tasi and Agingan Point treatment
30 plants.

31
32 45. The Division also needs serviceable vehicles to move its workers to and from job sites.
33 Presently six vehicles are in such bad shape that they are dangerous. The resulting reduced
34 vehicle problem raises costs and hurts service, as staff and materials cannot be brought to job
35 sites on time. Starting in September 2010, CUC has had to rent vehicles in order to get its crews
36 to trouble areas. Even more alarming is that during the past month both of the CUC-owned
37 backhoes (one for Water Operations, and one for Wastewater Operations) have been broken,
38 gone out of service, and await repair parts. CUC has had to rent backhoes for simply performing
39 routine water and wastewater operations functions on a daily basis during the past month.

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

7
8 47. CUC engineer staff shortages continue to hamper CUC's ability to anticipate and fix
9 technical problems. CUC's Water/Wastewater Division needed to add engineers to its staff of
10 three engineers, in order to fix the poor condition of the CUC sanitation assets. Significant
11 engineering resources have been focused on addressing EPA Stip Order issues. These issues
12 include staffing plans, pre-treatment programs, materials management programs, customer
13 inventory, and cross-connection control programs. CUC water and wastewater engineers are the
14 lead professionals on several on-going construction projects, which also stretches the limited
15 engineering resources. These include the Well Isolation Project, Sadog Tasi Sewer Plant
16 Rehabilitation, and Agingan Sewage Treatment Plant Rehabilitation. Recruitment and retention
17 of engineering staff to meet these challenges is difficult.

18
19 48. Nonetheless, CUC engineering and operations departments hired 4 new engineers this past
20 month, with one engineer assigned to the wastewater projects grants and construction
21 management, one assigned to design, one to water operations, and one to wastewater operations.
22 However, given the extensive engineering department workload three more engineer staff
23 members are still needed. CUC has just hired another, with the employee scheduled to arrive in
24 January 2011.

25 □

26 49. Incipient failures include the failure of 98 submersible pumps in the water system over a
27 period of twelve months. Higher grade stainless steel grates have to be specified that are resistant
28 to pitting. The pitting causes the grates to fail, and consequently the pump motors fail. CUC
29 has 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
31 installed 30 HP motors with the higher grade stainless steel was damaged by an apparent lightning
32 strike after only a month's operation.

33
34 50. CUC must be able to hire the staff to perform the required technical functions. The Water
35 and Wastewater Divisions cannot carry out their missions without adequate staff. These staff are
36 essential to producing clean, safe water supplies and removal of stormwater and sewage in a
37 safe, timely manner. While the bulk of CUC employees are drawn from local and US
38 populations, the Division management estimates that at least six trained technicians will be
39 required – three experienced Level 3 wastewater treatment operators, two Level 3 wastewater
40 collections operators, and an instrumentation /low voltage controls specialist. CUC lacks
41 enough experienced plumbers and pipe-fitters. Skilled pipe-fitters are needed to repair failing

1 CUC piping and related infrastructure, such as valves and hydrants. An experienced
2 Water/Wastewater Division operations manager is required. CUC requires a chemist to meet
3 federal requirements, but has been unable to find a qualified one in the local population, or a
4 cost-effective professional from the US Mainland; a foreign hire has been identified, however.
5 CUC announced a vacancy of the position for Deputy Director for Water and Wastewater.
6 Seven candidates were reviewed and evaluated. The best candidate, however, declined CUC's
7 offer, as described above. CUC's challenge is to meet the terms and working conditions of
8 Mainland competitors.

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

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

33
34 53. CUC continues to suffer an unprecedented number of waterline breaks and resultant water
35 leaks. During one day in September 2010 there were six new leaks reported which required
36 repair crews to work significant overtime. All repair work was performed using rental backhoes,
37 as CUC's backhoes were broken. CUC professionals consider that the number of leaks the
38 company experiences to be excessive, particularly because CUC does not provide 24 hour water
39 and does not properly pressurize the water system.

40
41 [\[a\]](#)

1 54. Put simply, Saipan does not have enough water. CUC professionals categorize much of the
2 Saipan water distribution system as “fatigued”. The do not believe that the number of breaks in
3 the system will decline in the foreseeable future. Pump and motor problems perpetuate the
4 problem. There are 13 pumps down in October 2010, including four big ones (over 30 hp). But
5 CUC’s water system in mid-September 2010 experienced several pump/motor failures.
6

7 55. Meanwhile, CUC must install meters to meet the requirements of federal Stipulated Order
8 #1, the PUC, and its own need for system revenue. Water metering and billing of customer
9 water usage by volume continues to be a challenge for CUC. The water meters installed in the
10 Saipan water system over the past five years have experienced nearly complete failure. (Nearly
11 10,000 water meters by serial number have been reported to the Water Task Force (“WTF”) by
12 CUC as failed. The WTF, in turn, has reported these meters to the manufacturer for warranty
13 purposes. While CUC has made huge strides in the past month with replacing approximately
14 1,000 broken meters with warranty supplied meters, and reducing the number of customers
15 whose water bills are *not* based on consumption (from 4,490 to 3,462), there are still many
16 customer meters to address. Compounding the challenge, CUC recently experienced nearly 400
17 water meter failures of the warranty meters provided by the manufacturer as replacement meters.
18 The manufacturer has begun to indicate opposition to providing more replacements.
19

20 56. CUC lacks water staff and recently lost staff. CUC’s water & wastewater workforce is
21 shrinking. It takes a long time to recruit. Sadly, one of CUC’s “Water Watch” supervisors died
22 suddenly in mid-September 2010. Skeleton crews are handling system repairs. Having access to
23 foreign skilled and semi-skilled technicians and trades people is critical, as with CUC’s Power
24 Division’s generation operations. CUC’s foreign contract employees have good formal training
25 and education, and they show up to work religiously, in order to provide the services our
26 population requires.
27

28 57. For its water and wastewater businesses, CUC has tried to hire water and wastewater
29 certified operators. There has not been enough interest by qualified professionals. But CUC
30 must hire such technical staff in order to comply with stiff EPA requirements, as expressed in the
31 latest version of the Stipulated Orders. Those professionals whom CUC can identify – more
32 likely these are foreign nationals – do not necessarily have the skill sets needed to actually
33 perform the skilled hands-on tasks of operating a utility. Thus, CUC will be looking for
34 plumber/pipefitters and mechanics (including a master who is skilled in maintaining and fixing
35 hydraulic systems on heavy equipment), specialized electricians and others. Having these skills
36 in-house, instead of at contracted local shops can save enormous amounts of money, as well.
37 While in the long run, these CUC needs provide opportunities for locals who wish to stay on our
38 islands, CUC’s needs, including the federal requirements, are immediate.
39

1 58. CUC also requires a constant supply of electricity to run its water and wastewater treatment
2 systems. CUC has very limited on-site emergency generation capability, and for only portions
3 of these systems.

4
5 59. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing
6 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost
7 recovery for the water and wastewater systems through the processes of the CNMI Public
8 Utilities Commission ("CPUC"). CUC filed a wastewater rate increase request, complete with
9 hundreds of pages of written expert witness testimony and technical support, on January 31,
10 2010. The Commission addressed the filing in May, authorizing a June 21, 2010, rate increase in
11 wastewater rates and full cost recovery for the electric costs of the water and wastewater
12 divisions.

13
14 60. Nonetheless, the EPA on July 21, 2010, filed a status report with the US District Court for
15 the Northern Mariana Islands which was highly critical of the progress of CUC's efforts to
16 comply with Stip Order 1's requirements to solve the water and wastewater situations. It
17 included a statement that tests in June and July each showed violation of the maximum
18 contaminant level drinking water standard for total coliform bacteria. (7-21-10 Status Report, p
19 6 fn 5) The Court held a hearing which began on August 5, 2010, and continued on for five days
20 until a Second Joint Stipulation ("SJS") was reached and executed by the DOJ/EPA, CUC and
21 the Attorney General on behalf of the CNMI.

22
23 Ⓐ
24 **Meeting US District Court and CNMI Public Utilities Commission requirements to**
25 **produce timely, accurate financial reports**
26

27
28 61. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
29 beginning in September, 2009. The "IFP" must develop over time, becoming more than
30 "interim". CUC cannot do this unless it has a staff of trained accounting and other financial
31 experts who can gather data, put the data in the required form and generate the IFP and its later
32 versions. EPA is reviewing CUC's most recent version of the IFP. CUC must submit its final
33 IFP on or before November 30, 2010.

34
35 62. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities
36 Commission ("CPUC"). The CPUC is charged by statute to oversee carefully CUC's operations
37 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC's
38 water and wastewater systems.

39
40 63. In electric and water/wastewater orders, of September 3 and November 20, 2009, the CPUC
41 addressed CUC's inability to deliver complete on-time financial reports, requiring CUC, in

1 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.'s
2 09-1 and 09-2.) The Commission revisited CUC rates, fees, charges and operations during this
3 year, including in the recent rate case, Docket No. 10-01. CUC's Executive Director was a lead
4 witness in the case, having filed written testimony (on January 31, 2010) and supplemental
5 testimony (on April 1, 2010).

6
7 64. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained
8 accounting and other financial experts who can gather data, put the data in the required form and
9 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
10 staff with the data required for their oversight. CUC has obligated itself to provide an updated,
11 compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1,
12 to the US District Court, and most recently, according to the August 12, 2010, SJS. EPA has yet
13 to approve it.

14
15 65. CUC's procurement system is lengthy and complex. A relic of other decades, with their
16 own challenges, it requires extensive technical experience in specifications and the procurement
17 process, and often must be coordinated with the CNMI's separate procurement procedures,
18 adding months to processes that must respond to the immediate challenges outlined in this
19 Executive Order.

20
21 66. 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. All are US citizens. Nonetheless, CUC must have the flexibility
26 to hire competent professionals as needed. CUC is still short-staffed, and needs an accounting
27 assistant, and an accounting specialist. On February 17, 2010, CUC's new Chief Financial
28 Officer reported for duty.

29
30 67. CUC's decades-old financial and accounting system computer failed repeatedly during the
31 last three months, 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. It failed again in August.

34
35 68. Nonetheless, the EPA on July 21, 2010, filed a status report with the US District Court for
36 the Northern Mariana Islands which was highly critical of the progress in CUC's efforts to
37 comply with Stip Order 2's requirements to provide timely and complete financial and other
38 operating reports and plans.

39
40 69. To summarize: Without properly trained technical staff CUC's ability to supply power is at
41 risk. So is its ability to manage the rest of its systems, including its complex procurement, its

1 finances and accounting. CUC's services could not be adequately staffed without the lifting of
2 the artificial legislative regulation of CUC's workforce, in EO 2009-08, Directive #10,
3 suspending the limitations on CUC hiring foreign workers. It is obvious that the hiring authority
4 must be continued.

5
6 70. In fact, during July - September 2010 over 18 CUC employment contracts for non-citizen,
7 technical specialists required renewal. Failure to timely renew could have crippled CUC's
8 efforts to provide service and meet federal requirements. More such contracts must be executed.
9 There is no indication that any of the above manpower situation will be resolved in the next
10 month without continuing in effect this EO and Directive #10.

11
12 
13 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

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

21
22 
23 **Forestalling corporate paralysis**

24
25 72. A critical concern is that the CUC Act's constricted scope of authority for the Executive
26 Director, and the complementary daily management by a host of Board volunteers, would
27 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before
28 CUC.

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

1
2 74. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
3 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –
4 with or without a Board in place. The complex technical problems listed above simply cannot be
5 managed on a day-to-day basis by a group of non-expert volunteers. For example, the Executive
6 Director had to be available to renegotiate CUC's fuel oil contract this year, and insure that fuel
7 supplies reached Tinian and Rota, as well as Saipan. Also, as a key witness in the recent CPUC
8 Docket 10-01, and in future rate cases, the Executive Director must be enabled to testify in favor
9 of the requested rate increase in order to fully present the required evidence.

10
11 75. No private or public utility company in the United States runs this way – with a group of
12 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in
13 the United States has mandated this form of corporate management for a public utility.

14
15 76. CUC has applied for and become eligible for millions of dollars of US ARRA grants,
16 which can substantially benefit the CNMI's infrastructure and create jobs. CUC has been
17 awarded \$11 million in grants from the EPA. But developing the grant requests and
18 implementing the grants requires management attention and expertise, part of a professionally-
19 run business organization. CUC has placed ARRA grants out for bid, so that these benefits can
20 start flowing. CUC must evaluate its needs, and hire and contract for the needed technical
21 specialists to manage the grant-funded projects. This requires a corporate structure capable of
22 making and sustaining important decisions.

23
24 77. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
25 drafting error, and the People, through their elected representatives, wish their utility company to
26 continue to supply them with essential services at a reasonable cost, meeting industry standards.



29 **Fixing CUC's technical insolvency**

30
31 78. CUC has been unable to borrow money to run its operations since the inception of this State
32 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books
33 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115
34 million. This situation may be corrected if the Executive Director is recognized to have the
35 authority to correct it. Part of this situation, the CDA relationship, has been corrected precisely
36 because the Executive Director was empowered by this Executive Order to do so.

37
38 79. 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 are less than 70% of requirements to run

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

3
4 80. 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 already-determined-insufficient
8 revenues from the sale of those services. Recent improvements in CUC finances, including the
9 issuance of audit reports, have been insufficient to allow CUC to go to market.

10
11 81. 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 82. 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 83. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It
22 also permits him to continue to run CUC, carefully manage cash to pay tens of millions of
23 dollars annually for fuel oil and purchased power, and do all the things necessary to providing
24 power, water and wastewater services, until the remaining members of a properly constituted
25 Board can be identified, confirmed, and convened for business. In February 2010 the Executive
26 Director delivered to CDA management the stock certificates required for the debt-equity
27 conversion. CUC has received the fully executed copy of the Stipulated Notice of Dismissal
28 (with prejudice) in CDA v. CUC, Superior Court Civil Action No. 01-0248D (4/21/2010), which
29 the CPUC has required that CDA provide to make effective the conversion of the CDA debt to
30 preferred equity. CUC has sought Public Utilities Commission final approval. The Commission
31 provided that approval in the rate order authorized at its May 28, 2010, business meeting. Soon,
32 CUC must be able to demonstrate to the financial community that it is properly managed, so that
33 it can borrow and pay back long term capital.



36 **Providing the basis for proper CPUC oversight**

37
38 84. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act,
39 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC
40 activities, particularly financial activities.

1 85. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
2 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's
3 error-infused creation of a volunteer Board which would run the corporation on a day-to-day
4 basis, becomes much less important than satisfying CPUC requirements.

5
6 86. What becomes very important is CUC's capability to provide the CPUC with accurate and
7 timely financial and accounting information. But such reporting is not possible without a
8 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
9 Executive Director to lead them.



12 **Addressing a critical financial challenge**

13
14 87. CUC faced a financial crisis in June 2010. It was critically short of funds to buy oil.
15 Without oil CUC would be forced to shut down its generation, bringing the economy of the
16 CNMI to a halt, and endangering health and welfare as electricity-dependent operations ceased –
17 sewage treatment, water pumping, traffic lights and security lighting, air conditioning for the
18 elderly, infants, and other medically fragile persons, and equipment at the CNMI's Hospital and
19 health clinics. The principal reason for the shortage was the Government's failure to pay
20 millions of dollars of utility bills. The Government was in arrears about four months on its bills.
21 Only by eliminating restrictions on the Governor's power to reprogram funds to address this
22 issue was crisis averted.

23
24 88. CUC only had a day or two's worth of purchased oil to power its system because it lacked
25 the funds to buy oil from its sole, cash-only supplier.

26
27 89. The Executive Director was required to spend substantial time on a concentrated basis
28 interacting with high CNMI government officials as well as developing contingency plans for
29 the orderly shut-down of the CUC system.

30
31 90. Fortunately, the Administration was able to develop a multi-stage plan to enable the
32 payment of enough CNMI Government bills, and the reprogramming of CUC funds to forestall
33 disaster. The Government is still, however, about two months in arrears on its bills.

34
35 91. In order to facilitate this solution, the Governor issued a Declaration of Disaster Emergency
36 (June 8, 2010).

37
38 92. Development of this temporary financial rescue plan would not have been possible without
39 the dedicated, focused effort of a properly empowered Executive Director. Such financial
40 conditions may continue unless the Government, and other large CUC customers, can be brought
41 current, and remain current, on their bills. This may present a challenge for CUC, given the

1 stressed financial conditions of the Commonwealth. A properly empowered Executive Director
2 will be required to address this challenge.

3
4 93. On May 11, 2010, CUC submitted to EPA a draft organization evaluation and
5 reorganization plan. But on June 14, 2010, the EPA assessed CUC a \$140,000 penalty for
6 failing to submit timely such a plan. EPA has yet to approve a master plan for CUC. In a July
7 1, 2010, official letter EPA stated its belief that CUC still lacked the technical capability to put
8 together “adequate” submissions. Importantly, CUC requires a functioning management,
9 including a properly empowered Executive Director to forestall any such additional EPA
10 punitive action.



12 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

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

21
22 95. This Declaration is necessary to protect the health and safety of our children, our senior
23 citizens, businesses and all other CNMI residents and visitors.



27 **CONCLUSION AND ORDER**

28
29 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth
30 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
31 facing the Commonwealth of the Northern Mariana Islands.

32
33 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the
34 issuance of Executive Directives setting forth the measures to be taken to address the State of
35 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

36
37 (f) In addition to any other powers conferred upon the Governor by law, the Governor
38 may, during a state of disaster emergency:

39
40 (1) Suspend the provisions of any regulatory statute prescribing the procedures
41 for conduct of the Commonwealth’s business, or the orders, rules, or regulations
42 of any Commonwealth activity or agency, if strict compliance with the provision

1 of any such statute, order, rule or regulation would in any way prevent, hinder, or
2 delay necessary action in coping with the emergency;

3
4 (2) Utilize all available resources of the Commonwealth as reasonably necessary
5 to cope with the disaster emergency of the Commonwealth;

6
7 (3) Transfer the direction, personnel, or functions of the Commonwealth
8 departments and agencies or units thereof for the purpose of performing or
9 facilitating emergency services;

10
11 3 CMC § 5121(f)(1)-(3).

12
13 By today's disaster emergency declaration, I intend to enable CUC to continue to provide
14 necessary service to the people of the Commonwealth.

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

22
23 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the
24 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

25
26
27 **DIRECTIVES**

28
29 I direct the following:

30
31 Directive 1: Deleted.

32
33 Directive 2: Deleted.

34
35 Directive 3: Deleted.

36
37 Directive 4: Deleted.

38
39 Directive 5: Deleted.

40
41 Directive 6: Deleted.

1 Directive 7: Deleted.

2
3 Directive 8: Deleted.

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

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

14
15 § 4532. Exemptions.

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

- 20
21 ~~(a) Department of Public Health. United States or Canadian board-certified physicians~~
22 ~~and dentists licensed to practice in the Commonwealth.~~
23 ~~(b) Department of Commerce. Temporary or part-time employees as needed for censuses~~
24 ~~and statistical surveys.~~
25 ~~(c) Government translators. Approved foreign national translators for: the Department of~~
26 ~~Labor, the Office of the Attorney General, the Office of the Public Defender, the~~
27 ~~Department of Public Safety, the Commonwealth Superior Court, the Commonwealth~~
28 ~~Supreme Court, and the Marianas Visitors Authority. The Attorney General shall~~
29 ~~establish guidelines for the approval of foreign national translators for the Executive~~
30 ~~Branch. The Supreme Court may establish guidelines for the approval of foreign national~~
31 ~~translators for the Judiciary.~~

32
33
34 3 CMC § 4532, as most recently amended by PL 17-1. (Strikeout is deliberately added) That is,
35 the following language is suspended: “the following”, “ on a case by case basis” and the
36 following listing:

- 37
38 “ (a) Department of Public Health. United States or Canadian board-certified physicians
39 and dentists licensed to practice in the Commonwealth.
40 “ (b) Department of Commerce. Temporary or part-time employees as needed for censuses
41 and statistical surveys.

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 further suspend and delete the "moratorium" of sec. 4601:

7
8 § 4601. Moratorium.

9
10 ~~There is hereby enacted a moratorium on the hiring of foreign national workers,~~
11 ~~as defined in 3 CMC §4911. This moratorium shall be read in conjunction with~~
12 ~~Section 4532 of Chapter 2 of this part, and said moratorium shall be strictly~~
13 ~~construed and adhered to by all agencies and instrumentalities of the~~
14 ~~Commonwealth government.~~

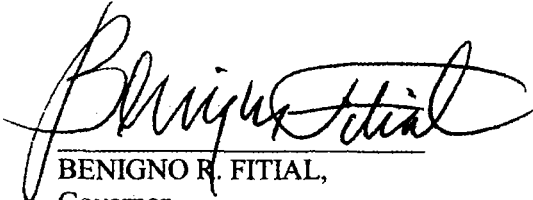
15
16 3 CMC § 4601 as most recently amended by PL 17-1. (Strikeout is deliberately added) That is,
17 the following language is suspended immediately: “There is hereby enacted a moratorium on the
18 hiring of foreign national workers, as defined in 3 CMC §4911. This moratorium shall be read in
19 conjunction with Section 4532 of Chapter 2 of this part, and said moratorium shall be strictly
20 construed and adhered to by all agencies and instrumentalities of the Commonwealth
21 government.”

22
23 I hereby direct that the effect of the suspension of the indicated language shall be that CUC shall
24 have the complete power, without regard to citizenship or otherwise lawful immigration status,
25 to hire engineers, professional employees in technical or trade areas, power plant mechanics and
26 utility technicians, either directly or indirectly. I further direct that these professional employees
27 may include, but shall not be limited to, sanitarians, engineers, accountants, financial experts,
28 information technology specialists, mechanics, electricians, well-drillers, pipefitters, plumbers,
29 wastewater treatment facilities operators, laboratory specialists and other trades technicians and
30 their professional managers.

31

1 I further direct generally that the suspension of the language for specified agencies and the
2 specified positions shall not be held as a limitation as to unnamed agencies and instrumentalities,
3 but shall continue to permit other government entities to continue to fill needed positions,
4 particularly in the areas of health care, census and translation/interpretation. Additionally,
5 suspension of the term "on a case by case basis" shall permit government entities, including,
6 notably, CUC, to develop programs and procedures that avoid the delays inherent in creating or
7 obtaining case-by-case reviews and approvals. Finally, suspension of the moratorium is not
8 intended to impede the efforts of CNMI agencies and instrumentalities in lawfully identifying
9 and filling positions with qualified citizens and legal residents.

10
11 Done this 20th day of October, 2010.

12
13
14
15
16
17
18 
19 BENIGNO R. FITIAL,
Governor

0 EO 2010-16 CUC Dis Decl (20Oct10) Governor copy.wpd



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2009-9**

2

3

4

DECLARATION OF A STATE OF DISASTER EMERGENCY:

5

**COMMONWEALTH UTILITIES CORPORATION'S
IMMINENT GENERATION AND OTHER FAILURE AND THE NEED TO
PROVIDE IMMEDIATE RELIABLE POWER, WATER AND WASTEWATER
SERVICES**

6

7

8

9

10

CONTINUATION #14

11

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24

I, **BENIGNO R. FITIAL**, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, Section 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979, do hereby declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the inability of the Commonwealth Utilities Corporation (CUC) to provide critical power generation service to the CNMI and the extreme, immediate and imminent threat such condition poses to the Commonwealth of the Northern Mariana Islands.

This Executive Order is intended to, and does, continue in effect portions of the Governor's preceding disaster emergency declarations on this matter, EO 2009-01 through -08, except as specifically modified. As more fully stated below, this Executive Order shall expire on the 31st day following the date of my signature. The following findings and conclusions further support continuation of the Declaration and issuance of directives.

1 **FINDINGS**

2
3 I find that:

4
5 1. All findings and conclusions of EO 2009-01 through -08 are incorporated by reference,
6 except as specifically varied in this Executive Order.

7
8 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

9
10 2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers
11 has continued to place CUC operations at risk. Presently CNMI law (PL 16-14) prohibits CUC
12 from hiring any more non-US technical workers than the 19 skilled professionals recently with
13 CUC. CUC has repeatedly asked the Legislature for relief from this statute regulating the
14 Government's workforce, to no avail. Further, errors in wording in the CUC enabling legislation
15 recently re-enacted, PL 16-17, as amended, would bar the Executive Director from day-to-day
16 management of the corporation, effectively shutting CUC down. This EO eliminates these
17 problems while it is in effect.

18
19 3. **Background.** CUC has substantially minimized the risk of losing the services of its owned
20 generating capacity, which losses created intermittent blackouts on portions of its system. It
21 therefore allowed the Aggreko year-long temporary power contract to terminate, as provided in
22 the agreement, effective September 12, 2009. This will save CUC customers at least \$6 million
23 per year in fees. But it still presents risks, as the strategy requires proper operation and
24 maintenance of CUC's owned engines by CUC's technical staff, and the timely securing of
25 materials and supplies.

26
27 4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction
28 of the US District Court and the US EPA, pursuant to two consent, or "stipulated", orders. The
29 first requires the upgrade and smooth functioning in virtually all aspects of CUC's water and
30 wastewater divisions. The second requires CUC to properly eliminate over 400,000 gallons of
31 used oil and to institute measures to avoid uncontrolled buildup of such inventories. Failure to
32 meet the requirements of the federal court orders could subject CUC and the CNMI to
33 substantial fines and charges, and, in the extreme, to a federal takeover of their finances.

34
35 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission (CPUC).
36 The regulator has plenary power over CUC rates, charges, fees, operations and capital
37 investments. CUC's failure to timely and competently meet CPUC orders and other
38 requirements can result in severe rate discipline, and fines and other penalties.

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

7
8 7. Without CUC electricity:

- 9
- 10 a. most CNMI economic activity would come to a halt, the courts would soon close,
11 much refrigeration and air conditioning would end, and the airports and ports
12 would be forced to rely on emergency generation and the limited oil supply for it;
 - 13
14 b. the CNMI's health and safety would immediately be at risk, since traffic signals
15 and street lighting would cease to function, emergency, fire and police facilities
16 and their communications systems, and the Hospital and island clinics would have
17 to rely on limited oil supplies for emergency generation and then cease
18 functioning, much refrigeration of food and medicines would end, as would air
19 conditioning for the elderly and medically fragile;
 - 20
21 c. the public schools and the Northern Marianas College would close. Other
22 educational institutions would close as their backup oil supplies for emergency
23 generators were exhausted; and
 - 24
25 d. water and sewage treatment would soon end. One of CUC's largest electric
26 customers is the combined CUC Water and Wastewater Divisions. CUC is the
27 sole supplier of electricity for these systems. CUC's water system relies on
28 electricity to maintain the system pressure needed to avoid the backflow of
29 pathogens, to chlorinate, and to pump, store and distribute water supplies. CUC's
30 wastewater system requires electricity to collect, pump, process, treat and
31 discharge sewage. The lack of electricity could result in sewage overflows,
32 contamination of land and water and rendering unsafe CNMI beaches, which are
33 also principal tourist destinations.
- 34
35

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

37
38 8. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain
39 and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to
40 buy many needed parts to avoid outages. CUC has begun the needed overhaul of PP #1 unit DE-

1 5 in September. In October four other units will undergo required overhaul during the ensuing
2 12-month period.

3
4 9. Adequate technical staff is essential to this work. A major challenge to carrying out this
5 rehabilitation has been finding the trained technicians needed to carry out these rehabilitation
6 projects, and maintain and run the equipment. The technicians must be ready for service when
7 needed and their services must be affordable. Any significant reduction in CUC's present
8 technical workforce could seriously compromise CUC's ability to generate and distribute power.

9
10 10. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit
11 (T & D) is dilapidated and bordering on being unsafe. There is an insufficient number of skilled
12 workers to operate T & D. The linemen must be trained to, and skillful in, meeting US
13 standards.

14
15 11. For example, Saipan's early-September brush with Typhoon Choi-Wan 15W that passed to
16 the north of Saipan, underscored the extreme vulnerability of CUC's power transmission and
17 distribution (T & D) system. Over 150 calls of no- power and line faults were fielded by crews
18 when, for a storm of this size, there should have been no more than a score. Accelerating
19 improvements to the T & D system ,with proper staff under an Emergency Order, would allow
20 CUC to "harden" the system in anticipation of a bigger storm event. The alternative, in a more
21 serious storm, is CUC's inability to recover in any reasonable time period.

22
23 12. Further, utility industry safety margins for isolated, island systems typically require a
24 reserve equal to the capacity of the two largest units; in CUC's case this would be another 15
25 MW of load, equivalent to the departed Aggreko temporary units. Meeting this reserve
26 requirement means CUC must have an adequate repair and maintenance staff.

27
28 13. The Legislature, through 3 CMC § 4972(5), as amended by PL 16-14 (Aug 27, 2008), has
29 limited CUC's ability to hire technical staff; allowing up to 19 foreign workers only. The CUC
30 Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such
31 persons as are necessary for operations, *except as otherwise limited by other law*. 4 CMC §
32 8123(h).

33
34 14. PMIC at PP #4 and Telesource on Tinian, as Independent Power Producers (IPPs), are not
35 subject to the Legislature's limitation on foreign workers.

36
37 15. There are not enough technical specialists at CUC to get the power generation work done,
38 particularly specialists with experience in the type of engines that CUC uses. CUC believes that
39 the vast majority of skill sets must come from non-US personnel.

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

5
6 17. CUC has hired some local staff recently thanks to the aggressive steps of CUC HR and the
7 Executive Director. In 2009 to date CUC has hired 9 US citizens, plus 3 skilled trade
8 technicians, foreign workers who have IR status, and an additional 9 trade technicians, for a total
9 of 21 new workers. But CUC also lost 4 US citizen technical workers, who resigned, this year.

10
11 18. CUC, as of this month, still needs 5 skilled trade technicians for power plant operations and
12 maintenance. As more units begin working after the rehabilitations are largely complete, CUC
13 will need more staff to operate and maintain them.

14
15 19. The impact of an inadequate workforce would be three-fold:

- 16
17 a. First, there would be a direct negative effect on the existing consumers. There
18 would be brownouts, or area blackouts, with the above-mentioned loss of service.
19
20 b. Second, the power plants would again degrade, producing more of these outages.
21
22 c. Third, there would be an indirect effect, increasing rates, because small
23 consumers would have to shoulder more of the fixed costs of the CUC system.
24 First, there would be loss of large customers. If the hotels were to become part of
25 the system, they could help pay CUC fixed costs, which would lower everyone
26 else's rates. The hotels need reliable, 24/7 power. But with unreliable power,
27 CUC would be unable to convince large commercial customers, particularly the
28 hotels, to join, or rejoin, its system. Second, would come additional expenses. If
29 CUC fails to meet federal court deadlines for the stipulated orders, the Court
30 could appoint a federal receiver and its consulting team – with all expenses
31 charged to CUC customers. Thus, the indirect effect of an inadequate workforce
32 would be to boost rates.

33
34 20. Rota has recently suffered blackouts from inadequate generator maintenance. The power
35 plant's other facilities and the island's distribution system similarly need the attentions of
36 additional manpower. The present alternative for Rota is akin to Saipan's – purchasing higher
37 cost power from the Rota Resort. Two Rota units must undergo overhaul.

38
39 21. Since EO 2009-8 late last month, and the suspension of the harmful legislative employment
40 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and

1 Rota power generation facilities. Hired were 11 foreign workers. Another 3 foreign workers
2 are awaiting authorization from their current employer to transfer to CUC. CUC needs to
3 continue trying to get to the level of 14 additional, foreign national skilled workers it anticipated
4 last month. Further, CUC needs to be able to hire beyond 14 additional, foreign nationals as the
5 work requires. Otherwise, if CUC had to discharge these workers its staffing levels would
6 return to those which overworked its limited staff. For example, over pay period numbers 2
7 through 11 of the year 2009, CUC accumulated 18,053 hours of overtime from technical
8 employees who each worked 40 or more hours of overtime in a pay period. This condition is
9 extreme, and a repeat can result in inefficiencies and poor work quality. It can lead to dangerous
10 mistakes, producing injury or death.

11
12 22. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The
13 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set
14 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6
15 million-per-year benefit of terminating the Aggreko temporary power contract.

16
17 23. CUC has demonstrated that the required workers are available as nonresident workers, and
18 cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign
19 national workers is necessary to ensure the delivery of uninterrupted power services to the
20 people of the Commonwealth.

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

24
25 24. CUC has taken concrete steps to address the storage and disposal of used oil, consonant
26 with the federal court's Stip Order 2. Federal court Stipulated Order # 2, relates to the used oil
27 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.
28 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an
29 adequate complement of trained technical employees, CUC can meet these requirements.

30
31 25. Recent inspection by the US Coast Guard (USCG) has resulted in the imposition of another
32 cost that was unanticipated even with Stip Order 2. The USCG now requires additional and
33 more stringent measures to contain or eliminate the possibility of any oil reaching the ocean
34 from Power Plants 1, 2 and the power plant in Rota. This requires trained staff.

35
36
37 **Complying with the federal court order on managing the water and wastewater systems**

38
39 26. As long as the Water and Wastewater Divisions can hire competent staff and receive power
40 from the Power Division, they can function.

1
2 27. The U.S. Department of Justice (DoJ), Environment and Natural Resources Division, has
3 sued CUC in federal court to come into compliance with critical water and sewage treatment
4 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) (“Stip Order
5 1”). *See also* http://www.usdoj.gov/enrd/Consent_Decrees.html. In July 2008 CUC, the CNMI
6 and (in September 2008) the U.S. Environmental Protection Agency (EPA) stipulated to this first
7 of two orders lodged with the U.S. District Court on the date the Complaint was filed. This
8 order requires CUC to implement a series of improvements to its water and wastewater systems
9 that respond to years of neglect, for which it presently lacks the funds and the complete technical
10 capability. CUC must be able to hire the staff to perform the required technical functions.

11
12 28. The Water and Wastewater Divisions cannot carry out their missions without adequate
13 staff. While the bulk of their employees are drawn from local and US populations, their
14 management estimates that at least 4 trained foreign technicians will be required – an
15 instrumentation specialist, a generator repair/rehab specialist with extensive transfer switch
16 experience, a fabrication specialist, with steel/aluminum and strong inert gas welding
17 experience, and an experienced wastewater treatment operator.

18
19 29. CUC also requires a constant supply of electricity to run its water and wastewater treatment
20 systems. CUC has very limited on-site emergency generation capability for only portions of
21 these systems.

22
23
24 **Meeting US District Court and CNMI PUC requirements to produce timely, accurate**
25 **financial reports**

26
27 30. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
28 beginning this month. The IFP must develop over time, becoming more than “interim”. CUC
29 cannot do this unless it has a staff of trained accounting and other financial experts who can
30 gather data, put the data in the required form and generate the IFP and its later versions.

31
32 31. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities
33 Commission (CPUC). The CPUC is charged by statute to oversee carefully CUC’s operations
34 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC’s
35 water and wastewater systems.

36
37 32. In its most recent electric and water/wastewater orders, of September 3, 2009, the CPUC
38 addressed CUC’s inability to deliver complete on-time financial reports, requiring CUC, in
39 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.’s

1 09-1 and 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations at
2 its November meeting.

3
4 33. CUC cannot upgrade its financial and accounting staff unless it has a staff of trained
5 accounting and other financial experts who can gather data, put the data in the required form and
6 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
7 staff with the data required for their oversight.

8
9 34. CUC has lost 2 senior accountants plus a related specialist. The IT and billing department
10 last month was reduced by one staffer, having advertised for a replacement for 4 weeks to no
11 avail. While it appeared that CUC might have to look to employing foreign technical specialists,
12 CUC has just hired back 2 former accountants and anticipates bringing a third person aboard in
13 October. All are US citizens. Nonetheless, CUC must have the flexibility to hire competent
14 professionals as needed.

15
16 35. To summarize: Without properly trained technical staff CUC's ability to supply power is at
17 risk. So is its ability to manage the rest of its systems, including its finances and accounting.
18 CUC's services could not be adequately staffed without last month's immediate lifting of the
19 artificial legislative regulation of CUC's workforce, in EO 2009-08, Directive #10, suspending
20 the limitations on CUC hiring foreign workers. It is obvious that the hiring authority must be
21 continued.

22
23 36. There is no indication that any of the above manpower situation will be resolved in the next
24 month without continuation in effect of this EO and Directive #10.

25
26
27 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

28
29 37. **Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and
30 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors
31 in the position of day-to-day management of the corporation, and requires a complex mix of
32 technical, geographic and other qualifications for Board membership. There is no Board because
33 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot
34 take a critical step toward solvency and the ability to borrow to finance its work.

1 **Forestalling corporate paralysis**

2
3 38. A critical concern is that the CUC Act's constricted scope of authority for the Executive
4 Director, and the complementary daily management by a host of volunteers, would paralyze the
5 corporation. This is particularly worrisome in light of the above-listed tasks before CUC.

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

18
19 40. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
20 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –
21 with or without a Board in place.

22
23 41. No private or public utility company in the United States runs this way – with a group of
24 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in
25 the United States has mandated this form of corporate management for a public utility.

26
27 42. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
28 drafting error, and the People, through their elected representatives, wish their utility company to
29 continue to supply them with essential services at a reasonable cost, meeting industry standards.

30
31
32 **Fixing CUC's technical insolvency**

33
34 43. CUC has been unable to borrow money to run its operations since the inception of this State
35 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books
36 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115
37 million. This situation may be corrected if the Executive Director is recognized to have the
38 authority to correct it.

1 44. The booked CDA obligation has rendered CUC nominally insolvent. While CUC is deemed
2 insolvent, CUC cannot borrow money. But CUC must be able to borrow money to bridge the
3 gap between (a) the need to spend money on essential goods and services to provide electricity,
4 and (b) the lagged collection of revenues from the sale of that electricity.

5
6 45. The CPUC, in its September 3 electric order, Docket No. 09-1, approved a CUC-CDA
7 settlement converting the CDA debt to preferred stock. But the deal requires CUC's Board to
8 agree to it.

9
10 46. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
11 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
12 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find
13 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
14 Nonetheless, CUC must continue to function, including borrowing money.

15
16 47. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It
17 also permits him to continue to run CUC, providing power, water and wastewater services, until
18 the remaining members of a properly constituted Board can be identified, confirmed, and
19 convened for business.

20
21
22 **Providing the basis for proper CPUC oversight**

23
24 48. The statutory scheme of utility regulation provides that the utility regulator, the CPUC, will
25 carefully examine CUC activities, particularly financial activities.

26
27 49. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
28 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's
29 error-infused creation of a Board which would run the corporation on a day-to-day basis,
30 becomes much less important than satisfying CPUC requirements.

31
32 50. What becomes very important is CUC's capability to provide the CPUC with accurate and
33 timely financial and accounting information. But such reporting is not possible without a
34 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
35 Executive Director to lead them.

1 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

2
3 51. There is no Legislative relief coming. For months CUC has repeatedly asked the
4 Legislature for such relief, including submission of draft legislation in July. The Legislature has
5 declined to respond. There is no alternative to providing this relief other than an order from the
6 Governor. Inaction will produce a disaster in which CUC is unable to provide its critical
7 community services. Directives # 9 and #10 were designed to avert this crisis. (The other
8 Directives, #1 through #8, are no longer relevant, and have been discontinued.)
9

10 52. This Declaration is necessary to protect the health and safety of our children, our senior
11 citizens, businesses and all other CNMI residents and visitors.
12
13
14

15 **CONCLUSION AND ORDER**

16
17 Therefore, I hereby invoke my authority under Article III, § 10 of the Commonwealth
18 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
19 facing the Commonwealth of the Northern Mariana Islands.
20

21 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the
22 issuance of Executive Directives setting forth the measures to be taken to address the State of
23 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:
24

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

27
28 (1) Suspend the provisions of any regulatory statute prescribing the procedures
29 for conduct of the Commonwealth's business, or the orders, rules, or regulations
30 of any Commonwealth activity or agency, if strict compliance with the provision
31 of any such statute, order, rule or regulation would in any way prevent, hinder, or
32 delay necessary action in coping with the emergency;

33
34 (2) Utilize all available resources of the Commonwealth as reasonably necessary
35 to cope with the disaster emergency of the Commonwealth;

36
37 (3) Transfer the direction, personnel, or functions of the Commonwealth
38 departments and agencies or units thereof for the purpose of performing or
39 facilitating emergency services;
40

EO 2009-9

Declaration of Disaster Emergency: CUC Continuation 14

1 3 CMC § 5121(f)(1)-(3).

2
3 By today's disaster emergency declaration, I intend to enable CUC to continue to provide
4 necessary service to the people of the Commonwealth.

5
6 This Declaration of a State of Disaster Emergency shall take effect immediately and all
7 memoranda, directives and other measures taken in accordance with this Declaration shall
8 remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the
9 end of the thirty (30) day period, notify the Presiding Officers of the Legislature that the state of
10 emergency has been lifted or has been extended for an additional period of thirty (30) days. 1
11 CMC § 7403(a); 3 CMC § 5121(c).

12
13 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the
14 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

15
16
17 **DIRECTIVES**

18
19 I direct the following:

20
21 Directive 1: Deleted.

22
23 Directive 2: Deleted.

24
25 Directive 3: Deleted.

26
27 Directive 4: Deleted.

28
29 Directive 5: Deleted.

30
31 Directive 6: Deleted.

32
33 Directive 7: Deleted.

34
35 Directive 8: Deleted.

36
37 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board,
38 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)
39 the confirmation and convening of an operating CUC Board, or (2) the termination of the
40 authority of this order. In particular, the Executive Director shall have full power and authority

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Declaration of Disaster Emergency: CUC Continuation 14

1 to agree to swap CDA debt and related obligations for preferred stock and related features and
2 rights.

3
4 Directive 10: The following strike-out-formatted language of the quoted provision of the
5 following statute regulating government employment is, as indicated, suspended immediately:
6

7 (b) Transition exemptions for government employment. . . . (5) Commonwealth
8 Utilities Corporation. Engineers, and professional employees in technical or trade
9 areas may be exempted and CUC may contract with manpower services or
10 directly hire power plant mechanics and utility technicians who may be
11 exempted; ~~provided that direct or manpower hire of foreign national workers shall~~
12 ~~not exceed nineteen (19) employees. This exemption shall expire on September~~
13 ~~30, 2010, and no contract may provide to the contrary.~~
14

15 3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original) That is,
16 the following language is suspended: “provided that direct or manpower hire of foreign national
17 workers shall not exceed nineteen (19) employees. This exemption shall expire on September
18 30, 2010, and no contract may provide to the contrary.”
19

20 The effect of the suspension shall be that CUC shall have the complete power, without regard to
21 citizenship or otherwise lawful immigration status, to hire engineers, professional employees in
22 technical or trade areas, power plant mechanics and utility technicians, either directly or
23 indirectly. These professional employees may include, but shall not be limited to, sanitarians,
24 engineers, accountants, financial experts, information technology specialists, mechanics,
25 electricians, well-drillers, pipefitters, plumbers, wastewater treatment facilities operators, and
26 other trades technicians.
27

28
29 Done this 27th day of September 2009.
30

31
32 
33
34 BENIGNO R. FITIAL
35 Governor
36

0 EO 2009-09 CUC Dir Decl (27Sept09).wpd



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

DECLARATION OF HEALTH EMERGENCY

WHEREAS the Commonwealth is experiencing an increasing rate of deaths among community members that can be attributed to lack of health care; and.

WHEREAS the current systems of health care delivery are overtaxed with less than needed numbers of physicians and nurses available to serve medical needs; and.

WHEREAS the rate of off-island referrals has increased to the point where it poses a fiscal threat to the economic stability of the Executive Branch; and.

WHEREAS the Department of Public Health is unable to address this situation within the existing regulatory structure.

NOW THEREFORE I Benigno R. Fitial do hereby **DECLARE A STATE OF HEALTH EMERGENCY** for the Commonwealth and direct the following action to occur forthwith:

1. Within fifteen (15) days of this Declaration, the Department of Public Health shall submit a written plan to move the Commonwealth from its present "medical emergency" status to an acceptable level of care.

DATED:

10/20/09

BY:

Benigno R. Fitial
Benigno R. Fitial
Governor



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2009-11**

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 #15**

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 power
17 generation service to the CNMI and the extreme, immediate and imminent threat such condition
18 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, except as
22 specifically modified. As more fully stated below, this Executive Order shall expire on the 31st
23 day following the date of my signature. The following findings and conclusions further support
24 continuation of the Declaration and issuance of directives.

1 **FINDINGS**

2
3 I find that:

4
5 1. All findings and conclusions of EO 2009-01 through -09 are incorporated by reference,
6 except as specifically varied in this Executive Order.

7
8 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

9
10 2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers
11 has continued to place CUC operations at risk. Presently CNMI law (PL 16-14) prohibits CUC
12 from hiring any more non-US technical workers than the 19 skilled professionals recently with
13 CUC. CUC has repeatedly asked the Legislature for relief from this statute regulating the
14 Government's workforce, to no avail. Further, errors in wording in the CUC enabling legislation
15 recently re-enacted, PL 16-17, as amended, would bar the Executive Director from day-to-day
16 management of the corporation, effectively shutting CUC down. This EO eliminates these
17 problems while it is in effect.

18
19 3. **Background.** CUC has substantially minimized the risk of losing the services of its owned
20 generating capacity, which losses created intermittent blackouts on portions of its system. It
21 therefore allowed the Aggreko year-long temporary power contract to terminate, as provided in
22 the agreement, effective September 12, 2009. This will save CUC customers at least \$6 million
23 per year in fees. But it still presents risks, as the strategy requires proper operation and
24 maintenance of CUC's owned engines by CUC's technical staff, and the timely securing of
25 materials and supplies.

26
27 4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction
28 of the US District Court and the US EPA, pursuant to two consent, or "stipulated", orders. The
29 first requires the upgrade and smooth functioning in virtually all aspects of CUC's water and
30 wastewater divisions. The second requires CUC to properly eliminate over 400,000 gallons of
31 used oil and to institute measures to avoid uncontrolled buildup of such inventories. Failure to
32 meet the requirements of the federal court orders could subject CUC and the CNMI to
33 substantial fines and charges, and, in the extreme, to a federal takeover of their finances.

34
35 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission (CPUC).
36 The regulator has plenary power over CUC rates, charges, fees, operations and capital
37 investments. CUC's failure to timely and competently meet CPUC orders and other
38 requirements can result in severe rate discipline, and fines and other penalties.

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

7
8 7. Without CUC electricity:

- 9
- 10 a. most CNMI economic activity would come to a halt, the courts would soon close,
11 much refrigeration and air conditioning would end, and the airports and ports
12 would be forced to rely on emergency generation and the limited oil supply for it;
13
 - 14 b. the CNMI's health and safety would immediately be at risk, since traffic signals
15 and street lighting would cease to function, emergency, fire and police facilities
16 and their communications systems, and the Hospital and island clinics would have
17 to rely on limited oil supplies for emergency generation and then cease
18 functioning, much refrigeration of food and medicines would end, as would air
19 conditioning for the elderly and medically fragile;
20
 - 21 c. the public schools and the Northern Marianas College would close. Other
22 educational institutions would close as their backup oil supplies for emergency
23 generators were exhausted; and
24
 - 25 d. water and sewage treatment would soon end. One of CUC's largest electric
26 customers is the combined CUC Water and Wastewater Divisions. CUC is the
27 sole supplier of electricity for these systems. CUC's water system relies on
28 electricity to maintain the system pressure needed to avoid the backflow of
29 pathogens, to chlorinate, and to pump, store and distribute water supplies. CUC's
30 wastewater system requires electricity to collect, pump, process, treat and
31 discharge sewage. The lack of electricity could result in sewage overflows,
32 contamination of land and water and rendering unsafe CNMI beaches, which are
33 also principal tourist destinations.
34

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

37
38 8. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain
39 and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to
40 buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in

1 September. In October four other units have begun required overhaul, which will take 12
2 months. In November, the following work must start, and will last for varying periods of time:
3 The critical replacement of the PP #1 anchor bolts, in order to stop the shifting and vibration that
4 has ruined the plant; foundation repairs to Engines 1 and 8; and, shortly thereafter the
5 replacement of turbochargers and oil water separators. All this work is essential.
6

7 9. Adequate technical staff is essential to this work. A major challenge to carrying out this
8 rehabilitation has been finding the trained technicians needed to carry out these rehabilitation
9 projects, and maintain and run the equipment. The technicians must be ready for service when
10 needed and their services must be affordable. Any significant reduction in CUC's present
11 technical workforce could seriously compromise CUC's ability to generate and distribute power.
12

13 10. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit
14 (T & D) is dilapidated and bordering on being unsafe. There is an insufficient number of skilled
15 workers to operate T & D. The linemen must be trained to, and skillful in, meeting US
16 standards. The critical upcoming projects in T & D include the replacement of the antiquated,
17 rundown and unsafe vehicle fleet; the redesign of T & D using national Rural Utility Service
18 standards; the replacement/installation of insulators, transformers, overcurrent protection,
19 sectionalizers and the installation of efficient LED streetlighting.
20

21 11. For example, Saipan's early-September brush with Typhoon Choi-Wan 15W that passed to
22 the north of Saipan, and typhoon Melor, which passed just north of Saipan in October,
23 underscored the extreme vulnerability of CUC's power transmission and distribution (T & D)
24 system. In September, over 150 calls of no- power and line faults were fielded by crews when,
25 for a storm of this size, there should have been no more than a score. In October, fortunately, the
26 CUC power system avoided a direct hit from a supertyphoon. Accelerating improvements to the
27 T & D system, with proper staff under an Emergency Order, would allow CUC to "harden" the
28 system in anticipation of a bigger storm event. The alternative, in a more serious storm, is
29 CUC's inability to recover in any reasonable time period.
30

31 12. Further, utility industry safety margins for isolated, island systems typically require a
32 reserve equal to the capacity of the two largest units; in CUC's case this would be another 15
33 MW of load, equivalent to the departed Aggreko temporary units. Meeting this reserve
34 requirement means CUC must have an adequate repair and maintenance staff.
35

36 13. The Legislature, through 3 CMC § 4972(5), as amended by PL 16-14 (Aug 27, 2008), has
37 limited CUC's ability to hire technical staff; allowing up to 19 foreign workers only. The CUC
38 Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such
39 persons as are necessary for operations, *except as otherwise limited by other law.* 4 CMC §
40 8123(h).

1
2 14. PMIC at PP #4 and Telesource on Tinian, as Independent Power Producers (IPPs), are not
3 subject to the Legislature's limitation on foreign workers.
4

5 15. There are not enough technical specialists at CUC to get the power generation work done,
6 particularly specialists with experience in the type of engines that CUC uses. CUC believes that
7 the vast majority of skill sets must come from non-US personnel.
8

9 16. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding
10 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after
11 interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator
12 candidates were US citizens.
13

14 17. CUC has hired some local staff recently thanks to the aggressive steps of CUC HR, the
15 Executive Director and Directive 10.
16

17 18. Therefore, CUC, as of this month, still needs skilled trade technicians for power plant
18 operations and maintenance. The Power Division still needs a trades technician. The Division
19 just hired a welder and is waiting for the paperwork on another trades technician. For Rota,
20 CUC has announced the need for a mechanic-operator and an electrical operator. As more units
21 begin working after the rehabilitations are largely complete, CUC will need more staff to operate
22 and maintain them.
23

24 19. The impact of an inadequate workforce would be three-fold:
25

- 26 a. First, there would be a direct negative effect on the existing consumers. There
27 would be brownouts, or area blackouts, with the above-mentioned loss of service.
28
29 b. Second, the power plants would again degrade, producing more of these outages.
30
31 c. Third, there would be an indirect effect, increasing rates, because small
32 consumers would have to shoulder more of the fixed costs of the CUC system. First, there would be loss of large customers. If the hotels were to become part of
33 the system, they could help pay CUC fixed costs, which would lower everyone
34 else's rates. The hotels need reliable, 24/7 power. But with unreliable power, CUC would be unable to convince large commercial customers, particularly the
35 hotels, to join, or rejoin, its system. Second, would come additional expenses. If
36 CUC fails to meet federal court deadlines for the stipulated orders, the Court
37 could appoint a federal receiver and its consulting team – with all expenses
38
39

1 charged to CUC customers. Thus, the indirect effect of an inadequate workforce
2 would be to boost rates.

3
4 20. Rota has recently suffered blackouts from inadequate generator maintenance. The power
5 plant's other facilities and the island's distribution system similarly need the attentions of
6 additional manpower. The present alternative for Rota is akin to Saipan's – purchasing higher
7 cost power from the Rota Resort. Two Rota units must undergo overhaul. Rota's status today is
8 precarious, with only one dependable engine running

9
10 21. Since E0 2009-8 in August, and the suspension of the harmful legislative employment
11 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and
12 Rota power generation facilities. CUC needs to be able to hire the workers it needs when it
13 needs them. Otherwise, if CUC had to discharge these workers its staffing levels would return to
14 those which overworked its limited staff. For example, over pay period numbers 2 through 11 of
15 the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who each
16 worked 40 or more hours of overtime in a pay period. This condition is extreme, and a repeat
17 can result in inefficiencies and poor work quality. It can lead to dangerous mistakes, producing
18 injury or death.

19
20 22. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The
21 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set
22 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6
23 million-per-year benefit of terminating the Aggreko temporary power contract.

24
25 23. CUC has demonstrated that the required workers are available as nonresident workers, and
26 cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign
27 national workers is necessary to ensure the delivery of uninterrupted power services to the
28 people of the Commonwealth.

29
30
31 **Complying with the federal court order on disposal of used oil**

32
33 24. CUC has taken concrete steps to address the storage and disposal of used oil, consonant
34 with the federal court's Stip Order 2. Federal court Stipulated Order # 2, relates to the used oil
35 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.
36 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an
37 adequate complement of trained technical employees, CUC can meet these requirements.

38
39 25. A September inspection by the US Coast Guard (USCG) has resulted in the imposition of
40 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional

1 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean
2 from Power Plants 1, 2 and the power plant in Rota. Further, as of October, CUC faces the
3 following staffing needs in this area: It critically needs the resources to inspect and redesign, the
4 entire fuel storage, pumping and handling system in order to meet the more stringent
5 requirements of today. The clean fuel storage tanks at Lower Base were originally designed for
6 another application. The fuel line from the oil company's terminal is in danger of rupturing
7 during a transfer; the pumping rate has to be reduced to prevent this. This requires trained staff.
8
9

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

11
12 26. As long as the Water and Wastewater Divisions can hire competent staff and receive power
13 from the Power Division, they can function.
14

15 27. The U.S. Department of Justice (DoJ), Environment and Natural Resources Division, has
16 sued CUC in federal court to come into compliance with critical water and sewage treatment
17 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) (“Stip Order
18 1”). *See also* http://www.usdoj.gov/enrd/Consent_Decrees.html. In July 2008 CUC, the CNMI
19 and (in September 2008) the U.S. Environmental Protection Agency (EPA) stipulated to this first
20 of two orders lodged with the U.S. District Court on the date the Complaint was filed. This
21 order requires CUC to implement a series of improvements to its water and wastewater systems
22 that respond to years of neglect, for which it presently lacks the funds and the complete technical
23 capability. CUC must be able to hire the staff to perform the required technical functions.
24

25 28. The Water and Wastewater Divisions cannot carry out their missions without adequate
26 staff. These staff are essential to clean, safe water supplies and removal of stormwater and
27 sewage in a safe, timely manner. While the bulk of their employees are drawn from local and
28 US populations, their management estimates that, as of October, at least 4 trained foreign
29 technicians will be required – an instrumentation specialist, a generator repair/rehab specialist
30 with extensive transfer switch experience, a fabrication specialist, with steel/aluminum and
31 strong inert gas welding experience, and an experienced wastewater treatment operator.
32

33 29. CUC also requires a constant supply of electricity to run its water and wastewater treatment
34 systems. CUC has very limited on-site emergency generation capability for only portions of
35 these systems.
36

37
38 **Meeting US District Court and CNMI PUC requirements to produce timely, accurate**
39 **financial reports**
40

1 30. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
2 beginning in September. The IFP must develop over time, becoming more than “interim”. CUC
3 cannot do this unless it has a staff of trained accounting and other financial experts who can
4 gather data, put the data in the required form and generate the IFP and its later versions.
5

6 31. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities
7 Commission (CPUC). The CPUC is charged by statute to oversee carefully CUC’s operations
8 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC’s
9 water and wastewater systems.
10

11 32. In its most recent electric and water/wastewater orders, of September 3, 2009, the CPUC
12 addressed CUC’s inability to deliver complete on-time financial reports, requiring CUC, in
13 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.’s
14 09-1 and 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations at
15 its November meeting.
16

17 33. CUC cannot upgrade its financial and accounting staff unless it has a staff of trained
18 accounting and other financial experts who can gather data, put the data in the required form and
19 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
20 staff with the data required for their oversight.
21

22 34. CUC has lost 2 senior accountants plus a related specialist. The IT and billing department
23 in August was reduced by one staffer, having advertised for a replacement for 4 weeks to no
24 avail. While it appeared that CUC might have to look to employing foreign technical specialists,
25 CUC has hired back 2 former accountants in September and is bringing on a third person aboard
26 in October. All are US citizens. Nonetheless, CUC must have the flexibility to hire competent
27 professionals as needed. CUC is still short-staffed, however, and needs an accounting assistant
28 and a specialist.
29

30 35. To summarize: Without properly trained technical staff CUC’s ability to supply power is at
31 risk. So is its ability to manage the rest of its systems, including its finances and accounting.
32 CUC’s services could not be adequately staffed without August’s lifting of the artificial
33 legislative regulation of CUC’s workforce, in EO 2009-08, Directive #10, suspending the
34 limitations on CUC hiring foreign workers. It is obvious that the hiring authority must be
35 continued.
36

37 36. There is no indication that any of the above manpower situation will be resolved in the next
38 month without continuation in effect of this EO and Directive #10.
39
40

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

2
3 **37. Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and
4 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors
5 in the position of day-to-day management of the corporation, and requires a complex mix of
6 technical, geographic and other qualifications for Board membership. There is no Board because
7 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot
8 take a critical step toward solvency and the ability to borrow to finance its work.
9

10
11 **Forestalling corporate paralysis**

12
13 **38.** A critical concern is that the CUC Act's constricted scope of authority for the Executive
14 Director, and the complementary daily management by a host of Board volunteers, would
15 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before
16 CUC.
17

18 **39.** A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC
19 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and
20 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133
21 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and
22 property), demonstrates that the Executive Director is to be left with little more to do than
23 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70
24 million/year corporation, on a day-to-day basis. This includes such decision-making as
25 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning
26 work crews, connecting customers, deciding on making repairs, collecting debts, complying with
27 the details of federal and CPUC regulatory requirements, making and funding long-term
28 technical power and water/wastewater plans, and insuring that, on a day-to-day basis, the power
29 and water flow and the sewage is treated.
30

31 **40.** Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
32 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –
33 with or without a Board in place.
34

35 **41.** No private or public utility company in the United States runs this way – with a group of
36 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in
37 the United States has mandated this form of corporate management for a public utility.
38

1 42. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
2 drafting error, and the People, through their elected representatives, wish their utility company to
3 continue to supply them with essential services at a reasonable cost, meeting industry standards.
4

5
6 **Fixing CUC's technical insolvency**
7

8 43. CUC has been unable to borrow money to run its operations since the inception of this State
9 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books
10 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115
11 million. This situation may be corrected if the Executive Director is recognized to have the
12 authority to correct it.
13

14 44. The booked CDA obligation has rendered CUC nominally insolvent. While CUC is deemed
15 insolvent, CUC cannot borrow money. But CUC must be able to borrow money to bridge the
16 gap between (a) the need to spend money on essential goods and services to provide electricity,
17 and (b) the lagged collection of revenues from the sale of that electricity.
18

19 45. The CPUC, in its September 3 electric order, Docket No. 09-1, approved a CUC-CDA
20 settlement converting the CDA debt to preferred stock. But the deal requires CUC's Board to
21 agree to it.
22

23 46. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
24 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
25 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find
26 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
27 Nonetheless, CUC must continue to function, including borrowing money.
28

29 47. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It
30 also permits him to continue to run CUC, providing power, water and wastewater services, until
31 the remaining members of a properly constituted Board can be identified, confirmed, and
32 convened for business.
33

34
35 **Providing the basis for proper CPUC oversight**
36

37 48. The statutory scheme of utility regulation provides that the utility regulator, the CPUC, will
38 carefully examine CUC activities, particularly financial activities.
39

1 49. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
2 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's
3 error-infused creation of a Board which would run the corporation on a day-to-day basis,
4 becomes much less important than satisfying CPUC requirements.

5
6 50. What becomes very important is CUC's capability to provide the CPUC with accurate and
7 timely financial and accounting information. But such reporting is not possible without a
8 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
9 Executive Director to lead them.

10
11
12 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

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

20
21 52. This Declaration is necessary to protect the health and safety of our children, our senior
22 citizens, businesses and all other CNMI residents and visitors.

23
24
25
26 **CONCLUSION AND ORDER**

27
28 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth
29 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
30 facing the Commonwealth of the Northern Mariana Islands.

31
32 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the
33 issuance of Executive Directives setting forth the measures to be taken to address the State of
34 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

35
36 (f) In addition to any other powers conferred upon the Governor by law, the Governor
37 may, during a state of disaster emergency:

38
39 (1) Suspend the provisions of any regulatory statute prescribing the procedures
40 for conduct of the Commonwealth's business, or the orders, rules, or regulations

1 of any Commonwealth activity or agency, if strict compliance with the provision
2 of any such statute, order, rule or regulation would in any way prevent, hinder, or
3 delay necessary action in coping with the emergency;

4
5 (2) Utilize all available resources of the Commonwealth as reasonably necessary
6 to cope with the disaster emergency of the Commonwealth;

7
8 (3) Transfer the direction, personnel, or functions of the Commonwealth
9 departments and agencies or units thereof for the purpose of performing or
10 facilitating emergency services;

11
12 3 CMC § 5121(f)(1)-(3).

13
14 By today's disaster emergency declaration, I intend to enable CUC to continue to provide
15 necessary service to the people of the Commonwealth.

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

23
24 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the
25 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).

26
27
28 **DIRECTIVES**

29
30 I direct the following:

31
32 Directive 1: Deleted.

33
34 Directive 2: Deleted.

35
36 Directive 3: Deleted.

37
38 Directive 4: Deleted.

39
40 Directive 5: Deleted.

EO 2009-11
Declaration of Disaster Emergency: CUC Continuation 15

1
2 Directive 6: Deleted.

3
4 Directive 7: Deleted.

5
6 Directive 8: Deleted.

7
8 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board,
9 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)
10 the confirmation and convening of an operating CUC Board, or (2) the termination of the
11 authority of this order. In particular, the Executive Director shall have full power and authority
12 to agree to swap CDA debt and related obligations for preferred stock and related features and
13 rights.

14
15 Directive 10: The following strike-out-formatted language of the quoted provision of the
16 following statute regulating government employment is, as indicated, suspended immediately:

17
18 (b) Transition exemptions for government employment. . . . (5) Commonwealth
19 Utilities Corporation. Engineers, and professional employees in technical or trade
20 areas may be exempted and CUC may contract with manpower services or
21 directly hire power plant mechanics and utility technicians who may be
22 exempted; ~~provided that direct or manpower hire of foreign national workers shall~~
23 ~~not exceed nineteen (19) employees. This exemption shall expire on September~~
24 ~~30, 2010, and no contract may provide to the contrary.~~

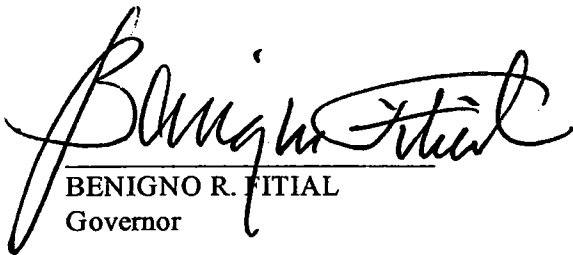
25
26 3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original; ~~strikeout~~
27 ~~is deliberately added~~) That is, the following language is suspended: “provided that direct or
28 manpower hire of foreign national workers shall not exceed nineteen (19) employees. This
29 exemption shall expire on September 30, 2010, and no contract may provide to the contrary.”
30

EO 2009-11

Declaration of Disaster Emergency: CUC Continuation 15

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

10 Done this 27th day of October 2009.
11
12

13
14 
15
16 BENIGNO R. FITIAL
17 Governor

0 EO 2009-11 CUC Dis Decl (27Oct09).wpd



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2009-12**

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 #16**

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 power
17 generation service to the CNMI and the extreme, immediate and imminent threat such condition
18 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,
22 except as specifically modified. As more fully stated below, this Executive Order shall expire on
23 the 31st day following the date of my signature. The following findings and conclusions further
24 support continuation of the Declaration and issuance of directives.

1 **FINDINGS**

2
3 I find that:

4
5 1. All findings and conclusions of EO 2009-01 through -09, and -11 are incorporated by
6 reference, except as specifically varied in this Executive Order.

7
8 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

9
10 2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers
11 has continued to place CUC operations at risk. Presently CNMI law (PL 16-14) prohibits CUC
12 from hiring any more non-US technical workers than the 19 skilled professionals recently with
13 CUC. CUC has repeatedly asked the Legislature for relief from this statute regulating the
14 Government's workforce, to no avail. Further, errors in wording in the CUC enabling legislation
15 recently re-enacted, PL 16-17, as amended, would bar the Executive Director from day-to-day
16 management of the corporation, effectively shutting CUC down. This EO eliminates these
17 problems while it is in effect.

18
19 3. **Background.** CUC has substantially minimized the risk of losing the services of its owned
20 generating capacity, which losses created intermittent blackouts on portions of its system. It
21 therefore allowed the Aggreko year-long temporary power contract to terminate, as provided in
22 the agreement, effective September 12, 2009. This saves CUC customers at least \$6 million per
23 year in fees. But it still presents risks, as the strategy requires proper operation and maintenance
24 of CUC's owned engines by CUC's technical staff, and the timely securing of materials and
25 supplies.

26
27 4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction
28 of the US District Court and the US EPA, pursuant to two consent, or "stipulated", orders. The
29 first requires the upgrade and smooth functioning in virtually all aspects of CUC's water and
30 wastewater divisions. The second requires CUC to properly eliminate over 400,000 gallons of
31 used oil and to institute measures to avoid uncontrolled buildup of such inventories. Failure to
32 meet the requirements of the federal court orders could subject CUC and the CNMI to
33 substantial fines and charges, and, in the extreme, to a federal takeover of their finances.

34
35 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission ("CPUC").
36 The regulator has plenary power over CUC rates, charges, fees, operations and capital
37 investments. CUC's failure to timely and competently meet CPUC orders and other
38 requirements can result in severe rate discipline, and fines and other penalties.

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

7
8 7. Without CUC electricity:

- 9
- 10 a. most CNMI economic activity would come to a halt, the courts would soon close,
11 much refrigeration and air conditioning would end, and the airports and ports
12 would be forced to rely on emergency generation and the limited, expensive oil
13 supply for it;
 - 14
15 b. the CNMI's health and safety would immediately be at risk, since traffic signals
16 and street lighting would cease to function, emergency, fire and police facilities
17 and their communications systems, and the Hospital and island clinics would have
18 to rely on limited oil supplies for emergency generation and then cease
19 functioning, much refrigeration of food and medicines would end, as would air
20 conditioning for the elderly and medically fragile;
 - 21
22 c. the public schools and the Northern Marianas College would close. Other
23 educational institutions would close as their backup oil supplies for emergency
24 generators were exhausted; and
 - 25
26 d. water and sewage treatment would soon end. One of CUC's largest electric
27 customers is the combined CUC Water and Wastewater Divisions. CUC is the
28 sole supplier of electricity for these systems. CUC's water system relies on
29 electricity to maintain the system pressure needed to avoid the backflow of
30 pathogens, to chlorinate, and to pump, store and distribute water supplies. CUC's
31 wastewater system requires electricity to collect, pump, process, treat and
32 discharge sewage. The lack of electricity could result in sewage overflows,
33 contamination of land and water and rendering unsafe the CNMI's beaches,
34 which are also principal tourist destinations.
- 35
36

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

38
39 8. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain
40 and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to

1 buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in
2 September. In October four other units began required overhaul, which will take 12 months. In
3 November, the following work must start, and will last for varying periods of time: The critical
4 replacement of the PP #1 anchor bolts, in order to stop the shifting and vibration that has ruined
5 the plant; foundation repairs to Engines 1 and 8; and, shortly thereafter the replacement of
6 turbochargers and oil water separators. All of this work is essential.

7
8 9. Adequate technical staff is essential to this work. A major challenge to carrying out this
9 rehabilitation has been finding the trained technicians needed to carry out these rehabilitation
10 projects, and maintain and run the equipment. The technicians must be ready for service when
11 needed and their services must be affordable. Any significant reduction in CUC's present
12 technical workforce could seriously compromise CUC's ability to generate and distribute power.

13
14 10. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit
15 ("T & D"), including many vehicles, is dilapidated and bordering on being unsafe. There is an
16 insufficient number of skilled workers to operate T & D. The linemen must be trained to, and
17 skillful in, meeting US standards. The critical upcoming projects in T & D include the
18 replacement of the antiquated, rundown and unsafe vehicle fleet; the redesign of T & D using
19 national Rural Utility Service standards; the replacement/installation of insulators, transformers,
20 overcurrent protection, sectionalizers and the installation of efficient LED street lighting.

21
22 11. For example, Saipan's early-September brush with Typhoon Choi-Wan 15W that passed to
23 the north of Saipan, and typhoon Melor, which passed just north of Saipan in October,
24 underscored the extreme vulnerability of CUC's power transmission and distribution (T & D)
25 system. In September, over 150 calls of no-power and line faults were fielded by crews when,
26 for a storm of this size, there should have been no more than a score. In October, fortunately, the
27 CUC power system avoided a direct hit from a supertyphoon. Fortunately, Typhoon Nida, as of
28 this writing, is projected to pass to the south and west of the Marianas. Accelerating
29 improvements to the T & D system, with proper staff under an Emergency Order, would allow
30 CUC to "harden" the system in anticipation of a bigger storm event. The alternative, in a more
31 serious storm, is CUC's inability to recover in any reasonable time period.

32
33 12. Further, utility industry safety margins for isolated, island systems typically require a
34 reserve equal to the capacity of the two largest units; in CUC's case this would be another 15
35 MW of load, equivalent to the departed Aggreko temporary units. Meeting this reserve
36 requirement means CUC must have an adequate repair and maintenance staff.

37
38 13. The Legislature, through 3 CMC § 4972(5), as amended by PL 16-14 (Aug. 27, 2008), has
39 limited CUC's ability to hire technical staff; allowing up to 19 foreign workers only. The CUC
40 Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such

1 persons as are necessary for operations, *except as otherwise limited by other law*. 4 CMC §
2 8123(h).

3
4 14. PMIC at PP #4 and Telesource on Tinian, as Independent Power Producers (IPPs), are not
5 subject to the Legislature's limitation on foreign workers.

6
7 15. There are not enough technical specialists at CUC to get the power generation work done,
8 particularly specialists with experience in the type of engines that CUC uses. CUC believes that
9 the vast majority of skill sets must come from non-US personnel.

10
11 16. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding
12 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after
13 interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator
14 candidates were US citizens.

15
16 17. CUC has hired some local staff recently thanks to the aggressive steps of CUC HR, the
17 Executive Director and Directive 10.

18
19 18. CUC, as of this month, has found the skilled trade technicians needed for power plant
20 operations and maintenance. For Rota, CUC has announced the need for a mechanic-operator
21 and an electrical operator. As more units begin working after the rehabilitations are largely
22 complete, CUC will need more staff to operate and maintain them. For the immediate future,
23 CUC needs to maintain its complement of skilled workers.

24
25 19. The impact of an inadequate workforce would be three-fold:

- 26
27 a. First, there would be a direct negative effect on the existing consumers. There
28 would be brownouts, or area blackouts, with the above-mentioned loss of service.
29
30 b. Second, the power plants would again degrade, producing more of these outages.
31
32 c. Third, there would be an indirect effect, increasing rates over the longer term,
33 because small consumers would have to shoulder more of the fixed costs of the
34 CUC system. First, there would be loss of large customers. By contrast, if the
35 hotels were to become part of the system, they could help pay CUC fixed costs,
36 which would lower everyone else's rates. The hotels need reliable, 24/7 power.
37 But with unreliable power, CUC would be unable to convince large commercial
38 customers, particularly the hotels, to join, or rejoin, its system. Second, would
39 come additional expenses. If CUC fails to meet federal court deadlines for the
40 stipulated orders, the Court could appoint a federal receiver and its consulting

1 team – with all expenses charged to CUC customers. Thus, the indirect effect of
2 an inadequate workforce would be to boost rates.
3

4 20. Rota's status today is precarious and financially un-sustainable. Rota has recently suffered
5 blackouts from inadequate generator maintenance. The power plant's other facilities and the
6 island's distribution system similarly need the attentions of additional manpower. The Rota
7 power plant needs additional generating sets to come on line, as there are only 1.5 dependable
8 sets in the plant. The third of two feeders is powered by a private resort at a cost of
9 \$200,000/month to CUC. The revenues from the customers on this feeder fall far below this
10 cost. CUC is negotiating with a Mainland supplier for a new generating set, with funding from
11 the US Department of the Interior. The present alternative for Rota is akin to Saipan's recent
12 Aggreko situation – purchasing higher cost, reliable power from the Rota Resort.
13

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

24 22. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The
25 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set
26 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6
27 million-per-year benefit of terminating the Aggreko temporary power contract.
28

29 23. CUC has demonstrated that the required workers are available as nonresident workers, and
30 cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign
31 national workers is necessary to ensure the delivery of uninterrupted power services to the
32 people of the Commonwealth.
33

34
35 **Complying with the federal court order on disposal of used oil**
36

37 24. CUC has taken concrete steps to address the storage and disposal of used oil, consonant
38 with the federal court's Stip Order 2. Federal court Stipulated Order # 2, relates to the used oil
39 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.
40 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an

1 adequate complement of trained technical employees, CUC has believed that it can meet these
2 requirements.

3
4 25. A September inspection by the US Coast Guard (USCG) has resulted in the imposition of
5 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional
6 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean
7 from Power Plants 1, 2 and the power plant in Rota. Further, as of October, 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. All of this requires trained
13 staff.

14
15 26. Serious deficiencies in the waste oil handling system at Lower Base have come to light in
16 the past month and are being addressed by both CUC and EPA. One deficiency is that the oily
17 water separators are not functioning as such because of the excessive amount of oil (as opposed
18 to water) entering the system. As a result, oil was spilling on to the ground rather than being
19 separated and skimmed off properly. Power Plant #1 has been sealed off to prevent any waste
20 oil from leaving the plant and flowing into the oily water separators. To prevent oil from
21 accumulating uncontained in the plant itself, emergency measures are being taken to store waste
22 oil and to fabricate above ground tanks. The oily water separators, pipes, holding tanks, baffles
23 are being cleaned out so that the entire system can be carefully inspected and re-engineered. All
24 of the additional work is expensive. Regardless of who does the work initially, CUC staff, EPA
25 contractors, or a combination thereof, CUC requires skilled, trained workers for the clean-up.
26 Failure to correct this situation could harm the nearby environment, CUC's ability to generate
27 electricity properly, and the assurances given pursuant to Stip Order 2.

28
29
30 **Complying with the federal court order on managing the water and wastewater systems**

31
32 27. As long as the Water and Wastewater Divisions can hire competent staff and receive power
33 from the Power Division, they can function.

34
35 28. The U.S. Department of Justice ("DoJ"), Environment and Natural Resources Division, has
36 sued CUC in federal court to come into compliance with critical water and sewage treatment
37 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order
38 1"). See also http://www.usdoj.gov/enrd/Consent_Decrees.html. In July 2008 CUC, the CNMI
39 and (in September 2008) the U.S. Environmental Protection Agency ("EPA") stipulated to this
40 first of two orders lodged with the U.S. District Court on the date the Complaint was filed. This

1 order requires CUC to implement a series of improvements to its water and wastewater systems
2 that respond to years of neglect, for which it presently lacks the funds and the complete technical
3 capability.
4

5 29. The Wastewater Division recently has had to respond to acid damage, which has occurred
6 over 30 years from anaerobic conditions in sewers. This has caused significant damage to
7 cement and metal infrastructure, so that key pipe systems have collapsed. The Division also
8 needs serviceable vehicles to move its workers to and from job sites; presently six vehicles are in
9 such bad shape that they are dangerous.

10
11 30. CUC must be able to hire the staff to perform the required technical functions. The Water
12 and Wastewater Divisions cannot carry out their missions without adequate staff. These staff are
13 essential to producing clean, safe water supplies and removal of stormwater and sewage in a
14 safe, timely manner. While the bulk of CUC employees are drawn from local and US
15 populations, the Division management estimates that, as of November, at least 6 trained
16 technicians will be required – three experienced Level 3 wastewater treatment operators, two
17 Level 3 wastewater collections operators, and an instrumentation /low voltage controls specialist.
18 An experienced Water/Wastewater Division operations manager will also be required.

19
20 31. CUC also requires a constant supply of electricity to run its water and wastewater treatment
21 systems. CUC has very limited on-site emergency generation capability, and for only portions
22 of these systems.

23
24 32. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing
25 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost
26 recovery through the processes of the CNMI Public Utilities Commission.
27
28

29 **Meeting US District Court and CNMI PUC requirements to produce timely, accurate**
30 **financial reports**

31
32 33. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
33 beginning in September. The “IFP” must develop over time, becoming more than “interim”.
34 CUC cannot do this unless it has a staff of trained accounting and other financial experts who
35 can gather data, put the data in the required form and generate the IFP and its later versions.
36

37 34. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities
38 Commission (“CPUC”). The CPUC is charged by statute to oversee carefully CUC’s operations
39 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC’s
40 water and wastewater systems.

1
2 35. In its recent electric and water/wastewater orders, of September 3, 2009, the CPUC
3 addressed CUC's inability to deliver complete on-time financial reports, requiring CUC, in
4 effect, to enhance its staff capability to provide critical regulatory information. (Docket No.'s
5 09-1 and 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations in
6 an order stemming from recent regulatory sessions and its November meeting, and thereafter in
7 March 2010.

8
9 36. 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 by December 31, 2009.

15
16 37. CUC this year lost 2 senior accountants plus a related specialist. The IT and billing
17 department in August was reduced by one staffer, having advertised for a replacement for 4
18 weeks to no avail. While it appeared that CUC might have to look to employing foreign
19 technical specialists, CUC hired back 2 former accountants in September and brought a third
20 person aboard in October. All are US citizens. Nonetheless, CUC must have the flexibility to
21 hire competent professionals as needed. CUC is still short-staffed, and needs an accounting
22 assistant, an accounting specialist and a Chief Financial Officer.

23
24 38. To summarize: Without properly trained technical staff CUC's ability to supply power is at
25 risk. So is its ability to manage the rest of its systems, including its finances and accounting.
26 CUC's services could not be adequately staffed without August's lifting of the artificial
27 legislative regulation of CUC's workforce, in EO 2009-08, Directive #10, suspending the
28 limitations on CUC hiring foreign workers. It is obvious that the hiring authority must be
29 continued.

30
31 39. There is no indication that any of the above manpower situation will be resolved in the next
32 month without continuing in effect this EO and Directive #10.

33
34
35 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

36
37 40. **Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and
38 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors
39 in the position of day-to-day management of the corporation, and requires a complex mix of
40 technical, geographic and other qualifications for Board membership. There is no Board because

1 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot
2 take a critical step toward solvency and the ability to borrow to finance its work.
3

4
5 **Forestalling corporate paralysis**
6

7 41. A critical concern is that the CUC Act's constricted scope of authority for the Executive
8 Director, and the complementary daily management by a host of Board volunteers, would
9 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before
10 CUC.
11

12 42. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC
13 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and
14 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133
15 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and
16 property), demonstrates that the Executive Director is to be left with little more to do than
17 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70
18 million/year corporation, on a day-to-day basis. This includes such decision-making as
19 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning
20 work crews, connecting customers, deciding on making repairs, collecting debts, complying with
21 the details of federal and CPUC regulatory requirements, making and funding long-term
22 technical power and water/wastewater plans, and insuring that, on a day-to-day basis, the power
23 and water flow and the sewage is treated.
24

25 43. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
26 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –
27 with or without a Board in place.
28

29 44. 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 45. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
34 drafting error, and the People, through their elected representatives, wish their utility company to
35 continue to supply them with essential services at a reasonable cost, meeting industry standards.
36
37

1 **Fixing CUC's technical insolvency**

2
3 46. CUC has been unable to borrow money to run its operations since the inception of this State
4 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books
5 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115
6 million. This situation may be corrected if the Executive Director is recognized to have the
7 authority to correct it.

8
9 47. Meanwhile, billings and collections are substantially below the levels required to prudently
10 manage CUC's current operations and provide for system repairs, replacements and upgrades.
11 For example, billings alone for water and wastewater are less than 70% of requirements to run
12 those two systems.

13
14 48. The booked CDA obligation has rendered CUC nominally insolvent. While CUC is deemed
15 insolvent, CUC cannot borrow money. But CUC must be able to borrow money to bridge the
16 gap between (a) the need to spend money on essential goods and services to provide electricity,
17 water and sewage service, and (b) the lagged collection of already-determined-insufficient
18 revenues from the sale of those services.

19
20 49. The CPUC, in its September 3 electric order, Docket No. 09-1, approved a CUC-CDA
21 settlement converting the CDA debt to preferred stock. But the deal requires CUC's Board to
22 agree to it.

23
24 50. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
25 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
26 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find
27 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
28 Nonetheless, CUC must continue to function, including borrowing money.

29
30 51. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It
31 also permits him to continue to run CUC, carefully manage cash to pay tens of millions of
32 dollars annually for fuel oil and purchased power, and do all the things necessary to providing
33 power, water and wastewater services, until the remaining members of a properly constituted
34 Board can be identified, confirmed, and convened for business.

1 **Providing the basis for proper CPUC oversight**

2
3 52. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act,
4 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC
5 activities, particularly financial activities.
6

7 53. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
8 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's
9 error-infused creation of a volunteer Board which would run the corporation on a day-to-day
10 basis, becomes much less important than satisfying CPUC requirements.
11

12 54. What becomes very important is CUC's capability to provide the CPUC with accurate and
13 timely financial and accounting information. But such reporting is not possible without a
14 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
15 Executive Director to lead them.
16

17
18 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

19
20 55. There is no Legislative relief coming. For months CUC has repeatedly asked the
21 Legislature for such relief, including submission of draft legislation in July. The Legislature has
22 declined to respond. There is no alternative to providing this relief other than an order from the
23 Governor. Inaction will produce a disaster in which CUC is unable to provide its critical
24 community services. Directives # 9 and #10 were designed to avert this crisis. (The other
25 Directives, #1 through #8, are no longer relevant, and were discontinued.)
26

27 56. This Declaration is necessary to protect the health and safety of our children, our senior
28 citizens, businesses and all other CNMI residents and visitors.
29
30
31

32 **CONCLUSION AND ORDER**

33
34 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth
35 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
36 facing the Commonwealth of the Northern Mariana Islands.
37

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

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

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

3 CMC § 5121(f)(1)-(3).

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

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

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

DIRECTIVES

I direct the following:

- Directive 1: Deleted.
- Directive 2: Deleted.

EO 2009-12
Declaration of Disaster Emergency: CUC Continuation 16

1 Directive 3: Deleted.

2
3 Directive 4: Deleted.

4
5 Directive 5: Deleted.

6
7 Directive 6: Deleted.

8
9 Directive 7: Deleted.

10
11 Directive 8: Deleted.

12
13 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board,
14 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)
15 the confirmation and convening of an operating CUC Board, or (2) the termination of the
16 authority of this order. In particular, the Executive Director shall have full power and authority
17 to agree to swap CDA debt and related obligations for preferred stock and related features and
18 rights.

19
20 Directive 10: The following strike-out-formatted language of the quoted provision of the
21 following statute regulating government employment is, as indicated, suspended immediately:

22
23 (b) Transition exemptions for government employment. . . . (5) Commonwealth
24 Utilities Corporation. Engineers, and professional employees in technical or trade
25 areas may be exempted and CUC may contract with manpower services or
26 directly hire power plant mechanics and utility technicians who may be
27 exempted; ~~provided that direct or manpower hire of foreign national workers shall~~
28 ~~not exceed nineteen (19) employees. This exemption shall expire on September~~
29 ~~30, 2010, and no contract may provide to the contrary.~~

30
31 3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original; strikeout
32 is deliberately added) That is, the following language is suspended: “provided that direct or
33 manpower hire of foreign national workers shall not exceed nineteen (19) employees. This
34 exemption shall expire on September 30, 2010, and no contract may provide to the contrary.”
35

EO 2009-12

Declaration of Disaster Emergency: CUC Continuation 16

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

8
9
10 Done this 25th day of November 2009.

11
12
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15
16 
17 BENIGNO R. FITIAL
Governor

0 EO 2009-12 CUC Dis Decl (25Nov09).wpd



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

1 **EXECUTIVE ORDER 2009-13**

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 #17**

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 service to the CNMI and the extreme, immediate and imminent threat such condition

18

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 11-12,

22

except as specifically modified. As more fully stated below, this Executive Order shall expire on

23

the 31st day following the date of my signature. The following findings and conclusions further

24

support continuation of the Declaration and issuance of directives.

1 **FINDINGS**

2
3 I find that:

4
5 1. All findings and conclusions of EO 2009-01 through -09, and 11-12 are incorporated by
6 reference, except as specifically varied in this Executive Order.

7
8 **MANPOWER CRISIS DUE TO RESTRICTIVE LEGISLATION**

9
10 2. **Summary.** A shortage of manpower forced by legislation limiting skilled foreign workers
11 has continued to place CUC operations at risk. Presently CNMI law (PL 16-14) prohibits CUC
12 from hiring any more non-US technical workers than the 19 skilled professionals recently with
13 CUC. CUC has repeatedly asked the Legislature for relief from this statute regulating the
14 Government's workforce, to no avail. Further, errors in wording in the CUC enabling legislation
15 recently re-enacted, PL 16-17, as amended, would bar the Executive Director from day-to-day
16 management of the corporation, effectively shutting CUC down. This EO eliminates these
17 problems while it is in effect.

18
19 3. **Background.** CUC has substantially minimized the risk of losing the services of its owned
20 generating capacity, which losses created intermittent blackouts on portions of its system. It
21 therefore allowed the Aggreko year-long temporary power contract to terminate, as provided in
22 the agreement, effective September 12, 2009. This saves CUC customers at least \$6 million per
23 year in fees. But it still presents risks, as the strategy requires proper operation and maintenance
24 of CUC's owned engines by CUC's technical staff, and the timely securing of materials and
25 supplies.

26
27 4. CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction
28 of the US District Court and the US EPA, pursuant to two consent, or "stipulated", orders. The
29 first requires the upgrade and smooth functioning in virtually all aspects of CUC's water and
30 wastewater divisions. The second requires CUC to properly eliminate over 400,000 gallons of
31 used oil and to institute measures to avoid uncontrolled buildup of such inventories. Failure to
32 meet the requirements of the federal court orders could subject CUC and the CNMI to
33 substantial fines and charges, and, in the extreme, to a federal takeover of their finances.
34 Presently CUC is "accruing" substantial fines. Most of the fines have not been levied; but they
35 could be. The EPA has, however, levied one fine, in the amount of \$29,000.

36
37 5. CUC is thoroughly regulated by the Commonwealth Public Utilities Commission ("CPUC").
38 The regulator has plenary power over CUC rates, charges, fees, operations and capital
39 investments. CUC's failure to timely and competently meet CPUC orders and other
40 requirements can result in severe rate discipline, and fines and other penalties. The Commission

1 recently required CUC to meet certain requirements, including the filing of a technically
2 complex rate case by the end of January 2010, or face fines of \$500 per day.

3
4 6. CUC is the sole electricity supplier to the Government of the CNMI, including all public
5 safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the
6 CNMI's businesses and homes. While some businesses and agencies own backup generators,
7 they are not generally organized to use the backups as permanent power sources; and the diesel
8 oil purchased to run these generators is substantially more expensive than that used for CUC
9 power.

10
11 7. Without CUC electricity:

- 12
13 a. most CNMI economic activity would come to a halt, the courts would soon close,
14 much refrigeration and air conditioning would end, and the airports and ports
15 would be forced to rely on emergency generation and the limited, expensive oil
16 supply for it;
- 17
18 b. the CNMI's health and safety would immediately be at risk, since traffic signals
19 and street lighting would cease to function, emergency, fire and police facilities
20 and their communications systems, and the Hospital and island clinics would have
21 to rely on limited oil supplies for emergency generation and then cease
22 functioning, much refrigeration of food and medicines would end, as would air
23 conditioning for the elderly and medically fragile;
- 24
25 c. the public schools and the Northern Marianas College would close. Other
26 educational institutions would close as their backup oil supplies for emergency
27 generators were exhausted; and
- 28
29 d. water and sewage treatment would soon end. One of CUC's largest electric
30 customers is the combined CUC Water and Wastewater Divisions. CUC is the
31 sole supplier of electricity for these systems. CUC's water system relies on
32 electricity to maintain the system pressure needed to avoid the backflow of
33 pathogens, to chlorinate, and to pump, store and distribute water supplies. CUC's
34 wastewater system requires electricity to collect, pump, process, treat and
35 discharge sewage. The lack of electricity could result in sewage overflows,
36 contamination of land and water and rendering unsafe the CNMI's beaches,
37 which are also principal tourist destinations.
- 38
39

Staffing CUC with the technical experts to permit continued electric service

8. CUC continues to maintain and rehabilitate its owned power plants. CUC tries to maintain and rehabilitate the operating units to adequately meet load. CUC has secured federal funds to buy many needed parts to avoid outages. CUC began the needed overhaul of PP #1 unit DE-5 in September. In October four other units began required overhaul, which will take 12 months.

9. In November, the following work started: The critical replacement of the PP #1 anchor bolts, in order to stop the shifting and vibration that has ruined the plant; and foundation repairs to Engines 1 and 8. Shortly thereafter the replacement of turbochargers and oil-water separators is to begin. All of this work is essential.

10. This work has been successful. As of this month, Power Plant 1 Engines 1, 2, 3, 5, 6, 7 are available. Engine 8's critical foundation repair and anchor bolt replacement have been completed. The major engine overhaul is to begin immediately.

11. In effect, CUC management, with generous federal financial assistance, has brought the its generation back from the brink of system failure. There are adequate reserves. If maintained properly, the system can provide the CNMI's citizens and residents with adequate power.

12. Adequate technical staff is essential to this work. A major challenge to carrying out this rehabilitation has been finding the trained technicians needed to carry out these rehabilitation projects, and maintain and run the equipment. The technicians must be ready for service when needed and their services must be affordable. Any significant reduction in CUC's present technical workforce could seriously compromise CUC's ability to generate and distribute power.

13. With respect to CUC's lines, equipment used by CUC's Transmission and Distribution unit ("T & D"), including many vehicles, is dilapidated and bordering on being unsafe. There is an insufficient number of skilled workers to operate T & D. The linemen must be trained to, and skillful in, meeting US standards. The critical upcoming projects in T & D include the replacement of the antiquated, rundown and unsafe vehicle fleet; the redesign of T & D using national Rural Utility Service standards; the replacement/installation of insulators, transformers, overcurrent protection, sectionalizers and the installation of efficient LED street lighting.

14. For example, Saipan's early-September brush with Typhoon Choi-Wan 15W that passed to the north of Saipan, and typhoon Melor, which passed just north of Saipan in October, underscored the extreme vulnerability of CUC's power transmission and distribution (T & D) system. In September, over 150 calls of no- power and line faults were fielded by crews when, for a storm of this size, there should have been no more than a score. In October, fortunately, the CUC power system avoided a direct hit from a supertyphoon. Fortunately, the typhoon season

1 appears to be ending with no direct hits on the CNMI and our power distribution system.
2 Accelerating improvements to the T & D system ,with proper staff under an Emergency Order,
3 would allow CUC to "harden" the system in anticipation of a bigger storm event. The
4 alternative, in a more serious storm, is CUC's inability to recover in any reasonable time period.
5

6 15. Further, utility industry safety margins for isolated, island systems typically require a
7 reserve equal to the capacity of the two largest generating units; in CUC's case this would be
8 another 15 MW of load, equivalent to the departed Aggreko temporary units. Meeting this
9 reserve requirement means CUC must have an adequate repair and maintenance staff.
10

11 16. The Legislature, through 3 CMC § 4972(5), as amended by PL 16-14 (Aug. 27, 2008), has
12 limited CUC's ability to hire technical staff, allowing up to 19 foreign workers only. The CUC
13 Act, as subsequently re-enacted by PL 16-17 (Oct 1, 2008), provides that CUC shall hire such
14 persons as are necessary for operations, *except as otherwise limited by other law.* 4 CMC §
15 8123(h).
16

17 17. PMIC at PP #4 and Telesource on Tinian, as Independent Power Producers (IPPs), are not
18 subject to the Legislature's limitation on foreign workers.
19

20 18. There are not enough technical specialists at CUC to get the power generation work done,
21 particularly specialists with experience in the type of engines that CUC uses. CUC believes that
22 the vast majority of skill sets must come from non-US personnel.
23

24 19. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding
25 all the qualified candidates. In the summer of 2009 CUC identified 16 potential new staff after
26 interviews – 7 mechanics, 1 welder, 1 machinist, and 7 operators. Two of the operator
27 candidates were US citizens.
28

29 20. CUC has hired some local staff recently thanks to the aggressive steps of CUC HR, the
30 Executive Director and Directive 10.
31

32 21. CUC, as of this month, has completed the hiring of the skilled trade technicians needed on
33 Saipan for power plant operations and maintenance. For Rota, CUC has announced the need for
34 a mechanic-operator and an electrical operator. As more units begin working after the
35 rehabilitations are largely complete, CUC will need more staff to operate and maintain them.
36 For the immediate future, CUC needs to maintain its complement of skilled workers.
37

38 22. The impact of an inadequate workforce would be three-fold:
39

- 1 a. First, there would be a direct negative effect on the existing consumers. There
2 would be brownouts, or area blackouts, with the above-mentioned loss of service.
3
- 4 b. Second, the power plants would again degrade, producing more of these outages.
5
- 6 c. Third, there would be an indirect effect, increasing rates over the longer term,
7 because small consumers would have to shoulder more of the fixed costs of the
8 CUC system. First, there would be loss of large customers. By contrast, if the
9 hotels were to become part of the system, they could help pay CUC fixed costs,
10 which would lower everyone else's rates. The hotels need reliable, 24/7 power.
11 But with unreliable power, CUC would be unable to convince large commercial
12 customers, particularly the hotels, to join, or rejoin, its system. Second, would
13 come additional expenses. If CUC fails to meet federal court deadlines for the
14 stipulated orders, the Court could appoint a federal receiver and its consulting
15 team – with all expenses charged to CUC customers. Thus, the indirect effect of
16 an inadequate workforce would be to boost rates.
17

18 23. Rota's status today is precarious and financially un-sustainable. Rota has recently suffered
19 blackouts from inadequate generator maintenance. The power plant's other facilities and the
20 island's distribution system similarly need the attentions of additional manpower. The Rota
21 power plant needs additional generating sets to come on line, as there are only 1.5 dependable
22 sets in the plant. The third of two feeders is powered by a private resort at a cost of
23 \$200,000/month to CUC. The revenues from the customers on this feeder fall far below this
24 cost. CUC is negotiating with a Mainland supplier for a new generating set, with funding from
25 the US Department of the Interior. The present alternative for Rota is akin to Saipan's recent
26 Aggreko situation – purchasing higher cost, reliable power from the Rota Resort.
27

28 24. Since E0 2009-8 in August, and the suspension of the harmful legislative employment
29 restriction, CUC has taken steps to hire the expertise to operate and maintain the Saipan and
30 Rota power generation facilities. CUC needs to be able to hire the workers it needs when it
31 needs them. Otherwise, if CUC had to discharge these workers its staffing levels would return to
32 those which overworked its limited staff. For example, over pay period numbers 2 through 11 of
33 the year 2009, CUC accumulated 18,053 hours of overtime from technical employees who each
34 worked 40 or more hours of overtime in a pay period. This condition is extreme, and a repeat
35 can result in inefficiencies and poor work quality. It can lead to dangerous mistakes, producing
36 injury or death.
37

38 25. CUC has repeatedly asked the Legislature to lift the restrictions on foreign workers. The
39 Legislature has failed to act on the CUC request. Without relief, this inaction will effectively set

1 the stage for loss of service and higher rates. Among other things it will thereby reverse the \$6
2 million-per-year benefit of terminating the Aggreko temporary power contract.

3
4 26. CUC has demonstrated that the required workers are available as nonresident workers, and
5 cost-effectively so. Thus, continued relief from the legislative prohibition of hiring foreign
6 national workers is necessary to ensure the delivery of uninterrupted power services to the
7 people of the Commonwealth.

8
9
10 **Complying with the federal court order on disposal of used oil**

11
12 27. CUC has taken concrete steps to address the storage and disposal of used oil, consonant
13 with the federal court's Stip Order 2. Federal court Stipulated Order 2, relates to the used oil
14 from the engines for four facilities (Power Plants 1, 3, 4 and Rota) and all CUC transformers.
15 *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order 2"). With an
16 adequate complement of trained technical employees, CUC has believed that it can meet these
17 requirements.

18
19 28. A September inspection by the US Coast Guard (USCG) has resulted in the imposition of
20 another cost that was unanticipated even with Stip Order 2. The USCG now requires additional
21 and more stringent measures to contain or eliminate the possibility of any oil reaching the ocean
22 from Power Plants 1, 2 and the power plant in Rota. Further, as of October, CUC has faced the
23 following staffing needs in this area: It critically needs the resources to inspect and redesign the
24 entire fuel storage, pumping and handling system in order to meet the more stringent
25 requirements of today. The clean fuel storage tanks at Lower Base were originally designed for
26 another application. The fuel line from the oil company's terminal is in danger of rupturing
27 during a transfer; the pumping rate has to be reduced to prevent this. All of this requires trained
28 staff.

29
30 29. Serious deficiencies in the waste oil handling system at Lower Base have come to light in
31 the past months and are being addressed by both CUC and EPA. One deficiency is that the oily
32 water separators are not functioning as such because of the excessive amount of oil (as opposed
33 to water) entering the system. As a result, oil was spilling on to the ground rather than being
34 separated and skimmed off properly. Power Plant #1 has been sealed off to prevent any waste
35 oil from leaving the plant and flowing into the oily water separators. To prevent oil from
36 accumulating uncontained in the plant itself, emergency measures are being taken to store waste
37 oil and to fabricate above-ground tanks. The oily water separators, pipes, holding tanks, and
38 baffles are being cleaned out so that the entire system can be carefully inspected and
39 re-engineered. All of the additional work is expensive. Regardless of who does the work
40 initially, CUC staff, EPA contractors, or a combination thereof, CUC requires skilled, trained

1 workers for the clean-up. Failure to correct this situation could harm the nearby environment,
2 CUC's ability to generate electricity properly, and the assurances given pursuant to Stip Order 2.
3 CUC has begun the process to hire a Oil Technical Manager.
4

5
6 **Complying with the federal court order on managing the water and wastewater systems**
7

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

11 31. The U.S. Department of Justice ("DoJ"), Environment and Natural Resources Division, has
12 sued CUC in federal court to come into compliance with critical water and sewage treatment
13 requirements. *USA v. CUC & CNMI*, Civ. No. 08-0051 (D. NMI Mar. 11, 2009) ("Stip Order
14 1"). See also http://www.usdoj.gov/enrd/Consent_Decrees.html. In July 2008 CUC, the CNMI
15 and (in September 2008) the U.S. Environmental Protection Agency ("EPA") stipulated to this
16 first of two orders lodged with the U.S. District Court on the date the Complaint was filed. This
17 order requires CUC to implement a series of improvements to its water and wastewater systems
18 that respond to years of neglect, for which it presently lacks the funds and the complete technical
19 capability.
20

21 32. Sewage collection piping failures are continuing at an accelerated rate. The Wastewater
22 Division must respond to acid damage in the asbestos cement piping system, the product of over
23 30 years of anaerobic conditions in sewers. This has caused significant damage to cement and
24 metal infrastructure, so that key pipe systems have collapsed. December 18 saw the sixth failure
25 in six months. Failures will continue until 10 miles of sewer pipe are replaced. But replacement
26 involves complex excavations, avoiding electric, phone and water utilities, blocking traffic,
27 stopping the infiltration of seawater (which damages treatment plant facilities), and pumping
28 sewage around blocked and excavated areas. The Division has already far exceeded its repair
29 budget.
30

31 33. The Division also needs serviceable vehicles to move its workers to and from job sites.
32 Presently six vehicles are in such bad shape that they are dangerous. The resulting reduced
33 vehicle problem raises costs and hurts service, as staff and materials cannot be brought to job
34 sites on time.
35

36 34. Sewage lift Station failures continue, with most pumping stations having only one of two
37 required pumps installed. CUC has issued a contract to purchase 30 additional pumps, however
38 the lead time between issuance of the contract and pump arrival is over six months, so that CUC
39 is still approximately three months out from pump arrival.
40

1 35. CUC Engineer staff shortages continue to hamper CUC's ability to anticipate and fix
2 technical problems. While CUC's Water/Wastewater Division employs four engineers, the poor
3 condition of the CUC sanitation assets requires at least two more engineers. But, significant
4 engineering resources are already focused on addressing EPA Stip Order 1 issues. These issues
5 include staffing plans, pre-treatment programs, materials management programs, customer
6 inventory, and cross-connection control programs. Recruitment and retention of engineering
7 staff to meet these challenges is difficult.

8
9 36. CUC must be able to hire the staff to perform the required technical functions. The Water
10 and Wastewater Divisions cannot carry out their missions without adequate staff. These staff are
11 essential to producing clean, safe water supplies and removal of stormwater and sewage in a
12 safe, timely manner. While the bulk of CUC employees are drawn from local and US
13 populations, the Division management estimates that, as of December, at least six trained
14 technicians will be required – three experienced Level 3 wastewater treatment operators, two
15 Level 3 wastewater collections operators, and an instrumentation /low voltage controls specialist.
16 An experienced Water/Wastewater Division operations manager will also be required.

17
18 37. CUC also requires a constant supply of electricity to run its water and wastewater treatment
19 systems. CUC has very limited on-site emergency generation capability, and for only portions
20 of these systems.

21
22 38. Meanwhile CUC continues to pay for power, chlorine, lab testing costs, and repairing
23 collapsing sewer lines. CUC has hired a consulting team to assist it in achieving full cost
24 recovery for the water and wastewater systems through the processes of the CNMI Public
25 Utilities Commission.

26
27
28 **Meeting US District Court and CNMI Public Utilities Commission requirements to**
29 **produce timely, accurate financial reports**

30
31 39. The federal Stip Orders require CUC to produce and carry out an Interim Financial Plan,
32 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.

36
37 40. Further, CUC is comprehensively regulated by the Commonwealth Public Utilities
38 Commission ("CPUC"). The CPUC is charged by statute to oversee carefully CUC's operations
39 and capital expenditures, and to develop rates that fully pay the costs of safely operating CUC's
40 water and wastewater systems.

1
2 41. In recent electric and water/wastewater orders, of September 3, 2009, the CPUC addressed
3 CUC's inability to deliver complete on-time financial reports, requiring CUC, in effect, to
4 enhance its staff capability to provide critical regulatory information. (Docket No.'s 09-1 and
5 09-2.) The Commission will be revisiting CUC rates, fees, charges and operations in an order
6 stemming from recent regulatory sessions in March 2010.

7
8 42. CUC cannot upgrade its financial and accounting operations unless it has a staff of trained
9 accounting and other financial experts who can gather data, put the data in the required form and
10 generate the required reports and filings with the CPUC, as well as provide the CPUC consulting
11 staff with the data required for their oversight. CUC has obligated itself to provide an updated,
12 compliant Interim Financial Plan and an organizational evaluation, both pursuant to Stip Order 1,
13 to the US District Court by December 31, 2009. It has also begun the process to hire a Chief
14 Financial Officer.

15
16 43. CUC this year lost 2 senior accountants plus a related specialist. The IT and billing
17 department in August was reduced by one staffer, having advertised for a replacement for 4
18 weeks to no avail. While it appeared that CUC might have to look to employing foreign
19 technical specialists, CUC hired back 2 former accountants in September and brought a third
20 person aboard in October. All are US citizens. Nonetheless, CUC must have the flexibility to
21 hire competent professionals as needed. CUC is still short-staffed, and needs an accounting
22 assistant, an accounting specialist and a Chief Financial Officer.

23
24 44. To summarize: Without properly trained technical staff CUC's ability to supply power is at
25 risk. So is its ability to manage the rest of its systems, including its finances and accounting.
26 CUC's services could not be adequately staffed without August's lifting of the artificial
27 legislative regulation of CUC's workforce, in EO 2009-08, Directive #10, suspending the
28 limitations on CUC hiring foreign workers. It is obvious that the hiring authority must be
29 continued.

30
31 45. There is no indication that any of the above manpower situation will be resolved in the next
32 month without continuing in effect this EO and Directive #10.

33
34
35 **MANAGEMENT CRISIS IN ABSENCE OF A PROPER BOARD/CEO STRUCTURE**

36
37 46. **Summary.** CUC is a \$70 million-per-year business, critical to the CNMI's economy and
38 the public health. Yet, the recently-renewed statute organizing it places the Board of Directors
39 in the position of day-to-day management of the corporation, and requires a complex mix of
40 technical, geographic and other qualifications for Board membership. There is no Board because

1 it has been impossible to meet these criteria. Without the Board, or its equivalent, CUC cannot
2 take a critical step toward solvency and the ability to borrow to finance its work.
3
4

5 **Forestalling corporate paralysis**
6

7 47. A critical concern is that the CUC Act's constricted scope of authority for the Executive
8 Director, and the complementary daily management by a host of Board volunteers, would
9 paralyze the corporation. This is particularly worrisome in light of the above-listed tasks before
10 CUC.
11

12 48. A careful reading of the CUC Act, PL 16-17, as amended, particularly its sections 4 CMC
13 §§ 8131 (Bd qualifications), 8134 (Bd approval of all "allocations" of money and property), and
14 1 CMC § 8247 (limited daily reimbursement of \$60.00); 4 CMC §§ 8132 (E.D. described), 8133
15 (limited E.D. functions listed), and 8134 (Bd approval of all "allocations" of money and
16 property), demonstrates that the Executive Director is to be left with little more to do than
17 provide reports to a Board of volunteers who are nonetheless to run CUC, a complex \$70
18 million/year corporation, on a day-to-day basis. This includes such decision-making as
19 purchasing materials and supplies, signing paychecks and other checks, hiring staff, assigning
20 work crews, connecting customers, deciding on making repairs, collecting debts, complying with
21 the details of federal and CPUC regulatory requirements, making and funding long-term
22 technical power and water/wastewater plans, and insuring that, on a day-to-day basis, the power
23 and water flow and the sewage is treated.
24

25 49. Permitting CUC to be managed this way would plunge the CNMI into economic chaos and
26 a public health care crisis, as corporate activity and the Hospital's operations ground to a halt –
27 with or without a Board in place. The complex technical problems listed above simply cannot be
28 managed on a day-to-day basis by a group of non-expert volunteers.
29

30 50. No private or public utility company in the United States runs this way – with a group of
31 volunteers managing a \$70-million corporation's day-to-day operations. No other legislature in
32 the United States has mandated this form of corporate management for a public utility.
33

34 51. I can only conclude that the legislation's extraordinary structure for CUC is the result of a
35 drafting error, and the People, through their elected representatives, wish their utility company to
36 continue to supply them with essential services at a reasonable cost, meeting industry standards.
37
38

Fixing CUC's technical insolvency

1
2
3 52. CUC has been unable to borrow money to run its operations since the inception of this State
4 of Disaster Emergency due to (a) its poor financial condition and (b) the existence on its books
5 of a liability to the Commonwealth Development Authority ("CDA") of approximately \$115
6 million. This situation may be corrected if the Executive Director is recognized to have the
7 authority to correct it.

8
9 53. Meanwhile, billings and collections are substantially below the levels required to prudently
10 manage CUC's current operations and provide for system repairs, replacements and upgrades.
11 For example, billings alone for water and wastewater are less than 70% of requirements to run
12 those two systems.

13
14 54. The booked CDA obligation has rendered CUC nominally insolvent. While CUC is deemed
15 insolvent, CUC cannot borrow money. But CUC must be able to borrow money to bridge the
16 gap between (a) the need to spend money on essential goods and services to provide electricity,
17 water and sewage service, and (b) the lagged collection of already-determined-insufficient
18 revenues from the sale of those services.

19
20 55. The CPUC, in its September 3 electric order, Docket No. 09-1, approved a CUC-CDA
21 settlement converting the CDA debt to preferred stock. But the deal requires CUC's Board to
22 agree to it.

23
24 56. There is no Board. CUC has functioned without a Board of Directors, because it has had to.
25 While CUC's enabling act, reenacted as PL 16-17, as amended, authorizes a Board, there is no
26 CUC Board yet because, while the staff of the Governor's Office have diligently tried to find
27 Board volunteers who meet the complex statutory qualifications, they have been unable to do so.
28 Nonetheless, CUC must continue to function, including borrowing money.

29
30 57. EO 2009-08's Directive # 9 provides the required authority to the Executive Director. It
31 also permits him to continue to run CUC, carefully manage cash to pay tens of millions of
32 dollars annually for fuel oil and purchased power, and do all the things necessary to providing
33 power, water and wastewater services, until the remaining members of a properly constituted
34 Board can be identified, confirmed, and convened for business.

1 **Providing the basis for proper CPUC oversight**

2
3 58. The broad and comprehensive statutory scheme of utility regulation in the Public Utility Act,
4 4 CMC §§ 8401-84, provides that the utility regulator, the CPUC, will carefully examine CUC
5 activities, particularly financial activities.

6
7 59. This extensive oversight satisfies the policy need for a body of arms-length, well-informed
8 citizens to watchdog the activities of this, the Commonwealth's key resource. Thus, the statute's
9 error-infused creation of a volunteer Board which would run the corporation on a day-to-day
10 basis, becomes much less important than satisfying CPUC requirements.

11
12 60. What becomes very important is CUC's capability to provide the CPUC with accurate and
13 timely financial and accounting information. But such reporting is not possible without a
14 competent, trained staff of accounting and financial experts at CUC, and a properly-empowered
15 Executive Director to lead them.

16
17
18 **CRISIS FROM THE LACK OF LEGISLATIVE ACTION**

19
20 61. There is no Legislative relief coming. For months CUC has repeatedly asked the
21 Legislature for such relief, including submission of draft legislation in July. The Legislature has
22 declined to respond. There is no alternative to providing this relief other than an order from the
23 Governor. Inaction will produce a disaster in which CUC is unable to provide its critical
24 community services. Directives # 9 and #10 were designed to avert this crisis. (The other
25 Directives, #1 through #8, are no longer relevant, and were discontinued.)

26
27 62. This Declaration is necessary to protect the health and safety of our children, our senior
28 citizens, businesses and all other CNMI residents and visitors.

29
30
31 **CONCLUSION AND ORDER**

32
33 Therefore, I hereby invoke my authority under Article III, § 10, of the Commonwealth
34 Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threat
35 facing the Commonwealth of the Northern Mariana Islands.

36
37 Exercise of the Constitutional and statutory authority invoked herein will be effectuated by the
38 issuance of Executive Directives setting forth the measures to be taken to address the State of
39 Disaster Emergency pursuant to 3 CMC § 5121(f), which states:

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

3
4 (1) Suspend the provisions of any regulatory statute prescribing the procedures
5 for conduct of the Commonwealth's business, or the orders, rules, or regulations
6 of any Commonwealth activity or agency, if strict compliance with the provision
7 of any such statute, order, rule or regulation would in any way prevent, hinder, or
8 delay necessary action in coping with the emergency;

9
10 (2) Utilize all available resources of the Commonwealth as reasonably necessary
11 to cope with the disaster emergency of the Commonwealth;

12
13 (3) Transfer the direction, personnel, or functions of the Commonwealth
14 departments and agencies or units thereof for the purpose of performing or
15 facilitating emergency services;

16
17 3 CMC § 5121(f)(1)-(3).
18

19 By today's disaster emergency declaration, I intend to enable CUC to continue to provide
20 necessary service to the people of the Commonwealth.
21

22 This Declaration of a State of Disaster Emergency shall take effect immediately and all
23 memoranda, directives and other measures taken in accordance with this Declaration shall
24 remain in effect for thirty (30) days from the date of this Executive Order unless I, prior to the
25 end of the thirty (30)-day period, notify the Presiding Officers of the Legislature that the state of
26 emergency has been lifted or has been extended for an additional period of thirty (30) days. 1
27 CMC § 7403(a); 3 CMC § 5121(c).
28

29 A comprehensive report on the exercise of my constitutional authority shall be transmitted to the
30 presiding officers of the Legislature as soon as practicable in accordance with 1 CMC § 7403(a).
31

32
33 **DIRECTIVES**

34 I direct the following:

35
36 Directive 1: Deleted.

37
38 Directive 2: Deleted.
39
40

EO 2009-13
Declaration of Disaster Emergency: CUC Continuation 17

1 Directive 3: Deleted.

2
3 Directive 4: Deleted.

4
5 Directive 5: Deleted.

6
7 Directive 6: Deleted.

8
9 Directive 7: Deleted.

10
11 Directive 8: Deleted.

12
13 Directive 9: The Executive Director of CUC shall have all the powers of the CUC Board,
14 thereby enabling him to carry out all critical business of CUC, pending the earlier of either (1)
15 the confirmation and convening of an operating CUC Board, or (2) the termination of the
16 authority of this order. In particular, the Executive Director shall have full power and authority
17 to agree to swap CDA debt and related obligations for preferred stock and related features and
18 rights.

19
20 Directive 10: The following strike-out-formatted language of the quoted provision of the
21 following statute regulating government employment is, as indicated, suspended immediately:

22
23 (b) Transition exemptions for government employment. . . . (5) Commonwealth
24 Utilities Corporation. Engineers, and professional employees in technical or trade
25 areas may be exempted and CUC may contract with manpower services or
26 directly hire power plant mechanics and utility technicians who may be
27 exempted; ~~provided that direct or manpower hire of foreign national workers shall~~
28 ~~not exceed nineteen (19) employees. This exemption shall expire on September~~
29 ~~30, 2010, and no contract may provide to the contrary.~~

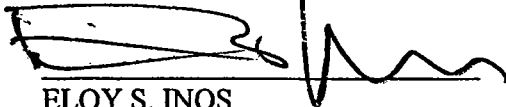
30
31 3 CMC § 4972(b)(5), as most recently amended by PL 16-14. (Underlining in original; strikeout
32 is deliberately added) That is, the following language is suspended: “provided that direct or
33 manpower hire of foreign national workers shall not exceed nineteen (19) employees. This
34 exemption shall expire on September 30, 2010, and no contract may provide to the contrary.”
35

EO 2009-13

Declaration of Disaster Emergency: CUC Continuation 17

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

9
10 Done this 23rd day of December 2009.

11
12
13
14 

15 ELOY S. INOS
16 Acting Governor
17

0 EO 2009-13 CUC Dis Decl (23NDec09).wpd



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AG Opinion 2010 - 12

Concerning the Commonwealth's obligation under federal law to make timely payment of federally-prescribed minimum wages and overtime compensation to Commonwealth employees who have not been identified as performing essential government services, but who volunteer to work during the government shutdown

QUESTIONS PRESENTED AND CONCLUSIONS

1. Some department heads and supervisors have asked whether they may allow selected non-essential employees to voluntarily come in to work without pay during the budget impasse. If, pursuant to Executive Order 2010-11, an employee has not been identified as performing an essential government service under Article III, Section 9(a) of the NMI Constitution, may that employee still volunteer their assistance with the understanding that their services are gratuitous?

CONCLUSION: No, the Commonwealth is prohibited by law from accepting voluntary unpaid services from its employees. Federal statutes require the timely payment of minimum compensation and earned overtime to employees who perform any work during the work week. 29 U.S.C. § 206-207. These statutes apply to the CNMI and have been held to mandate the payment of compensation to state public employees whose salary payments are suspended under provisions of the state's constitution due to a budget impasse. Violations of the federal statutes may lead to civil damages, liquidated damages, fines, criminal penalties, and personal liability for public officials. 29 U.S.C. § 216.

2. May an employee agree to waive any rights they may have under the federal law, or volunteer to postpone the receipt of any required compensation until the time that the legislature passes a balanced budget?

CONCLUSION: No, the employee may not agree to waive the protections of the Fair Labor Standards Act (29 U.S.C. § 201-219). A waiver by the employee is no bar to a subsequent private action by the employee to enforce the Act. Additionally, the full range of remedies available under the Act may be obtained in a direct action by the U.S. Secretary of Labor without the consent of the affected employees. The Act requires timely payment of the prescribed compensation. This generally means payment on the employee's regular payday, but in no event later than the next scheduled payday. 29 C.F.R. § 778.106 (2002).

ANALYSIS

Background

On October 1, 2010, the first day of fiscal year 2011, the Commonwealth had not enacted a balanced budget for 2011. Pursuant to Article III, Section 9(a) of the Northern Mariana Islands Constitution, no funds may be drawn from the general fund until the approval of a balanced budget, “provided that certain government services and employees shall remain available as provided by law in order to deliver services essential to the health, safety. And welfare of the people of the Commonwealth and to protect against damage to and destruction of property....” NMI Const., Art. III, § 9(a).

On September 30, 2010, Governor Benigno R. Fitial issued Executive Order 2010-11, declaring a state of emergency and identifying various government departments and positions that are deemed to be “essential” within the meaning of Article III, Section 9(a). Pursuant to the executive order, services classified as essential, and the salaries of employees providing those services, will continue to be supported by the general fund. All other government services and expenditures, including the salaries of non-essential employees, are suspended until such time as a balanced budget appropriations bill is enacted into law. E.O. 2010-11, p. 4.

As of the present date, no balanced budget has been enacted. The governor has also amended and revised the original list of essential government services and positions through subsequent executive orders. Commonwealth employees whose positions are not classified as essential have been directed not to appear for work. Naturally, this creates a personal hardship for those employees who are not allowed to come to work and it also raises difficulties for those active employees who are engaged in essential services but who rely upon the support of those classified as “non-essential” per Section 9(a).

In this context, many have raised the question of whether government employees whose positions have not been deemed “essential,” may nevertheless volunteer to show up for work or perform services with the understanding that they either will not be paid, or that their compensation will be deferred until such time as the legislature passes a budget. Such an arrangement is prohibited by the Fair Labor Standards Act, however, and the Commonwealth could incur substantial liability under the Act for permitting its employees to work without timely payment for their services.

FLSA Basics

The Fair Labor Standards Act of 1938 (29 U.S.C. § 201-219) (“FLSA”) generally applies within the CNMI and its applicable provisions are enforceable against the Commonwealth. *Norita v. CNMI*, 331 F.3d 690, 696-697 (9th Cir. 2003). The FLSA mandates that “every employer shall pay” a minimum wage set by the Act to each qualified employee “who in any workweek is engaged in commerce.” 29 U.S.C. § 206(b). The Act further mandates that every employee who works in excess of 40 hours in a workweek must be paid at the employee’s *regular rate of pay* for 40 hours’ work, plus overtime at the rate of at least one and one-half times the employee’s regular rate of pay. § 207(a)(1). In 1974, the FLSA was amended to clarify that the Act applies equally to public employers, including state governments. § 203(d), (e)(2)(C).

The employer's liability for violations of the FLSA is potentially quite severe. A willful violation of the chapter is a criminal offense punishable by a fine of up to \$10,000 and imprisonment for up to six months. 29 U.S.C. § 216(a). Failure to pay the prescribed minimum wages and overtime may result in civil damages equal to the unpaid compensation, plus 100% liquidated damages, attorney's fees and costs of suit by the employees or by the United States. § 216(b). In addition to these damages, the employer who violates the FLSA and who acted willfully is also subject to a civil penalty of up to \$1,100 for *each violation* of the Act. § 216(e)(2). Liability thus attaches to the public entity "employer," as well as to "persons" within the entity who are responsible for personnel decisions. §§ 203(d); 216(a), (b), (e)(1)(A), (e)(2).

The status of employees and the specific obligations imposed on the employer are defined by the FLSA, not by state or common law. *Bartels v. Birmingham*, 332 U.S. 126, 130 (1947); *Larson v. School Bd. of Pinellas County*, 820 F.Supp. 596, 599 (M.D. Fla. 1993) (individual members of public school board may be liable as "employers" on an FLSA claim). The Act's broad definitions are liberally construed to provide coverage on the basis of "economic realities" without deference to state law classifications or to the employee's contractual terms of employment.¹ *Mitchell v. Lublin, McGaughy & Associates*, 358 U.S. 207, 211 (1959) (noting that "the Act has been construed liberally to apply to the furthest reaches consistent with congressional direction"). The expansive statutory definition of the employment relationship has permitted FLSA actions against state governments, political subdivisions, departments, agencies, public officials and even against public officers and government employees in their personal capacity.²

Effect of a Constitutional Suspension of Appropriations

Several states, including Connecticut, Nevada, Pennsylvania and Kentucky, have experienced public employee furloughs and temporary freezes on salary payments due to state constitutional prohibitions on appropriations during a budget impasse. California has encountered this several times. The courts of these states, as well as federal circuit courts, have found that the FLSA continues to apply to the state as an employer and that the prescribed payments must continue to be made to state employees who are engaged during any workweek, even where the payment is prohibited by the state constitution. *Biggs v. Wilson*, 1 F.3d 1537 (9th Cir. 1993);

¹ Section 3 of the FLSA provides the following pertinent definitions:

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee....

(e)(1) ... the term "employee" means any individual employed by an employer.

....

(g) "Employ" includes to suffer or permit to work.

29 U.S.C. § 203.

² See, *Fraternal Order of Police, Barkley Lodge v. Fletcher*, 618 F.Supp.2d 712, 721 (W.D.Ky. 2008) ("The simplest and plain reading of the FLSA leads the Court to conclude that public employees who act directly or indirectly in the interest of an employer, including a public agency employer, in relation to an employee, may be held individually liable under the FLSA."). Also, *Barfield v. Madison County*, 984 F.Supp. 491, 496 (S.D. Miss. 1997) (sheriff, in his individual capacity, was "employer" of sheriff's department employees for purposes of FLSA); *Weiss v. Marsh*, 543 F.Supp. 1115, 1120 (M.D. Ala. 1981) (employees of Department of Army may be personally liable as "employers" of departmental employees over whom they exercise authority). In *Weiss*, the district court reasoned that personal liability for public officers was consistent with the FLSA's penal and civil penalty provisions and may be necessary to effectively deter violations of the Act by public employers. *Id.*, at 1123.

Council 13, Am. Fed. Of State, County & Muni. Employees, ex rel. Fillman v. Rendell, 986 A.2d 63 (Pa. 2009); *White v. Davis*, 68 P.3d 74 (Cal. 2003); *Gilb v. Chiang*, 186 Cal.App.4th 444 (Cal.App. 2010); see also, *White v. San Mateo County*, 37 Fed. Appx. 280 (9th Cir. 2003) (Table); and, *Michigan Employee Unions v. Michigan*, 61 F.3d 904 (6th Cir. 1995) (Table).

In *Biggs v. Wilson*, the Ninth Circuit squarely held that California had violated the FLSA in July 1990 by failing to pay wages to public transportation workers during a budget impasse. The court determined that under the FLSA, the public employer’s “obligation [to pay] kicks in once an employee has done covered work in any workweek” and that California would be liable for damages and liquidated damages notwithstanding the state’s claim of immunity under the Tenth Amendment.³ *Biggs*, 1 F.3d at 1542. The transportation workers were fully paid for their work when a budget was finally passed 14 days late, but were entitled to bring a suit for liquidated damages under the FLSA based upon the delay in payment. *Id.*, at 1538. The court held that the FLSA requires the state government to pay government workers “on time” during a budget impasse, which means “on the employee’s regular payday.” *Id.*, at 1541.

In *White v. Davis*, the California Supreme Court expressly held that, under the federal supremacy clause (U.S. Const., art. VI, § 2), the FLSA prevailed over provisions contained in the state constitution which imposed a mandatory freeze on appropriations during a budget impasse. *White*, 68 P.3d at 78-79. Citing *Biggs* and *White*, the Pennsylvania Supreme Court reached the same conclusion: that state employees who worked during a shutdown mandated by the state’s constitution would still have to be paid according to the federal statute. *Fillman*, 986 A.2d at 81-83.

Applicability to Volunteers

An employee may not agree to waive the protections of the FLSA (such as the guaranteed minimum wage), nor may an employee volunteer to perform services for the employer if they are the same type of services that the individual is regularly employed to perform. 29 U.S.C. § 203(e)(4)(A); *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 302 (1985) (“If an exception to the Act were carved out for employees willing to testify that they performed work ‘voluntarily,’ employers might be able to use superior bargaining power to coerce employees to make such assertions, or to waive their protections under the Act.”).

It is also clear from *Biggs v. Wilson, supra*, and subsequent cases, that the employee’s right to be paid “on time” is protected by the FLSA to the same degree as the employee’s right to payment of wages and overtime at the federally-prescribed rates. In *Biggs*, the workers had notice that their salary payments were frozen, but “volunteered” to continue in their jobs with the expectation that they would eventually be paid for their services. Although, as expected, the workers were paid for the total of their time when the legislature passed a budget, this did not excuse the state’s failure to make timely payment under the FLSA and did not preclude the workers’ claim for liquidated damages. *Biggs*, at 1538-40. An employee’s waiver of the right to receive timely payment of compensation for work performed is against public policy and is of no legal effect.

³ Rejecting the state’s Tenth Amendment argument that to enforce its compliance with the FLSA would require California to violate its own constitution, the court stated: “The FLSA does not require California to pass a budget on time; it only requires California to do what all employers must do—pay its employees the minimum wage on payday. That California has made its federal obligation dependent upon the operation of state law does not render the federal law unconstitutional.” *Biggs*, 1 F.3d at 1543.

FAQ [Frequently Asked Questions]

Question: I don't work at an "Executive Branch" agency. Does FLSA still apply to me as a public employer?

Answer: Yes.

Question: What do you mean by "personal liability?"

Answer: A person working a public employee who allows "volunteers" to work without regular pay may be found liable – not only responsible but **responsible to pay wages and penalties personally**.

Question: This doesn't make sense. An employee should be able to take the risk of non-payment and should be able to volunteer. If they don't get paid, they don't get paid. But they should have the choice.

Answer: As a policy matter, this is a good point. As a matter of law, the provisions of the FLSA apply and no employee may volunteer. During this period of "shutdown" only those listed as "essential" employees are permitted to work on behalf of the Commonwealth.

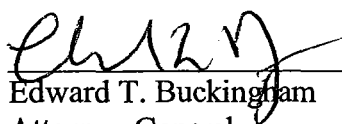
Question: I am a supervisor in zoning. Can I have my employees volunteer?

Answer: No. And the same answer applies if you put in a different Commonwealth agency name. If the employer is a public entity in the Commonwealth, the provisions of the FLSA as described in this opinion apply.

CONCLUSION

We know from *Norita* that the CNMI does not have 11th Amendment immunity with respect to the FLSA and that a civil action for violations of the FLSA may be brought against the Commonwealth and Commonwealth officials in the U.S. District Court. Even if such immunity could be found, however, the FLSA is still enforceable against the Commonwealth administratively or by an action brought by the United States Secretary of Labor. Also, the FLSA specifically does not allow an employee to "volunteer" services to their employer without pay. Allowing employees to show up to perform any of their usual tasks would trigger the mandatory payment provisions of the FLSA and expose the Commonwealth to liability and to potential civil and liquidated damages if the volunteers are not timely paid for their services at the prescribed federal rates.

Date: 10-8-10



Edward T. Buckingham
Attorney General



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

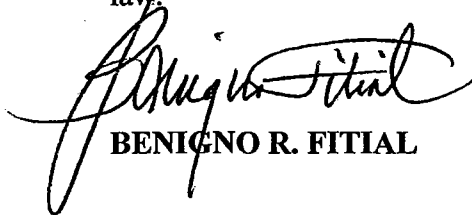
DIRECTIVE NO: 273

DATE: October 8, 2010

TO: ALL DEPARTMENT HEADS/AGENCIES
FROM: Governor
SUBJ.: SUSPENSION OF GOVERNMENT TRAVEL DURING SHUTDOWN

Please be advised that during the period of the Government shutdown, all travel, both locally funded and federally funded, will be denied. It is imperative that we exercise strict financial austerity even for those services that were deemed essential for the health, safety, and welfare of our CNMI community.

This directive shall remain in effect until a balanced budget is passed and enacted into law.


BENIGNO R. FITIAL



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lieutenant Governor

DIRECTIVE

DATE: October 10, 2010
No. 274

TO: ALL BRANCHES, DEPARTMENTS, AND AGENCIES

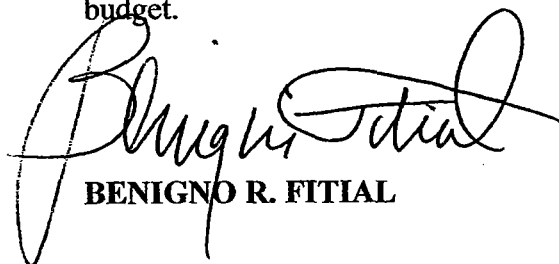
FROM: Governor

SUBJ.: Declaration of Commonwealth Cultural Day, October 11, 2010 as a holiday with pay.

Pursuant to Public Law 17-21 Section 605(c), I hereby declare Commonwealth Cultural Day, October 11, 2010 as a holiday which shall be paid as detailed herein.

Government employees who are **not** scheduled to work on Commonwealth Cultural Day shall be paid charging available annual leave hours for this holiday. Government employees who **are** scheduled to work on this holiday shall be paid their regular pay.

I take this step to ease the financial hardship experienced by our employees and their families as a result of the government shutdown caused by the delay in the passage of the budget.



BENIGNO R. FITIAL



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

MEMORANDUM

Date: October 20, 2010
DIRECTIVE #275

TO : Department of Public Safety

FROM : Governor

SUBJECT : MAI report and continued compliance with PSSRR and Civil Service Act

In February 2010, I requested consulting support to conduct an organizational review and desk audit of the Department of Public Safety (DPS). Management Analysis, Incorporated (MAI) was selected to perform the review and audit. This audit was undertaken as a result of the current state of financial affairs and funding of the CNMI government. Throughout the years, DPS has developed and aligned itself to meet the many expectations of the public in their desire for increased public safety services and support. The current DPS organizations are structured to provide many public safety services that are becoming too labor intensive and cost prohibitive to provide. DPS must continue to re-evaluate their basic core mission requirements and return to providing their core services if they are to function within their declining budgets.

Therefore, because of our current economic hardship, I tasked MAI with conducting a review and audit that would provide recommendations on (1) improving efficiency and reduce redundancies, (2) improving current core levels of service while reducing non-emergency and non-essential services, (3) meeting all local, Federal laws and regulations and (4) producing cost savings.

On October 5, 2010 MAI released its report on these four areas of concern. Currently, my administration is reviewing and assessing the report in order to implement those recommendations that would best serve the Commonwealth.

DPS is dedicated to providing the CNMI with the highest quality public safety services in order to enhance community safety, protect life, and reduce crime and the fear of crime. Its mission is "to join with our community in bringing a high quality of living and safety into the CNMI. We

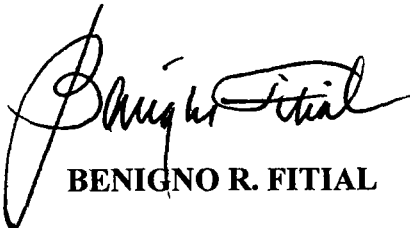
do this by providing responsive, cost effective, and innovative public services.” DPS accomplishes the mission, but as with most organizations, there is always more efficiency to be gained when the organization is assessed.

During this time while the MAI report is being assessed I ask that DPS continue to follow the Personnel Service System Rules and Regulations along with the Civil Service Act. Although positions will be reviewed and personnel assessed at this time DPS should continue to:

- (1) Comply with the PSSRR and Civil Service Act concerning salary/merit increases and promotions¹;
- (2) Comply with the PSSRR and Civil Service Act concerning the competitive selection process;
- (3) Comply with the Civil Service Act requiring DPS strict adherence to the following merit principles:
 - a. Equal opportunity for all regardless of age, race, sex, religion, political affiliation or place of origin;
 - b. Impartial selection of the ablest person for government service by means of competitive tests which are fair, objective, and practical;
 - c. Just opportunity for competent employees to be promoted within the civil service;
 - d. Reasonable job security for the competent employee;
 - e. Systematic classification of all posts through adequate job evaluation;
 - f. Fair and reasonable grievance procedures for all employees pertinent to condition of employment; and
 - g. Proper employer-employee relations to achieve a well-trained, productive and happy work force.

1 CMC §8102.

The administration is taking the recommendations of the MAI report very seriously and therefore I thank you in advance for your continued adherence to the PSSRR and Civil Service Act, while you await communication from my office concerning the MAI report.



BENIGNO R. FITIAL

¹ Please be aware that since 1999 NMIAC §10-20.2-1101 stating “all provisions in this subchapter that require increases in employees’ salaries due to permanent or temporary promotions, acting or detail assignments, reallocation or reclassification of positions, and step increases based on attendance at workshops or other training programs, will be suspended” has been implemented. The suspension of pay increases for civil service employees has not expired.

DIRECTIVE

DATE: 23 MAY 1994
No. 036

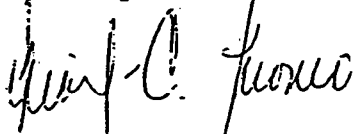
TO : Director, Dept. Public Health & Environmental Services

FROM : Governor

SUBJECT: Executive Order No. 94-2

This is to inform you that in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 106, effective immediately, the Department of Public Health and Environmental Services is redesignated the Department of Public Health.

The procedure for transferring authority, funds, records, property and personnel, should this be required, are set forth in Part V of the Executive Order, Section 503, 504 and 505.



FROILAN C. TENORIO

DIRECTIVE

DATE: 23 MAY 1994
No. 037

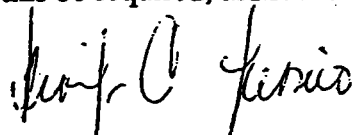
TO : Director, Dept. Public Health & Environmental Services

FROM : Governor

SUBJECT: Executive Order No. 94-2

This is to inform you that in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 205, effective immediately, the Health Planning and Development Agency and the Health Coordination Council are allocated to the Department of Public Health for purposes of administration and coordination.

The procedure for transferring authority, funds, records, property and personnel, should this be required, are set forth in Part V of the Executive Order, Section 503, 504 and 505.



FROILAN C. TENORIO

DIRECTIVE

Date: 24 MAY 1994
NO. 038

TO : DIRECTOR OF PERSONNEL
OFFICE OF PERSONNEL MANAGEMENT

FROM : GOVERNOR

SUBJECT: EXECUTIVE ORDER 94-2

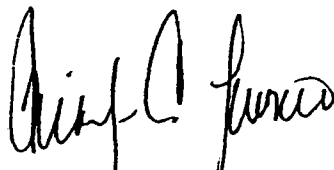
To complete implementation of Executive Order 94-2, with respect to the transfer of functions and personnel from the Office of Personnel Management, you are requested to transfer the following persons from the Administrative Services Division (staff housing office) to the Department of Public Works.

An inventory of all government-owned property will be made prior to the actual move from your office to the Department of Public Works. One copy of this inventory will be maintained by your office, and one copy shall be presented to the Secretary, Department of Public Works.

In addition to property, the following persons are to be permanently transferred to the Department of Public Works:

Herman A. Torres
Estanislao Fujihira
Vitaliano K. Moses
Ignacio Santos

Please make certain that the transfer of authority, funds, records, and property, in accordance with Part V of the Executive Order, Sections 503, 504, and 505, are completed by close of business, May 26, 1994.



FROILAN C. TENORIO

cc: Chairman, Civil Service Commission
Members, Civil Service Commission
Secretary, Department of Public Works

DIRECTIVE

DATE: 23 MAY 1994
No. 039

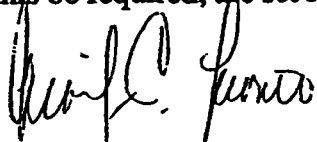
TO : Acting Chairman, Alcoholic Beverage Control Board

FROM : Governor

SUBJECT: Executive Order No. 94-2

This is to inform you that in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 209, effective immediately, the authority of the Governor under 4 CMC, Section 5525 to issue temporary licenses for the sale of alcoholic beverages by nonprofit organizations is transferred to the Secretary of Commerce

The procedure for transferring authority, funds, records, property and personnel, should this be required, are set forth in Part V of the Executive Order, Section 503, 504 and 505.



FROILAN C. TENORIO

cc: Secretary of Commerce

DIRECTIVE

DATE: 23 MAY 1994
No. 040

TO : Chairman, Statistical Advisory Council

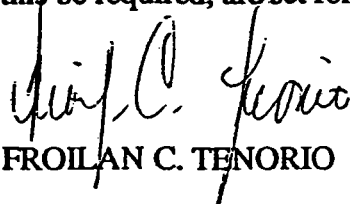
FROM : Governor

SUBJECT: Executive Order No. 94-2

This is to inform you that in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 302(d), effective immediately, the Statistical Advisory Council is abolished and its records, property, facilities, equipment, and supplies are to be transferred to the Department of Commerce.

The Secretary of Commerce shall solicit from all activities of the Commonwealth Government, including those of the Legislative and Judicial branches, and from the private sector as appropriate, their needs for government statistics and shall consider such needs when determining what statistics to collect, compile, and report.

The procedure for transferring authority, funds, records, property and personnel, should this be required, are set forth in Part V of the Executive Order, Section 503, 504 and 505.



FROILAN C. TENORIO

cc: Department of Commerce
Department of Finance

DIRECTIVE

DATE: 23 MAY 1994
No. 041

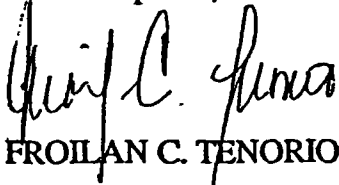
TO : Chairman, Commonwealth Library Council

FROM : Governor

SUBJECT: Executive Order No. 94.2

This is to inform you that in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 308(e), effective immediately, the Commonwealth Library Council is allocated to the Department of Community and Cultural Affairs for purposes of administration and coordination.

The procedure for transferring authority, funds, records, property and personnel, should this be required, are set forth in Part V of the Executive Order, Section 503, 504 and 505.



FROILAN C. TENORIO

cc: Department of Community and Cultural Affairs

DIRECTIVE

DATE: 23 MAY 1994
No. 042

TO : Executive Director, Commonwealth Ports Authority
FROM : Governor
SUBJ. : Executive Order 94-2

This is to inform you that, in accordance with Executive Order No. 94-2, Reorganization Plan No. 1, of 1994, Section 304 (a), effective immediately, the Commonwealth Ports Authority is allocated to the Department of Public Works for purposes of administration and coordination.

Please refer to Section 507 for information regarding administration and coordination with the Department of Public Works. This pertinent part reads as follows: "When an agency is allocated by this plan to another agency for purposes of administration and coordination, the allocated agency shall not be integrated into the other agency. ... However, there shall be regular communication between the two agencies, such that the officials and personnel of the allocated agency are aware of the policies and actions of the other agency."

If you have any questions regarding any aspect of this plan please contact my office.



FROILAN C. TENORIO

cc: Commonwealth Ports Authority Board Members
Secretary of Public Works

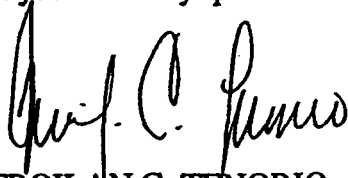
DIRECTIVEDATE: 23 MAY 1994
No. 043

TO : Chairperson, Alcoholic Beverage Control Board
FROM : Governor
SUBJ. : Executive Order 94-2; Section 302 (c)

This is to inform you that, in accordance with Executive Order 94-2, Reorganization Plan No. 1, effective immediately, the Alcoholic Beverage Control Board is abolished and its functions transferred to the Secretary of Commerce.

The procedure for transferring authority, funds, records, property and personnel, should this be required, are set forth in Part V of the Executive Order, Sections 503, 504 and 505.

If you have any questions regarding the reorganization plan please contact my office.



FROILAN C. TENORIO

cc: Alcoholic Beverage Control Board Members
Secretary of Commerce
Secretary of Finance

DIRECTIVE

DATE: 24 MAY 1994
NO. 044

TO : DIRECTOR OF PERSONNEL
OFFICE OF PERSONNEL MANAGEMENT

FROM : GOVERNOR

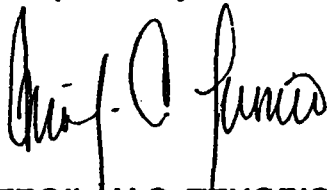
SUBJECT: EXECUTIVE ORDER 94-2, SECTION 214(f)

To complete implementation of Section 214(f) of Executive Order 94-2, with respect to the transfer of functions and personnel from the Office of Personnel Management, you are requested to transfer the following persons from the Training Division to the Northern Marianas College. An inventory of all government-owned property will be made prior to the actual move from your office to NMC. One copy of this inventory will be maintained by your office, and one copy shall be presented to the President of the Northern Marianas College.

In addition to property, the following persons are to be permanently transferred to the Northern Marianas College:

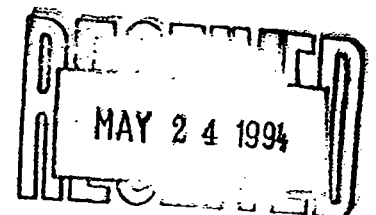
Rhoda Smith
Kathy Wise George
Deborah Camacho

Please make certain that the transfer of authority, funds, records, and property in accordance with Part V of the Executive Order, Sections 503, 504, and 505, are completed by close of business, May 25, 1994



FROILAN C. TENORIO

cc: Chairman, Civil Service Commission
Members, Civil Service Commission
President, Northern Marianas College



DIRECTIVEDATE: 25 MAY 1994
No. 045

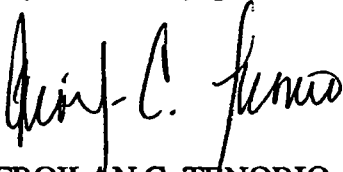
TO : Executive Director, Marianas Public Land Corporation
FROM : Governor
SUBJ. : Executive Order No. 94-2, Section 306(a)

This is to inform you that, in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 306 (a), effectively immediately, pursuant to Section 4(f) of Article XI of the Constitution, the Marianas Public Land Corporation is dissolved and its functions transferred to the Division of Public Lands in the Department of Lands and Natural Resources, which shall have at its head a Director of Public Lands.

Other sections that may be of related interest are 105, and 306(b).

The procedures for transferring authority, funds, records, property, and personnel, should this be required, are set forth in Part V of the Executive Order, Sections 503, 504 and 505.

If you have any questions regarding any aspect of the transfer please contact my office.



FROILAN C. TENORIO

cc: MPLC Board Members
Secretary of Lands and Natural Resources
Director of Land Registration
Director of Public Lands

DIRECTIVE

DATE: 23 MAY 1994
No. C46

TO : Director, Department of Community and Cultural Affairs

FROM : Governor

SUBJECT: Executive Order No. 94-2

This is to inform you that in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 308(a), there is established, within the Department of Community and Cultural Affairs a Division of Sports and Recreation, headed by a Director of Sports and Administration.

The Division shall develop and administer programs relating to team and individual sports, recreational activities, and physical fitness for youth and adults, including senior citizens and persons with mental or physical disabilities.



FROILAN C. TENORIO

DIRECTIVEDATE: 23 MAY 1994
No. 047

TO : President, Northern Marianas College
Board of Regents, Northern Marianas College

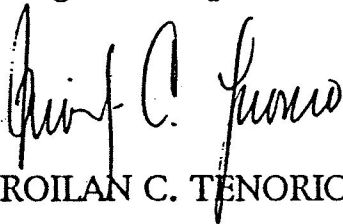
FROM : Governor

SUBJ. : Executive Order 94-2; Scholarships

This is to inform you that in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 211, effective June 21 of this year, all functions of the College relating to student scholarships, except those donated, bequeathed, or granted to the College by parties outside the Commonwealth Government, are hereby transferred to the Office of the Governor.

Please contact this office so that we can arrange for the transfer to be made in an orderly manner.

Within the Office of the Governor, there shall be a Scholarship Advisory Board, which shall review scholarship applications and shall set forth objective standards for the award of scholarships. I will be making the initial appointments to this Board in the near future. If you have any suggestions or recommendations in this matter, please don't hesitate to bring them up.



FROILAN C. TENORIO

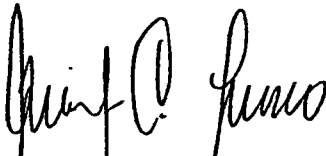
DIRECTIVE

DATE: 23 MAY 1994
No. 048

TO : Special Assistant for Women's Affairs
FROM : Governor
SUBJ. : Executive Order No. 94-2, Section 204 (a), (2)

This is to inform you that, in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 204 (a), (2), effective immediately, the office of Women's Affairs is transferred to the Department of Community and Cultural Affairs. Other applicable provisions that should be consulted are Section 204 (b), (c).

The procedure for transferring authority, funds, records, property and personnel, should this be required, are set forth in Part V of the Executive Order, Section 503, 504 and 505.



FROILAN C. TENORIO

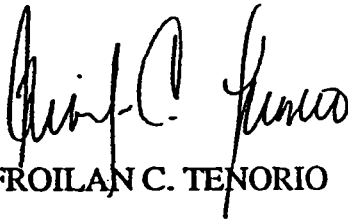
cc: Director of Community & Cultural Affairs

DIRECTIVE

DATE: 23 MAY 1994
No. 049

TO : Director of Commerce and Labor
FROM : Governor
SUBJ. : Executive Order No. 94-2, Section 208

This is to inform you that, in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 208, effective immediately, all functions of the Governor relating to weights and measures pursuant to Chapter 4 of 4 CMC, Division 5, are transferred to the Secretary of Commerce. Please contact my Secretary for all documents related to weights and measures.



FROILAN C. TENORIO

DIRECTIVE

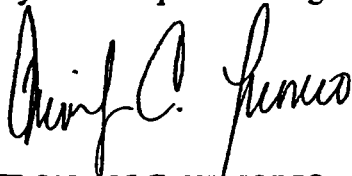
DATE: 23 MAY 1994
No. 050

TO : Personnel Officer
FROM : Governor
SUBJ. : Executive Order 94-2; Section 307 (c)

This is to inform you that, in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 307 (c), effective immediately, any function of the Personnel Office relating to administration of group health or life insurance programs for government officials or employees is transferred to the Department of Finance. The Public Auditor has commenced an audit of the health insurance program and will report the results of such audit to the legislature and the public when it is completed.

The procedure for transferring authority, funds, records, property and personnel, should this be required, are set forth in Part V of the Executive Order, Section 503, 504 and 505.

If you have questions regarding this transfer please contact my office.



FROILAN C. TENORIO

cc: Secretary of Finance
Administrator, Retirement Fund
Public Auditor

DIRECTIVE

DATE: 23 MAY 1994
No. 051

TO : Administrator, Energy Office
FROM : Governor
SUBJ. : Executive Order 94-2, Section 212

This is to inform you that, in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 212, effective immediately, the Energy Office is transferred to the Department of Public Works.

The procedure for transferring authority, funds, records, property and personnel, should this be required, are set forth in Part V of the Executive Order, Section 503, 504 and 505.

If you have any questions regarding implementation of this transfer please contact my office.



FROILAN C. TENORIO

cc: Director of Public Works

DIRECTIVE

DATE: 23 MAY 1994
No. 052

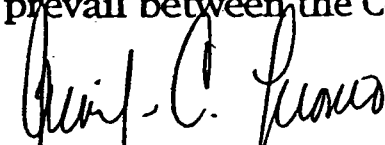
TO : Chairman, State Job Training Coordination Council
JTPA
Director, Department of Commerce and Labor

FROM : Governor

SUBJ. : Executive Order 94-2

This is to inform you that in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 301(b)(4), effective immediately, the State Job Training Coordination Council/Private Industry Council and the JTPA office are hereby allocated to the Department of Labor, Immigration and Customs for purposes of administration and coordination.

Section 507 of the Executive Order defines the relationship that will prevail between the Council, JTPA, and the Department.



FROILAN C. TENORIO

DIRECTIVE

DATE: 23 MAY 1994
No. 053

TO : Board of Health and Environmental Quality
FROM : Governor
SUBJ. : Executive Order 94-2

This is to inform you that, in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 305 (a), effective immediately, the Board of Health and Environmental Quality is abolished and its functions transferred to the Secretary of Public Health.

The procedure for transferring authority, funds, records, property and personnel, should this be required, are set forth in Part V of the Executive Order, Section 503, 504 and 505.



FROILAN C. TENORIO

cc: Board of Health and Environmental Quality Members
Secretary of Public Health
Public Health Administrator

DIRECTIVEDATE: 23 MAY 1994
No. 054

TO : Director of Natural Resources
FROM : Governor
SUBJ. : Executive Order No. 94-2, Section 105

This is to inform you that, in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 105, effective immediately, the Department of Natural Resources is re-designated the Department of Lands and Natural Resources. Please review the plan to determine what other changes affect your department. Some provisions may be implemented in full and others may be deferred under the authority of Section 511 of Executive Order 94-2. If you have any questions regarding any aspect of implementation, please contact my office.

The procedure for transferring authority, funds, records, property and personnel, should this be required, are set forth in Part V of the Executive Order, Section 503, 504 and 505.



FROILAN C. TENORIO

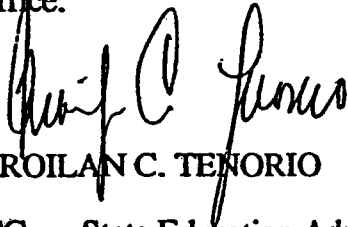
DIRECTIVEDATE: 23 MAY 1994
No. 055

TO : Chairperson, Board of Education
FROM : Governor
SUBJ. : Executive Order No. 94-2, Section 403

This is to inform you that, in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 403, effective immediately, for purposes of administration and coordination, the State Education Advisory Council, the State Interagency Coordinating Council, and the Special Education State Advisory Panel are allocated to the Board of Education, which may assign any of them to the Public School System for such purposes.

Please consult with Section 507 of Executive Order 94-2 to ascertain the parameters of what is intended by this allocation for administration and coordination purposes.

If you have any further questions regarding implementation of this plan, please contact my office.



FROILAN C. TENORIO

CC: State Education Advisory Council Members
State Interagency Coordinating Council Members
Special Education Advisory Panel Members

DIRECTIVE

DATE: 23 MAY 1994
No. 056

TO : Special Assistant for Planning and Budgeting
FROM : Governor
SUBJ. : Executive Order No. 94-2, Section 101

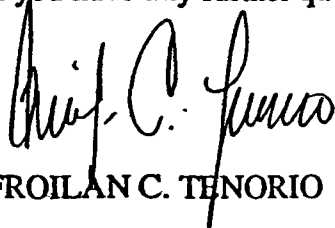
This is to inform you that, in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 101, effective immediately, the Special Assistant for Planning and Budgeting is re-designated the Special Assistant for Management & Budget and shall head the Office of Management & Budget. The additional duties and responsibilities of the Special Assistant for Management and Budget are stated in Section 202 (d), as follows:

"The Special Assistant for Management and Budget shall, in addition to any other duties be responsible for improving and coordinating the management of the Commonwealth Government. In this regard, the Special Assistant shall ensure discipline in government programs and activities for consistency with the Governor's policies and budget, improve government efficiency by reducing duplication and overlaps between and among agencies, and assist department and activity heads in internal organization and management to achieve maximum effectiveness at minimum cost to the taxpayers."

Other duties are stated in Section 306 (e).

The procedure for transferring authority, funds, records, property and personnel, should this be required, are set forth in Part V of the Executive Order, Section 503, 504 and 505.

If you have any further questions regarding implementation of this plan please contact my office.



FROILAN C. TENORIO

DIRECTIVE

DATE: 24 MAY 1994
NO. 057

TO : DIRECTOR OF PERSONNEL
OFFICE OF PERSONNEL MANAGEMENT

FROM : GOVERNOR

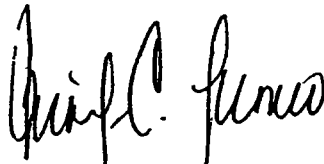
SUBJECT: EXECUTIVE ORDER 94-2, SECTION 307(c)

To complete implementation of Section 307(c) of Executive Order 94-2, with respect to the transfer of functions and personnel from the Office of Personnel Management, you are requested to transfer the following persons from the Group Health and Life Insurance programs to the Department of Finance. An inventory of all government-owned property will be made prior to the actual move from your office to the Department of Finance. One copy of this inventory will be maintained by your office, and one copy shall be presented to the Secretary, Department of Finance.

In addition to property, the following persons are to be permanently transferred to the Department of Finance:

Dolores S. Moore
Margarita T. Palacios
Raymond S. Ada
Joseph I. Benavente
Geraldine S. Teregeyo
James T. Camacho

Please make certain that the transfer of authority, funds, records, and property in accordance with Part V of the Executive Order, Sections 503, 504, and 505, are completed by close of business, May 27, 1994



FROILAN C. TENORIO

cc: Chairman, Civil Service Commission
Members, Civil Service Commission
Secretary, Department of Finance

DIRECTIVE

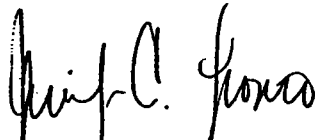
DATE: 24 MAY 1994
NO. 058

TO : HISTORIC PRESERVATION OFFICER
DEPARTMENT OF COMMUNITY AND CULTURAL AFFAIRS

FROM : GOVERNOR

SUBJECT: EXECUTIVE ORDER 94-2, SECTION 401(f)

This is to inform you that in accordance with Executive Order 94-2, Reorganization Plan No. 1, effective immediately, the functions of the Governor regarding historic preservation appeals pursuant to 2 CMC Section 4831(c) are transferred to the Development Appeals Board. Decisions of the Development Review Board relating to historic preservation, shall, in lieu of the procedure set forth in such section, be subject to judicial review as provided in Section 401(h) of Executive Order 94-2.



FROILAN C. TENORIO

cc: Secretary, Department of Community and Cultural Affairs
Members, Development Appeals Board

DIRECTIVE

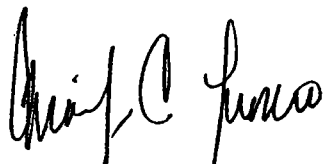
DATE: 24 MAY 1994
NO. 059

TO : SECRETARY
DEPARTMENT OF COMMUNITY AND CULTURAL AFFAIRS

FROM : GOVERNOR

SUBJECT: EXECUTIVE ORDER 94-2, SECTION 308(g)

This is to inform you that in accordance with Executive Order 94-2, Reorganization Plan No. 1, effective immediately, the Commonwealth Hall of Fame is abolished and its records, property, facilities, equipment, and supplies transferred to the Department of Community and Cultural Affairs.



FROILAN C. TENORIO

DIRECTIVE

DATE: 24 MAY 1994
NO. 060

TO : SECRETARY
DEPARTMENT OF FINANCE

FROM : GOVERNOR

SUBJECT: EXECUTIVE ORDER 94-2, SECTION 405

This is to inform you that in accordance with Executive Order 94-2, Reorganization Plan No. 1, effective immediately, the Task Force on Income and Sales Taxation and Business Tax Incentives is abolished and its records, property, facilities, equipment, and supplies are transferred to the Department of Finance.



FROILAN C. TENORIO

DIRECTIVE

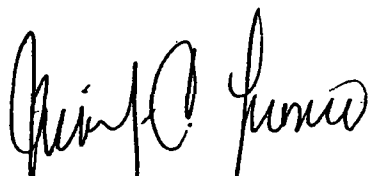
DATE: 24 MAY 1994
NO. 061

TO : SECRETARY
DEPARTMENT OF COMMUNITY AND CULTURAL AFFAIRS

FROM : GOVERNOR

SUBJECT: EXECUTIVE ORDER 94-2, SECTION 308(b)

This is to inform you that in accordance with Executive Order 94-2, Reorganization Plan No. 1, effective immediately, the Northern Marianas Amateur Sports Association is allocated to the Division of Sports and Recreation of the Department of Community and Cultural Affairs for purposes of administration and coordination.



FROILAN C. TENORIO

DIRECTIVE

DATE: 25 MAY 1994
NO. 062

TO : BENNET T. SEMAN, MANAGING DIRECTOR
MARIANAS VISITORS BUREAU

FROM : GOVERNOR

SUBJECT: EXECUTIVE ORDER 94-2, SECTION 302(b)

This is to inform you that in accordance with Executive Order 94-2, Reorganization Plan No. 1, effective immediately, the Marianas Visitors Bureau is transferred to the Department of Commerce. The Board of Directors of the Marianas Visitors Bureau is abolished and its functions are hereby transferred to the Secretary of Commerce.

As for now, the Marianas Visitors Bureau will continue to occupy its present location.

Furthermore, the procedure for transferring authority, funds, records, property and personnel, should this be required, are set forth in Part V of the Executive Order, Sections 503, 504, and 505.



FROILAN C. TENORIO

cc: Chairman, MVB Board of Directors (distribute to all Members)
Secretary, Department of Commerce

DIRECTIVE

DATE: 1 JUN 1994
NO. 063

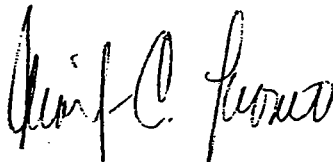
TO : BOARD ADMINISTRATOR
BOARD OF PROFESSIONAL LICENSING

FROM : GOVERNOR

SUBJECT: EXECUTIVE ORDER 94-2, SECTION 304(c)

This is to inform you that in accordance with Executive Order 94-2, Reorganization Plan No. 1, effective immediately, the Board of Professional Licensing is abolished and its functions transferred to a Division of Professional Licensing in the Department of Public Works, which shall have at its head a Director of Professional Licensing.

The procedure for transferring authority, funds, records, property and personnel, should this be required, are set forth in Part V of the Executive Order, Sections 503, 504, and 505.



FROILAN C. TENORIO

cc: Secretary, Department of Public Works
Director of Professional Licensing, Department of Public Works
Chairperson, Board of Professional Licensing
Members, Board of Professional Licensing

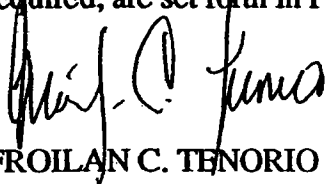
DIRECTIVEDATE: 1 JUN 1994
No. 064

TO : Secretary of Commerce
FROM : Governor
SUBJ. : Executive Order No. 94-2, Section 301(b) (1)

This is to inform you that, in accordance with Executive Order 94-2, Section 301 (b), (1), Reorganization Plan No. 1, effective immediately, the Division of Labor and the Division of Employment Services are transferred from the Department of Commerce to the Department of Labor, Immigration, and Customs. The Secretary of Labor, Immigration, and Customs shall strengthen the Division of Employment Services to increase its ability to encourage and locate private sector employment for Commonwealth residents. The Secretary shall coordinate the functions of the two office such that the availability of resident workers known to the Division of Employment Services is considered by the Division of Labor before nonresident worker certificates are issued.

Mr. Gonzalo Santos is appointed the new Director of the Division of Labor and Employment Services, effective immediately. Please familiarize yourselves with the relevant provisions of Executive Order 94-2, and begin implementation as soon as is possible.

The procedure for transferring authority, funds, records, property and personnel, should this be required, are set forth in Part V of the Executive Order, Sections 503,504 and 505.



FROILAN C. TENORIO

cc: Secretary of Labor, Immigration & Customs
Mr. Gonzalo Santos
Chief, Division of Labor
Chief, Division of Employment Services

DIRECTIVE

DATE: 1 JUN 1994
No. 065

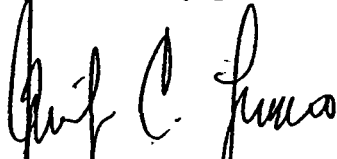
TO : Secretary of Commerce
FROM : Governor
SUBJ. : Executive Order No. 94-2, Section 301(a)

This is to inform you that, in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 301 (a), effectively immediately, there is hereby established a Department of Labor, Immigration, and Customs, which shall have at its head a Secretary of Labor, Immigration, and Customs. Other Sections of Executive Order 94-2 which have relevance and are also effective include Section 301 (b) (1), (2), (3), (4), (5), and (d).

Section 301(c), dealing with Immigration, is deferred until further notice.

The procedures for transferring authority, funds, records, property, and personnel, should this be required, are set forth in Part V of the Executive Order, Sections 503, 504 and 505.

If you have any questions regarding any aspect of this Directive, please contact my office.



FROILAN C. TENORIO

cc: Secretary, Department of Labor, Immigration, and Customs
Secretary of Finance
Chief, Division of Customs
Chief, Division of Labor

DIRECTIVE

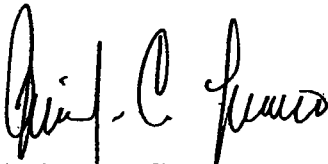
DATE: ~~7/1~~ 1 JUN 1994
No. 066

TO : Chief of Customs
FROM : Governor
SUBJ. : Executive Order No. 94-2, Section 301(d)

This is to inform you that, in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 301 (d), effectively immediately, the Customs Division is transferred to the Department of Labor, Immigration and Customs as a division of that department, and shall have at its head a Director of Customs.

The procedures for transferring authority, funds, records, property, and personnel, should this be required, are set forth in Part V of the Executive Order, Sections 503, 504 and 505.

If you have any questions regarding any aspect of this Directive, please contact my office.



FROILAN C. TENORIO

cc: Secretary, Department of Labor, Immigration, and Customs
Secretary, Department of Commerce
Secretary of Finance

DIRECTIVE

DATE: 2 JUN 1994

No: 067

TO : Taxicab Bureau
Director of Finance
Acting Secretary, Department of Commerce

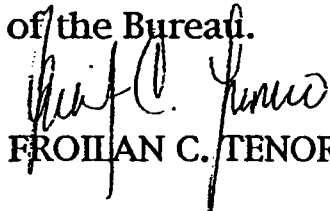
FROM : Governor

SUBJ. : Executive Order 94-2; Taxicab Bureau

This is to inform you that in accordance with Executive Order No. 94-2, Reorganization Plan No. 1 of 1994, Section 302(a), effective immediately, the Taxicab Bureau is abolished and its functions transferred from the Department of Finance to the Department of Commerce.

The procedures for transferring authority, funds, records, property, and personnel, should this be required, are set forth in Part V of the Executive Order, Sections 503, 504, and 505.

This transfer shall not affect the employment or duties of any employees of the Bureau.

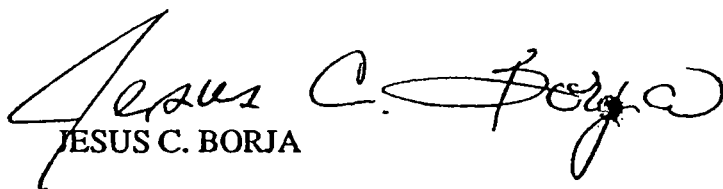

FROILAN C. TENORIO

DIRECTIVE

DATE: 20 JUN 1994
No. 068

TO : All Department and Activity Heads
FROM : Acting Governor
SUBJ. : Executive Order 94-2 - Re-organization

I hereby employ the discretion vested in me by Section 511 of Executive Order 94-2, and defer until a date to be established, the implementation of those sections of Executive Order 94-2 that have not yet been activated by executive directive.


JESUS C. BORJA

DIRECTIVE

DATE: 22 JUN 1994

NO.: 069

TO : DIRECTOR OF PERSONNEL
OFFICE OF PERSONNEL MANAGEMENT

FROM : GOVERNOR

SUBJECT : CLARIFICATION OF DIRECTIVE No. 044

To complete implementation of Section 214(f) of Executive Order 94-2, you are requested to transfer the of functions of, and four (4) full time employment positions (FTE's) from the Training Division at the Office of Personnel Management to the Northern Marianas College. An inventory of all government owned property and training materials from the Training Divison will be made prior to the actual move from your office to NMC. One copy of this inventory will be maintained by your office, and one copy will be presented to the President of the Northern Marianas College.

Please make certain that the transfer of authority, funds, records, property and training materials are in accordance with Part V of the Executive Order, Sections 503, 504, and 505.


FROILAN C. TENORIO

cc: Chairman, Civil Service Commission
Members, Civil Service Commission
President, Northern Marianas College
Special Assistant For Administration

JUN 23 1994



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

FROILAN C. TENORIO
Governor

JESUS C. BORJA
Lt. Governor

Capitol
Saipan, MP 96950
Telephone: (670) 322-5000
Fax: (670) 322-5000

24 JUN 1994

The Honorable Diego T. Benavente
Speaker of the House of Representatives
Ninth Northern Marianas
Commonwealth Legislature
Saipan, MP 96950

The Honorable Juan S. Demapan
Senate President
Ninth Northern Marianas
Commonwealth Legislature
Saipan, MP 96950

Dear Mr. Speaker and Mr. President,

I am transmitting with this letter Executive Order 94-3, the Second Re-organization Plan of 1994.

As you know, the Superior Court just recently ruled on Executive Order 94-2. The Court found that the so called autonomous agencies were, indeed, part of the Executive Branch and so subject to re-organization. Nevertheless, the Court voided the order because of a technical defect in its passage.

This Order restates E.O. 94-2. There are a few minor changes. The Attorney General's office will not be renamed the Department of Justice; they prefer their present title. The Director of Public Safety will be Commissioner of Public Safety, not the Secretary. More powers have been given to the Office of Personnel Management, the Emergency Management Office has been moved into the Governor's Office, and the provision dealing with Marianas Visitors' Bureau has been re-written. And, in the single most important change, Customs has been moved back under the Department of Finance. Almost all of the rest of this order, though, is identical to E.O. 94-2

There could well be tremendous confusion and difficulty if the re-organization plan is first reversed and then carried out for a second time. Therefore, I respectfully request that the Legislature move forward as quickly as possible in acting on this Order.

Sincerely,

FROILAN C. TENORIO

EXECUTIVE ORDER NO. 94-3

SUBJECT: Re-organization Plan No. 2 of 1994

AUTHORITY: Constitution, Article III, Section 15

WHEREAS, Section 15 of Article III of the Constitution requires that Executive Branch offices, agencies, and instrumentalities of the Commonwealth Government be allocated among and within not more than fifteen principal departments, grouped as far as practicable according to major purposes; and

WHEREAS, pursuant to such section, regulatory, quasi-judicial, and temporary agencies may be so allocated, but need not be; and

WHEREAS, the Governor may make changes in the allocation of offices, agencies, and instrumentalities, and in their functions and duties, as necessary for efficient administration; and

WHEREAS, such changes may affect existing law; and

WHEREAS, the existence of a multitude of offices, agencies, and instrumentalities outside of the principal departments has resulted in duplication of functions, overlaps of responsibility, lack of coordination, and other forms of inefficient administration; and,

WHEREAS, the power of the Governor to reorganize the Executive Branch, has been affirmed and upheld by the Superior Court of the Commonwealth of the Northern Mariana Islands in its Decision and Judgment dated June 23, 1994, in the case of Marianas Visitor's Bureaus, et al. v. CNMI;

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 Re-organization Plan No. 2 of 1994:

PART 1. RE-DESIGNATIONS.

Section 101. Special Assistant for Management and Budget. The Special Assistant for Planning and Budgeting is re-designated the Special Assistant for Management and Budget and shall head the Office of Management and Budget.

Section 102. Special Assistant for Public Liaison. The Special Assistant for Political Affairs is re-designated the Special Assistant to the Governor for Public Liaison and shall head the Office of Public Liaison.

Section 103. Department of Commerce. The Department of Commerce and Labor is re-designated the Department of Commerce.

Section 104. Department of Lands and Natural Resources. The Department of Natural Resources is re-designated the Department of Lands and Natural Resources.

Section 105. Department of Public Health. The Department of Public Health and Environmental Services is re-designated the Department of Public Health.

Section 106. Changes in Departmental Components and Titles.

(a) Department Secretaries. Each department director, except the Attorney General and the Director of Public Safety, is re-designated a secretary. The Director of Public Safety is re-designated the Commissioner of Public Safety.

(b) Division Directors. Except as otherwise provided in this plan, the major components of a department shall be known as divisions. Each chief of a major component of a department is re-designated a director. For example, the Chief of Labor is re-designated Director of Labor. If the head of a division has a title other than chief, that title may be retained at the discretion of the head of the department, adjusted as necessary to reflect any re-allocation of duties or functions made by this plan.

(c) Office Chiefs. Except as otherwise provided in this plan, minor components of a department, whether or not within a division, shall be known as

offices. Each office head is re-designated a chief.

(d) **Renaming by Department Heads.** With the approval of the Governor, the head of a department may vary the designation of any component of such department or the title of the head of any such component from the designations and titles provided in subsections (a) through (c) of this section.

PART 2. OFFICE OF THE GOVERNOR.

Transfers, abolishments, creations, and changes in functions and duties, not otherwise provided for, relating to the Office of the Governor are hereby effected as set forth in this part.

Section 201. Passports and Certificates of Identity. The functions of the Attorney General and the Immigration and Naturalization Officer (including those as Chief of Immigration) relating to Certificates of Identity or United States passports are transferred to the Governor and delegated to the Special Assistant for Administration. The Special Assistant for Administration may designate any qualified officer or employee of the Commonwealth Government to serve as an examining officer pursuant to 3 CMC §4126.

Section 202. Planning and Management Functions.

(a) There is hereby established a Planning Office in the Office of the Governor, which shall have at its head a Special Assistant for Planning, who shall be appointed by and serve at the pleasure of the Governor.

(b) The planning functions of the Special Assistant for Management and Budget, other than those relating to land use planning, are transferred to the Special Assistant for Planning.

(c) The functions of the Special Assistant for Management and Budget relating to land use planning are transferred to the Secretary of Lands and Natural Resources.

(d) The Special Assistant for Management and Budget shall, in addition to any other duties, be responsible for improving and coordinating the management of

the Commonwealth Government. In this regard, the Special Assistant shall ensure discipline in government programs and activities for consistency with the Governor's policies and budget, improve government efficiency by reducing duplication and overlaps between and among agencies, and assist department and activity heads in internal organization and management to achieve maximum effectiveness at minimum cost to the taxpayers.

Section 203. Special Assistant for Youth.

(a) There is established the Office of Youth Affairs, which shall have at its head a Special Assistant for Youth, who shall be appointed by and serve at the pleasure of the Governor.

(b) The Special Assistant for Youth shall coordinate all Commonwealth Government programs and activities for youth. The Special Assistant may also conduct programs and activities for youth that are not being conducted by other agencies and, in particular, may develop and implement innovative programs and activities for youth.

(c) As used in this section, the term "programs and activities for youth" means programs and activities with substantial participation by, or designed for the benefit of, non-delinquent and non-criminal individuals under the age of twenty-three years, except primarily academic programs of the Public School System or the Northern Marianas College, and except primarily medical programs of the Department of Public Health.

Section 204. Constitutional Officers.

(a) The following officers and their respective offices are transferred to the Department of Community and Cultural Affairs:

- (1) Executive Assistant for Carolinian Affairs;
- (2) Special Assistant for Women's Affairs; and
- (3) Resident Executive for Indigenous Affairs.

(b) Except as provided in subsection (c) of this section, the Secretary of Community and Cultural Affairs shall coordinate the activities of the officers and offices transferred pursuant to this section to reduce or eliminate conflict and overlaps and to promote productivity and efficiency.

(c) Notwithstanding the provisions of subsection (b) of this section, all rights, powers, and responsibilities of the officers transferred pursuant to this section shall be preserved as set forth in the Constitution and shall not be derogated by the Secretary of Community and Cultural Affairs. For example, pursuant to the Constitution, the Executive Assistant for Carolinian Affairs, without the permission of the Secretary, may require information in writing (even from the Secretary), conduct investigations, report findings, and make recommendations to the Governor.

Section 205. Health Planning and Coordination. The Health Planning and Development Agency and the Health Coordination Council are allocated to the Department of Public Health for purposes of administration and coordination.

Section 206. Coastal Resources Management.

(a) The Coastal Resources Management Office is transferred to the Department of Lands and Natural Resources.

(b) The Coastal Advisory Council is abolished and its functions transferred to the Development Advisory Council established by Section 402 of this plan.

Section 107. Corporate Charters. All functions of the Governor relating to corporate charters pursuant to Chapter 1 of 4 CMC, Division 4, are delegated to the Attorney General.

Section 208. Weights and Measures. All functions of the Governor relating to weights and measures pursuant to Chapter 4 of 4 CMC, Division 5, are transferred to the Secretary of Commerce.

Section 209. Temporary Alcoholic Beverage Licenses. The authority of

the Governor under 4 CMC §5525 to issue temporary licenses for the sale of alcoholic beverages by nonprofit organizations is transferred to the Secretary of Commerce.

Section 210. Public Liaison. The Special Assistant for Public Liaison shall coordinate the government's participation in community events and celebrations and provide outreach to various organizations, association, and other groups.

Section 211. Scholarships.

(a) All functions of the Northern Marianas College Board of Regents relating to student scholarships, except those donated, bequeathed or granted to the College by parties outside the Commonwealth Government, are transferred to the Office of the Governor.

(b) There is hereby established in the Office of the Governor a Scholarship Advisory Board consisting of nine members who shall be appointed by and serve at the pleasure of the Governor. At least two of the members shall be from Tinian, and at least two from Rota. Not more than five of the board members shall be associated with a single political party. The Board shall review applications for scholarships and make recommendations to the Governor with respect thereto. The Board shall also recommend objective standards for the award of scholarships. The provisions of Public Law No. 8-41 shall not apply to the Board.

(c) As used in this section, the term "scholarships" includes student grants, student loans and other programs of student financial assistance.

Section 211. Energy Office. The Energy Office is transferred to the Department of Public Works.

Section 213. Board of Parole.

(a) The Board of Parole is allocated to the Office of the Special Assistant for Administration for purposes of administration and coordination. After the effective date of this section, appointments to the Board shall be made by the Governor with the advice and consent of the Senate.

(b) Subsection (a) of 6 CMC §4205, relative to probation, is repealed and succeeding subsections re-designated accordingly.

(c) Section 4207 of ⁶CMC is revised to read as follows:

"§4207. Board of Parole; Staff.

The Special Assistant for Administration shall provide staff support to the Board, including a Probation Officer who shall have the power of arrest of persons under the jurisdiction of the Board."

(d) Any existing staff of the Board of Parole is transferred to the Office of the Special Assistant for Administration.

Section 214. Personnel Management.

(a) There is hereby established an Office of Personnel Management, which shall have at its head a Director of Personnel, who shall be appointed by the Governor with the advice and consent of the Senate and who shall have the rank of a special assistant to the Governor.

(b) The Personnel Office is abolished and, except as otherwise provided in this section or in Section 307, its functions transferred to the Office of Personnel Management.

(c) Boards and commissions (including the Civil Service Commission for its own employees), the Marianas Public Land Trust, the Board of Education/Public School System, the Northern Marianas College, and the Legislative and Judicial Branches (for their administrative staffs) may, to the extent of budgetary resource retain or establish personnel management functions within their organizations, or they may, by agreement, arrange with the Office of Personnel Management to perform such functions on their behalf.

(d) The following functions of the Personnel Office shall be retained by the Civil Service Commission (which may establish an appropriate administrative structure for such purpose) and may be delegated in whole or in part to any or all of

the appointing authorities:

(1) Exemption of positions from Civil Service classifications.

(2) Development, evaluation, and improvement of the Personnel Service Performance Standards and Appraisal System.

(3) Recommendation and promulgation of regulations relating to Personnel matters.

(e) Notwithstanding any other provision of law, the function of taking any personnel action is, subject to the policies set forth by the Civil Service Commission, vested in the respective appointing authorities and shall not require further approval. Such actions shall be documented by the Office of Personnel Management (or by any office or employee conducting personnel management functions pursuant to subsection (b) of this section), and a copy of such documentation forwarded to the Civil Service Commission.

(f) The functions of the Personnel Office relating to training programs for government employees are transferred to the Northern Marianas College. The Board of Regents of the Northern Marianas College shall consult as necessary with the Director of Personnel regarding such programs. Government agencies and instrumentalities may, after consultation with the College, supplement such programs as budgetary resources may permit.

(g) Nothing in this section shall be taken to derogate from the constitutional authority of the Civil Service Commission.

Section 215. Special Assistant for Drugs & Substance Abuse.

(a) There is established in the Office of the Governor the Office of Drugs and Substance Abuse, which shall be headed by a Special Assistant for Drugs and Substance Abuse, who shall be appointed by and shall serve at the pleasure of the Governor.

(b) The Special Assistant for Drugs and Substance Abuse shall

coordinate all activities of the Commonwealth Government relating to drugs and substance abuse, including education, prevention, interdiction, enforcement, treatment, and rehabilitation.

(c) The heads of Public Health and Environmental Safety, Finance, Community and Cultural Affairs, Public Safety, and all other relevant agencies shall advise the Special Assistant regarding programs and activities of their respective offices and departments relating to drug control and substance abuse and shall coordinate such programs and activities with each other and with the Special Assistant; provided, that nothing in this subsection shall be taken to require advice or coordination where such action would compromise a pending investigation or legal proceeding or would violate any law.

The Special Assistant shall also coordinate with private and voluntary organizations, religious groups, businesses, health care practitioners (including practitioners of traditional medicine) and other persons or groups in the Commonwealth expressing an interest in controlling drugs and combating substance abuse.

(d) The Special Assistant may stimulate or supplement programs and activities conducted by other agencies, or may initiate new programs and activities, subject to the availability of funding.

(e) All applications for grants or grant renewals from the Federal Government or other sources in the areas of drug control and substance abuse shall be coordinated by and require the approval of the Special Assistant.

(f) The Special Assistant shall utilize funds appropriated or otherwise available to the Office of the Governor and designated for such purpose by the Governor and may, with the approval of the Governor, employ staff or procure the services of independent contractors.

(g) The position of Special Assistant for Drugs and Substance Abuse shall continue in existence for four years from the effective date of this order. If still needed, it may be renewed thereafter by a subsequent Executive Order.

Section 216. Emergency Operations. The Disaster Control Office and the Office of Civil Defense are consolidated in a Division of Emergency Operations

within the Office of the Governor, which shall have at its head a Director of Emergency Operations.

PART 3. THE DEPARTMENTS

Transfers, abolishments, creations, and changes in functions and duties relating to the major departments, not otherwise provided for, are hereby effected as set forth in this part.

Section 301. Department of Labor and Immigration.

(a) **Department Established.** There is hereby established a Department of Labor and Immigration which shall have at its head a Secretary of Labor and Immigration.

(b) Labor and Employment Services.

(1) The Division of Labor and the Division of Employment Services are transferred from the Department of Commerce to the Department of Labor and Immigration. The Secretary of Labor and Immigration shall strengthen the Division of Employment Services to increase its ability to encourage and locate private sector employment for Commonwealth residents. The Secretary shall coordinate the functions of the two offices such that the availability of resident workers known to the Division of Employment Services is considered by the Division of Labor before non-resident worker certificates are issued.

(2) The functions of the Secretary of Commerce under Chapter 2 or 4 CMC, Division 9, relating to minimum wages and hours, are transferred to the Secretary of Labor and Immigration.

(3) The Wage and Salary Review Board is abolished and its records, property, facilities, equipment, and supplies transferred to the Department of Labor and Immigration..

(4) The State Job Training Coordination Council/Private Industry

Legislature, and the public.

Section 308. Department of Community and Cultural Affairs.

(a) **Sports and Recreation.** There is established in the Department of Community and Cultural Affairs a Division of Sports and Recreation, which shall have at its head a Director of Sports and Recreation. The Division shall develop and administer programs relating to team and individual sports, recreational activities, and physical fitness for youth and adults, including senior citizens and persons with mental or physical disabilities.

(b) **Amateur Sports Association.** The Northern Marianas Amateur Sports Association is allocated to the Division of Sports and Recreation of the Department of Community and Cultural Affairs for purposes of administration and coordination.

(c) **Council for Arts and Culture.** The Commonwealth Council for Arts and Culture is allocated to the Department of Community and Cultural Affairs for purposes of administration and coordination.

(d) **Chamorro-Carolinian Language Policy Commission.** The Chamorro-Carolinian Language Policy Commission is allocated to the Department of Community and Cultural Affairs for purposes of administration and coordination.

(e) **Library Council.** The Commonwealth Library Council is allocated to the Department of Community and Cultural Affairs for purposes of administration and coordination.

(f) **Historic Preservation Review Board.** The Historic Preservation Review Board is abolished and its functions transferred to the Historic Preservation Office in the Department of Community and Cultural Affairs.

(g) **Hall of Fame.** The Commonwealth Hall of Fame is abolished and its records, property, facilities, equipment, and supplies transferred to the Department of Community and Cultural Affairs.

Section 309. Attorney General. The Division of Intergovernmental Relations is abolished and its functions assigned by the Attorney General as the Attorney General determines to be the most productive use of available resources.

PART 4. OTHER AGENCIES AND INSTRUMENTALITIES

Transfers, abolishments, creations, and changes in functions and duties relating to other agencies and instrumentalities of the Commonwealth, not otherwise provided for, are hereby effected as set forth in this part.

Section 401. Development Appeals Board.

(a) There is hereby established a Development Appeals Board consisting of nine members, including five from Saipan, two from Rota, and two from Tinian. Not more than three of the members from Saipan, and not more than five members of the entire Board shall be associated with a single political party. Members of the Board shall be appointed by the Governor with the advice and consent of the Senate for terms of two years, except that of the members first appointed, five shall serve for one year and four shall serve for two years, as the Governor shall determine. The members of the Board shall be compensated at the rate established for board members of government corporations and councils by 1 CMC §8247.

(b) Except as provided in subsection (c) of this Section, the Development Appeals Board shall hear appeals of adverse decisions of agencies and instrumentalities regarding permits and other approvals for private sector development.

(c) To the extent that changes in zone boundaries or changes of zones for individual parcels are decided by the Saipan Legislative Delegation by local law, the Board shall not hear any appeal from a decision or recommendation of the Division of Zoning on a request from any person regarding a change of zone or of zone boundary. Any function of the Zoning Board abolished by Section 306(c) of this plan relating to variances is transferred to the Development Appeals Board, and the five Saipan members of the Board shall sit as a Board of Zoning Appeals and shall hear and decide upon applications for variances from the Saipan Zoning Law as

approved by Saipan Local Law 8-7 and as may from time-to-time be amended.

(d) The Board may, subject to appropriations, hire employees under Civil Service procedures or contract for professional services to assist it in carrying out its duties. The Board may, by agreement, utilize the services of employees of other agencies of the government on a reimbursable or non-reimbursable basis.

(e) The Coastal Resources Appeals Board and the Building Safety Code Review Board are abolished and their functions transferred to the Development Appeals Board.

(f) The functions of the Governor regarding historic preservation appeals pursuant to 2 CMC §4831(c) are transferred to the Development Appeals Board. Decisions of the Development Review Board relating to historic preservation, shall, in lieu of the procedure set forth in such section, be subject to judicial review as provided in subsection (h) of this section.

(g) The Development Appeals Board and that portion thereof designated as the Board of Zoning Appeals shall each meet as necessary to discharge its responsibilities without undue delay and not less frequently than once a month when there are matters pending consideration, except that by-laws may provide for hearings by panels consisting of less than the full membership of the Board (or of the Board of Zoning Appeals). At least one member of any such panel of the Development Appeals Board shall be from the senatorial district involved. All members of any such panel of the Board of Zoning Appeals shall be from Saipan.

(h) Decisions of the Development Appeals Board, including those of the Board of Zoning Appeals, shall be subject to judicial review pursuant to the provisions of 1 CMC §9112, except that the court shall act upon such review within 60 days after the written record of the proceedings is made available to the court.

Section 402. Development Advisory Council.

(a) There is hereby established a Development Advisory Council consisting of nine members, including five from Saipan, two from Rota and two from Tinian, who shall be appointed by and serve at the pleasure of the Governor. The Council

is allocated to the Department of Lands and Natural Resources for purposes of administration and coordination. The Council shall advise the Governor, the head of any agency involved in the development process, the Development Appeals Board (including the Board of Zoning Appeals), the Zoning Board of Rota, the mayors, the Legislature, and the respective legislative delegations regarding the effect of government policies and actions on private sector development in the Commonwealth. The Council may comment upon or intervene in any application for or hearing, appeal, or other proceeding concerning any permit or approval required for development.

(b) To the extent that the Zoning Advisory Council has not fully disbanded as required by 2 CMC §7223(d), it is abolished and its records, property, facilities, equipment, and supplies transferred to the Development Advisory Council.

Section 403. Board of Education. For purposes of administration and coordination, the State Education Advisory Council, the State Interagency Coordinating Council, and the Special Education State Advisory Panel are allocated to the Board of Education, which may assign any of them to the Public School System for such purposes.

Section 404. Saipan Street Directory Commission. The Saipan Street Directory Commission is abolished and its records, property, facilities, equipment, and supplies transferred to the Office of the Mayor of Saipan.

Section 405. Taxation Task Force. The Task Force on Income and Sales Taxation and Business Tax Incentives is abolished and its records, property, facilities, equipment, and supplies transferred to the Department of Finance.

Section 406. Other Task Forces. The Termination and Trusteeship Task Force and the Task Force on Privatization of Government Services are abolished and their records, property, facilities, equipment, and supplies transferred to the Office of the Governor.

Section 407. Marianas Housing Authority.

(a) The Marianas Housing Authority is abolished and its functions transferred to a Division of Housing, within the Commonwealth Development Authority, which shall have at its head a Director of Housing.

(b) Any bond or other indebtedness of the Mariana Island Housing Authority shall be assumed by the Commonwealth Government, but only upon such terms and security as shall have been agreed to previously by the Authority. The full faith and credit of the Commonwealth shall not secure such bond or other indebtedness, except as may have been pledged prior to such assumption or as otherwise provided by law.

PART 5. GENERAL PROVISIONS.

Section 501. Definition of Agency. As used in this part, the term "agency" means any office, division, bureau, board, commission, authority, corporation, instrumentality, or other entity or component of the Commonwealth Government, other than one within the Legislative or Judicial branches.

Section 502. Legal and Regulatory References. All references in law or regulation to any agency of official re-designated by this plan shall be deemed to be a reference to such agency of official as so re-designated. In addition, references to an agency and to the head of such agency are used interchangeably in this plan as regards the authority or a function thereof.

Section 503. Authority Transferred. Except as otherwise provided in this plan, the functions of the head of any department or other agency (including those of a collective head, such as a board or commission) relating to the administration of any agency or function transferred pursuant to this plan are hereby transferred to, and shall be exercised by the head of the department or other agency to which such transferred agency or function is transferred by this plan.

Section 504. Transfer of Records, Property, and Personnel.

(a) All records and property (including office equipment) of the various agencies, and all records and property used primarily in the administration of any function, transferred by this plan and, except as otherwise provided, all the personnel used in the administration of such agencies and functions (including employees whose chief duties relate to such administration) are hereby transferred to the respective departments or other agencies concerned for use in the administration of the agencies and functions transferred by this plan.

(b) The Special Assistant for Management and Budget, the Special Assistant for Administration, and the Director of Personnel shall consult with each other regarding appropriate procedures for the integration of the personnel of any abolished agency, the functions of which are transferred to another agency, into the employment of the gaining agency. The three officials shall, within 30 days after the effective date of this plan, make recommendations to the Civil Service Commission, which shall, within 30 days thereafter, promulgate regulations for such integration. If such regulations provide for the appointment of such personnel to positions in the classified Civil Service of the Excepted Service, the individuals involved must be qualified to perform the duties of such positions.

(c) Pending the integration of personnel provided for in subsection (b) of this section, their terms of employment with the abolished agency shall continue to apply to the extent permitted by law.

(d) As used in this section, the term "gaining agency" means any agency to which an agency or any of its functions is transferred.

Section 505. Transfer of Funds. So much of the unexpended balances of appropriations, allocations, allotments, or other funds available for the use of any agency in the exercise of any function transferred by this plan, or for the use of the head of any department or other agency in the exercise of any function so transferred, as the Special Assistant for Management and Budget with the approval of the Governor shall determine, shall be transferred to the department or other agency concerned for use in connection with the exercise of the function so transferred. 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.

Section 506. Interim Appointments. Whenever an appointment of a member of a board, commission, or other collective head of an agency is pending before the Senate for confirmation, the Governor may appoint an individual as an interim or acting member to serve until the Senate acts on the permanent appointment. If an individual is confirmed as a permanent member while serving as an interim or acting member, the term of office of that member shall be deemed to have begun on the date of the interim or acting appointment.

Section 507. Administration and Coordination. When an agency is allocated by this plan to another agency "for purposes of administration and coordination", the allocated agency shall not be integrated into the other agency. The individual or collective head of the allocated agency shall not report to or serve under the direction of the head of the other agency. However, there shall be regular communication between the two agencies, such that the officials and personnel of the allocated agency are aware of the policies and actions of the other agency. The two agencies may, at their discretion, enter into an agreement to coordinate any of their activities, to share staff or administrative services, or otherwise to improve efficiency and effectiveness. The annual budget for an allocated agency shall be set forth in the Governor's Budget as a separate entry under the general heading of the agency to which it is allocated.

Section 508. Independence of Board members. Notwithstanding any other provision of this plan, the independence of any member of a board or commission to whom the provisions of Section 21 of Article III of the Constitution apply, shall be preserved.

Section 509. Governor's Appointments; Excepted Service.

(a) In order to assure the accountability of government managers, all officials at or above the level of division director, or the equivalent by whatever title known, shall be appointed by and serve at the pleasure of the Governor, provided that such official shall report to and serve under the direction of the head of any supervisory official, such as a department head.

(b) In order further to ensure accountability, the executive director or other principal officer of any board, commission, or of any agency headed by a board or commission, shall be appointed by the Governor with the concurrence of a majority of the members of the relevant board or commission present and voting, a quorum thereof being present. Once appointed, such officer shall serve at the pleasure of the board or commission and shall also be subject to removal by the Governor for cause. Pursuant to Article XV of the Constitution, the provisions of this subsection shall not apply to the Commissioner of Education or the President of the Northern Marianas College.

(c) In order to assure consistency in government policies, and to ensure confidentiality in the formulation of policy, the following positions, if not subject to appointment by the Governor or otherwise exempt from the Civil Service system, shall be in the Excepted Service:

(1) Any position in the Office of the Governor (including the Office of the Lieutenant Governor), except the administrative staff of the Office of Personnel Management.

(2) Any position the duties of which include direct involvement in the making of government policy.

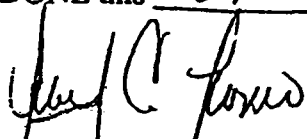
(3) Any position which requires a confidential relationship with an official appointed by the Governor or with a person appointed to a position described in paragraph (2) of this subsection.

(d) Any person appointed by the Governor, or appointed to a position described in subsection (c) of this section, who was a member of the classified Civil Service immediately before such appointment, shall, upon termination from such position, be reinstated in the classified Civil Service in a position for which such person is qualified at the grade and step previously held, except that, if the performance of such person has been sufficiently satisfactory, any within grade step increase that such person would have earned had that person remained in the classified Civil Service shall be awarded.

Section 510. Codification of Changes. The Law Revision Commission shall codify the designations, allocations, and changes in existing law affected by this plan.

Section 511. Effective Date. In accordance with the Constitution, this plan shall become effective sixty days after submission to the Legislature, unless specifically modified or disapproved by a majority of the members of each house of the Legislature, provided, that in case it shall appear to the Governor that the interests of economy or management require that any transfer, consolidation, or abolishment be delayed beyond the date this plan becomes effective, the Governor may, in his discretion, fix a later date therefor, and he may for like cause further defer such date from time to time.

DONE this 24th day of JUNE, 1994.



FROILAN C. TENORIO
Governor

DIRECTIVE

DATE: 26 AUG 1994
NO. 070

TO : All Department and Activity Heads
FROM : Governor
SUBJECT : Withdrawal of Directive No. 16 - Re-issuance of Directive on Executive Order 94-3,
Effectiveness of Executive Order 94-3

Executive Order 94-3 is now in effect. In order to bring about an orderly transition, and pursuant to Section 511, certain sections of the Order will not be immediately implemented. The implementation of all sections will be made known via DIRECTIVES to be issued.



FROILAN C. TENORIO