



By Order of the Court, Associate Judge DAVID A. WISEMAN

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**FOR PUBLICATION**



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**IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**COMMONWEALTH UTILITIES CORPORATION,** ) **CIVIL CASE NO. 13-0227**  
)  
)

**Plaintiff,** )  
)

v. )

**COMMONWEALTH HEALTHCARE CORPORATION,** )  
)  
)

**Defendant.** )  
)  
)

**ORDER GRANTING  
DEFENDANT’S REQUEST FOR  
PRELIMINARY INJUNCTION**

**I. INTRODUCTION**

**THIS MATTER** came before the Court on May 29, 2014 at 1:30 p.m. in Courtroom 223A on Defendant’s motion for a temporary restraining order and preliminary injunction. Plaintiff Commonwealth Utilities Corporation (“CUC”) was represented by James Sirok, Esq. and Michael White, while Defendant Commonwealth Healthcare Corporation (“CHCC”) was represented by Assistant Attorney Generals David Lochaby, Reena Patel, and Teresita Sablan.

Based upon the Court’s review of the parties’ filings and arguments made during the hearings held in this matter, the Court issues the following order granting Defendant’s request for preliminary injunction.

**II. BACKGROUND**

This case revolves around the efforts of the island’s sole power utility company to collect allegedly unpaid utility bills from Saipan’s sole hospital, where the hospital requested injunctive

1 relief to insulate the operations of the hospital from being interfered with after CUC allegedly  
2 threatened to disconnect CHCC's utilities.

3 On December 10, 2013, CUC initiated a complaint against CHCC in the Commonwealth  
4 Superior Court to recover an alleged unpaid utility bill in the amount of \$9,690,875.67. On  
5 February 13, 2014, CHCC filed its Answer to CUC's Complaint, in which it denied CUC's claims  
6 and raised several affirmative defenses to CUC's lawsuit.

7 In early May 2014, both parties attempted — to no avail — to negotiate the terms of  
8 payment of CHCC's utility bills to settle the lawsuit out of court. According to CHCC, the main  
9 issue was its inability to pay accrued late charges — which accounted for approximately 25% of  
10 CUC's regular billings to CHCC — yet CUC nevertheless demanded CHCC pay each monthly bill  
11 to include all late charges. CUC allegedly made repeated threats to CHCC that if CHCC failed to  
12 pay each month's bill including the late charges, CUC would immediately commence the temporary  
13 disconnection of services at CHCC, where CUC would exercise its own discretion on which  
14 services they determined to be unnecessary.

15 In response, CHCC filed a Motion for Temporary Restraining Order and Preliminary  
16 Injunction on May 12, 2014. CHCC requested this Court restrain CUC from disconnecting utility  
17 services for failure to pay what they claim were and are exorbitant and illegal late charges.

18 This Court promptly reviewed CHCC's case, and immediately issued a Temporary  
19 Restraining Order ("TRO") against CUC on May 21, 2014, finding therein that CHCC would suffer  
20 immediate and irreparable injury should CUC disconnect any of CHCC's utility services as CHCC  
21 would become unable to provide critical healthcare and public health services to the public. (TRO,  
22 at 1.) This Court's TRO "restrained, enjoined, and prohibited [CUC] from disconnecting any utility  
23 services [CUC] provides to [CHCC], or with impeding or interfering in any manner with the  
24 provision of electric/water/sewer utility services to [CHCC]" and set Defendant's Motion for

1 Preliminary Injunction for hearing on May 29, 2014 at 1:30 p.m. (*Id.*)

2           On May 29, 2014, the Court heard CHCC’s Motion for Preliminary Injunction, in which it  
3 heard testimony from Esther Muna, the Chief Executive Officer (“CEO”) of CHCC. The main  
4 focus of Ms. Muna’s testimony revolved around CHCC’s dire financial straits which have made it  
5 impossible to make full payments to CUC, as well as CHCC’s attempts to reduce its energy  
6 consumption in efforts to lower its utility bills with CUC. Ms. Muna claimed that CHCC has made  
7 partial payments to CUC since January 2013, yet CUC filed the underlying lawsuit in May 2014  
8 and continued to threaten to disconnect CHCC if it failed to pay its current consumption and late  
9 charges. Finally, Ms. Muna illustrated that any such disconnection of any of its services would  
10 cause irreparable harm by effectively rendering the Commonwealth’s sole hospital inoperable, as  
11 well as the incidental effect the disconnection would have on CHCC’s risk of losing CMS  
12 certification and the funding acquired therefrom.

13           At the hearing, CUC opposed CHCC’s Motion for Preliminary Injunction, presenting  
14 arguments to the Court through its counsel alongside testimony from CUC Board of Directors  
15 Chairman David J. Sablan. CUC argued that CUC never threatened immediate disconnection of  
16 services to CHCC following the underlying lawsuit, and, while it declined to identify precisely  
17 which portions of CHCC’s service could be safely disconnected, stated that any disconnection of  
18 services would only be to what it deemed to be “non-essential” portions of CHCC’s operations.  
19 CUC also claimed that harm would result to CUC if CHCC failed to pay its late charges and make  
20 current its utility account with CUC.

21           At the conclusion of the hearing, the Court ordered CHCC to continue making timely  
22 payments of its current utilities usage, not including late fees, interest, or penalties, until ordered  
23 otherwise. Further, in lieu of oral arguments, the Court ordered the parties to submit Findings of  
24 Fact and Conclusions of Law, to include CUC’s opposition to the preliminary injunction and

1 CHCC’s reply brief, as well as declarations from each party as to which services they deem to be  
2 “non-essential.” Lastly, the Court ordered the previously issued TRO to remain in effect pending  
3 the Court’s review of the briefs and its decision on the Preliminary Injunction.

4 On June 20, 2014, CUC filed its Written Argument in Opposition to Issuance of Preliminary  
5 Injunction, arguing that: (1) the Court’s issuance of a TRO was not supported under NMI R. Civ.  
6 P. 65(b); (2) the Court lacks jurisdiction to issue a preliminary injunction; (3) CHCC is estopped  
7 from requesting the Court to issue a preliminary injunction; and (4) CHCC has failed to prove the  
8 factors necessary for the Court to enter a preliminary injunction.

9 On July 3, 2014, CHCC filed its Written Argument for Preliminary Injunction, arguing in  
10 response that: (1) the Court’s issuance of a TRO on May 21, 2014 was valid under NMI R. Civ. P.  
11 65(b); (2) the Court has jurisdiction to issue a preliminary injunction against CUC; (3) CHCC has  
12 not waived its right nor is it estopped from requesting a preliminary injunction; and (4) CHCC has  
13 proven that a preliminary injunction is necessary to preserve the status quo in this case.

14 Based upon the foregoing factual and procedural background, the Court addresses the  
15 party’s arguments relating to the necessity of the issuance of a preliminary injunction.

### 16 **III. DISCUSSION**

17 The Court now addresses the arguments of both parties relating to the necessity of issuing a  
18 preliminary injunction, as well as employs the applicable four factor test under *Tinian Shipping*  
19 which guides the Court’s analysis.

#### 20 **A. Validity of TRO under NMI R. Civ. P. 65(b)**

21 First, CUC argues this Court’s issuance of the May 21, 2014 TRO was invalid under NMI  
22 R. Civ. P. 65(b).

23 Pursuant to Rule 65(b) of the Commonwealth Rules of Civil Procedure, a “Commonwealth  
24 Court may grant a TRO without written or oral notice to the adverse party’s attorney if: (1) it

1 clearly appears from specific facts shown by affidavit or by the verified complaint that immediate  
2 and irreparable injury, loss, or damage will result to the applicant before the adverse party's  
3 attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing  
4 the efforts, if any, which have been made to give the notice and the reasons supporting the claim  
5 that notice should not be required." NMI R. Civ. P. 65(b). Further, "[e]very TRO granted without  
6 notice must be endorsed with the date of issuance, shall be filed in the clerk's office and entered of  
7 record, shall define the injury and state why it is irreparable and why the order was granted without  
8 notice, and shall not exceed ten (10) days unless extended for good cause shown." *Id.*

9 Here, the Court granted CHCC's request for a TRO on May 21, 2014, without written or  
10 oral notice to the adverse party's attorney. After reviewing CHCC's motion and accompanying  
11 exhibits — which included (1) a Declaration by CHCC CEO Esther Muna, (2) an email from CUC  
12 counsel James Sirok to Ms. Muna, and (3) a Saipan Tribune article detailing CUC's threats to  
13 CHCC — the Court found good cause to believe that immediate and irreparable injury, loss, or  
14 damage would result before the adverse party could be heard.

15 Specifically, Ms. Muna's Declaration illustrated such irreparable harm to both CHCC and,  
16 incidentally, the public, that would result if the Court did not grant CHCC's request for a TRO,  
17 including the risk of losing CMS certification — which accounts for nearly two-thirds of its annual  
18 budget — and being unable to operate as the sole hospital on the island as a result. Further, Ms.  
19 Muna explained that CUC is not qualified to determine what services can "safely" be disconnected,  
20 especially due to the fact that CUC is ignorant of the internal operations and relationships of the  
21 various CHCC services. Ms. Muna detailed a previous circumstance where CUC has demonstrated  
22 its willingness to disconnect CHCC services they deem to be "non-essential." CUC previously  
23 disconnected the Medicaid Office when it was still under the Governor's Office instead of CHCC,  
24 then reconnected the service when it was informed of this fact.

1 Furthermore, the Court properly considered the final two exhibits in CHCC’s motion, which  
2 included both an email from CUC counsel to Ms. Muna and a Saipan Tribune article detailing CUC  
3 Board Chairman’s involvement. First, CUC counsel James Sirok sent an email to CHCC CEO  
4 Esther Muna stating that CUC will disconnect utility services to CHCC unless it pays its next three  
5 monthly utility bills in full, including interest and penalties. Second, according to a Saipan Tribune  
6 article published on May 8, 2014, CUC Board Chairman David Sablan gave orders to CUC to  
7 immediately disconnect CHCC’s “non-essential” accounts if it fails to pay its May billing in full.

8 Accordingly, the Court found that irreparable harm may result to CHCC and the general  
9 public if CHCC was unable to pay its billing in full, considering CUC repeatedly demonstrated its  
10 willingness to disconnect CHCC services they deem “non-essential,” without illustrating which  
11 precise services it deems to be so or reasoning why such services are not essential to the operation  
12 of the sole hospital on the island. Moreover, any such disconnection of any of CHCC’s services  
13 would likely affect the operation of the rest of the organization, due to the interconnectedness of all  
14 of the hospital’s operations. In the May 21, 2014 TRO, the Court found that: “(1) CUC provides  
15 utility services to CHCC; (2) CUC has threatened to disconnect unspecified utility services to  
16 CHCC; and (3) CHCC would suffer immediate and irreparable injury if CUC disconnected any of  
17 its utility services as CHCC would become immediately unable to provide critical healthcare and  
18 public health services to the public.” (TRO, at 1.)

19 In conclusion, the Court properly issued a TRO on May 21, 2014 pursuant to NMI R. Civ. P  
20 65(b) when it found good cause that CHCC and the people of the Commonwealth faced immediate  
21 and irreparable harm, where there existed a significant risk that CUC would immediately disconnect  
22 services and thereby incapacitate the sole hospital in the CNMI.

23 Lastly, CUC argues that this Court should not enter a preliminary injunction because the  
24 Court erred in issuing its May 21, 2014 TRO. The Court rejects CUC’s argument as inapposite, as

1 a TRO and preliminary injunction are entirely separate forms of injunctive relief which have no  
2 bearing on one another. Even assuming *arguendo* that this Court’s issuance of a TRO was not  
3 permissible pursuant to NMI R. Civ. P. 65(b), such a determination would have no bearing on the  
4 Court’s authority to enter a preliminary injunction pursuant to NMI R. Civ. P. 65(a).

5 **B. Jurisdiction to Issue Preliminary Injunction**

6 CUC argues that this Court has no jurisdiction to enter a preliminary injunction because  
7 CHCC allegedly failed to exhaust its administrative remedies by not asking CPUC to order CUC  
8 not to disconnect its utility services. (Opp., at 11.) CHCC claims, and this Court agrees, that this  
9 argument is frivolous and not supported by law.

10 The Constitution, Commonwealth law, and relevant case law all bestow this Court with the  
11 inherent authority and original jurisdiction to issue such an order. NMI Const. art. IV, § 2  
12 provides: “[t]he Superior Court shall have all inherent powers, including the power to issue all  
13 writs necessary to complete the exercise of its duties and jurisdiction under this constitution and the  
14 laws of the Commonwealth.” Further, “[t]he Superior Court has original jurisdiction over all civil  
15 actions, in law and in equity . . . and has the power to issue writs of mandamus, certiorari,  
16 prohibition, habeas corpus, and all other writs and orders necessary and appropriate to the full  
17 exercise of its jurisdiction. 1 CMC § 3202. Specifically, the Superior Court will issue a  
18 preliminary injunction when it is necessary to preserve the status quo between parties to an action  
19 pending a final determination on the merits. *See Villanueva v. Tinian Shipping and Transport*, 2005  
20 ¶ 19 (citing *Pacific Am. Title Ins. & Escrow (CNMI), Inc. v. Anderson*, 1999 MP 15 ¶ 8) (both  
21 partially overruled on other grounds in *Friends of Marpi, et al. v. Commonwealth Government, et*  
22 *al.*, 2012 MP 9 ¶ 18).

23 This Court’s original jurisdiction over the matter was activated once CUC initiated the  
24 lawsuit when it filed its Complaint on December 10, 2013. Thus, the Court has the proper

1 jurisdiction and authority to fashion a remedy to “preserve the status quo” by enjoining CUC from  
2 disconnecting services to CHCC until such a time as the Court makes a final determination on the  
3 merits of CUC’s lawsuit. In fact, the Court exercised its authority to do so when it issued a  
4 Temporary Restraining Order on May 21, 2014, preventing CUC from disconnecting services to  
5 CHCC until both parties could be heard on the merits. The Court also ordered both parties to  
6 submit documentation demonstrating which services of CHCC each party deemed to be “non-  
7 essential,” in an attempt to find a middle ground should such a termination be imminent or  
8 absolutely financially necessary. While the parties failed to submit such documentation, the Court  
9 does not find such guidance to be necessary to determine this issue or any other issue within this  
10 order; the interconnectedness of the hospital’s operations, together with CHC’s various efforts to  
11 reduce energy consumption, provides sufficient cause to authorize the Court to grant injunctive  
12 relief against CUC in order to preserve the status quo and prevent irreparable harm from befalling  
13 the hospital and thus the people of the Commonwealth.

14 Accordingly, the Court holds that it has the proper jurisdiction and authority to grant the  
15 previously issued TRO.

16 **C. Waiver of Right to Request Preliminary Injunction or Estoppel**

17 Next, CUC argues that CHCC waived its right to request this Court to issue a preliminary  
18 injunction to prevent CUC from disconnecting “non-essential” services, claiming that 4 CMC §  
19 8141(g) requires CUC to disconnect services to consumers not actively contesting a dispute in  
20 billing and that CHCC failed to file a billing dispute over the accuracy of CUC’s bills with CPUC.  
21 (Opp., at 12-15.)

22 The purpose of a preliminary injunction isn’t to determine the merits of a case, but rather to  
23 preserve the status quo between the parties in an action pending a court’s final determination on the  
24 merits. *Tinian Shipping*, 2005 MP at ¶ 19. No case law exists to support the argument that a party



1 waives his right to request injunctive relief due to missing an opportunity to dispute the opposing  
2 party's claims prior to the initiation of the lawsuit.

3 Here, the parties failed to reach an agreement during the course of settlement negotiations in  
4 early May 2014 regarding CHCC's payment of its current bills and accrued interests and penalties.  
5 CHCC requested injunctive relief immediately following written threats that CUC would  
6 imminently disconnect services if CHCC did not submit full payment of its monthly bills, including  
7 all interests in penalties, due to the risk of its inherent ability to function and provide critical  
8 healthcare services to the Commonwealth. CHCC's request was made for the purpose of  
9 preserving the status quo until the Court has the opportunity to determine the merits of the  
10 underlying lawsuit, not to challenge CUC's billings.

11 Thus, the Court finds that CHCC is not estopped from moving for injunctive relief.

12 **D. Tinian Shipping Four-Factor Test**

13 Having dispensed with the previously discussed arguments made by CUC in the Opposition  
14 filed in this matter, the Court now moves to the applicable four-factor test which guides the Court's  
15 analysis in deciding whether to grant CHCC's motion for preliminary injunction, analyzing each  
16 factor in turn. In essence, CHCC has requested this Court to enjoin CUC from disconnecting utility  
17 services for failure to pay CHCC's current bills, accrued interests, penalties, and late charges.

18 In deciding whether to grant a preliminary injunction, the Commonwealth courts will  
19 examine four factors: (1) whether the moving party has a strong likelihood of success on the merits;  
20 (2) the level of the threat of irreparable harm to the moving party if the relief is not granted; (3) the  
21 balance of hardships between the parties; and (4) any effect the injunction may have on the public  
22 interest. *Villanueva v. Tinian Shipping and Transport*, 2005 MP ¶ 20. The purpose of a  
23 preliminary injunction is not to determine the merits of the underlying suit, but to preserve the  
24 status quo between the parties pending the court's final determination on the merits of the case.

1 *Tinian Shipping*, 2005 MP at ¶ 19.

2 **1. Likelihood of Success on the Merits**

3 The first factor guiding the Court’s analysis requires CHCC to demonstrate a *prima facie*  
4 showing of a right to relief in order to satisfy this factor. *See Saipan Achugao Resort Members’*  
5 *Assn. v. Wan Jin Yoon*, Civil Action No. 03-0187E, at 2 (Order Denying Motion for TRO and  
6 Prelim. Inj., July 7, 2003). That is, the evidence presented by CHCC does not need to be conclusive  
7 in order to establish a likelihood of success on the merits. *See id.* (citing *Terrell v. Terrell*, 719  
8 N.Y.S.D. 41, 43 (N.Y. App. Div. 2001).

9 Here, CHCC states that it “does not argue that it owes nothing to CUC,” nor does it dispute  
10 the billings relating to its actual usage. Rather, CHCC challenges the legality of CUC’s late charges  
11 on its account, as well as directly raises several affirmative defenses in its Answer to CUC’s  
12 complaint, including: (1) the effect of Executive Order 2007-11 and all subsequent Emergency  
13 Orders pertaining to CUC; (2) Public Law No. 18-18, Section 604; (3) lack of standing; (4) lack of  
14 ripeness; (5) estoppel; (6) laches; and (7) prejudgment interest immunity. (Answer, at 1-3.)

15 The basis of CHCC’s challenge related to the late fees is that they are exorbitant and in  
16 violation of both 4 CMC §§ 8451 and 8123(m), which require late fees to be just and reasonable  
17 and no higher than the actual cost to CUC to connect and provide utilities to its customers. CHCC  
18 claims the late fees it has been charged amount to over one million dollars and constitute nearly a  
19 quarter of each monthly CUC bill.

20 While the Court is cautious to posture itself vis-à-vis CHCC’s myriad affirmative defenses,  
21 it does recognize that those detailed in CHCC’s various memoranda are not frivolous arguments  
22 designed to delay the proceedings or make misrepresentations to the Court. The Court is  
23 particularly interested in the application of PL 18-18 § 604, which requires the Governor’s approval  
24 for an agency to use “any part of their appropriations in connection with prosecuting a legal matter

1 against another agency,” as well as Executive Order 2007-11 and other subsequent Executive  
2 Orders authorizing the Governor of the Commonwealth of the Northern Mariana Islands to oversee  
3 and direct CUC’s operations. Lastly, while the Court declines to comment on the likelihood of  
4 success of CHCC’s excessive late fees argument, it does acknowledge that late fees accounting for  
5 nearly a quarter of CHCC’s monthly utility bill are, likely in large part, causing CHCC to be unable  
6 to pay the full amount of the monthly bill. During the hearing on this matter, CHCC did, after all,  
7 agree to pay its current usage for the remainder of the suit without late fees, interests, or penalties.

8 Thus, the Court finds that CHCC has made a *prima facie* showing of likely success on the  
9 merits — at least in part — of the underlying suit.

10 **2. Possibility of Imminent, Irreparable Harm**

11 Second, the Court further examines the possibility of irreparable harm that would result if  
12 CHCC were not granted injunctive relief and CUC were allowed to terminate or disconnect utility  
13 services to CHCC.

14 In order to prove the irreparable harm factor, CHCC must demonstrate that any alleged  
15 injury is “actual and imminent, rather than a remote or speculative possibility, and that the alleged  
16 injury is incapable of being fully remedied by monetary damages.” *Achugao Resort*, at 2, 7-11.

17 The Court has previously found, and does so again here, that any disconnection of services  
18 at CHCC would likely immediately render CHCC inoperable, resulting in what CHCC stated would  
19 be a “catastrophic reduction in healthcare services in the Commonwealth.” The Court has also  
20 recognized that CUC, through its Chairman of the Board and counsel, have repeatedly threatened to  
21 disconnect services it deems to be “non-essential” at any time CHCC fails to pay the full amount of  
22 its monthly bills, including all late fees, interest, and penalties.

23 The fact that CUC has repeatedly failed to identify which exact services it deems to be  
24 “non-essential” — even in the face of a direct court order to do so — concerns the Court when

1 considering the potential damage that could be caused by disconnecting even a portion of the lone  
2 hospital's services, as each part of CHCC, including the hospital, the Public Health Division, and its  
3 administrative services, are necessarily interconnected such that all aspects of its organization must  
4 be fully operational in order for CHCC to function as a whole. CHCC represents to the Court the  
5 cascade of damage that would be caused by disconnecting utilities at the hospital, Public Health  
6 Division, and administrative services, which include being unable to provide critical care to  
7 patients, maintain public health and safety, bill for services, access vital medical records, and  
8 perform other day-to-day operations.

9 Most importantly, the Court recognizes that the principle concern of CHCC is maintaining  
10 its Centers for Medicare & Medicaid Services (CMS) Certification — which accounts for the vast  
11 majority of CHCC's annual budget and was under review. Without power, air conditioning, clean  
12 water, or sewage services, CHCC would surely lose, or be in further danger of losing, its CMS  
13 Certification, which would surely cripple and likely destroy the very foundation of the hospital's  
14 operation, since a large number of the island's residents rely on Medicare and Medicaid to obtain  
15 health care.

16 However, beyond the impact a disconnection would have on the interconnected operation of  
17 CHCC's services and the risk of losing its CMS Certification, the Court is particularly concerned  
18 due to the fact that CUC is ignorant of the internal operations of CHCC and cannot reasonably  
19 determine which services could be safely disconnected. For example, at the hearing in this matter  
20 on May 29, 2014, CUC Board Chairman David J. Sablan suggested that CHCC's administrative  
21 offices could operate sufficiently without power by using flashlights and candles. The Court deigns  
22 to acknowledge this argument, but it suffices to say that such a statement succinctly demonstrates  
23 CUC's business-oriented indifference to CHCC's various functions and the integral role it plays in  
24 the lives of the people of the Commonwealth.

1 Thus, the Court finds that the possibility of irreparable harm, which is actual, imminent, and  
2 not speculative, weighs heavily in favor of CHCC in deciding whether to grant injunction relief.

3 **3. Balance of Hardships**

4 Third, the Court balances the hardships between the respective parties if the requested  
5 injunctive relief were or were not to be granted.

6 On one hand, if the requested injunctive relief were granted, CUC would not be able to  
7 collect the full amount due on CHCC's account, including late fees, interest, and applicable  
8 penalties. However, CUC argues in its Opposition that CHCC will not be able to pay its monthly  
9 usage bills irrespective of the issuance of a preliminary injunction, despite the fact that CHCC was  
10 ordered by this Court after hearing held in this matter to pay its current usage bill for the remainder  
11 of the TRO, and the Court has not been made aware of an instance in which CHCC has failed to  
12 meet that requirement. Further, CHCC CEO Esther Muna explained in her testimony the various  
13 cost-cutting measures being undertaken at CHCC to lower its utility bills to ensure that it can pay  
14 its actual usage costs and drive down any further obligations to CUC. Thus, the apparent hardship  
15 to CUC if the injunction were granted is minimized by this Court's own order requiring CHCC to at  
16 least pay its current usage bill until its motion for preliminary injunction is decided.

17 On the other hand, the hardships facing CHCC if the injunction were not granted, as  
18 thoroughly detailed above, far outweigh any remainder of monetary or financial interest CUC  
19 would incur should the Court deny CHCC's request for injunctive relief. Avoiding redundant  
20 analyses, the Court stresses the detrimental and potentially devastating effect such a disconnection  
21 of any of CHCC's operations would have on its ability to provide critical care services, retain CMS  
22 Certification, and otherwise sustain the welfare of the people of the Commonwealth.

23 Accordingly, the Court finds that the balance of hardships factor weighs heavily in favor of  
24 granting the injunctive relief requested by CHCC.

1           **4.     Effect on Public Interest**

2           Lastly, the Court considers any effect the issuance of a preliminary injunction would have  
3 on the public interest.

4           CUC argues in its Opposition that a preliminary injunction would harm the public because it  
5 could have serious ramifications to CUC’s primary business, where CUC may be forced to increase  
6 its rates to consumers in order to recoup any services provided to CHCC essentially free of charge.  
7 (Opposition, at 21.) CHCC argues in response that the public has a paramount interest in ensuring  
8 that the people of the Commonwealth have access to its services as the sole hospital providing  
9 healthcare to most of its residents. (Response, at 12-13.)

10          Here, the Court recognizes that the ability to provide critical care services to the people of  
11 the Commonwealth is undoubtedly more important than any monetary loss CUC may incur during  
12 the remainder of the case. No evidence exists to support the hypothetical proposition that CUC  
13 would be forced to raise its base rates to consumers as a result of CHCC paying only for its current  
14 usage as opposed to the full amount due on its account, including late fees, interest, and applicable  
15 penalties, as the balance could potentially be recovered as damages in the underlying suit.

16          On a public policy note, the Court also believes that a public utility should not be allowed  
17 carte blanche to disconnect operations and services it deems, without justification, to be non-  
18 essential to the customer’s continued operation, especially where the customer is a public  
19 corporation which provides critical and irreplaceable services to the general public.

20          Thus, the effect on the public interest would be deleterious if the Court declined to grant the  
21 requested injunctive relief, and this factor also weighs in favor of granting CHCC’s request.

22          In conclusion, the Court finds that the balance of the four-factor test from *Tinian Shipping*  
23 — which includes likelihood of success on the merits, threat of irreparable harm to the moving  
24 party, the balance of hardships between the parties, and any effect the injunction may have on the

1 public interest — weighs in favor of granting the requested injunctive relief. The Court also finds  
2 that at least three of the factors — threat of irreparable harm, balance of hardships, and effect on the  
3 public interest — weigh heavily in favor of granting the preliminary injunction against CUC.  
4 Otherwise, the first factor, likelihood of CHC’s success on the merits of the underlying suit, is  
5 likely the weakest, yet it still weighs in favor of this Court’s issuance of the preliminary injunction.

6 Accordingly, based upon the four-factor test from *Tinian Shipping*, the Court grants  
7 CHCC’s request for a preliminary injunction against CUC preventing and prohibiting the utility  
8 from disconnecting any services for the remainder of the underlying suit.

9 **E. Alternative Test**

10 Alternatively, the court may issue a preliminary injunction if the moving party demonstrates  
11 either a combination of probable success on the merits and the possibility of irreparable harm, or  
12 the existence of serious questions going to the merits and a balance of hardships tipping in the  
13 moving party’s favor. *Tinian Shipping*, 2005 at ¶ 20.

14 Thus, while the Court declines to find that CHCC has a strong likelihood of success on the  
15 merits of the underlying case, it does recognize that CHCC’s Answer to CUC’s complaint raises  
16 serious questions going to the merits of the case, as it would entertain the majority of the arguments  
17 made in CHCC’s Answer and in the written materials submitted in this matter. Further, the Court  
18 also finds that the balance of the hardships tips sharply in CHCC’s favor, as providing critical,  
19 irreplaceable, and potentially life-saving healthcare services to the people of the Commonwealth is  
20 infinitely more important than any financial interest of a public corporation.

21 Thus, even if the balance of the four-factor test does not weigh in favor of granting the  
22 preliminary injunction, the above test enumerated in *Tinian Shipping* provides the Court with an  
23 alternate authority on which to base its issuance of the preliminary injunction. That is, the Court  
24 grants CHCC’s request for a preliminary injunction against CUC based upon either test.

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**V. CONCLUSION**

In view of the foregoing, the Court **HEREBY GRANTS** CHCC’s request for injunctive relief and as such issues a Preliminary Injunction enjoining CUC from disconnecting any utility services provided to CHCC until any such further order dispensing with the underlying case.

As such, it is **HEREBY ORDERED** that CUC, its agents, assistants, employees, successors, and all other persons acting in concert or cooperation with it or under its control, are enjoined and prohibited from disconnecting any utility services CUC provides to CHCC, or with impeding or interfering in any manner with the provision of electric/water/sewer utility services to Defendant.

It is **FURTHER ORDERED** that CHCC shall continue to pay its current and monthly utility usage bills — not including late fees, interest, and penalties — for the remainder of the underlying suit or until ordered by this Court to do otherwise.

**SO ORDERED** this 20<sup>th</sup> day of January, 2015.

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/ s /  
David A. Wiseman, Associate Judge