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



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# **COMMONWEALTH REGISTER**

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### **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

Benigno R. Fitial Governor Eloy S. Inos Lieutenant Governor

#### EXECUTIVE ORDER No. 2012-15

#### **DECLARATION OF HEALTH EMERGENCY**

WHEREAS, the Commonwealth Healthcare Corporation ("CHC") provides the bulk of necessary healthcare in the Commonwealth, as well as providing all emergency medical services; and

**WHEREAS,** the disruption of the provision of medical services by the CHC poses a direct threat to the health and safety of the people of the Northern Mariana Islands; and

WHEREAS, the CHC is currently in arrears to payments to vendors providing vital services and equipment and is in arrears in regards to salary payments to necessary employees; and

WHEREAS, CHC deteriorating financial condition affects its ability to maintain adequate infrastructure, equipment and personnel such that it is jeopardizing CHC's federal funding; and

**WHEREAS**, CHC, has been notified by federal authorities that, due to deficiencies in CHC operations and infrastructure, CHC will cease to be eligible for Medicare/Medicaid payments along with other penalties if the deficiencies are not promptly remediated.

**WHEREAS,** Article III §10 of the Constitution of the Commonwealth and section 5101 *et seq.* of Title Three of the Commonwealth Code provide that the Governor has the authority and duty to take the necessary steps to respond to impending disasters:

**NOW THEREFORE.** a State of Emergency for the Commonwealth of the Northern Mariana Islands is declared due to the imminent threat of the disruption of critical medical services in the Commonwealth and the danger that such a condition poses to the public because of the great increase in otherwise preventable deaths that would result.

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

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

To ensure that the suspension of regulatory provisions does not lead to financial abuse, this emergency declaration incorporates the March 19, 2012 Memorandum of Understanding (MOU) between CHC and the Department of Finance, Office Management and Budget, and Office of the Attorney General. In addition, any financial reports submitted by the CHC pursuant to the MOU must be submitted with a certification of the person submitting them stating that the reports are a full and accurate under penalty of perjury.

day of November. 2012 Done this.

Benigno R. Fitial Governor



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial Governor Eloy S. Inos Lieutenant Governor

#### EXECUTIVE ORDER NO. 2012-16

**SUBJECT:** DECLARATION OF A STATE OF DISASTER EMERGENCY: Commonwealth Utilities Corporation's imminent failure and the need to provide immediate reliable power, water, and wastewater services.

**AUTHORITY:** I. BENIGNO R. FITIAL, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution and 3 CMC § 5121 of the Commonwealth Disaster Relief Act of 1979. do hereby declare a State of Disaster Emergency for the Commonwealth of the Northern Mariana Islands due to the imminent threat of the inability of the Commonwealth Utilities Corporation ("CUC") to provide critical power generation, water, and wastewater services to the CNMI and considering the harm such condition would pose to the Commonwealth of the Northern Mariana Islands.

WHEREAS, ON MAY 18, 2012. THROUGH EXECUTIVE ORDER 2012-05, I issued a Declaration of a State of Disaster Emergency regarding the Commonwealth Utilities Corporation's imminent failure and the need to provide immediate reliable power, water, and wastewater services.

WHEREAS, CUC IS THE SOLE ELECTRICITY SUPPLIER to the Government of the CNMI, including all public safety activities, the schools, and the only hospital. CUC also supplies electricity to most of the CNMI's businesses and homes. While some businesses and agencies own backup generators, they are not generally organized to use the backups as permanent power sources and the diesel oil purchased to run these generators is substantially more expensive than that used for CUC power.

WHEREAS, WITHOUT CUC ELECTRICITY:

- (1) Most CNMI economic activity would come to a halt, much refrigeration and air conditioning would end, and the airports and ports would be forced to rely on emergency generation on the limited, expensive oil supply for it;
- (2) The CNMI's health and safety would immediately be at risk because traffic signals and street lighting would cease to function; emergency, fire, police facilities and their communications systems, and the hospital and island clinics would have to rely on limited oil supplies for emergency generation

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and then cease functioning; and much refrigeration of food and medicines would end. as would air conditioning for the elderly and sick:

- (3) The public schools and the Northern Marianas College would close. Other educational institutions would close as their backup oil supplies for emergency generators were exhausted; and
- (4) Water and sewage treatment would soon end. One of CUC's largest electric customers is the combined CUC Water and Wastewater Divisions. CUC is the sole supplier of electricity for these systems. CUC's water system relies on electricity to maintain the system pressure needed to prevent the backflow of pathogens, to chlorinate, and to pump, store, and distribute water supplies. CUC's wastewater system requires electricity to collect, pump, process, treat, and discharge sewage. The lack of electricity could result in sewage overflows, contaminating land and water and rendering unsafe the CNMI's beaches, which are also principal tourist destinations.

#### WHEREAS, THERE EXISTS A FINANCIAL CRISIS:

- CUC is owed over \$9 million by the public school system ("PSS") and the Commonwealth Healthcare Corporation ("CHC") and is owed over millions more by residential users. CUC is facing \$2.6 million in accounts payable to vendors who have, in good faith, provided materials and other services;
- (2) There is conflict and potential conflict between CUC and government agencies over money owed and other issues. Such conflict drains resources especially if it results in the parties going to court. Interagency cooperation and oversight is vital to ensure that government agencies can continue its operations without draining CUC's remaining resources.
- (3) The people of the Commonwealth and its government are going through severe economically distressed times. This has put a severe strain on the government to meet its obligation.
- (4) CUC often only has days worth of purchased diesel fuel to power its system because it lacks the funds to buy oil from its sole. cash-only supplier. CUC has no credit or other means to buy fuel than the revenue it collects from its customers:
- (5) A unified government approach is necessary to reconcile and resolve the fiscal crises of the government with the fiscal crises of CUC. This can only be achieved through an emergency declaration.

WHEREAS, THERE EXISTS A TECHNICAL WORKER CRISIS:

(1) CUC faces a manpower crisis. Skilled workers and a responsive support system are key to the success of the operation, particularly for preventative

maintenance. At present, CNMI law at 3 CMC §§ 4531 and 4532 prohibits CUC from hiring any more non-U.S. technical workers:

- (2) CUC bears a substantial obligation to deliver highly technical work on time to the satisfaction of the U.S. District Court and the U.S. Environmental Protection Agency ("EPA"), pursuant to two sets of consent, or "Stipulated Orders." Failure to meet the requirements of the federal court orders could subject CUC and the CNMI to substantial fines and charges and. in the extreme, to a federal takeover of their finances;
- (3) CUC requires employees with specialized training. There are many non-U.S. citizens whom CUC needs to retain on technical and professional contracts. Without these positions filled, CUC operations would be severely compromised:
- (4) The legislature, through P.L. 17-1 (Mar. 22, 2010), has limited CUC's ability to hire technical staff. eliminating prior statutory permission to hire up to nineteen foreign workers and reinstituting a moratorium on the government's hiring of foreign nationals. even if needed for highly technical positions for which no local or mainland citizens are available. The CUC Act. as subsequently reenacted by P.L. 16-17 (Oct. 1, 2008), provides that CUC shall hire such persons as are necessary for operations. *except as otherwise limited by other law.* 4 CMC § 8123(h);
- (5) There are not enough U.S. citizen or U.S. resident technical specialists at CUC to perform the power generation work, particularly specialists with experience in the type of engines that CUC uses. U.S. citizens with the necessary skills are not readily available in the CNMI and it is costly to recruit from the United States. CUC believes that the vast majority of skill sets, considering its cash restrictions, must come from non-U.S. personnel. CUC has tried to hire diesel mechanics in the CNMI, but has been unsuccessful in finding enough qualified candidates;
- (6) The impact of an inadequate workforce is substantial. First, there would be a direct deterioration of service to existing customers. There would be brownouts or area blackouts with the above-mentioned loss of service. Second, the power plants would again degrade, producing more of these outages. Third, if CUC fails to meet federal court deadlines for the Stipulated Orders, the Court could appoint a federal receiver and its consulting team, with all expenses charged to CUC customers.
- (7) CUC's renewal of contracts and hiring of foreign expert workers is necessary to sustain the integrity of CUC's systems. Thus, continued relief from the legislative prohibition on hiring foreign national workers is necessary to ensure the delivery of uninterrupted power services to the people of the Commonwealth.
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#### WHEREAS, A BOARD OF DIRECTORS DOES NOT EXIST:

- (1) There is no Board of Directors. CUC has functioned without a Board because it has had to. While CUC's enabling act, reenacted as P.L. 16-17, as amended, authorizes a Board, there is no CUC Board yet because, while the staff of the Governor's Office have diligently tried to find Board volunteers who meet the complex statutory qualifications, they have been unable to do so. Nonetheless, CUC must continue to function.
- (2) Without a Board in place. I still must provide for the continued operations of CUC. The Director needs to be able to negotiate with federal and other agencies.

WHEREAS, BY THIS RENEWAL OF THE DISASTER EMERGENCY DECLARATION. I intend to enable CUC to continue to provide necessary services to the people of the Commonwealth. This Declaration is necessary to protect the health and safety of our children, our senior citizens. businesses, and all other CNMI residents and visitors.

**NOW, THEREFORE,** I hereby invoke my authority under Article III. § 10 of the Commonwealth Constitution and 3 CMC § 5121(f) to take all necessary measures to address the imminent threats facing the Commonwealth of the Northern Mariana Islands including, but not limited to, the authority to:

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

It is hereby **ORDERED** that:

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

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

**DIRECTIVE 1:** I hereby assume all of the executive power of the CUC which shall include any and all powers vested in the board of Directors and the Executive Director. This executive authority shall be exercised either by me or by my designated Executive Director.

**DIRECTIVE 2:** All provisions in Title 4 of the Commonwealth Code and P.L. 17-34 that concern PUC regulation of CUC and its actions are suspended under this Order.

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**DIRECTIVE 3:** Section 4531 of Title 3 of the Commonwealth Code is hereby suspended as to CUC as follows:

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

3 CMC §4531. Restrictions on Government Employment Employment by departments, agencies, and all other instrumentalities of the Commonwealth government is limited to citizens and permanent residents; provided that the government may enter into contracts with foreign nationals for services performed outside of the Commonwealth.

As a result of my suspension of 3 CMC § 4531, CUC shall have the full power and authority to retain staff which may include employees other than citizens and permanent residents of the United States.

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

SIGNED AND PROMULGATED on this 19th day of November 2012.

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



# Commonwealth of the Northern Mariana Islands Scholarship Advisory Board

Caller Box 10007, Saipan, MP 96950 Tel: (670) 664-4750; Fax: (670) 664-4759 cnmi.sab@gmail.com

#### PUBLIC NOTICE AND CERTIFICATION OF ADOPTION OF SCHOLARSHIP ADVISORY BOARD REGULATIONS FOR THE HONORS SCHOLARSHIP PROGRAM

#### PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED REGULATIONS Volume 34, Number 08, p. 032750 to 032776 of August 29, 2012

ACTION TO ADOPT PROPOSED REGULATIONS: The Scholarship Advisory Board HEREBY ADOPTS AS PERMANENT REGULATIONS those that were published as proposed regulations in the Commonwealth Register at the above referenced pages, pursuant to the procedures of the Administrative Procedure Act (APA), 1 CMC § 9104(a). The Board announced that it intended them as permanent, and now does so.

**PRIOR PUBLICATION:** The prior publication was as stated above. The Board adopted the regulations as final at its regular Board meeting of November 26, 2012.

#### MODIFICATIONS FROM PROPOSED REGULATIONS: None.

**AUTHORITY:** The Honor Scholarship was established by P.L. 14-37, the "CNMI Honor Scholarship Act of 2004." Pursuant to Executive Order 94-3 § 211 (b), incorporated by reference in 1 CMC § 2051, the SAB is authorized to "recommend objective standards for the award of scholarships." Additionally, P.L. 14-37 Section 1342 describes the Board's role in adopting regulations.

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

**COMMENTS AND AGENCY CONCISE STATEMENT:** The Board received no submissions during the 30-day notice and comment period required by APA, 1 CMC § 9104(a)(2).

**ATTORNEY GENERAL APPROVAL:** The proposed Amendments were approved for promulgation by the Attorney General at page 032751 of Volume 34 of the Commonwealth Register, as required by 1 CMC § 2153(e).

I declare under penalty of perjury that the foregoing statements are true and correct and that this declaration was executed at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

Kodep Ogumoro-Uludong Scholarship Advisory Board Chair

11/26/12

Filed and Recorded by:

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Esther M. San Nicolas Commonwealth Register

<u>//...27.201</u>2 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's approval), the certified final regulations, modified as indicated above from the cited proposed regulations, 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 \_\_\_\_\_day of \_\_\_\_\_, 2012.

J.P. San Nicolas Attorney General