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

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VOLUME 37
NUMBER 08

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TABLE OF CONTENTS

LEGAL OPINIONS

Legal Op. No. 2015-03
Subject: The interpretation of Article XV, §1(e) of the NMI Constitution as to PSS's annual appropriation
Office of the Attorney General **036859**

Legal Op. No. 2015-04
Subject: Legal Opinion regarding payment of within-grade increases (WGIs) and lump-sum bonus payments
Office of the Attorney General **036864**

EXECUTIVE ORDERS

E.O. No. 2015-11
Subject: Declaration of Major Disaster and Significant Emergency In the Commonwealth of the Northern Mariana Islands
Office of the Governor **036869**

E.O. No. 2015-12
Subject: Declaration of a State of Significant Emergency
Office of the Governor **036871**

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OAG 15-03

June 10, 2015

Subject: The interpretation of Article XV, §1(e) of the NMI Constitution as to PSS's annual appropriation

Requested by: Herman T. Guerrero, Chairman, State Board of Education and Rita A. Sablan, Ed. D, Commissioner of Education

Opinion of the Attorney General

I. Issue Presented

Whether the term "general revenues" in Article XV, § 1(e) of the Commonwealth Constitution refers to the General Fund only, or whether it includes special funds and accounts which are kept separate from the General Fund.

Short Answer: The term "general revenues" refers to the revenues that are deposited into the General Fund and does not include the revenues of the special funds and accounts that are kept separate from the General Fund.

II. Analysis

The definition of "general revenues" as used in Article XV, § 1(e) should be interpreted to mean only those revenues deposited into the General Fund as defined by Commonwealth law. The relevant constitutional language at issue provides:

> The public elementary and secondary education system shall be guaranteed an annual budget of not less than twenty-five percent of *the general revenues* of the Commonwealth through an annual appropriation. The budgetary appropriation may not be reprogrammed for other purposes, and any unencumbered fund balance at the end of a fiscal year shall be available for reappropriation.

NMI CONST., ART. XV, § 1(e). (emphasis added).

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When interpreting the Commonwealth Constitution, the Commonwealth courts follow principles parallel to those of statutory construction. *See Pangelinan v. Commonwealth*, 2 CR 1148, 1160 (DC App. Div. 1982) (stating that the general principles of statutory construction are equally applicable in cases of constitutional construction). This examination begins with the actual language of the Commonwealth Constitution. *Cf. Islands Aviation Inc. v. Mar. I. Airport Auth.*, 1 CR 633, 654 (DC App. Div. 1983) (referring to the basic rule of statutory construction). The language must be given its plain meaning. *Camacho v. Northern Marinas Retirement fund*, 1 N.M.I. 362, 367 (1990); *N. Mar. Coll. v. Civ. Serv. Comm'n* II, 2007 MP 8 ¶ 9. The Court will apply the plain, commonly understood meaning of the constitutional language unless there is evidence that a contrary meaning was intended. *Id.* If necessary, the Court will consult legislative history in construing constitutional provisions. *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122, 143 n. 23 (1991); *rev'd on other grounds*, 31 F.3d 750 (9th Cir. 1994), *cert denied*, 513 U.S. 1136, 115 S. Ct 913, 130 L. Ed. 2d. 294 (1995). The overarching principle is to give effect to the intent of the framers and the people adopting the NMI Constitution. *Nakatsukasa v. Superior Court*, 6 N.M.I. 59, 1999 MP 25 ¶ 13.

The analysis of the NMI Const. Art. XV, § 1(e) begins with the plain, commonly understood meaning of the term "general revenues" of the Commonwealth. The Court has relied on the definitions in *Black's Law Dictionary* as a source of plain and commonly understood meaning of words and terms. *See, e.g., Commonwealth v. Santos*, 2014 MP 3 ¶ 17.

Black's Law Dictionary defines the term "general revenue" as: "[t]he income stream from which a state or municipality pays its obligations unless a law calls for payment from a special fund." BLACK'S LAW DICTIONARY 1513 (10th ed. 2009). The definition also refers the reader to the definition of "general fund," which is defined as "a government's primary operating fund… [or] a state's assets furnishing the means for the support of government and for defraying the legislature's discretionary appropriations." *Id.* at 788. *Black's Law Dictionary* further states that a "general fund is distinguished from assets of a special character, such as trust, escrow, and special-purpose funds." *Id.* Both definitions share certain common elements: (1) they both involve government money, income, or assets; (2) which are used to support the government by paying its obligations and operations; (3) by legislative appropriation; (4) from a "general" fund as opposed to a special fund reserved for a specific purpose or special, specified revenues. Given the commonalities, the definitions in *Black's Law Dictionary* for "general revenue" and "general fund" are synonymous.

The Commonwealth is not the first jurisdiction to ponder the meaning of "general revenues." In *State ex rel. State Road Commission v. O'Brien*, 140 W.Va. 114 (1954), the West Virginia Supreme Court held that the "general revenues" of the state did not include a gasoline tax fund, which was earmarked solely for use in repairing and improving highways. *Id.* at 124.

Nothing in the sparse legislative history of Commonwealth Constitution Article XI, § 1(e) counsels against using the plainly understood meanings of the terms "general revenue" and "general fund." The guaranteed funding clause of Article XI, § 1(e) originates from Amendment 38 of the Second Constitutional Convention. Section 1(e) was later amended by House Legislative Initiative 15-3 and most recently by HLI 18-12, which increased the percentage of the guaranteed funding from 15% to 25%. While acknowledging the increase of PSS's guaranteed funding, the respective committee reports for Amendment 38 and HLI 18-12 did not include a discussion of the term "general revenues."

Article XI, § 6(d) of the Commonwealth Constitution informs our understanding of the term "general revenue." Section 6(d), which established the Marianas Public Land Trust, mandates that "[t]he trustees shall transfer to the *general revenues* of the Commonwealth the remaining interest accrued on the trust proceeds…." NMI CONST. ART. XI, § 6(d). (emphasis added). The term also appears in the 1976 Analysis of the original constitution. The Analysis' discussion of Article XI, § 5(g) dealing with public land states that all public land revenues before the effective date of the constitution are part of the *general revenues* of the Commonwealth and that any public land revenue generated after the effective date of the Constitution would be collected by the Marianas Public Land Corporation. *Id.* at 169. The term "general revenues" also appears in the discussion of § 6(d), in which the framers expressed their intent for MPLT to transfer any interest earned from the trust funds to the *general revenues* of the Commonwealth for appropriation by the legislature. *Id.* at 172–73 (emphasis added). The Analysis further provides that the interest transferred would not be earmarked for a particular purpose and would be allocated by the legislature "as it sees fit." *Id* As such, it is clear that the term "general revenues," in Article XI, § 6(d) refers to those revenues deposited into the General Fund as defined by Commonwealth law.

The plain meaning of "general revenues" and the corresponding parts of the Analysis, demonstrates what the framers of the NMI Constitution understood the term to mean (1) government funds; (2) used to pay the government's general obligations; (3) subject to legislative appropriation; and (4) not earmarked for a particular purpose. Those four conjunctive elements are virtually identical to the four elements which constitute the legal definitions of "general revenues" and "general fund" in *Black's Law Dictionary.*

The General Fund was created by Commonwealth law. 4 CMC § 1802. All revenues raised by Commonwealth tax and other revenue generating laws must be deposited into the General Fund "unless otherwise provided by law." 4 CMC § 1802. Similarly, section 1804(a) requires that all revenues raised under the Revenue and Tax Division of Title 4 be deposited into the General Fund "except as provided by [Division 1 of Title 4]." 4 CMC § 1804(a). Commonwealth law prohibits disbursements from the General Fund unless appropriated, "or by operation of NMI CONST. ART. III, § 9(a)." 1 CMC § 1802. Under § 9(a) of Article III, no money may be drawn from the General Fund unless a balanced budget for the current fiscal year is enacted into law; only government services essential for the health, safety, and welfare of the people may be paid in the absence of a balanced budget approved for the fiscal year.

The statutory construct for the General Fund describes a legal concept closely resembling the concept of "general revenues" described in the NMI Constitution and consistent with the definitions of the two terms in *Black's Law Dictionary*. First the General Fund contains only Commonwealth government tax revenues. Second, the general fund is used to pay the government's annual budget. Third, legislative appropriation is required to disburse payment from the General Fund. Fourth, the General Fund can be used to pay any of the government's expenses; it is not earmarked for any particular purpose.

Accordingly, the definition of "general revenues" as used in Article XV, § 1(e) should be interpreted to mean only those revenues deposited into the General Fund as defined by Commonwealth law. Funds which are deposited into special funds and accounts separate from the General Fund are not "general revenues." The following funds are separate from the General Fund and are not included in the calculation of general revenues:

(1) Land Compensation Fund (1 CMC § 1804(c))

(2) Technical Education Program Fund (1 CMC § 2282)

(3) Special Surplus Property Fund (1 CMC § 2590)

(4) CHC Revolving Imprest Fund (1 CMC §§ 2607-2608)

(5) Commonwealth Parks and Recreation Fund (1 CMC § 2707)

(6) Special Agriculture Equipment Service Revolving Fund Account (1 CMC §§ 2722-2723)

(7) DPL Operations Fund (1 CMC § 2803(c))

(8) Judicial Building Fund (1 CMC § 3405)

(9) Probation Services Fund (1 CMC § 3406)

(10) Law Revision Commission Revolving General Fund (1 CMC § 3809)

(11) Commonwealth Lottery Fund (1 CMC §§ 9317-9318)

(12) CNMI Veterans Cemetery Revolving Fund (1 CMC § 20129)

(13) Division of Environmental Quality Special Fund (2 CMC § 3135)

(14) Homestead Development Home Financing Security Fund (2 CMC § 4489)

(15) Fish and Game Conservation Fund (2 CMC § 5107)

(16) Fish and Game Revolving Fund (2 CMC § 5643)

(17) Nonpublic Elementary and Secondary Education Fund (3 CMC § 1175)

(18) Tobacco Settlement Expenditure Fund (3 CMC § 2173)

(19) Health Care Professions Licensing Board (3 CMC § 2209)

(20) Solid Waste Management Revolving Fund (3 CMC § 3551)

(21) CNMI Scholarship Fund (3 CMC § 10107)

(22) Solid Waste Revolving Fund (4 CMC § 1402(g)(1))

(23) Cancer Fund (4 CMC § 1402(g)(2))

(24) Group Health Life Insurance Account (4 CMC § 1402(g)(3))

(25) Retirement Defined Benefit Plan Members Fund (4 CMC § 1511(a))

(26) Special Account for the 3rd Senatorial District (4 CMC § 1511(b))

(27) Special Account for the 1st and 2nd Senatorial District (4 CMC § 1511(c))

(28) Public School System Building Fund (4 CMC § 1803(b))

(29) Technical Education Program Fund (4 CMC § 1503(f))

(30) MVA Trust Account (4 CMC § 2157))

(31) Board of Professional Licensing Revolving Fund (4 CMC § 3111)

(32) Water Catchment Tank Loan Revolving Fund (4 CMC § 8162)

(33) Public Utilities Commission Revolving Fund (4 CMC § 8427)

(34) Special Disability Fund (4 CMC § 9353)

(35) Tobacco Control Fund (4 CMC § 50171))

(36) Sex Offender Revolving Fund (6 CMC § 1380)

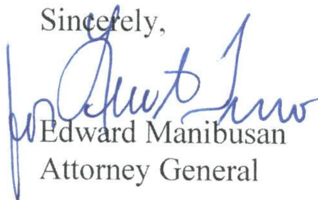
Also excluded from the General Fund are those funds established for each of the three senatorial districts.[1]

The term "general revenues" as used in Article XV, § 1(e) refers to the revenues deposited into the General Fund. The term does not encompass the special funds and accounts which are kept separate and apart from the General Fund. Accordingly, the calculation of the Public School System's annual appropriation should be based only on the revenues deposited into the General Fund.

III. CONCLUSION

Article XV, § 1(e) requires the Public School System to receive an annual appropriation of 25% of the projected revenues to be deposited into the General Fund of the Commonwealth. As discussed, not all of the revenues and resources of the Commonwealth are deposited into the General Fund. A substantial amount of Commonwealth revenues is deposited into multiple funds and accounts that are kept separate and apart from the General Fund. Those special funds and accounts are not included in the computation of the Public School System's annual budget. Only the revenues deposited into the General Fund will be used to compute PSS's budget.[2]

Sincerely,



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[1] *See* Rota Scholarship and Education Fund (10 CMC § 11105); Rota Resident Identification Card Fund (10 CMC § 14107); Tinian Tourism and Beautification Fund (10 CMC § 2473); Tinian Resident Identification Card Fund (10 CMC § 20206); Saipan Village and Secondary Road Fund (10 CMC § 3136); and Saipan Higher Education Financial Assistance Fund (10 CMC § 3925).

[2] Based on the House Concurrent Resolution No. 19-1 which lists the Commonwealth's resources for FY 2016, including the General Fund and the foregoing special funds/accounts and for the purpose of computing PSS's FY 2016 appropriation, the general revenues of the Commonwealth for FY 2016 is $147,860,375. To comply with NMI Const. Art. XV, § 1(e), the Legislature must appropriate the sum of $36,965,093.75 to PSS for FY 2016.

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August 12, 2015

OAGLO: 2015-006
LSR No: 2015-010

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Re: Request for Legal Opinion Regarding Payment of Within-Grade Increases (WGIs) and Lump-sum Bonus Payments

Attorney General's Legal Opinion No. 2015-04

This opinion is in response to the request of the Director of Personnel for a legal opinion that discusses various issues regarding the payment of within-grade increases and merit increases pursuant to 1 CMC § 8215 and lump-sum bonus payments pursuant to 1 CMC § 8213.

Short Answer

Even if the Governor orders the resumption of within-grade increases, merit increases, and bonuses to civil service employees, these payments cannot take effect until the Department of Finance certifies that funds are available for paying these benefits.

Background

1 CMC § 8215 establishes within-grade and merit pay increases for civil service employees:

> An employee shall be granted a one-step, within-grade increase upon completion of 52 consecutive calendar weeks of sustained satisfactory work performance. An employee shall be awarded, in addition, a merit increase (not exceeding one step increase in the base salary) by achieving an overall performance appraisal average score equivalent to "outstanding/exceptional" upon completion of 52 consecutive calendar weeks of sustained superior work performance. Such additional merit increases shall not alter the waiting period required for qualifying for the next within-grade step increase. No employee shall be compensated above the maximum step prescribed for the employee's pay level. All requests for within-grade and merit increases shall be acted upon within 90 working days after submitting the request and all supporting documents to the office of personnel. All such requests not acted upon within 90 working days shall be deemed granted upon availability of funds.

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1 CMC § 7405 provides general governance for salary increases:

> ...No person, including the Civil Service Commission, may reclassify or adjust the salary of a government employee whose salary is paid from appropriations from the general funds without first receiving from the Office of Management and Budget and the Department of Finance certification that lawful and sufficient funds for that purpose are available.

Civil service employees whose salary has been frozen may receive bonus payments pursuant to 1 CMC § 8213(g):

> ...Upon continued satisfactory performance, the employee is entitled to such bonus once every two years thereafter using the same formula, provided that the bonus shall only apply if the necessary funding is available by appropriation or lawful reprogramming....

These within-grade increases, merit increases, and bonus payments were last made in September of 2001. Atty. Gen. Op. No. 06-06 (May 30, 2006). On November 7, 2001, Governor Pedro Tenorio requested the implementation of financial austerity measures for the civil service system.[1] Governor Juan Babauta formally suspended the within-grade and merit increase program by Directive No. 223 on January 2, 2003. This Directive provided that it "shall remain in effect until rescinded in writing or superseded by the adoption of pertinent rules and regulations." *Id.* at 2.

Discussion

1. Within-Grade Increases

Within-grade increases are mandatory. "An employee *shall* be granted a one-step, within-grade increase upon completion of 52 consecutive calendar weeks of sustained satisfactory work performance." 1 CMC § 8215 (emphasis added). However, no person shall "reclassify or adjust a salary of a government employee... without *first* receiving from the Office of Management and Budget and the Department of Finance certification that lawful and sufficient funds for that purpose exist." 1 CMC § 7405 (emphasis added). When read together, these statutes create a procedure for within-grade increases. Once an employee completes 52 consecutive weeks of sustained satisfactory work performance, the Civil Service Commission must sign off on a within-grade increase for the employee. This request for an increase then goes to the Office of Management and Budget and the Department of Finance, who must certify that the funds for the increase exist. If the government cannot afford the pay increase, the request remains in the "In box" until these agencies determine that funds for this purpose exist.

This procedure is consistent with Finance's constitutional authority to "control and regulate the expenditure of public funds." NMI Const., art. X, § 8. If another agency were to order Finance to

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[1] The Office of the Attorney General and the Office of the Governor attempted to find this document, but could not. We know of its existence because it was referenced in the Commonwealth Register. 23 Com. Reg. 18747 (Nov. 23, 2001).

make payments without allowing Finance to certify that government could afford the payments, they would be infringing upon Finance's constitutional authority. This is also the process described in a previous Attorney General Opinion. "…[U]ntil funds are appropriated for within-grade and merit increases and the Office of Management of Budget and the Department of Finance both certify that lawful and sufficient funds for those increases exist, the salaries of government employees which are paid from the general fund may not be adjusted for such increases." Attorney General Opinion, Nov. 7, 2001.

Because the salary adjustment does not go into effect until Management and Budget and Finance certify that funds exist, employees who have not received within-grade increases are not entitled to retroactive pay.[2] "Where state law withholds an entitlement until certain conditions are met, the employee cannot acquire a property interest…." *Logan County Educ. Ass'n v. Logan County Bd. of Educ.*, 376 S.E.2d 340, 346 (W.Va. 1988) (internal citations omitted). 1 CMC § 7405 withholds the entitlement to a within-grade increase until OMB and Finance's conditions are met. Any within-grade increases that Civil Service has approved will go into effect once OMB and Finance approves of them. For some employees, this means that they will receive multiple within-grade increases at once.

Disapproval of retroactive pay increases is supported by case law in other jurisdictions. In *Nye v. University of Washington*, 260 P.3d 1000 (Wash. App. Div. 1 2011), the plaintiff was a professor at the University of Washington. Due to a decrease in funding, the university suspended merit raises for 2009 through 2011. The plaintiff sued for retroactive payment of a merit increase, claiming his contract entitled him to the raise. The Washington Court of Appeals found for the university, explaining, "[a] raise is an increase in future wage or salary…. [A] raise compensates for the performance of future work. Here, before Nye performed that future work during the 2009-2010 academic year, the merit raise had been properly suspended by the university." *Id.* at 1006.

Gubernatorial pronouncements of expenditure controls prevent the Civil Service Commission and OMB from submitting pay increases to the Department of Finance for approval. However, because of Finance's constitutional authority to control the expenditure of public funds, the Governor cannot prevent Finance from approving or denying pay increases.

2. Merit Increases

Merit increases function in much the same way as within-grade increases. Once an employee has qualified for a merit increase though superior work performance pursuant to 1 CMC § 8215, the Civil Service Commission must submit the request for merit increase to OMB and Finance for approval. The increase goes into effect once OMB and Finance certifies that funds exist. Employees are not entitled to retroactive increases.

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[2] A previous Attorney General Opinion supported payment of retroactive pay increases; however, this Opinion did not cite any law to support this conclusion. Attorney General Opinion No. 06-06.

3. Bonuses

1 CMC § 8213(g)'s bonuses for employees are not restricted by 1 CMC § 7405 because that statute applies only to the reclassification or adjustment of salaries. A salary is "compensation for services... paid at regular intervals...." *Black's Law Dictionary* 1537 (10th ed. 2014). Because these bonuses are lump-sum payments, and do not affect the compensation that is paid at regular intervals, they are not salary adjustments.

Nevertheless, someone must still certify that "...the necessary funding is available by appropriation or lawful reprogramming." 1 CMC § 8213(g). The statute does not say who is responsible for making this certification. Given that the payment of a bonus is an "expenditure of public funds," the Department of Finance must undertake this responsibility. NMI Const., art. X, § 8.

The process for approving bonuses works very much like the process for pay increases. The Civil Service Commission certifies that the employee is entitled to a bonus under 1 CMC § 8213(g), and submits the certification to Finance.[3] If Finance certifies that the funds exist, the employee receives the bonus. Again, the employee is not entitled to back pay for bonuses to which they were entitled when funds did not exist to pay the bonuses. *Nye*, *supra.*

Answers

This section provides answers to the questions posed by the Director of Personnel in his letter of July 13, 2015.

1. "Are the payments specified in the laws mandatory or optional?"

Within-grade increases and merit increases are mandatory because 1 CMC § 8215 states that they "shall" be granted. Bonuses are mandatory because 1 CMC § 8213(g) says that employees are "entitled" to receive them. Civil service employees must receive these payments at some point: the only question is when.

2. "Were the actions taken to halt the statutory payments appropriate without statutory changes?"

The actions taken by previous governors to stop the payments are ultimately irrelevant because the Department of Finance has the final authority to approve or deny pay increases and bonuses. Even if the Office of the Governor had not issued its directives suspending the payments, if Finance had determined the funds did not exist, the payments would not have been issued.

[3] The Office of Management and Budget is not mentioned in 1 CMC § 8213(g), so it is not involved in the process of approving bonuses.

3. *"Are the unpaid WGIs due retroactively when funding is available?"*

As discussed above, no employee is entitled to a within-grade increase until after OMB and Finance have approved the increase. Because OMB and Finance did not approve these increases, they are not due retroactively.

4. *"Are the unpaid lump sum bonuses due retroactively when funding is available?"*

Again, no employee may receive a payment until after Finance has certified that funds exist, so lump sum bonuses are not due retroactively.

5. *"Who determines if funding is available?"*

Article X, section 8 of the Constitution makes Finance responsible for determining if funds are available.

6. *"Can a decision to re-start one benefit or the other take place without payment of any retroactive debts (if benefits are determined to be retroactively owed)?"*

Because the payments in question are not retroactively owed, this question is irrelevant.

7. *"Can individual departments determine that they have funding available and restart benefit payments for their department only?"*

Because the Department of Finance is constitutionally responsible for the control of public funds, individual departments may not restart benefit payments without Finance's approval. In addition, because 1 CMC § 8215 requires the approval of the Office of Management and Budget before a within-grade increase or a merit increase goes into effect, departments cannot resume these increases without OMB's approval. OMB is not involved in the bonus approval process.

Sincerely,

Edward E. Manibusan
Attorney General

EXECUTIVE ORDER No. 2015-11
DECLARATION OF MAJOR DISASTER AND SIGNIFICANT EMERGENCY IN THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

WHEREAS, on August 2, 2015, Typhoon Soudelor struck the Commonwealth of the Northern Mariana Islands;

WHEREAS, Typhoon Soudelor caused significant damage to public and private property, the full extent of which is presently unknown;

WHEREAS, the disruption of critical infrastructure poses a significant threat to the peace, health, and safety of the Commonwealth's residents;

WHEREAS, the present conditions threaten the public peace, health, and safety;

NOW THEREFORE, I, RALPH DLG. TORRES, pursuant to the authority vested in me as Acting Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution and the Homeland Security and Emergency Management Act of 2013, 1 CMC §§ 20141-20147, do hereby issue a Declaration of Major Disaster and Significant Emergency in the Commonwealth of the Northern Mariana Islands.

I HEREBY INVOKE MY AUTHORITY under Article III, § 10 of the Commonwealth Constitution and 1 CMC § 20144(c) to protect the health and safety of the people of the Commonwealth. Accordingly, the following is hereby **ORDERED**:

I. EXEMPTION FROM REGULATIONS

The Commonwealth Homeland Security and Emergency Management Office shall provide assistance and support to the people of the Commonwealth. In doing so, the Commonwealth Homeland Security and Emergency Management Office, any government agency acting pursuant to its request, and any private person or entity acting pursuant to its request, is hereby granted a temporary exemption from any Commonwealth regulation that would tend to prevent, hinder, or delay any action the Homeland Security Office deems necessary when assisting and supporting the Commonwealth in its recovery from Typhoon Soudelor. However, the Homeland Security Office, other government agencies, and private persons or entities temporarily exempted from such regulations under this provision must continue to comply with regulations that would not tend to prevent, hinder, or delay actions the Homeland Security Office deems necessary to carry out this order. On or about September 15, 2015, the Homeland Security and Emergency Management Office shall prepare and submit a report to the Office of the Governor that details any actions taken under this section.

II. GOVERNMENT EQUIPMENT AND PROPERTY

The Office of the Governor hereby invokes its authority to utilize all available government resources necessary to respond to this Declaration of Major Disaster and State of Significant Emergency. The Commonwealth Homeland Security and Emergency Management Office is hereby authorized to utilize all available government equipment and property in the Commonwealth to respond to this Declaration of Major Disaster and State of Significant Emergency.

III. TRANSFER OF PERSONNEL AND FUNCTIONS OF GOVERNMENT AGENCIES

The Commonwealth Homeland Security and Emergency Management Office may, after consultation with the Office of the Governor, temporarily transfer the direction, personnel, and functions of government agencies to facilitate its response and recovery programs.

IV. TRANSPORTATION

The Commonwealth Homeland Security and Emergency Management Office may prescribe routes, modes of transportation, and destinations in consultation with public safety authorities for the provision of emergency services.

V. AUTHORITY TO LIMIT AND CONTROL THE MOVEMENT OF INDIVIDUALS WITHIN STRICKEN AND THREATENED PUBLIC AREAS

The Commonwealth Homeland Security and Emergency Management Office may control or limit ingress and egress to and from any stricken or threatened public area, the movement of persons within the area, and the occupancy of premises therein, if such actions are reasonable and necessary to facilitate its response or recovery programs.

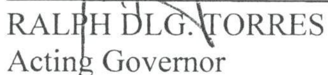
VI. THE FEDERAL GOVERNMENT

The Office of the Governor will seek aid from the federal government if any such aid is available and necessary.

VII. EFFECTIVE DATE

This Declaration of Major Disaster and State of Significant Emergency shall take effect immediately and all memoranda, directives, and other measures taken in accordance with this Declaration shall remain in effect for thirty (30) days from the date of this Executive Order.

Done this 3rd day of August, 2015.



RALPH DLG. TORRES
Acting Governor

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Eloy S. Inos
Governor

Ralph DLG. Torres
Lieutenant Governor

EXECUTIVE ORDER NO. 2015-12

SUBJECT: DECLARATION OF A STATE OF SIGNIFICANT EMERGENCY

AUTHORITY: I, ELOY S. INOS, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution and PL 18-4, § 104 of the Homeland Security and Emergency Management Act of 2013, do hereby declare a State of Significant Emergency for the Commonwealth of the Northern Mariana Islands due to the imminent threat of the inability of the Commonwealth Utilities Corporation ("CUC") to provide critical power generation, water, and wastewater services to the CNMI and considering the harm such condition would pose to the community, environment, and critical infrastructure of the Commonwealth of the Northern Mariana Islands.

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

WHEREAS, WITHOUT CUC ELECTRICITY:

(1) Most CNMI economic activity would come to a halt, much refrigeration and air conditioning would end, and the airports and ports would be forced to rely on emergency generation on the limited, expensive oil supply for it;

(2) The CNMI's health and safety would immediately be at risk because traffic signals and street lighting would cease to function; emergency, fire, police facilities and their communications systems, and the hospital and island clinics would have to rely on limited fuel supplies for emergency generation and then cease functioning; and much refrigeration of food and medicines would end, as would air conditioning for the elderly and sick;

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(3) The public schools and the Northern Marianas College would close. Other educational institutions would close as their backup fuel supplies for emergency generators were exhausted; and

(4) Water and sewage treatment would soon end. One of CUC's largest electric customers is the combined CUC Water and Wastewater Divisions. CUC is the sole supplier of electricity for these systems. CUC's water system relies on electricity to maintain the system pressure needed to prevent the backflow of pathogens, to chlorinate, and to pump, store, and distribute water supplies. CUC's wastewater system requires electricity to collect, pump, process, treat, and discharge sewage. The lack of electricity could result in sewage overflows, contaminating land and water.

WHEREAS, THERE EXISTS A FINANCIAL CRISIS:

(1) CUC is owed over $20 million by the public school system ("PSS") and the Commonwealth Healthcare Corporation ("CHC") and is owed over millions more by other users;

(2) Although the commonwealth economy has recently improved, the improvement is only marginal and the economy and the government's finances are still fragile. This government strains to meet its obligations.

(3) CUC often only has days' worth of purchased diesel fuel to power its system because it lacks the funds to buy oil from its sole, cash-only supplier. CUC has no credit or other means to buy fuel than the revenue it collects from its customers;

WHEREAS, THERE EXISTS A 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

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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. The legislature is urged to address this matter by way of amending local law to allow CUC to continue employing the services of foreign workers for such technical positions difficult to fill and to provide for a reasonable transition period.

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

NOW, THEREFORE, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and PL 18-4 § 104(c), to take all necessary measures to address the threats facing the Commonwealth of the Northern Mariana Islands.

It is hereby **ORDERED** that:

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

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prior to the end of the thirty (30)-day period, terminate the declaration of a state of significant emergency. PL 18-4, § 104(g)

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

DIRECTIVE: Insofar as it applies to CUC, 3 CMC § 4531 is hereby suspended. As a result of the 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 Directive is in no way meant as the limits of my actions or authority under this Declaration. Accordingly, I reserve the right under this Declaration to issue any and all directives necessary to prevent, mitigate or ameliorate the adverse effects of the emergency.

SIGNED AND PROMULGATED on this 17th day of August, 2015.

ELOY S. INOS

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