



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Benigno R. Fitial
Governor

Eloy S. Inos
Lt. Governor

March 10, 2011

Honorable Paul A. Manglona
Senate President, The Senate
Seventeenth Northern Marianas
Commonwealth Legislature
Saipan, MP 96950

Honorable Eliceo D. Cabrera
Speaker, House of Representatives
Seventeenth Northern Marianas
Commonwealth Legislature
Saipan, MP 96950

Dear Mr. President and Mr. Speaker:

This is to inform you that I have signed into law House Bill No. 17-114, SS1, SD2, SS2, CCS1, entitled, "To amend Section 3 of Public Law 16-17 to give the CUC the flexibility needed to partner with the private sector to provide reliable service at efficient rates; and for other purposes," which was passed by the House of Representatives and the Senate of the Seventeenth Northern Marianas Commonwealth Legislature.

This bill becomes **Public Law No. 17-34**. Copies bearing my signature are forwarded for your reference.

Sincerely,

ELOY S. INOS
Acting Governor

cc: Governor; Attorney General; Press Secretary; Executive Director, Commonwealth Utilities Corporation; Chairperson, Public Utilities Commission; Secretary, Department of Finance; Chief Executive Officer, Commonwealth Development Authority; Secretary, Department of Public Lands; Executive Director, Commonwealth Ports Authority, Commonwealth's Law Revision Commission, Special Assistant for Administration; Special Assistant for Programs and Legislative Review



House of Representatives

SEVENTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

P.O. BOX 500386
SAIPAN, MP 96950

March 8, 2011

The Honorable Benigno R. Fitial
Governor
Commonwealth of the Northern
Mariana Islands
Capitol Hill
Saipan, MP 96950

Dear Governor Fitial:

I have the honor of transmitting herewith for your action **H. B. 17-114, SS1, SD2, SS2, CCS1**, entitled: "To amend Section 3 of Public Law 16-17 to give the CUC the flexibility needed to partner with the private sector to provide reliable service at efficient rates; and for other purposes.", which was passed by the House of Representatives and the Senate of the Seventeenth Northern Marianas Commonwealth Legislature.

Sincerely yours,



Linda B. Muña
House Clerk

Attachment



*Seventeenth Legislature
of the
Commonwealth of the Northern Mariana Islands*
IN THE HOUSE OF REPRESENTATIVES

Second Regular Session

October 15, 2010

Representative Stanley T. McGinnis Torres, of Saipan, Precinct 3 (*for himself*), in an open and public meeting with an opportunity for the public to comment, introduced the following Bill:

H. B. 17-114

AN ACT

TO RESTORE THE COMMONWEALTH UTILITIES CORPORATION'S PROCUREMENT AUTHORITY TO GIVE THE CUC THE FLEXIBILITY NEEDED TO PARTNER WITH THE PRIVATE SECTOR TO PROVIDE RELIABLE SERVICE AT EFFICIENT RATES; AND FOR OTHER PURPOSES.

The Bill was referred to the House Committee on Public Utilities Transportation and Communication, and placed on the Bill Calendar on October 18, 2010.

**THE BILL WAS PASSED BY THE HOUSE OF REPRESENTATIVES ON
FIRST AND FINAL READING, OCTOBER 18, 2010;
without amendments and transmitted to the
THE SENATE.**

The Bill was not referred to a Senate Committee.

**THE BILL WAS PASSED BY THE SENATE ON FIRST AND FINAL READING, FEBRUARY 11, 2011;
with amendments in the form of H. B. 17-114, SS1, SD1, SS2.**

**H. B. 17-114, SS1, SD1, SS2 WAS RETURNED TO THE HOUSE OF REPRESENTATIVES ON
FEBRUARY 16, 2011.**

The House of Representatives rejected the Senate amendments and the Bill was sent to Conference, which submitted Conference Committee Report 17-3, in the form of H. B. 17-114, SS1, SD1, SS2, CCS1;

**THE BILL WAS PASSED BY THE HOUSE OF REPRESENTATIVES ON March 3, 2011 and by
THE SENATE ON MARCH 4, 2011.**

A handwritten signature in black ink, appearing to read "Linda B. Muña".

Linda B. Muña, House Clerk



*Seventeenth Legislature
of the
Commonwealth of the Northern Mariana Islands*
IN THE HOUSE OF REPRESENTATIVES

Third Regular Session

March 3, 2011

H. B. 17-114, SS1, SD1, SS2, CCS1

AN ACT

To amend Section 3 of Public Law 16-17 to give the CUC the flexibility needed to partner with the private sector to provide reliable service at efficient rates; and for other purposes.

**Be it enacted by the Seventeenth Northern Marianas
Commonwealth Legislature:**

1 **Section 1. Findings and Purpose** The Legislature finds that
2 Commonwealth ratepayers deserve a utility that constantly delivers high quality
3 power at reasonable prices. Currently, oil prices are approaching \$100.00 per
4 barrel for delivery to Saipan and are well over \$100.00 per barrel for delivery to
5 Rota. It is imperative that CUC be able to provide service which is affordable to
6 the Commonwealth's residents and businesses.

7 The Legislature further finds that portions of Public Law 16-17 have
8 placed restrictions on CUC which lead to inefficiencies that translate directly into
9 higher costs to consumers. These inefficiencies must be removed. It is the

1 purpose of this Act to remove the impediments and inefficiencies and restore
2 CUC's procurement authority such that it will be able to enter into agreements
3 with providers to ensure efficient delivery of services at reasonable rates to
4 consumers. The Legislature declares that this Act is necessary and is a proper use
5 of the legislative authority conferred by Article II of the Commonwealth
6 Constitution.

7 **Section 2. Amendment.** Sections 3 of Public Law 16-17 is hereby
8 amended to read as follows:

9 **"Section 3. PSAA procurement process.**

10 (a) Bids only. The Commonwealth Utilities Corporation (herein
11 "CUC") shall not enter into any form of performance management
12 contract, franchise agreement, or private sector assistance agreement
13 unless the agreement is awarded pursuant to an invitation to bid except as
14 provided in this section. No such contract shall be awarded pursuant to a
15 request for proposals (RFP) unless the Attorney General certifies, under
16 penalty of perjury, that (1) the RFP is the most appropriate procurement
17 tool for a specific form of PSAA, and (2) such RFP complies with all
18 CUC procurement regulations, CNMI and federal laws. All RFP,
19 excepting renewable energy projects in paragraph (b) below, shall be
20 subject to the provisions of this section.

21 (b) Renewable energy projects. Renewable Energy Projects shall
22 be exempt from all the provisions of this section. Renewable energy

1 projects are any projects that do not use as their main source of power
2 generation fossil fuels, including but not limited to oil, coal or natural gas,
3 but instead use power generating forces including but not limited to wind,
4 solar, geothermal, biomass or nuclear battery. All that shall be required by
5 persons seeking business with CUC as renewable energy project
6 contractors shall be submitting requests for proposal under established
7 Commonwealth procurement regulations. For the purposes of this act,
8 renewable energy projects are limited to private sector assistance
9 agreements where a private renewable energy firm sells or manages
10 renewable energy power or assets to or on behalf of CUC. An
11 independent power producer (IPP) selected for renewable energy project
12 via the RFP process shall not be considered an "eligible customer-
13 generator" as defined under section 8631 of PL 15-87 and shall not be
14 subject to the rate or compensation limitations of section 8639(a) of PL
15 15-87. Under this paragraph, renewable energy projects shall in no case
16 be interpreted to include the sale, management, franchise, concession,
17 build/operate/transfer, build/operate/own, independent power producer
18 contract, contract for a public utilities cooperative or full privatization of
19 any oil consuming CUC asset.

20 (c) Public documents. A CUC invitation to bid and its attachments,
21 including any form of performance management contract or franchise
22 agreement or private partnership for its services and operations as

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1 described below, shall be and remain a public document and shall be
2 posted for review and downloading, without charge, on a website
3 maintained by CUC.

4 (d) Private sector assistance agreements. CUC may procure private
5 sector assistance under a private sector assistance agreement ("PSAA").

6 A PSAA is limited to:

7 (1) A performance management contract (PMC) by which
8 CUC may privatize the generation of its electrical power for a
9 limited term not to exceed five (5) years;

10 (2) A concession or franchise agreement by which CUC
11 transfers a utility service, including the related required capital
12 investment, to the private sector for a limited term not to exceed 25
13 years;

14 (3) A contract for a public utilities cooperative;

15 (4) A build/operate/transfer (BOT) contract;

16 (5) Build, Operate, Own (BOO) Contract;

17 (6) A contract for an independent power producer (IPP); or

18 (7) Full privatization of CUC as follows: notwithstanding
19 any provision of law to the contrary, the full privatization of
20 CUC's electric power generation operation is authorized;

21 (e) Authority. CUC shall procure such private sector assistance
22 under its procurement regulations (set forth in the Commonwealth

1 Register, Volume 29, No. 06; June 18, 2007), as amended by CUC from
2 time to time thereafter, and as modified by this Act. No other procurement
3 regulations shall apply.

4 (f) Limitation of bid. With respect to a PSAA procured pursuant to
5 subsection (d) (1)-(7) of this section, the invitation for bids shall include a
6 condition that such PSAA shall establish a renewable energy portfolio
7 standard of at least fifty percent (50%) of its net electricity sales within
8 seven (7) years of the PSAA, if such a standard has not yet been met by
9 CUC, notwithstanding subsection 6 CMC §8622 as amended by Public
10 Law 15-87.

11 (g) Pre-qualification of Bidders. If the PSAA process requires a
12 pre-qualification of bidders, then a private business entity that is licensed
13 in the Commonwealth and, for at least ten years, has been engaged in
14 business that is closely related to the utility for which the invitation for bid
15 is being published, is hereby deemed qualified to submit a sealed bid.
16 This subsection shall not be construed to preclude entities that are not pre-
17 qualified to submit a sealed bid pursuant to this section.

18 (h) PUC review.

19 (1) Any PSAA award shall not be final unless the Public
20 Utilities Commission (herein "PUC") approves it under 4 CMC
21 §§8439, 8440, or 8441 within 42 days.

1 (2) No contract shall be awarded to any contractor who is
2 not already permitted in a U.S. or international jurisdiction, or who
3 has not operated a major source of emission in accordance with
4 U.S. Environmental Protection Agency (EPA) regulations for at
5 least five (5) years.

6 (3) The involvement of PUC in a CUC PSAA under this
7 Act is limited to the process described in Section 4.

8 (i) "All PSAA procurement shall be subject to 1 CMC § 7404."

9 **Section 3. Amendment.** Public Law 16-2 § 12 (d) shall be amended as
10 follows:

11 "(d) Notwithstanding subsection (b), once three commissioners
12 have been appointed and confirmed, any event, be it resignation, removal,
13 or otherwise, which reduces the number of Commissioners below three
14 shall not divest the Commission of its authority, and the PUC shall
15 continue its duties shorthanded until such time as additional
16 commissioners have been duly appointed and confirmed. If, for any
17 reason, the Commission consists of only two Commissioners, then a
18 quorum for the conduct of the PUC's business shall be two and decisions
19 shall be unanimous until such time as an additional Commissioner or
20 Commissioners shall be duly nominated and confirmed. If the
21 Commission consists of a sole Commissioner, then a quorum for the
22 conduct of the Commission's business shall be one, but only for a period

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1 of 60 days, with the possibility of one 30 day extension only by the
2 governor, upon a finding that such extension is in the best interest of the
3 public. Upon expiration of this 60, or 90 days, another PUC
4 commissioner must be appointed for PUC to continue to act.”

5 **Section 4. Amendment.** Title 4 § 8403 paragraph (e) shall be amended
6 as follows:

7 “(e) No Commissioner shall be an employee of the government of
8 the Commonwealth or any of its agencies or any entity regulated by the
9 Commission, with the exception of any government appointee or
10 commissioner from the 1st or 2nd senatorial district, nor may a
11 commissioner serve as a consultant to any entity regulated by the
12 Commission, nor may a commissioner serve as a member of any other
13 government board or commission. Acceptance by a Commissioner of any
14 position in violation of this section automatically terminates that persons
15 term of office.”

16 **Section 5. Severability.** If any provisions of this Act or the application
17 of any such provision to any person or circumstance should be held invalid by a
18 court of competent jurisdiction, the remainder of this Act or the application of its
19 provisions to persons or circumstances other than those to which it is held invalid
20 shall not be affected thereby.

21 **Section 6. Savings Clause.** This Act and any repealer contained herein
22 shall not be construed as affecting any existing right acquired under contract or

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1 acquired under statutes repealed or under any rule, regulation, or order adopted
2 under the statutes. Repealers contained in this Act shall not affect any proceeding
3 instituted under or pursuant to prior law. The enactment of the Act shall not have
4 the effect of terminating, or in any way modifying, any liability, civil or criminal,
5 which shall already be in existence on the date this Act becomes effective.

6 **Section 7. Effective Date.** This Act shall take effect upon its approval by
7 the Governor, or its becoming law without such approval.

Attested to by:



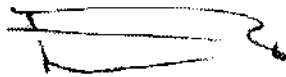
Linda B. Muña, House Clerk

Certified by:



ELICEO D. CABRERA, SPEAKER

APPROVED this 10TH day of MARCH, 2011



ELOY S. INOS

Acting Governor

Commonwealth of the Northern Mariana Islands