



HOUSE OF REPRESENTATIVES  
SIXTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE  
FIRST REGULAR SESSION, 2008

Public Law No. 16-17  
H. B. No. 16-77, HS1, HD6, SD1

AN ACT

TO ALLOW AND ENCOURAGE THE COMMONWEALTH UTILITIES CORPORATION TO ENGAGE THE PRIVATE SECTOR TO PARTNER WITH THE COMMONWEALTH TO SECURE RELIABLE UTILITY SERVICES AT AFFORDABLE RATES, AND FOR OTHER PURPOSES.

BE IT ENACTED BY THE SIXTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

1           **Section 1. Short title.** This Act may be cited as the "CUC Private Sector Partnership  
2 Act of 2008."

3           **Section 2. Findings and purpose.** The Sixteenth Northern Marianas Commonwealth  
4 Legislature finds that the people of the Commonwealth demand and deserve, at the earliest  
5 possible time, reliable power at affordable rates delivered by an efficient, well-managed  
6 utility service. To achieve this goal, the Commonwealth Utilities Corporation (CUC) requires  
7 an infusion of funds. A source of funding may be available through CUC's issuance of public  
8 utility revenue bonds or through the private sector and other funding sources that are  
9 independent of the depleted coffers of the Commonwealth government.

10           The Legislature further finds that Commonwealth ratepayers deserve a utility that  
11 delivers high quality power on a 24/7 basis at reasonable prices, whose operations are open  
12 and transparent, whose books are balanced, whose audits are clean, and whose operations are  
13 reviewed by an independent regulator. Further, Commonwealth investors deserve a utility  
14 that can and will meet their future power, water, and wastewater needs in a reliable manner  
15 with stable and affordable rates. Commonwealth employees deserve a utility run by skilled  
16 managers supervising a highly trained local workforce with good morale, competitive  
17 compensation, and excellent training opportunities for personnel enhancement and  
18 certification to ensure the availability of the skilled work force required for the operation and  
19 maintenance of the utilities. Commonwealth power consumers deserve a utility that can

1 procure materials and supplies, including spare parts and professional services, in a flexible,  
2 timely, and cost-effective manner. Commonwealth citizens deserve an environmentally  
3 friendly utility service committed to cost effective green power generation. Finally,  
4 Commonwealth taxpayers deserve a utility whose operation does not require public subsidies,  
5 but rather one that enhances taxpayers' jobs, finances, and economic security.

6 The Legislature further finds that the Commonwealth and CUC are far from achieving  
7 these goals. Residents and businesses alike are suffering from outages, unreliable power and  
8 increasing rates. Tourists and investors are discouraged from pursuing their activities in the  
9 Commonwealth. The Commonwealth's economy is in a tailspin, and the current power crisis  
10 is accelerating that tailspin. The lack of affordable; reliable, and continuous power from a  
11 professionally managed utility creates an imminent threat to the health, safety, and welfare of  
12 the people of the Commonwealth. The water and waste treatment facilities, which require  
13 power, may fail to function safely and as needed; public safety facilities and equipment may  
14 not function when required; the healthcare facilities may become paralyzed; businesses,  
15 particularly those operating hi-tech equipment and those requiring air conditioning for their  
16 tourist customers, may be unable to operate efficiently or at all. Finally, large power  
17 consumers, such as hotels and shopping centers that ordinarily would buy power from CUC  
18 and contribute to the overall costs of the system, must generate their own power at a much  
19 higher cost per kilowatt hour.

20 The Legislature further finds that more than two-thirds of CUC's revenue (about \$75  
21 million per year of CNMI ratepayers' funds) goes directly offshore to pay for the foreign oil  
22 required to run CUC's generators, instead of flowing through the CNMI economy. The  
23 continuing problems with CUC's equipment and finances are causing a collapse of  
24 overburdened consumers' family finances and threaten to cause a collapse of the Islands'  
25 power, water, and sewer infrastructures- an emergency that the Commonwealth must avoid.  
26 Recovery is possible, but requires the assistance and support from the private sector. The  
27 Commonwealth and CUC must commit themselves to implementing successful models of  
28 public-private sector partnerships. These models range from privatization of management  
29 through performance management contracts, as undertaken in Guam, to privatization of an

1 entire utility service regulated by a public utilities commission, as is common in the 50 states.  
2 By taking advantage of one or more of these models, the Commonwealth and CUC can draw  
3 on outside financing and expertise from the private sector to meet –and resolve- the power  
4 crisis. Based on the foregoing, the Legislature finds and declares that this Act is a necessary  
5 and proper use of its legislative authority under Article II of the Commonwealth Constitution.

6 The Legislature further finds that the Board of CUC should be restored its normal  
7 managerial powers, as was the case prior to Executive Order 2006-4. Section 9 is a re-  
8 enactment of the CUC statute that takes into account numerous public laws passed beginning  
9 in the 13th Legislature.

10 The Legislature finally finds that CUC's previous efforts to privatize portions of its  
11 services or to procure alternative energy resources have been largely unsuccessful because  
12 CUC has failed to solicit these contracts through the process of sealed competitive bids from  
13 pre-qualified bidders. The use of the RFP system (requests for proposals) injects into the  
14 process an unacceptable element of subjectivity, and as a result participants in the process  
15 lack confidence in it and tend to file protests against the content of the requests or the  
16 procedures for evaluating them. These protests have been largely successful and have  
17 delayed the procurement of essential goods and services. This Act shall authorize the full  
18 privatization of CUC; provided that any private entity that acquires CUC shall pay a total of  
19 not less than two hundred fifty million dollars (\$250,000,000.00) in cash or in a combination  
20 of cash and equivalent infrastructure improvements, and provided further that any acquisition  
21 shall be for a period of not less than forty (40) years.

22 The Legislature intends that this Act be read, to the fullest extent possible,  
23 consistently with Public Law 16-2.

24 **Section 3. PSAA procurement process.**

25 (a) Bids only. The Commonwealth Utilities Corporation (herein "CUC") shall not  
26 enter into any form of performance management contract, franchise agreement, or  
27 private sector assistance agreement unless the agreement is awarded pursuant to  
28 an invitation to bid. No such contract shall be awarded pursuant to a request for  
29 proposals (RFP).

1 (b) Public documents. A CUC invitation to bid and its attachments, including any  
2 form of performance management contract or franchise agreement or private  
3 partnership for its services and operations as described below, shall be and remain  
4 a public document and shall be posted for review and downloading, without  
5 charge, on a website maintained by CUC.

6 (c) Private sector assistance agreements. CUC may procure private sector assistance  
7 under a private sector assistance agreement ("PSAA"). A PSAA is limited to:

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

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

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

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

16 (5) A contract for an independent power producer (IPP); or

17 (6) Full privatization of CUC as follows: notwithstanding any provision of law to  
18 the contrary, the full privatization of CUC's electric power generation  
19 operation is authorized; provided that any private entity that acquires CUC's  
20 electric power generation operation in full shall pay a total of not less than two  
21 hundred fifty million dollars (\$250,000,000.00) in cash or in cash and  
22 equivalent infrastructure improvements in the form of aerial and underground  
23 power transmission lines and expanded renewable energy generation facilities  
24 to meet greater than 50% of demand; and provided further that any acquisition  
25 of the electric power generation operation shall be for a period of not less than  
26 forty (40) years.

27 (d) Authority. CUC shall procure such private sector assistance under its procurement  
28 regulations (set forth in the Commonwealth Register, Volume 29, No. 06; June

1 18, 2007), as amended by CUC from time to time thereafter, and as modified by  
2 this Act. No other procurement regulations shall apply.

3 (e) Limitation of bid. With respect to a PSAA procured pursuant to subsection (c)(1)-  
4 (6) of this section, CUC shall procure the services of a United States certified  
5 contractor experienced with CUC's facilities or other power generation facilities  
6 to draft a PSAA invitation for bids; provided that the invitation for bids shall  
7 include a condition that such PSAA shall establish a renewable energy portfolio  
8 standard of at least fifty percent (50%) of its net electricity sales within seven (7)  
9 years of the PSAA, notwithstanding subsection 6 CMC §8622 as amended by  
10 Public Law 15-87.

11 (f) Bid evaluation. With respect to a PSAA procured pursuant to subsection (c)(1)-(6)  
12 of this section, CUC shall procure the services of a United States certified  
13 contractor to conduct the bid evaluation.

14 (g) PUC review.

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

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

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

24 **Section 4. PSAA review.** Notwithstanding 1 CMC §9101 et seq., 1 CMC §7811 et  
25 seq., 2 CMC §2301 et seq., or any other provision of law:

26 (a) Review of procurement decision in general.

27 (1) An aggrieved person may seek review of a CUC procurement for goods or  
28 services through a private sector assistance agreement (a "CUC PSAA  
29 procurement") by filing a protest.

- 1 (2) The protest shall be filed in writing with CUC within ten (10) days after the  
2 aggrieved person knows, or by the exercise of reasonable diligence should  
3 know, of the decision of CUC, including but not limited to the awarding of a  
4 CUC PSAA.
- 5 (3) CUC shall respond in writing to the protest within ten (10) days. The protest,  
6 CUC's response, and any reply by the aggrieved party shall be forwarded to  
7 PUC in the event that the protest is for an award of a CUC contract subject to  
8 PUC review and approval.
- 9 (4) PUC shall consider any protest filed in reaching its determination whether to  
10 approve or disapprove any given award subject to its review.
- 11 (5) An expedited procedure shall govern the review of a CUC PSAA  
12 procurement. Filings and document exchanges accomplished and distributed  
13 by electronic means shall be favored.
- 14 (6) Except as otherwise provided in this section, no person shall have standing to  
15 obtain review of a CUC PSAA procurement unless the person shall show  
16 actual prejudice from the decision.
- 17 (7) The Public Auditor shall have no involvement in a CUC PSAA procurement,  
18 nor jurisdiction over an appeal arising from such a procurement; provided that  
19 nothing in this subsection shall be construed to limit the authority of the  
20 Public Auditor set forth in Article 111, §12 of the Constitution of the Northern  
21 Mariana Islands.
- 22 (8) In deciding whether to approve or disapprove a CUC award, PUC shall issue a  
23 written decision on any protest filed.
- 24 (9) CUC shall bear the costs of any PUC review of CUC's actions in any protest,  
25 rate case, or any other PUC action in which CUC's past, present or future  
26 courses of action are being reviewed or considered by PUC.
- 27 (b) PUC review.

1 (1) CUC shall file its final PSAA procurement decision with the PUC, including  
2 such supporting information as the PUC shall require, within seven (7) days of  
3 reaching its decision.

4 (2) Upon CUC's filing, PUC shall immediately commence its review of a CUC  
5 PSAA procurement decision. PUC shall adopt procedures for an expedited  
6 review and for notice and participation of the person/s who participated in the  
7 CUC PSAA procurement.

8 (3) The following persons may participate by right before the PUC proceeding:

9 (A) CUC;

10 (B) the Attorney General; and

11 (C) the person/s in whose favor the procurement decision was entered.

12 A person who participates by right shall file a timely notice of participation in  
13 lieu of an answer. The notice shall state the person's position regarding a CUC  
14 decision. Any other person shall petition for leave to intervene.

15 (4) Within 42 days of the date of CUC's filing, PUC shall complete its review  
16 proceedings and enter final orders adjudicating a protest, if any, and approving  
17 or disapproving CUC's decision. PUC's substantive review shall be pursuant  
18 to 4 CMC §§8439,8440, or 8441.

19 (5) PUC's failure to enter an order shall constitute a final agency action  
20 dismissing the protest and approving the CUC PSAA.

21 (6) PUC's final action on a protest shall be subject to review pursuant to the  
22 Administrative Procedure Act [1 CMC §9101 et seq.], and this Act.

23 (7) PUC's final action on a decision approving or disapproving a PSAA shall be  
24 subject to review pursuant to the Administrative Procedure Act [1 CMC  
25 §9101 et seq.], and this Act.

26 (c) Superior Court: expedited review of PUC decision.

27 (1) The appeal of a PUC decision shall be an expedited appeal of an  
28 administrative agency decision to the Superior Court, and not an original  
29 action. Except as otherwise provided by this Act, judicial review of the PUC

1 decision shall be pursuant to the Administrative Procedure Act, under the  
2 standard of review set forth in 1 CMC § 91 12(f). The facts shall not be subject  
3 to trial *de novo*.

4 (2) The following persons shall participate by right before the courts:

5 (A) the appellant;

6 (B) CUC;

7 (C) the Attorney General; and

8 (D) the person in whose favor the procurement decision was entered.

9 No answer shall be required. Each such person shall file a notice of  
10 participation stating the person's position regarding the appeal. Any other  
11 person shall petition for leave to intervene. The Court shall not grant the  
12 intervention unless the person shall clearly and convincingly demonstrate an  
13 interest in the CUC PSAA decision.

14 (3) A person who desires to appeal a PUC decision shall, within seven (7) days  
15 following the date the PUC enters that decision, file its appeal with the  
16 Superior Court. This is a jurisdictional prerequisite. The appellant shall not  
17 have perfected the appeal until the appellant has served a copy on the Attorney  
18 General and CUC. The notice of appeal shall be accompanied by a legal  
19 memorandum and supporting materials demonstrating plainly why the PUC  
20 decision should be reversed or modified.

21 (4) The Court shall conduct its review on an expedited basis. Within fourteen (14)  
22 days following the filing of an appeal:

23 (A) A respondent shall file its notice of participation and legal memorandum;

24 (B) An intervenor shall file its petition and supporting legal memorandum;

25 (C) The Court shall issue its notice for a hearing, if any.

26 (5) There shall be no oral argument unless a party so requests or the Court orders  
27 oral argument.

28 (6) The Court shall issue its opinion expeditiously and enter judgment no later  
29 than seven (7) days thereafter.

1 (d) Supreme Court: expedited review.

2 (1) A party may appeal the judgment of the Superior Court to the Supreme Court  
3 as in other cases, provided that:

4 (A) From the date of the entry of judgment, as a prerequisite for jurisdiction, a  
5 notice of appeal shall be filed within seven (7) days;

6 (B) The appellant's brief shall be filed within fourteen (14) days of filing the  
7 notice of appeal;

8 (C) The appellee's brief shall be filed within twenty-eight (28) days of filing  
9 the notice of appeal;

10 (D) A party may file a declaration and relevant materials in lieu of filing the  
11 record, in order to meet the expedited schedule; and

12 (E) There shall be no oral argument unless the Court shall, upon a party's  
13 request or its own motion, grant it.

14 (2) Unless the Supreme Court determines there is good cause for delay, the  
15 Court's judgment shall issue within forty-two (42) days after the filing of a  
16 notice of appeal.

17  
18 (3) No stay of a Superior Court decision shall be issued absent compelling  
19 evidence requiring immediate relief.

20 **Section 5. Private sector procurement, employment and agency status.** A

21 business that is a party to a PSAA remains a private sector entity and shall not be subject to:

22 (a) Treatment as a public sector agency or instrumentality by virtue of its contract and  
23 scope of work; provided that CUC may by contract extend to it limited legal  
24 liability and immunity protections if such extension is approved by the Attorney  
25 General.

26 (b) CUC or CNMI procurement regulations, with respect to procurements undertaken  
27 by it within the scope of its work.

28 (c) Commonwealth employment laws and regulations that are applicable solely to the  
29 public sector, with respect to decisions made by it within the scope of its work.

1           **Section 6. Scope of procurement.** Procurement under this Act shall be exempt from  
2 1 CMC §7404 et seq., as amended, and regulations promulgated pursuant to those sections.

3           **Section 7. Title to property; easement rights.**

4           (a) CUC is hereby granted, without further consideration, the right of perpetual access  
5           to and use of all easements held by the Commonwealth through any agency,  
6           entity, or other instrumentality that allow for public utility services.

7           (b) CUC shall hold title to the property on which its facilities, buildings,  
8           improvements, fixtures, or other assets are permanently situated, except for lands  
9           owned by the Commonwealth Port Authority. The Department of Public Lands  
10           shall grant, as a ministerial act without further consideration, such titles to CUC  
11           within 28 days of a demand. A grant may be made subject to survey. The costs of  
12           any required survey shall be borne by the Department of Public Lands.

13           (c) Upon request, the Department of Public Lands shall assist CUC in identifying the  
14           location and acquiring: (1) easements that CUC determines it requires for a public  
15           purpose, and (2) titles to properties on which CUC may have located, or may  
16           propose to locate, future utility service facilities, buildings, improvements, or  
17           other assets.

18           **Section 8. Protection of CUC employees serving under PSAA management.**

19           (a) CUC and PUC, as the case may be, shall ensure that a PSAA protects the jobs of  
20           current CUC employees by allowing such employees to continue serving the  
21           utility for a fixed number of years or for an indefinite duration.

22           (b) Additionally, CUC and PUC, as the case may be, shall ensure that a PSAA  
23           requires a contractor to engage in and provide training opportunities for  
24           certification to a largely resident worker labor force at competitive rates of  
25           compensation.

26           **Section 9. Renewable energy purchases from CUC customers.**

27           (a) Pursuant to Public Law 15-87, a group of eligible customer-generators who  
28           aggregate their entitlements to sell renewable energy to the CUC power system  
29           and co-locate the generating equipment at a site that is remote from one or more

1 of them shall have the same rights to sell renewable energy to CUC as does an  
2 individual eligible customer-generator.

3 (b) A contract entered into between CUC and an eligible customer-generator (or a  
4 group of such eligible customer-generators) under Public Law 15-87 shall not be  
5 deemed to be a contract for a utility service as described in 4 CMC §§8112 or  
6 8141.

7 (c) A customer-generator, self-generator, performance management contractor, and an  
8 entity which sells power at wholesale to CUC shall not be included in the  
9 definition of public utilities under 4 CMC §8402(e) (defining "public utility"  
10 under the Public Utilities Commission law [P.L. 15-35]).

11 **Section 10. Commonwealth Utilities Corporation.** Chapter 1 of Division 8 of Title  
12 4 of the Commonwealth Code is repealed and re-enacted and shall supersede all prior  
13 enactments thereof, including but not limited to Executive Order 2006-4, as follows:

14  
15 **"Chapter 1. Commonwealth Utilities Corporation.**

16 **Article 1. General provisions**

17 **Article 2. Commonwealth Utilities Corporation established**

18 **Article 3. Corporate directors, officers, and employees**

19 **Article 4. General corporate operations**

20 **Article 5. Miscellaneous**

21 **Article 6. Water catchment loan revolving fund program**

22 **Article 7. Electrical connection requirements**

23 **Article 8. Water Usage rates**

24  
25 **Article 1. General provisions.**

26 **§8111. Short title**

27 **§8112. Definitions**

28

1           **§8111. Short title.** This Act may be cited as the Commonwealth Utilities Corporation  
2 Act of 2008."

3           **§8112. Definitions.** As used in this chapter, the following terms shall, unless the  
4 context clearly indicates otherwise, have the following meanings:

- 5           (a) "Board" means the Board of Directors of the Commonwealth Utilities  
6 Corporation;
- 7           (b) "Commonwealth" means the Commonwealth of the Northern Mariana Islands;
- 8           (c) "Commission," or "PUC," means the Commonwealth Public Utilities  
9 Commission;
- 10          (d) "Corporation," or "CUC," means the Commonwealth Utilities Corporation;
- 11          (e) "Immediate family member" means a spouse, parent, child, sibling, parent-in-law,  
12 sibling-in-law, child-in-law, or household member;
- 13          (f) "Utility service" means the delivery of electrical, water, and sewer services in the  
14 Commonwealth.

15  
16 **Article 2. Commonwealth Utilities Corporation established**

17           **§8121. Commonwealth Utilities Corporation: public corporation**

18           **§8122. Commonwealth Utilities Corporation: duties**

19           **§8123. Commonwealth Utilities Corporation: powers**

20  
21           **§8121. Commonwealth Utilities Corporation: public corporation.**

- 22           (a) There is in the Commonwealth government a Commonwealth Utilities  
23 Corporation (CUC), a public corporation.
- 24           (b) CUC is the successor to Commonwealth Utility Rate Commission for all legal  
25 purposes.
- 26           (c) CUC shall have the following divisions:
- 27                   (1) Electrical power division;
- 28                   (2) Water services division;
- 29                   (3) Sewer division;

1 (4) Compliance division.

2 (d) If a service has been wholly or partially turned over to the private sector, CUC  
3 shall be reduced accordingly and CUC shall monitor the performance, rates, and  
4 contractual compliance of the private sector enterprise.

5 **§8122. Commonwealth Utilities Corporation: duties.**

6 (a) CUC shall supervise the construction, maintenance operations, and regulation of  
7 electric, water, and sewage services; provided that whenever feasible CUC shall  
8 contract with the private sector to assume its duties with respect to one or more of  
9 its divisions.

10 (b) CUC shall, within 90 days of the effective date of this chapter or upon achieving a  
11 quorum of board members, whichever is later, implement a plan by which CUC or  
12 its designee will establish rates, meter, bill, and collect fees in a fair and rational  
13 manner from all consumers of utility services it has not privatized so that the  
14 corporation will be financially independent of all appropriations by the  
15 Commonwealth Legislature by October 1, 2009, or as soon as possible thereafter.

16 (c) Notwithstanding 4 CMC §8439 or any other provision of law, CUC may:

17 (1) Issue invitations for bids to privatize or transfer ownership, control,  
18 management, or operations, in whole or in part, of a utility service and the  
19 property relating to that utility service;

20 (2) Award any contract therefore, contingent upon the contractor obtaining  
21 from the Commission a certificate of public convenience and necessity as  
22 required under 4 CMC §8441.

23 The Commission's review shall include a determination of whether the divestiture  
24 and the contractor's proposed rates, charges, assessments, and costs are consistent  
25 with the public interest. A business undertaking, licensed in the Commonwealth  
26 for at least eight years and engaged in a business closely related to the utility  
27 service for which CUC publishes a request for proposal or solicits bids, shall be  
28 permitted to submit a proposal upon the payment of the required fees and shall by

1 operation of law pre-qualify as a responsible bidder or offeror for such request for  
2 proposal or bid.

3 (d) For the purposes of a deliberate and uninterrupted transition to regulation under  
4 PUC, and notwithstanding 4 CMC §8425, §8429, or any other provision of law,  
5 CUC's authority to set rates shall continue until such time as PUC issues an order  
6 setting rates fees, charges, or rents for a utility service.

7 (e) CUC shall be responsible for the maintenance and operation of all water wells  
8 located on public school grounds to ensure that water wells comply or meet the  
9 Division of Environmental quality's Safe Drinking Water Quality Standards,  
10 including but not limited to the chlorination of water.

11 **§8123. Commonwealth Utilities Corporation: powers.** Except as otherwise  
12 provided or limited in this division or by other law, in order to carry out its duties CUC shall  
13 have all of the powers conferred by law on a public corporation, and all the powers  
14 reasonably incidental to that purpose, including the power to:

15 (a) Prescribe, adopt, amend, and repeal by-laws;

16 (b) Receive and hold funds from contractors, consumers, lessees, the Commonwealth  
17 government, and other sources;

18 (c) Sue and be sued in its corporate name;

19 (d) Acquire and hold any interest allowed by law in any real or personal property,  
20 tangible or intangible, in connection with the activities of the corporation, and to  
21 sell, mortgage, or otherwise dispose of such interest;

22 (e) Borrow money from any public or private source, either within the  
23 Commonwealth or the United States, or in any other country, and to give security  
24 in connection with such borrowing, provided that any borrowing in excess of  
25 \$500,000 shall be approved by law;

26 (f) Upon prior approval by joint resolution of the Legislature in conformity with the  
27 Commonwealth Development Authority Act (4 CMC §10101 et seq.) as to each  
28 issue of bonds, to make and issue tax exempt bonds and other tax exempt  
29 obligations for sale to the general public;

- 1 (g) Pursuant to public notice and bidding wherever possible, to make contracts and  
2 execute all instruments necessary or convenient to exercise the powers of the  
3 corporation;
- 4 (h) Hire such employees as are necessary for the operation of the corporation and  
5 engage the services of independent experts, advisors, and other contractors as  
6 necessary to the fulfillment of the purposes of the corporation;
- 7 (i) Contract to transfer to private ownership or control the construction, management,  
8 and operation of the electrical power, water, and sewer systems in a public  
9 manner that is fair to the government, its employees, and utility service  
10 consumers;
- 11 (j) Assume existing contracts with respect to utility services;
- 12 (k) Regulate utility services to the extent permitted by federal law and contractual  
13 obligations of the Commonwealth government;
- 14 (l) Strengthen the existing system of metering, billing, and collecting fees for utility  
15 services;
- 16 (m) To the extent deemed lawful and necessary, and subject to the requirements of  
17 Chapter 4 of this division, to review and establish utility rates and other fees for  
18 electrical power, water, and sewer, except that no fee for electrical power, water,  
19 or sewer shall be higher than the actual cost to the corporation to connect  
20 customers and provide the utility;
- 21 (n) Prepare and submit a budget as a government corporation pursuant to 1 CMC  
22 §7206;
- 23 (o) Establish a system of rewards for persons other than government employees in the  
24 course of their official duties who furnish information that leads to a conviction of  
25 a criminal offense involving theft of utility materials or services;
- 26 (p) Effectuate the settlement of disputes between CUC and the Commonwealth  
27 Development Authority (CDA) as required by their Memorandum of Agreement.  
28 CUC may issue shares of cumulative, non-convertible, non-transferable preferred  
29 stock valued at \$45,000,000.00 to CDA. CUC and CDA may provide by written

1 agreement, subject to the terms and conditions of the Memorandum of  
2 Agreement, such terms and conditions being incorporated herein by reference, for  
3 (1) guaranteed annual dividends fixed and payable **as** agreed;  
4 (2) buy-back provisions;  
5 (3) default provisions;  
6 (4) preferred shareholder rights; and  
7 (5) consistent with Commonwealth law, such other rights and remedies as are  
8 typically found in shareholder and stock purchase agreements.

9 (q) Take such action **as** it deems necessary and proper to operate the corporation,  
10 further its purposes, administer its services, and perform its duties.

11 (r) The powers of the Corporation shall be subject to Public Law 15-35 as amended.  
12

13 **Article 3. Corporate directors, officers, and employees**

14 **§8131. Board of Directors: established**

15 **§8132. Board of Directors: meetings**

16 **§8133. Officers and staff of the Corporation**

17 **§8134. Executive Director: duties**  
18

19 **§8131. Board of Directors: established.**

20 (a) The Corporation shall be governed by a board of directors. The Board shall be  
21 composed of eight members. The Governor shall appoint the members with the  
22 advice and consent of the Senate; provided, however, that no employee or official  
23 of the Commonwealth government (including any agency, instrumentality, or  
24 political subdivision thereof) shall be appointed except as explicitly authorized by  
25 this section; provided, further, that no person shall be appointed who does not  
26 have at least an Associate of Arts degree from an accredited postsecondary  
27 educational institution. Except as explicitly provided by this section, Title 1,  
28 Division 2, Part 2 [1 CMC §2901 et seq.], is applicable to the Board. The Board  
29 shall be composed as follows:

- 1 (1) One member shall be the Chairman of the Board of Directors of the  
2 Commonwealth Development Authority;
- 3 (2) At least one member shall be from Tinian and at least one member shall be  
4 from Rota;
- 5 (3) At least two members shall be women;
- 6 (4) At least one member shall be from off-island with utility management  
7 experience; and
- 8 (5) At least five members shall possess a minimum of three years private sector  
9 business or professional background.
- 10 (b) The appointed members shall serve a term of four years. Vacancies shall be filled  
11 in the same manner as the original appointment. Any person appointed to fill a  
12 vacancy created prior to the expiration of the term of a member shall serve the  
13 remainder of the unexpired term. Any member may be reappointed to serve  
14 successive terms. No person may act as a member of the Board until confirmed by  
15 the Senate, except that reappointment to another term shall not affect the ability of  
16 an incumbent member to serve until the expiration of his or her term.
- 17 (c) The appointed members shall receive such compensation as is provided by law.
- 18 (d) The Board shall elect its officers from among its members and establish its rules  
19 of procedure.
- 20 (e) Appointed members shall be reimbursed for reasonable and necessary expenses at  
21 established Commonwealth government rates for meetings actually attended.  
22 Rules on travel and per diem rates shall be the same as those established for the  
23 Executive branch.
- 24 (f) The Governor may remove an appointed member for gross neglect or dereliction  
25 of duty, breach of fiduciary duty, conviction of a felony, or mental or physical  
26 incapacity. The Board may remove any member for missing three consecutive  
27 meetings or other frequent absences without the prior written approval of the  
28 chairman. Upon resignation, removal or expiration of the term of appointment, the

1 member shall cease to sit on the Board and shall not be included in a quorum  
2 count.

3 **§8132. Board of Directors: meetings.**

4 (a) Meetings of the Board shall be held within the Commonwealth at a time and place  
5 publicly designated by the Board at least once every month for its first two years  
6 of existence. Thereafter it shall meet at least quarterly. Special meetings may be  
7 called by the chairman or by the majority of the Board members.

8 (b) All meetings shall be open to the public, except where the Board finds that  
9 personal matters affecting the privacy of an individual or other confidential  
10 matters are to be considered. In such a case the Board may, or at the request of the  
11 individual involved shall, consider the matter in closed session; provided, that any  
12 opening of public bids, award of public bids, or other official action resulting  
13 from the meeting shall be acted upon in an open meeting.

14 (c) The presence of four members shall constitute a quorum for the transaction of  
15 business at any Board meeting.

16 **§8133. Officers and staff of the Corporation.**

17 (a) Executive Director. The Board shall appoint an executive director to administer  
18 the operations of the corporation on behalf of the Board. The executive director  
19 shall have, in addition to such other qualifications as the board may prescribe, a  
20 minimum of five years professional experience in public utility services, business  
21 management or finance and shall possess at least a bachelor's degree from an  
22 accredited university or college.

23 (b) Other corporate officers.

24 (1) The Executive Director shall appoint a corporate comptroller pursuant to 4  
25 CMC §8134(d) and (e).

26 (2) The Executive Director may hire assistant directors to be in charge of one or  
27 more divisions of the Corporation.

28 (c) Staff. The staff of the Corporation shall be exempt from the application of the  
29 Commonwealth Civil Service Act, Title 1, Division 8, Part 1 (1 CMC §8101 et

1 seq.), except that 1 CMC §§8142 and 8145(c) shall apply to the Corporation as if  
2 all employees of the corporation were members of the civil service, and  
3 employees of the corporation shall enjoy the protections of 1 CMC §§8141,  
4 8145(b), (d), (e) and (f), and 8151-8153 to the same extent and in the same  
5 manner as if they were members of the civil service. The Corporation shall  
6 develop, adopt, and administer a merit personnel system that rewards productivity  
7 and service, provides management flexibility, and includes provisions for  
8 employees to appeal serious disciplinary action. The Board shall establish rules  
9 and regulations governing the selection, promotion, performance evaluation,  
10 demotion, suspension, dismissal, and other disciplinary rules for employees of the  
11 corporation.

12 (1) (i) No recommendation of any person who applies for examination or  
13 appointment to any office or position within the Corporation which may  
14 be given by an elected official of the Commonwealth, except as to the  
15 ability or character of the applicant, shall be considered by any person in  
16 the giving of any examination or in the making of any appointment under  
17 the personnel system of the corporation.

18 (ii) No person shall make any false statement, certificate, mark, rating, or  
19 report with regard to any test, certification, or appointment made under the  
20 personnel system of the Corporation, nor commit or attempt to commit any  
21 fraud preventing the impartial execution of any provision of the personnel  
22 system of the Corporation.

23 (iii) No person shall, directly or indirectly, give, pay, offer, solicit, or accept  
24 any money, service, or other thing of value to obtain any appointment,  
25 proposed appointment, promotion or proposed promotion to, or obtain any  
26 advantage in, a position within the Corporation.

27 (2) The Corporation may set its own compensation, wage and salary scales. The  
28 Corporation shall provide a copy of its wage and salary scales to the presiding  
29 officers of the Legislature upon adoption, and shall also so provide a copy of

1 any changes to those scales as and when made from time to time. The  
2 Corporation shall submit an annual report to the Governor and the presiding  
3 officers of the Legislature no later than April 1 of each year detailing how the  
4 wage and salary scales in effect during the preceding calendar year compare  
5 with the wages and salaries paid by the Commonwealth and in the  
6 marketplace generally for positions requiring comparable education, training,  
7 or experience.

- 8 (3) Employees of the Corporation shall be eligible to participate in any  
9 Commonwealth health and life insurance plan, and shall accumulate leave  
10 time in accordance with applicable law and the personnel system of the  
11 corporation. The provisions of the Commonwealth Workers' Compensation  
12 Law, Division 9, Chapter 3 of this Title (4 CMC §9301 et seq.), apply to  
13 employees of the Corporation, and compensation payments pursuant thereto  
14 unless otherwise secured shall be made from the Government Self-Insurance  
15 Fund (4 CMC §9354), from appropriations by the Legislature for that purpose,  
16 or from funds otherwise available.

17 **§8134. Executive Director: duties.**

- 18 (a) The Executive Director shall prepare an operating manual to implement the  
19 general operation and management policies established by this chapter and by the  
20 Board including all internal administration, metering, billing, and collection  
21 procedures, privatization plans, and other matters. The manual shall be  
22 transmitted to the Board for its approval.
- 23 (b) The Executive Director shall refer to the Board for review of all matters involving  
24 allocation of corporation funds or property.
- 25 (c) The Executive Director shall:
- 26 (1) Monitor the progress toward the improvement of the financial status of utility  
27 services.
- 28 (2) Report to the Board at each board meeting as to the activities of the  
29 Corporation.

1 (3) Prepare an annual report of the Corporation's operation and activities for each  
2 fiscal year within three months of the end of the fiscal year, including  
3 appropriate financial statements, and submit a draft of the report to the Board  
4 for approval.

5 (4) Prepare the annual administrative budget for review and approval by the Board  
6 and for submission to the Governor and the Legislature pursuant to 1 CMC  
7 §7206.

8 (5) Hire such employees as the Board may delegate power to do so.

9 (6) Perform such other duties as the Board may require.

10 (d) The Executive Director shall hire a corporate comptroller who shall:

11 (1) Keep the official books and accounts of the Corporation.

12 (2) Prepare an annual report of the financial condition of the Corporation for the  
13 Board.

14 (3) Perform such other functions as the executive director or the board may  
15 require.

16 (e) The comptroller shall hold at least a bachelor's degree in accounting and five  
17 years experience in governmental or financial accounting.

18 (f) The Executive Director, comptroller, and any other officer may be dismissed by  
19 affirmative vote of a majority of the authorized voting membership of the Board.  
20 Any officer subject to dismissal under this subsection may request a public  
21 hearing before the Board; and in the event of such a request, no dismissal shall be  
22 effective unless voted by the Board at the conclusion of or subsequent to such  
23 hearing.

24  
25 **Article 4. General corporate operations**

26 **§8141. Management**

27 **§8142. Rates and charges; public hearings**

28 **§8143. Metering and billing**

29 **§8144. Disconnection of utility services**

1           **§8145. Reconnection of utility services**

2  
3           **§8141. Management.**

- 4           (a) The Executive Director and Board shall manage the corporation in a business-like  
5           manner so as to provide the most efficient delivery of its services at the most  
6           reasonable cost to consumers.
- 7           (b) If the Board contracts with a private business to provide a utility service, the  
8           Board shall permit the business to adopt a utility rate and billing structure that  
9           provides a reasonable return on investment. The Board shall determine  
10          reasonableness by reference, in part, to the rate of return on investment earned by  
11          providers of similar utility services in other jurisdictions.
- 12          (c) Pursuant to 4 CMC §1602, the Board shall adjust the utility services collection and  
13          rate structure so that within three complete fiscal years collections from a  
14          particular utility service are sufficient to recover the costs associated with the  
15          operation and delivery of the particular utility service. These costs shall include  
16          adequate financial reserves for debt service, if any, and the replacement costs of  
17          obsolete or damaged equipment.
- 18          (d) The Board's rate schedules may provide for separate utility service rates for  
19          different islands, residential, commercial, industrial or other categories of  
20          consumption. The rate schedule for each category of utility consumption shall be  
21          uniform within each island, except that the schedule may provide for increasing  
22          marginal rates as the consumption of a person increases. The board may provide  
23          life-line utility services at lower rates for the benefit of low income consumers.
- 24          (e) The Board shall annually review and in its discretion may revise the rate  
25          schedules. The Board shall adopt procedures to permit consumers to contest their  
26          billings.
- 27          (f) The Board may finance the extension or improvement of utility services through  
28          tax exempt bonds or other tax exempt obligations issued by it in conjunction with  
29          the Commonwealth Development Authority.

1 (g) In the event the Board has not privatized a utility service, its consumer accounts  
2 receivable for the utility service shall not be more than 90 days past due, unless  
3 the consumer is actively contesting the billing. The Board shall cut off utility  
4 services to consumers who are not actively contesting their billing and who have  
5 accounts more than 90 days past due.

6 (h) Residential consumers may be given up to one year to pay in full any outstanding  
7 balance in their accounts.

8 **§8142. Rates and charges; public hearings.** Before proposing any schedule  
9 affecting rates for services provided by the Corporation, the Board or its designee shall  
10 comply with any requirement regarding the holding of public hearings within the  
11 Commonwealth required by the PUC.

12 **§8143. Metering and billing.**

13 (a) CUC shall accurately meter electricity and water and shall bill all consumers,  
14 including government consumers and all government buildings, for electrical  
15 power, water consumption, and sewer services by no later than October 1, 2007,  
16 at not less than the full cost of production, operation, and maintenance of those  
17 services; provided, however, that nothing in this section or any other provision of  
18 law shall preclude the immediate equitable increase in existing rate schedules  
19 prior to the accurate metering of all classes of consumers. The classes of  
20 consumers are commercial, residential, and governmental, or such other classes as  
21 the Corporation may determine appropriate.

22 (b) Residential security deposit. The Corporation shall collect from every residential  
23 customer account a one month security deposit upon submission of an application  
24 for utility services, provided that residential customers who had utilities connected  
25 when the security deposit requirement was not in place and are in good standing  
26 shall not be disconnected due to the absence of a security deposit. Deposits shall  
27 be placed in an interest-earning trust fund to be established by the Executive  
28 Director. Funds collected shall not be used for any other purpose. All residential

1 security deposit refunds shall be paid within thirty (30) days after disconnection of  
2 utilities with earned interest.

3 (c) Residential disconnection. Residential customers who are receiving utility  
4 assistance from the Department of Community and Cultural Affairs (DCCA) shall  
5 not be disconnected due to the failure of DCCA to remit payments to CUC in a  
6 timely manner.

7 (d) CUC shall separate the electrical power, water consumption, and sewer services in  
8 its billing system. Consumers shall be permitted to pay for each utility service  
9 separately. CUC shall not disconnect a customer's water service for failure to pay  
10 for the electrical power portion of their bill. CUC shall allow customers to  
11 reconnect water or electrical power services upon payment of their water or  
12 electrical power consumption charges and reconnection fees.

13 **§8144. Disconnection of utility services.**

14 (a) Offset security deposit.

15 (6) Prior to the disconnection of utility services, the security deposit of a  
16 residential customer shall be used to offset amount past due for utility  
17 services.

18 (7) CUC shall establish by regulation procedures for the restoring, within a  
19 reasonable period of time, of security deposits, should such security deposits  
20 be used to offset a customer's past-due accounts.

21 (b) CUC shall not disconnect the utility services of a residential customer before the  
22 disconnection date.

23 (c) CUC shall not disconnect the utility services of a customer if the customer is  
24 actively disputing a billing statement.

25 (d) CUC shall not disconnect all utility services (electrical power, water, and sewer)  
26 of a residential customer if the customer is only delinquent in the payment of one  
27 utility service.

28 (e) CUC shall be liable for all reconnection fees and costs if the Corporation  
29 disconnects a residential customer in violation of any provision of this section.

1           **§8145. Reconnection of utility services.**

2           (a) Fees. CUC shall not charge a reconnection fee for utility services that is greater  
3           than the actual average cost incurred by the Corporation to reconnect a residential  
4           customer; provided that the reconnection fee does not exceed sixty dollars (\$60).  
5           Actual cost includes the average total labor hours, administrative costs, parts,  
6           transportation, and other costs necessary to reconnect a residential customer.

7           (b) Reconnection security deposit. CUC shall not require an additional security  
8           deposit to reconnect a residential customer's utility service that is greater than the  
9           security deposit required for new residential utility service applicants.

10  
11       **Article 5. Miscellaneous**

12           **§8151. Legal counsel**

13           **§8152. Audits**

14           **§8153. Conflicts of interest**

15           **§8154. Civil and criminal penalties**

16           **§8155. Funds collected**

17           **§8156. Energy assistance**

18           **§8157. Rules and regulations**

19           **§8158. Judicial review**

20  
21           **§8151. Legal counsel.** The Board may retain or engage private legal counsel. In  
22           addition, unless prevented by conflict from doing so, the Attorney General shall serve as  
23           legal counsel to the Corporation upon the request of the Board, providing representation of  
24           such scope as the Board may prescribe.

25           **§8152. Audits.**

26           (a) The Public Auditor shall audit the operations, books, and records of the  
27           Corporation in accordance with 1 CMC §7710(a) and P.L. 3-91. The final report  
28           of the audit shall be made public and shall be transmitted to the Board, the  
29           Executive Director, the Governor, and the presiding officers of the Legislature.

1 (b) Nothing in this section shall be construed as limiting the authority of the Board to  
2 employ, retain or engage auditors or a private auditing firm. Basic responsibility  
3 for the audit function belongs to the Board, which should appoint a certified public  
4 auditor with experience doing utility audits (which may be the Public Auditor) to  
5 conduct an annual audit and such other audits as the Board deems appropriate.  
6 The annual audit should be complete with a management letter, shall be a public  
7 document, and shall include a summary suitable for ready publication in  
8 newspapers of general circulation in the Commonwealth. Copies of the annual  
9 audits shall be provided to the Governor and the presiding officers of the  
10 Legislature. Audits by the Public Auditor do not relieve the Board of its overall  
11 responsibility for the audit function; the sufficiency of such audits shall be judged  
12 by the same standards as would apply in the case of private auditors retained or  
13 engaged by the Board.

14 **§8153. Conflicts of interest.** No member of the Board, officer, counsel, agent, or  
15 employee of the Corporation shall in any manner, directly or indirectly, participate in the  
16 determination of any question affecting his personal interest or the interests of any enterprise  
17 in which he or his immediate family member is directly or indirectly interested.

18 **§8154. Civil and criminal penalties.** A member of the Board, officer, counsel,  
19 employee, or agent of the Corporation, or any other person who embezzles, abstracts, or  
20 willfully misapplies any money, funds, credits, or securities of the corporation, or who  
21 willfully makes any false entry in any book, report, or statement of the Corporation, or who  
22 does any other act with intent to injure or defraud the Corporation, or who accepts any  
23 unlawful consideration which relates to his duties under this chapter, or any individual who,  
24 with like intent, conspires with, aids, or abets any person in any violation of this section, shall  
25 be dismissed from employment, permanently barred from reemployment with the  
26 Corporation, civilly liable for any losses that their actions caused the corporation, fined not  
27 more than \$2,000, or imprisoned for not more than five years, or both.

28 **§8155. Funds collected.** CUC shall deposit all funds received in insured or fully  
29 collateralized accounts.

1           **§8156. Energy assistance.** This chapter shall not affect any financial assistance for  
2 utility services provided under Public Law 1-22.

3           **§8157. Rules and regulations.** The Board is authorized to promulgate rules and  
4 regulations necessary to carry out the purposes of this chapter.

5           **§8158. Judicial review.**

6           (a) A person aggrieved by an act or omission of the Corporation shall obtain review  
7 pursuant to 4 CMC §8435.

8           (b) An appeal shall not stay the effective date of any schedule of utility rates.  
9

10 **Article 6. Water catchment loan revolving fund program** Unchanged.

11 **Article 7. Electrical connection requirements** Unchanged.

12 **Article 8. Water usage rates** Unchanged."

13           **Section 11. Bankruptcy protection.** CUC is hereby granted the corporate power  
14 under 4 CMC §8123 to seek bankruptcy protection consistent with its corporate purposes.

15           **Section 12. Transition.** In order to provide for an orderly transition under this Act,  
16 the following provisions shall apply until their expiration by operation of law on January 1,  
17 2009:

18           (a) For the first eight Board members appointed and confirmed only, the nominees  
19 shall be confirmed by a majority of the members of both houses of the  
20 Legislature. Thereafter, Board members shall be confirmed according to the  
21 process in §8131 of Section 10 of this Act.

22           (b) The Executive Director of CUC shall remain in his position until a quorum of  
23 Board members is in place and shall serve thereafter at the pleasure of the Board.  
24 The Executive Director shall issue an invitation for bids pursuant to Section 3(e)  
25 and (f) of this Act within ninety (90) days of its effective date.

26           **Section 13. Severability.** If any provision of this Act or the application of any such  
27 provision to any person or circumstance should be held invalid by a court of competent  
28 jurisdiction, the remainder of this Act or the application of its provisions to persons or  
29 circumstances other than those to which it is held invalid shall not be affected thereby.

1           **Section 14. Savings clause.** This Act and any repealer contained herein shall not be  
2 construed as affecting any existing right acquired under contract or acquired under statutes  
3 repealed or under any rule, regulation or order adopted under the statutes. Repealers  
4 contained in this Act shall not affect any proceeding instituted under or pursuant to prior law.  
5 The enactment of this Act shall not have the effect of terminating, or in any way modifying,  
6 any liability civil or criminal, which shall already be in existence at the date this Act becomes  
7 effective.

8           **Section 15. Effective date.** This Act shall take effect, upon approval by the Governor  
9 or upon its becoming law without such approval.

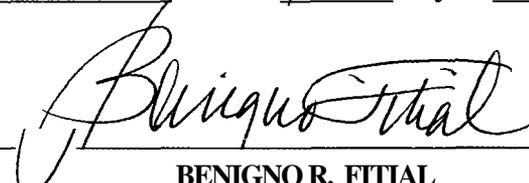
**CERTIFIED BY:**

**ATTESTED TO BY:**

  
\_\_\_\_\_  
**JOSEPH P. DELEON GUERRERO**  
ACTING SPEAKER OF THE HOUSE

  
\_\_\_\_\_  
**EVELYN C. FLEMING**  
HOUSE CLERK

DISAPPROVED on this 15<sup>th</sup> day of SEPTEMBER, 2008

  
\_\_\_\_\_  
**BENIGNO R. FITIAL**  
GOVERNOR  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

\*\*\*\*\*

Overridden by the House of Representatives on October 1,2008, and by the Senate on September 18,2008, by the affirmative vote of two-thirds of the members in each house.

CERTIFIED BY:

  
\_\_\_\_\_  
**ARNOLD I. PALACIOS**  
Speaker of the House

10/2/08  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
**PETE P. REYES**  
President of the Senate

10/2/08  
\_\_\_\_\_  
DATE