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THE HOUSE OF REPRESENTATIVES

16TH COMMONWEALTH LEGISLATURE

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January 31, 2009

The Honorable John C. Cruden, Acting Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
PO Box 7611
Washington, D.C. 20044-7611

Re: United States v. Commonwealth Utilities Corporation and the Commonwealth of the Northern Mariana Islands, D.J. Ref. 90-5-1-1-08471

Dear Mr. Cruden,

I respectfully submit the following comments on the Stipulated Orders into which the Commonwealth Utilities Corporation (“CUC”), the Commonwealth of the Northern Mariana Islands (“CNMI”), and the United States have entered in order to address CUC’s long-standing noncompliance with the Clean Water Act (“CWA”) and the Safe Drinking Water Act (“SDWA”). I am a resident of the CNMI, a consumer of CUC services, a member of the House of Representatives for the 16th CNMI Legislature, and Chair of the Public Utilities and Infrastructure Committee for the Saipan and Northern Islands Legislative Delegation.

I am grateful for the efforts of the U.S. Department of Justice (“DoJ”) and the U.S. Environmental Protection Agency (“EPA”) to compel CUC to comply with the mandates of the CWA and the SWDA, through the Stipulated Orders. These Stipulated Orders constitute a critical and much-needed step towards correcting the deplorable and substandard conditions of CUC’s water, wastewater, and used oil management systems, which have caused great risk, suffering, and injustice to the people of the CNMI for far too long.

My primary concern with respect to the Stipulated Orders deals with CUC’s realistic capacity to meet the numerous, complex, and most likely costly provisions of the Stipulated Orders. Severe management and financial challenges face CUC at this time. Moreover, as the various financial audit, management audit, performance evaluation, legislative oversight, media, and other reports compiled over the years reveal, CUC has a long history of being a grossly dysfunctional, extremely politicized, frequently noncompliant, and generally mismanaged entity, with disastrous consequences for all the basic public services under its jurisdiction – water, wastewater, and power utilities. It should be noted that the Stipulated Orders are only the most recent in a range of numerous other enforcement actions by EPA and the local Division of Environmental Quality over the years. Though progress has been made towards compliance with federal mandates and improvements in services, such progress has been limited and sporadic.

I submit that CUC’s problems are fundamental and systemic, and cannot be resolved through conventional means. Because these fundamental and systemic problems are at the root of grave and continuing threats to public health, drastic remedies must be considered. I therefore respectfully

request that DoJ and EPA consider moving for the U.S. District Court to exercise its broad range of equitable powers and appoint a receiver for CUC. An independent, qualified receiver under the careful supervision of the court can take the decisive and appropriate actions necessary to bring the CNMI's utilities into compliance with the Stipulated Orders. Receivership would also help insulate CUC from the local political interferences that plague the agency to this day, and would facilitate the organizational restructuring, financial management and accounting improvements, infrastructure development, strategic planning, and other requirements of the Stipulated Orders that are so desperately needed in order to transform CUC into the fiscally solvent and well-managed utility agency that it has thus far never been.

Local politics and chronic misgovernance have greatly contributed to the deterioration of the CNMI's public utilities. Over the years, dozens of Board resolutions, public laws, and executive orders have been enacted that have adversely impacted the integrity and viability of CUC -- creating unfunded mandates, altering the organizational structure of CUC, impacting rates, providing various subsidies to CUC in conflict with CUC's mandate to operate independently of government appropriations, and generally impairing public confidence in the agency. In 2006, the enabling statute for CUC, Public Law 4-47, was essentially rewritten by executive order, and CUC has since seen its governing board abolished, converted to an advisory board (the members of which were never appointed), and reconverted back to a governing board by Public Law 16-17 over the Governor's veto (the members of the new governing board have also thus far never been appointed). CUC remains in effect under the control of the Governor. The Executive Director, who is now a political appointee, answers directly to the Governor.

In October 2006, a Public Utilities Commission was created by law and charged with the authority to regulate CUC and other public utilities with respect to rates, fees, and other matters affecting utility services. A sufficient quorum of members to the Commission was not established, however, until April 2008. Although the PUC has valiantly attempted to make CUC more accountable to its constituents and to set just and reasonable rates, the PUC, too, has been subjected to political meddling, with the enactment of several public laws and executive orders that have diminished the extent to which the commission can effectively and credibly regulate CUC. While CUC is mandated to comply with the stipulated orders issued by the PUC with respect to CUC's rate structure and long-term business plan, it is unlikely that there would be any meaningful consequences if CUC fails to comply.

It should be noted that CUC has been under a nearly continuous state of emergency per gubernatorial declaration since December 2007. Prior to December 2007, gubernatorial declarations of emergency were periodically issued throughout the latter half of 2005 and in the early months of 2006. Under these states of emergency, the Governor has exercised broad powers to suspend any statute or regulation of any CNMI agency or activity if compliance would affect necessary action to cope with the emergency, including regulations relating to electric rates, procurement, PUC review, occupational safety, and environmental protection. Despite these declarations, and any corrective measures taken thereto, conditions at CUC have continued to worsen. Repeated requests from the Legislature for a comprehensive plan and financial management strategy that go beyond day-to-day crisis management for CUC have gone unanswered.

Furthermore, CUC's financial condition is grim, and raises serious questions about the agency's ability to comply with the Stipulated Orders, particularly under the present management and political conditions. CUC's financial statements over the years present a picture of steadily

deteriorating fiscal health – including ballooning deficits, mounting debts, noncompliance with loan agreements and federal grant conditions, and worsening cash flow problems. Indeed, despite being the sole utility agency of the CNMI and despite its mandate to operate on a full cost recovery basis, CUC has not been profitable in nearly every fiscal year since its inception in 1987. In December 2008, during a public hearing conducted by the PUC, both the hearing examiners and the CUC Executive Director described CUC as “insolvent.” The latest 2007 independent auditor’s report for CUC identifies material weaknesses and significant deficiencies in internal controls over financial reporting and major federally funded programs, offers a qualified auditors’ opinion, and expresses doubt about CUC’s ability to continue as a going concern. This report has been considerably delayed and has not yet been finalized because CUC has yet to respond to the auditors’ findings or submit its plan of corrective action.

Although the Stipulated Orders do not specifically and directly address the ongoing power crisis, I strongly believe that it would be counterproductive to separate the CNMI’s power issues from its water, wastewater, and used oil issues, and to exclude the power utility from any potential receivership scenario. The funds for all three utilities have been commingled for years; to this day power operations subsidize water and wastewater operations, and the rate structures for the latter services remain insufficient to recover actual costs. The power crisis also simultaneously diverts considerable financial, human, and other resources away from the water, wastewater, and used oil crises. In addition, frequent power outages contribute to failures in the water and wastewater treatment and delivery systems, which require a dependable source of electrical power. Any plan to correct CUC’s water, wastewater, and used oil deficiencies, if it is to be meaningful and lasting, must take into account the entire utility system, including power.

In closing, I would like to emphasize that I am fully cognizant of the seriousness of this request for receivership. I make this request only after having carefully examined CUC’s nearly twenty-two years of mismanagement, planning failures, noncompliance with both federal and local mandates, fiscal abuse, political meddling, and neglect – and the public health and environmental catastrophes, both real and threatened, that have resulted. It has become increasingly evident that CUC’s problems are beyond the capacity of existing management at CUC, and of the present political leadership, to effectively resolve on their own. I fully support the Stipulated Orders, but urge DoJ and EPA to move for the appointment of a receiver for CUC, in consideration of the totality of historic and present-day fiscal, organizational, and political impediments that are crippling CUC’s ability to realistically comply with the federal mandates and to provide the most essential of public services to the people of the CNMI.

Thank you for the opportunity to submit these comments. I can be reached at rep.sablanc@cnmileg.gov.mp or tinasablan@gmail.com, or at (670) 664-8931 or (670) 285-3935 should you need further information, including copies of any documents in my possession that could provide more detailed background on the points raised in this letter.

Sincerely,



Representative Christina Sablan