

EXECUTIVE ORDER 2006-4

SUBJECT: Reorganization Plan No. 2 of 2006

AUTHORITY: Constitution, Article III, Section 15

WHEREAS, Section 15 of Article III of the Constitution requires that Executive Branch offices, agencies, and instrumentalities of the Commonwealth Government be allocated among and within not more than fifteen principal departments, grouped as far as practicable according to major purposes; and

WHEREAS, under this section, regulatory, quasi-judicial, and temporary agencies may be so allocated, but need not be; and

WHEREAS, the Governor may make changes in the allocation of offices, agencies, and instrumentalities, and in their functions and duties, as necessary for efficient administration; and

WHEREAS, such changes may affect existing law; and

WHEREAS, the existence of a multitude of offices, agencies, and instrumentalities outside of the principal departments has resulted in duplication of functions, overlaps of responsibility, lack of coordination, and other forms of inefficient administration; and

WHEREAS, the power of the Governor to reorganize the Executive Branch has been affirmed and upheld by the Superior Court of the Commonwealth of the Northern Mariana Islands in its Decision and Judgment dated June 23, 1994, in the case of *Marianas Visitors Bureau v. Commonwealth*, Civ. No. 94-0516 (Memorandum Decision and Judgment) June 23, 1994;

NOW, THEREFORE, to comply with the mandate of the Constitution and to promote efficient administration, it is hereby

ORDERED:

That the following provisions shall constitute Reorganization Plan No. 2 of 2006 (the "Executive Order"):

1. Rescinding of Prior Executive Order. The Reorganization Plan No. 1 of 2006 is rescinded upon the effective date of this Executive Order.
2. CUC Reorganized. Under this Executive Order, the functions and duties of the Commonwealth Utilities Corporation are reorganized as a public corporation of the Commonwealth that has as its head an executive director. The role of the CUC board is advisory. With respect to utility services

that are generated or delivered in whole or in part by private businesses, the CUC board will act as a public utility commission with respect to those services “only until such time as the legislature establishes a public utility commission and the commission notifies the board that it is ready to assume its duties and responsibilities with respect to utility services as defined in this Executive Order.”

3. Rescinding of Fuel Surcharge Fee. The Fuel Surcharge Fee effective February 27, 2005 is rescinded as of the effective date of a new utility rate schedule to be adopted by the CUC as provided in this Executive Order.
4. Provisions of the Executive Order. The provisions of this Executive Order amend 1 CMC Section 8111 et seq., to read as follows:

“CHAPTER 1.
Commonwealth Utilities Corporation.

Article 1. General Provisions.

§ 8111. Short Title.

§ 8112. Definitions.

§ 8111. Short Title.

This chapter may be cited as the Commonwealth Utilities Corporation Reorganization Executive Order.

§ 8112. Definitions.

As used in this chapter:

(a) “Corporation” means the Commonwealth Utilities Corporation or its designee.

(b) “Utility service” includes the generation, provision, transmission, treatment, and delivery of electrical, water, and sewer services in the Commonwealth.

Article 2. Commonwealth Utilities Corporation Established.

§ 8121. Commonwealth Utilities Corporation: Public Corporation.

§ 8122. Commonwealth Utilities Corporation: Duties.

§ 8123. Commonwealth Utilities Corporation: Powers.

§ 8121. Commonwealth Utilities Corporation: Public Corporation.

(a) There is in the Commonwealth government a Commonwealth Utilities Corporation, a public corporation.

(b) The Commonwealth Utilities Corporation is the successor of the Commonwealth Utility Rate Commission for purposes of 4 CMC §§ 1602-1604.

(c) If a service is wholly or partially turned over to the private sector, , the corporation shall be reduced in size accordingly and the CUC shall monitor the performance, rates, and contractual compliance of the private sector enterprise.

§ 8122. Commonwealth Utilities Corporation: Duties.

(a) The Commonwealth Utilities Corporation shall supervise the construction, maintenance, operations, and regulation of power, sewage, and water utility services; provided, that whenever feasible the corporation shall contract for private business to assume its duties with respect to one or more of its functions.

(b) The corporation shall, within 60 days after the effective date of this Executive Order, implement a plan by which it will establish rates, meter, bill, and collect fees in a fair and rational manner from all consumers of its utility services, so that the corporation will be financially independent of all appropriations by the Commonwealth Legislature by July 1, 2006 or as soon as possible thereafter.

§ 8123. Commonwealth Utilities Corporation: Powers.

Except as otherwise provided or limited in this chapter, or by other law, in order to carry out its duties, the corporation, acting through its executive director and his or her designees, shall have all of the powers conferred by law on a public corporation, and all powers reasonably incidental to its purpose, including the powers:

(a) To prescribe, adopt, amend, and repeal administrative and operational policies.

(b) To receive and hold funds from contractors, consumers, lessees, the government of the Commonwealth, and any other sources.

(c) To sue and be sued in its corporate name.

(d) To acquire and hold any interest allowed by law in any real or personal property, tangible or intangible, in connection with the activities of the corporation, and to sell, mortgage, or otherwise dispose of such interest.

(e) To borrow money from any private or public source, either within the Commonwealth or the United States or in any other country, and to give security in connection with such borrowing; provided that any such borrowing that is in excess of \$500,000 is approved by law specifically authorizing such borrowing.

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

(g) Pursuant to public notice and bidding whenever possible, to make contracts and execute all instruments necessary or convenient to exercise the powers of the corporation.

(h) To hire such employees as are necessary for the operation of the corporation and to engage the services of independent experts, advisors, and other contractors as are necessary to the fulfillment of the purposes of the corporation.

(i) To contract to transfer to private ownership or control the construction, management, and operation of the water, sewer, and electrical power systems in a public manner that is both timely and fair to the government, its employees, and utility service consumers.

- (j) To assume existing contracts with respect to utility services.
- (k) To regulate utility services to the extent permitted by applicable federal law and the contractual obligations of the Commonwealth government.
- (l) To immediately strengthen the existing system of metering, billing, and collecting fees for utility services provided by the corporation, and to provide monthly financial reports to the Governor and presiding officers of the legislature.
- (m) To the extent the corporation deems lawful and necessary, to review and establish utility rates and other fees for water, sewer, and electrical power.
- (n) To prepare and submit a budget as a government corporation pursuant to 1 CMC § 7206.
- (o) To take such action as it deems necessary and proper to operate the corporation, further its purposes, administer its services, and perform its duties.

Article 3. Corporate Directors, Officers, and Employees.

- § 8131. Board of Directors: Established.
- § 8132. Board of Directors: Meetings.
- § 8133. Officers and Staff of the Corporation.
- § 8134. Executive Director: Duties.

§ 8131. Board of Directors: Established.

(a) The corporation shall have a board of directors that shall serve the corporation in an advisory capacity and shall defer to the executive director with respect to the management and administration of the corporation.

(b) The board shall be composed of five members. The Governor shall appoint the members with the advice and consent of the Senate; provided, however, that no employee or official of the Commonwealth government (including any agency, instrumentality, or political subdivision thereof) shall be appointed except as authorized by this section; provided, further, that no person shall be appointed who does not have at least an Associate of Arts degree from an accredited postsecondary educational institution. 1 CMC § 2901(g) is applicable to the board. The board shall additionally be composed as follows:

- (1) At least one member shall have utility management experience; and
- (2) All members shall have engineering, accounting or business degrees from accredited colleges or universities or be certified public accountants or financial analysts. Members also shall have a minimum of three years private sector business experience, public sector utility management experience, or a professional background.

(c) The appointed members shall serve a term of four years; provided that the terms of the initial members shall be staggered. Vacancies shall be filled in the same manner as the original appointment. Any person appointed to fill a vacancy created prior to the expiration of the term of a member shall serve the remainder of the unexpired term. Any member may be reappointed to serve successive terms. No person may act as a member of the board until confirmed by the Senate, except that reappointment to another term shall not affect the ability of an incumbent member to serve until the expiration of his or her term and until his or her successor assumes office

(d) The appointed members shall receive such compensation as is provided by law for service on executive branch boards.

(e) The board shall elect its officers from among its members and establish its rules of procedure. The board may issue bylaws with respect to its functions.

(f) Appointed members shall be reimbursed for reasonable and necessary expenses at established Commonwealth government rates for meetings actually attended. Rules on travel and per diem rates shall be the same as those established for the executive branch.

(g) The Governor may remove an appointed member for gross neglect or dereliction of duty, breach of fiduciary duty, conviction of a felony, or mental or physical incapacity. The board shall remove any member for missing three consecutive meetings or for other frequent absences without the prior written approval of the chairman. Upon resignation, removal or expiration of the term of appointment, the member shall cease to sit on the board and shall not be included in a quorum count.

§ 8132. Board of Directors: Meetings.

(a) Meetings of the board shall be held within the Commonwealth at a time and place publicly designated by the board.

(b) All meetings shall be open to the public and comply with the Open Government Act.

(c) The presence of three members shall constitute a quorum for the transaction of business at any board meeting.

§ 8133. Officers and Staff of the Corporation.

(a) Executive Director. The Governor shall appoint an executive director to manage and administer the operations of the corporation. The executive director shall have, in addition to such other qualifications as the Governor may prescribe, a minimum of five years professional experience in public utility services, business management, engineering, or finance and shall possess at least a bachelor's degree from an accredited university or college. The executive director shall receive a two year contract and shall be removed only for cause as specified in the contract.

(b) Other Corporate Officers.

(1) The executive director shall appoint a chief financial officer pursuant to 4 CMC § 8134(d) and (e).

(2) The executive director may hire management staff to be in charge of one or more functions of the corporation.

(c) Staff. The staff of the corporation shall be exempt from the application of the Commonwealth Civil Service Act, title 1, division 8, part 1 (1 CMC § 8101 et seq.), except that 1 CMC §§ 8142 and 8145(c) shall apply to the corporation as if all employees of the corporation were members of the civil service, and employees of the corporation shall enjoy the protections of 1 CMC §§ 8141, 8145(b), (d), (e) and (f), and 8151-8153 to the same extent and in the same manner as if they were members of the civil service. The corporation shall develop, adopt, and administer a merit personnel system that rewards productivity and service, provides management flexibility, and includes provisions for employees to appeal serious disciplinary action. The executive director shall adopt a

personnel manual governing the selection, promotion, performance evaluation, demotion, suspension, dismissal, and other disciplinary rules for employees of the corporation.

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

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

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

(2) The corporation may set its own compensation, wage and salary scales. The corporation shall provide a copy of its wage and salary scales to the presiding officers of the legislature upon adoption, and shall also so provide a copy of any changes to those scales as and when made from time to time. The corporation shall submit an annual report to the Governor and the presiding officers of the legislature no later than April 1 of each year detailing how the wage and salary scales in effect during the preceding calendar year compare with the wages and salaries paid by the Commonwealth and in the marketplace generally for positions requiring comparable education, training, or experience.

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

§ 8134. Executive Director: Duties.

(a) The executive director shall act for and on behalf of the corporation.

(b) The executive director shall cause to be prepared an operating manual to implement the general operation and management policies established by this chapter including all internal administration, metering, billing, and collection procedures, privatization plans, and other matters.

(c) The executive director shall review and determine all matters involving allocation of corporation funds or property.

(d) The executive director shall:

(1) Monitor the progress toward the improvement of the financial status of utility services.

(2) Inform the board at each board meeting as to the activities of the corporation.

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

(4) Prepare the annual administrative budget for review by the board and for submission to the Governor and the legislature pursuant to 1 CMC § 7206.

(5) Hire such employees as determined necessary and as authorized by budget and by law.

(6) Perform such other duties as may be required by law.

(e) The executive director shall hire a chief financial officer who shall:

(1) Keep the official books and accounts of the corporation.

(2) Prepare an annual report of the financial condition of the corporation.

(3) Perform such other functions as the executive director may require.

(f) The chief financial officer shall hold at least a bachelor's degree from an accredited college or university and ten years professional experience in governmental or financial accounting.

(g) The executive director may be dismissed by the Governor for cause, as specified by contract.

Article 4. General Corporate Operations.

§ 8141. Management.

§ 8142. Rates and Charges; Public Hearing.

§ 8143. Metering and Billing.

§ 8141. Management.

(a) The executive director shall manage the corporation in a business-like manner so as to provide the most efficient delivery of its services at the most reasonable cost to consumers. The executive director may call upon the board for advice with respect to the management and administration of the corporation.

(b) If the executive director proposes to contract with a private business to provide a utility service, the board shall act as a utility commission with respect to the private business only until such time as the legislature establishes a public utility commission and the commission notifies the board that it is ready to assume its duties and responsibilities with respect to utility services as defined in this Executive Order. To the extent it may be required to act as a utility commission, the board shall review and approve any proposed contract that includes a proposed utility rate and billing structure after determining that it is in the best interests of the Commonwealth and provides the private business with a reasonable return on investment. The board shall determine reasonableness by reference, in part, to the rate of return on investment earned by providers of similar utility services in other jurisdictions. The board may adopt regulations with respect to its utility commission function.

(c) The executive director shall adjust the rates charged for utility services provided by the CUC so that within one year from the effective date of this Executive Order and for all dates thereafter, the rates charged for electrical utility services are sufficient to recover the costs associated with the operation, maintenance, transmission, generation, and delivery of electricity service and the repayment of any debt associated

with that service. The term “costs” shall include adequate financial reserves for debt service, if any, and the replacement costs of obsolete or damaged equipment.

(d) The executive director’s rate schedules for utility services may provide for separate utility service rates for different islands, residential, commercial, industrial or other categories of consumption. The rate schedule for each category of utility consumption shall be uniform within each island, except that the schedule may provide for increasing marginal rates as the consumption of a person increases. The executive director may provide life-line utility services at lower rates for the benefit of low income consumers.

(e) The executive director shall annually review and shall revise the rate schedules as determined appropriate and as needed to comply with the requirements of this section. The executive director shall maintain procedures to permit consumers to contest their billings.

(f) The executive director may finance the extension or improvement of utility services through tax exempt bonds or other tax exempt obligations issued by it, in conjunction with, or by the Commonwealth Development Authority.

(g) Consumer accounts receivable for the utility service shall not be more than 90 days past due, unless the consumer is actively contesting the billing. The corporation shall cut off utility services to consumers who are not actively contesting their billing and who have accounts more than 90 days past due.

§ 8142. Rates and Charges; Public Hearing.

Before finally adopting any schedule affecting rates for services directly provided by the corporation, the executive director or his or her designees shall hold at least one public hearing in each senatorial district affected, and notice of the time and place of the hearing shall be published at least once in a newspaper of general circulation in the Commonwealth at least 10 days before the date of the hearing.

§ 8143. Metering and Billing.

The corporation shall accurately meter electricity and water and shall bill all consumers including all government consumers and all government buildings for electrical power, water consumption, and sewer services by no later than January 1, 2008, at no less than the full cost of production, operation, and maintenance of those services; provided, however, that nothing in this Executive Order or any other law shall preclude the immediate equitable increase in the existing rate schedules prior to the accurate metering of all classes of consumers. The classes of consumers are commercial, residential and governmental or such other classes as the corporation may determine appropriate.

Article 5. Miscellaneous.

§ 8151. Legal Counsel.

§ 8152. Procurement and Audits.

§ 8153. Conflicts of Interest.

§ 8154. Civil and Criminal Penalties.

- § 8155. Funds Collected.
- § 8156. Energy Assistance.
- § 8157. Rules and Regulations.
- § 8158. Judicial Review.

§ 8151. Legal Counsel.

The executive director may retain or engage in-house and private legal counsel pursuant to contracts approved by the Attorney General. In addition, unless prevented by conflict from doing so, the Attorney General shall serve as legal counsel to the corporation, providing the representation of such scope as the executive director may prescribe.

§ 8152. Procurement and Audits.

(a) The corporation shall comply with the procurement regulations of the Commonwealth or such other procurement regulations as may be issued by the executive director and approved by the Secretary of Finance and Attorney General. The corporation shall receive decentralized procurement status as provided in Section 2-201 of the procurement regulations and be exempt from the small purchase limitations set forth in Section 3-105; provided, however, that the corporation shall obtain three quotations for any purchase between \$10,000 and \$50,000.

(b) The Public Auditor shall audit the operations, books, and records of the corporation in accordance with 1 CMC § 7710(a) and PL 3-91. The final report of the audit shall be made public and shall be transmitted to the executive director, the board, the Governor, and the presiding officers of the legislature.

(c) Nothing in this section shall be construed as limiting the authority of the executive director to employ, retain or engage auditors or a private auditing firm. Basic responsibility for the audit function belongs to the executive director, which should appoint a certified public auditor with experience doing utility audits (which may be the Public Auditor) to conduct an annual audit and such other audits as the executive director deems appropriate. The annual audit should be complete with a management letter, shall be a public document, and shall include a summary suitable for ready publication in newspapers of general circulation in the Commonwealth. Copies of the annual audits shall be provided to the Governor and both houses of the legislature. Audits by the Public Auditor do not relieve the executive director of his or her overall responsibility for the audit function; the sufficiency of such audits shall be judged by the same standards as would apply in the case of private auditors retained or engaged by the executive director.

§ 8153. Conflicts of Interest.

No member of the board, officer, counsel, agent, or employee of the corporation shall in any manner, directly or indirectly, participate in the determination of any question affecting his personal interest or the interests of any enterprise in which he or his parent, spouse, son, daughter, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law or any member of his household is directly or indirectly interested.

§ 8154. Civil and Criminal Penalties.

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

§ 8155. Funds Collected.

The corporation shall deposit all funds received by it in insured or fully collateralized accounts.

§ 8156. Energy Assistance.

This chapter does not affect the financial assistance for utility services provided under PL 1-22.

§ 8157. Rules and Regulations.

The executive director may issue regulations necessary to carry out the purposes of this chapter.

§ 8158. Judicial Review.

(a) Any person aggrieved by an act or omission of the corporation may obtain judicial review pursuant to the Administrative Procedure Act [1 CMC § 9101 et seq.]. A litigant who, in the opinion of the court, substantially prevails on the merits shall receive his costs and attorney's fees.

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

5. Severability. The provisions of this Executive Order are severable. If any provision of this Executive Order, or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Executive Order, or the application of its provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.
6. Savings Clause. This Executive Order and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Executive Order shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Executive Order shall not have the effect of terminating, or in any way modifying, any liability civil or criminal, which shall already be in existence at the date this Executive Order becomes effective.

7. Effective Date. In accord with Article III, Section 15 of the Commonwealth Constitution, this Executive Order shall become effective 60 days after submission to the legislature, unless specifically modified or disapproved by a majority of the members of each house of the legislature.

Done this 4th day of May, 2006.

BENIGNO R. FITIAL

Governor