

BEFORE THE COMMONWEALTH PUBLIC UTILITIES COMMISSION

INVESTIGATION OF COMMONWEALTH  
UTILITIES CORPORATION'S WATER  
AND WASTEWATER RATES AND RELATED  
MATTERS

DOCKET 09-2

DECISION AND ORDER

*Background*

On December 19, 2008, the Commonwealth Public Utilities Commission [CPUC] issued an order, pursuant to the mandate of 4 CMC § 8421<sup>1</sup>, which authorized the review of Commonwealth Utilities Corporation's [CUC] water and wastewater rates. This docket has been conducted pursuant to CPUC's authority under 4 CMC § 8409.

Prehearing activities in the docket, which have occurred under the oversight of CPUC's hearing examiner, have included: a) an on-site investigation of CUC's water and wastewater facilities by CPUC's regulatory consultant [Georgetown Consulting Group – (GCG)] and subsequent discovery by GCG related to this investigation; b) prefiled testimony by GCG and CUC; and c) a two day prehearing conference with the parties on March 25 and 26, 2009, which resulted in a March 27, 2009 stipulation between CUC and GCG [*Stipulation*]. The Stipulation recommends that CPUC award interim rate relief and undertake other regulatory action. On March 27, 2009, CPUC conducted a duly noticed public hearing to receive and discuss the Stipulation and to receive public comment. These proceedings and the evidentiary record are more fully discussed in the hearing examiner's March 31, 2009 report. This proceeding is significantly impacted and focused by the United States [CNMI] District Court's March 11, 2009 Stipulated Order For Preliminary Injunctive Relief [*Stipulated Order*] in **United States of America v. Commonwealth Utilities Corporation and the Commonwealth of the Northern Mariana Islands** – Civil Case No. 08-0051.

On April 2, 2009, CPUC conducted a duly noticed special meeting at which the evidentiary record, including the parties' testimony, the Stipulation and the hearing examiner's report were carefully considered. After deliberation, for good cause shown and in the exercise of its statutory authority and discretion, CPUC makes the findings and determinations set forth below, which are supported by the preponderance of the evidentiary record.

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<sup>1</sup> Statutory citations in this Decision refer to sections contained the public laws which promulgated them.

### *Findings and Determinations*

1. CPUC's initiation of the investigation of CPUC's water and wastewater rates and related matters is reasonable, necessary and in accordance with the mandate of 4 CMC § 8421.
2. CUC was given timely notice of CPUC's March 27, 2009 public hearing in this docket in accordance with 4 CMC § 8417. CPUC duly noticed the public hearing pursuant to the requirements of this section.
3. No person applied for the privilege to participate in the hearing under 4 CMC § 8409[j]. The public was given an opportunity to present their views at the hearing.
4. These findings and determinations are consistent with the Stipulation.<sup>2</sup>
5. In the fiscal year ending September 30, 2008, the CUC water division incurred a revenue deficit of \$5.99 million and during the same period, the CUC wastewater division incurred a deficit of \$3.86 million. These deficit amounts include estimated FY09 Stipulated Order operational and capital compliance expenses. These revenue deficits have not materially changed in FY09.
6. 4 CMC § 8122[b] mandates that CUC shall establish rates, meter, bill and collect fees in a fair manner so that it will be financially independent by October 1, 2009 or as soon thereafter as reasonably possible. 4 CMC § 8411[c] mandates that CUC water and wastewater rates must be set at levels that are at least adequate to cover its full cost of service, including its financial obligations, operating expenses, debt service, capital improvement needs of these divisions. The Stipulated Order mandates that water and wastewater rates shall be established so that together with other sources of revenue, they guarantee that CUC can meet its projected budgeted costs in each utility division.
7. As a significant first step in bridging the gap between CUC's \$5.99 million water revenue deficit and its statutory duty to establish water rates, which are adequate to recover its full cost of service, CUC's water rates should be increased across the board, effective April 3, 2009, by 81%, subject to the qualification that 50% of this increase should be suspended until June

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<sup>2</sup> Accordingly, pursuant to the authority under 4 CMC § 8431, the comment period in §8431[d] is suspended.

1, 2009 to permit the CNMI Government and/or other entities to identify and tender to CUC funds from alternative sources [e.g. economic stimulus funds, section 702 funds, payment of the \$3.2 million delinquent utility bill owed by the Public School System] to replace the suspended portion of the proposed rate increase. In the event the Government and/or other entities tender funds to substitute for the suspended rate increase or any portion thereof, then that portion of the suspended rate increase should remain suspended until April 1, 2010, when the full rate increase should automatically go into effect. Otherwise, the suspended portion of the rate increase not covered by substitute revenues should go into effect on June 1, 2009. The Stipulation contains in its Attachment B a chart, which documents these rate increases for CUC's water tariffs.

8. The rate increase discussed in determination 7 above, which would cover approximately 60% of CUC's water revenue deficit: a) is just, reasonable, appropriate and necessary<sup>3</sup>; b) respects the importance of making a reasonable effort to minimize the impact of utility rates on customers during these difficult economic times, particularly when no lifeline rate for low income customers has yet been established; and c) would provide CPUC with a reasonable period - leading to further rate proceedings during the first quarter of FY10 - to examine the opportunity for revenue enhancement activities [revenue cycle improvements, accounts receivable collection, unmetered and unbilled service] to cover the remaining 40% revenue deficit.
9. Although the parties have recommended that concurrent with the implementation of an increase in water rates, CPUC should also increase wastewater rates across the board by 173.4% in the same manner as set forth in determination 7 above, CPUC is not persuaded that this proposed increase in wastewater rates would be either just and reasonable or fair when there is evidence in the record that significant commercial establishments on Saipan are connected to CUC's wastewater system, but are neither metered nor billed for this wastewater service. Accordingly, any consideration by CPUC of an increase in wastewater rates should be deferred for a period of sixty days during which hearing examiner should be authorized and directed in concert with GCG and CUC to investigate this matter and to report to CPUC on or before June 1, 2009.
10. The rate changes in water rates have been considered by CPUC using standards and financial criteria consistent with generally accepted

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<sup>3</sup> Findings of "just and reasonable" and "appropriate" are required under 4 CMC § 8421. A finding of "necessity" is required under 4 CMC § 8409[e].

ratemaking principles and in full consideration of the requirement of maintenance of service to the public.

11. CPUC's hearing examiner should be authorized and directed to oversee proceedings with CUC and GCG: a] to examine revenue enhancement opportunities; b] to make recommendations about how best to implement them in order to cover the remaining 40% revenue deficit; c] to determine whether there are statutory or other implementation obstacles; d] to undertake such other review of this matter as he considers reasonable and appropriate; and e] to report his findings to CPUC during the August 2009 regulatory session.
12. Revenues derived from the recommended water rate increases, which would go into effect on April 3, 2009, should be used only for water expenditures. Revenues derived from or corresponding to the suspended 50% portion of the rate increases should be used only for water expenditures directly related to CUC's compliance with the Stipulated Order.
13. CUC and GCG should collaborate, under the hearing examiner's oversight, in the development of the Interim Financial Plan, which under the Stipulated Order must be filed with the United States Environmental Protection Agency in early September 2009. The Plan should be filed with CPUC for its review and approval during the August 2009 regulatory session.
14. The contract protocol, which was established by CPUC order dated December 19, 2008 in Docket 09-1, should be applied to CUC's water and wastewater divisions, provided, however, that the scope of review for procurements mandated by the Stipulated Order should be limited to the review of project cost and to the establishment of an authorized expenditure ceiling, beyond which ceiling CPUC approval would be required in accordance with protocol section 10.


### *Order*

After careful review and consideration of the above determinations, the report and recommendations of its hearing examiner, the Stipulation and the record herein, for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned commissioners, the Commonwealth Public Utilities Commission **HEREBY ORDERS THAT:**

1. Effective April 3, 2009, CUC's water rates shall be increased across the board by 81% in the manner set forth in Attachment B to the Stipulation, subject to the qualification that 50% of these increases shall be suspended until June 1, 2009 to permit the CNMI Government and/or other entities to identify and tender to CUC funds from alternative sources [e.g. economic stimulus funds, section 702 funds, payment of the \$3.2 million delinquent utility bills owed by the Public School System] to replace the suspended portion of the rate increase. In the event the Government and/or other entities tender the funds required to substitute for the suspended rate increase or any portion thereof, then that portion of the suspended rate increase shall remain suspended until April 1, 2010, when the full rate increase shall automatically go into effect. Otherwise, the suspended portion of the rate increase, which is not covered by substitute funds, shall automatically go into effect on June 1, 2009 without further action by CPUC. The Stipulation presents in its Attachment B a chart, which describes these increases in CUC's water rates.
2. CPUC's hearing examiner is hereby authorized and directed to oversee an investigation, in which CUC and GCG shall participate: a] to examine revenue enhancement opportunities, including those discussed in determination 11 above; b] to make recommendations about how best to implement them in order to cover the remaining 40% deficit in CUC water and wastewater revenues; c] to determine whether there are statutory or other implementation obstacles; d] to undertake such other review of this matter as he considers reasonable and appropriate; and e] to report his findings to CPUC during the August 2009 regulatory session.
3. CPUC's hearing examiner is hereby authorized and directed to oversee an investigation, in which CUC and GCG shall participate, regarding: a] whether substantial commercial enterprises on Saipan are connected to and use CUC's wastewater system, but are neither metered or billed for this service; b] what remedial action can be taken by CUC to meter and bill for service provided to these enterprises and an expedited timeline for doing so; and c] the revenue impact that such metered service would have upon CUC's need for wastewater rate relief. Hearing examiner shall issue a report to CPUC on this investigation on or before June 1, 2009. CPUC reserves jurisdiction to reconsider the need for wastewater rate relief after considering the report.

4. Revenues derived from the increase of water rates, which go into effect on April 3, 2009, shall be used only for CUC water expenditures. Revenues derived from or corresponding to the suspended 50% portion of the rate increase shall be used only for expenditures directly related to CUC's compliance with the Stipulated Order. The hearing examiner shall establish CUC reporting requirements, which will enable CPUC to monitor and confirm CUC's compliance with this requirement.
5. CUC and GCG shall collaborate, under the hearing examiner's oversight, in the development of the Interim Financial Plan, which pursuant to the Stipulated Order must be filed with the United States Environmental Protection Agency in early September 2009. The Plan shall be filed with CPUC for its review and approval during the August 2009 regulatory session.
6. The contract protocol, which was established by CPUC order dated December 19, 2008 in Docket 09-1, shall apply to CUC's water and wastewater divisions, provided, however, that the scope of review for procurements mandated by the Stipulated Order shall be limited to the review of project cost and the establishment of an authorized expenditure ceiling, beyond which ceiling CPUC approval would be required in accordance with protocol section 10.
7. CPUC reserves its continuing jurisdiction in this docket.
8. All rulings and orders of the hearing examiner during the course of this proceeding are ratified and confirmed. All motions not heretofore granted or denied are denied. No other matters require consideration in order to adopt this decision and order.
9. CUC shall pay for CPUC's expenses, including without limitation, consulting and hearing examiner expenses and fees and the expenses of conducting the hearing process and all further regulatory expenses, which are incurred pursuant to this order.
10. The hearing examiner is authorized to interpret the meaning of this order in furtherance of its reasonable and effective implementation.

April 2, 2009.

  
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Viola Alepuyo  
Chairperson

  
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Kyle Calabrese  
Commissioner