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IN THE PUBLIC UTILITIES COMMISSION
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Petition of the)
Commonwealth Utilities Corporation)
For rate relief in its Power, Water and)
Wastewater business)

RATE CASE No. 10-01

Supplemental Direct Testimony of:
Antonio S. Muna
Executive Director
Commonwealth Utilities Corporation

Subjects: Agingan Point Settlement;
Revised Interim Financial Plan (IFP);
New CFO; CDA Deal

Filing Date: April 1, 2010

Supplemental Direct Testimony of
Antonio S. Muna, Executive Director, CUC

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Q. Please state your name and business address.

A. My name is Antonio S. Muna. I am the Executive Director of Commonwealth Utilities Corporation (“CUC”). My office is located at the Joeten DanDan Building, 3rd Floor. The mailing address is PO Box 501220 CK, Saipan MP 96950. My telephone number is 670.235.7025 and my fax number is 670.235.5131. I am the same Antonio S. Muna who testified in writing with my January 31, 2010, submittal in this docket. My background and qualifications are presented in my prefiled testimony dated January 31, 2010.

Q. What is the purpose of your supplemental testimony?

A. I wish to update the Commission on the Agingan Point GPPC Settlement. I also briefly address CUC’s revisions to its Interim Financial Plan. I wish to introduce to the Commission our new CFO, Charles Warren. Finally, I wish to ask the Commission to release us from an unintended impasse in the CDA deal.

Q. Do you have any exhibits?

A. Yes, as discussed below, I offer:

Agingan Point Settlement with GPPC, Exhibit ____ (ASM-01)

IFP of March 26, 2010, Exhibit ____ (ASM-02)

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1

Errata/Updates to Initial Testimony

2

Q. Do you have any updates to your prefiled testimony of January 31, 2010?

A. Yes I do.

6

Q. Please proceed.

A. I have the following errata for my initial testimony:

- a. P 7 lines 18- 20: I would like to add that, with our Assistant E.D., Utu Abe Malae, on board, I have been, and will be, getting regular operational briefings from him.
- b. P 9 line 22: The audited FY 2007 financials that we provided with this filing are still in “draft” form and status.
- c. P 11 lines 2-6: However, I would add, the electric rates would not necessarily have to be higher with Aggreko still in place and the efficiency of PP#1 still down to where it was formerly. In such a situation, in order to protect our customers, we would try to cut other areas of expenditure to keep rates down. For instance, note that CCU did not seek a nonfuel rate increase in order to pay Aggreko. Instead, we borrowed for the initial payment, and then, with stability and customer use of our system restored, we sought and received federal funding for the PP#1 rehabilitation. The decreasing fuel costs allowed us to pay Aggreko without a rate increase.
- d. With respect to the Agingan Point Outfall, GPPC Settlement, please see below.

22

Topic 5: Agingan Point GPPC Settlement Update

24

Q. What is the status of the settlement negotiations with GPPC?

A. We have concluded negotiations and have prepared a final settlement document. I am providing it as Exhibit ___ (ASM -01).

28

Q. Please describe the overall approach for the final settlement agreement.

A. Yes. I will not repeat my earlier testimony. Basically there are two elements to the deal. The first is the past due amounts for the original contract. The second is the “change order”

31

1 to address the cost overruns experienced during the project work. The total cost of these
2 two elements is still about \$1 million below the original cost estimate from independent
3 engineering consultants.

4
5 I am pleased to say that the GPPC Deal is, from a numbers standpoint, done. This has been
6 a long process – CUC was talking to GPPC about this situation even before the Commission
7 adopted the Contract Protocol. I hope the Commission finds that this process has been a
8 prudent one and the result reasonable. I believe that this is true.

9
10 From the point of view of the Commission's 2008 Contract Protocol Order, the first element
11 of the deal does NOT require CUC approval. It merely resolves our hold-backs under a pre-
12 existing contract. CUC has begun to pay off this obligation, at the rate of \$105,000 per
13 month, to cover principal and interest. I have also requested that Mr. Jackson include the
14 original contract payoff amounts in his rate case calculations.

15
16 **Q. What about the second element, the change order?**

17 A. That element could, or could not, be subject to Commission pre-review. CUC's interest is in
18 getting the deal finalized, and the contingent litigation removed from our books. A
19 Commission approval order in this case would eliminate uncertainty as to rate recovery for
20 this element, and, as I discuss below, assist us in refinancing this obligation.

21
22 **Q. Where is the second element procedurally?**

23 A. According to the Commission's Contract Protocol Order, we were to get a response from
24 Georgetown within 49 days of filing our request for pre-approval. We filed our petition for this
25 case, which included this matter, on January 31, 2010. That deadline came, therefore, on
26 March 21. We would appreciate hearing whether the recommendation is for approval,
27 whether Georgetown needs more time, per the Protocol, or whether we need to go to
28 hearing on this during the May rate case hearings.

29
30 **Q. What is CUC's intention for this second element, assuming Commission approval?**

1 A. With Commission approval we hope to go to the financial market and refinance the
2 obligation. Our objective is to achieve a much lower interest rate than the finance/build
3 contract rate of 16% as well as payment terms that better matched the likely service life of
4 this important plant addition. Without the certainty that Commission pre-approval would give,
5 I fear that our refinancing task will be harder and the costs of refinancing greater. I would
6 refer any further questions on our financing options to our CFO, Chuck Warren.

7
8 In any event, Mr. Jackson's calculations reflect our satisfying the settlement amounts.
9

10 **Q. What is your recommendation on the settlement?**

11 A. I recommend that the Commission approve the settlement at its earliest convenience. In
12 order to better understand its significance, and because I believe that the settlement is a
13 proper resolution of the Agingan Outfall Project dispute, I have asked Mr. Jackson to include
14 it in his rate case calculations.
15
16

17 **Topic 6: IFP Filing March 26, 2010**
18

19 **Q. Why does CUC have to compile an Interim Financial Plan?**

20 A. The Interim Financial Plan ("IFP") is a requirement of the Stipulated Order signed by
21 representatives of the US Environmental Protection Agency, CUC and the CNMI
22 Government. CUC's obligation to develop and maintain an IFP is outlined in Section A.7,
23 paragraph 48 of the Stipulated Order.
24

25 **Q. When did CUC produce its initial IFP?**

26 A. CUC produced an initial IFP in November 2009 and filed it with the US District Court on
27 September 29, 2009. A copy of this IFP has previously been provided to the Commission
28 and is also available in the workpapers accompanying the January 31, 2010 testimony of
29 Dan V. Jackson.
30

31 **Q. Who at CUC was in charge of producing the IFP?**

1 A. As Executive Director, I was ultimately responsible for producing the IFP. Much of the
2 analysis and research for the initial IFP was completed by my Deputy Director Bruce Megarr.
3 Mr. Megarr and his staff undertook a line-by-line examination and assignment of all CUC's
4 water and wastewater operating and capital expenses for the current year, FY 2010, and the
5 forecast period FY 2011 and FY 2012.

6
7 For the power generation portion of the IFP, the Deputy Directors and Managers for the
8 responsibility areas of the Power Division were responsible. We used FY 2009 expenditures
9 as our baseline.

10

11 **Q. Was the IFP reviewed by any regulatory body?**

12 A. Yes, the Staff of the Commission. The Commission ordered its consulting staff, Georgetown
13 Consulting Group ("GCG") to conduct a review of the IFP and the degree to which it met the
14 requirements of the Stipulated Order. While referencing other outstanding compliance
15 issues, GCG acknowledged the reasonableness of the expense estimates contained in the
16 IFP in their November 4, 2009, letter to the Commission:

17

18 "While the IFP as filed by CUC does make detailed and reasoned projections of
19 Water and Wastewater Departments (sic) operating expenses and Stipulated Order
20 requirements, other areas of the IFP are unmistakably deficient."
21

22 (GCG Nov. 4, 2009 Letter p 2). Further, on the "Compliance Assessment" table presented
23 on pp. 3-4 of the letter, GCG identified the following elements of the IFP as "Satisfied":

24

- 25 • Projected expenses for personnel, staffing, operations, maintenance, repair and
- 26 accounting
- 27 • Detailed breakdown of projected costs and reserves
- 28

29

30 **Q. Have you updated the IFP since September 2009?**

31 A. Yes. We just completed a thorough and comprehensive update of the IFP dated March 26,
32 2010. It is titled "Interim Financial Management, Deliverable No. 48, Financial Reserves

1 Deliverable No. 49, Stipulated Order Number One Civil Case No. CV 08-0051". We filed it
2 with the EPA by email on March 26, 2010.

3
4 **Q. Who was involved in this update?**

5 A. I was responsible for the overall production and completion of the revised IFP. Mr. Megarr
6 and his staff contributed to the IFP. Additionally, I engaged the audit firm Deloitte and
7 Touche to assist in the completion of the revised IFP.

8
9 **Q. Are you providing this as an exhibit?**

10 A. Yes. I am providing this as Exhibit ____ (ASM-02, specifically as -02a and -02b).

11
12 **Q. Do you believe that the revised IFP represents a reasonable estimate of current year
13 and forecast expenses for the water and wastewater utilities?**

14 A. Yes. I believe it is an accurate and reliable estimate of CUC's expenses. I should note that
15 many of the Water/Wastewater expenses in the revised IFP are identical to those contained
16 in the September 2009 IFP. A major revision to W/WW includes changes in the estimate of
17 personnel costs. There are also some reductions in W/WW repair and maintenance
18 expenses from the levels of the earlier IFP. Therefore, when you look at the overall W/WW
19 numbers you may not see a great difference. We gave Georgetown a copy of the IFP, here
20 as a pdf exhibit, in xls and doc formats so that they could better analyze it.

21
22 For non-water and non-wastewater expenses, we went to the relevant managers for their
23 input, used FY 2009 expenditures as baseline, and then incorporated personnel costs
24 implied from our March 2010 payroll. We adjusted for announced or to-be-announced
25 vacancies.

26
27 **Q. Have you supplied this revised IFP to anyone else?**

28 A. Yes. I gave it to Mr. Jackson to use in his revised rate scenario calculations.

29
30 **Q. Do you believe it is reasonable for Mr. Jackson to base his expense estimates and
31 revenue requirements on the data contained in this revised IFP?**

1 A. Yes I do. These data represent our best current projections.

2
3 **Q. Are you keeping the Commission's consultant, Georgetown Consulting Group**
4 **("GCG") informed of the progress and production of the revised IFP?**

5 A. Yes we are. We sent them a copy of the March 26 filing per the cc list on the filing.
6
7

8 **Topic 7: New CFO Charles Warren**
9

10 **Q. Please discuss CUC's hiring of a Chief Financial Officer.**

11 A. Yes. I am pleased to introduce to the Commission our Chief Financial Officer, Charles
12 Warren. He is appearing as a supplemental witness in this case.
13

14 **Q. Could you briefly describe the process by which you identified Mr. Warren.**

15 A. Yes. After extensive advertising in the Pacific region and on the Mainland, CUC determined
16 that we were not offering a competitive compensation package for the experienced
17 professional needed to help upgrade and turn around our financial system. In particular we
18 were going to need a seasoned professional, with a strong sense of efficient financial
19 management and an understanding of the challenges that CUC faces by location and
20 history, as well as a sensitivity to our culture and society in the CNMI. The interesting
21 resumes we received sought extraordinarily high compensation, lacked the requisite
22 experience, and lacked evidence of the required sensitivity.
23

24 **Q. How did you find Mr. Warren?**

25 A. Abe Malae knew of Mr. Warren's experience and availability from Chuck's many years'
26 business operations in American Samoa. He knew him personally and as a responsible
27 professional with the utility company's customers. As you can see by Chuck's resume, he is
28 a seasoned financial professional, and a CPA, with extensive financial and accounting
29 experience in the private sector. He started work on February 17, 2010, and jumped right
30 into the middle of the discovery phase of this case. I am happy to introduce him to the
31 Commission.

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Topic 8: CDA Debt-Equity Swap and Unintended Consequences

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Q. Could you please provide the Commission with the status of the CDA debt-equity swap?

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A. Yes. The matter is stalled, I am afraid. I believed we had consummated the transaction when we provided CDA with the required stock certificate. But there has been a hitch.

7

8

9

Q. Are you saying that the parties have not done everything required in the PSA, the Preferred Stock Agreement?

10

11

A. No. To the contrary. The parties have done everything required in the PSA. According to the PSA we now have a situation where the debt has been “forever canceled and discharge[d]” (para. 5) and the deal is an “irrevocable, mutual and full waiver and release of any and all claims” (para. 5).

12

13

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16

Except the deal is not final. The PSA requires Commission approval. (para. 10) The Commission approved in its September 3, 2009 Order, para. 6 but, as part of its approval, it required that CDA “file a satisfaction of judgment” in the Superior Court case that held for the debt.

17

18

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Q. Hasn't CDA provided the satisfaction?

22

A. No. We have asked CDA repeatedly to provide the document. We have presented them with the Commission's order requiring the document. As of this filing, they have failed to provide it.

23

24

25

26

Q. Have the CDA staff or board explained why they have failed to file the satisfaction which the Commission required?

27

28

A. No.

29

30

Q. Do you have an opinion on that filing requirement?

31

1 A. Yes, I do. If the concern of the Commission is to have CDA file a satisfaction of judgment, I
2 believe that CUC is in a much better position to force the filing issue on CDA **after** the deal is
3 final and the debt has been converted to equity pursuant to the PSA. The PSA is firm on its
4 effect of wiping out the debt:
5

6 “As of the date of CUC’s issuance of the Preferred Stock Certificate under Section 1, this
7 Agreement **shall forever cancel and discharge the indebtedness of CUC**
8 **to CDA** under any and all loan agreements, promissory notes or other evidence of
9 indebtedness now existing between the parties. This Agreement shall be an irrevocable,
10 mutual waiver and release of any and all claims, demands, actions, and all liabilities
11 between the parties, including any alleged principal, interest, penalties, late charges, and
12 the like arising from any indebtedness of CUC to CDA now existing.”
13

14 (PSA, Paragraph 5, my emphasis added.) Presently, due to the Commission’s requirement
15 for the CDA filing, the debt-to-equity conversion is unresolved and control of the conversion
16 is in the hands of the creditor, CDA.
17

18 **Q. Do you have a request of the Commission?**

19 A. Yes, I do. I request that the Commission revise its approval, and release CUC from the
20 requirement that CDA file the satisfaction of judgment. Neither CUC nor the Commission
21 can force CDA to do so.
22

23 I invite the Commission to review the PSA (which we filed with our second petition for
24 approval). I believe that the Commission will see that the language of the agreement clearly
25 eliminates the judgment and the debt upon the delivery of the stock certificates and, of
26 course, the Commission’s approval. Thus, I request that the Commission revise its earlier
27 order and simply state that it approves the deal.
28

29 **Q. What would be the effect of such a revision in the Commission’s approval?**

30 A. The deal will be immediately in effect. This will convert \$61.6 million of principal and \$138.7
31 million of interest, as of 9/30/2009 on the CUC books, to preferred stock, as the
32 Commission’s Order provides. Our independent auditors will be able to certify the swap, and
33 our books will close for FY 2009 with the CDA debt off the books, replaced by the preferred

1 stock of the PSA. I believe that the Commission approves of this result, and I would urge it
2 to express that approval.

3
4 As soon as our financials are clean we will be able to start looking for the long term debt, at
5 good rates, which I and other witnesses have discussed.
6
7

8 **Conclusion**

9
10 **Q. Did you prepare this supplement testimony and exhibits, or was it prepared under**
11 **your supervision and control?**

12 A. Yes.
13

14 **Q. Are the statements in your testimony true and correct to the best of your knowledge,**
15 **information and belief?**

16 A. Yes.
17

18 **Q. If you were testifying live, under oath, today, would you say what appears in this, your**
19 **prefiled testimony filing?**

20 A. Yes.
21

22 **Q. Does this conclude your testimony?**

23 A. Yes it does.
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Declaration

The preceding (a) prefiled testimony in this docket and (b) prefiled testimony of April 1, 2010, and (c) the exhibits referred to therein, are true and correct to the best of my knowledge, information and belief. Signed under the penalties of perjury.

/s

Antonio S. Muna
Commonwealth Utilities Corporation