

FOURTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

PUBLIC LAW NO. 4-47
HOUSE BILL NO. 122,
S.D.1

SECOND REGULAR SESSION, 1984

AN ACT

To establish a Commonwealth Utilities Corporation and for other purposes.

BE IT ENACTED BY THE NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

Section 1. Amendment to 4 CMC, Division 8. A Chapter 1 of 4 CMC, Division 8 is enacted to read as follows:

"Chapter 1. Commonwealth Utilities Corporation.

Article 1. General Provisions.

Section 8111. Short Title. This Chapter may be cited as the Commonwealth Utilities Corporation Act.

Section 8112. Definitions. As used in this Chapter:

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

(b) "Utility service" includes the delivery of electrical, water, sewer, refuse collection, cable television and telephone services in the Commonwealth.

Article 2. Commonwealth Utilities Corporation Established.

Section 8121. Commonwealth Utilities Corporation: Public Corporation.

(a) There is in 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 Sections 1602 through 1604.

(c) The Corporation shall have the following divisions:

- (1) Electrical Power Division.
- (2) Water Services Division.
- (3) Sewer Division.
- (4) Refuse Collection Division.
- (5) Compliance Division.

(d) If a service has been turned over to the private sector, such as telephone service, the Corporation shall be reduced in size accordingly and the Compliance Division shall monitor the performance, rates, and contractual compliance of the private sector enterprise.

Section 8122. Commonwealth Utilities Corporation: Duties.

(a) The Commonwealth Utilities Corporation shall supervise the construction, maintenance operations, and regulation of all utility services, including power, sewage, refuse collection, telephone, cable television, and water; Provided, that whenever feasible the Corporation shall contract for private businesses to assume its duties with respect to one or more of its divisions.

(b) The Corporation shall within 90 days of confirmation of all Board members implement a plan by which it or its designee will establish rates, meter, bill, and collect fees in a fair and rational manner from all consumers of utility services it has not privatized so that the Corporation will be financially independent of all appropriations by the Commonwealth Legislature by the end of three complete fiscal years from the effective date of this act.

(c) The Corporation shall keep in the private sector the construction, management and operation of the telephone and cable television services in the Commonwealth.

Section 8123. Commonwealth Utilities Corporation: Powers.

In order to carry out its duties, the corporation 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 bylaws.
- (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.

(f) Upon prior approval by joint resolution of the Legislature and in conformity with the Commonwealth Development Authority Act 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, refuse collection 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 such as the telephone system and cable television services.

(k) To regulate cable, telephone and other 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.

(m) To the extent the Corporation deems lawful and necessary, to review and establish utility rates and other fees for water, sewer, refuse collection, telephone, cable television, and electrical power.

(n) To prepare and submit a budget as a government corporation pursuant to 1 CMC Section 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.

Section 8131. Board of Directors: Established.

(a) The Corporation shall be governed by a Board of Directors. The Board shall be composed of five members appointed by the Governor and confirmed by the Senate. Each of the members shall have at least five years of managerial or financial experience in business, finance, or utility services. 1 CMC Div. 2, Part 2 shall not apply to this Board.

(b) The members shall serve a term of four years with the initial term of the first members to be staggered upon drawing of lots. Each member replacing a Board member after his original term shall serve a four year term.

(c) The members shall receive such compensation as is provided by Public Law 4-32.

(d) The Board shall elect its officers from among its members and establish its rules of procedure.

(e) 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.

(f) The Governor may remove a member for gross neglect or dereliction of duty, breach of fiduciary duty, conviction of a felony, or mental or physical incapacity. Any vacancy caused by death, resignation, removal, or otherwise shall be filled for a new four year term in the same manner as the original appointment. The Board may remove any member for missing three consecutive meetings or 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.

Section 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 at least once every month for its first two years of existence.

Thereafter it shall meet at least quarterly.

Special meetings may be called by the Chairman or by the majority of the Board members.

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

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

Section 8133. Officers and Staff of the Corporation.

(a) Executive Director. The Board shall appoint an executive director to administer the operations of the Corporation on behalf of the Board. The Executive Director shall have a minimum of five years professional experience in the public utility services, business management, or finance and shall possess at least a bachelors degree from an accredited university or college.

The Board may establish other qualifications of the Executive Director, set his salary not to exceed \$40,000, and set his term of office not to exceed five years.

(b) Other Corporate Officers.

(1) The Executive Director shall appoint a Corporate Comptroller pursuant to Section 8134(d) and (e).

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

(c) Staff. The staff of the Corporation shall initially be transferred from the appropriate Divisions of the Department of Public Works. Pursuant to applicable civil service rules, the Corporation may employ such additional persons as the Board deems necessary.

Section 8134. Executive Director: Duties.

(a) The Executive Director shall prepare an operating manual to implement the general operation and management policies established by this act and by the Board, including all internal administration, metering, billing, and collection procedures, privatization plans, and other matters. The manual shall be transmitted to the Board for its approval.

(b) The Executive Director shall refer to the Board for review all matters involving allocation of Corporation funds or property.

(c) The Executive Director shall:

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

(2) Report to the Board at each Board meeting as to the activities of the Corporation.

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

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

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

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

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

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

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

(3) Perform such other functions as the Executive Director or the Board may require.

(e) The Comptroller shall hold at least a bachelor's degree in accounting and 5 years experience in governmental or financial accounting.

(f) The Executive Director, Comptroller and any other officer may be dismissed by affirmative vote of four Board members.

Article 4. General Corporate Operations.

Section 8141. Management.

(a) The Executive Director and Board 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.

(b) If the Board contracts with a private business to provide a utility service, the Board

shall permit the business to adopt a utility rate and billing structure that provides 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.

(c) Pursuant to 4 CMC Section 1602, the Board shall adjust the utility services collection and rate structure so that within three complete fiscal years collections from a particular utility service are sufficient to recover the costs associated with the operation and delivery of the particular utility service. These costs shall include adequate financial reserves for debt service, if any, and the replacement costs of obsolete or damaged equipment.

(d) The Board's rate schedules 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 Board may provide life-line utility services at lower rates for the benefit of low income consumers.

(e) The Board shall annually review and in its discretion may revise the rate schedules. The Board shall adopt procedures to permit consumers to contest their billings.

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

(g) In the event the Board has not privatized a utility service, its 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 Board shall cut off utility services to consumers who are not actively contesting their billing and who have accounts more than 90 days past due.

Section 8142. Rates and Charges; Public Hearing. Before adopting any schedule affecting rates for services directly provided by the Corporation, the Board or its 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 ten days before the date of the hearing.

Section 8143. User Fees for Electrical Consumption.

(a) Publication of New Schedule. Within three months after a Board has been confirmed pursuant to this act, the Board shall approve a new schedule of user fees more accurately reflecting the cost of providing electrical services to the people of the Commonwealth. Within two years the new user fees shall charge all large consumers an amount at least equal to the marginal costs of providing them utility services.

(b) Electrical Power Charges. The Board shall determine whether to impose as of October 1, 1985, a fuel surcharge fee of up to \$.035 per kilowatt hour for all consumers of electricity. Once imposed, the Board may annually adjust the fuel surcharge fee to reflect the total costs of purchasing fuel for the production of electricity; Provided, that the fuel surcharge fee shall not increase for consumers of less than 2001 kilowatt hours per month at a rate of more than \$0.02 per kilowatt hour per calendar year.

(c) Consumer Use. The Corporation shall take all steps necessary to accurately meter, and bill all consumers including government consumers and all government buildings for electrical power,

sewage, refuse collection, and water consumption by no later than October 1, 1986, at no less than the cost of production, operation, and maintenance of the services provided. No rate increases may be implemented until the Corporation is in full compliance with this subsection.

Article 5. Miscellaneous.

Section 8151. Legal Counsel.

(a) The Attorney General shall be the legal counsel of the Corporation. The Attorney General may approve the routine use of standardized contract forms and other documents by the Corporation in lieu of approving each separate contract and other documents.

(b) With prior approval of the Attorney General, the Board may retain or engage private legal counsel.

Section 8152. Audits. The Public Auditor shall audit the operations, books, and records of the Corporation in accordance with 1 CMC Section 7710(a) and Public Law 3-91. The final report of the audit shall be made public and shall be transmitted to the Board, the Executive Director, the Governor, and the presiding officers of the Legislature.

Section 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.

Section 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 5 years, or both.

Section 8155. Funds Collected. The Corporation shall deposit all funds received by it in insured or fully collateralized accounts.

Section 8156. Energy Assistance. This Chapter does not affect the financial assistance for utility services provided under Public Law 1-22.

Section 8157. Rules and Regulations. The Board may issue regulations necessary to carry out the purposes of this Chapter.

Section 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 Div. 9, Ch. 1. A litigant who, in the opinion of the court, substantially prevails on the merits shall receive his cost and attorneys fees.

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

Section 2. Conforming Amendment. 1 CMC Section 2403(b) is repealed and reenacted to read as follows:


"(b) To construct, maintain and operate public signs, traffic signals, public vessels, public buildings, and public works function previously performed by chartered municipalities, unless otherwise provided by law;"

Section 3. (a) Repealer. 4 CMC Section 1605 is repealed.

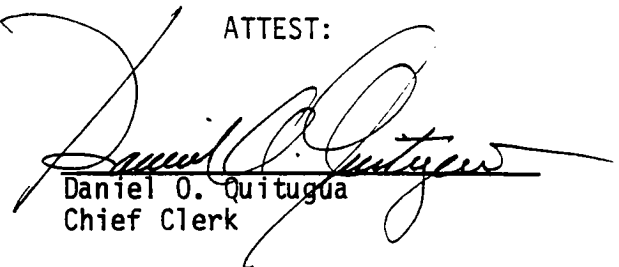
(b) Executive Order Vacated. Executive Order No. 21 is vacated in its entirety.

Section 4. Severability. The provisions of this Act are severable.

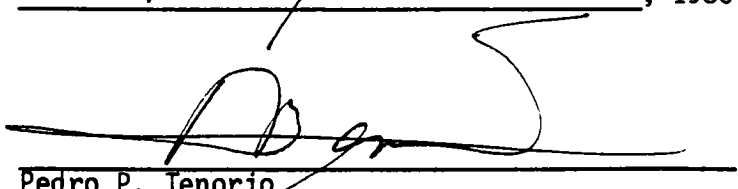
Section 5. Effective Date. Upon its approval by the Governor or upon its becoming law without such approval, this act shall take effect October 1, 1985.



Vicente M. Sablan
Speaker of the House

ATTEST:


Daniel O. Quitugua
Chief Clerk

May 3, 1985


Pedro P. Tenorio
Governor
Commonwealth of the Northern Mariana Islands