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14 IN THE PUBLIC UTILITIES COMMISSION
15 OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

16 **PETITION OF THE COMMONWEALTH
17 UTILITIES CORPORATION:**

18 **FOR RATE RELIEF IN ITS POWER,
19 WATER AND WASTEWATER
20 BUSINESS**

DOCKET NO. 13-01

PETITION

21
22 CUC's Petition for Rate Relief
23

24 The Commonwealth Utilities Corporation ("CUC"), a publicly-owned corporation within the
25 Commonwealth of the Northern Mariana Islands, through its attorneys, hereby petitions the
26 Commonwealth Public Utilities Commission ("CPUC" or "Commission") to approve and order
27 changes in its electric, water and wastewater base rates.
28

1 **Summary:** CUC seeks a change in electric, water and wastewater rates, and an increase in
2 certain fees and charges.
3

4 **Testimony and Exhibits:** The material and relevant facts are presented through the expert
5 testimony and exhibits accompanying this petition and hereby filed with the Commission,
6 including the following witnesses and their exhibits:
7

8 **CUC Exhibit 1 - Testimony of Economists.com - Dan V. Jackson and Robert E. Young**

9 **Appendix A - Resumes**

10 **Appendix B - CUC's financial statements for the end of Fiscal Year 2012 and
for the first six months of FY 2013**

11 **Appendix C - Updated volume model for water and wastewater**

12 **Appendix D - CUC's adopted budget and our known and measureable changes**

13 **Appendix E - Copy of the water and wastewater rate model**

14 **Appendix F - Minimum Filing Requirements ("MFR") schedules used by the
CPUC to evaluate the reasonableness of CUC's rate applications**

15 **Appendix G - Updated volume model electric containing historical and test year
electric accounts and consumption details**

16 **Appendix H - Summary of the budget adjustments for test year**

17 **Appendix I - Summary of analysis, findings and conclusions into a Non Rate
Fees and Services Cost Analysis Report**

18 **Appendix J - Summary schedule of recommended Electric Non-Rate fees and
Charges**

19 **CUC Exhibit 2 - Testimony of Alan W. Fletcher**

20 **Appendix AWF-A - Resume**

21 **CUC Exhibit 3 - Testimony of Charles H. Warren**

22 **Appendix CHW - A - Resume of Charles H. Warren**

23 **Appendix CHW - B - Summary of Billing Frequency Analysis**

24 **Appendix CHW - C - Master Plan "Draft Final Financial Plan for Drinking
Water and Wastewater Systems" from CH2M Hill as submitted for
final approval as required under the Stipulated Orders to the United
States Environmental Protection Agency**

25 **CUC Exhibit 4 - Testimony of Wallon Young Fong**

26 **Appendix WYF - 1 - Resume of Wallon Young Fong**

27 **Testimony Support 1 WYF**

28 **Testimony Support 2 WYF**

Testimony Support 3 WYF

Testimony Support 4 WYF

Testimony Support 5 WYF

Testimony Support 6 WYF

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I. Commission Power and Authority

1. The Commonwealth Public Utilities Commission has the power and authority to determine rates and provide for refunds for "public utilities" and "regulated entities," including CUC. 4 CMC § 8402(e) and (f) (definitions). Public Utilities Commission Act, Public Laws 15-35 and 15-40, as amended, 4 CMC § 8401 - 84.
2. The Commission has "regulatory oversight supervision" over CUC and other regulated entities. 4 CMC § 8411.
3. The Commission "shall" regulate, investigate, establish and modify all rates,

1 fares, fees, and charges for all CNMI regulated entities. 4 CMC §8411(a)-(c). In
2 addition, the Commission "shall" investigate and examine all rates and fees charged [4
3 CMC § 8411(b)], as well as regulate all matters pertaining to utility operation [4 CMC
4 §§ 8411(a)]. It shall ensure financially sufficient rates for regulated entities [4 CMC
5 8411(f)(1)], and shall review rates to insure that they are "just and reasonable" [4 CMC
6 8426(a)].
7

8 **II. CUC's intended action, to raise rates, fees and charges**

9 4. CUC seeks to establish, abandon, modify, depart from, and change rates,
10 charges, tariffs, and assessments for its customers, (hereinafter referred to as a "rate
11 change," as defined the CPUC's Rules of Practice and Procedure ("RPP") at 1(h).

12 5. CUC has found, and anticipates, that its current rates are and will be insufficient
13 to provide the cash for its operations and other obligations.

14 6. Federal consent decrees regarding the mandated improvement of its water and
15 wastewater facilities and operations, and the elimination of pollution and potential
16 pollution from CUC's oil handling and oil waste, require rates which are sufficient to
17 fund these tasks, *USA v. CUC and CNMI*, CV 08-0051 (Stipulated Orders One and Two,
18 entered March 11, 2009).

19 7. Recent Commission electric, water and wastewater rates have required changes
20 in rates and rate structure to support CUC's efficient and lawful operations.
21

22 **III. Background facts and circumstances**

23 8. CUC is the Commonwealth of the Northern Mariana Islands ("CNMI")
24 Government's wholly owned and combined electric, water and wastewater utility
25 company.

26 9. CUC's corporate offices are located at 3rd Floor, Joeten Dandan Building, P.O.
27 Box 501220, Saipan, MP 96950.
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1 10. CUC transacts roughly \$95 million per year of utility business, about 80% of
2 which is electric, and, of that amount, about 70% represents the purchase of oil to
3 generate electricity.

4 11. CUC has all of the powers conferred by law on a public corporation, and all
5 powers reasonably incidental to its purpose. 4 CMC § 8123. CUC may take such action
6 as it deems necessary and proper to operate the corporation, further its purposes,
7 administer its services, and perform its duties. 4 CMC §8123.

8 12. CUC is presently managed by a team consisting of Alan W. Fletcher, Acting
9 Executive Director and Deputy Director for Water and Wastewater, John Riegel, Chief
10 Engineer, Wallon Young Fong, Deputy Director for Electric Power Systems
11 Rehabilitation, and Charles H. Warren, Chief Financial Officer.

12 13. The Governor of the CNMI has overseen the corporation while he satisfies a
13 statutory mandate to find, appoint, and have confirmed qualified persons to serve on
14 CUC's Board. See Executive Orders 2010 – 01, et al., Directive 9; through the most
15 recent Executive Order No. 2013-12, issued June 19, 2013. The Executive Order
16 empowers the designated Executive Director to operate the company with all of the
17 executive powers, including those of the CUC Board and Executive Director. CUC
18 continues to operate the corporation pursuant to the Executive Orders to provide
19 electric, water, and wastewater services to the CNMI.

20
21 **IV. CPUC in reviewing this petition should consider its regulatory power and**
22 **jurisdiction as well as the requirements that CUC use cost-based rates which are not**
23 **externally subsidized**

24 14. The Commission has broad power and jurisdiction to regulate CUC.

25 15. CUC, by statute, by federal court order, and by agreement, must function
26 without an external subsidy.

27 **A. Requirement by statutes**

28 16. CNMI statutes require CUC to cover its costs through its rates:

a. The Commission “shall” . . .

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Establish and modify from time to time, reasonable rates and charges for services, which when all rates for respective blocks of usage are considered together, shall be at least adequate to cover the full cost of such service or subject to any contractual agreements of each entity to the holders of any bonds and shall increase rates or charges from time to time as may be necessary pursuant to any contractual obligations. 4 CMC § 8411(c). See also definition of “just and reasonable” at 4 CMC § 8402(d).

b. The rates the Commission sets “shall”

(f) Ensure that rates will, at all times. . . Be sufficient to enable each entity to meet its financial obligations, operating expenses, debt service, capital improvement needs.” 4 CMC § 8411(f)(1).

c. The Commission shall review rates to insure that they are “just and reasonable.” 4 CMC § 8426(a).

d. The Commission may not permit a firm with divisions which are regulated and non-regulated from subsidizing the non-regulated business with the revenues of a regulated affiliate:

No entity may use current revenue earned or expenses incurred in conjunction with services subject to regulation under this Chapter to subsidize services that are not regulated or are not tariffed. Expenses incurred in conjunction with services that are not regulated or that are not tariffed under this Chapter may not be attributed to services that are subject to regulation for any reason. The Commission may not subsidize the price of any entity’s service, including wholesale prices or the prices of elements, by reducing the prices to reflect an allocation or credit of revenue from the operations of an affiliated company of the entity. 4 CMC 8443(e).

e. The Commission, however, is given great flexibility in determining how to set rates:

(d) The Commission may utilize methods, analytical techniques and procedures for determining rates, rents, and charges that are different from those mentioned in this subsection, including forbearance of rate regulation and detariffing, provided it demonstrates in authentic form that the chosen method will satisfy the criteria established in this subsection for the rate structure in a more effective way than the methods mentioned herein. 4 CMC § 8443(d).

1 The Commission in its January 27, 2012 Order, at page 5, par. 11 provided for an
2 interdivisional loan to the wastewater division from the electric division to eliminate the
3 need for an increase in wastewater rates at the last session, demonstrating that the
4 Commission may utilize other methods and procedures to satisfy the need for an
5 effective rate structure.

6 f. The Commission’s legal ability to fix “just and reasonable rates” after a hearing
7 rests on its determining that the rate is not: (1) in violation of any provisions of the Act,
8 (2) incompatible with the Act’s purposes, (3) unreasonable. Also the rate shall not: (4)
9 ... offer improper advantages or preferences to said regulated entity, or (5) otherwise
10 endanger[s] the stability of the provision of the entity’s services to the Commonwealth.
11 4 CMC § 8446(a).

12
13 g. The Commission is bound by the requirement that: “All rates, charges, assessments,
14 and costs made or charged by any public utility shall be just and reasonable and in
15 conformance with public law.” 4 CMC § 8451. This shall be in accord with the
16 provisions “of this Chapter.” 4 CMC §8451(a).

17
18 **B. Requirement by federal court order**

19 17. CUC has settled an EPA lawsuit in *USA v. CUC & CNMI*, Civ. No. 08-0051
20 (D.N.M.I., Mar. 11, 2009). In particular, Stipulated Order Number One ("SO1") requires
21 that costs be covered:

22
23 a. The interim financial plan must represent: “The Annual Budget, designed to
24 ensure adequate financing of operation and maintenance, repair and replacement,
25 when necessary, of sufficient revenues to cover drinking water and wastewater
26 systems... as well as any other anticipated related expenses...including the
27 establishment of a rate structure to generate sufficient revenues. . . .” para. 48(b).
28 CUC must produce a “financial management plan ensuring that all user fees,
taxes, assessments, or other sources of revenue collected for the drinking water
and wastewater systems are applied to the operations, maintenance, repair,
replacement, and compliance activities of those systems ” para. 48(d)(v).

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b. The master plan’s five year financial plan must provide for a “detailed descriptive plan for raising sufficient revenue to meet the projected costs as outlined in the budgets, including adjustments or increases in (i) Estimated annual budgets for each of user fees, taxes, assessments, or other sources of revenue.” Para. 65(a)(ii).

The Master Plan has been completed and the final draft has been submitted to EPA for approval pursuant to SO1. In CUC Exhibit 3, an excerpt of the Master Plan is attached to the Testimony of Chief Financial Officer Charles Warren as Appendix CHW-03.

C. Requirement by formal agreement

18. The federal Grant Pledge Agreement of 1985 provided, among other things, that CUC was to function as an independent agency, in a businesslike manner, without subsidies. (Agreement of the Special Representatives on Future United States Financial Assistance for the Northern Mariana Islands, of July 10, 1985, section 4(e) (“Grant Pledge Agreement”). The “grant pledge agreement” provided over \$200 million, through the Commonwealth Development Authority (“CDA”) to build Power Plant #1 and other infrastructure.

19. CUC has formally agreed to cost-based rates with the CDA, the Commonwealth Development Authority, in order to settle long and debilitating litigation. The Commission has approved the agreement.

a. CUC long ago agreed with CDA, as part of the Grant Pledge Agreement and loan, to, inter alia, to adopt a “full cost recovery plan” to set rates “at levels consistent with full cost recovery”, consistent with special protections for low income residential consumers. In settling litigation with CDA over the loan, CUC again agreed in the “Amended Memorandum of Agreement Between CUC and CDA of 1/16/04” (“the 2004 Agreement”). The Legislature supported this 2004 Agreement, and a related 2002 agreement, with Public Law 13-36, 4 CMC § 8123(p)(Dec. 10, 2002), and Public Law 16-17, 4 CMC § 8123(p)(Sept. 18,

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2008).

b. On May 7, 2009, CDA and CUC signed an agreement to end the dispute, the Preferred Stock Agreement (“PSA”). It included payment promises from CUC and a requirement for CPUC approval is required before the Agreement takes effect.

c. The Commission approved the PSA in 2009. In re CUC, No. 09-01 (Electric) (Decision and Order of Sept. 3, 2009), Ordering par. 6.

V. Facts supporting this petition

A. CUC’s cost of providing service is not being recovered and requires that new rates be set for water, wastewater and electric services.

20. CUC is providing water, wastewater and electric services to its customers. But it is not recovering its full costs of service. **CUC Exhibit 1** summarizes CUC’s financial portrait. CUC’s operating revenues for FY 2012 were \$97.7 million but its operating expenses were \$104 million. This results in an overall operating loss of (\$8,230,994). **See CUC Exhibit 1**, pages 10-12. There are four major factors contributing to the need for a rate adjustment: Stipulated Order requirements, declining customer and volume base, operating and capital cost increases, and typhoon preparedness. **See CUC Exhibit 1**, page 4. These are discussed in turn.

21. Stipulated Orders. CUC is required to meet Stipulated Order requirements, and while this increases costs, it also has resulted in demonstrated improvements to the quality of CUC’s services to its customers. **CUC Exhibit 1** discusses this requirement, as does the testimony of Alan W. Fletcher, Acting Executive Director of CUC, as set forth in **CUC Exhibit 2**.

22. Declining customer and volume base. The testimony of Charles H. Warren additionally shows how CUC has sustained its operating losses. See **CUC Exhibit 3**,

1 page 5-7. It explains the effects of economic shifts in our population of customers and
2 usage, which are resulting in less large accounts to pay for fixed costs of operation. See
3 **Appendix CHW-B** Summary of Billing Frequency Analysis.

4 23. Operating and capital cost increases. Many operating costs have increased due to
5 inflation and other factors beyond CUC's control. Further, some of these costs are
6 increasing at rates that exceed the inflation rate. CUC must operate like a business to
7 survive. Yet, CUC is a publicly run, non-profit institution. CUC has no reserve or
8 profit, so when its costs increase, CUC has no choice but to pass these costs through to
9 its customers. **CUC Exhibit 1** analyzes this issue.

10 24. Typhoon preparedness. CUC is desperately short of inventory for its electric
11 distribution system. Items such as poles, cross arms, transformers, service drops and
12 related hardware are far below reasonable and prudent levels for any utility. This is
13 supported by the testimony of Economists.com, attached as **CUC Exhibit 1**.

14 25. In **CUC Exhibit 1**, CUC's consultant, Economists.com, presents its analysis of
15 and recommendations for an adjustment to and restructuring of CUC's electric, water
16 and wastewater rates. CUC requests that the Commonwealth Public Utilities
17 Commission ("CPUC") approve this rate adjustment and place it into effect on October
18 1, 2013. This request is supported by the testimony of Acting Executive Director Alan
19 W. Fletcher, **CUC Exhibit 2**; Chief Financial Officer Charles H. Warren, **CUC Exhibit**
20 **3**; and Deputy Director for Power Systems Rehabilitation Wallon Young Fong, **CUC**
21 **Exhibit 4**.

22
23 **B. CUC's recommended electric rate design includes elimination of the**
24 **Lifeline Rate in favor of a low income credit, the reconfiguration of rate**
25 **blocks, and implementation of a standby charge.**

26 26. CUC's recommended water and wastewater rate plan is presented in **Exhibit**
27 **Econ-1**, page 8. The recommended electric rate plan is presented in **Exhibit Econ-2**,
28 page 9. The combined impact of all rate adjustments on average ratepayers is

1 presented in **Exhibit Econ-3**, page 10.

2 27. Within the new electric rate design, CUC proposes the restructuring of the
3 electric Lifeline rate for reasons described in the testimony of Charles H. Warren, **CUC**
4 **Exhibit 3**. CUC would replace the Lifeline electric rate with a plan that is more
5 beneficial to its low-income ratepayers. This involves offering a credit based on Public
6 Law 16-7 of up to \$28 per month for residential customers who use less than 200 kWh
7 per month. See **CUC Exhibit 1**, page 41. CUC believes this will provide much more
8 significant rate relief to the neediest CUC customers and dramatically reduce the
9 administrative burden currently associated with the Lifeline rate. Customers who use
10 200 kWh per month would pay a monthly electric bill of approximately \$76 under the
11 proposed rates. After application of the Public Law 16-7 credit, the bill will be about
12 \$48, or a 37% reduction. Customers who use 100 kWh per month would experience an
13 even more drastic effect. Under proposed rates, the monthly bill for a residential
14 customer using 100 kWh is approximately \$34. After application of the Public Law 16-
15 7 credit, their bill would fall to approximately \$6 per month, an 82% reduction.

16 28. In addition, CUC recommends a compression of the residential electric rate
17 blocks. See **CUC Exhibit 1**, page 41; **CUC Exhibit 3**. The continuing decline in
18 average use per customer has resulted in more kWh consumed in the lower
19 consumption blocks.

20 29. Also, CUC recommends that a standby charge be implemented based on the
21 installed generating capacity of commercial customers with a kW demand of greater
22 than 200 kW, that generate all or a significant portion of their own electrical
23 requirements. These commercial customers are mostly hotel and golf courses which do
24 not regularly consume CUC power. CUC has sufficient generation capacity to meet the
25 full electrical requirements of CUC's existing customers on the island of Saipan plus the
26 additional requirements of the hotels and golf courses that are either not on the CUC
27 grid or are using it for only a portion of their electric requirements or for standby
28

1 power. See **CUC Exhibit 4**, Testimony of Wallon Young Fong. At this time, CUC and
2 its customers are essentially paying for commercial customers who only hook up to
3 CUC when they have emergency power needs. See **CUC Exhibit 1, page 42**. This
4 provision of services by CUC to its commercial customers needs to be compensated.
5

6 **C. CUC’s recommended water and wastewater rate structure includes a**
7 **phase in of a cost-based rate for Government, CUC, PSS, CHC and CPA**
8 **rates, the establishment of a groundwater protection fee, the collection of**
9 **the previously-established wastewater electric charge, the elimination of**
10 **WEC and WWEC charges for the first 3,000 gallons for residential**
11 **customers, and the establishment of a standpipe charge.**

12 30. CUC recognizes that for many years, the government, CUC, PSS, CHC and CPA
13 customer classes have been assessed a rate in excess of their respective cost of service.
14 CUC is recommending that CUC be allowed to phase in a cost-based rate for each of
15 these customer classes over the next five years. This will result in a gradual reduction
16 of the rates for these classes each year until a cost-based rate is achieved. CUC
17 emphasizes that adoption of this policy will compel CPUC to increase rates for
18 residential and commercial customers to make up the revenue lost from the lowering of
19 the rate for these other classes. The recommended rates are presented in **CUC Exhibit**
20 **1, page 10.**

21 31. CUC recommends adoption of a Groundwater Protection Fee to be assessed to
22 all water customers. This fee is detailed in **CUC Exhibit 1, page 10.**

23 32. CUC recommends that the CPUC allow it to begin collecting monthly
24 Wastewater Electric Charges (WWEC). The charge methodology was established at
25 the last rate proceeding in 2012; however, CUC was not allowed to collect the
26 wastewater electric charge. CUC recommends that wastewater customers begin paying
27 this monthly charge effective immediately.

28 33. CUC recognizes that the combination of increasing expenses, elimination of
CUC’s operating losses, and lowering of the Government, PSS, CHC and CPA rates will

1 result in increases to residential and commercial customers. To ease the burden on
2 CUC low income ratepayers, CUC recommends that the CPUC modify its WEC and
3 WWEC policies to eliminate the charge for the first 3,000 gallons of residential water
4 and wastewater service. This will lessen the burden on residential ratepayers. It will
5 require a modification in the way the WEC and WWEC is charged, to ensure that all
6 water and wastewater-related electric charges are recovered from the remaining
7 ratepayers.

8 34. CUC recommends adoption of a “standpipe charge” for water drawn in bulk
9 quantity from certain locations. This is frequently done for agricultural purposes. CUC
10 proposes a rate of \$7.25 per 1,000 gallons for this service. The calculation and
11 recommendation is presented in **CUC Exhibit 1**, page 32.

12 35. CUC recommends adoption of a schedule for all non-rate services. In order to
13 establish the cost of these services, Economists.com has performed a study, attached as
14 **CUC Exhibit 1** (Appendix I). This study presents the analysis and rationale for each of
15 the recommended fees. The schedule of fees is presented in **CUC Exhibit 1**, pp. 51-54.

16 **D. Other requests**

17 36. Proposed Revisions to CUC’s Rules and Regulations. CUC requests that the
18 CPUC consider changes to its rules and regulations as set forth in **CUC Exhibit 3**,
19 Testimony of Charles H. Warren.

20 **VI. Informational Matters**

21 37. The United States Coast Guard has notified CUC that there is a \$3.1 million
22 liability for EPA clean-up activities at its power plant facilities. CUC has submitted an
23 inability to pay application with its financial documents to show that it is unable to pay
24 for these projects at this time.

25 38. CUC has commissioned a grid stability study which should be completed August
26 30, 2013. This study will aid CUC to develop renewable energy in a safe and reliable
27
28

1 manner.

2 39. The loan from the power division to the wastewater division authorized in the
3 last rate case did not occur for two reasons. First, CUC did not have ability to track
4 cash collections until we recently implemented the new computer system. So we were
5 not able to separate our receivables in a way that we could meaningfully accumulate the
6 funds to make such a loan. Second, the power division lost money, and so no funds were
7 available to lend to the water division. See **CUC Exhibit 3**, Testimony of Charles H.
8 Warren.

9 **VII. Conclusion and request for relief**

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11 40. The above requirements and facts support and mandate rates that, on a total
12 company basis, are fair, just and reasonable to CUC and its mission, its obligations to its
13 owners, the citizens of the CNMI, to the U.S. Federal District Court, the U.S.
14 Environmental Protection Agency, and to its customers. The law and the facts require
15 that CUC's rates be increased, specifically, the electric, water and wastewater rates.

16 36. For the above-stated reasons, CUC requests that the Commission:

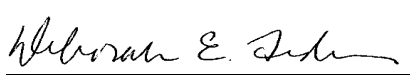
- 17 i. Enter the assigned docket number of 13-01;
- 18 ii. Accept parties to the docket;
- 19 iii. Set a schedule for public notice be given of this petition and this docket, with a
20 hearing date within the dates of September 3-6, 2013;
- 21 iv. Consider the parties' legal and factual arguments;
- 22 v. Hold hearings and/or take written evidence and/or comments on these
23 matters;
- 24 vi. Admit into evidence all the attached testimony and exhibits, a volume of which have
25 been uploaded to a CUC website for this purpose.
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vii. Set increased rates that will provide CUC with a reasonable opportunity to meet the requirements of its current operations and other obligations, as more fully set out in the accompanying testimony and exhibits.

viii. Award to CUC such further relief as the facts and the law merit.

Respectfully submitted,


Deborah E. Fisher
Attorney for Commonwealth Utilities Corporation

Dated: July 5, 2013