



Gov. Msg. No. **17-343**

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**Benigno R. Fitial**  
Governor

**Eloy S. Inos**  
Lt. Governor

Honorable Paul A. Manglona  
Senate President, The Senate  
Seventeenth Northern Marianas  
Commonwealth Legislature  
Saipan, MP 96950

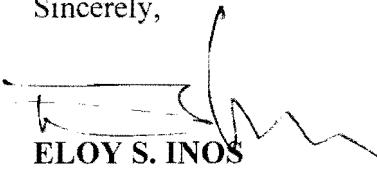
Honorable Eliceo D. Cabrera  
Speaker, House of Representatives  
Seventeenth Northern Marianas  
Commonwealth Legislature  
Saipan, MP 96950

Dear Mr. President and Mr. Speaker:

This is to inform you that I have signed into law House Bill No. 17-114, SS1, SD2, SS2, CCS1, entitled, "To amend Section 3 of Public Law 16-17 to give the CUC the flexibility needed to partner with the private sector to provide reliable service at efficient rates; and for other purposes," which was passed by the House of Representatives and the Senate of the Seventeenth Northern Marianas Commonwealth Legislature.

This bill becomes **Public Law No. 17-34**. Copies bearing my signature are forwarded for your reference.

Sincerely,

  
**ELOY S. INOS**  
Acting Governor

cc: Governor; Attorney General; Press Secretary; Executive Director, Commonwealth Utilities Corporation; Chairperson, Public Utilities Commission; Secretary, Department of Finance; Chief Executive Officer, Commonwealth Development Authority; Secretary, Department of Public Lands; Executive Director, Commonwealth Ports Authority, Commonwealth's Law Revision Commission, Special Assistant for Administration; Special Assistant for Programs and Legislative Review



*Seventeenth Legislature  
of the  
Commonwealth of the Northern Mariana Islands*  
**IN THE HOUSE OF REPRESENTATIVES**

**Second Regular Session**

**October 15, 2010**

**Representative Stanley T. McGinnis Torres**, of Saipan, Precinct 3 (*for himself*), in an open and public meeting with an opportunity for the public to comment, introduced the following Bill:

**H. B. 17-114**

**AN ACT**

**TO RESTORE THE COMMONWEALTH UTILITIES  
CORPORATION'S PROCUREMENT AUTHORITY TO GIVE THE  
CUC THE FLEXIBILITY NEEDED TO PARTNER WITH THE  
PRIVATE SECTOR TO PROVIDE RELIABLE SERVICE AT  
EFFICIENT RATES; AND FOR OTHER PURPOSES.**

The Bill was referred to the House Committee on Public Utilities Transportation and Communication, and placed on the Bill Calendar on October 18, 2010.

**THE BILL WAS PASSED BY THE HOUSE OF REPRESENTATIVES ON  
FIRST AND FINAL READING, OCTOBER 18, 2010;**  
*without amendments* and transmitted to the  
**THE SENATE.**

The Bill was not referred to a Senate Committee.  
**THE BILL WAS PASSED BY THE SENATE ON FIRST AND FINAL READING, FEBRUARY 11, 2011;**  
*with amendments* in the form of H. B. 17-114, SS1, SD1, SS2.

**H. B. 17-114, SS1, SD1, SS2 WAS RETURNED TO THE HOUSE OF REPRESENTATIVES ON  
FEBRUARY 16, 2011.**

The House of Representatives rejected the Senate amendments and the Bill was sent to Conference, which submitted **Conference Committee Report 17-3, in the form of H. B. 17-114, SS1, SD1, SS2, CCS1;**  
**THE BILL WAS PASSED BY THE HOUSE OF REPRESENTATIVES ON March 3, 2011 and by  
THE SENATE ON MARCH 4, 2011.**

A handwritten signature in black ink, appearing to read "L. Muña", is written over a horizontal line.

**Linda B. Muña, House Clerk**



*Seventeenth Legislature*  
*of the*  
*Commonwealth of the Northern Mariana Islands*  
**IN THE HOUSE OF REPRESENTATIVES**

**Third Regular Session**

**March 3, 2011**

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**H. B. 17-114, SS1, SD1, SS2, CCS1**

**AN ACT**

To amend Section 3 of Public Law 16-17 to give the CUC the flexibility needed to partner with the private sector to provide reliable service at efficient rates; and for other purposes.

**Be it enacted by the Seventeenth Northern Marianas  
Commonwealth Legislature:**

1           **Section 1. Findings and Purpose**   The Legislature finds that  
2   Commonwealth ratepayers deserve a utility that constantly delivers high quality  
3   power at reasonable prices. Currently, oil prices are approaching \$100.00 per  
4   barrel for delivery to Saipan and are well over \$100.00 per barrel for delivery to  
5   Rota. It is imperative that CUC be able to provide service which is affordable to  
6   the Commonwealth's residents and businesses.

7           The Legislature further finds that portions of Public Law 16-17 have  
8   placed restrictions on CUC which lead to inefficiencies that translate directly into  
9   higher costs to consumers. These inefficiencies must be removed. It is the

1 purpose of this Act to remove the impediments and inefficiencies and restore  
2 CUC's procurement authority such that it will be able to enter into agreements  
3 with providers to ensure efficient delivery of services at reasonable rates to  
4 consumers. The Legislature declares that this Act is necessary and is a proper use  
5 of the legislative authority conferred by Article II of the Commonwealth  
6 Constitution.

7       **Section 2. Amendment.** Sections 3 of Public Law 16-17 is hereby  
8 amended to read as follows:

9       **"Section 3. PSAA procurement process.**

10               (a) Bids only. The Commonwealth Utilities Corporation (herein  
11 "CUC") shall not enter into any form of performance management  
12 contract, franchise agreement, or private sector assistance agreement  
13 unless the agreement is awarded pursuant to an invitation to bid except as  
14 provided in this section. No such contract shall be awarded pursuant to a  
15 request for proposals (RFP) unless the Attorney General certifies, under  
16 penalty of perjury, that (1) the RFP is the most appropriate procurement  
17 tool for a specific form of PSAA, and (2) such RFP complies with all  
18 CUC procurement regulations, CNMI and federal laws. All RFP,  
19 excepting renewable energy projects in paragraph (b) below, shall be  
20 subject to the provisions of this section.

21               (b) Renewable energy projects. Renewable Energy Projects shall  
22 be exempt from all the provisions of this section. Renewable energy

1 projects are any projects that do not use as their main source of power  
2 generation fossil fuels, including but not limited to oil, coal or natural gas,  
3 but instead use power generating forces including but not limited to wind,  
4 solar, geothermal, biomass or nuclear battery. All that shall be required by  
5 persons seeking business with CUC as renewable energy project  
6 contractors shall be submitting requests for proposal under established  
7 Commonwealth procurement regulations. For the purposes of this act,  
8 renewable energy projects are limited to private sector assistance  
9 agreements where a private renewable energy firm sells or manages  
10 renewable energy power or assets to or on behalf of CUC. An  
11 independent power producer (IPP) selected for renewable energy project  
12 via the RFP process shall not be considered an "eligible customer-  
13 generator" as defined under section 8631 of PL 15-87 and shall not be  
14 subject to the rate or compensation limitations of section 8639(a) of PL  
15 15-87. Under this paragraph, renewable energy projects shall in no case  
16 be interpreted to include the sale, management, franchise, concession,  
17 build/operate/transfer, build/operate/own, independent power producer  
18 contract, contract for a public utilities cooperative or full privatization of  
19 any oil consuming CUC asset.

20 (c) Public documents. A CUC invitation to bid and its attachments,  
21 including any form of performance management contract or franchise  
22 agreement or private partnership for its services and operations as

1 described below, shall be and remain a public document and shall be  
2 posted for review and downloading, without charge, on a website  
3 maintained by CUC.

4 (d) Private sector assistance agreements. CUC may procure private  
5 sector assistance under a private sector assistance agreement ("PSAA").

6 A PSAA is limited to:

7 (1) A performance management contract (PMC) by which  
8 CUC may privatize the generation of its electrical power for a  
9 limited term not to exceed five (5) years;

10 (2) A concession or franchise agreement by which CUC  
11 transfers a utility service, including the related required capital  
12 investment, to the private sector for a limited term not to exceed 25  
13 years;

14 (3) A contract for a public utilities cooperative;

15 (4) A build/operate/transfer (BOT) contract;

16 (5) Build, Operate, Own (BOO) Contract;

17 (6) A contract for an independent power producer (IPP); or

18 (7) Full privatization of CUC as follows: notwithstanding  
19 any provision of law to the contrary, the full privatization of  
20 CUC's electric power generation operation is authorized;

21 (e) Authority. CUC shall procure such private sector assistance  
22 under its procurement regulations (set forth in the Commonwealth

1 Register, Volume 29, No. 06; June 18, 2007), as amended by CUC from  
2 time to time thereafter, and as modified by this Act. No other procurement  
3 regulations shall apply.

4 (f) Limitation of bid. With respect to a PSAA procured pursuant to  
5 subsection (d) (1)-(7) of this section, the invitation for bids shall include a  
6 condition that such PSAA shall establish a renewable energy portfolio  
7 standard of at least fifty percent (50%) of its net electricity sales within  
8 seven (7) years of the PSAA, if such a standard has not yet been met by  
9 CUC, notwithstanding subsection 6 CMC §8622 as amended by Public  
10 Law 15-87.

11 (g) Pre-qualification of Bidders. If the PSAA process requires a  
12 pre-qualification of bidders, then a private business entity that is licensed  
13 in the Commonwealth and, for at least ten years, has been engaged in  
14 business that is closely related to the utility for which the invitation for bid  
15 is being published, is hereby deemed qualified to submit a sealed bid.  
16 This subsection shall not be construed to preclude entities that are not pre-  
17 qualified to submit a sealed bid pursuant to this section.

18 (h) PUC review.

19 (1) Any PSAA award shall not be final unless the Public  
20 Utilities Commission (herein "PUC") approves it under 4 CMC  
21 §§8439, 8440, or 8441 within 42 days.

1                   (2) No contract shall be awarded to any contractor who is  
2                   not already permitted in a U.S. or international jurisdiction, or who  
3                   has not operated a major source of emission in accordance with  
4                   U.S. Environmental Protection Agency (EPA) regulations for at  
5                   least five (5) years.

6                   (3) The involvement of PUC in a CUC PSAA under this  
7                   Act is limited to the process described in Section 4.

8                   (i) "All PSAA procurement shall be subject to 1 CMC § 7404."

9                   **Section 3. Amendment.** Public Law 16-2 § 12 (d) shall be amended as  
10                  follows:

11                   “(d) Notwithstanding subsection (b), once three commissioners  
12                   have been appointed and confirmed, any event, be it resignation, removal,  
13                   or otherwise, which reduces the number of Commissioners below three  
14                   shall not divest the Commission of its authority, and the PUC shall  
15                   continue its duties shorthanded until such time as additional  
16                   commissioners have been duly appointed and confirmed. If, for any  
17                   reason, the Commission consists of only two Commissioners, then a  
18                   quorum for the conduct of the PUC’s business shall be two and decisions  
19                   shall be unanimous until such time as an additional Commissioner or  
20                   Commissioners shall be duly nominated and confirmed. If the  
21                   Commission consists of a sole Commissioner, than a quorum for the  
22                   conduct of the Commission’s business shall be one, but only for a period



1 of 60 days, with the possibility of one 30 day extension only by the  
2 governor, upon a finding that such extension is in the best interest of the  
3 public. Upon expiration of this 60, or 90 days, another PUC  
4 commissioner must be appointed for PUC to continue to act.”

5 **Section 4. Amendment.** Title 4 § 8403 paragraph (e) shall be amended  
6 as follows:

7 “(e) No Commissioner shall be an employee of the government of  
8 the Commonwealth or any of its agencies or any entity regulated by the  
9 Commission, with the exception of any government appointee or  
10 commissioner from the 1<sup>st</sup> or 2<sup>nd</sup> senatorial district, nor may a  
11 commissioner serve as a consultant to any entity regulated by the  
12 Commission, nor may a commissioner serve as a member of any other  
13 government board or commission. Acceptance by a Commissioner of any  
14 position in violation of this section automatically terminates that persons  
15 term of office.”

16 **Section 5. Severability.** If any provisions of this Act or the application  
17 of any such provision to any person or circumstance should be held invalid by a  
18 court of competent jurisdiction, the remainder of this Act or the application of its  
19 provisions to persons or circumstances other than those to which it is held invalid  
20 shall not be affected thereby.

21 **Section 6. Savings Clause.** This Act and any repealer contained herein  
22 shall not be construed as affecting any existing right acquired under contract or

**HOUSE BILL 17-114, SS1, SD1, SS2, CCS1**

1 acquired under statutes repealed or under any rule, regulation, or order adopted  
2 under the statutes. Repealers contained in this Act shall not affect any proceeding  
3 instituted under or pursuant to prior law. The enactment of the Act shall not have  
4 the effect of terminating, or in any way modifying, any liability, civil or criminal,  
5 which shall already be in existence on the date this Act becomes effective.

6 **Section 7. Effective Date.** This Act shall take effect upon its approval by  
7 the Governor, or its becoming law without such approval.

Attested to by:



*Linda B. Muña, House Clerk*

Certified by:



*ELICEO D. CABRERA, SPEAKER*

APPROVED this 10TH day of MARCH, 2011



*ELOY S. INOS  
Acting Governor  
Commonwealth of the Northern Mariana Islands*