

**TWENTY-THIRD NORTHERN MARIANAS COMMONWEALTH  
LEGISLATURE**

**IN THE HOUSE OF REPRESENTATIVES**

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**Regular Session, 2023**

**H. B. 23- 52**

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**A BILL FOR AN ACT**

To authorized the Commonwealth Development Authority (CDA) that they must write off the principal sum and interest loan extended to the Commonwealth Utilities Corporation (CUC); and for other purposes.

**BE IT ENACTED BY THE 23<sup>RD</sup> NORTHERN MARIANAS  
COMMONWEALTH LEGISLATURE:**

1           **Section 1. Short Title.** This act shall be known as the “Loan Write-Off Act  
2 of 2023”

3           **Section 2. Findings and Purpose.**

4           The Commonwealth of the Northern Mariana Islands (CNMI) has been  
5 grappling with a long-standing issue related to the outstanding debt owed by the  
6 Commonwealth Utilities Corporation (CUC) to the Commonwealth Economic  
7 Development Authority (CEDA). The legal and policy implications of this issue  
8 has been the subject of intense scrutiny in recent years, resulting in several  
9 legislative proposals, court cases, and other initiatives aimed at finding a resolution.  
10           The draft legislation currently under consideration seeks to authorize CDA  
11 to write off the principal sum and interest due to it from loans extended to CUC, as

1 referenced in the amended Memorandum of Agreement executed by the two public  
2 corporations in 2004. To support this proposed solution, the legislation provides a  
3 comprehensive analysis of the issue, including important findings that help support  
4 for the proposed solution.

5         Firstly, the CNMI Superior Court case file no. CV01-0248, Commonwealth  
6 Development Authority v. Commonwealth Utilities Corporation, contains  
7 important information about the legal dispute between CDA and CUC over the loan  
8 repayment, including the arguments made by each party and the court's decision or  
9 rulings. This case has been an important reference point for understanding the legal  
10 issues surrounding the debt repayment, and has helped to inform the current  
11 legislative proposal. (Please see attachment).

12         Secondly, the legislative proposals of Public Law No. 13-36, Public Law  
13 No. 15-12, and Public Law No. 15-44 are key policy initiatives passed in the CNMI  
14 Legislature that have sought to address the loan repayment issue. These laws  
15 contain important policy considerations and concerns that have been debated and  
16 discussed at length, and have informed the current legislative proposal. (Please see  
17 attachment).

18         Thirdly, the amended Memorandum of Agreement between CUC and  
19 CEDA executed on January 13, 2004 and January 17, 2004, which references the  
20 loans in question, is a key document in understanding the loan repayment issue.  
21 This agreement establishes the terms and conditions of the loans, including the

1 repayment obligations of CUC, and has been the subject of intense scrutiny and  
2 debate in recent years. (Please see attachment).

3 Fourthly, the outstanding debt owed by CUC to CEDA has had significant  
4 financial implications for both parties, as well for the broader economic stability  
5 and development of the CNMI. The financial condition of CUC is critical to the  
6 economic stability and development of the CNMI, and finding a resolution to the  
7 outstanding debt issue is therefore important.

8 Finally, authorizing CEDA that they must write off the principal sum and  
9 interest due to it from loans extended to CUC, as referenced in the amended  
10 Memorandum of Agreement, is a reasonable and appropriate solution to the loan  
11 repayment issue. This proposed solution takes into account the legal and policy  
12 considerations related to the issue, and is aimed at finding a fair and equitable  
13 resolution that benefits both parties.

14 In conclusion, the findings outlined in the legislation help to provide a  
15 comprehensive understanding of the loan repayment issue between CUC and  
16 CEDA, and build support for the proposed solution of authorizing CEDA to write  
17 off the principal sum and interest due to it from the loans in question. By taking  
18 into account the relevant legal and policy considerations, the legislation seeks to

1 find a fair and equitable resolution that benefits both parties and supports the  
2 economic stability and development of the CNMI.

3 **Section 3. Amendment.** Title 4, Division 10, Chapter 6, §10603 of the  
4 Commonwealth Code is hereby amended to read as follows:

5 “§10603. CEDA-CUC Loan Principal and Interest Write-Off.

6 ~~The Commonwealth Economic Development Authority (CEDA) is hereby~~  
7 ~~authorized to waive the sum of \$45,500,000.00 of the principal amount owed by~~  
8 ~~the Commonwealth Utilities Corporation (CUC), such amount being the aggregate~~  
9 ~~sum of all outstanding sewer and water project loans given to CUC and referenced~~  
10 ~~in the Amended Memorandum of Agreement between CEDA and CUC executed~~  
11 ~~on January 13, 2004 and January 17, 2004, by each respective public corporation.~~  
12 ~~Pursuant to the same Amended Memorandum of Agreement, CEDA is hereby~~  
13 ~~authorized to waive any and all accrued interest owed by CUC on all outstanding~~  
14 ~~loans in accordance with the terms and conditions of the Amended Memorandum~~  
15 ~~of Agreement, such terms and conditions being incorporated herein by reference.~~  
16 ~~However, in the event that CUC’s power division or any section thereof is~~  
17 ~~privatized, fifty percent or \$22,750,000.00 of the principal amount of~~  
18 ~~\$45,500,000.00 shall be rebated to the residential power consumers and the~~

1 ~~remaining fifty percent shall be waived. The said rebate shall be subject to review~~  
2 ~~and approval by the Public Utilities Commission upon privatization.~~

3 A. Definitions. For the purpose of this Act, the following terms shall have  
4 the following meanings:

- 5 1. "CEDA" means the Commonwealth Economic Development  
6 Authority
- 7 2. "CUC" means the Commonwealth Utilities Corporation
- 8 3. "Amended Memorandum of Agreement" refers to the amended  
9 Memorandum of Agreement executed on January 13, 2004 and  
10 January 17, 2004, respectively, by CUC and CEDA
- 11 4. "Loan" refers to the loans extended to CUC by CEDA, as referenced  
12 in the Amended Memorandum of Agreement
- 13 5. "Write-Off" refers to the cancellation of the principal sum and  
14 interest due to CEDA from loans extended to CUC, as authorized by  
15 this Act

16 B. Authorization of Write Off Loans.

- 17 1. The CEDA is hereby required to write off the principal sum and  
18 interest due to it from loans extended to CUC, as referenced in the  
19 Amended Memorandum of Agreement. All shares of stock owned

1           by CEDA in CUC are hereby dissolved, ending any ownership by  
2           CEDA in CUC.

3           2. The write-off authorized under this Act shall be deemed the final  
4           settlement of all debts, obligations, and claims arising from the loans  
5           extended to CUC.

6           3. The write-off authorized under this Act shall not affect any other  
7           rights or obligations of CUC or CEDA under the Amended  
8           Memorandum of Agreement or any other applicable law.

9           **Section 4. Severability.** If any provisions of this Act or the application of  
10          any such provision to any person or circumstance should be held invalid by a court  
11          of competent jurisdiction, the remainder of this Act or the application of its  
12          provisions to persons or circumstances other than those to which it is held invalid  
13          shall not be affected thereby.


14          **Section 5. Savings Clause.** This Act and any repealer contained herein  
15          shall not be construed as affecting any existing right acquired under contract or  
16          acquired under statutes repealed or under any rule, regulation, or order adopted  
17          under the statutes. Repealers contained in this Act shall not affect any proceeding  
18          instituted under or pursuant to prior law. The enactment of the Act shall not have  
19          the effect of terminating, or in any way modifying, any liability, civil or criminal,  
20          which shall already be in existence on the date this Act becomes effective.

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

Prefiled: 5/16/2023

Date: 16 MAY '23

Introduced by: \_\_\_\_\_



Rep. Vincent R. S. Aldan

Reviewed for Legal Sufficiency by:

J. Mauley 5-16-23  
House Legal Counsel

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IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH DEVELOPMENT,  
AUTHORITY,  
  
Plaintiff,  
  
v.  
  
COMMONWEALTH UTILITIES  
CORPORATION,  
  
Defendant.

248D  
Civil Action No. 01-~~0149~~

**ORDER GRANTING  
PLAINTIFF'S CROSS-MOTION  
FOR SUMMARY JUDGMENT  
AND DENYING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

**I. PROCEDURAL BACKGROUND**

This matter came before the court on August 24, 2001, in Courtroom 220 at 9:00 a.m. on Plaintiff's motion for summary judgment and Defendant's cross-motion for summary judgment. Vicente T. Salas, Esq., appeared on behalf of the Plaintiff, the Commonwealth Development Corporation (CDA). Robert T. Torres, Esq., appeared on behalf of the Defendant, the Commonwealth Utilities Corporation (CUC). The court, having reviewed the briefs, affidavits, exhibits and declarations, and having heard and considered the arguments of counsel, now renders its written decision.

**II. FACTS**

On May 31, 1985, the Legislature passed Public Law 4-49, the Commonwealth Development Authority Act, codified at 4 CMC § 10101 *et. seq* (CDA Act). The CDA Act "created as an autonomous public agency of the Commonwealth of the Northern Mariana Islands, a body corporate to be known as

**FOR PUBLICATION**



1 the Commonwealth Development Authority to serve those functions provided for in N.M.I. Const. art.  
2 XI, § 6(c) and such other purposes as this division establishes.” *See* 4 CMC § 10201.

3 On July 10, 1985, the Government of the Commonwealth of the Northern Mariana Islands  
4 (CNMI) entered into a Special Representatives Agreement with the Government of the United States  
5 (Special Representatives Agreement) wherein the United States agreed to provide the CNMI with  
6 \$223,000,000.00 over a seven-year period, beginning October 1, 1985, and ending on September 30,  
7 1992. *See* Special Representatives Agreement (July 10, 1985). \$125,000,000.00 of the aforementioned  
8 funds were allocated for “Capital Development.” *Id.* at 2. Eighty percent (80%) of the “Capital  
9 Development” funds were to be set aside for essential capital improvement products and twenty percent  
10 (20%) of the “Capital Development” funds were set aside to finance a “plan that shall provide for  
11 economic development activities.” *Id.* To provide for such economic development activities the Special  
12 Representative’s Agreement states that “[t]he Government of the Commonwealth of the Northern  
13 Mariana Islands shall establish a revolving fund, into which repayments of principal and interest from  
14 revenue-producing projects shall be deposited for financing of additional revenue-producing capital  
15 development projects.” *Id.*

16 On October 1, 1985, the Legislature passed Public Law 4-47, the Commonwealth Utilities  
17 Corporation Act, codified at 4 CMC § 8111 *et. seq.* (CUC Act). The CUC Act created “in the  
18 Commonwealth government a Commonwealth Utilities Corporation, a public corporation.” *See* 4 CMC  
19 § 8121(a).

20 On July 23, 1986, House Joint Resolution 5-12 was adopted to implement the Special  
21 Representatives Agreement “by maximizing capital development through the use of public and private  
22 financing techniques administered by CDA.” *See* H.J.R. 5-12. House Joint Resolution 5-12 authorized  
23 “the CDA to enter into an agreement to issue tax exempt bonds for infrastructure development in the  
24 sum not to exceed \$140,000,000.00.” *See* H.J.R. 5-12. The \$140,000,000.00 was designated to be  
25 “deposited into a Trust Account and held in a trust for CDA and shall not be committed to any project  
26 except those CIP projects shown on Attachment One hereto, or as such may be amended, until approved  
27 by the affirmative vote of a majority of the members representing the respective Senatorial District as  
28 to projects in that District.” *Id.*, at 2.

1           On July 29, 1987, the Legislature passed Public Law 5-37, amending the CDA Act to include  
2 a new fifth chapter, 4 CMC § 10501 *et. seq.*, which created an Irrevocable Trust Fund and a Revolving  
3 Fund “to appropriate Covenant Multi-Year Financial Funds to the Commonwealth Development  
4 Authority for use.” *See* P. L. 5-37. The Revolving Fund, pursuant to 4 CMC § 1501(k), is defined as  
5 a “fund established by CDA into which repayments of principal and interest from Loan Agreements  
6 made by CDA to borrowing autonomous public agencies with respect to the Bonds shall be deposited  
7 into.” *See* 4 CMC § 1501(k).

8           On October 1, 1987, the CNMI and the United States entered into a Grant Pledge Agreement  
9 wherein the United States pledged the payment of \$228,000,000.00 in guaranteed annual amounts of  
10 direct grant assistance. *See* CUC’s Exhibit C. The Grant Pledge Agreement specifically references a  
11 previous loan agreement between CDA and CUC to finance acquisition and construction of facilities  
12 for generation and public distribution of electrical power. *See* CUC’s Exhibit C, Grant Pledge  
13 Agreement at 2.

14           On February 17, 1988, CDA and CUC entered into a Loan Agreement wherein CDA agreed to  
15 lend \$30,000,00.00 to CUC in exchange for CUC’s agreement to repay such principal to CDA with  
16 interest. *See* CUC’s Exhibit D.

17           On January 13, 1989, CDA and CUC entered into a Loan Agreement whereby CDA agreed to  
18 lend \$16,068,750.00 to CUC in exchange for CUC’s agreement to repay such principal to CDA with  
19 interest. *See* CUC’s Exhibit E.

20           On January 30, 1990, CDA and CUC entered into a Loan Agreement wherein CDA agreed to  
21 lend \$5,000,000.00 to CUC in exchange for CUC’s agreement to repay such principal to CDA with  
22 interest. *See* CUC’s Exhibit F.

23           On August 23, 2001, CDA filed a Complaint for Money Due seeking an order of the court  
24 finding CUC to be in default on the aforementioned Loan Agreements and ordering declaring that the  
25 entire outstanding loan amount, principal plus interest, be immediately due and payable to to enforce  
26 collection through all available remedies.

27           On July 2, 2001, CUC admitted that “[t]here is no question that CUC has defaulted under these  
28 loans. *See* CUC’s Motion for Summary Judgment at 8.

1 **III. ISSUES**

2  
3 1. Whether the underlying complaint seeking to enforce the three (3) loan agreements entered  
4 into by the Commonwealth Development Authority and the Commonwealth Utilities Commission  
5 present a nonjusticiable political question requiring the court to refrain from deciding the matter on the  
6 merits.

7  
8 2. Whether the court shall grant summary judgment in the present matter pursuant to Com. R.  
9 Civ. P. 56 on the ground that there is no dispute as to material fact and that the moving party is entitled  
10 to judgment as a matter of law.

11 **IV. ANALYSIS**

12  
13 A. Separation of Powers / Justiciability of the Present Matter Under the Political Question Doctrine.

14 “The separation of powers concept came into being ‘to safeguard the independence of each  
15 branch of the government and protect it from domination and interference by the others.’” *Sablan v.*  
16 *Tenorio*, 4 N.M.I. 351, 363 (1996).” “The separation of powers concept takes the form of the ‘political  
17 question’ doctrine in the context of judicial review of legislative and executive decisions.” *Id.* “The  
18 political question doctrine, a doctrine of judicial abstention, comes into play when the controversy  
19 brought before the court (1) involves a decision made by a branch of the government coequal to the  
20 judiciary, and (2) concerns a political matter.” *Id.* “The presence of a political question renders the  
21 controversy nonjusticiable.” *Id.* “In other words, it immunizes the disputed legislative or executive  
22 decision from judicial scrutiny. *Id.*

23 “The assessment of whether a given controversy presents a political question must be made on  
24 a case-by-case basis.” *Sablan v. Tenorio, supra* at 363. “A number of factors may be considered in this  
25 analysis: whether there is a textually demonstrable commitment of the issue to a coordinate branch of  
26 government; whether judicially discoverable and manageable standards for assessing the dispute are  
27 lacking; whether a court could render a decision without also making an initial policy determination that  
28 clearly should be left to another branch; whether it would be possible for a court independently to

1 resolve the case without undercutting the respect due to coordinate branches of government; whether  
2 there is an unusual need to adhere to a political decision already made; or whether an embarrassing  
3 situation might be created by various governmental departments ruling on one question.” *Id.*

4 “Deciding whether a matter has in any measure been committed by the Constitution to another branch  
5 of government, or whether the action of that branch exceeds whatever authority has been committed,  
6 is itself a delicate exercise in constitutional interpretation, and is a responsibility of [the court] as  
7 ultimate interpreter of the Constitution.” *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663

8 (1962). “The judicial power of the Commonwealth shall be vested in a judiciary of the Northern  
9 Mariana Islands which shall include one supreme court and one superior court and such other inferior  
10 courts as may be established by law.” N.M.I. Const. art. IV § 1. “The Commonwealth superior court  
11 shall have original jurisdiction in all cases in equity and at law . . .” N.M.I. Const. art. IV § 2.

12 The present matter calls upon the court to interpret the CDA Act, (4 CMC § 10101 *et. seq.*), the  
13 CUC Act (4 CMC § 8111 *et. seq.*), House Joint Resolution 5-12, the Special Representatives  
14 Agreement, Public Law 5-37, and the Grant Pledge Agreement to determine whether the three (3) loan  
15 agreements entered into by the CDA and the CUC are valid and enforceable. “The judiciary is the final  
16 authority on issues of statutory construction.” *Chevron U.S.A. Inc. v. Natural Resources Defense*  
17 *Council*, 104 S.Ct. 2778, 2781 n. 9 (1984). As such, the present matter presents a justiciable question  
18 because there is a textually demonstrable commitment of the issue, statutory interpretation, to the  
19 judiciary branch of government and it is possible for the court to resolve the case without undercutting  
20 the respect due to coordinate branches of government.

21  
22 **B. Summary Judgment Standard.**

23 The standard for summary judgment is set forth in Rule 56 of the Commonwealth Rules of Civil  
24 Procedure. Rule 56(a) provides:

25 A party seeking to recover upon a claim . . . may . . . move with or  
26 without supporting affidavits for a summary judgment in the party’s  
favor upon all or any part thereof. Com. R. Civ. P. 56(a).

27 Rule 56(c) continues:  
28

1 The judgment sought shall be rendered forthwith if the pleadings,  
2 depositions, answers to interrogatories, and admissions on file, together  
3 with the affidavits, if any, show that there is no genuine issue as to any  
4 material fact and that the moving party is entitled to judgment as a matter  
5 of law.

6 Com. R. Civ. P. 56(c). *see also Celotex v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 92 L.Ed.2d 264  
7 (1986). Once a movant for summary judgment has shown that no genuine issue of material fact exists,  
8 the burden shifts to the opponent to show that such an issue does exist. *See Riley v. Public School Sys.*,  
9 4 N.M.I. 85, 89 (1994); *see also Castro v. Hotel Nikko, Saipan, Inc.*, 4 N.M.I. 268, 172 (1995). In  
10 determining whether to grant summary judgment, the court must view the evidence and all inferences  
11 to be drawn from the underlying facts in the light most favorable to the nonmoving party. *See Anderson*  
12 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

13 Pursuant to Com. R. Civ. P. 56(e):

14 When a motion for summary judgment is made and supported as  
15 provided in this rule, an adverse party may not rest upon the mere  
16 allegations or denials of the adverse party's pleading, but the adverse  
17 party's response, by affidavits or as otherwise provided in this rule, must  
18 set forth specific facts showing that there is a genuine issue for trial. If  
19 the adverse party does not so respond, summary judgment, if appropriate,  
20 shall be entered against the adverse party.

21 Com. R. Civ. P. 56(e). To defeat a supported motion for summary judgment, the non-moving party must  
22 assert sufficient factual indicia from which a reasonable trier of fact could reasonably find in his or her  
23 favor." *Castro supra*, at 272 (1995), *citing Anderson, supra* at 249; *see also Eurotex, Inc. v. Muna*, 4  
24 N.M.I. 280, 284 (1995).

25 **B. CUC's Motion for Summary Judgment / CDA's Cross-Motion for Summary Judgment.**

26 Four elements are essential to the formation of a contract: (1) parties capable of contracting;  
27 (2) their consent; (3) a lawful object; and (4) sufficient consideration. *Bretz v. Portland General*  
28 *Electric*, 882 F.2d 411, 413 (9<sup>th</sup> Cir. 1989). CUC asserts that the three (3) Loan Agreements entered into  
were illegal and therefore unenforceable because the CDA lacked the first essential element, the  
capability of lawfully entering into the contracts. CUC claims that House Joint Resolution No. 5-12  
allowed CDA to issue bonds totaling \$140,000,000.00, but that such money was "public funds" which

1 could only be appropriated by the Legislature. CDA, however, asserts that the three (3) loan agreements  
2 were lawfully entered into pursuant to House Joint Resolution No. 5-12, the CDA Act (4 CMC § 10101  
3 *et. seq.*), the Special Representative’s Agreement, and the Grant Pledge Agreement.

4  
5 1. CUC’s Authority to Enter into Loan Agreements.

6 Pursuant to 4 CMC § 8123:

7 Except as otherwise provided or limited in this chapter, or by other law,  
8 in order to carry out its duties, [CUC] shall have all of the powers  
9 conferred by law on a public corporation, and all powers reasonably  
10 incidental to its purpose, including the powers:

- 11 (e) To borrow money from any private or public source, either  
12 within the Commonwealth or the United States or in any other  
13 country, and to give security in connection with such borrowing.

14 4 CMC § 8123. As such, CUC was enabled by the Legislature to borrow money from public sources  
15 and to give security in connection with such borrowing. Accordingly, CUC had the authority to enter  
16 into the Loan Agreements with CDA on February 17, 1988, (\$30,000,00.00), January 13, 1989,  
17 (\$16,068,750.00), and January 30, 1990, (\$5,000,000.00). The question remains, however, whether  
18 CDA had the authority to enter into the Loan Agreements and to lend the aforementioned sums to CUC.

19 2. CDA’s Authority to Enter into the Loan Agreements.

20 On July 29, 1987, the Legislature passed Public Law 5-37, amending the CDA Act to include  
21 a new fifth chapter, 4 CMC § 10501 *et. seq.*, which created an Irrevocable Trust Fund and a Revolving  
22 Fund “to appropriate Covenant Multi-Year Financial Funds to the Commonwealth Development  
23 Authority for use.” *See* P. L. 5-37. The Revolving Fund, pursuant to 4 CMC § 1501(k), is defined as  
24 a “fund established by CDA into which repayments of principal and interest from Loan Agreements  
25 made by CDA to borrowing autonomous public agencies with respect to the Bonds shall be deposited  
26 into.” *See* 4 CMC § 1501(k).

27 CUC contends that the funds established by Public Law 5-37 are “public funds” which must be  
28 appropriated by the Legislature, not by the CDA in the form of loan agreements to autonomous public  
agencies. CUC’s argument, however, fails to take into account the plain language of the CDA Act.

1 First, the funds loaned to CUC in the first and second Loan Agreements were dispersed to the  
2 CDA pursuant to 4 CMC § 10503, which codified the Special Representatives Agreement and the Grant  
3 Pledge Agreement. Pursuant to 4 CMC § 10503:

4 Pursuant to a grant pledge agreement between the Commonwealth and  
5 DOI, or any successor to DOI, with respect to Covenant funds, such  
6 pledged Covenant funds shall be transferred, as received, to the Covenant  
7 funds trustee for deposit in the respective parity lot subaccount of the  
8 trust account, on the dates and in the amounts scheduled in such grant  
9 pledge agreement. **The receipt of such funds into the trust account  
10 shall constitute an act of appropriation by the legislature and shall  
11 enable the funds to be expended as set forth in 4 CMC § 10504.**

12 4 CMC § 10503, *see also* 4 CMC § 10401(a)(6) (“[t]he funds available to the [CDA] as paid-in capital  
13 shall consist of the following . . . [a]ll United States capital development assistance provided pursuant  
14 to the terms of the July 10, 1985, Agreement of the Special Representatives on Future United States  
15 Financial Assistance for the Northern Mariana Islands.” 4 CMC § 10401(a)(6).

16 Second, the plain language of the CDA Act makes it clear that although the above funds may  
17 be “public funds,” the appropriation of such funds is not made by the Legislature as a whole, but rather,  
18 by specific legislators from the affected senatorial districts who, in conjunction with the CDA, would  
19 certify that any dispersal of such funds would only be for those projects set out in House Joint  
20 Resolution 5-12. Specifically, 4 CMC § 10502 states, in pertinent part:

21 Covenant funds may be pledged to secure the payment of principal,  
22 premium and interest on bonds, **the proceeds of which are to be used  
23 by CDA to finance specified capital improvement projects; provided  
24 however, that the indenture of trust shall provide that no bond  
25 proceeds shall be released by the bond trustee from the construction  
26 fund of the indenture of trust for expenditure on a project unless  
27 CDA, by an authorized officer, and the majority of the legislative  
28 members representing the respective senatorial district in which the  
29 CIP project is located, certifies to the bond trustee that such project  
30 is a CIP project further approved pursuant to House Joint  
31 Resolution 5-12, S.D. 1, as amended, by the affirmative vote of a  
32 majority of the legislative members representing the respective  
33 senatorial district in which such CIP project is located . . .**

34 4 CMC § 10502 (emphasis added).

35 The funds referred to above are derived from the Special Representatives Agreement which  
36 provides that the United States would grant the CNMI \$223,000,000.00 over a seven-year period,  
37 beginning October 1, 1985, and ending on September 30, 1992. *See* Special Representatives Agreement  
38

1 (July 10, 1985). \$125,000,000.00 of the aforementioned funds were allocated for “Capital  
2 Development.” *Id.* at 2. Eighty percent (80%) of the “Capital Development” funds were to be set aside  
3 for essential capital improvement products and twenty percent (20%) of the “Capital Development”  
4 funds were set aside to finance a “plan that shall provide for economic development activities.” *Id.*

5 The funds used to finance the first two (2) Loan Agreements were derived from the eighty  
6 percent (80%) of the “Capital Development” funds that were set aside to finance essential capital  
7 improvement projects. The first two (2) Loan Agreements, therefore, are subject to the requirements  
8 of 4 CMC §§10502-10503.

9 The funds used to finance the third Loan Agreement, however, were derived from the twenty  
10 percent (20%) of the “Capital Development” funds that were set aside to finance a “plan that shall  
11 provide for economic development activities.” *Id.* To provide for such economic development activities  
12 the Special Representative’s Agreement states that “[t]he Government of the Commonwealth of the  
13 Northern Mariana Islands shall establish a revolving fund, into which repayments of principal and  
14 interest from revenue-producing projects shall be deposited for financing of additional revenue-  
15 producing capital development projects.” *Id.* The \$5,000,000.00 used to finance the third Loan  
16 Agreement was derived from this money, accordingly, the third Loan Agreement is not subject to the  
17 requirements set forth at 4 CMC §§10502-10503.

18  
19 a. Lawfulness and Enforceability of First Loan Agreement.

20 On February 17, 1988, CDA and CUC entered into a loan agreement wherein CDA  
21 agreed to lend \$30,000,00.00 to CUC in exchange for CUC’s agreement to repay such principal to CDA  
22 with interest. *See* CUC’s Exhibit D. The first Loan Agreement was entered into to finance a Capital  
23 Improvement Project outlined in Appendix C of the agreement. *See* CUC’s Exhibit D. Attached to the  
24 agreement was a copy of the required legislative approval from a majority of the legislative members  
25 representing the Legislative District where the Capital Improvement project was located. *See* CUC’s  
26 Exhibit D. The first Loan Agreement, therefore, was entered into pursuant to the mandates of the House  
27 Joint Resolution No. 5-12, the CDA Act (4 CMC § 10101 *et. seq.*), the Special Representative’s  
28 Agreement, and the Grant Pledge Agreement and is a legal and enforceable contract. Further, given that



1 CUC has admitted that “[t]here is no question that CUC has defaulted under these loans,” the court  
2 finds that CUC is in default and that CDA is entitled to judgment as a matter of law.

3  
4 b. Lawfulness and Enforceability of Second Loan Agreement.

5 On January 13, 1989, CDA and CUC entered into a second Loan Agreement whereby  
6 CDA agreed to lend \$16,068,750.00 to CUC in exchange for CUC’s agreement to repay such principal  
7 to CDA with interest. *See* CUC’s Exhibit E. The second Loan Agreement was entered into to finance  
8 a Capital Improvement Project outlined in Appendix D of the agreement. *See* CUC’s Exhibit E. The  
9 Capital Improvement Project involved financing infrastructure improvements so that CUC could provide  
10 better water services and facilities to the people of the Commonwealth. Attached to the agreement was  
11 a copy of the required legislative approval from a majority of the legislative members representing the  
12 Legislative District where the Capital Improvement project was located. *See* CUC’s Exhibit D,  
13 Appendix G (Third Senatorial District Resolution No. 6-7). The second Loan Agreement, therefore, was  
14 entered into pursuant to the mandates of the House Joint Resolution No. 5-12, the CDA Act (4 CMC  
15 § 10101 *et. seq.*), the Special Representative’s Agreement, and the Grant Pledge Agreement and is a  
16 legal and enforceable contract. Further, given that CUC has admitted that “[t]here is no question that  
17 CUC has defaulted under these loans,” the court finds that CUC is in default and that CDA is entitled  
18 to judgment as a matter of law.

19  
20 c. Lawfulness and Enforceability of Third Loan Agreement.

21 On January 30, 1990, CDA and CUC entered into a third Loan Agreement wherein CDA  
22 agreed to lend \$5,000,000.00 to CUC in exchange for CUC’s agreement to repay such principal to CDA  
23 with interest. *See* CUC’s Exhibit F. The second Loan Agreement was entered into to enable CUC to  
24 to finance a Capital Improvement Project involving the construction of a new “Saipan power plant  
25 number 2.” *See* CUC’s Exhibit F, at 2. The \$5,000,000.00 lent to CUC under the third Loan  
26 Agreement did not come from the same source as those used to fund the first two (2) Loan Agreements.  
27 Specifically, the \$5,000,000.00 was derived from the “capital development funds” which the Special  
28 Representatives Agreement allocated to CDA to “finance a plan that shall provide for economic

1 development activities.” *See* Special Representatives Agreement, July 10, 1985. As such, the third  
2 Loan Agreement did not require legislative approval from a majority of the legislative members  
3 representing the Legislative District where the Capital Improvement project was located. The third Loan  
4 Agreement, therefore, was entered into pursuant to the mandates of the House Joint Resolution No. 5-12,  
5 the CDA Act (4 CMC § 10101 *et. seq.*), the Special Representative’s Agreement, and the Grant Pledge  
6 Agreement and is a legal and enforceable contract. Further, given that CUC has admitted that “[t]here  
7 is no question that CUC has defaulted under these loans,” the court finds that CUC is in default and that  
8 CDA is entitled to judgment as a matter of law.

9  
10 C. Damages / Remedies.

11 The terms of the three (3) Loan Agreements set forth a remedy provision wherein CUC agreed  
12 that upon default, CDA may “[d]eclare the entire outstanding amount of the Loan to be immediately due  
13 and payable, and enforce collection of the same through all remedies available by law.” *See* CUC’s  
14 Exhibit D, at 6-7; CUC’s Exhibit E, at 6; CUC’s Exhibit F, at 6. The court agrees that such a provision  
15 is acceptable and judgment will be entered accordingly.

16 The terms of the three (3) Loan Agreements set forth a second remedy provision wherein, upon  
17 default, the CDA may “[a]ppoint a business entity to manage the operations of CUC . . . [i]f CUC has  
18 an outstanding management contract at the time of the default, CDA may terminate the contract on the  
19 first date permitted by its terms.” *See* CUC’s Exhibit D, at 7; CUC’s Exhibit E, at 6-7; CUC’s Exhibit  
20 F, at 6. CDA, therefore, seeks an order of the court appointing an independent business entity to review  
21 the management operations of CUC and to assume day-to-day management of CUC.

22 The court is concerned that such a remedy would unduly interfere with role of CUC’s Board of  
23 Directors who are appointed by the Governor with the advice and consent of the Senate. As such,  
24 despite the court’s authority to appoint an independent business entity to review the management  
25 operations of CUC and to assume day-to-day management of CUC, the court exercises its discretion to  
26 deny such relief.

27 The court notes that it is disappointed that CUC has failed to responsibly adhere to the terms of  
28 the three (3) Loan Agreements. The court further notes that it is now incumbent on the Executive and

1 Legislative Branches to bear the burden placed upon them by the CNMI electorate to ensure that CUC  
2 is managed in an efficient and accountable manner. There is nothing more important than to ensure that  
3 CUC abides by the mandate set forth at 4 CMC § 8141 which states that “[t]he executive director and  
4 board shall manage [CUC] in a business-like manner so as to provide the most efficient delivery of its  
5 services at the most reasonable cost to consumers.” See 4 CMC § 8141.  
6

## 7 V. CONCLUSION

8 For the foregoing reasons, the court finds that the three (3) Loan Agreements entered into on  
9 February 17, 1988, (\$30,000,000.00), January 13, 1989, (\$16,068,750.00), and January 30, 1990,  
10 (\$5,500,000.00), between the CDA and CUC are legal and enforceable contracts. As such, pursuant to  
11 the terms of the Loan Agreements, and given that CUC has admitted that “[t]here is no question that  
12 CUC has defaulted under these loans”, the court finds that CUC is in default and that CDA is entitled  
13 to judgment as a matter of law. Accordingly, CDA’s cross-motion for summary judgment is  
14 **GRANTED** and CUC’s motion for summary judgment is **DENIED**.

15 In furtherance of the above ruling and in accordance with the remedies provisions set forth in  
16 the three (3) Loan Agreements, the court hereby orders the following:  
17

- 18 1. The entire outstanding amount of the February 17, 1988, Loan  
19 Agreement is immediately due and payable by CUC to CDA;
- 20 2. The entire outstanding amount of the January 13, 1989, Loan  
21 Agreement is immediately due and payable by CUC to CDA; and
- 22 3. The entire outstanding amount of the January 30, 1990, Loan  
23 Agreement is immediately due and payable by CUC to CDA.  
24

25 So ORDERED this 6<sup>th</sup> day of September, 2001.  
26

27 /S/  
28 JUAN T. LIZAMA, Associate Judge

**THIRTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE**

**FIRST SPECIAL SESSION, 2002**

*Public Law 13-36*

**H.B. NO. 13-107, SD1**

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**AN ACT**

To effectuate the terms of the Memorandum of Agreement between the Commonwealth Development Authority and the Commonwealth Utilities Corporation by authorizing the Commonwealth Utilities Corporation to issue shares of cumulative, non-convertible preferred stock valued at \$45,500,000.00 to the Commonwealth Development Authority and to provide for the repayment of debt for users fees for electrical consumption by the CNMI Government according to the terms of the Memorandum of Agreement; and for other purposes.

**BE IT ENACTED BY THE THIRTEENTH NORTHERN MARIANAS  
COMMONWEALTH LEGISLATURE:**

**Section 1. Findings.** The Commonwealth Utilities Corporation (CUC) and the Commonwealth Development Authority (CDA), both public corporations existing as autonomous agencies of the Government of the Commonwealth of the Northern Mariana Islands, have been involved in a legal dispute in the Superior Court of the Commonwealth. The parties desire to settle their disputes in an out-of-court settlement and have agreed on the terms of a mutual settlement that requires, among other things, a waiver of a portion of the debt owed by CUC to CDA and the conversion of the balance of debt to equity ownership. CUC and CDA have reduced the terms and conditions of their agreement to writing and seek the assistance of the legislature in effectuating certain provisions. The legislature finds that the out-of-court settlement reached by CUC and the authority CDA is a reasonable resolution of their differences. The legislature further finds that the terms and conditions of the settlement are in the public interest.

**Section 2. Amendments.** Title 4 CMC § 8123 is hereby amended by adding a new subsection (p) to read as follows:

“(p) To effectuate the settlement of disputes between CUC and the Commonwealth Development Authority (CDA) as required by their Memorandum of Agreement, CUC may issue shares of cumulative, non-convertible, non-transferable preferred stock valued at \$45,500,000.00 to CDA. CUC and CDA may provide by written agreement, subject to the terms and conditions of the Memorandum of Agreement, such terms and conditions being incorporated herein by reference, for (i) guaranteed annual dividends fixed and payable as agreed; (ii) buy-back provisions; (iii) default provisions; (iv) preferred shareholder rights, and (v) consistent with Commonwealth law, such other rights and remedies as are typically found in shareholder and stock purchase agreements.”

**Section 3. Severability.** If any provisions of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

**Section 4. Savings Clause.** This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of the Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence on the date this Act becomes effective.

**Section 5. Effective Date.** This Act shall take effect upon its approval by the Governor, or it becoming law without such approval.

**CERTIFIED BY:**

**ATTESTED TO BY:**

/s/ \_\_\_\_\_  
**HEINZ S. HOFSCHEIDER**  
SPEAKER OF THE HOUSE

/s/ \_\_\_\_\_  
**EVELYN C. FLEMING**  
HOUSE CLERK

**Approved this 10th day of December, 2002**

/s/ \_\_\_\_\_  
**JUAN N. BABAUTA**  
GOVERNOR  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS



**HOUSE OF REPRESENTATIVES**  
FIFTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE  
FIRST REGULAR SESSION, 2006

**PUBLIC LAW NO. 15-12**  
**H. B. No. 15-64, HS1, HD3**

**AN ACT**

To authorize the Commonwealth Development Authority (CDA) to write off the principal sum and interest due to it, from loans extended to the Commonwealth Utilities Corporation referenced in the amended Memorandum of Agreement between CUC and CDA executed on January 13, 2004 and January 17, 2004, by each respective public corporation; and for other purposes.

**BE IT ENACTED BY THE FIFTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:**

1           **Section 1. Findings.** The Legislature finds that the Commonwealth Development  
2 Authority (CDA) and the Commonwealth Utilities Corporation (CUC), formerly a public  
3 corporation and now allocated to the Department of Public Works by Executive Order No.  
4 2006-1, have been involved in a legal dispute regarding loans extended to CUC by CDA in  
5 the Superior Court of the Commonwealth. The parties have attempted to resolve their dispute  
6 numerous times but to no avail and the Superior Court has stated that both parties are  
7 government agencies and could resolve their differences without court intervention. In  
8 January 2004, CUC and CDA executed an Amended Memorandum of Agreement (AMOA)  
9 setting forth the terms of their agreement. The Legislature, however, finds that CUC is in a  
10 state of severe financial crisis and is unable to make payments pursuant to the said AMOA.  
11 At this time, CUC's main struggle surrounds its fuel cost payment every month, costs which  
12 continue to rise each month.

13           Moreover, the Legislature finds that the funds provided to CUC by CDA were from a  
14 \$140 million direct grant assistance to the CNMI from the federal government without any  
15 repayment requirement. The Legislature further finds that CDA acted as a conduit for the  
16 distribution of the said funds which was to be used for infrastructure development in the  
17 CNMI. CDA distributed the said funds to various government agencies, other than CUC,

1 without requiring the said agencies to pay back the funds given to them. Arguably, CUC, too,  
2 should not have to pay back the funds given to it by CDA and the funds were used for  
3 infrastructure development, i.e. power, water, and sewer projects. Accordingly, the  
4 Legislature further finds that it is in the best interest of the CNMI to write off in full CUC's  
5 loans from CDA in order to promote the stability of CUC and to secure the continuity of  
6 public utility services to the people of the CNMI.

7 Furthermore, the Legislature further finds that Public Laws 12-1, and 13-36 are  
8 impediments in the way of rehabilitating and reorganizing the Commonwealth Utilities  
9 Corporation. Accordingly, the legislature finds that it is in the best interest of the people of  
10 the Commonwealth to repeal the above-referenced public laws.

11 **Section 2. Amendment.** Title 4, Division 10, Chapter 6 of the Commonwealth Code  
12 is hereby amended by adding a new § 10603 to read as follows:

13 "§ 10603. *CDA-CUC Loan Principal and Interest Write Off.* The  
14 Commonwealth Development Authority (CDA) is hereby authorized to waive the sum  
15 of \$45,500,000.00 of the principal amount owed by the Commonwealth Utilities  
16 Corporation (CUC), such amount being the aggregate sum of all outstanding sewer  
17 and water project loans given to CUC and referenced in the Amended Memorandum  
18 of Agreement between CDA and CUC executed on January 13, 2004 and January 17,  
19 2004, by each respective public corporation. Pursuant to the same Amended  
20 Memorandum of Agreement, CDA is hereby authorized to waive any and all accrued  
21 interest owed by CUC on all outstanding loans in accordance with the terms and  
22 conditions of the Amended Memorandum of Agreement, such terms and conditions  
23 being incorporated herein by reference. However, in the event that the power  
24 generation system for the CNMI is privatized and controlled by an independent power  
25 producer, fifty percent of the principal amount of \$45,500,000.00 shall be paid by the  
26 independent power producer to the Commonwealth Development Authority. Such  
27 payment shall be reserved and used for loan programs administered by the  
28 Commonwealth Development Authority or its successor agency."



1           **Section 3. Repealer.** The following public laws are hereby repealed in their entirety:

2           A.     Public Law 12-1 is hereby repealed in its entirety.

3           B.     Public Law 13-36 is hereby repealed in its entirety.

4           **Section 4. Severability.** If any provision of this Act or the application of any such  
5 provision to any person or circumstance should be held invalid by a court of competent  
6 jurisdiction, the remainder of this Act or the application of its provisions to persons or  
7 circumstances other than those to which it is held invalid shall not be affected thereby.

8           **Section 5. Savings Clause.** This Act and any repealer contained herein shall not be  
9 construed as affecting any existing right acquired under contract or acquired under statutes  
10 repealed or under any rule, regulation, or order adopted under the statutes. Repealers  
11 contained in this Act shall not affect any proceeding instituted under or pursuant to prior law.  
12 The enactment of the Act shall not have the effect of terminating, or in any way modifying,  
13 any liability, civil or criminal, which shall already be in existence on the date this Act  
14 becomes effective.

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

**CERTIFIED BY:**

**ATTESTED TO BY:**

/s/ \_\_\_\_\_  
**OSCAR M. BABAUTA**  
SPEAKER OF THE HOUSE

/s/ \_\_\_\_\_  
**EVELYN C. FLEMING**  
HOUSE CLERK

**APPROVED on this 6<sup>th</sup> day of JUNE, 2006**

/s/ \_\_\_\_\_  
**BENIGNO R. FITIAL**  
GOVERNOR  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**FIFTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE**

**SECOND REGULAR SESSION, 2006**

PUBLIC LAW NO. 15-44  
**SENATE BILL NO. 15-62, HD2, CCS1**

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**AN ACT**

To amend Section 2 of Public Law 15-12 to further the rehabilitation and reorganization of the Commonwealth Utilities Corporation.

**BE IT ENACTED BY THE FIFTEENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:**

1           **Section 1. Findings and Purpose.** To further the purpose of Public Law 15-12 to  
2 remove impediments to rehabilitating and reorganizing the Commonwealth Utilities  
3 Corporation, the legislature finds that Section 2 of said law must be amended due to  
4 potential, inadvertent consequences that may result. Section 2 of Public Law 15-12  
5 provides, in part, that

6                   . . . in the event that the power generation system for the CNMI is  
7 privatized and controlled by an independent power producer, fifty  
8 percent of the principal amount of \$45,500,000.00 shall be paid by the  
9 independent power producer to the Commonwealth Development  
10 Authority. Such payment shall be reserved and used for loan programs  
11 administered by the Commonwealth Development Authority or its  
12 successor agency.

13 The legislature finds that the above language not only impedes the likelihood of  
14 privatization of the Commonwealth Utilities Corporation but also heightens the risk that the  
15 cost to the independent power producer who takes control of the CNMI's power generation  
16 system might be borne ultimately by Commonwealth consumers should the above-cited  
17 language remain in the statute. Either result is not in the best interest of the CUC and the  
18 already suffering people of the CNMI. Therefore, the purpose of this act is to ensure that

1 privatization in unimpeded and no financial burden because of privatization is placed on  
2 Commonwealth consumers.

3 **Section 2. Amendment.** Section 2 of Public Law 15-12 is amended as follows:

4 “Section 2. Amendment. Title 4, Division 10, Chapter 6 of the  
5 Commonwealth Code is hereby amended by adding a new § 10603 to read as  
6 follows:

7 “§ 10603. *CDA-CUC Loan Principal and Interest Write Off.* The  
8 Commonwealth Development Authority (CDA) is hereby authorized to  
9 waive the sum of \$45,500,000.00 of the principal amount owed by the  
10 Commonwealth Utilities Corporation (CUC), such amount being the  
11 aggregate sum of all outstanding sewer and water project loans given to CUC  
12 and referenced in the Amended Memorandum of Agreement between CDA  
13 and CUC executed on January 13, 2004 and January 17, 2004, by each  
14 respective public corporation. Pursuant to the same Amended Memorandum  
15 of Agreement, CDA is hereby authorized to waive any and all accrued  
16 interest owed by CUC on all outstanding loans in accordance with the terms  
17 and conditions of the Amended Memorandum of Agreement, such terms and  
18 conditions being incorporated herein by reference. ~~However, in the event that~~  
19 ~~the power generation system for the CNMI is privatized and controlled by an~~  
20 ~~independent power producer, fifty percent of the principal amount of~~  
21 ~~\$45,500,000.00 shall be paid by the independent power producer to the~~  
22 ~~Commonwealth Development Authority. Such payment shall be reserved and~~  
23 ~~used for loan programs administered by the Commonwealth Development~~  
24 ~~Authority or its successor agency. However, in the event that CUC’s power~~  
25 ~~division or any section thereof is privatized, fifty percent or \$22,750,000.00~~  
26 ~~of the principal amount of \$45,500,000.00 shall be rebated to the residential~~  
27 ~~power consumers and the remaining fifty percent shall be waived. The said~~  
28 ~~rebate shall be subject to review and approval by the Public Utilities~~  
29 ~~Commission upon privatization.”~~

1           **Section 3. Severability.** If any provision of this Act or the application of any such  
2 provision to any person or circumstance should be held invalid by a court of competent  
3 jurisdiction, the remainder of this Act or the application of its provisions to persons or  
4 circumstances other than those to which it is held invalid shall not be affected thereby.

5           **Section 4. Savings Clause.** This Act and any repealer contained herein shall not be  
6 construed as affecting any existing right acquired under contract or acquired under statutes  
7 repealed or under any rule, regulation or order adopted under the statutes. Repealers  
8 contained in this Act shall not affect any proceeding instituted under or pursuant to prior  
9 law. The enactment of this Act shall not have the effect of terminating, or in any way  
10 modifying, any liability, civil or criminal, which shall already be in existence at the date this  
11 Act becomes effective.

12           **Section 5. Effective Date.** This Act shall take effect upon its approval by the  
13 Governor or upon its becoming law without such approval.

**CERTIFIED BY:**

**ATTESTED BY:**

/S/ \_\_\_\_\_  
for **JOSEPH M. MENDIOLA**  
Acting President of the Senate

/S/ \_\_\_\_\_  
**MARIA FRICA T. PANGELINAN**  
Senate Legislative Secretary

APPROVED this 23<sup>rd</sup> day of January, 2007

/S/ \_\_\_\_\_  
**BENIGNO R. FITIAL**  
**Governor**  
**Commonwealth of the Northern Mariana Islands**