

On My Mind  
9/22/06

The NMI Retirement Board badly needs help, but I am not sure that replacing board members is the answer - even if new Board member(s) were astute, impartial, and knowledgeable (which is hoping for a lot). For starters, the new Defined Contribution Plan is scheduled to start January 1, 2007, a little over three months from now. Yet, the Request For Proposal(RFP) for a third party administrator, to manage the DCP, has yet to be issued.

On top of that, the Retirement Fund has issued another RFP, for services from a "consulting pension counsel" - an attorney who is an expert in pension services - who would "review, identify, develop and analyze fiscal reform measures relating to the CNMI's defined benefit plan and defined contribution plan for public employees." The deadline for the counsel's report is March 31, 2007.

One wonder how the Defined Contribution Plan can go into effect when there is no administrator, and when a review and analysis of the DCP won't be finished until a full three months after the DCP has supposedly gone into effect. And just maybe, shouldn't the hiring of an administrator wait until the counsel's report has been received and reviewed?

The obvious solution, it seems to me, is to postpone the start-up of the DCP until AFTER the legal counsel has submitted his report, and AFTER a third party administrator has been hired. Will that happen? Time will tell.....

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Ever behind the eight-ball, the Retirement Board has only begun asking, just this past week, why it has not heard from retirees - and employees - affected by the suspension of the government contribution to the pension plan. Until last week, the Board had not asked for input, response, or interest from members. But now that there is a question as to whether the Board can represent the members in the law suit it has filed against the government, all of a sudden, the Board is complaining about the absence of member input.

However, the argument being made by government - that the Board has not been aggrieved - is a rather fine point, and not one that is readily grasped by most laypersons. The general assumption is that the Board has the fiduciary duty to protect and provide for the interests of Retirement Fund members, and that therefore it is not necessary for the members to take any action - the Board is their "agent."

It's not clear whether the Board's attorney in the case presently in the court has been ineffective in making that argument, or whether the argument isn't valid. But it's unfair to criticize the members when it had not been made known, or understood and realized that the Board needed, wanted member input.

The Board has also now asked whether it should hire an attorney to represent member interests - seemingly already conceding that the present attorney is not doing so. If in fact the Board does have a fiduciary duty toward its members, and if that duty is not being met at present, and if hiring an attorney would satisfy that duty, isn't it clear that the Board should do so? Why is the Board complaining about member inaction? Why doesn't it just go ahead and do what it is supposed to?

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Also badly in need of help, it would appear, is the CUC Board. After years of attempting to issue an RFP that would lead towards privatization of the utility, the Board has suddenly decided that it cannot issue such an RFP until a Public Utilities Commission is established, and that that can't happen until the legislature passes into law a bill that would do so. What has changed? Why was it ok to work on - and indeed, issue - an RFP for privatization before, and not now? Is this a mere delaying tactic? If so, for whose benefit?

Approval of a bill to establish a public utilities commission may take a while. Two bills have been proposed, one a House bill, the other a Senate substitute bill. Both bills are over 40 pages long, and I have not tried to absorb, understand the nitty-gritty of either bill. But having skimmed both, my general impression is that House bill, H.B. 15-055 HS2 HD3 (not sure what HS means, but HD means House Draft #3), is full of jargon, unnecessarily detailed, and a bit of a jumble - all of which might make it difficult to interpret and apply. Senate substitute bill, HB 15-55 HS2 HD3 SS1 (the SS1 means Senate Substitute #1), on the other hand, reads easily, well, smoothly, logically. It also has a rather lengthy, but very impressive, "Findings" section which spells out all the right principles of what a good utility commission should accomplish. And does not seem so full of the kind of detail that might well belong in regulations, rather than law.

With the two being so different, it's not at all clear how things will fall out. Will the House gracefully yield, and accept the Senate version? Will the House insist on some combination, further messing up the picture? Will the Senate yield, and subject us all to the House version? Whatever happens, if CUC is going to wait for the bill to pass before issuing its privatization RFP, we'll be lucky if we see the RFP even issued before the end of the year.

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In the meantime, while refusing to renew its contract with Pacific Marine and Industrial Corporation (PMIC), the private company running Power Plant IV, CUC has issued an emergency RFP asking for proposals to provide a net output of 10 mw per day - with the bid proposal due October 3, less than four working days after the final issue of bid documents on September 27. The PMIC contract expired July 31, 2006.

I'm told that the intent is not to substitute the power that PMIC is generating, but to find an additional source of power. I think if I were in the power business, I would think long and hard about getting involved with an agency that, at the very same time it is seeking a new power vendor, it is giving a present power supplier a hard time about renewing its contract.

Replacing Board members isn't going to solve CUC's problems either. In this case, it would appear that what is needed is putting someone in place who is knowledgeable, trustworthy, politically astute, who has a successful track record in dealing with the issues now facing CUC - and giving him the authority to do what's necessary to get CUC back in working order.

I've mentioned Abe Malae, at one time Director of the American Samoa Power Authority in this column before, as the perfect candidate for such a job, and I believe he was even being considered. But then his name was dropped. I was never sure why.

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CUC could also do a better job in explaining the changes to the monthly bills it sends out. It took a few phone calls, but what I finally learned was that before, CUC listed "electric

residential" and "fuel surcharge" as two separate items. The first represented actual usage (assuming being metered), and the second the infamous surcharge. Then, for the time rates were undergoing change again, it charged "electrical residential" and something called "electric fuel charges." I never did find out what the difference was.

But now it has changed its terms again, to an "electric fuel charge" and an "electric non-fuel charge" - which, I understand, will remain the labels used on its bills - at least for the time being. The electric fuel charge covers the metered usage and reflects the cost of fuel oil; the "non-fuel charge" covers both a new fixed monthly rate (depending on usage) to cover administrative costs, as well as a 1.6% charge to cover non-fuel costs such as engine maintenance.

The numbers, like the 1.6%, were those recommended by the CUC consultant firm [economy.com](http://economy.com).

Will be interesting to see whether the rates will reflect drops in market fuel oil prices, or only increases....

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The next "Island Business Opportunities" conference is coming up - it will be held in Hawaii in mid-November. One has to admire the U.S. Department of Interior, and its Deputy Assistant Secretary for Insular Affairs David Cohen, for persisting in holding these conferences (this will be the 3<sup>rd</sup>) in the face not only of the CNMI's poor economy and weakening infrastructure, but in the face of rather limited success, at least in the CNMI.

The intent of the conferences is to bring off-island investors together with local businesses in hopes of identifying business opportunities that would mutually interest and satisfy both the investor and the local businessperson. While several investors have taken steps to initiate new businesses in the CNMI, to date none has yet been established.

Cohen insists that he can only provide what is asked for by the island entities, but I would like to suggest, nonetheless, that maybe what is needed is not so much the transfer of off-island business ideas and models to the CNMI, but support and help for the creation of more on-island type businesses such as Tony Pellegrino's shrimp farming, and the NMC's Cooperative Research Education and Extension Service (CREES) tilapia farming project.

This would mean helping people analyze and identify on-island opportunities and develop business plans, making small business loans more readily available, giving people training in how to operate a business once they've made their plans. If government tightens its reins and more people become unemployed, what is needed is an alternate source of income. The newly announced desk-audit of private sector jobs in a search for jobs for islanders is one move in the right direction. What is needed is more such moves. (More on this next week.)

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Movies this week: There's only one new one, a PG, bringing the total PG's to 3, with 4 PG-13's and 2 R's. The ratios are better, but sure would be nice if the films were better. At least football fans will be happy - two football movies are showing, one PG and one PG.

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