September 11, 2007

The Honorable Isaac V. Figir
Speaker
15th FSM Congress
Palikir, Pohnpei, FM 96941

RE: C.A. No. 15-12

Dear Speaker Figir:

I am pleased to inform you that I have designated the following Congressional Act as Public Law No. 15-08:

Congressional Act No. 15-12 "AN ACT TO ENACT A NEW TITLE 27 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA TO GOVERN ESSENTIAL SERVICES AND TO ENACT A NEW CHAPTER 2 THEREOF TO CREATE THE FEDERATED STATES OF MICRONESIA PETROLEUM CORPORATION AS A PUBLIC CORPORATION, AND FOR OTHER PURPOSES".

I sincerely appreciate the support and swift action of the Congress in passing this Act.

Sincerely,

[Signature]
Manny Mori
President

xc: Chief Justice, FSM Supreme Court
Secretary, Department of Justice
Secretary, Department of Finance and Administration
Legislative Counsel, CFSM
PIO, FSM
Library, CFSM
September 08, 2007

His Excellency Manny Mori  
President  
Federated States of Micronesia  
Palikir, Pohnpei FM 96941  

Dear Mr. President:

I have the honor to transmit herewith Congressional Act No. 15-12, "AN ACT TO ENACT A NEW TITLE 27 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA TO GOVERN ESSENTIAL SERVICES AND TO ENACT A NEW CHAPTER 2 THEREOF TO CREATE THE FEDERATED STATES OF MICRONESIA PETROLEUM CORPORATION AS A PUBLIC CORPORATION, AND FOR OTHER PURPOSES.", which was passed by the Fifteenth Congress of the Federated States of Micronesia, Second Special Session, 2007, by a two-thirds vote of all the State delegations as required and as duly certified.

Sincerely yours,

Liwiana K. Ramon  
Chief Clerk, Congress of the  
Federated States of Micronesia  

Enclosures
ACT NO. 15-12

Public Law No. 15 - 08

An Act

To enact a new Title 27 of the Code of the Federated States of Micronesia to govern essential services and to enact a new Chapter 2 thereof to create the Federated States of Micronesia Petroleum Corporation as a public corporation, and for other purposes.

Introduced by: Joe N. Suka (by request)
Date: July 5, 2007

Referred to: Resources and Development Committee
S.C.R. No. 15-23 – September 6, 2007

First Reading: September 6, 2007
Second Reading: September 7, 2007

Liwiana K. Ramon
Chief Clerk, FSM Congress
ACT NO. 15-12


We hereby certify that on September 7 the foregoing act passed Second and Final Reading of the Fifteenth Congress of the Federated States of Micronesia, Second Special Session, 2007, by a two-thirds vote of all the State delegations as required under article IX, section 20, of the Constitution of the Federated States of Micronesia.

Isaac V. Figir
Speaker
Congress of the Federated States of Micronesia

Liwiana K. Ramon
Chief Clerk
Congress of the Federated States of Micronesia
FIFTEENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA
FIRST SPECIAL SESSION, 2007 CONGRESSIONAL BILL NO. 15-39, C.D.1, C.D.2,
C.D.3, C.D.4

AN ACT

To enact a new title 27 of the Code of the Federated States of
Micronesia to govern essential services and to enact a new chapter 2
thereof to create the Federated States of Micronesia Petroleum
Corporation as a public corporation, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. The Code of the Federated States of Micronesia,
as amended, is hereby further amended by enacting a new title 27
entitled "Essential Services".

2 Section 2. The Code of the Federated States of Micronesia,
as amended, is hereby further amended by enacting a new chapter 1
of title 27 which shall be titled "Reserved".

3 Section 3. The Code of the Federated States of Micronesia,
as amended, is hereby further amended by enacting a new chapter 2
of title 27 which shall be entitled "Federated States of
Micronesia Petroleum Corporation Act of 2007".

4 Section 4. The Code of the Federated States of Micronesia,
as amended, is hereby further amended by enacting a new section
201 to chapter 2 of title 27 as follows:

"Section 201. Short title. This chapter may be cited
as the "Federated States of Micronesia Petroleum
Corporation Act of 2007"."

5 Section 5. The Code of the Federated States of Micronesia,
as amended, is hereby further amended by enacting a new section
202 to chapter 2 of title 27 as follows:
"Section 202. Definitions. For the purposes of this chapter and subsequent regulations, the following definitions shall apply unless the context otherwise requires:

(1) "Board" means the Board of Directors appointed under section 213;

(2) "CEO" means the Chief Executive Officer appointed under section 231;

(3) "Chairperson" means the Chairperson of the Board;

(4) "Congress" means the Congress of the Federated States of Micronesia;

(5) "Corporation" means the Federated States of Micronesia Petroleum Corporation;

(6) "Executive Council" means the President of the Federated States of Micronesia and the Governor of each State. As used herein, consent, approval or instruction of the Executive Council shall mean such consent, approval or instruction taken with the unanimous consent of the President and each Governor. For the avoidance of doubt, a written resolution of the Federated States of Micronesia Economic Policy Implementation Council, duly signed by the President and each Governor, shall constitute such an instruction notwithstanding the fact that it is also executed by other officials;

(7) "FSM" means the Federated States of Micronesia;
(8) "Officer" includes any employee of the Corporation vested with a power or duty in accordance with this Chapter;

(9) "Premises" means any piece of land and if there are buildings of any sort erected on that land, includes those buildings, and also includes a ship or other vessel;

(10) "Product" or "Products" means petroleum products including automotive and industrial diesel fuels, gasoline, unleaded petrol, kerosene, Jet A1, lubricants and any other petroleum or alternative fuel products that may now be available or that may become available in the future;

(11) "Secretary" means the Secretary of Finance and Administration of the Federated States of Micronesia;

(12) "State" means a State of the Federated States of Micronesia;

(13) "Works" or "Works of the Corporation" includes the whole of the petroleum storage and dispensing systems and associated works owned, controlled or managed by the Corporation for any purpose associated with its functions under this Act."

Section 6. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 211 to chapter 2 of title 27 as follows:
"Section 211. Establishment of Corporation. The Federated States of Micronesia Petroleum Corporation is hereby established as a public corporation under the laws of the Federated States of Micronesia. It may hereinafter be referred to as "the Corporation".

Section 7. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 212 to chapter 2 of title 27 as follows:

"Section 212. Independence. The Corporation shall not be deemed to be a government department, board or agency and as such is not subject to the laws governing the activities of the government including but not limited to title 52 (the Public Service System Act) and title 55 (The Financial Management Act); provided, however, that nothing herein shall be deemed to waive the Corporation's responsibility to comply with the Financial Management Act if allotted government funds."

Section 8. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 213 to chapter 2 of title 27 as follows:

"Section 213. Board of Directors of the Corporation. The affairs of the Corporation shall be managed and its corporate powers exercised by a Board of Directors, hereinafter referred to as 'the Board.'"

Section 9. The Code of the Federated States of Micronesia,
1 as amended, is hereby further amended by enacting a new section
2 214(a) to chapter 2 of title 27 as follows:
3 "Section 214(a). Appointment and Termination of
4 Directors.
5 (1) The Board shall be composed of seven voting
6 members as follows:
7 (a) one director appointed by the President of
8 the FSM with the advice and consent of Congress;
9 (b) one director appointed by the Governor of
10 the State of Chuuk with the advice and consent of the
11 Chuuk State Senate;
12 (c) one director appointed by the Governor of
13 the State of Kosrae with the advice and consent of the
14 Kosrae State Legislature;
15 (d) one director appointed by the Governor of
16 the State of Pohnpei with the advice and consent of the
17 Pohnpei State Legislature;
18 (e) one director appointed by the Governor of
19 the State of Yap with the advice and consent of the Yap
20 State Legislature; and
21 (f) two directors appointed by the President of
22 the FSM with the advice and consent of Congress from a
23 list of private sector candidates nominated by the four
24 State governors.
25 (2) The persons appointed under subsection 214(a)(1)
must have experience in public administration, environmental matters, finance, or oil and gas distribution. At least one person appointed under subsection 214(a)(1)(f) must have special knowledge and capacity in the field of oil and gas distribution.

(3) No person appointed under subsection 214(a)(1) nor any member of his or her immediate family may possess any pecuniary interest in any business or entity which derives any part of its revenue from the distribution of oil or gas in the Federated States of Micronesia.

(4) The persons appointed under subsection 214(a)(1) hold office for a term of three years, provided, however, that the initial terms of office shall be determined by lot at the first meeting held by the Board with three members serving an initial term of one year, two serving an initial term of two years and two serving an initial term of three years. Provided further, that if no replacement has been appointed prior to the expiration of a director's term, he or she shall continue to serve for an additional period of 90 days or until a replacement is appointed, whichever is less. All members are eligible for reappointment.

(5) Vacancies on the Board shall be filled for the unexpired portion of the term in the same manner as
originally filled.

(6) The Board may, at any time by majority vote, remove any director for failure to attend three consecutive meetings of the Board, or for neglect of duty or malfeasance in office."

Section 10. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 214(b) to chapter 2 of title 27 as follows:

"Section 214(b). Transitional Board of Directors. Notwithstanding section 214(a), the President and the Governors of the States of Chuuk, Kosrae, Pohnpei and Yap shall have the authority to appoint a transitional Board of Directors, whose tenure shall not exceed six months. The transitional Board shall consist of five members whose appointments are not subject to advice and consent by Congress or any branch of a State Legislature. One of the members shall be chosen by the President of the FSM and one shall be chosen by each of the Governors of the four FSM States. Appointment to the transitional Board shall not preclude a permanent appointment under section 214(a) and a permanent appointment pursuant to subsection 214(1)(a, b, c, d, or e) shall immediately replace a person appointed to the transitional Board pursuant to this section. All other requirements of section 214(a) shall apply to the
transitional Board. The initial meeting of the
transitional Board may be called at any time after four
of the five members have been appointed.

Section 11. The Code of the Federated States of Micronesia,
as amended, is hereby further amended by enacting a new section
215 to chapter 2 of title 27 as follows:

"Section 215. Chairperson of the Board. The
Chairperson of the Board shall be chosen by the Board
members by majority vote and shall serve for a term of
one year from the date of selection. The Chairperson may
authorize, in writing, any director to exercise any
power or perform any function conferred on the
Chairperson by or under this Act."

Section 12. The Code of the Federated States of Micronesia,
as amended, is hereby further amended by enacting a new section
216 to chapter 2 of title 27 as follows:

"Section 216. Meetings of the Board.

(1) The Board must meet as often as may be necessary
for the performance of its functions, provided that it
shall meet no less than once per quarter each calendar
year and provided, further, that at least two such
meetings shall require the physical presence of the
directors at a single location.

(2) At any meeting, the quorum of the Board is a
majority of the total directors appointed at the time of
the meeting.

(3) Notice of a meeting of the Board must be given to each director and shall be delivered by hand or sent by post, facsimile, electronic mail or other written message to an address supplied by the director to the Board for this purpose.

(4) Decisions at meetings of the Board are taken by a simple majority of the directors present and voting.

(5) Subject to this section, the Board may regulate its own procedure.

(6) The validity of a proceeding of the Board is not affected by a vacancy in the membership or by any defect in the appointment of a director."

Section 13. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 217 to chapter 2 of title 27 as follows:

"Section 217. Transaction of Business Without Meeting. A resolution of the Board is valid, even though it was not passed at a meeting of the Board, if -

(1) it is signed or assented to by no less than five directors of the Board; and

(2) a notice in writing of the proposed resolution was given to each director no less than 7 Days before the resolution is assented to by any director."

Section 14. The Code of the Federated States of Micronesia,
as amended, is hereby further amended by enacting a new section 218 to chapter 2 of title 27 as follows:

"Section 218. Remuneration of Directors. Directors who are employees of the national government of the FSM or a State government shall receive no additional compensation for their service as members of the Board. The compensation of members who are not Government employees shall be as determined by the Board and published in the minutes and annual report of the Board.

Section 15. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 219 to chapter 2 of title 27 as follows:


(1) A director of the Board who has a direct or indirect personal interest in the outcome of any matter before the Board must disclose the interest to the Board.

(2) The disclosure of an interest under subsection (1) must be recorded in the minutes of the Board.

(3) After making a disclosure under subsection (1),

the director -

(a) in the case of a meeting, must withdraw from the meeting before the commencement of deliberations of the Board in respect of the matter referred to in subsection (1), although the director may be counted for
the purposes of forming a quorum of the Board at the
meeting; and

(b) in any case, must not vote on the matter."

Section 16. The Code of the Federated States of Micronesia,
as amended, is hereby further amended by enacting a new section
220 to chapter 2 of title 27 as follows:

"Section 220. Minutes of Meetings and Business

Transacted. The Board must keep minutes of all its
meetings and business transacted under section 216 and
217 in a proper form. All minutes of the meetings shall
be made available to the public upon request."

Section 17. The Code of the Federated States of Micronesia,
as amended, is hereby further amended by enacting a new section
221 to chapter 2 of title 27 as follows:

"Section 221. Delegation of Board's Powers.

(1) The Board may, from time to time, by notice in
writing under the hand of the Chairperson, delegate to
any person or committee any of the Board's powers under
this Act.

(2) A delegation under this section may be made to a
specified person or committee, or holder for the time
being of a specified office or to the holders of offices
of a specified class.

(3) A delegation may be made subject to such
restrictions and conditions as the Board thinks fit, and
may be made either generally or in relation to any
particular case or class of cases.

(4) A person or committee purporting to exercise a
power of the Board by virtue of a delegation under this
section must, when required to do so, produce evidence
of authority of the person or committee to exercise the
power."

Section 18. The Code of the Federated States of Micronesia,
as amended, is hereby further amended by enacting a new section
231 to chapter 2 of title 27 as follows:

"Section 231. Appointment of Chief Executive Officer.

(1) The Board must appoint a Chief Executive Officer
on such terms and conditions as the Board may determine.

(2) The CEO -

(a) shall serve at the pleasure of the Board;

(b) shall have had not less than five years
experience in the oil industry, or the equivalent
experience in a related profession;

(c) shall not engage in any other business
without the prior consent of the Board;

(d) shall be responsible for the day to day
operation of the Corporation;

(e) shall be responsible for the proper
administration and management of the functions and
affairs of the Corporation;
(f) shall be responsible for developing a five-year plan and an annual plan describing the medium and 
short term goals of the Corporation; and 
(g) must perform such other functions and duties as the Board may determine.

(3) The Board shall review the performance of the Chief Executive Officer at least annually in light of 
the Corporation's goals and objectives, and may terminate the CEO at any time, for any reason.

(4) If the CEO is temporarily absent from FSM, or temporarily unable to perform the duties of office, the Board may, appoint a person to act in the place of the CEO during that period."

Section 19. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 232 to chapter 2 of title 27 as follows:

"Section 232. Appointment of Chief Financial Officer.
The CEO shall appoint, with the concurrence of the Board, a Chief Financial Officer, for such term as shall be directed by the Board. He shall receive and disburse all funds of the Corporation. The Chief Financial Officer shall serve at all times under the direct supervision of the CEO."

Section 20. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section
1 233 to chapter 2 of title 27 as follows:
   "Section 233. Appointment of Health and Safety Officer. The CEO shall appoint, with the concurrence of the Board, a Health and Safety Officer. The Health and Safety Officer, whose duties may be combined with those of another position, shall be responsible for ensuring compliance with all health, safety and environmental laws and for developing, with input from the Board and the Executive Council, health, safety and environmental policies for the day-to-day operation of the Corporation."

2 Section 21. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 234 to chapter 2 of Title 27 as follows:
   "Section 234. Appointment of Other Officers and Staff. To the extent consistent with this Title, the CEO may appoint, retain and terminate, on such terms and conditions as the Board may determine, such officers, employees, agents, or consultants as may be necessary or expedient for carrying out the functions and duties of the Corporation."

3 Section 22. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 241 to chapter 2 of title 27 as follows:
   "Section 241. Functions of the Corporation. The
functions of the Corporation are:

(1) to operate and manage the Works, either directly or through contracting out such management to third parties;

(2) to secure contracts with Product suppliers who will provide the required fuel Products at the lowest cost through competitive bidding to the extent practicable;

(3) to provide oil and gas distribution services on the basis of commercially accepted practices, treating all purchasers of Products on equitable terms in accordance with its published prices and requiring all users to pay for fuel purchased; provided that nothing in this subsection shall prevent the Corporation from using subsidies received from governmental, international or private sources to reduce the overall costs charged to users of public utilities services;

(4) to plan for the continued security of Product supply in the FSM;

(5) to maintain and operate the Works so as to minimize the likelihood of interruption of supply, and to handle the Product in a manner that protects the environment, the safety, and the health of employees and the public;

(6) to make safety, health and environmental
considerations a priority in planning, and in the
development of new products and processes; to advise
promptly, appropriate officials, employees, customers
and the public of information on significant industry-
related safety, health and environmental hazards, and to
recommend protective measures;
(7) to invest surplus revenues of the Corporation in
the maintenance, expansion and improvement of product
facilities and services;
(8) to represent the Federated States of Micronesia
with regard to regional fuel supply initiatives as
requested by the Government of the Federated States of
Micronesia; and
(9) to do all those things which shall be necessary
or incidental to the performance of its functions under
this Chapter."

Section 23. The Code of the Federated States of Micronesia,
as amended, is hereby further amended by enacting a new section
242 to chapter 2 of title 27 as follows:


(1) In performing the functions authorized under this
Chapter or under any other law of the Federated States
of Micronesia, the Corporation shall have the capacity
to exercise all powers normally exercised by a
corporation, including, but not limited to, the
1 following:

   (a) to adopt, alter, and use a corporate seal;

   (b) to adopt and amend bylaws governing the

   conduct of its business and the exercise of its powers;

   (c) to sue and be sued in its corporate name;

   (d) to acquire, in any lawful manner, real,

   personal, or mixed property, either tangible or

   intangible; to hold, maintain, use, and operate such

   property; and to sell, lease, or otherwise dispose of

   such property;

   (e) to, subject to Section 251 and the laws of

   the Federated States of Micronesia, borrow or raise any

   sum or sums of money and to issue corporate bonds on

   such security and upon such terms as may from time to

   time be deemed necessary for the expansion and

   improvement of the Works;

   (f) to retain and terminate the services of

   employees, agents, attorneys, auditors, and independent

   contractors upon such terms and conditions as it may

   deem appropriate; and

   (g) to do all such other things as may be deemed

   incidental to or conducive to the attainment of the

   responsibilities of the Corporation.

   (2) Without limiting the generality of the powers

   given to it by subsection (1), and in addition to any
other powers provided for by this Act, the Corporation shall have the following specific powers—

(a) to acquire, lease, construct, maintain and operate facilities, plant, equipment and infrastructure associated with the supply of Product and the related activities of the Corporation; to erect Works, and install any necessary equipment, machinery and plant for any purpose related to the functions of the Corporation;

(b) to acquire, lease and take over in any lawful manner the business, property, assets, and liabilities of any preexisting entity relating to fuel storage and distribution;

(c) to purchase, lease or otherwise acquire and maintain such personal and real property as the Corporation may from time to time deem necessary for the furtherance of its functions;

(d) to do all such things as it deems expedient to enter into any contract for the sale, lease or purchase of property related to the performance of its functions;

(e) to hire out plant or equipment of the Corporation and to enter into contracts for its operation and management;

(f) to fix, charge and recover rates and fees for the supply of Product and for any other service
provided by the Corporation;

(g) to fix, charge and recover any surcharge on
rates and fees for the supply of Product during any
period when it may be reasonably anticipated that the
supply of Product may be affected by a shortage of
supply;

(h) to ration or differentially allocate the
supply of Product consistent with reasonable business
practices and the needs of customers;

(i) to recover the capital cost of supplying
Product or providing other services to particular
premises on such terms and conditions as the Corporation
determines;

(j) to investigate any failure to comply with
this Act, or any act that effects the ability of the
Corporation to provide services under this Act, and to
take such steps as it considers necessary to secure
compliance with this Act or to prevent interference with
the activities of the Corporation; and

(k) to set and to enforce standards for work
done by contractors and tradesmen relating to the supply
of Product and any other service provided by the
Corporation."

Section 24. The Code of the Federated States of Micronesia,
as amended, is hereby further amended by enacting a new section
243 to chapter 2 of title 27 as follows:

"Section 243. Executive Council May Give Direction and Require Information. The powers, functions and discretion of the Corporation, its Board of Directors and its officers shall be subject to the right and power of the Executive Council to -

(1) request, and obtain from the Corporation, such returns, accounts, and other information as the Executive Council may, from time to time, require, and to institute any investigation, hearing, audit or other informational process as the Executive Council shall deem appropriate; and

(2) set the terms and timing of any subsequent divestment of the assets and operations of the Corporation or for the issuance of common shares of the Corporation; provided any such divestment must provide for the payment or satisfaction of all indebtedness incurred in the formation and operation of the Corporation for which the Government of the Federated States of Micronesia may be obligated or a full and complete release of the Government of the Federated States of Micronesia from liability for the repayment of such loans or indebtedness."

Section 25. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section
1 251 to chapter 2 of title 27 as follows:

"Section 251. Debts and obligations of the Corporation.

(1) Unless otherwise expressly provided by law, the debts and obligations of the Corporation shall not be debts or obligations of the Government of the Federated States of Micronesia or of a Government of a State, nor shall the Government of the Federated States of Micronesia or that of a State be responsible for any such debts or obligations.

(2) Unless an express assumption of liability shall be executed by the Corporation and approved by Resolution of Congress, the Corporation shall not assume, or be deemed to have assumed, the liability of any third party whose assets or operations are acquired by the Corporation, including, without limitation, liabilities arising from any breach of legal or contractual obligation or arising from violation of any law, rule, ordinance, regulation or decree.

(3) During such periods of time there remains outstanding any loans or obligations payable to the Government of the Federated States of Micronesia or any loans or obligations payable by the Corporation to any other party for which the Government of the Federated States of Micronesia may be a guarantor, borrower or otherwise obligated, no new loans or indebtedness
(except credit extended pursuant to energy/fuel supply agreements) in excess of an aggregate amount of $1,000,000 shall be incurred unless approved by Resolution of Congress."

Section 26. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 252 to chapter 2 of title 27 as follows:

"Section 252. Funds of the Corporation.

(1) The funds of the Corporation consist of -

(a) money appropriated from time to time by the FSM Congress and the State legislatures and paid to the Corporation;

(b) money derived from the disposal, lease, or hire of, or any other dealing with, any property vested in or acquired by the Corporation;

(c) money borrowed by the Corporation in accordance with subsection (2);

(d) income from interest referred to in subsection (3); and

(e) except as provided herein, any other moneys that may become payable to the Corporation in respect of the sale of Product or any matter incidental to its functions and powers.

(2) Subject to Section 251, the Corporation may borrow such sums as shall be required by the Corporation
to meet any of its obligations or to perform any of its functions.

(3) The Corporation shall, to the extent practicable, maintain its funds in the form of liquid, interest bearing bank deposits or such other investments as shall be approved in writing by the Board.

(4) The Corporation shall conserve its funds by performing its functions and exercising its powers under this Chapter so as to ensure that the total revenues of the Corporation are sufficient to meet all sums properly chargeable to its revenue account including depreciation and interest on capital."

Section 27. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 253 to chapter 2 of title 27 as follows:

"Section 253. Annual Budget and Costs of Administration.

(1) At such time and in such manner as the Board may prescribe, the Chief Financial Officer shall submit to the Board and to the Executive Council a detailed budget for the next ensuing fiscal year which shall include:

(a) for the last completed fiscal year, audited accounts indicating the prevailing rates and charges applicable to the Product, the amount of gross income generated by the Corporation, and the amount of all
capital and operational expenditures made by the
Corporation, together with the closing balance of all
bank accounts maintained by the Corporation;
(b) for the fiscal year in progress, a statement
showing the estimated amount of gross income and the
estimated amount of all capital and operational
expenditures made by the Corporation, together with such
summaries, schedules, and supporting data as the Board
may deem necessary; and
(c) for the next ensuing fiscal year, a budget
showing anticipated rates and charges for the Product,
the estimated amounts of gross income of the Corporation
and a statement of all estimated capital and operational
expenditures anticipated by the Corporation.
(2) In the event the expenditures identified in
subsection 1(c) are anticipated to exceed the estimated
amount of gross income to be generated by the
Corporation in the next ensuing fiscal year, plus
appropriations, grants, loans or subsidies fully
approved by the Congress of the Federated States of
Micronesia and the amount of any funds, including the
balance of any applicable capital expenditure sinking
funds earmarked for the current year’s expenditures,
carried over from previous fiscal years, the proposed
budget shall include a plan for financing the deficit.
For any fiscal year during which the Corporation is expected to have outstanding loan balances owing to the Federated States of Micronesia or in which the Federated States of Micronesia continues to be obligated or liable for repayment of any portion of a loan or debt of the Corporation, or if the proposed plan to finance a budget deficit pursuant to subsection (2) above includes a grant, loan, guarantee or subsidy from the Federated States of Micronesia, the budget of the Corporation shall be submitted to Congress for approval and no further loans or indebtedness shall be incurred by the Corporation until the budget has been approved by Resolution of Congress."

Section 28. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 254 to chapter 2 of title 27 as follows:

"Section 254. Accounts, Annual Report, and Audit.

(1) The Board, the CEO and the Chief Financial Officer of the Corporation are jointly responsible for ensuring that the Corporation at all times keeps adequate accounts of its transactions and financial affairs, and must, without limitation, ensure that -

(a) all moneys received by the Corporation are properly brought to account;

(b) all payments by the Corporation are properly
authorized;

(c) adequate control is maintained over the Corporation's property and the incurring of liabilities; and

(d) the accounts are kept in accordance with generally accepted accounting principles.

(2) Within three months after the end of each financial year, the Chief Financial Officer must prepare a report of the Corporation's activities during the financial year (referred to as the "Annual Report") and shall submit a copy of the Report to the Secretary, the Board and to the Executive Council.

(3) The Annual Report must contain, among other things -

(a) a statement of financial performance, which shall include a balance sheet, operating statements, a statement of changes in financial position, and an analysis of changes in retained earnings;

(b) a statement summarizing the rates and charges prevailing throughout the prior year with respect to the Product and the outlook for such rates in the coming year;

(c) a statement concerning the condition of the Works and the capital expenditure plan of the Corporation;
(d) the CEO's one and five-year plans required pursuant to section 231 of this Chapter; and

(e) such other information as is required to give a true and fair view of the Corporation's financial and operational affairs.

(4) The annual accounts of the Corporation must be audited by the FSM Public Auditor. For this purpose, the Chief Financial Officer must, within three months after the end of each financial year submit to the Public Auditor -

(a) the statement of financial performance and accompanying accounts of the Corporation for the year;

(b) the most recent budget prepared pursuant to section 253; and

(c) the Annual Report for the year prepared in accordance with subsection (2)."

Section 29. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 255 to chapter 2 of title 27 as follows: .

"Section 255. Tax liability. The Corporation shall be liable for the payment of any tax, assessment or contribution as may be required by law. Nothing herein shall be deemed to exempt employees and independent contractors of the Corporation from any tax liability for services rendered to the Corporation.
Section 30. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 261 to chapter 2 of title 27 as follows:

"Section 261. Operating Standards. The Board, the CEO and the Health and Safety Officer of the Corporation shall be jointly responsible for developing and implementing written operational policies that shall set forth the manner in which the Corporation is to --

(1) manage its business with the goal of preventing incidents and of controlling emissions and wastes to below harmful levels, and to design, operate, and maintain facilities to this end and to respond quickly and effectively to incidents resulting from its operations;

(2) design and maintain facilities, establish management systems, provide training and conduct operations in a manner that safeguards people and property;

(3) identify and manage risks associated with its products and to ensure that Product is not manufactured or sold when it is not possible through proper design, procedures, and practices to provide an appropriate level of safety for people and the environment;

(4) specify precautions required in handling, transporting, using, and disposing of Product and to
take reasonable steps to communicate those precautions
to employees, customers, and others who might be
affected;

(5) comply with all applicable environmental and
industrial and product safety laws and regulations and
to apply responsible standards where laws and
regulations do not exist;

(6) furnish services that reliably meet responsible
standards of performance, efficiency, and courtesy; to
furnish accurate and sufficient information about its
products and services, including details of guarantees
and warranties, so that customers can make informed
purchasing decisions; and where the Corporation's
products reach the ultimate consumer through independent
parties, such as service station dealers and
distributors, to actively encourage such parties to
achieve standards comparable to those which have been
established for the Corporation's own performance; and

(7) undertake appropriate reviews and evaluations of
its operations to measure progress and to foster
compliance with these policies."

Section 30. The Code of the Federated States of Micronesia,
as amended, is hereby further amended by enacting a new section
262 to chapter 2 of title 27 as follows:

"Section 262. Contracts.
(1) The purchase of all supplies and materials and
the construction of all works by independent
contractors, when the expenditure exceeds $20,000, shall
be, by contract, let to the lowest responsible bidder
whose offer adequately responds in quality, fitness, and
capacity to the particular requirements of the proposed
work or materials and supplies called for by the
contract; provided that Product quality and reliability
of Product supply shall be taken into account when
evaluating fuel supply agreements; and provided further
that any initial fuel supply agreement and facilities
operation agreement executed as part of a transaction by
which the Corporation acquires the Works shall be exempt
from such requirement. A notice requesting bids shall be
published at least ten days before bids are received.
The lowest responsible bidder shall be determined by the
CEO using sound judgment and after consultation with the
Board. The Board may reject any and all bids and re-
advertise at its discretion.

(2) If, after rejecting bids for materials and
supplies, the Board determines that, in its opinion, the
materials and supplies may be purchased at a lower price
in the open market, the Board may authorize such
purchases without further observance of the provisions
requiring contracts, bids or notices.
(3) In case of major public calamity, or whenever it is in the interest of public safety or necessary to keep public utilities services operational, the Board may determine that the public interest and necessity demand the immediate expenditure of funds to keep the services operational or in a safe condition, and thereupon authorize the expenditure of such sums as may be needed without the observation of the provisions requiring contracts, bids or notices.

(4) Where reasonable, preference in the letting of contracts shall be given to local contractors based on the procedure provided by Section 405, Title 55 of the FSM Code.

(5) No director shall vote on any contract awarded by the Board in which the director has a direct or indirect financial interest."

Section 31. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 263 to chapter 2 of title 27 as follows:

"Section 263. Power to discontinue or ration supplies.

(1) In addition to any other powers of the Corporation under this Act, the Corporation may, without notice, discontinue, ration or limit any supply of Product or other service provided by it if it considers it necessary or desirable to do so -
(a) by reason of a disruption of international supplies;

(b) by reason of any accident or emergency;

(c) to facilitate any work done or to be done by the Corporation;

(d) to avoid or limit pollution; or

(e) for the conservation of strategic product reserves.

(2) As soon as possible after it has taken any action under sub-section (1) the Corporation shall give notice of its action and indicate the likely duration of the discontinuance or rationing.

(3) The Corporation shall not be liable to any person for any loss or damage suffered by that person, and no person shall have a claim against the Corporation, where there is an increase, diminution or discontinuance in the supply of Product or any other service provided by the Corporation, or where there is a diminution in the quality of products, provided that such increase, diminution or discontinuance is caused by accident, other natural phenomenon or other unavoidable cause, by the Corporation acting in good faith in the proper exercise of its functions, or by the exercise by the Corporation of a power under this Act.

(4) Without limiting the foregoing, if any fees or
charges in respect of any customer, including
governments or governmental units of any type, remain
unpaid thirty (30) calendar days after the date due for
payment, the CEO may discontinue the supply of Product
and services to that customer and may commence legal
action to recover any rates, fees or charges that have
fallen due for payment."

Section 32. The Code of the Federated States of Micronesia,
as amended, is hereby further amended by enacting a new section
264 to chapter 2 of title 27 as follows:

"Section 264. Transition; Employees. The Corporation
may, at its discretion, undertake to hire employees in
good standing of pre-existing entities involved in the
business of oil and gas distribution in the FSM,
provided that the Corporation shall be under no
obligation to do so with respect to any particular
employee, nor shall it be required to hire employees at
the same salaries or to fill the same positions as they
may have enjoyed previously. In the event employees of a
pre-existing entity are employed by the Corporation, all
accrued benefits, sick leave, annual leave and other
contractual obligations owed by the pre-existing entity
to its employees shall remain the obligations of that
entity and shall not be assumed by the Corporation,
except to the extent directed in writing by the Board."
Section 33. The Code of the Federated States of Micronesia, as amended, is hereby further amended by enacting a new section 265 to chapter 2 of title 27 as follows:

"Section 265. Issuance of Shares; divestment.

(1) Upon the written instruction of the Executive Council, the Corporation shall, through the filing of such documents as may be required of privately-held corporations, including, without limitation, Articles of Incorporation, Bylaws and Share Affidavits, capitalize itself through the issuance of common shares and, in such event, the provisions of this Chapter shall be made subject to the terms of the Articles of Incorporation and Bylaws, and nothing in this Chapter shall be read as restricting the payment of dividends, the holding of annual shareholder's meetings, the conduct of audits for the benefit of shareholders, the election of Directors and such other corporate governance and shareholder's rights provisions as may be set out in the Articles of Incorporation and Bylaws and approved by the Executive Council.

(2) Upon the written instruction of the Executive Council, the Corporation shall, subject to the conditions set forth in Section 243, take all necessary steps to divest its assets and operations, in whole or in part, to such entity or entities as shall be directed
by the Executive Council. The Board and officers of the
Corporation shall take all necessary actions to
effectuate such divestment, including the execution of
documents and instruments, and the turnover of books,
records and personal property as shall be necessary to
transfer operations and assets of the Corporation to the
entity or entities designated by the Executive Council.
Upon written instruction of the Executive Council
following such divestment, the Corporation shall wind up
its affairs and cease operation."

Section 34. Effectiveness. This act shall become law upon
approval by the President of the Federated States of Micronesia or
upon its becoming law without such approval.

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09-11, 2007

Manny Mori
President
Federated States of Micronesia