

## PUBLIC UTILITIES

Only the PUC Board of Directors can terminate PUC's general manager. The Governor has no such power under any circumstance. If the PUC Board lacks a quorum, the Governor's power extends only to nominating new Board members who, if confirmed, would allow the Board to have a quorum and thus to transact business. Perman v. Ehsa, 18 FSM R. 432, 438 (Pon. 2012).

The Pohnpei Governor has neither the power nor the authority to exercise any of the powers vested exclusively in the PUC Board. Perman v. Ehsa, 18 FSM R. 432, 438 (Pon. 2012).

Pohnpei Utility Corporation is not part of the executive branch of the Pohnpei state government or part of either of the other two branches. It is an independent agency not subject to or under any of the three branches of government. Perman v. Ehsa, 18 FSM R. 432, 440 (Pon. 2012).

By Chuuk state law, a public utility may enter on any private land to dig out and replace or redistribute at the landowner's instruction earth or soil for the maintenance of any pipe or line, but the landowner's instruction is required only if the soil is to be redistributed. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 422 (Chk. S. Ct. Tr. 2019).

No trespass was committed when the public utility already had an easement over the pipes that it replaced on the plaintiff's land, and the law did not require instruction from the land owner since the soil that the utility dug up to replace the pipes was never redistributed – it was placed over the pipes again. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 423 (Chk. S. Ct. Tr. 2019).

No trespass was committed when the public utility placed primary utility poles to connect the general public in that area to electricity because the landowner's right to possessory interest remains subject to the public utility's right to use the soil above and below the land for public utility purposes. Thus, no interference with the land owner's possessory interest occurred. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 423 (Chk. S. Ct. Tr. 2019).

A public utility did not create a nuisance when it installed primary electric poles and replaced pipes because neither qualify as unreasonable conduct nor an abnormally dangerous activity. Public utilities often engage in the installation and replacement of utilities to provide the entire community with a higher standard of living. Neither create any realistic danger to the landowner or surrounding landowners and they provide benefits to the community. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 423-24 (Chk. S. Ct. Tr. 2019).

Chuuk Public Utilities Corporation is a semi-public entity where the governor of Chuuk appoints its board of directors; it is thus a government actor whose actions are subject to the mandates found within the Chuuk Constitution – including the declaration of rights clause. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

Chuuk state law requires a public utility to consult with the land owner and announce entry before it works on public utilities – but provides no relief for failure to consult. Due process requires consultation with the landowner before installing a new structure on the land (or extending another easement through that land), but the replacement of existing pipes falls outside that due process requirement since that easement already existed. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

The respect for real property, as implicitly recognized under the Chuuk Constitution, requires that if the real property owner is known, a public utility must consult with the landowner before creating a new easement over a land – in part to alleviate the landowner's concerns and to create a practical easement which limits the easement's effect on the owner. But consultation with the real landowner may sometimes be impossible; so when the real property owner is absent or unknown, a public utility company may broadcast two radio announcements about its intent to place a new structure on a particular parcel of land and invite any parties who might have an ownership claim to attend a consultation meeting. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).