



**PUBLIC SERVICES COMMISSION**  
**Virgin Islands of the United States**  
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14 April 2023

VIA Email Only

Roger E. Merritt, Jr.  
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**Unpaid Annual Assessments - Public Services Commission**

Good day, Director Merritt:

In conjunction with the new relationship between the Waste Management Authority and the Public Services Commission, we have an outstanding issue that must be resolved. The Waste Management Authority is several years in arrears on its annual assessments to the Commission. Those outstanding assessments are:

FY2021	\$215,433.45	Order No. 51/2021
FY2022	\$317,739.28	Order No. 27/2021
FY2023	\$362,897.58	Order No. 34/2022
<b>Total</b>	<b>\$896,070.31</b>	

All of these assessments are overdue and owing.

When the Waste Management Authority was first created, it was included in those utilities to be assessed as part of the self-funding of the Public Services Commission. Section 25a of Title 30 provides, in relevant part:

**(a)** As used in this section:

gross operating revenues means *the gross operating revenues* of a public utility derived from intraterritorial regulated operations in the last preceding calendar year except as it relates to the Virgin Islands Water and Power Authority, gross operating revenue calculations do not include fuel charges, referred to as the LEAC (Levelized Energy Adjustment Charge).

*territorial gross operating revenues means the aggregate sum of all of the gross operating revenues of all of the public utilities regulated by the Commission.*

public utility includes public utilities and cable television companies.

**(b)** Each public utility shall, *prior to September 30*, of each year, pay a fee, as determined under subsection (c) of this section, to the Commission except that the Virgin Islands Water and Power Authority shall pay a quarterly fee of the annual assessment by the utilities, consistent with the quarterly allotment to the Public Services Commission by the Office of Management and Budget. The fees shall be deposited into the Public Services Commission Revolving Fund; provided, however, that there is hereby established a ceiling of \$2,500,000 for the amount of said fees to be deposited into the Fund, any excess to be covered into the General Fund.

**(c)** The annual fee for a particular public utility shall be an amount equal to the product of the Commission's total current year assessments and the public utility's revenue ratio. The revenue ratio of a public utility shall be equal to its gross operating revenues divided by the territorial gross operating revenues. The Executive Director of the Commission shall, prior to September 1 of each year, calculate each public utility's fees under this section, and after approval by the Commission, shall notify each such public utility of the amount due.

**(d)** ...

[*Emphasis added.*]

At the initiation of the Waste Management Authority, the Commission worked through the annual and docket specific assessment process with Authority staff. The Commission concluded and the Authority agreed that the revenues received through the appropriation process are in fact for the regulated operations of the Authority. Title 29, Section 494 provides in part:

**(f)** It is in the best interests of the Government of the Virgin Islands to create an autonomous Virgin Islands Waste Management Authority to assume all the powers, duties, and responsibilities pertaining to wastewater and solid waste management services in the Territory, as specified by this chapter; and

**(g)** The provisions of this chapter are hereby declared to be necessary for the protection and enhancement of the public health and welfare and in the public interest.

**(h)** Therefore, the Legislature declares that the purposes of this chapter are:

**(1)** To protect the public health and safety, the health of the environment from the effect of improper, inadequate, and unsound management of waste water and solid waste;

**(2)** To create an autonomous Virgin Islands Waste Management Authority to establish a program of regulation over the management, storage, transportation, collection, treatment and disposal of wastewater and solid waste; and

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(3) To assure the safe and adequate management of all waste within the Virgin Islands.

If there was an argument that the full operations of the Authority are not within the Commission's purview, that argument ended with the passage of Act No. 8471, which added to the list of utilities regulated:

(5) Waste management service provided by the Virgin Islands Waste Management Authority or any successor agency;

The Commission, which is entirely funded by assessments on the regulated utilities, has made both annual and special assessments on the Authority since its inception. And those assessments were paid in a reasonably timely manner from 2007 until 2021.

In 2020 the Authority requested that the Commission permit the annual assessment to be paid in quarterly allotments instead of the single annual assessment provided in the statute; then Commission Executive Director Cole agreed to permit quarterly payments, which were made. In 2021 the Authority again requested that the payments be permitted quarterly; Director Cole again graciously permitted that process. Unfortunately, the Authority has not kept its commitment; a single payment was made in 2021, and nothing since.

The Commission has issued its annual assessment orders generally in September, but we note that the Authority is provided advance notice of the assessment and is subsequently provided the Annual Assessment Order. The outstanding assessments and the respective orders are listed at the beginning of this letter.

If the Authority wishes to challenge an assessment, it may do so before the assessment is made through the Commission's staff and Director. The Authority can also appear before the Commission and request to address the assessment prior to its adoption. Finally, the Authority can seek reconsideration of any order within 30 days of its issuance (30 V.I.C. § 33); following a petition for reconsideration, an order can be appealed to the Superior Court (30 V.I.C. § 34). In these instances, none of these procedures were utilized to challenge the assessments and they are now final.

Please advise how the Authority intends to meet its assessment obligations.

Thank you,  
*/s/ Boyd L. Sprehn*  
Boyd L. Sprehn  
General Counsel

CC: Sandra Setorie, PSC Interim Executive Director  
Brenda Connor, Accounts Maintenance Officer

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