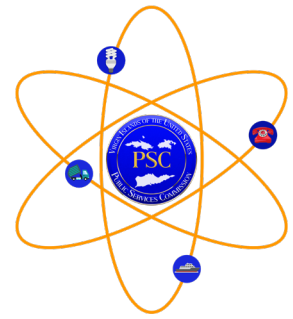




**Government of the United States Virgin Islands
Public Services Commission**

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January 22, 2024

Hon. Sen. Carla J. Joseph
Chair

Committee on Government Operations, Veterans Affairs and Consumer Protection
Capitol Building

P.O. Box 1690

St. Thomas, VI 00804

Senatorcarlajoseph@legvi.org

Re: Public Services Commission Testimony for
January 23, 2024, Block IV, at 3:30 p.m.

Good afternoon Honorable Members of the Committee on Government Operations, Veterans Affairs and Consumer Protection: **Chair** Carla J. Joseph, **Vice-Chair** Javan E. James, Sr., and Senator Kenneth L. Gittens, Senator Samuel Carrion, Senator Alma Francis Heyliger, Senator Ray Fonseca, and Senator Milton E. Potter. The Public Services Commission wants to thank you for the opportunity to testify today.

In your request to the Commission, dated as of January 9, 2024, the Committee requested that we provide you with:

- Overview of the agency to include the enabling law, jurisdiction as well as overall operations,
- Justification for the recent increase in Levelized Energy Adjustment Clause (LEAC) as well as its projected impact on the Rate Payers,
- Status of standard operating policies required by local and/or federal cognizant entity(s),
- Status of assessment discussion with the Virgin Islands Waste Management Authority and,
- Current agency challenges and plan of action to resolve challenges.

Overview:

Every state and territory has some form of Public Services Commission, or more commonly, Public Utilities Commission, though numerous titles are used. In some states there are multiple commissions that each handle a portion of the matters concerning public utilities.

Why were these commissions formed? Originally, certain utilities were described as “natural monopolies.” Examples are railroads, telephone, gas and electrical services. Why natural monopolies? Because each of these services required massive capital investments in delivery systems – Railroad lines, transmission and distribution lines, poles, generating power plants, water retention, pumping and distribution pipelines, often with overlapping flood control and storm systems, sewer systems, waste disposal, etc. It did not make sense to permit multiple sets of power lines, telephone lines, poles, pipelines etc. to be built on city streets. It also became important that all citizens be provided access to the services, and providing services in urban areas is far less costly and more profitable than providing the same service in rural areas. The technologies have changed, and views on the “natural monopolies” have changed as well, but the primary function of ensuring the provision of essential services in a reliable manner and at a reasonable cost remain central to the Commissions.

The general purposes of the Commissions, often referred to as “regulatory commissions,” are:

- Ensure that critical public services are provided to all potential customers at a reasonable cost;
- Provide the privately or Investor Owned Utilities (IOUs) with the opportunity to earn a reasonable rate of return on their investment;
- Adapt to significant changes in technology, resources and public policy; and
- Ensure that services are secure, reliable and, increasingly important, resilient in the face of storms and environmental challenges.

The Virgin Islands seek to achieve these functions through the Public Services Commission. The Commission is created and authorized in Title 3, Section 273.

In 2021, the Commission was reduced to five appointed Commissioners and two ex officio members of the Legislature – currently Senators Carla J. Joseph and Marise C. James. As of December 2023, for the first time in over a decade, the Commission has a full set of appointed commissioners. Commissioners effectively volunteer their time, receiving only a stipend, yet receive a tremendous amount of material regarding these critical services.

For the Virgin Islands, the fully regulated utilities are listed in Title 30, Chapter 1, Section 1:

- (1) telephone service;
- (2) water supply services; except retail deliveries;
- (3) electric power service;
- (4) public marine passenger transportation services operating under government grant of exclusive franchise;
- (5) Waste management service provided by the Virgin Islands Waste Management

The inclusion of Waste Management is a recent change – Act No. 8471 in 2021. From its creation until 2021, the Commission was limited to reviewing rates and fees, but did not look at the Waste Management Authority as a whole. Now it is required to do so.

Other important changes in the law have affected the degree of regulatory control the Commission has over WAPA, and the inclusion of cellular service for customer service issues only.

In addition, federal laws, regulations and orders have both limited our jurisdiction and required Commission action in other ways, particularly in regard to telecommunications.

Other services have been included, but removed for various reasons:

- Cable TV (See Chapter 8, FCC and National Telecommunications Act);
- Car Barges between St. Thomas-St. John;
- Passenger ferry service between St. Thomas and St. Croix; and
- Lighterage (a port service).

In addition, the Commission has jurisdiction over certain aspects of other entities and activities. For example, certification and annual recertification of Eligible Telecommunications Carriers (ETC) for funding through Federal Communications Commission (FCC) programs. We also have jurisdiction over Small Power Production and Cogeneration Facilities through Title 30, Chapter 2, independent of jurisdiction over WAPA through Chapter 1.

The Public Services Commission is required to conduct rate investigations of the regulated utilities at least once every five years.¹ In the coming year several of these investigations will be conducted. Investigations commenced or to be commenced include:

- Franchised ferries: A review of the current rate structure has commenced. In addition, the Commission has been in communication with Public Works regarding the new ferry being built for this service, and will consider its potential impact on rates.
- WAPA's Water System: The Commission has commenced several investigations of WAPA's Water and Electric Systems (which have separate accounting) over the past decade, but the issues with the Electric System have dominated. A rate investigation of the Water System is due.
- Waste Management Authority: The Waste Management Authority was placed within the jurisdiction of the Commission in Act No. 8471, at the end of 2021. The Commission has commenced gathering information to conduct a full review of rates and operations of VIWMA.

¹ **§ 20 Investigations of rates and services**

(a) Upon its own initiative or upon reasonable complaint made against any public utility including the Virgin Islands Water and Power Authority that any of the rates, tolls, charges, or schedules, or services, or time and conditions of payment, or any joint rate or rates, schedules, or services, are in any respect unreasonable or unjustly discriminatory, or any service in connection therewith, is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate or cannot be obtained, or any billing for service inaccurate or erroneous the Commission may, in its discretion, proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, schedules, regulations, or act complained of shall be entered by the Commission without a formal hearing.

(b) Commencing July 30, 2001, the Commission shall conduct rate investigations of all regulated utilities every five years and hold formal hearings as required under subsection (a) of this section.

In addition to on-going activities, the Commission has sought to implement its increased authority to resolve customer service and billing disputes.² The Commission is also publicizing its newly assigned role in addressing consumer complaints regarding cellular service.

Recent Increase in [Water] Levelized Energy Adjustment Clause (LEAC):

The question presented did not specify the Water LEAC charge, however, the Electric LEAC charge has been frozen at \$0.2222/kWh since early 2022. The Commission would like to stress to this Committee and the public that the cost of fuel and purchased power (which is what is included in the Electric LEAC) has been higher than that rate for much of the past two years, however, the Government of the Virgin Islands has chosen to subsidize the excess cost to a very large degree. We also note that the Water and Power Authority has recently asserted that despite the GVI subsidy, WAPA has accrued a \$90M deferred fuel balance, and it will seek to recover that balance in future rates; that is a decision for future determination by the Commissioners.

We also note that one of the reasons that WAPA has not sought to increase the Electric LEAC rate is that it may well be self-defeating to increase rates. At current total electric rates of \$0.42-\$0.46 per kilowatt/hour, WAPA is more expensive than many solar and battery systems. Consequently, WAPA is losing customers and, even for customers who remain on the grid, sales are declining. WAPA must cure that loss of customers and must do so by providing better service at lower cost. Increasing rates would be likely to accelerate the loss of customers and sales.

² § 23 Power of Commission to fix rates and services

...

(c) In addition to the powers granted in subsection (a), the Commission shall have the power to investigate and resolve all customer disputes over billing and complaints about service, including complaints filed pursuant to the Virgin Islands Ratepayers' Bill of Rights established in section 1a of this title, filed against any public utility, including the Virgin Islands Water and Power Authority. Ratepayers must first attempt to resolve the dispute directly with the public utility. A ratepayer may present a dispute to the Public Services Commission for resolution only after the public utility and the ratepayer have failed to resolve the dispute in a manner satisfactory to the ratepayer.

[Added Oct. 26, 2020, No. 8375, § 2, Sess. L. 2020, p. 185.]

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The Water LEAC is a little more complicated to explain. The Water LEAC was also originally implemented to address volatility in the cost of fuel. At that time, WAPA produced all of its water by distillation – the use of equipment referred to “IDE units.” Those plants operated by using steam diverted from the electrical generation units. The cost of that diverted energy (the fuel required) was allocated to the Water System. However, by 2005 the improvements in reverse osmosis (“RO”) technology and the increasing cost of fuel rendered the distillation units excessively costly. Changes in technology had also rendered WAPA’s old steam generating units obsolete.

In 2011/2012 WAPA moved to contract out the production of water to Seven Seas, which had extensive experience in the operation of RO facilities. Those contracts provided that Seven Seas make the necessary capital investments in the new equipment, and WAPA pays only for the water delivered.

RO plants do not need steam, instead operating on pressure. The pressure is provided by electric pumps. WAPA’s Electric System charges the Water System for the electricity delivered. The price of the water includes an adjustment for the cost of electricity.

The Water LEAC had remained below actual cost for a substantial period of time. The Water LEAC adjustment was made to reflect the costs of energy to operate the RO system. It is not related to the larger issues concerning the water quality issues in the distribution system. Those concerns will be addressed in the planned rate investigation.

For your information, attached to the testimony is a cover letter from WAPA to the Commission dated October 12, 2023, which provides additional information on the Water LEAC rate.

Status of standard operating policies required by local and/or federal cognizant entity(s):

Commission staff is in the process of drafting, reviewing and affirming new Standard Operating Procedures (“SOPs”) and policies, including Internal Operating Procedures for accounting, budget and travel policies.

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The Commission staff is also working with VITEMA and FEMA to ensure that disaster response and recovery policies are current and are implemented in the event of future emergencies.

The Commission recently adopted new regulations for the handling of customer service complaints concerning the Water and Power Authority.

The Commission staff is gathering information and drafting procedures for the implementation of customer service processes for cellular service, implementing Chapter 9 of Title 30. Because of the limitations imposed by law, this is and will remain a challenging task. The Commission is also working to inform the public that we are a resource for issues with the cellular carriers.

Our recently appointed Assistant Executive Director, Ms. Tisean Hendricks, is leading the charge in updating our significantly out of date published regulations, and finally, in conjunction with the anticipated rate cases, the Commission staff is reviewing our process for the selection and appointment of hearing examiners.

Status of Annual Assessment Issues with the Virgin Islands Waste Management Authority:

The Public Services Commission is not funded by an direct taxpayer subsidy. The Commission is entirely funded by the entities that are regulated by or appear before the Commission. This system is not unique, but is the standard throughout the United States. And the logic is fairly straightforward – the costs are borne by those who are directly affected by and benefit from the Commission's actions – the utilities and their customers.

Because the Commission is not subsidized by the general fund or tax revenues and its funds remain in its account. Because the Commission has been judicious in its spending, it has accrued a reserve balance; that balance assisted the Commission in making it through the Covid years without additional support. However, the non-payment of assessments by the Waste Management Authority now imperils the Commission's operations.

As a result, Waste Management now has an outstanding balance in excess of \$1.4 million.

Those outstanding and final assessments for prior years are:

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

The assessments for prior years are final and all appeals have been waived.

Since the first quarter of Fiscal Year 2021, the Waste Management Authority has made no payments on its annual assessment to the Public Services Commission.

The core operating expenses of the Public Services Commission are recovered through an annual assessment on the regulated utilities, as defined in our statutes.³ The regulated utilities are assessed based on their revenues, as defined in their audited financial statements for the previous year, allocated pro rata. The extraordinary expenses associated with specific dockets – e.g., rate investigations, eligible telecommunications certifications for FCC purposes, qualified facility status for independent power production, are paid by the affected utility or company.

³ § 25a Annual assessment of utilities

...

(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) The Commission shall, prior to August 1 of each year, submit a report to the Committee on Finance of the Legislature detailing the total amount of appropriations needed by the Commission for the following fiscal year.

At the time the Waste Management Authority was created, the Commission identified to the Legislature the potential issue with the inclusion of the Waste Management Authority as a utility, and its continued subsidization by the GVI. Following the creation of the Waste Management Authority, the Commission met with VIWMA management and reached an agreement as to how the annual assessment would be calculated. That agreement was implemented and followed from 2007 until 2021.

In FY2020 Waste Management requested that it be permitted to pay its assessment in quarterly installments (only WAPA is so permitted in the statute; all others pay a single payment, akin to a property tax). As a courtesy, then Director Cole permitted the quarterly payments. In FY2021 Waste Management again requested quarterly payments, and again it was permitted as a courtesy. However, Waste Management only made the first quarter payment, and has made no payment since that time.

On April 14, 2023, the Commission wrote to Waste Management and explained this in detail. A copy of that letter is attached.

Waste Management has petitioned for reconsideration of its FY2024 assessment. That item is expected to be on the Commission's February agenda.

Current Agency Challenges and Plan Of Action To Resolve Challenges:

The most critical challenge facing the Commission is the inability to collect the annual assessments due from the Waste Management Authority. We are limited in our ability to cure this problem. Only assistance from the Legislature can resolve this problem.

It is our view that the appropriate resolution is for the funds to be included in the appropriation to the Waste Management Authority with clear direction to pay the assessments in full. A direct appropriation to the Commission would solve the financial issues, but would violate the policies for which the current structure was created.

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As we have testified, we have a very busy year planned, and as we move forward we may have additional areas in which we can provide further updates, and may seek your assistance.

We thank you for time and attention, and are ready to respond to your questions.

Sincerely,

/s/ Sandra L. Setorie

Executive Director

Cc: Commissioners