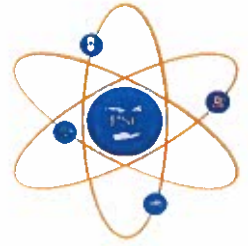




**Government of the United States Virgin Islands
Public Services Commission**

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March 21, 2025

The Honorable Avery L. Lewis
Chairman
Committee on Government Operations, Veterans Affairs, and Consumer
Protection
Capitol Building
P.O. Box 1690
St. Thomas, VI 00804
senatoraverylewis@legvi.org

Re: Public Services Commission Testimony for
March 24, 2025

Good afternoon Honorable Members of the Committee on Government Operations, Veterans Affairs and Consumer Protection: Chairman Avery L. Lewis, Vice-Chairman Novelle E. Francis, Jr., Senator Ray Fonseca, Senator Alma Francis Heyliger, Senator Franklin D. Johnson, Senator Carla J. Joseph, and members of the viewing and listening public. The Public Services Commission thanks the Committee for the opportunity to testify today.

I am Sandra L. Setorie, Executive Director of the Virgin Island Public Services Commission. Accompanying me today are team members Tisean Hendricks, Assistant Executive Director, and Boyd Sprehn, Esq., General Counsel.

You invited us today to testify on “telecommunications, waste, PSC assessment dispute, and energy matters” namely,

- A comprehensive update regarding regulatory matters of the public utilities under the purview of the VIPSC, namely telecommunications, solid waste and wastewater, and energy.

- Status of assessment disputes and violations with regulated utilities, specifically the Virgin Islands Waste Management Authority and Virgin Islands Water and Power Authority.

It is the statutory responsibility of the Commission to undertake rate investigations of each of the regulated utilities at least once every five years (30 VIC § 20(b)). We are providing this briefing to outline the schedule and highlight some of the key issues that will arise in completing these tasks. Because the PSC is concerned with overburdening both the utilities and its own staff, the commencement of these investigations is being staggered over the course of this year.

Telephone:

The Commission's jurisdiction over rates is limited to traditional landline telephone. A rate case was concluded in 2023 under PSC Docket No. 683. In that case, rates were not increased, instead the Commission, in cooperation with the incumbent local exchange carrier ("ILEC"), Viya, the Commission instituted a "rate cap." The rate cap does not permit Viya to charge more than it had previously been authorized (five years earlier in 2018), rather, it allows Viya to reduce its rates to meet the competition from cellular and Voice over Internet Protocol ("VoIP") telephone services.

More recently under Docket No. 690, the Commission determined that the Virgin Islands Telephone Company ("VITELCO," doing business as "Viya") is now facing substantial competition and should be eased from certain regulatory burdens.

Twenty years ago, VITELCO had just under 100,000 telephone lines and received about \$14 million annually in federal support. VITELCO now has fewer than 20,000 lines, and its federal support has been drastically reduced, with plans to phase it out completely in the near future. Cellphones now directly compete with landlines, and Broadband VI's federal support for a new internet service also

requires Broadband VI to provide VoIP service to every address in the Virgin Islands. The Commission will be making recommendations for further changes to the laws governing telephone and telecommunications services.

Ferries:

The Commission has directed PSC staff to begin a rate review of the Ferries in 2024 under Docket No. 691. The Commission has recently appointed SFT Solutions LLC, principal Jed JohnHope, to serve as hearing examiner for this matter. Several issues have been identified by both the Commissioners and staff, and the Hearing Examiner is holding an initial conference this week with the franchisees and PSC staff to discuss the issues the ferry companies wish to address. Additionally, we note that the newly completed ferry, Spirit of 1733, owned by the Department of Public Works and set to be leased to one of the joint franchisees, will be a key consideration in this investigation.

Energy and Water:

Two separate investigations will be conducted.

Docket No. 706 was established to review the electric system rates. The last rate investigation of WAPA's Electric System concluded in January 2020. This investigation will commence with our next meeting, on April 8th. A hearing examiner will be recommended. Commission staff has already held discussions with WAPA's management regarding the initiation of this investigation.

Three additional factors are critical to the timing of the Electric System rate investigation, namely:

1. The final report from the turnaround management consultant, Ernst & Young Turnaround Management Services, LLC (EY), evaluating the financial and operational performance of the WAPA, is due on March 29, 2025. Nearly every

factor the Legislature required to be addressed in the report falls within the Commission's jurisdiction and is relevant to rate setting. While the Turnaround Management Consultant's report will not conclude the Commission's decision, the information gathered and the analysis conducted will be taken into consideration, as it represents work we should not have to duplicate.

2. The Water and Power Authority has also reported that it would receive over \$800 million in grants from the federal government:
 - a. \$660M for St. Croix Electrical Generation;
 - b. \$205M for St. Thomas Electrical Generation;
 - c. \$30M for Automated Metering Infrastructure.

The continued availability of those funds, as well as funds for undergrounding and storm resilience of the distribution systems will also be addressed in the rate investigation.

3. The increased use and reliance on renewable and alternative fuels have seen significant advancements. Since the Commission mandated that Water and Power Authority to move ahead with solar and wind power agreements in 2023, significant progress has been made. By the end of April, St. Croix is expected to have more than 25MW of solar power available, along with some battery backup. St. Thomas is projected to realize another 10 MW, along with substantial battery backup, before the end of 2025, and another 10 MW in 2026. While wind power faced delays due to land leasing issues, its financing is now being finalized. This wind power is expected to come online in the coming years, well before the next mandated investigation.

Docket No. 700 was established during the water quality crisis on St. Croix in 2024. The formal rate investigation is scheduled to begin this summer.

Although the Commission has previously commenced investigations into the Water System, it has been some time since one has been concluded, as the emergency issues with the Electric System have consumed resources. The Water

System is in need of substantial investment and replacement. While line losses on St. Thomas and St. John had been relatively low, they are beginning to increase. Line losses on St. Croix are clearly unacceptable and continuing to increase.

The delivery pipelines on St. Croix are a significant factor in the quality of the delivered water, and in the amount of water necessary to deliver usable water. WAPA has previously reported that federal approval of replacement funding for much of the St. Croix Water System had been obtained; the continued availability of those funds will be addressed in the rates investigations.

Waste Management:

Similar to the Water and Power Authority reviews, two separate rate investigations will be performed.

Since the operations of Solid Waste disposal – including landfills, recycling, hazardous waste, electronic wastes, etc. – are separate from the operation of the wastewater systems, including sewers, each will undergo a distinct investigation. Once again, PSC staff has discussed this bifurcation, the initiation of the investigations, and their overall scope with Waste Management's Interim Director, Mr. Daryl Griffith.

Before the passage of Act No. 8471, the Commission's role was limited to approving the fees and charges of the Waste Management Authority, without broader regulatory oversight. With the authorization of Act No. 8471, this process and jurisdiction have significantly changed. The Commission has been actively seeking information on the total fees, charges, and activities of the Waste Management Authority, but until recently, faced considerable resistance. On the contrary, that posture seems to be shifting, as we recently had a productive meeting between PSC management and WMA's Interim Director Griffith.

Docket No. 707 was established to review the wastewater system rates. The investigation will commence this 2025 summer as well.

A few years after the creation of the Waste Management Authority, the Commission conducted an investigation into its proposed Environmental User Fee ("EUF") and Wastewater User Fee ("WUF"). The Commission conditionally approved the WUF, which has been included in property tax bills for many years. In 2016, the Commission approved a temporary increase in the user fee to \$110.77 per Equivalent Residential Unit, and this amount remains on current tax bills.

Docket No. 708 will focus on the solid waste investigation. The Commission understands that the intent behind Act No. 8471, placing the Waste Management Authority within the jurisdiction of the PSC, was due to WMA's significant failure in fulfilling key aspects of its missions:

- Neither landfill has been closed or made legally and environmentally compliant;
- Waste collection facilities have not been established;
- No major recycling operations have commenced;
- Tires remain a significant issue and hazard;
- Landfill fires remain a threat;
- Sewage systems continued to fail;
- Information on the outstanding consent decrees, judgments and other issues with the US EPA and other agencies or courts remains insufficient;
- The information provided by WMA to the Commission on the fees and funds it collects does not correspond to the fees approved by the PSC or the Legislature;
- Vendors are frequently paid late, if at all; and,
- Perhaps most importantly, WMA remains overwhelmingly dependent on the Legislature for its funding.

In recent testimony before the Legislature, the Authority disclosed its plans to institute a residential fee for solid waste collection and disposal. The Commission staff has advised Waste Management that any petition for new or increased rates must comply with the Ratepayers' Bill of Rights (codified at 30 VIC § 1a), which mandates public notice through publication in the news for at least four weeks in advance of submission to the Commission. The Bill of Rights would normally also include mailed notices to customers enclosed with current bills, this provision does not apply since WMA does not currently issue bills by mail. The Commission anticipates that any fee for residential collection will be included in the scope of this rate investigation. As seen from the brief list of issues above, there are substantial issues of revenue, policy and planning to be considered in this matter.

The Commission is currently conducting a request for qualifications/proposals to seek technical consulting assistance for Solid Waste, Wastewater, Electrical, and Water systems. External expertise will be required for each of these areas.

The Commission had intended to commence its oversight activities for WMA earlier, but WMA's failure to meet its assessed financial obligations to the PSC made it impossible to do so. The Commission could not responsibly enter into a contract with another party without the assurance that the Commission could pay its obligations.

We believe that the question of whether the Waste Management Authority is subject to assessment, including both the annual assessment and the docket-specific assessments (which cover the costs of outside services incurred in those dockets) has now been resolved.

Until this year, the Public Services Commission has never been funded by direct appropriation of general fund resources. Instead, the PSC is funded by assessments on the utilities that it regulates. This approach is a long-standing method used by regulatory commissions throughout the United States and is done

for two main reasons: first, the burden of the regulatory costs is borne by the benefitted parties – the regulated utilities and their customers; and second, to safeguard the Commission's independence and ensure that it can carry out its functions without undue external influence.

The Legislature established the formula for calculating the Annual Assessments, with the key point of contention in the dispute with Waste Management being the term “revenue.” Title 30, Section 25a specifies that the annual assessment is based on the “gross operating revenues” of the utility.

From its inception in 2004 until 2021, the Waste Management Authority consistently paid its annual assessments. Prior to WMA’s creation, the Commission raised concerns with the Legislature about the issuance of assessments and the expectation that Waste Management would require substantial financial support from the Government for an extended period. However, it was also anticipated that Waste Management would gradually become more reliant on fees and charges over time.

In 2021, Waste Management ceased making any effort to pay its annual assessment, and instead asserted – without filing any petitions for reconsideration or appeals – that revenues should not include appropriations from the Legislature. Because no appeals were ever filed, the annual assessments for FY2021, FY2022 and FY2023 are final, due and owing.

In 2023, WMA for the first time filed a petition for reconsideration of its FY2024 annual assessment, and the Commission denied reconsideration. Waste Management failed to file a timely appeal with the Superior Court and the appeal was subsequently dismissed. The FY2024 assessment is now final, due and owing.

In 2024, WMA filed for reconsideration of its FY2025 annual assessment, once more asserting that appropriations should not be considered revenue. However, the Legislature, in establishing the Waste Management Authority, expressly stated

its position that appropriations are revenue. Act No. 6638, as codified in Title 29, Section 495, states:

(x) The term ‘revenues’ means all charges and other receipts derived by the Authority from the operation of the wastewater or solid waste management systems and from all other activities or properties of the Authority, **including, but not limited to, proceeds of bonds, grants, gifts or appropriations to the Authority,** investment earnings and proceeds of insurance or condemnation, and the sale or disposition of real or personal property; provided, however, that amounts paid to or for the account of the Authority shall be included in revenues unless the Authority shall elect that such amount or any portion thereof shall be segregated from other funds of the Authority and applied directly by the Authority or the trustee for the Authority's bonds to the payment of the debt service thereof, in which event, such amount or portions shall not be included in revenues of the Authority for the purposes of this chapter.

[Emphasis added.]

As the laws of the Virgin Islands expressly reject Waste Management’s argument, we do not expect any appeal to be filed, and if one is filed, we expect it to be denied.

The impact of this dispute has been to deplete the PSC of its carefully developed reserve and restrict its operating funds. However, as discussed above, the Commission considers the matter resolved, the dispute closed, and is moving forward in performing its assigned tasks.

We should also acknowledge that the Commission did not receive any of its annual assessment from WAPA in FY2024. WAPA has presented no legal argument, and filed no petitions for reconsideration. WAPA simply asserts that it

is too financially strained. To date, WAPA has also not paid any of its FY2025 annual assessment.

With the most recent Electric LEAC rate, WAPA should now be recovering more than its current fuel costs. While the Commission has not yet determined how much of WAPA's asserted deferred fuel costs should be collected from ratepayers, WAPA's rates for the second quarter of 2025 (April-June) should allow it to begin reducing its Accounts Payable. It is important to note that in a bankruptcy proceeding, regulatory fees such as these are given the highest priority, second only to taxes. The Commission expects WAPA to make the necessary payments for the assessments owed.

In conclusion, the Commission has a full agenda with its regulated utilities and will be addressing many critical issues for the Territory. Improvements in handling waste are essential for our economy, our tourism, our environment, and overall quality of life. Likewise, improvements to our electrical and water systems are, again, critical to our economy, tourism, industry, and our quality of life. St. John cannot function or thrive without cost-effective transportation and reliable connections to the services and facilities available on St. Thomas. Additionally, no modern environment can function without high-quality telecommunications.

We are available to answer any further questions you may have.

Sincerely,



Sandra L. Setorie, Executive Director

cc: Commissioners, VIPSC