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PSC Denies WMA Petition To Reconsider Assessment, Sparking Potential Legal Battle

Public Services Commission rejects WMA's plea for assessment revision

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In denying the Waste Management Authority's petition for reconsideration of its annual assessment, the Public Services Commission has set the stage for a potential legal fight between the two entities.

During the PSC meeting on Tuesday, Florence Kahugu, general counsel for the WMA, said that the PSC's calculation of the agency's annual assessment was done in error, as monies provided by central government as appropriation and special allocation funds should not be included as part of the WMA's inter-territorial regulated operations. As such, the annual assessment should be reduced from over \$400,000 to just over \$14,000.

Darryl Griffith, WMA's chief financial officer, argued that the PSC calculated gross operating revenues from Waste Management in 2022 to be \$53.7 million, compared with their auditors calculation of \$1.3 million. Despite the funding received from the government's appropriations process being put into use to cover operating expenses, Mr. Griffith told commissioners that it was not classed as operating revenue, which he defined as "money generated from a business's core activities." Meanwhile, attorney Kahugu defined the term as "the operating revenue of [a] public utility derived from territorial regulated operations."

The definition of "gross operating revenue" proved to be the intractable point of disagreement between the two parties. Responding to pushback from commissioners, Mr. Griffith insisted that "our auditors firmly disagree" that the money received from the government should be included. Noting that Bert Smith & Co, which also does audits for the Government of the Virgin Islands, has cleared the WMA's financial audits annually, Mr. Griffith remained resolute on the WMA's official stance regarding what is owed to the PSC.

Louis Sylvester, deputy WMA executive director, noted that 95% of the WMA's revenue comes from legislative appropriation. "We have not transitioned to a true agency where we are generating all our revenues from activity like WAPA," he said. Because of this support, WMA does not bill GVI for waste disposal services. The status quo has continued in this manner, Mr. Sylvester said, because an initial proposal shortly after the WMA was designated as a semi-autonomous instrumentality to charge two cents per pound of waste was vigorously rejected by the business and residential communities. "That had to be rescinded", he noted. "In the absence of that methodology of funding the agency, the government has continued subsidizing the operation," Mr. Sylvester continued. "We are an independent authority in name, but not necessarily in finance."

Despite WMA's assertions, PSC staff pushed back, saying that when the commission assumed full jurisdiction over the agency in 2021, the Legislature was alerted that assessments could potentially be problematic since the WMA would not be fully self-funded, but would receive revenue from other sources including appropriations from the Legislature. However, lawmakers took no action to make any special exceptions for the WMA. Additionally, the agency has paid previous annual assessments from 2007-2021 without complaint.

Choosing to rely on the largesse of central government, having made no significant proposals for self-funding, should not excuse the WMA from paying the assessment as currently calculated, the PSC argued.

Recommendations made to the commissioners were to deny the WMA's petition for a review of their most recent assessment, and also to formally open a rate investigation into the agency's operations. It was emphasized that the only sum up for debate was the current assessment. The arrears of approximately \$1.3 million, commissioners were informed, were due in full, as the timeframe in which the WMA was able to dispute previous assessments had already expired.

Ms. Kahugu said that if the petition was denied, "we will be proceeding to the Superior Court accordingly." She was reminded that all legal costs, including those of the PSC, would have to be borne by the WMA if the matter goes to court.

Ultimately, commissioners unanimously voted to deny WMA's petition for reconsideration of their assessment, and similarly voted to prepare a scope for the initiation of a full rate investigation into the agency.

