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PSC Commissioner Demands Hiring of Hearing Examiner to Verify WAPA's Water Testing

Amid concerns over water safety and transparency, PSC Commissioner David Hughes insists on immediate hiring to oversee WAPA's compliance and testing protocols

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At the end of an update from representatives of the Water and Power Authority on the state of play following last year's scare over findings of elevated levels of lead and copper in the water supply on St. Croix, Public Services Commission member David Hughes had a pointed question for the PSC's own staff. "Where's our hearing examiner?" he asked, a question he also posed during the PSC's meeting in February.

According to a Request for Qualifications posted on the PSC website in 2023, a hearing examiner "reviews and interprets public utilities' local and federal regulations, conducts hearings, and

renders recommendations of an appropriate order or decision by the PSC.” In this case, as Mr. Hughes put it in February, the prospective hearing examiner would focus on “working with the utility to understand...more fully our interests as a commission.”

During Tuesday’s meeting, Mr. Hughes noted that the PSC “should be involved, or at least be taking the steps to assure ourselves that the utility has a regular testing program that we’re comfortable with on behalf of the consumer.”

Unsatisfied with PSC Executive Director Sandra Setorie’s response that “we’re working on it,” Mr. Hughes argued that “we as a Commission are not doing what we’re supposed to do” when it comes to ensuring that water emergencies such as the one St. Croix endured last year are avoided. “WAPA should never have had to do 65 samples due to complaints on brown water to find out that there was some latent lead, they should have a regular testing program in place that would have uncovered this on a regular basis,” Mr. Hughes argued.

WAPA’s director of Water Distribution for St. Croix, Don Gregoire, took exception to the commissioner’s statement. “We do test the water as per our EPA protocols,” he insisted, noting that EPA guidelines were, after the alarm over lead levels, changed to once again require testing every six months. “And we do have our own lab on site that tests the water every day,” said Mr. Gregoire.

Mr. Hughes was not convinced. “This Commission cannot possibly have any confidence in that program because we don’t know what it is,” he said to Mr. Gregoire.

The efficacy of WAPA’s testing program on St. Croix, such that it is, has been [thrown into question](#) recently. An explosive lawsuit from a former lab supervisor alleges that the St. Croix laboratory was a morass of lapsed certifications, missing reagents, and compromised sample collection points out in the field. “Plaintiff realized that there was no actual proper water testing laboratory at WAPA St. Croix,” the lawsuit from Carl Potter Jr. declares.

The circumstances described in Mr. Potter’s lawsuit perhaps give credence to Mr. Hughes’s argument that PSC oversight of the process is urgently required. “The purpose of the hearing examiner is not necessarily to find out that you’re not doing your job,” Mr. Hughes said to Mr. Gregoire during Tuesday’s meeting. “It’s for us to understand that you’re doing your job and how you’re doing it.”

Arguing that WAPA currently suffers from “a deficit of public information and transparency,” Mr. Hughes argued that the onus was on the PSC to ensure that the public was suitably informed. “We’re not doing our job,” said Mr. Hughes of the commission’s failure thus far to identify and appoint a hearing examiner. “We have a regulatory role. We’re not discharging it,” he admonished.

In his update to the PSC, WAPA Chief Operating Officer for Water Noel Hodge confirmed that the [much-touted](#) billion-dollar prudent replacement grant from the Federal Emergency Management Agency had been awarded to WAPA to completely replace St. Croix’s water distribution infrastructure. The agency is currently in the process of developing a capital improvement master plan that is intended to be executed over the span of 20 years. FEMA’s final decision on a fixed cost offer is anticipated by September of 2024, with construction on the first projects expected to begin perhaps three years after that.