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“Why Would We Pay For Something Twice?” Vote To Approve Battery Lease Agreement Despite Troubling Clauses Narrowly Fails At WAPA Board Meeting

Despite push from several board members, unresolved concerns about battery lifespan and double payments lead to the defeat of the motion

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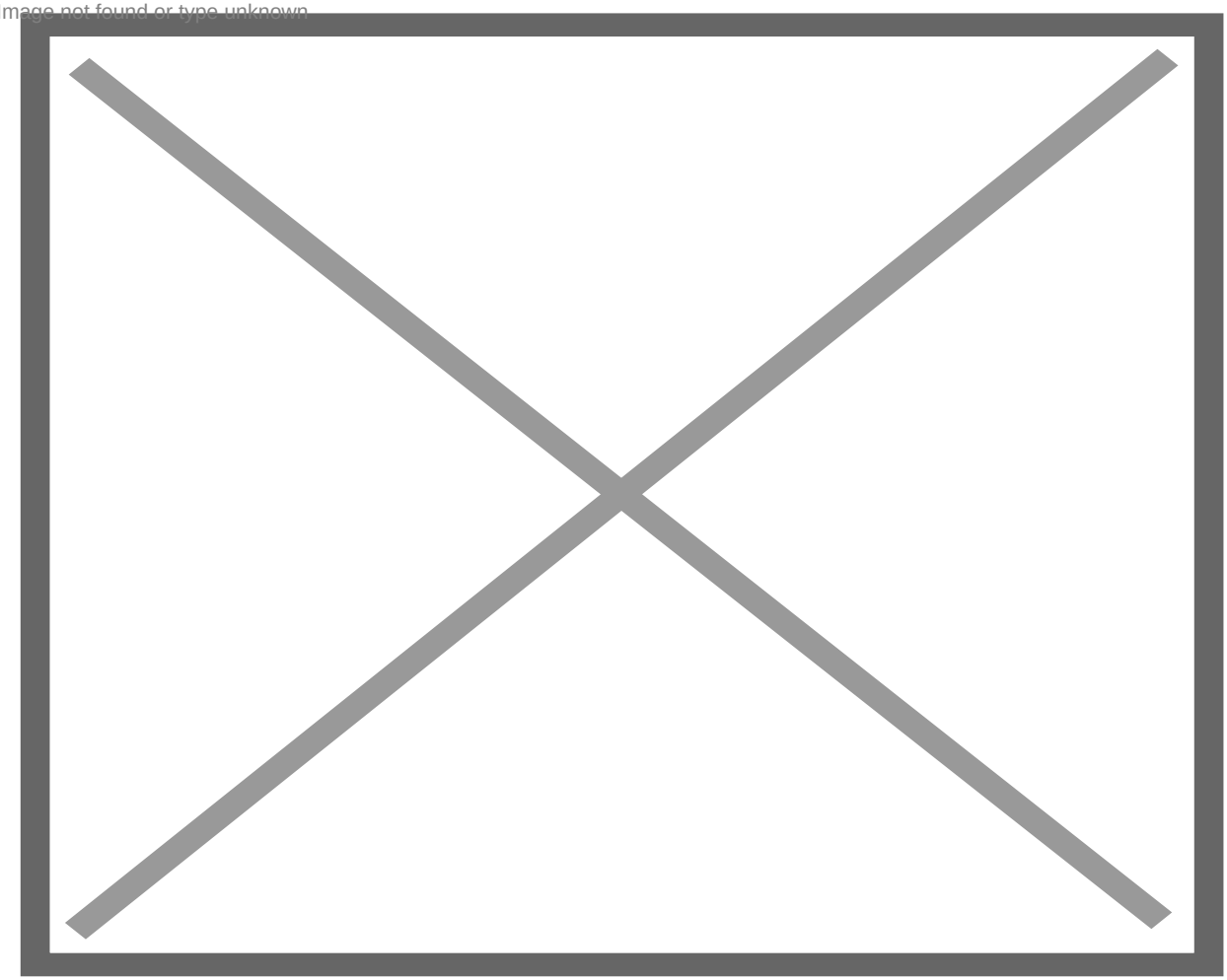

V.I. Electron's Estate Petronella site on the South Shore of St. Croix on Thursday, June 28 2024. By. V.I. CONSORTIUM

During Thursday’s meeting of the Water and Power Authority Governing Board, members narrowly defeated a motion to approve a battery lease agreement despite several unresolved concerns about the contract being raised by board members and WAPA management.?

Up for discussion was the agreement between WAPA and V.I. Electron to supply battery storage to the solar farm at Estate Petronella on St. Croix. The solar farm, once energized and connected to the grid, is supposed to be the vanguard of a major investment in renewable, sustainable, cleaner energy in the territory.

?The battery storage lease would run over the course of 25 years, representing a total of approximately $24.2 million over its lifespan. In response to a question from Kyle Fleming, who was replaced as board chair during this meeting by Hubert Turnbull, WAPA CEO Andrew Smith noted that the batteries in question have a useful life “somewhere in the 12 to 14 year range.” With no clause in the lease that stipulates a schedule for replacement or refurbishment of the battery, Mr. Smith confirmed Mr. Fleming’s assessment that, “What’s put in place on day one is what we’re expecting to have to survive the 25 years.” One mitigating factor, explained Mr. Smith, is that the lease is structured so that the level of payment is tied to battery performance. This could set up a financial incentive for VI Election to ensure that batteries are operating as efficiently as possible so that their revenue remains at an acceptable level, however Mr. Smith admitted that he does not know “what that breakpoint is, what that economic analysis is for VI Electron.”

In his presentation, Mr. Smith alerted board members to the need to finalize the contract between the entities. Over the course of the lengthy negotiations, “we've now had a couple of different iterations of the contract passed back and forth between the two parties, WAPA and VI Electron, and some of the items that have been verbally agreed to have still not been conformed in the contract to the verbal agreement,” he said.

?He listed six “open items” that needed to be settled, including a cap on availability damages. According to Mr. Smith, “WAPA pays approximately $68,000 a month for the battery lease.” The contract currently caps availability damages at 5%, which means that “if the batteries turn on, and then a week later, the batteries, for some reason, stop, or whatever,” VI Electron would only be liable for 5% of the monthly lease cost. “So the batteries could be offline for a month, they would owe WAPA approximately for $3,500,” Mr. Smith calculated. “From my perspective, that's a material risk – that WAPA would still have to pay a monthly lease for assets that it's not able to use,” he concluded.

Another of the six items that needed to be included in the written agreement is the stipulation that the amount payable for the battery lease would be reduced proportionally if all of the battery capacity is unable to be interconnected to the grid. The contract currently stipulates that the full amount of the lease – $67, 756 each month – would be due if at least 50% of the battery capacity is utilized. In this circumstance, however, “we would only be getting half the value of the assets that we’re paying for,” Mr. Smith noted.

A third clause that had been verbally agreed but was yet to be reduced to writing is one that halves an “additional energy charge for energy that comes out of those batteries,” something Mr. Smith indicates is on top of the monthly lease payments. Initially, the contract priced that additional charge at “the full power purchase agreement rate,” Mr. Smith said. For an 8 MWh battery, Mr. Smith calculated that WAPA would pay $13,000 in addition to the monthly lease cost.?

The three items outlined, plus the additional three open items that he skimmed over, represented risks to WAPA, Mr. Smith said. “That doesn't mean they're unacceptable risks, but I just wanted to outline that for the board.”?

Board member Lionel Selwood voiced concerns about a 90-day cap on damages if the project is delayed going into service. Mr. Smith confirmed that penalties for delays would be assessed at

$500 per day, up to 90 days, and noted that without the batteries, “it will be very difficult for us to use the solar farm,” because of the intermittent nature of that method of generation. While noting that the cap could be lifted if mutually agreed by both parties, Mr. Smith offered board members a reality check. He set up a hypothetical scenario where VI Electron is 120 days behind schedule, when WAPA approaches them to request lifting the 90-day cap on damages. “What would you say?” Mr. Smith asked Mr. Selwood. “Are you going to agree to that?”?

Mr. Selwood responded that as “a private company running something, no…but if I’m in a public forum and somebody who’s supposed to be a partner to the people of the Virgin Islands, that’s a different discussion, right?” He expressed hope that VI Electron, a private sector entity, would “understand that they will need to play ball and actually partner with us, if that’s the language within the provision.”

Following an in-depth technical discussion with Chief Operating Officer Ashley Bryan on the specifics of how the solar farm will be able to connect to the existing power system, board members returned to troubling aspects of the contract in its current form.

“Why would we pay a lease when we’re paying for the metered energy coming out of these batteries?” Board member Maurice Muia asked. “That’s one of the concerns I have with the contract,” Mr. Smith responded. “Commercially, I don’t think you would,” he explained, likening it to having to lease a car for a fixed sum each month and having to pay the car company extra for each mile driven. He expressed his view that “we lease the battery, and there should be no charge for the energy coming out.” Mr. Muia agreed. “I see no good reason that we would pay for a lease and then pay for the metered energy that comes out.”

Mr. Muia also raised what he classed as a “significant risk” - the possibility that the developers may be able to evade the requirements of the National Environmental Policy Act (NEPA). NEPA seeks to ensure that large projects receive a “through environmental policy review,” according to Mr. Muia, which is something necessary to protect the public from potential environmental harms. The possibility that, due to a “legislative loophole,” the environmental scrutiny required under NEPA would not need to be performed was not acceptable to Mr. Muia. “I'm a firm believer any work that we do in the Virgin Islands that benefits the people of the Virgin Islands needs to comply with all rules and regulations that are in place to ensure the protection of the public. That’s one thing I don’t waver on, is protection of the public,” he asserted.?

Ms. Bryan, the WAPA chief operating officer, informed board members that the long-awaited interconnection study for the project is expected to be completed by July 31, and that the batteries are already installed on site. ”It does seem like they are very near ready to start commissioning activities,” she opined.

As discussion on the agenda item wrapped up, Mr. Fleming requested a motion to approve the lease agreement as currently presented, confirming that he did indeed wish for the board to approve the agreement despite the six “open items” outlined by Mr. Smith having not yet been resolved. “Despite the apprehensions and concerns relative to what currently exists within the lease contract, the motion would be to approve what is currently presented,” Mr. Fleming indicated, a stance that was immediately objected to by board member Turnbull, who would later go on to replace Mr. Fleming as chair.

“That doesn’t make any sense,” said Mr. Turnbull. “With all the respect, fiduciary responsibility for me means that all these things are covered.” He pointed out that “even though they might be verbally agreed to, they’re not in writing.” Mr. Turnbull suggested that the proper procedure

should be that “we have something complete” before providing formal approval. “I’m not saying no, but I’m saying we have to come better than this,” he added later.?

“I guess I would like to agree with that,” Mr. Fleming replied. “However we’ve been kind of back and forth a number of times now.” He described the negotiation process as receiving verbal commitments from VI Electron that somehow do not get fully translated onto paper. Notwithstanding, Mr. Fleming expressed that there is “significant desire to see a renewable project be available within the Virgin Islands.” His push for approval of the lease as written, he said, was him “seeking to try to expedite a project that seems within grasp.”

Mr. Muia also objected to Mr. Fleming’s perspective. “In all good faith, we as the board cannot approve something if it is not to a stage where we agree with the terms.” Speaking about the immense amount of work that has been done by board members and WAPA employees to negotiate terms favorable to the utility, Mr. Muia declared that if the contract is presented not in a form within the best interest of the people of the Virgin Islands, I think people can understand what my vote would be, because my job is to reduce their risk and increase their benefit as much as possible.”

Board member Selwood noted that he had a particular gripe with the clause that would tie WAPA into what he classed as “double payment” for the lease as a whole, and for the energy coming from the batteries. “Why would we pay for something twice?” he asked. “I’m only one vote, but I hope that you and the rest of my colleagues can understand my point there as a power systems engineer.”

Ultimately, Board member Juanita Young moved that WAPA’s board ignore the open questions and accept the lease as presented. That motion received equal numbers of yay and nay votes, which caused it to fail. Board member Turnbull then moved that the board have a direct discussion with VI Election “to iron out the pending outstanding items,” following which a motion to approve the lease agreement could be entertained. Mr. Turnbull’s initiative was approved by the board, being carried four votes in favor to one against. Mr. Fleming voted against the motion, while Ms. Jackson was not present for the vote.