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Solar Provider Proposes Direct Power Sales to Offset WAPA's \$4.5 Million Debt

BMR Energy seeks alternative solution as mounting unpaid debts from the Water and Power Authority threaten operations, prompting a new plan to sell electricity directly to large consumers in the Virgin Islands

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BMR Energy, facing mounting unpaid debts from the Water and Power Authority, has proposed a new plan to sell electricity directly to large consumers in the Virgin Islands. During a Public Services Commission meeting on Tuesday, BMR CEO Bruce Levy warned that without consistent payments from WAPA, the company's financial survival is at risk, leaving the territory with limited options to keep solar energy flowing.

As discussed [during the June PSC meeting](#), BMR Energy presented commissioners with a proposal to sell the electricity they produce from the Spanish town and Donoe solar plants directly

to consumers, as a bid to remain commercially viable in the face of mounting arrears from the Water and Power Authority.

A formal hearing on the matter was postponed to next month, as WAPA's counsel indicated that she was not prepared to participate in that process. However Bruce Levy, BMR's CEO presented his case to the Commission. "We've been delivering power, and WAPA has not been able to pay, and we are going broke," he said. "We're still here, but just barely. We don't fix things when they break, and it is unsustainable."

He acknowledged receiving approximately three months' worth of payments previously, followed by a lump sum payment of approximately \$258,000 last week, "which immediately was used to pay our insurance premium." However, there have been no commitments from WAPA to adhere to a consistent payment schedule for whittling down the approximately \$4.5 million in debt. For BMR Energy, [things were at a tipping point](#).

If WAPA is unable to pay what they owe, the choices for BMR Energy – and the territory as a whole – were stark. One option is "we shut down, which is going to happen soon anyway, because something's going to break, and we just don't have any money to fix it," Mr. Levy said. In that eventuality, things become even more dire. "We'll probably then go into default on our loan, because we're not going to keep funding a plant that's not even running, and God knows what will happen after that," he declared.

The other possible scenario, would be for BMR Energy to sell electricity direct to large consumers – "over 200 kilowatts," according to Mr. Levy, who used Home Depot as an example. "We need to sign up 16 customers on St. Croix to purchase the output of Spanish Town, and up to maybe 21 customers...to purchase the output of Donoe," he estimated. Rather than metering their electricity use, these customers would be "allocated a portion of the generation we make at each plant," and billed accordingly. Any additional power needs would be supplied and billed by WAPA as normal. These customers would benefit from being able to buy their allocated portion of BMR's generation capacity at the reduced price it sells to WAPA, Mr. Levy noted. He estimated that setting up a system for direct power sales could be done within a month, and said that it would be "hopefully" a temporary step to ensure that BMR Energy can earn enough revenue to stay afloat until WAPA's operational finances are once again in order.

However Patricia Quinlan, WAPA's assistant general counsel, objected to the proposal, saying that the PSC did not have the authority to approve such a request. "This is a breach of contract dispute" between BMR and WAPA, she told commissioners. "There is no statute in the Virgin Islands that gives the PSC any authority to hear a contract dispute," Ms. Quinlan said, arguing that such a move would "abrogate authority from the Virgin Islands Supreme Court that has not been abrogated by the Legislature."

Ms. Quinlan complained that the approval of BMR Energy's proposal would create an additional administrative burden on WAPA, and force the authority to "have to spend more money to make this work." She warned against creating a precedent whereby other disgruntled vendors might feel encouraged to approach the PSC for relief. "The PSC is not the right place to have equitable remedies, common law remedies for breach of contract dispute," she argued. Additionally, Ms. Quinlan felt that such an arrangement would require WAPA to share customer information with BMR to identify potential suitable customers, and share transmission and distribution infrastructure as well.?

Adam Marinelli, counsel for BMR Energy, said that the company anticipated having to litigate following the final outcome of the formal hearing next month. He called WAPA's opposition to his client's proposal "nothing more than a legal red herring," as the idea is "not a resolution to the contractual dispute." The money owed by WAPA is "an issue for another day that will likely see the courts," said Mr. Marinelli. BMR's proposal, he said, was one "in line with the recent legislative push to enforce the implementation of renewable energies in the Virgin Islands."?

He argued that there was "no statutory provision against breaking the 60-year constructive monopoly that WAPA has enjoyed," and noted the high levels of public dissatisfaction with WAPA's performance over those six decades. The proposal before the PSC was not to adjudicate a contractual dispute but to create a new utility, which the Commission has every authority to do, Mr. Marinelli contended.

PSC Commissioner Raymond Williams, noting that the PSC was seeking "amenable solutions" to the "real issues before us," gently chided WAPA for its attempts at "legal maneuvering." He advised Mr. Knight, as a representative of a supposed "new WAPA" to "look at moving forward not from a litigious perspective but more of a co-operative perspective."

PSC Commissioner David Hughes, meanwhile, viewed BMR Energy's proposal as "an overly messy and complicated attempt by the vendor to remove the incentive that WAPA currently has to not pay." He argued that the PSC had the power to implement "other, simpler ways to remove the incentive for WAPA not to pay." With attorney Quinlan conceding that the Commission has the power to order interconnection and set those rates, Mr. Hughes told BMR representatives that his "great preference would be simply to designate you a regulated utility and order an interconnection and let you charge whatever you want for the delivery for your power across WAPA's lines." Mr. Hughes felt that the proposal under consideration was too complicated, and while he understood the intent, said it was prompting a "messy and unnecessary conversation." Mr. Hughes suggested that reducing WAPA's rate by half a cent at the next missed payment may spur the utility to make BMR Energy whole, however his fellow commissioners seemed satisfied to wait until the full hearing in October to make any firm decisions on the matter.