

## Judge Dismisses Claims Against Itron and Tantalus in AMI Lawsuit Over Statutory Shield and Lack of Evidence

Citing Virgin Islands law and insufficient fraud details, the court dismissed claims against WAPA contractors Itron and Tantalus. WAPA still faces a due process claim tied to alleged service termination without proper notice.

WAPA / **Published On April 01, 2025 06:27 AM /**

Staff Consortium **April 01, 2025**

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Last week, District Court Judge Juan Sánchez dismissed Itron Inc. and Tantalus Systems Inc. from a [lawsuit alleging consumer fraud and deceptive business practices](#) in the rollout of the Water and Power Authority's doomed automated metering system. All three companies (Itron, Tantalus and WAPA) had been named as defendants in the civil action.

The defendants asked the court to dismiss the case, alleging that plaintiffs had failed to state a claim according to the federal rules for civil procedures. In the cases of Tantalus and Itron, Judge Sánchez agreed. However, WAPA, despite succeeding in having one of the claims against it tossed out, still has a case to answer.

In his 11-page memorandum explaining the decision, the judge notes that “plaintiffs have a protected property interest in continuing water and electricity services provided by VIWAPA because the Virgin Islands Ratepayers’ Bill of Rights...limits termination of service.”

After favorably considering the plaintiff’s allegations, Judge Sánchez concluded that complaints to the Public Services Commission were futile in providing redress when it came to resolving billing issues with WAPA, and that “VIWAPA did not provide...the required procedural due process under the Fourteenth Amendment before terminating or threatening to terminate service.” Thus he allowed the due process claim to stand.

However, the judge determined that the allegations of fraud against WAPA “do not provide any details of a scheme to submit false claims and rely on hindsight rather than contemporaneous sources.” The assertion that the three companies knowingly misrepresented the capabilities of the AMI system in order to obtain a loan from the U.S. Department of Agriculture, Judge Sánchez said, fell short. There was no evidence provided in support of this assertion, the judge found; no details of alleged false services, faulty equipment, or fake invoices. Therefore, the fraud claim was dismissed.

The consumer protection claim against Tantalus and Itron was also dismissed by Judge Sánchez. WAPA approved the contract for the installation of the AMI system. The Virgin Islands Code, however, exempts “any regulatory body or officer acting under statutory authority of this territory or the United States” from the provisions of the law against consumer fraud and deceptive business practices. Because WAPA is an autonomous governmental instrumentality, the judge ruled that Tantalus and Itron, the recipients of WAPA's contract, were shielded from the claim.

Finally, Judge Sánchez ruled that a claim against Tantalus and Itron for “failure to warn of a defect” was too weak to be allowed to continue. “Plaintiffs’ theory of harm is far too attenuated to be cognizable,” the judge ruled. There was no evidence offered to support the claim that the AMI system increased the risk of a cyberattack on the territory's electrical grid, he said, and “plaintiffs’ alleged injury to their security and safety is not imminent.”

Altogether, Judge Sánchez’s ruling has all but gutted the lawsuit alleging widespread damage and harm to WAPA customers over its billing practices and deployment of the AMI system.

Terri Griffiths, the attorney representing the plaintiffs, expressed disappointment at the ruling and announced her intention to appeal.

In a statement issued to the Consortium, Ms. Griffiths notes that “there are thousands of Virgin Islands residents who have reported extraordinary power bills obviously not based on actual usage after the installation of the ‘smart meters.’” She took issue with the dismissal of Itron and Tantalus by virtue of their doing business with a government entity, noting that the logical conclusion of the arguments of those defendants would mean that “companies who contract with a government entity would face no liability or consequences for their indisputably tortious conduct.” This outcome, Ms. Griffith argues, “is not compatible with Virgin Islands legislative intent with respect to this statute or the other statutory provisions enacted to curb the problems at WAPA.”