The Virgin Islands Consortium

WMA and PSC Clash Over Payment Formula as Legal Amendment Threatens Commission's Standing

The PSC faces financial instability as WMA and WAPA withhold millions in assessments, citing disputes over revenue definitions; a new law excluding legislative appropriations from gross revenues may undercut the commission's legal footing.

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The V.I. Public Services Commission and the Waste Management Authority remain at loggerheads over the formula used to calculate the annual assessment that WMA must pay to the PSC. After one legal action initiated by WMA was dismissed, the authority has since filed another motion. However, a change in the law made late last year could undercut the PSC's case before the courts.

On Thursday, the PSC appeared before the Committee on Budget, Appropriations, and Finance to discuss its budget request of $2,079,292.79. The PSC budget is supposed to be wholly funded by annual assessments collected from the entities the PSC regulates, including WMA and the Water and Power Authority. Both entities, however, are chronically delinquent in their payments, placing the commission’s finances in a precarious position and threatening operations.

The WMA, as lawmakers are well aware, refuses to pay its assessment on the basis that the commission has been incorrectly calculating the amounts owed. According to PSC Executive Director Sandra Setorie, WMA insists that “legislative appropriations should not be considered part of its revenue.” Ms. Setorie disagreed, citing a section of the Code that allows the PSC to base the assessment on appropriations as well.

Delinquent payments dating back to 2021 “can no longer be challenged and remain due and pending,” Ms. Setorie stated. According to the PSC, WMA currently owes $1,656,495.42 for assessments between 2021 and 2025. The PSC’s order has not discouraged WMA from once again seeking the intervention of the courts on the matter.

It later became apparent, however, that the commission’s legal counsel, Boyd Sprehn, was unaware of an amendment to Title 29 that excluded legislative appropriations from the formula. “The Legislature added a sentence that said money appropriated by the Legislature of the Virgin Islands to public utilities are not gross operating revenues,” explained Senator Marise James. “We can’t pass laws and they're not being applied or ignored. And in your case, it's not intentional at all.”

Act 8919, the amendment in question, “was initially vetoed by the governor. It was overridden back by the legislature on October 16 of 2024,” explained committee chair Senator Novelle Francis. “I'm surprised that this has not made its way to you yet.”

PSC’s legal counsel has promised to review that act. Now, it is unclear how the courts may interpret WMA’s argument. Previously, “the Waste Management Authority's arguments were rejected and its appeal dismissed,” per Ms. Setorie’s testimony.

The Water and Power Authority, meanwhile, remains delinquent in its payments but has filed no legal action to challenge the assessment, as WMA did. WAPA owes payments for 2024 and for the current year. “WAPA is collecting those assessments and simply not paying them to the commission,” Ms. Setorie stated. WAPA owed the PSC $2,401,493.71.

The failure of both WMA and WAPA to pay their assessments forced the Legislature to make a general fund appropriation to the PSC in FY2025, an unprecedented measure.

“We have certainly been able to still operate and function very, very efficiently and effectively with the limited resources that we have,” Ms. Setorie told Senator Angel Bolques Jr. Mr. Sprehn also addressed Mr. Bolques's query about collecting late fees on tardy assessment payments. Penalty provisions in the Code “exempt them from applying to government agencies, so there's none that we can impose on WAPA or Waste Management under our current laws,” Mr. Sphren responded.

Questions, therefore, arose as to whether the Legislature “should consider providing the budget to the PSC instead of allowing for the regulators to actually pay assessment fees.” Ms. Setorie was not keen on that proposal. “In order to maintain a degree of independence, it is necessary that our funding does not come from the general fund,” she explained.

Senator Hubert Frederick felt differently. “We need to start looking at this differently. If you're regulating private utilities, this is fine, but to regulate public or semi-public entities, it really doesn't make any sense. We're moving money from one pocket to the next.”

Notwithstanding, the PSC intends to press forward, relying on assessment fees to fund operations.