

## **WAPA Blasted for Ignoring Lower-Cost Propane Proposal While Returning to Empire at Higher Price**

**Commissioner Hughes accused WAPA of failing to meaningfully engage a bidder already supplying fuel at cheaper rates, charging that officials instead steered negotiations back to Empire for a more expensive contract under questionable procurement practices**

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Through the infamous Vitol agreement, propane tanks started arriving at WAPA in on Oct. 5, 2014.

During Tuesday's meeting of the Public Services Commission, the Water and Power Authority's quest to find a long-term supplier for propane came under intense scrutiny by at least one commissioner.

One of the items on the PSC agenda was an examination of WAPA's second request for proposals for the supply of liquified propane gas (LPG) to the territory. The [first RFP failed](#) after WAPA determined none of the received bids to have been suitable. A subsequent attempt at a [direct award to one company was aborted](#) after the board cited procurement and capacity concerns, and a new RFP process initiated.

On Tuesday, Commissioner Hughes asked what changes had been made from the initial failed RFP to the one issued at the beginning of September. "I don't feel there's major changes," said Nicole Aubain, WAPA's contract administration manager. "I do know that we did broaden our advertisement platform. We sent it out to a lot more different media than we previously did." Apart from some fine-tuning of the language, Ms. Aubain admitted that the new RFP is mostly the same.

That surprised Mr. Hughes, as he noted that "a number of the vendors that participated in the last RFP took great exception" to the requirement to maintain local storage of propane. "They thought it indicated a substantial misunderstanding by WAPA on how fuel moves." Hughes called the requirement "completely unnecessary" and "exclusionary to all but one party," and wondered why that requirement was retained.

"Hurricanes don't stop propane from moving throughout the Caribbean," he stated. "They just occasionally make the service terminal unavailable...it might make the ports unavailable, but it doesn't mean that propane stops moving." Shippers in the region are well-equipped to deal with severe adverse weather, Mr. Hughes argued. "They reroute ships, they stand it at anchor, they wait for the terminals to be available so that they can fulfill their contracts...this was the point made by a number of the more established bulk carriers in the Caribbean, including the one that was currently servicing the WAPA account and has for the last three and a half years," he pointed out. Some of the respondents to the initial RFP felt that the request for local storage was "used as an exclusionary tactic," he said. According to Mr. Hughes, the clause "created a preference situation to Empire vis a vis all other candidates."

According to Dionne Sinclair, WAPA's general counsel, local storage is only "one of several factors that we listed that would be given consideration. It was by no means, not in the present procurement or in the prior RFP, a mandatory component."

Commissioner Hughes also critiqued the RFP for failing to take into account the decreasing need for propane due to WAPA's efforts to secure power from sustainable sources and via new, more efficient fossil fuel generators. He anticipated an approximate 30% reduction in fossil fuel contribution to WAPA's power generation over the next two years. These observations, Mr. Hughes noted, were made by respondents to the original RFP. He wondered why the second RFP was issued virtually unchanged despite the feedback received. "I just find it amazing that we'd go through a process that, by the director's admission, failed, and we wouldn't actually make any changes. That makes no sense to me," he said. "We managed to disqualify the entire industry through our RFP process and then didn't make any changes effectively to it," he continued, noting that one of the unsuccessful applicants was already supplying WAPA with fuel.

However, Ms. Sinclair argued that it was not a matter of qualification, but rather that the proposals received were too costly. "For the price point that was being demanded, it would not have availed itself to anything that would have benefited the Authority, and certainly would not have benefited the people of the Virgin Islands," she said. For that reason, "we closed out that procurement, we went to direct solicitations, and were able from that process to get a viable option," WAPA's general counsel noted.

Commissioner Hughes then disclosed the existence of a proposal submitted to WAPA “that was substantially below the selection that you subsequently made with Empire, and well below the selection that you've made with Empire in the interim six-month contract.” Mr. Hughes accused WAPA officials of making “no substantial reply” to that proposal.

According to attorney Sinclair, however, the proposal Mr. Hughes is referencing was “limited to St. Thomas and left out completely St. Croix.” Factoring in the cost of getting the fuel from St. Thomas to St. Croix, she said, “would have made it almost double in actual value.”

Mr. Hughes called Ms. Sinclair's assessment a “complete mischaracterization of that proposal.” He rebutted her assertions by citing from the proposal extensively. In effect, it called for the delivery of the territory's LPG supply to St. Thomas, with a subsequent sub-shipment from St. Thomas to St. Croix using a vessel that can navigate the challenging route. He noted that transport to St. Croix would have been billed at-cost, “an extraordinarily generous offer,” he noted. That proposal, submitted by a company which Mr. Hughes says has “already been doing business with the Authority for the last three and a half years,” came in well below the current pricing arrangements, he disclosed. “I wouldn't expect we're going to see bids below that from other entities,” he continued, reiterating that the lower-priced proposal “was not meaningfully engaged” by WAPA officials. “WAPA instead went back to Empire and signed a contract in its direct negotiation” for a higher price, Mr. Hughes concluded.

Attorney Sinclair, however, explicitly rejected any suggestion “that the Authority is in agreement somehow with Empire outside of the procurement process.” That insinuation “is 100% not true,” she asserted. “I'm really trying to even understand why such an allegation...would ever be made and made publicly when there is absolutely no basis to it,” WAPA's counsel fretted. She underscored the role of the Contract Management Administration in ensuring that “every vendor has a full and fair opportunity to submit their proposal.”

Mr. Hughes stood firmly behind his comments, which he said were made “to defray any attempt at what's called a directed contract...unfortunately, the utility has had a history of directed contracts to vendors,” he pointed out. Rather than seeking involvement in WAPA's procurement process, the PSC is “interested that you guys follow a correct process that does not result in directed contracts...that means exclusionary provisions, that means the selective transmission of information to one party and not the other,” he noted.

“This is one of the reasons the Virgin Islands never really seems to be able to get market rate participation from established entities,” Mr. Hughes said, “because we have a reputation for this type of a process.” He predicted that WAPA would have “very limited participation in this case, even though there are 16 companies that do bulk transport in the Caribbean. You're not going to get 16 bids. You might get one or two, plus...the incumbent that you've given the six-month interim contract to.”

“No-one wants to bid on these contracts,” Mr. Hughes announced.