

The Virgin Islands Consortium

Senate Express Skepticism Over ABR VI Operating Agreement, Ratification Appears Unlikely

VIC News / **Published On November 11, 2014 03:42 PM /**

Ernice Gilbert **November 11, 2014**



ABR VI

The 30th Legislature of the Virgin Islands met on Monday at the Fritz Lawetz Conference Room in Frederiksted for a Committee of the Whole hearing, where testimony from principals of ABR VI and Monarch Energy Partners was heard, as well as testimony from private citizens. At the more than eight-hour meeting, which began a little after 4:30 p.m. Monday and lasted well after midnight on Tuesday morning, lawmakers poked holes in ABR VI's Operating Agreement that is currently before the Senate for ratification.

On behalf of the Government of the Virgin Islands, Attorney General Vincent F. Frazer built a lengthy case explaining why the Senate should move to ratify the Operating Agreement between ABR VI and the Virgin Islands Government. He was joined by members of the de Jongh Administration's who aided in negotiating the Operating Agreement.

In sworn testimony, Frazer said the Operating Agreement represents, "The culmination of more than two and a half years of work on the part of the Governor, and the Government's negotiating team, following the sudden announcement by HOVENSA officials of the closing of the refinery in January 2012 and the economic catastrophe that immediately followed." Frazer continued with a list of reasons why the deal should be accepted, stating that it would ensure against "more than \$100 million annually in lost direct and indirect tax revenues," and provide for "more than \$500 million annually in total economic activity."

The Attorney General highlighted some key points of the Operating Agreement, and testified that it was structured, in part, "around the recognition that the single most important factor in achieving a reopened Refinery is ABR's ability to obtain and repay the roughly \$1 billion in debt and financing that will be necessary to fund the reconstruction, refinery."



Private citizens listen to testimonies of ABR VI

and Monarch Energy Partners.

If ABR VI fails, and does not obtain financing for the project, which the year-old company says it is in talks with lenders who are ready to provide financing, and a restart of the refinery is not possible, it will be in breach of the agreement, which would then activate "significant financial and cleanup-related consequences."

Frazer went on to say that ABR VI will "be permitted to operate the facility as a storage terminal during this phase to fund its payment obligations to the Government."

Yet, after much explanation of what ABR VI offered and testimony from David Herr of the law firm Duff and Phelps, members of the 30th Legislature questioned the provisions outlined in the Operating Agreement and the little time given by Governor de Jongh for ratification. The document was submitted to the body on October 30 and a vote was requested by the Governor on November 12.

St. Croix Senator "Nellie" Rivera O'Reilly found that since registering as a company in the Virgin Islands last November, ABR VI had not filed the required paperwork in June of this year or paid the required fees in order to continue to operate as a business entity in the

Virgin Islands. The company confirmed through Mark Eckard, managing director for legal and governmental affairs, that ABR VI is currently not in good standing to operate as a business in the Virgin Islands, but had planned to make its status current before the deal was closed. Senator Rivera-O'Reilly also revealed that HOVENSA is currently in a legal dispute with the Virgin Islands Government for the recuperation of a \$200 million tax refund the refinery says the government owes it. Frazer confirmed the dispute between the VI Government and HOVENSA.

Sen. Clifford Graham from St. Thomas questioned Frazer about ABR VI's decision not to disclose information about its fuel price formula, which, ABR VI said is being withheld because it contains "trade secrets." Graham pointedly asked the Attorney General and representatives of ABR VI how could they expect lawmakers to ratify an agreement without having full knowledge of everything outlined in the agreement. He went on to say that if he and his colleagues did not receive a document outlining ABR's fuel price formula, the company should not expect an affirmative vote from him for the passage of the Operating Agreement.

Sen. Terrance "Positive" Nelson also pressed Frazer and ABR VI representatives, questioning which ABR company would be purchasing the refinery: Atlantic Basin Refining, Inc. or Atlantic Basin Refining Holdings, LLC, as the companies are separate entities. Eckard explained that ABR Holdings, LLC would be purchasing the refinery and that ABR, Inc. is a subsidiary of ABR Holdings, LLC. When pressed further, Eckard admitted that ABR Holdings LLC was started "a few weeks ago" and had confirmed in previous testimony that ABR, Inc. was not in good standing with Virgin Islands business operations requirements.

Several senators also raised questions about what constituted the sale of the refinery, which, it was later revealed, had a sticker price of \$200 million. Herr and Frazer explained that the "membership interest" of HOVENSA was being sold, and that the sale was between Hess Oil Virgin Islands Corporation (HOVIC), PEDVSA VI and ABR. Frazer added that the Virgin Islands Government is not a party in the matter; but Nelson swiftly challenged Frazer's remark, stating that the Virgin Islands Government is party to the sale.

In a letter dated Oct. 30, 2014 that Governor de Jongh addressed to Senate President Shawn-Michael Malone when submitting the Operating Agreement to the Legislature for ratification, de Jongh wrote, in part: "As you are aware, the Government is party to a Concession Agreement by and among the Government, Hess Oil Virgin Islands Corp. (HOVIC), PDVSA V.I. ("PDVSA") ... and HOVENSA, LLC... for the construction, operation and maintenance of the Oil Refinery and Related Facilities located at Limetree Bay, St. Croix, U. S. Virgin Islands."



Members of the 30th Legislature

Monday's hearing further revealed that an actual sale had not yet taken place between ABR and the refinery's owners. With that, Sen. Tregenza Roach from St. Thomas questioned why the Senate was being asked to ratify an Operating Agreement for a sale that not yet taken place.

Newly re-elected Senator Kenneth Gittens slammed the Operating Agreement, and revealed that ABR VI was formed only days after the Government's Fourth Amendment Agreement was set in place last November. The Senator suggested that the scenario appeared to give ABR VI an upper hand in the purchase of the refinery. The Fourth Amendment Agreement was established so HOVENSA could operate as an oil storage facility while its owners searched for a buyer.

And Sen. Diane Capehart, falling in line with the rest of the 30th Legislature's concerns, decried the short notice given by the Governor to ratify such a far-reaching agreement, stating that the ramifications of the agreement will "affect generations to come."

On Wednesday, Nov. 12, the 30th Legislature will meet in St. Thomas at 10 a.m. with ABR VI representatives in a continuation of Monday's Committee of the Whole hearing on HOVENSA. The Wednesday meeting was originally scheduled as a Special Session with Gov. de Jongh to vote on the Operating Agreement.

Feature Photo: ABR VI representatives take oath at Monday night's Senate hearing on HOVENSA.