

The Virgin Islands Consortium

Finance Committee Votes To Send ABR Operating Agreement To Full Senate

Business / **Published On December 17, 2014 02:10 PM /**

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Sen. Clifford Graham

After over nine hours of hearing testimony from Atlantic Basin Refining (ABR) principals, government officials and residents for and against the Operating Agreement reached between ABR and the de Jongh Administration, the 30th Legislature's Finance Committee, chaired by St. Thomas Senator Clifford Graham, Tuesday voted to send the Operating Agreement to the full Senate body for consideration on Dec. 19.

The document had been sent to the Finance Committee since November for review.

Senator Donald Cole of St. Thomas made the motion to move the Operating Agreement out of committee and send it to the Senate, which was seconded by Senator Clarence Payne, also of St. Thomas. Committee members who voted for and against are as follows:

- Sen. Judi Buckley: Yes
- Sen. Donald Cole: Yes
- Sen. Myron D. Jackson: Yes
- Sen. Terrence "Positive" Nelson: No
- Sen. Nereida Rivera O'Reilly: No
- Sen. Clarence Payne: Yes
- Sen. Clifford Graham: Yes

The Virgin Islands Government, represented by Attorney General Vincent Frazer and David Herr of the law firm Duff and Phelps, made their case in support of the ratification of the Operating Agreement.

The Virgin Islands Water and Power Authority's Executive Director Hugo V. Hodge, Jr., for the first time since the ratification hearings began, testified, saying that while WAPA has been proactive in making preparations and finding alternative partners to fill the void that HOVENSA's full closure would leave, there will be added cost to the Authority's operations.

"If the agreement is approved, there is no discernable impact on the Authority's day-to-day operations, and everything will remain status quo," Hodge began. "As you are aware, HOVENSA supplies the Authority with fuel for its generator units, and presently only provides gasoline for our vehicles on St. Croix."

Hodge went on to detail the adverse impact the refinery's closing would have on WAPA.

"With regards on how it will affect the Authority if the agreement is not approved, please note that as the Authority has previously noted, [it] relies on HOVENSA for gasoline, and for ultra-low sulfur diesel and road diesel for our large vehicles on St. Croix," he said.

"Additionally and most importantly," Hodge continued, "we rely on HOVENSA for storage of No. 2 fuel and oil for our power-generating facilities for both districts, as our current fuel supplier, Vitol, stores the fuel it sells to the Authority with HOVENSA."

Later, Doug Fordyce, managing director in the Oil & Gas Group at Lazard Frères & Co. LLC ("Lazard"), described in detail the procedures it went through from the time it was chosen by HOVENSA to facilitate the sales process of the refinery. He first outlined his professional background.

"I have worked in investment banking for my entire career and have more than 20 years of experience," Fordyce said. "For the last decade, I have been employed by Lazard in Houston, Texas, the headquarters of the firm's oil and gas practice. My practice focuses on providing strategic advice and transaction services to companies, governments and investors in the energy sector. My experience spans a range of transactions, including mergers, divestitures, acquisitions and restructurings. I have led many divestiture processes similar to the one for HOVENSA."

After making known to senators the process leading up to where the deal stands, Fordyce then spoke about Monarch Energy Partners, painting a picture that leaves questions about the company's efforts to be part of the bidding process, and whether it has the financial backing that it claims.

"As an initial matter, according to our records, at no time during the process did Monarch identify itself as a primary potential buyer of HOVENSA," Fordyce testified. "Certain individuals who now claim to be affiliated with Monarch did contact us, but did not initially identify themselves as representing Monarch.

"Moreover, this correspondence began on September 23, 2014 ? more than 10 months after the process had been publicly announced, two months after the deadline for final bids, more than one month after ABR and the owners agreed upon a PSA, and at a point after ABR had already initiated negotiations with the Government. After the owners had agreed to the transaction with ABR, we only collected inbound inquiries as a contingency in the event that negotiations between ABR and the Government failed."

Fordyce went on to say that Darryl Hardy, executive director of Monarch Energy Partners and a member of venture capitalist, PMG Venture, first contacted Lazard on September 23, and claimed he was a member of an entity Hardy called Prime Global.

"He stated that he was acting on behalf of an undisclosed third party. My colleagues informed Mr. Hardy of the current status of the process and requested that he provide the same proof of financial and operating capacity as requested of other potential bidders," Fordyce said.

"Three days later, on September 26, 2014, Mr. Hardy called, now claiming to represent The Gemini Foundation, and responded to our previous request with a "five-step layout" business plan contained in an email. He claimed that his consortium included The Gemini Foundation, G2, Grafton Portfolio, Evergreen United Investments and Monarch Environmental. In his email, Mr. Hardy referred to Monarch Environmental as the party that would review potential candidates to operate the refinery, and conduct decontamination and site clean-up services as well as work with the EPA."

On behalf of ABR, William Forster, the company's managing director, spoke on a myriad of topics relating to the purchasing of the HOVENSA refinery by ABR, and gave projections in relation to the company's restart efforts.

"In brief, we expect the engineering and budgeting phase should be finished within nine months after ABR buys Hovensa," he said. "With favorable market conditions, the financing should also be in hand in about the same time frame. Construction work may take another year and a half; and all-in-all the refinery could be up and running again--processing in a greener fashion than ever before--in not much longer than two years," Forster said.

ABR in the past has referred to itself as "thinly capitalized," however it plans to finance the refinery's restart cost with a combination of loans and equity investment.

Throughout the night, a majority of the senators shared their misgivings with the Operating Agreement, including Sen. Terrence "Positive" Nelson, who, toward the end of the hearing and before the vote, thanked residents who provided emotional testimony on

behalf of ABR, speaking of the job losses tied to HOVENSA and the fear of losing more.

However, Nelson maintained that the deal was not one he was willing to push forward.

"Thank you for your interest, we hear you and understand you," the St. Croix senator said.

"I think we have all considered, but to be honest, the language in this [agreement] is not favorable. And just like in negotiations, sometimes you have to reject what is in front of you and go back to the table."

Feature Image: Sen. Clifford Graham, chair of Senate Finance Committee

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