

**GOVERNMENT OF THE VIRGIN ISLANDS
OF THE UNITED STATES**

Public Services Commission

IN RE:)	Order No. 16/2024
)	Docket No. 696
THE VIRGIN ISLANDS WASTE MANAGEMENT)	
AUTHORITY PETITION FOR RECONSIDERATION)	
OF ANNUAL ASSESSMENT FEES)	
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Order

WHEREAS, the Virgin Islands Public Services Commission (hereinafter “PSC or Commission”) is entirely funded by assessments on the regulated utilities, both annual and special assessments; and

WHEREAS, Section 25a of Title 30 provides, in relevant part:

(a) As used in this section:

gross operating revenues means *the gross operating revenues* of a public utility derived from intraterritorial regulated operations in the last preceding calendar year except as it relates to the Virgin Islands Water and Power Authority, gross operating revenue calculations do not include fuel charges, referred to as the LEAC (Levelized Energy Adjustment Charge).

territorial gross operating revenues means the aggregate sum of all of the gross operating revenues of all of the public utilities regulated by the Commission.

public utility includes public utilities and cable television companies.

(b) Each public utility shall, *prior to September 30*, of each year, pay a fee, as determined under subsection (c) of this section, to the Commission except that the Virgin Islands Water and Power Authority shall pay a quarterly fee of the annual assessment by the utilities, consistent with the quarterly allotment to the Public Services Commission by the Office of Management and Budget. The fees shall be deposited into the Public Services Commission Revolving Fund; provided, however, that there is hereby established a ceiling of \$2,500,000 for the amount of said fees to be deposited into the Fund, any excess to be covered into the General Fund.

(c) The annual fee for a particular public utility shall be an amount equal to the product of the Commission's total current year assessments and the public utility's revenue ratio. The revenue ratio of a public utility shall be equal to its gross operating revenues divided by the territorial gross operating revenues. The Executive Director of the Commission shall, prior to September 1 of each year,

calculate each public utility's fees under this section, and after approval by the Commission, shall notify each such public utility of the amount due...
[*Emphasis added.*]

WHEREAS, the Virgin Islands Waste Management Authority (hereinafter “Authority or VIWMA”) was created in 2007; and

WHEREAS, in Act 6638, the 25th Legislature of the Virgin Islands established VIWMA as an autonomous instrumentality; intending for VIWMA to become self-sufficient in its funding. VIWMA was at that time and has since that time been primarily funded by appropriations through the Virgin Islands Legislature; and

WHEREAS, the PSC has been assigned the responsibility to approve all fees and charges collected by VIWMA; and

WHEREAS, promptly after the creation of the VIWMA, recognizing that VIWMA would be substantially funded by the Government for a period of years, the Commission’s staff met with VIWMA’s then Director, May Cornwall, and her staff and agreed that the revenues received through the appropriations process to fund the regulated operations of the Authority would be included in the Annual Assessment calculation; and

WHEREAS, the Authority remains primarily funded through the Appropriations process; and

WHEREAS, those assessments were made and paid in a reasonably timely manner from 2007 until Fiscal Year 2020; and

WHEREAS, the Authority has not paid its annual assessments since Fiscal Year 2020; and

WHEREAS, the Commission has not changed the manner in which it calculates the annual assessment for VIWMA; and

WHEREAS, in Act No. 8471, the 34th Legislature of the Virgin Islands placed VIWMA fully within the regulatory jurisdiction of the Commission (30 V.I.C. § 1(a)(5)); and

WHEREAS, on September 19, 2023, the Commission met in Regular Session and ordered that funds be collected from all public utilities for Fiscal Year 2024 (“FY2024”) through annual assessment fees in PSC Order No. 47/2023; and

WHEREAS, on November 2, 2023, PSC Order 47/2023 was submitted to VIWMA and on November 16, 2023, VIWMA submitted a Petition for Reconsideration of Annual Fees; and

WHEREAS, VIWMA’s Petition for Reconsideration of Annual Fees argues that the PSC’s Annual Fees to VIWMA for FY 2024, Order No. 47/20232, are erroneous, in violation of the pertinent Virgin Islands Code, and the underlying Public Policy; and

WHEREAS, at the Commission's December 12 and 13, 2023 meeting the Commission granted reconsideration and directed that the matter be returned to the Commission at its next meeting; and

WHEREAS, on December 21, 2023, the Commission's counsel contacted VIWMA's counsel and stated:

The Commission has directed that papers be submitted at least ten days in advance of the meeting, in this case by Friday, February 2, 2024. Any papers or documents in support of VIWMA's Petition will have to be submitted in time for the Commission staff to respond. Recognizing the numerous holidays, I suggest that VIWMA submit any additional supporting documents or briefing by January 10th. The Commission Staff response would then be produced by January 24th.

WHEREAS, the Authority chose not to file any supporting briefs or documents; and

WHEREAS, on February 13, 2024, the Commission held a Regular Meeting via Zoom video conferencing system that was hosted at both PSC offices on St. Thomas located at No. 1003 Estate Ross Suite 4, Barbel Plaza and on St. Croix located at Estate Carlton Suite 1 & 2; and

WHEREAS, the Commission heard testimony from VIWMA's staff: Luis Sylvester, Florence Kahugu, Esq., and Daryl Griffith and the PSC's General Counsel, Boyd Sprehn, Esq.; and

WHEREAS, upon review and deliberation, the Commission voted to DENY VIWMA's Petition for Reconsideration of Annual Fees and directed staff to prepare a scope for initiation of a rate investigation for the consideration of the Commission by the next scheduled PSC meeting.

NOW THEREFORE, the Commission Orders that:

1. VIWMA's Petition for Reconsideration of Annual Fees is DENIED; and
2. Staff shall prepare a scope for initiation of a rate investigation for the consideration of the Commission by the next scheduled PSC meeting.

So Ordered.

For the Commission,

Date: April 23, 2024



Pedro K. Williams, Chair