

GOVERNMENT OF THE VIRGIN ISLANDS

PUBLIC SERVICES COMMISSION

IN RE:)
) Docket Nos. 289, 563,
Outstanding and Overdue Assessments of the) 606, 612, 613, 614, 620,
Utilities Regulated by the Public Services Commission;) 627, 632, 636, 638 and
i.e., Virgin Islands Water and Power Authority and Virgin Islands) Annual Assessments
Waste Management Authority) **Order No. 47/2016**
)
)
)

ORDER

This matter is before the Virgin Islands Public Services Commission (hereinafter "Commission" or "PSC") as a result of the extraordinary delay and/or non-payment of both Annual and Docket Specific Assessments by regulated utilities.

WHEREAS, the Commission is funded solely through an annual assessment on all utilities and docket specific assessments on specific utilities, and not through the general fund or tax revenues; and

WHEREAS, the Commission's general operations are funded through the annual assessment which is provided in Section 25a of title 30, which specifies in relevant part:

(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.



WHEREAS, the statute provides that all utilities shall pay their annual assessments¹ in a single payment due by September 30 of each year, except that the Water and Power Authority which is required to pay its assessments in quarterly payments; and

WHEREAS, Section 25 of Title 30 provides for the funding of costs related to specific investigations, complaints and actions (identified as docket) by assessment on the specific regulated utility; and

WHEREAS, the Authority is now the only utility with outstanding and overdue assessments and no payment plan in place; and

WHEREAS, as of April 18, 2016, the Authority's Quarterly Annual Assessments for the first three quarters of fiscal year 2016 are overdue in the amount of \$710,464.98²; and

WHEREAS, as of April 18, 2016, the Authority was overdue on Docket Specific Assessments, in the amount of \$580,103.00 for assessments from July 2014 through the present; and

WHEREAS, the total amount overdue is currently \$1,290,567.98, as shown on Exhibit A in detail on both docket specific and annual assessments; and

WHEREAS, non-payment of the assessments has interfered and continues to interfere with the ability of the Public Services Commission to carry out its legal mandate to regulate all utilities and specifically interferes with the ability of the Commission to set "just, reasonable and

¹ Title 30, Section 25a provides, in 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 \$1,800,000 for the amount of said fees to be deposited into the Fund, any excess to be covered into the General Fund. [Italics added.]*

² Per Sec. 25a, Title 30, subsection (b) only the Water and Power Authority may pay its assessment in quarterly payments; all other utilities are required to pay in a single payment. See Fn. 1, above.



prudent” rates for WAPA, thereby doing a disservice to Territory, WAPA, and its ratepayers;
and

WHEREAS, this issue has repeatedly been brought up for discussion on PSC agendas and on several occasions WAPA has indicated that it would bring its account current but has not done so; and

WHEREAS, the Commission has in all cases permitted that the regulated utilities to include in its computation of rates the annual and docket specific assessments made, which means that these amounts are being or have been collected by the utilities; and

WHEREAS, non-payment of its assessment orders from the PSC constitute an event that is subject to a fine, pursuant to Sections 39 and 40 of Title 30 of the Virgin Islands Code.³ Each day that there is non-payment represents an additional violation; and

WHEREAS, at its duly noticed meeting on March 15, 2016, the Commission ordered the imposition of penalties pursuant to Section 39 for each day that each overdue assessment order was in violation, and which the same Order No. 46/2016 suspended the imposition of penalties for a period of 30 days to permit the Authority bring the assessments current and avoid penalties; and

³ **39. Penalty for violations**

(a) If any public utility shall violate any provision of this chapter, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it, or shall fail, neglect, or refuse to obey any lawful subpoena, requirement or order made by the Commission, or any judgment or decree made by any court upon its application, for every such violation, failure, or refusal, such public utility shall forfeit and pay to the Government of the Virgin Islands the sum of \$100 for each such offense. In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any public utility acting within the scope of his employment and instructions shall in every case be deemed to be the act, omission, or failure of such public utility.

(b) The Attorney General of the Virgin Islands, at the request of the Public Services Commission, or its designated agent therefor, shall forthwith bring appropriate action to compel adherence to, or enjoin violations of, any lawful orders of the Commission issued pursuant to this chapter, and to recover in the name of the Government of the Virgin Islands the penalties herein provided, and the Court shall give priority to any such actions.

(c) The provisions of this section shall not apply to departments or agencies of the Government of the Virgin Islands furnishing public utility services, however, this provision shall not exempt the Government of the Virgin Islands from claims made pursuant to Title 3, chapter 118 of the Code.

40. Separate offenses

That every day during which any public utility, or any officer, agent, or employee thereof, shall fail knowingly or wilfully to observe and comply with any order or direction of the Commission, or perform any duty enjoined by this chapter, shall constitute a separate and distinct violation of such order, or direction, or of this chapter as the case may be.



WHEREAS, on March 29, 2016, the Authority filed a Petition of Reconsideration challenging the authority of the Commission to impose the penalties provided in Order No. 46/2016; and

WHEREAS, at the Commission's meeting on April 18, 2016, the Commission heard from its Executive Director and the Authority's Acting Executive Director and the Authority's counsel; and

WHEREAS, the Authority's Acting Director Julio Rhymer and Commission Executive Director Donald Cole presented to the Commission an agreed payment program, as follows:

April 22, 2016	\$200,000.00;
May 6, 2016	\$200,000.00;
May 20, 2016	\$200,000.00;
June 2, 2016	\$200,000.00;
June 16, 2016	\$200,000.00;
June 30, 2016	\$200,000.00;
July 14, 2016	\$ 90,567.98; and


NOW THEREFORE, it is ORDERED:

1. The Commission accepts the Water and Power Authority's proposed payment plan;
2. The imposition of penalties is suspended so long as the Authority complies with the schedule for payments;
3. If those payments are not made, penalties begin to accrue on the next business day on all outstanding assessments;
4. The Petition for Reconsideration is denied.

So Ordered.

For the Commission,

Date: April 18, 2016



Johann Clendenin, Chair



PSC Report on WAPA Payments Of Assessments

Assessments are estimates based on actual invoices on hand plus forthcoming invoices from Consultants, Hearing Examiners and/or Attorney's detailing work performed on a particular docket

To date WAPA has several Docket Specific Assessments that are outstanding these assessments are as follows:

Docket Num.	Docket Name	Order Num.	Dated	Amount
289	WAPA LEAC	36/2014	07/18/2014	175,000.00
620	WAPA Avoided Cost	37/2015	07/18/2014	5,000.00
627	Solar Delivered Complaint	38/2014	07/18/2014	1,500.00
627	Solar Delivered Complaint	08/2015	07/22/2015	2,000.00
632	WAPA Petition for Feed in Tarraiff for the Electric System	51/2014	07/19/2015	10,000.00
606	WAPA Approval of Solar Energy Projects in Base Rate Electric	67/2015	07/15/2015	9,550.00
613	WAPA Petition For Increase in Base Rate Water	69/2015	07/15/2015	13,150.00
614	WAPA Minimum Filing Req	70/2015	07/15/2015	32,220.00
612	WAPA Petition for Increase in Base Rate Electric	87/2015	09/23/2015	450.00
636	Complaint of Sunny Isle Concessions, (Subway) v. Virgin Islands Water and Power Authority	85/2015	09/23/2015	7,320.00
620	WAPA Avoided Cost	88/2015	09/23/2015	5,470.00



PSC Report on WAPA Payments Of Assessments

Assessments are estimates based on actual invoices on hand plus forthcoming invoices from Consultants, Hearing Examiners and/or Attorney's detailing work performed on a particular docket

Docket Num.	Docket Name	Order Num.	Dated	Amount
289	WAPA Levilized Energy Adjustment (7/2016		10/27/2015	81,100.00
638	WAPA Management Audit Report	8/2016	10/27/2015	3,700.00
289	WAPA Levilized Energy Adjustment (29/2016		1/11/2016	89,117.00
612	WAPA Petition for Ann. Rev. Increas	30/2016	1/11/2016	8,060.00
638	WAPA Management Audit Report	31/2016	1/11/2016	19,904.00
620	WAPA Avoided Cost Study	32/2016	1/11/2016	1,710.00
563	WAPA Petition for Insurance & hazai	33/2016	1/11/2016	2,422.00
620	WAPA Avoided Cost Study	35/2016	1/13/2016	4,050.00
289	WAPA Levilized Energy Adjustment (36/2016		1/13/2016	3,820.00
620	WAPA Avoided Cost Study	42/2016	03/23/2016	5,760.00
289	WAPA Levilized Energy Adjustment (43/2016		03/23/2016	98,800.00

Total Outstanding Docket Specific

580,103.00

TO date WAPA has several Annual Assessment that are outstanding, these assessments are as follows:

4th Qtr	2015	36,095.25
1st Qtr	2016	224,789.91
2nd Qtr	2016	224,789.91
3rd Qtr	2015	2,016.00
Total Outstanding Annual Assessment		<u>710,464.98</u>



Summary: To date WAPA has a Total Docket Specific outstanding amount of

Total Outstanding Annual Assessment of

580,103.00

710,464.98

1,290,567.98

Total outstanding Annual Assessments and Docket Specific as of April 18, 2016

1,290,567.98