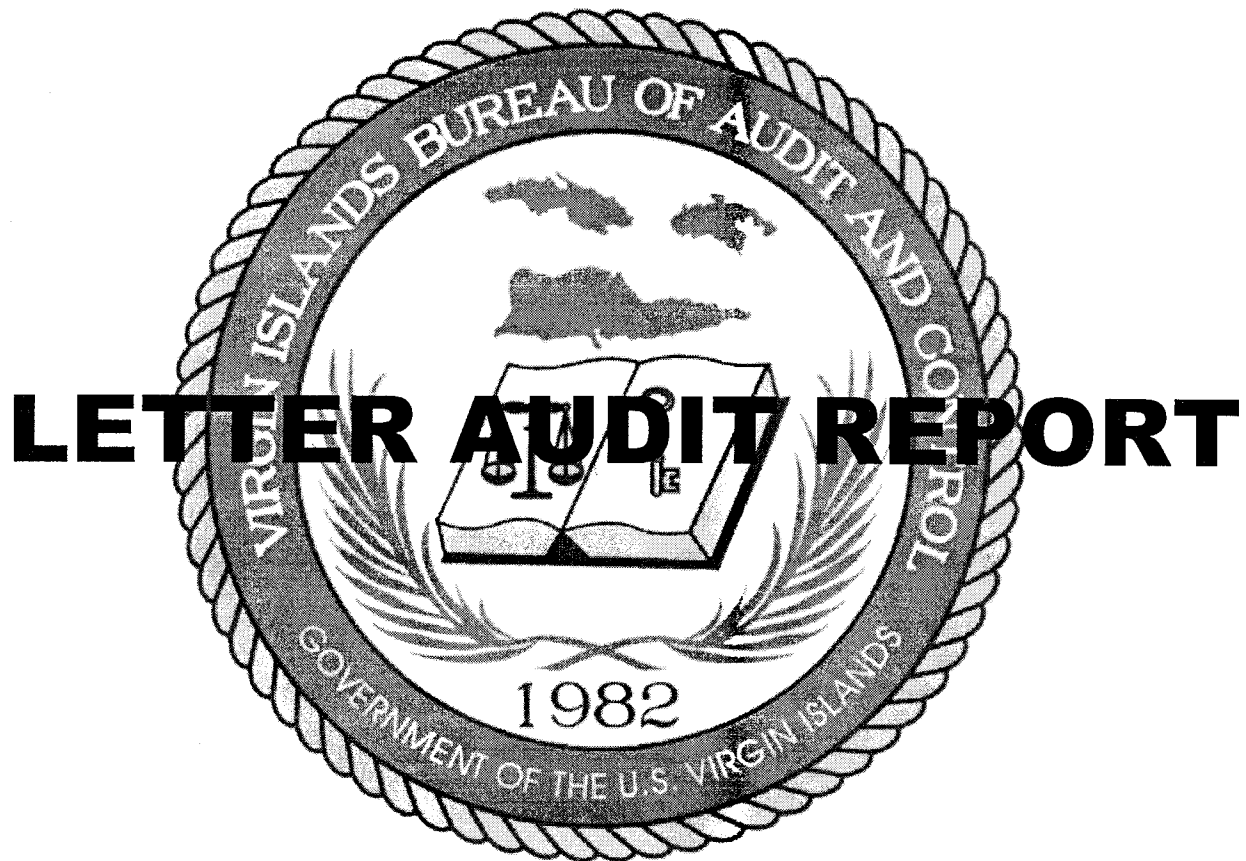


THE UNITED STATES VIRGIN ISLANDS
VIRGIN ISLANDS BUREAU OF AUDIT AND CONTROL



**REVIEW OF THE CIRCUMSTANCES SURROUNDING THE
PSC'S DECISION NOT TO CONDUCT A FORMAL HEARING
ON THE LEGISLATURE'S RESOLUTION 1582**

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GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS

V.I. BUREAU OF AUDIT AND CONTROL

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December 10, 1999

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Honorable Charles W. Turnbull
Governor of the Virgin Islands
Government House
Kongens Gade
St. Thomas, Virgin Islands 00802

Honorable Vargrave A. Richards
President
23rd Legislature
Capital Building
St. Thomas, Virgin Islands 00802

Dear Governor Turnbull and Senator Richards:

This letter audit report contains the results of our review of the circumstances surrounding the decision of the Public Services Commission (PSC) not to conduct a formal rate reduction hearing on the Virgin Islands Legislature's Resolution 1582. The Resolution requested the PSC to reduce, by 20%, the telephone rates charged by the Virgin Islands Telephone Corporation (VITELCO). This review was conducted at the request of Senator Vargrave A. Richards, President of the 23rd Legislature.

The objective of the audit was to determine whether the PSC acted in accordance with the Virgin Islands Code (Code) and the Virgin Islands Rules and Regulations (Rules and Regs) when it was decided not to proceed with the rate hearing.

To accomplish our audit objective, we reviewed the provisions of Title 30, Chapter 1 of the Code, Title 30 of the Rules and Regs, transcripts of meetings held by the Industrial Development Commission (IDC), the PSC, and the June 9, 1999 Legislative Committee of the Whole meeting. We also reviewed reports issued by the PSC consultants, responses issued by VITELCO, and other documents and correspondence determined to be necessary in conducting the audit.

As stated on numerous occasions, we did not review the merits of the PSC's consultant report on VITELCO's rate of return nor VITELCO's response.

Except for limitations to our independence as detailed in the succeeding two paragraphs, the audit was performed in accordance with "Government Auditing Standards" issued by the Comptroller General of the United States. We included tests and procedures that were considered necessary under the circumstances.

The second General Standard of the "Government Auditing Standards" states; "In all matters relating to the audit work, the audit organization and the individual auditors, whether government or public, should be free from personal and external impairments to independence, should be organizationally independent and should maintain an independent attitude and appearance."

Under the current organizational structure, the Virgin Islands Bureau of Audit and Control (Audit Bureau) is not organizationally independent. Budget and personnel limitations have adversely affected the Audit Bureau's ability to fully carry out our responsibilities.

AUDIT RESULTS

We have concluded that the PSC generally acted within their authority in deciding not to continue a further investigation of the rate of return of VITELCO. The Virgin Islands Legislature, the apparent complainant, did not appeal the decision made by the PSC, thereby tacitly accepting the PSC's decision. Finally, we found no evidence to substantiate several allegations of improprieties by PSC members that allegedly would have influenced their actions relative to their decision.

The findings and conclusions are detailed in the report.

Criteria

Title 30, Chapter 1 of the Code details the general requirements for the operations of the PSC. Specifically, Title 30, Section 20 of the Code establishes the authority by which the PSC can investigate the rates charged by a public utility. It states:

Upon its own initiative or upon reasonable complaint made against any public utility that any rates, tolls, charges, or schedules, or services, or time and conditions of payment, or any joint rate or rates, schedules, or services, are in any respect unreasonable or unjustly discriminatory, or any service in connection therewith, is in any respect unreasonable, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the Commission may, in its discretion, proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, schedules, regulations, or act complained of shall be entered by the Commission without a formal hearing. (emphasis added)

Title 30, Section 21 of the Code requires the PSC to notify the public utility that a complaint had been filed, and ten days after may schedule a hearing and an investigation.

Title 30, Section 22 of the Code further requires the PSC to notify the utility and the complainant ten days prior to the investigation and hearing. Both parties are entitled to be heard and are entitled to call witnesses.

Once the PSC makes a decision on a complaint, Title 30, Section 33 of the Code allows any party affected by the decision of the PSC to petition for reconsideration any final order or ruling made by the PSC. The petition for reconsideration, however, must be filed within 30 days after publication of the order or ruling.

Finally, Title 30, Section 34 allows either party to appeal to the District Court any decision made following a reconsideration of the order or ruling. The appeal must be filed within 60 days.

The Rules and Regs, among other provisions, details the requirement for filing an informal and formal complaint. Specifically, Title 30, Section 11-21 of the Rules and Regs establishes the criteria to be used when an informal complaint is filed. It states:

"Any interested person may make a complaint to the Executive Director with respect to any matter under the jurisdiction of the Commission, such as rates or services of public utilities. The Executive Director shall endeavor to resolve the complaint to the satisfaction of the complainant [sic] through informal discussion with the public utility involved. If this endeavor fails, the complaint must be reduced to writing and then referred to the Chairman who shall place it on the agenda of the next meeting of the Commission. If the Commission is unable to resolve the matter to the satisfaction of the complainant, it shall be docketed as a formal complaint."

Formal complaints are covered by Title 30 Section 1-31 of the Rules and Regs. It states:

"Any interested person or public utility may make [a] formal complaint to the Commission with respect to any matter subject to the jurisdiction of the Commission, such as rates or services. Such formal complaint must be in writing, in triplicate, must be sufficiently specific to identify the rate, practice or service complained of, and must specify in what way it is considered unlawful. The Executive Director shall immediately transmit one copy thereof to the public utility involved with direction that, within the ten days, the complaint either be satisfied or a reply thereto filed. If not satisfied, the complaint shall thereupon be assigned for formal hearing. The Commission may likewise, on its own motion, institute an investigation of matters subject to its jurisdiction by sending to the public utility a statement of the matters to be considered and determined, and assigning the matter for formal hearing.

Background

The following chronology summarizes the major events leading to the eventual decision by the PSC not to pursue the VITELCO rate reduction as requested by the Legislature.

- May 6, 1996 - VITELCO submitted an application to the Industrial Development Commission (IDC) requesting an extension of its IDC benefits, increasing most exemptions to 100%.

- May 28, 1996 and September 9, 1996 - the IDC conducted hearings on VITELCO's application request.
- April 4, 1997 - The PSC Chairman in his capacity as the Executive Director of the Tax Review Board, and another full-time employee of the Department of Finance received salary increases.
- May 1, 1997 - the IDC approved the extension of benefits to VITELCO.
- June 18, 1997 - Senator Adlah Donastorg sponsored Bills 22-0105 to petition the PSC to reduce VITELCO's rates by 20%.
- June 19, 1997 - The 22nd Legislature, on a 14 yes, 1 absent vote, passed Resolution 1582 to petition the PSC to reduce VITELCO's rates by 20%.
- June 30, 1997 - Resolution 1582 was signed by the Senate President.
- June 30, 1997 - The IDC Certificate of Benefits Extension for VITELCO was signed.
- August 12, 1997 - The PSC conducted a public hearing which included some discussion of Resolution 1582, at which time the PSC's legal counsel indicated that the Resolution "is treated like a complaint."
- October 9, 1997 - The PSC conducted a hearing, at which a decision was made to have the Legislature's Resolution 1582 assigned Docket Number 513. A decision was also made to have the Georgetown Consulting Group and Attorney Maria Tankenson Hodge investigate the matters raised by Resolution 1582.
- October 13, 1997 - The PSC issued Order 1/1998, in accordance with the October 9, 1997 PSC meeting, assigning an investigation of the Legislature's Resolution.
- November 18, 1997 and February 17, 1998 - On two separate occasions, the PSC's consultants requested information from VITELCO.
- January 28, 1998 and April 13, 1998 - VITELCO responded to each of the information requests.
- April 22, 1998 - The PSC conducted an unofficial meeting to be updated on the status of the preliminary investigation.

- May 1, 1998 - The Georgetown Consulting Group issued its preliminary report, claiming excessive earnings by VITELCO, and recommending a full rate investigation.
- May 27, 1998 - The PSC held a public hearing to include a preliminary discussion of the consultant's report and a time table for VITELCO's written reply.
- July 13, 1998 - VITELCO responded to the Consultant's report, refuting the findings.
- August 24, 1998 - The consultant responded to VITELCO's rebuttal. The Consultant admitted that some analytical errors were made, however, the consultant still insisted that VITELCO's rate of return was too high, and should be further investigated.
- October 2, 1998 - VITELCO again responded to the Consultant's reply, refuting the Consultant's assertions.
- October 7, 1998 - The PSC held a public meeting to, among other things, discuss and take testimony from their consultants and VITELCO representatives on Docket 513, the Legislature's rate reduction request. The PSC ultimately decided not to follow their Consultant's recommendations.
- November 11, 1998 - The PSC issued Order 1/1999 rejecting the consultant's recommendations and terminating further consideration of the Legislature's Resolution 1582. Copies of the order were sent to VITELCO and the Legislature.
- March 5, 1999 - Senator Donastorg filed a complaint claiming to be overcharged by VITELCO.
- May 18, 1999 - The PSC's legal counsel issued an opinion on Senator Donastorg's complaint, summarizing three possible courses of action.
- June 4, 1999 - The PSC's legal counsel issued an opinion on PSC Order 1/1999 recommending that no further action was required on the Legislature's Resolution 1582.
- June 9, 1999 - The V.I. Legislature conducted a Committee of the Whole meeting to take testimony on the VITELCO issue (Docket 513). No further actions were taken by the Legislature.

Informal/Formal Complaint

In determining whether the PSC acted appropriately in deciding to terminate further consideration of the rate reduction Resolution by the Legislature, three basic criteria must be discussed. The first determination that has to be made is whether Resolution 1582 was a formal complaint, in accordance with the Code and the Rules and Regs. Secondly, who was the complainant. Finally, if the Resolution was a complaint, then it must be determined whether a formal hearing was held in accordance with the Code.

Let us review the issue of whether the Resolution was a complaint by first reviewing the related Code Sections. As previously stated, Title 30, Section 20 of the Code authorizes the PSC to investigate the rates charged by a public utility based "...upon [a] reasonable complaint" The Rules and Regs identify two types of complaints; informal and formal complaints. Title 30, Section 11-21 of the Rules and Regs implies that an informal complaint is an oral complaint filed by an interested person to the Executive Director of the PSC. The Executive Director attempts to resolve the complaint informally with the public utility. If it is not resolved, it must be reduced to writing, referred to the Chairman and placed on the agenda for the next meeting. If it is still not resolved, it is docketed as a formal complaint, and treated as such.

Title 30, Section 11-31 of the Rules and Regs requires formal complaints to be submitted in writing, in triplicate, be specific in identifying the rate complained of and specify how it is considered unlawful. The public utility is given ten days to resolve the complaint, or else it is assigned for formal hearing. The PSC can also, at its discretion, initiate an investigation of matters subject to its jurisdiction, and assigning the matter for a formal hearing.

Although a legal opinion might be necessary to determine if Resolution 1582 was in fact a formal complaint as defined in the Rules and Regs, in our opinion, the actions taken by the PSC from the beginning clearly shows that they intended to treat the Resolution as a formal complaint. During the final hearing, however, in October 1998, there was a lengthy discussion on the process of a formal hearing and who was the complainant. These issues will also be discussed in this report.

At the first PSC meeting held on August 12, 1997, the Resolution was discussed. The Legal Counsel for the PSC stated in response to a request for clarification from the Chairman "... it [the Resolution] could fall within the parameters of Title 20, which allows the commission to investigate rates either upon its own initiative or upon a reasonable complaint. I believe it will fall within the parameters of that section of Title 30 if the Commission chooses to go ahead with it." He further stated, "The Commission could go through its usual investigative procedure. It is not bound by the 20 percent reduction. If the Commission feels a smaller percentage is warranted or none at all, the Commission could

do so. It is not a law. It is not a mandate. It is a resolution. It is treated as a complaint."

At the PSC's October 9, 1997 meeting on a 3 to 1 vote with two absent, it was decided to have the consultants, Georgetown Consulting and Attorney Maria T. Hodge (legal consultant), investigate the issues raised by the Resolution. The Resolution was assigned Docket number 513.

Finally, at the October 7, 1998 hearing, there was a lengthy discussion between several PSC Commission members and the legal consultant on the procedures required in disposing of the Resolution. There was also some discussion on whether Senator Donastorg or the 22nd Legislature as a body was the complainant. Throughout the discussion, the Commissioners and the legal consultant referred to the Resolution as a complaint.

The second issue of who was the complainant was also discussed during the October 7, 1998 hearing. In fact, there was a lot of confusion by the Commissioners on who in fact was the complainant. At least one Commissioner and the legal consultant initially considered Senator Donastorg to be the complainant, while another Commissioner considered the 22nd Legislature to be the complainant. In addition, on two separate occasions during the meeting a legal representative for Senator Donastorg indicated that the Senator was not the complainant, but rather the 22nd Legislature, since the rate reduction included in the Resolution was approved by a majority (14) of the 22nd Legislature. We agree with this interpretation.

Based on the provisions of the Code, the Rules and Regs and the discussions at the various PSC meetings, it is our opinion that the PSC, at their discretion, chose to treat Resolution 1582 as a formal complaint, with the 22nd Legislature being the complainant.

Rate Investigation/Rate Hearing

Following the assumption that Resolution 1582 was a formal complaint submitted by the 22nd Legislature, the next question that must be resolved is whether the PSC followed the provisions of Title 30, Section 20 through 22 of the Code. Although this question too should be more appropriately addressed by legal counsel, we will give our opinion based on our interpretation of the Code and the events.

In summary, Section 20 states that the PSC can at their discretion conduct an investigation, however "...no order affecting said rates... or act complained of shall be entered by the Commission without a formal hearing." The Rules and Regs, which further explains the Code, states in Title 30 Section 1-31, that if a formal complaint is not resolved by the public utility, ". . . the complaint shall thereupon be assigned for formal hearing." Section 21 of the Code requires the PSC to notify the public utility that a complaint was filed. Section 22 of the Code further requires the PSC to notify the utility and the

complainant ten days prior to the investigation and hearing. Both parties are entitled to be heard and call witnesses.

Section 33 of the Code allows any party affected by a ruling of the PSC to petition for reconsideration. However, the petition must be filed within 30 days of the ruling. Section 34 of the Code allows either party to appeal to the District Court any decision made on a petition for reconsideration. The appeal must be filed within 60 days.

The question then is whether the October 7, 1998 Public Hearing can be considered a formal hearing. Records reviewed by us showed that an agenda dated September 25, 1998, of the October 7, 1998 meeting, was sent to Senator Donastorg, as well as, Senators Stephen Frett and Holland Redfield, non-voting members of the PSC. In addition, we were informed that the President of the 22nd Legislature, Senator Lorraine Berry, was also notified of the hearing and the plan to discuss Resolution 1582. The Legislature chose not to be represented at the hearing, although Senator Donastorg did send a representative.

At the hearing, the PSC's legal consultant advised the Commission, that at a minimum, a formal hearing was required to afford both parties, VITELCO and the Legislature, the opportunity to be heard. After which the PSC could make their ruling.

The legal consultant advised the PSC that if they chose not to have the formal hearing, the parties involved could petition the PSC for reconsideration, and eventually can appeal to the District Court in accordance with Sections 33 and 34 of the Code. The PSC chose not to follow the recommendation of their consultant to conduct a formal rate hearing and terminated further consideration of Resolution 1582. All parties involved, including the Legislature were provided with copies of the order and none chose to petition for reconsideration as outlined in the Code.

In June 1999, the 23rd Legislature conducted a Committee of the Whole meeting to take testimony from all parties involved in the issue, however, no further actions were taken by the Legislature as a result of the hearing.

If one were to agree with the legal consultant that the PSC did not hold the formal hearing before making their decision, the Legislature, as the complainant, chose not to petition the PSC for reconsideration of its ruling as required by the Code. This amounts to tacit acceptance by the Legislature of the decision made by the PSC. In our opinion, at this time it would serve no useful purpose to attempt to hold another hearing on this petition. Over a year has passed, and following all of the testimony that has already been presented, both at the October 7, 1999 PSC meeting and the June 1999 Legislative Committee of the Whole meeting, it is highly unlikely that the PSC would reverse its decision.

Alleged Influence

During the course of our review, several allegations were made concerning claims that Commission members were given pay raises in return for voting against the VITELCO rate reduction petition submitted by the Legislature. Other allegations consisted of claims being made that PSC members were attending conferences at the expense of VITELCO. Our review of all documents provided to us failed to provide any evidence to substantiate either of these claims. Therefore, pending additional documentation to support the claims, we must regard them as without merit.

Scheduled Rate Investigation

Although not specifically a part of our audit objective, during the course of our review, we contacted four public utility commissions throughout the United States requesting information on their handling of rate investigations. Three of the four commissions require telephone rates to be reviewed at a specific period of time. Idaho requires local telephone rates to be reviewed every three years, while New Hampshire and Wyoming review local telephone rates annually. The state of Washington reviews local phone rates only when the regulated utility requests a rate increase.

We feel that there is precedent for the Legislature to require by statute, regular rate investigations of entities monitored by the PSC. These investigations can be required on a 3 or 5-year basis, however, with annual reporting requirements built into the rate review plan. In deciding whether to establish a specific time period for rate investigations, however, consideration must be given to the possibility that a rate review can result in either a decrease or increase in fees to the consumer.

Recommendation

We recommend that the Public Services Commission, considers the benefits of requesting a revision of Title 30 of the Code to require the establishment of a specific time period to review the various rates and fees of the utilities under the control of the PSC.

PSC Response


The PSC in their December 8, 1999 response agreed with the recommendation made in the report. It was indicated that comments would be requested from the regulatory consultant, on the feasibility of requesting the establishment of a specific time period to perform utility rate reviews.

Inspector General's Comments

The PSC response was sufficient for us to consider the recommendation resolve. However, we request that a copy of the consultant's comments be supplied to the Audit Bureau.

If you or your staff require additional information, please call me at 774-6426.

Sincerely,


Steven van Beverhoudt, CFE, CGFM
Inspector General

Enclosure:



GOVERNMENT OF THE VIRGIN ISLANDS
OF THE
UNITED STATES

ATTACHMENT

— 0 —

Public Services Commission

December 8, 1999

Steven van Beverhoudt, CFE, CGFM
Inspector General
V.I. Bureau of Audit and Control
Government of the U.S. Virgin Islands
No. 75 Kronprindsens Gade
St. Thomas, VI 00802

Dear Mr. van Beverhoudt:

This is to acknowledge receipt of your Draft Letter Report concerning the Public Services Commission dated November 29, 1999. We have circulated your draft report to the Commissioners. While we were unable to obtain the comments from all of the Commissioners, I am authorized to advise you that we have only one comment and that comment relates to the legislative recommendation contained on page 14 of the draft report. We will refer this suggestion to our regulatory consultants for their comments.

Thank you for your thorough report. With Best Wishes for the Holidays we remain,

Very truly yours,

Walter L. Challenger
Chairman