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Congress of the United States
House of Representatives
Washington, DC 20515

September 18, 2019

The Honorable Albert Bryan
Governor
U.S. Virgin Islands
5047 (21-22) Kongens Gade
St. Thomas, VI 00802

The Honorable Novelle Francis
Senate President
33rd Legislature of the U.S. Virgin Islands
Post Office Box 1690
St. Thomas, VI 00804

COMMITTEE ON TRANSPORTATION
AND INFRASTRUCTURE
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SUBCOMMITTEE ON COAST GUARD
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ENERGY AND CREDIT
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AND FOREIGN AGRICULTURE
SENIOR WHIP

Dear Governor Bryan and Senate President Francis:

I write to express grave concern regarding the viability and sustainability of the Virgin Islands Water and Power Authority (hereinafter "WAPA" or "the Authority"). Based on recent in-depth discussions with WAPA and outside utility and finance experts, I believe that the Virgin Islands is suffering an energy crisis. This conclusion is not simply a reaction to the regular power outages plaguing our islands. Those power outages are symptoms of more insidious problems facing the Authority. The conclusions stated herein are the result of a thorough analysis of the root causes of WAPA's financial insolvency and operational deficiencies.

The Virgin Islands' energy crisis has now reached the level of a State of Emergency. I pray that you both see the failures of WAPA as consequential to the wellbeing of the territory. Respectfully, I ask that you both work together to declare a State of Emergency regarding our energy crisis and take attendant extraordinary actions to bring immediate relief to the people of our territory.

WAPA is out of options and must be radically reformed. WAPA must take radical, extraordinary steps for our people to receive **efficient and reliable service in a financially sound utility system**. I suggest that the Office of the Governor, the 33rd Legislature of the Virgin Islands, the Virgin Islands Public Services Commission ("PSC"), and the Office of the Delegate to Congress, work *together* to petition for financial and technical assistance from relevant federal agencies to enable WAPA to chart a new course. Indeed, WAPA may need to seek federal court intervention as the Authority's operation are under duress by several of its vendors/creditors, creating an unfair advantage and negotiation toward other creditors and the people of the Virgin Islands.

As a primary factor, WAPA is effectively insolvent. An entity is insolvent when either (i) its liabilities are greater than its assets or (ii) the entity is unable to pay its bills as they become due. Alarming, WAPA meets both tests to be considered insolvent.

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WAPA's revenues are insufficient to meet its expenses. Simply deferring payments to creditors is not a solution to this structural problem. As of August 30, 2019, WAPA had a negative operating cash balance of over \$13 million as a result of negative cash flows of over \$59,000. Based on expert outside financial projections, WAPA will, by end of November 2019 have a *negative* cash balance of \$33 million. So far, WAPA's only answer to its fundamental economic problems has been to simply further delay payments to creditors. WAPA's course of conduct in this regard is irresponsible and immature. The Virgin Islands cannot continue in this manner and expect federal agencies to treat us as capable stewards of billions of dollars in federal aid.

WAPA has been expressly cited to me by officials of the Department of Housing and Urban Development ("HUD") as a primary entity which lacked the ability to handle hundreds of millions of dollars in federal aid. This was one of the factors cited in the current Administration's decision to delay the release of federal relief dollars stemming from Hurricanes Irma and Maria. HUD's August 2, 2019 announcement cites "capacity issues in the U.S. Virgin Islands" as reason for delays and segregation of funding. Indeed, WAPA has not been able to access the first tranche of Community Development Block Grant ("CDBG") funding because, as of this letter, the Authority has not completed a single audit since 2015. Additionally, WAPA's debt load includes such enormous amounts as approximately \$252 million in bond debt (senior and subordinate revenue bonds and Bond Anticipation Notes), \$94 million in federal Community Disaster Loans (with repayments starting in July 2021), \$160 million owed to VITOL (which is a 10 year, effectively 15% interest payment), \$103 million owed to Wartsila/Aggreko and APR for costs of purchase and long term lease of generator units. Let us not forget that there is an outstanding \$24 million summary judgement by the federal court due to Trafigura (a former fuel supplier).

I am also concerned with WAPA's management. Regarding WAPA's financial management, I am disturbed by what would appear to be pressure to make "day to day" "business as usual" decisions which do not address core deficiencies and the insolvency of the Authority. For example, WAPA's recent use of a recent influx of funds (this includes a transfer of federal Medicaid funds as well as payment of outstanding utility invoices owed by the Government of the Virgin Islands) to pay a single creditor – VITOL – without eliciting any accommodations or concession from VITO was simply irresponsible. Further, the Authority's decision to attempt to refinance a large antecedent debt of a creditor (VITOL) through a federal loan or private lender without first securing any agreement on the reduction of the actual obligation or otherwise adjust relevant terms, gives me (and should give you both) great distress.

Operationally, WAPA has no one on its executive team with the requisite municipal power generation expertise and experience. This fact has been cited by several consultants, auditors, and agencies as a fundamental management operations oversight. Moreover, WAPA has not been able to correct its net metering issues or other questions related to generation amounts. WAPA made decisions to forego maintenance and removed operation of a generator which would have provided backup operability to keep the islands powered – rather than causing our island to suffer from the prolonged regular black-outs now plaguing the territory. While some may argue that the older generator was not as efficient as the new generators, this argument rings

hollow as the sustained black-outs are not only costly as power surges destroy appliances and electronic equipment but will also have a toll on our GDP and gross receipts as businesses experience loss of revenue during such outages.

I believe a declaration of the State of Emergency and attendant request for federal assistance should include the following actions:

- Request for loan forgiveness from the US Treasury through Federal Emergency Management ("FEMA") for the \$94 Million owed by WAPA in Community Development Loan which will become due as escrow payments in July 2021 and payments 2022.
- Seek technical assistance from the Department of Agriculture Rural Utility Service ("RUS") to supplement the management and expertise of WAPA. To date, RUS has denied the requests of WAPA's CEO to provide a low interest rate, long term loan to refinance the VITOL debt. Request technical assistance from RUS should put us in a better position to have the Governor, as the Chief Executive of the Virgin Islands (rather than as previously requested solely by the CEO of the Authority) request support in restructuring the outstanding debt.
- Utilize expertise from the Department of Energy to work more closely with WAPA and VI Department of Energy for generation expertise along with support to provide efficient and reliable electricity. The Department of Energy has devoted time to our relevant island challenges and now has a specific expertise in small island energy issues.
- Petition HUD to re-evaluate its decision in 2018 to allocate only \$67.6 million to the Virgin Islands for WAPA rebuilding resilience and hardening of the system out of the \$2 Billion set aside for Puerto Rico and the US Virgin Islands. During the 115th Congress, I was successful in securing within the Bipartisan Budget Act of 2018 a set aside of \$2 billion for Puerto Rico and the Virgin Islands - specifically for our utility system improvements. After the initial announcement and questioning by both my office and Governor Mapp, FEMA and HUD agreed that the formula used to calculate the \$67.6 million set aside for the Virgin Islands was not the correct method but were reluctant to retract the first announcement. The previous Virgin Islands' administration was not aggressive in urging HUD to reconsider the amount. With a declaration of utility State of Emergency, the administration may be willing to reconsider.
- Demand implementation of the Insular Areas Act authority to provide cost share waiver for FEMA Public Assistance to the Virgin Islands. This would provide millions of additional dollars to the territory by allowing us to tap into funds which presently we are unable to utilize.

WAPA may also need to seek federal court intervention. WAPA can no longer conduct business as normal. The Authority is operating under duress from several vendors which have an unfair

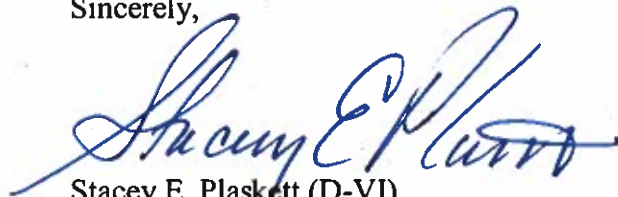
advantage over WAPA's operation and its other creditors. We are in an unfair position to negotiate, for which an appropriate court may be willing to intervene and help adjust WAPA's debts. Existing consent decrees and court judgments are also factors that may compel a federal court to intervene. We should use the PSC and the 33rd Legislature as a review board, more appropriate for public engagement and information sharing.

Now is the time for radical disruptive action.

Please know I take absolutely no pleasure in writing this letter. I have attempted to operate within my lane and allow local government to do its job. In reviewing the state of WAPA after numerous requests for assistance from various stakeholders; I have taken great effort to meet with multiple stakeholders, several times – questioning, reevaluating answers and issues, cross referencing each. I recognize that what I am writing will not be taken kindly by some, possibly many. I believe however, what is happening at the Virgin Islands Water and Power Authority, as outlined in the aforementioned areas will have a negative domino effect in other areas of our territory – local business operations, public health and safety, and use of the federal disaster funds available, to name a few. Business as usual, hopes rather than radical plans, bringing in experts to review symptoms rather than the disease; these behaviors have put us in a vicious circular motion that will become a whirlpool driving us to ruin. I know that you both want better for our government operations, the welfare of the people of the Virgin Islands and our future.

I stand ready to assist and await your response.

Sincerely,

A handwritten signature in blue ink that reads "Stacey E. Plaskett". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Stacey E. Plaskett (D-VI)
Member of Congress

cc: Lawrence Kupfer, WAPA Executive Director, CEO
Commissioner Anthony E. Thomas, WAPA Board Chair
Raymond Williams, Chairman, VI Public Services Commission