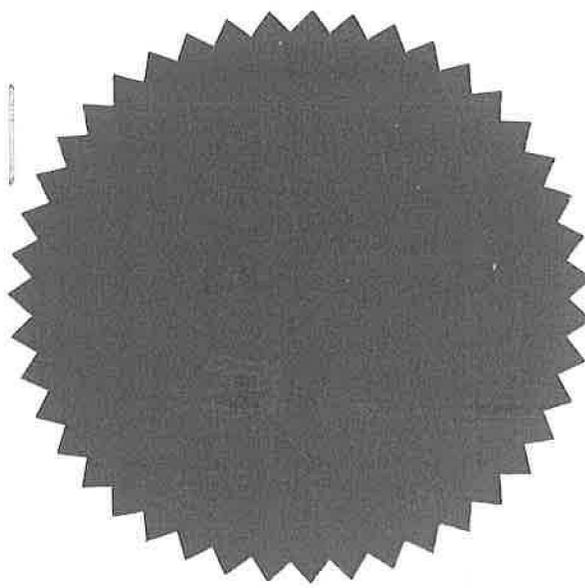


JAMAICA

No. 27 - 2015



I assent,

*J. L. Allen*

*Governor-General.*

*16<sup>th</sup> day of November 2015*

AN ACT to Amend the Office of Utilities Regulation Act.

[ *17<sup>th</sup> day of November 2015* ]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Office of Utilities Regulation (Amendment) Act, 2015, and shall be read and construed as one with the Office of Utilities Regulation Act (hereinafter referred to as the "principal Act") and all amendments thereto.

Short title and construction.

2. Section 4 of the principal Act is amended—

- (a) in subsection (4), by deleting the words "The Office" and substituting therefor the words "Subject to subsection (4A), the Office";

Amendment of section 4 of principal Act.

(b) by inserting next after subsection (4) the following—

“ (4A) The rates determined by the Office in respect of prescribed utility services for the generation, transmission, distribution and supply of electricity shall—

(a) be in accordance with—

- (i) the provisions of this Act and any regulations made under this Act;
- (ii) the *Electricity Act* and any regulations made under that Act;
- (iii) all policy directions issued by Cabinet with respect thereto; and
- (iv) the tariff provisions set out in all licences and enabling instruments with respect thereto;

and in determining the appropriate rate of return on investment required to satisfy the interests of persons investing in Jamaica, the opinion of the Bank of Jamaica shall be obtained by way of guidance, which opinion shall take into account relevant market benchmarks and provide an assessment of the appropriate country risk premium; and

(b) take into account—

- (i) the interest of consumers in respect of matters, including the cost, safety and quality of the services;

- (ii) Jamaica's economic development;
  - (iii) the best use of indigenous resources;
  - (iv) the possibility of including specific tariffs to encourage the regularization of and payment for, electricity usage by consumers who are unable to pay for the full cost of the services provided; and
  - (v) the possibility of including specific tariffs for special economic zones, and wholesale rates for large consumers, to enhance their competitiveness and Jamaica's economic development.”;
- (c) in subsection (7), by deleting the numeral “(a)”; and
- (d) by inserting next after subsection (7) the following subsection—
- “ (8) The Cabinet may issue to the Office general policy directions in respect of any prescribed utility service, and the Office shall adhere to those directions in the performance of its functions under this Act.”.

3. Section 9 of the principal Act is amended in the proviso to subsection (2) by deleting the words “the said daily penalty shall not be

Amendment  
of section 9  
of principal  
Act.

recoverable in respect of any day before the expiration thereof” and substituting therefor the words “and the fine shall not be payable if the Court is satisfied that the requirements have been duly complied with prior to the expiration of that period”.

Amendment  
of section 15  
of principal  
Act.

4. Section 15 of the principal Act is amended by deleting the words “taking or” and substituting therefor the words “taking of”.

Amendment  
of section 16  
of principal  
Act.

5. Section 16 of the principal Act is amended by inserting next after subsection (1) the following subsection—

“ (1 A) Without prejudice to the generality of subsection (1), the Office may make regulations prescribing the procedure for, and analytical tools to be used in, determining, in accordance with section 4(4A), the tariffs applicable to prescribed utility services for the generation, transmission, distribution, supply, despatch and use of electricity.”

Amendment  
of Second  
Schedule to  
principal  
Act.

6. The Second Schedule to the principal Act is amended—

(a) by deleting paragraph 1 and substituting therefor the following—

“Constitution  
of the  
Office.

1. The Office shall consist of the persons appointed in accordance with paragraph 1 of the Fourth Schedule.”;

(b) in paragraph (2), by deleting—

(i) from sub-paragraphs (1) and (2) the words “the Director-General” wherever they appear and substituting therefor, in each case, the words “a Director-General”;

(ii) sub-paragraph (3), and substituting therefor the following—

“ (3) The Governor-General may, at any time, revoke the appointment of the Director-General if he is satisfied, on the

recommendation of the Prime Minister,  
that—

(a) the Director-General is guilty of  
inefficiency, incompetence,  
misconduct or malfeasance; or

(b) the Director-General has—

(i) a physical or mental  
infirmity that renders the  
Director-General  
incapable of satisfactorily  
performing the functions of  
the office of Director-  
General;

(ii) failed to carry out any of  
the functions of the office  
of Director-General or is  
otherwise guilty of neglect  
of duty; or

(iii) engaged in, or is engaging  
in, any activity that can  
reasonably be considered  
to be incompatible with the  
functions of the office of  
Director-General”;

(c) by inserting next after paragraph 2 the following paragraph—

“Functions of  
the  
Director-  
General.

2A. The Director-General shall—

(a) be responsible to the Office for  
the general management and  
administration of the Office; and

(b) carry out such functions as are  
assigned to the Director-  
General under this Act or any

other enactment, and such other functions as may be delegated to the Director-General by the Office.”;

(d) in paragraph 3—

(i) by deleting sub-paragraph (1) and substituting therefor the following—

“ (1) Subject to the provisions of this Schedule, one or more Deputy Directors-General may be appointed by the Prime Minister on the recommendation of the Minister, who shall make the recommendation after consultation with the Office.”;

(ii) by deleting sub-paragraph (3) and substituting therefor the following—

“ (3) The Prime Minister may, at any time, revoke the appointment of a Deputy Director-General if the Prime Minister is satisfied, after consultation with the Minister and the Office, that—

(a) the Deputy Director-General is guilty of inefficiency, incompetence, misconduct or malfeasance; or

(b) the Deputy Director-General has—

(i) a physical or mental infirmity that renders the Deputy Director-General incapable of satisfactorily per-

forming the functions of the office of Deputy Director-General;

- (ii) failed to carry out any of the functions of the office of Deputy Director-General or any responsibility assigned to him under this Act or is otherwise guilty of neglect of duty; or
- (iii) engaged in, or is engaging in, any activity that can reasonably be considered to be incompatible with the functions of the Deputy Directors-General”;

- (e) by inserting next after paragraph (3), the following as paragraphs 3A and 3B—

“Functions of Deputy Director-General.

3A. A Deputy Director-General shall carry out such functions as are assigned to that Deputy Director-General under this Act and such other functions as may be delegated to Deputy Directors-General by the Office.

Special assignment.

3B. The Office shall assign to each Deputy Director-General responsibility for one or more of the items specified in the First Schedule.”;

First Schedule.

- (f) in paragraph 4(1)(b), by deleting—
- (i) the words “any approved” and substituting therefor the words “any specified”; and
  - (ii) the words “an approved” and substituting therefor the words “a specified”;
- (g) in paragraph 8(2), by deleting the words “other than those” and substituting the words “other than those”;
- (h) in paragraph 9, by deleting—
- (i) from sub-paragraph (2)—
    - (A) the word “Director-General” and substituting therefor the words “chairperson of the Office”;
    - (B) the words “Deputy Director-General” and substituting therefor the words “member of the Office”; and
  - (ii) sub-paragraph (3) and substituting therefor the following sub-paragraphs—
    - “ (3) The chairperson of the Office or, in the absence or inability to act of the chairperson, the deputy chairperson, shall preside at the meetings of the Office.
    - (3A) The quorum for meetings of the Office shall be four, and decisions shall be made by a majority of votes, with the person presiding at the meeting (as specified in sub-paragraph (3)) having both an original and a casting vote in any case where the votes are equal.”.

7. The principal Act is amended by inserting next after the Third Schedule the following as the Fourth Schedule—

Insertion of  
Fourth  
Schedule in  
principal Act.

“ FOURTH SCHEDULE (Second Schedule,  
paragraph 1(1))

*The Office*

Membership. 1.—(1) The Office shall consist of six appointed members and one *ex officio* member.

(2) Subject to paragraphs (4) and (5), the appointed members shall be appointed as follows —

- (a) four members appointed by the Governor-General, on the recommendation of the Prime Minister, made after consultation with the Leader of the Opposition;
- (b) one member appointed by the Governor-General, on the recommendation of the Private Sector Organization of Jamaica (or such other body representing the private sector as the Governor-General is satisfied, on the recommendation of the Prime Minister, made after consultation with the Leader of the Opposition, has succeeded to the functions of the Private Sector Organization of Jamaica); and
- (c) one member appointed by the Governor-General, on the recommendation of a body appearing to the Governor-General to represent the interests of consumers.

(3) The Director-General shall be the *ex officio* member of the Office.

(4) The persons recommended for appointment under sub-paragraph (2) shall be recommended from among persons who are qualified as having had experience of, and shown capacity in, matters relating to industry, finance, economics, engineering, accountancy, commerce or law.

(5) A person shall not be qualified for appointment as a member of the Office if it appears to the Governor-General that the person, if appointed, would have a conflict of interest.

(6) The Governor-General shall, on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, appoint one of the appointed members of

*The Office of Utilities Regulation  
(Amendment) Act, 2015*

the Office to be the chairperson of the Office and another of the appointed members of the Office to be the deputy chairperson.

(7) In the case of the absence or inability to act of the chairperson of the Office, the deputy chairperson of the Office shall perform the functions of the chairperson during the period of such absence or inability to act.

Tenure.

2.—(1) Subject to sub-paragraph (2) and paragraph 3, the appointment of an appointed member of the Office shall be for a period of five years, and the appointed member shall be eligible for reappointment.

(2) The Governor-General may, at any time, revoke the appointment of any appointed member of the Office if the Governor-General is satisfied, on the recommendation of the appropriate person specified in sub-paragraph (3), that—

- (a) the member is guilty of inefficiency, incompetence, misconduct or malfeasance; or
- (b) the member has—
  - (i) a physical or mental infirmity that renders him incapable of satisfactorily performing the functions of the member;
  - (ii) failed to carry out any of the functions required of a member of the Office or is otherwise guilty of neglect of duty;
  - (iii) engaged in, or is engaging in, any activity that can reasonably be considered to be incompatible with the member's functions as a member of the Office; or
  - (iv) by virtue of paragraph 1(5), ceased to be qualified to be a member of the Office.

(3) For the purposes of sub-paragraph (2), the appropriate person is—

- (a) in the case of a member appointed under paragraph 1(2)(a), the Prime Minister after consultation with the Leader of the Opposition;

- (b) in the case of a member appointed under paragraph 1(2)(b) or (c), the person that recommended the member's appointment.
- Resignation. 3. An appointed member of the Office may, at any time, resign as a member by instrument in writing addressed to the Governor-General and copied to—
- (a) in the case of a member appointed under paragraph 1(2)(a), the Prime Minister; and
- (b) in the case of a member appointed under paragraph 1(2)(b) or (c), the entity that recommended the person's appointment.
- (2) The resignation under sub-paragraph (1) shall have effect from the date of receipt of such instrument by the Governor-General.
- Temporary appointments. 4. Any person qualified for appointment as an appointed member of the Office may, subject to complying with paragraph 1(2), be appointed by the Governor-General to act temporarily in the place of an appointed member of the Office, in the case of the absence or inability to act of such appointed member.
- Publication of appointments. 5. The names of the appointed members of the Office, including any person appointed to act temporarily in the place of an appointed member appointed under paragraph 4, shall be published in the *Gazette*.
- Remuneration. 6. The Office shall pay to the appointed members of the Office such remuneration (whether by way of honoraria or fees), and such allowances, as the Minister with responsibility for the public service may determine.”.

Passed in the House of Representatives this 13th day of October, 2015 with one (1) amendment.

MICHAEL A. PEART  
*Speaker.*

Passed in the Senate this 23rd day of October, 2015 with one (1) amendment.

A. BROWN  
*Deputy President.*

On the 27th day of October, 2015 the House of Representatives agreed to the amendments made by the Senate.

LLOYD B. SMITH  
*Deputy Speaker.*

*This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.*

*Sgd. Heather E. Coote*  
Clerk to the Houses of Parliament.