

**JPS' COMMENTS ON THE RULES AND PROCEDURE FOR OPERATION AND ADMINISTRATION
OF THE ELECTRICITY SECTOR SYSTEM BENEFIT FUND**

EXTRACT FROM NPRM	COMMENT
<p>3.1. These Rules of procedure for the operation and administration of the SBF are to:</p> <p>iv. Ensure that the regulator, the electric utility and the Ministry with responsibility for the energy sector are held accountable for all inflows and outflows of the SBF, in keeping with section 50 of the EA.</p>	<ul style="list-style-type: none"> Under the legislation funding through the SBF is not limited to JPS and the rationale for the rules must therefore reflect that. We therefore suggest that this be reworded to acknowledge this along the lines of, “<i>Ensure that the regulator, the electric utility, the Ministry and any party accessing the fund are held accountable for all transactions, management and accounting related to the SBF...</i>”
<p>5.1. The SBF shall be used only for capital expenditures directly related to the purpose and objectives of the SBF as outlined in section 4 above.</p>	<ul style="list-style-type: none"> If the SBF is intended for capital expenditure only, the document should clearly define what is considered to be capital expenditure and this intention should be consistently applied throughout the Rules. Whereas Section 5.1 indicates that the SBF should be used for capital expenditure only, Section 15.1 refers to Capital and O&M expenditure. This lack of alignment between the definition of the allowable expenditure and the purpose of the Fund was identified as one of the weaknesses in previous Funds. However given the purpose and objectives of the SBF (as indicated in Section 4), JPS is of the view that the Office may want to consider the inclusion of operating expenditure to be allowable. For example, one of the purposes of the SBF is to “promote energy conservation” (Section 4.1 (iii) which potentially may involve costs which would not be considered capital in nature.
<p>7.1. JPS shall be required to do, and be held accountable for the following:</p> <p>a) The billing and collection of tariff revenues from its customers as may be approved and designated as inflows to the SBF by the OUR from time to time;</p> <p>b) Setting aside, as required, the approved monthly tariff revenues as may be designated for the SBF, converting such sums into United States Dollars and depositing such converted sums within fifteen (15) days of the end of each month</p>	<ul style="list-style-type: none"> 7.1 a) - We recommend that this be extended to include the identification of the SBF as a separate line item on customers’ bills. 7.1. b) The legislation does not stipulate that the SBF should be a United States currency denominated fund. In fact, all the financing sources identified in the EA (with the possible exception of “any other sources”) are all nominally Jamaican currency sources of funding. JPS is therefore of the view that the appropriate currency of transfer of the SBF revenues to the OUR is the Jamaican currency. As administrator and controller of the fund the OUR thereafter has the authority and responsibility to determine the currency in which it wishes to hold or invest the SBF. 7.1. b) Additionally a bad debt factor should be applied to the nominal billed amount for the SBF to determine the amount which should be remitted to the OUR.

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<p>in the bank account established by the OUR for deposit of SBF inflows.</p> <p>e) Obtaining and providing the OUR with at least three (3) quotations from reputable entities for any major procurement of goods and/or services to be funded from the proceeds of the SBF.</p> <p>f) Keeping all documentary evidence of all goods and services procured in the implementation of approved and assigned SBF projects.</p>	<ul style="list-style-type: none"> • 7.1 e) Appropriate guidance should be included within the Rules to understand what is considered to be “major procurement” as well as “reputable entities” • 7.1 f) The expected retention period for documentary evidence should also be defined within the Rules and should be aligned with the existing statutory retention period.
<p>7.2. In the event that the Office decides that the residual balance or a specified sum of money shall be transferred from an existing or terminated fund operated by JPS to the SBF, JPS shall be required to execute the specified transfer in keeping with the Office’s determination</p>	<ul style="list-style-type: none"> • 7.2 – We recommend amending the paragraph to reflect “<i>JPS shall execute the specified transfer, after consultation with the Office on the most efficient mechanism and timing to effect the transfer, in keeping with the Office’s Determination</i>”.
<p>9.2 In the administration and control of the SBF, the OUR shall be held accountable and shall be responsible for:</p> <p>f) Reviewing and issuing its non-objection to project plans and approval of project budgets produced by JPS or any other entity that may be implementing an SBF funded project;</p>	<ul style="list-style-type: none"> • 9.2 – The Rules should be more specific regarding the administration surrounding the submission and approval of requests, such as project plans and budgets, including: <ul style="list-style-type: none"> • The time period between the submission of the request and the approval by the Office, • The consultation framework to be adopted for the evaluation of projects • 9.2 – Additionally the following should also be added as bullet point (i): The publication of statements of accounts of the SBF either with the OUR’s Annual Report or separately at a fixed declared interval. Statement to include the list of projects either completed or underway that are funded by the SBF.

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<p>10.1. The SBF proceeds shall be deposited into an interest bearing account at a financial institution(s) that is approved by the Office. The OUR will apply the same policies and investment criteria to the SBF as it applies to its own investments.</p>	<ul style="list-style-type: none"> • 10.1 - In furtherance of the OUR's declaration at 9.1 that it shall ensure the regulatory principles of transparency and efficiency are observed with the SBF, we recommend that the OUR includes those policies and principles that will be observed in the management of the investments held by the SBF. • Additionally the Office should make provisions for a designated investment manager who will serve as the Responsible Officer for the investment and management of the SBF.
<p>12.2. The total value of tax benefits obtained through capital or investment allowance for the SBF assets should be transferred into the SBF account as and when such benefits become due and payable.</p>	<ul style="list-style-type: none"> • Further discussions should be held between the OUR and JPS regarding the treatment of capital allowances associated with these assets. • Based on the suggested mechanism, JPS or any other SBF-funded entity will incur additional tax liabilities due to its use of the Fund. The funding received from the SBF represents income which is ultimately taxable and would typically have been offset by the allowances associated with the ownership of the assets. Rule 12.2 would result in the company being penalised for utilising the SBF to fund the related activities. • The impact of this penalty is also compounded for JPS due to the fact that these assets would not be considered as part of the Rate Base and therefore no income will be earned from its use.
<p>12.3. Where the SBF assets are jointly funded by the SBF and the JPS, or where such assets are not readily identifiable, the Office may determine a deemed amount of tax recoverable on the basis of the expenditures charged to the SBF, the class of assets and the allowances for depreciation applicable. The amount of taxation recoverable shall be accrued to the SBF within ninety (90) days after the close of a calendar year.</p>	<ul style="list-style-type: none"> • 12.3 – In the circumstances where the assets are jointly funded, how will these assets be treated in the Rate Base of JPS? • Additionally the Rules should also take into consideration how the tax liability for the assets that are SBF-funded for another entity other than JPS should be treated. • We recommend that any payment associated with the tax benefit from capital allowances be made 180 days subsequent to year end.
<p>13.1. JPS shall establish and maintain regulatory accounts and asset register in respect of its SBF projects and SBF assets that reflect all revenues, financial transactions and assets, independent of its general financial accounts and asset register. This is to enable the OUR, to better monitor the activities of the SBF and make appropriate</p>	<ul style="list-style-type: none"> • 13.1 - The Rules do not address the treatment and accounting for the assets that are acquired by other parties other than JPS.

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<p>adjustments to the tariff based on the status of these regulatory accounts and asset register.</p>	
<p>13.2. The book value of the SBF assets shall be revalued from time to time in a manner consistent with similar assets owned by JPS predicated on the formula approved by the OUR. The book value of the SBF assets at any given time shall therefore reflect the value based upon the most recent revaluation.</p>	<ul style="list-style-type: none"> • 13.2 Currently JPS does not have a policy to revalue all categories of assets. If there is an expectation that the SBF related assets should be revalued this expense should be covered by the SBF. • The Rule does not address what should be done for other entities that may hold assets funded by the SBF.
<p>13.3. JPS will be required to maintain and repair the SBF assets in accordance with the standards required for its own assets as set out in Condition 6, paragraph 4 of the Licence, i.e. JPS “...shall maintain (which shall include appropriate registration in respect of intellectual property) and repair all relevant assets throughout the term of this Licence in accordance with good industry practice so as to enable it to meet its obligations under this Licence.”</p>	<ul style="list-style-type: none"> • 13.3 – The cost associated with the maintenance of the SBF assets should therefore be a specific adjustment to ensure recovery in the Revenue Requirement • The Rules need to also state how this maintenance of assets extends to other SBF-funded assets not associated with JPS. •
<p>13.5. Should SBF assets be required for use in the delivery of services and/or activities other than those services and/or activities that form part of the Licensed Business, JPS shall first obtain the approval of the Office for any such deployment of SBF assets to such services and/or activities. Where these service and/or activities are revenue generating, the Office will determine the proportion of revenue that should flow into the SBF from such services and/or activities.</p>	<ul style="list-style-type: none"> • 13.5 - It should not be the sole determination of the OUR but rather an agreement that emerges from consultation between JPS (or other relevant entity) and the Office regarding the appropriate allocation of cost associated with the use of the asset.
<p>14.1. The OUR will account for operations of the SBF and monitor the usage of the relevant SBF proceeds by way of annual, quarterly and special</p>	<ul style="list-style-type: none"> • 14.1 – We recommend this section be amended to ...”shall be submitted by the JPS or other SBF-funded project developer”.

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<p>reports that will be prepared by the OUR in addition to those reports that shall be submitted by the JPS. Such reports shall set out, among other things:</p> <p>i. All inflows and outflows of the SBF; and</p> <p>ii. The overall progress of the SBF projects.</p>	<ul style="list-style-type: none"> This section does not specify who the OUR will be providing the annual, quarterly and special reports it produces and the committed time period for publication. We recommend these reports be sent to the project developer, the Ministry and be published on the OUR's website.
<p>16.1. The Office shall cause an audit of the SBF to be done at least once every three (3) years and the cost of conducting such an audit shall be paid from the proceeds of the SBF. The auditor shall among other things, certify whether the operations of, and expenditures from the SBF are consistent with the rules set out herein.</p>	<ul style="list-style-type: none"> 16.1 - This provision is adequate for special audits of the SBF. However, best practice recommends that the Fund be reviewed on an annual basis and should be considered to be done at the time of the OUR's annual audit. Statements of the Fund's financing and expenditure should therefore also be included in the OUR's Annual Report.
<p>17.3. If the aggrieved party is dissatisfied with the Office's position after the review, then:</p> <p>(i) In the case of JPS, it may appeal to the Appeal Tribunal established under Condition 32 of the Licence; or</p> <p>(ii) In the case of another entity that is implementing a SBF funded project, it may appeal to the Electricity Appeal Tribunal established under section 51 of the EA IF it is a licensee as defined under the EA.</p>	<ul style="list-style-type: none"> 17.3 - The Appeals process needs to include special appeal provision for SBF-funded project developers that are not a licensee under either the Act or the Licence. This could possibly take the form of arbitration procedures.