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# Office of Utilities Regulation

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## DIRECTIVE

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DIRECTIVE TO JAMAICA PUBLIC SERVICE COMPANY LIMITED (JPS) FOR THE REPAYMENT OF FOREIGN EXCHANGE ADJUSTMENT CHARGES ON FUEL SUPPLIED BY PETROJAM LIMITED DURING THE PERIOD MARCH 2013 TO DECEMBER 2013

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13<sup>th</sup>, February 2015



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**OFFICE OF UTILITIES REGULATION**

3<sup>rd</sup> Floor, PCJ Resource Centre, 36 Trafalgar Road, Kingston 10

## DOCUMENT TITLE AND APPROVAL PAGE

1. **DOCUMENT NUMBER: 2015/ELE/002/DIR.001**

2. **DOCUMENT TITLE:**

Directive to Jamaica Public Service Company Limited (JPS) for the repayment of Foreign Exchange Adjustment Charges on Fuel Supplied by Petrojam Limited during the Period March 2013 to December 2013.

3. **PURPOSE OF DOCUMENT**

To require Jamaica Public Service Company Limited (JPS) to return to customers, the amounts unilaterally imposed during the period March 2013 to December 2013 as Foreign Exchange Adjustment on fuel supplied by Petrojam Limited.

4. **APPROVAL**

This Directive is approved by the Office of Utilities Regulation and becomes effective on the 16<sup>th</sup>, February 2015.

By Order of the Office :



Albert Gordon

Director General

Date: 13<sup>th</sup>, February, 2015

**OFFICE OF UTILITIES REGULATION  
DIRECTIVE**

**(Issued pursuant to Section 4, of the Office of Utilities Regulation Act)**

**IN THE MATTER OF:**

JAMAICA PUBLIC SERVICE COMPANY LIMITED'S  
UNILATERALLY IMPOSITION OF CHARGES IN THE  
PERIOD MARCH 2013 TO DECEMBER 2013 AS FOREIGN  
EXCHANGE ADJUSTMENT ON JPS FUEL COST IN  
RESPECT OF FUEL SUPPLIED BY PETROJAM LIMITED

**AND**

THE OFFICE OF UTILITIES REGULATION ACT, 1995

**AND**

THE AMENDED AND RESTATED ALL-ISLAND ELECTRIC  
LICENCE, 2011

**TO: JAMAICA PUBLIC SERVICE COMPANY LIMITED**

**WHEREAS**

- A. Pursuant to Section 4(1) of the Office of Utilities Regulation Act (the "OUR Act") and the Amended and Restated All-Island Electric Licence, 2011 (the "Licence"), the Office of Utilities Regulation ("OUR/Office") is empowered to regulate electricity services in Jamaica and the Jamaica Public Service Company Limited ("JPS/Licensee") respectively.
- B. Pursuant to Condition 2(3) of the Licence, JPS shall "provide an adequate, safe and efficient service based on modern standards, to all of the island of Jamaica at

reasonable rates so as to meet the demands of the Island and to contribute to economic development”.

- C. Condition 15 of the Licence provides that JPS is subject to price controls. Condition 15, inter alia, provides as follows:

*“Condition 15: Price Controls*

- 1. The licensee is subject to the conditions in Schedule 3.*
- 2. The prices to be charged by the Licensee in respect of the Supply of electricity shall be subject to such limitation as may be imposed from time to time by the Office.”*

- D. Schedule 3 of the Licence provides that the fuel cost pass through mechanism shall be in accordance with Exhibit 2, Schedule 3. Schedule 3 paragraph 3(D) reads,

*“The Licensee shall apply the Fuel Rate Adjustment Mechanism that is in force on the date of this Licence. The Fuel Cost Mechanism that is in force on the date of this Licence is described in Exhibit 2” .*

- E. Exhibit 2, Schedule 3 of the Licence provides as follows:

*“The cost of fuel per kilo-watt-hour (net of efficiencies) shall be calculated each month on the basis of the total fuel computed to have been consumed by the Licensee and Independent Power Producers (IPPs) in the production of electricity as well as the Licensee’s generating heat rate as determined by the Office at the adjustment date and the IPPs generating heat rate as per contract with the IPPs and system losses, as determined by the Office at the adjustment date of total net generation (the Licensee and IPPs).*

*The fuel cost portion of the monthly bill computed under the appropriate rate schedule will be calculated in the following manner:*

$$F = F_m/S_m$$

Where:

*Billing Period = The billing month during the effective period for which the adjusted fuel rates will be in effect as determined by the Office.*

*F = Monthly Adjustment Fuel Rate in J\$ per kWh rounded to the nearest one-hundredth of a cent applicable to bills rendered during the current Billing Period.*

*F<sub>m</sub> = Total applicable energy cost for period*

*The total applicable energy cost for the period is:*

- (a) the cost of fuel adjusted for the determined heat rate and system losses and which fuel is consumed in the Licensee's generating units or burned in generating units on behalf of the Licensee for the calendar month which ended one month prior to the first day of the billing period plus;*
- (b) the fuel portion of the cost of purchased power (including IPPs), adjusted for the determined system losses, for the calendar month which ended one month prior to the first day of the billing period; and*
- (c) an amount to correct for the over-recovery or under-recovery of the total reasonable and prudent fuel cost, such amount shall be determined as the difference between fuel costs billed, using estimated fuel costs, actual reasonable and prudent fuel costs incurred during the month which ended one month prior to the first day of the billing period.*

*S<sub>m</sub> = the kWh sales in the Billing Period.*

*The kWh sales in the billing period is the actual kWh sales occurring in the period billing period which ended one month prior to the first day of the applicable billing period.*

*The Fuel Rate Adjustment including the Schedule for application of the fuel charge to each rate class, shall be submitted by the Licensee to the Office ten (10) days prior to*

*the end of the month just preceding the applicable billing month and shall become effective on the first billing cycle on the applicable billing month.”*

- F. JPS, for some months during the period March 2013 to December 2013 (the Relevant Period), made foreign exchange adjustment on payments for fuel supplied by Petrojam Limited in the sum of **J\$973,372,164.14**, which was passed through to customers. The applicable months for which foreign exchange adjustments to the JPS fuel cost occurred is attached as **ANNEX 1**, with note being taken of the reversal of foreign exchange adjustment for the months of February and April 2014.
- G. By letter dated May 7, 2013, the OUR requested clarification from JPS regarding the insertion of a line item called “FX adj on Petrojam Fuel” in the fuel oil statements for the Relevant Period.
- H. By letter dated May 28, 2013 JPS responded, setting out its reasons for making the said foreign exchange adjustments.
- I. JPS in its “Comments on the OUR’s 2014 – 2019 Tariff Review Draft Determination” dated July 21, 2014 reiterated the basis on which the foreign exchange adjustments during the Relevant Period were made.
- J. The Office, having received JPS’ explanations for making the said adjustments considered the matter and concluded that JPS had no authority under the existing regulatory framework, as set forth in Exhibit 2, Schedule 3 of the Licence, to unilaterally impose the additional costs on customers.
- K. The Office, by letter dated July 30, 2014, directed JPS that the sum of **\$973,372,164.14** as shown in the table below, should be refunded to customers within the shortest possible time. Further, JPS was also advised that it should make a submission to the Office regarding the mechanism for the refunding of the customers. JPS was instructed to make its submission on or before August 7, 2014. A copy of the said letter is attached hereto as **ANNEX 2**.

L. JPS by letter dated August 4, 2014 in response to the Office's directive contained in the letter dated July 30, 2014 aforesaid, protested the Office's decision and the means by which the Office arrived at its decision. JPS expressed the view that the Office arrived at its determination on the matter without the benefit of due process and requested a meeting with the Office to discuss the matter. A copy of the said letter is attached hereto as **ANNEX 3**.

M. The Office, by letter dated November 28, 2014, responded to JPS' letter of August 4, 2014 in the following terms –

*“For the record the Office refutes the assertion that its decision was made without the benefit of due process as prior to arriving at its decision, the relevant enquiries were made of JPS regarding:*

- 1. the explanation for the charge; and*
- 2. how it was computed...”*

N. The Office also stated further in its response that:

*“In arriving at its decision the Office took full cognizance of JPS response including the legal basis proffered for its action but clearly disagreed. **We would also reiterate at this point that the Office is not retreating from its position that JPS has no legal authority under the existing regulatory framework to unilaterally impose these additional costs on customers” and consequently the refund is due.** (Emphasis added)*

*We have however taken note of your request to engage the Office further on this issue and in this regard we are prepared to offer such an opportunity during the week of December 01, 2014. ...”.*

A copy of the said letter dated November 28, 2014 is attached hereto as **ANNEX 4**.

O. On December 5, 2014 the Office met with JPS' officers and gave them a further opportunity to present additional information, explanations or clarifications.

P. Having heard the representatives of JPS and after careful consideration of the matters raised by them, the Office has concluded that JPS' imposition of charges as foreign exchange adjustment on fuel supplied during the Relevant Period is in contravention of the provisions of Exhibit 2, Schedule 3 of the Licence.

Q. Section 4(2)(a) of the OUR Act provides:

*“(2) The Office may, where it considers necessary, give directions to any licensee or specified organization with a view to ensuring that –(a) the needs of the consumers of the services provided by the licensee or specified organization are met, and  
(b) the prescribed utility service operates efficiently and in a manner designed to –  
i. ....  
ii. ....  
iii. afford to its consumers economical and reliable service”*

R. Section 4(3) of the OUR Act provides:

*“(3) In the performance of its functions under this Act the Office shall undertake such measures as it considers necessary or desirable to –  
(a) ....  
(b) protect the interest of consumers in relation to the supply of a prescribed utility service;  
(c) .....  
(d) .....  
(e) ....”*

Based on the foregoing, the Office **HEREBY DIRECTS** JPS as follows:

- (i) **TO REFUND** to its customers the sum of **J\$973,372,164.14** being amounts unilaterally imposed as Foreign Exchange Adjustments on fuel supplied by Petrojam Limited during the period March 2013 to December 2013 in contravention of Exhibit 2, Schedule 3 of the Licence.

- (ii) **TO SUBMIT** to the Office, within **seven (7) days** from the effective date of this Directive, the mechanism including all applicable details and commencement date by which it will refund the said sum of **J\$973,372,164.14**.

The Office also **DIRECTS** that the said refund process shall be completed within **six (6) months** of the effective date of this Directive.

**TAKE NOTICE** that this **DIRECTIVE** becomes effective on the 16<sup>th</sup> February, 2015.

**BY ORDER OF THE OFFICE OF UTILITIES REGULATION**



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Albert C. Gordon

Director General

Date: 13<sup>th</sup>, February 2015