
Office of Utilities Regulation

Rules and Procedure for Operation and Administration of the Electricity Sector System Benefit Fund (SBF)

Notice of Proposed Rule Making

Document Number: 2018/ELE/009/NPR.002

Publication Date: 2018 April 27



OFFICE OF UTILITIES REGULATION

ABSTRACT

This Notice for Proposed Rule Making (NPRM) is a consultative document which sets out, and invites comments, on the proposed rules and procedures which should govern the operation and administration of the Electricity Sector System Benefit Fund (“SBF”) established pursuant to the Electricity Act, 2015 (“the EA”). Section 50 of the EA requires that the SBF be administered and controlled by the Office of Utilities Regulation (the “Office”).

This NPRM, among other things, outlines the legal basis for establishing the SBF, the stakeholders’ roles in relation to the SBF, the proposed treatment of the SBF assets and the level and types of monitoring required for proper accountability to all stakeholders, specifically the electricity customer stakeholder group.

Stakeholders and other individuals with an interest in contributing to the development of these rules may do so by providing feedback on this document.

On reviewing and evaluating the feed-back received, the OUR will make a determination on the form, elements and content that should comprise the rules and procedures that will govern the operation and administration of the SBF. It is intended that these rules and procedures will be finalized and promulgated by 2018 July 05.

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CONSULTATION PROCESS

Comments from interested parties

Persons who wish to express opinions on this Notice of Proposed Rulemaking (“NPRM”) are invited to submit their comments in writing to the Office of Utilities Regulation (“OUR”) by delivery, post, facsimile or e-mail addressed to:-

Secretary to the Office
Office of Utilities Regulation
P.O. Box 593
36 Trafalgar Road
Kingston 10

Attention: NPRM - System Benefit Fund

Fax: (876) 929-3635

E-mail: stto@our.org.jm

Responses are requested by Monday 2018 May 21

Any responses which are confidential should be clearly identified as such. Responses which are not confidential, pursuant to any relevant legislation or other laws, will be posted to the OUR’s website (www.our.org.jm). In the interest of promoting transparent debate, respondents are requested to limit as far as possible the use of confidentiality markings. Respondents are also encouraged to supply their responses in electronic form, to facilitate posting on the OUR's website.

Comments on responses

The OUR's intention in issuing this NPRM is to stimulate public debate for consideration in the development of the rules and procedures of the SBF. The responses to this NPRM play a vital part of that public debate. The OUR will therefore provide an opportunity to persons both to examine the information and the views put forward in the responses to the NPRM (non-confidential), and to comment on them. The comments may take the form of either correcting a factual error or putting forward counter arguments. As in the case of the responses, comments on the responses which are not confidential will be posted to the OUR’s website.

Comments on responses are requested by Monday 2018 June 04

Arrangements for viewing responses

This NPRM and the non-confidential responses and comments on responses received by the OUR will also be made available to the public through the OUR's Information Centre ("OURIC"). Persons who wish to view the NPRM, responses and comments on responses should make an appointment by contacting:-

Mr. Lyndon Adlam
Acting Manager – Records and Information Management
Telephone: (876) 968-6053
Fax: (876) 929-3635
Email: lyndon.adlam@our.org.jm

Individuals with appointment should visit the OUR's offices at:

3rd Floor, PCJ Resource Centre
36 Trafalgar Road
Kingston 10

Photocopies of selected responses and/or comments on responses may be provided on request at a price which reflects the cost to the OUR.

Consultation Timetable

The timetable for the consultation on this NPRM is summarized in the Table below:-

Summary of the timetable for public consultation

<i>Event</i>	<i>Date</i>
Publish NPRM Document	2018, April 27
Deadline to Receive Responses to NPRM	By 2018, May 21
Deadline to Receive Comments on Responses to NPRM	By 2018, June 04
Publication of Determination Notice	By 2018, July 05

DEFINITIONS AND ACRONYMS

1. **“Assets”** means the material assets and facilities owned, operated or leased by the Licensee, including real estate.
2. **CPLTD** – Current Portion of Long Term Debt
3. **EA** – Electricity Act, 2015
4. **EEIF** – Electricity Efficiency Improvement Fund
5. **“JPS”** means the Jamaica Public Service Company Limited.
6. **“kWh”** means Kilowatt-hours, which is the unit of energy used to measure electricity consumption.
7. **“Licence”** means the Jamaica Public Service Company Limited Electricity Licence, 2016, which authorizes JPS to generate, transmit, distribute and supply electricity in Jamaica.
8. **“Licensed Business”** means the business of generation, transmission, distribution, supply and despatch of electricity as carried out by the Licensee under the Licence.
9. **“Licensee”** means the JPS.
10. **“Ministry”** unless the context requires otherwise, means the Ministry with oversight responsibilities for the energy sector.
11. **“MSET”** means the Ministry of Science, Energy and Technology
12. **“Office” or “OUR”** means the Office of Utilities Regulation as established pursuant to the OUR Act.
13. **“OUR Act”** means the Office of Utilities Regulation Act.
14. **“O&M”** means the Operation and Maintenance of the utility plant as a part of the process of generating, transmitting, distributing and supplying electricity.
15. **“Rate Base”** means the value of the net investment in the Licensed Business.
16. **“SBF”** means the System Benefit Fund established in accordance with the Electricity Act, 2015
17. **“SBF Assets”** means assets purchased with proceeds from the SBF.
18. **“T&D System”** means the transmission and distribution network consisting wholly of electric lines owned or operated by the Licensee and used to transmit electricity, and includes any electrical plant and meters owned or operated by the Licensee in connection with the transmission and distribution of electricity.

1. BACKGROUND

- 1.1. The Electricity Efficiency Improvement Fund (“EEIF”) was introduced by the Office of Utilities Regulation (“Office” or “OUR”) in 2009 October for the purpose of augmenting the Jamaica Public Service Company Limited’s (“JPS”) capital expenditure in its drive to accelerate the reduction of system losses. The EEIF was established with an initial annual revenue intake of US\$13,000,000.00 and was financed by way of an incremental rate of 0.4 US¢/kWh on JPS’ customers’ bills.
- 1.2. Arising from questions related to the effectiveness of the EEIF in substantially impacting system losses, the Office determined in the Jamaica Public Service Company Limited Annual Tariff Adjustment 2016 – Determination Notice (Document No. Ele 2016/ELE/004DET.001 dated 2016 July 4) that the revenue intake into the EEIF would be reduced by fifty percent (50%).
- 1.3. In its 2017 Annual Rate Review Submission of 2017 May 5, the JPS made a proposal that the EEIF be discontinued and instead the System Benefit Fund (“SBF”), prescribed under the Electricity Act, 2015 (“EA”), be implemented in its place. The company further proposed that the proceeds of the SBF be used to assist in funding the wiring of houses of customers in various targeted communities.
- 1.4. Subsequent to JPS’ submission, and prior to the Office issuing its determination thereon, the Ministry of Science, Energy and Technology (“MSET”), by letter dated 2017 August 15 requested that the OUR replace the EEIF with the SBF in an initial annual amount of US\$5,000,000.00, and instructed that proceeds of the SBF be used to allow JPS to recover the cost of implementing its Smart Streetlight Programme under its Electricity Licence, 2016 (the “Licence”).
- 1.5. The Office, in its Jamaica Public Service Company Limited Annual Review 2017 & Extraordinary Rate Review – CPLTD: Determination Notice (Document number: 2017/ELE/006DET.003) dated 2017 August 31 (the “2017 Annual Adjustment”) approved the establishment of the SBF in replacement of the EEIF, and in an initial amount of US\$5,000,000.00 as requested by MSET, during the first year. The Office did not approve the proposal that the proceeds of the SBF be used for house wiring in targeted communities, but instead confirmed that the SBF would be used for the purposes contemplated in the EA.
- 1.6. Given that the termination of the funding of the EEIF coincided with the introduction of the SBF, and the source of funding for both are the same, the OUR considered it prudent and logical to have JPS transfer the residual funds and any outstanding obligations accruing to the EEIF to the SBF. Preliminary evidence suggested that:

- i. At the end of 2016, JPS owed US\$17.4 million to the EEIF by way of cumulative tax benefit since its introduction in 2009;
- ii. Additional tax benefits would be due to the EEIF in 2017 and beyond;
- iii. There was the need for a reconciliation of the EEIF expenditures against the revenue inflows to determine the residual sum to be transferred from the EEIF to the SBF.

1.7. Accordingly, the Office determined in the 2017 Annual Adjustment that the initial US\$5,000,000.00 in the SBF would be funded over the first year directly through JPS' repayment of its existing outstanding obligations to the EEIF. At the 2018 annual rate review the Office will determine JPS's remaining liability to the EEIF and make a determination on how this amount should be transferred to the SBF.

1.8. So as to establish a foundation for the administration of the SBF which is based on principles of transparency, efficiency and fairness, the Office has taken steps to establish a segregated bank account for the SBF, independent of the OUR's own financial transactions, and is now implementing its commitment to consult on and develop the rules for administration of the SBF.

2. LEGISLATIVE AND REGULATORY FRAMEWORK

2.1. The OUR is established under the Office of Utilities Regulation Act (“OUR Act”) to regulate, among other things the generation, transmission, distribution and supply of electricity. This power to regulate the electricity sector is confirmed in the EA where at section 4(d) the EA states that “*the Office shall regulate the electricity section generally*”.

2.2. Section 50 of the EA establishes the SBF, and specifies that it should be administered and controlled by the Office. Subsection (2) and (3) of section 50 of EA prescribes the sources of financing and the permitted usage of the SBF as follows:

“(2) The System Benefit Fund shall be financed from-

- (a) tariffs, as the Office may direct;*
- (b) fines collected pursuant to this Act;*
- (c) monies from the Consolidated Fund;*
- (d) any other source*

(3) The resources of the System Benefit Fund shall be utilised –

- (a) to increase the penetration of renewable energy or energy security;*
- (b) for the promotion of energy conservation;*
- (c) for the purpose of providing electricity to rural areas; and*
- (d) for any other purpose that the Minister may prescribe by Order published in the Gazette.”*

2.3. In exercise of his powers under section 50(3)(d) of the EA, the Minister with responsibility for the electricity sector prescribed in the Electricity Act (System Benefit Fund) Order, 2017 (dated 2017 August 16) that the resources of the SBF be utilised for the purpose of “*allowing the Jamaica Public Service Company Limited to recover the costs of implementing the Smart Streetlight Programme in accordance with the Electricity Licence, 2016*”. The Licence at Condition 28, paragraph 6 describes the Smart Streetlight Programme and further states that “*The Office shall utilise a Fund or the System Benefit Fund (as defined in the EA), to allow the Licensee to recover the costs of implementing Smart Streetlight Programme*”.

- 2.4. The Office now seeks to establish rules and procedures to govern its operation and administration of the SBF in accordance with the provisions of the EA and orders issued thereunder, as well as the Licence.

3. RATIONALE FOR THE RULES

3.1. These Rules of procedure for the operation and administration of the SBF are to:

- i. Provide clear and precise understanding of the principles, parameters and processes necessary for good governance of the SBF;
- ii. Establish the framework within which the OUR may effectively administer and monitor the activities of the SBF;
- iii. Facilitate transparent and prudent administration of the SBF; and
- 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.

3.2. These Rules set out the:

- i. Scope, purpose and objectives of the SBF;
- ii. Circumstances and the purposes for which the SBF may be applied;
- iii. The Ministry's responsibilities;
- iv. The OUR's record keeping and responsibilities;
- v. JPS's record-keeping responsibilities; and
- vi. Accounting with regard to the SBF.

4. PURPOSE AND OBJECTIVES OF THE SBF

4.1. The purpose of the SBF is to create a financial mechanism through which funding may be made available for the following uses:

- i. To increase the penetration of renewable energy;
- ii. To enhance national energy security;
- iii. To promote energy conservation;
- iv. To provide electricity to rural areas;
- v. To facilitate the recovery of cost by JPS for implementing the Smart Streetlight Programme in accordance with the Licence; and
- vi. For any other purpose that the Minister with responsibility for the electricity sector may prescribe by Order published in the *Gazette*.

- 4.2. In respect of rural electrification programmes which involve the use of renewable energy, the EA further stipulates at section 52(7) that *“to the extent that the solution in the rural area is from renewable energy sources, the System Benefit Fund may be utilized to subsidize the tariff to rural customers to achieve grid parity.”*

5. APPLICATION OF SBF

- 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.

6. ROLE OF THE MINISTRY

- 6.1. In keeping with the purposes and objectives of the SBF as delineated in section 4 above, and generally the objects of the EA, the Ministry may, from time to time, after consultation with the OUR, identify other uses to which the proceeds of the SBF may be applied.
- 6.2. Where such identified uses are not contemplated in the purposes set out in subparagraphs i. to v. of section 4 above, the Ministry shall, in a timely manner, issue and have published in the Gazette the relevant Order authorising such use of the SBF.

7. ROLE OF JPS

- 7.1. JPS shall be required to do, and be held accountable for the following:
- 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;
 - 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 in the bank account established by the OUR for deposit of SBF inflows.
 - c) Developing the project plans for SBF programmes that it or the Ministry may identify for implementation by JPS, and seeking the Office’s No Objection to the plans and the Office’s approval for funding to be allocated for same from the SBF. The plans submitted to the OUR for approval shall include but not be limited to:
 - A detailed technical description of the project. Among the technical specifications, the project description shall establish the project’s objectives, boundaries, timelines, risks as well as the parameters that will be used to evaluate and measure its success.
 - The projected expenditure and income stream associated with the project;
 - A cost benefit analysis;

- An analysis of the impact that the project will have on the Grid and the company's revenue;
 - Schedules indicating the quarterly funding requirements from the SBF.
- d) Successfully implementing and executing its SBF projects.
- 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.
- f) Keeping all documentary evidence of all goods and services procured in the implementation of approved and assigned SBF projects.
- g) Submitting annual, quarterly (as further detailed in section 15 below) and special reports, as may be requested by the OUR from time to time, in relation to its SBF projects, within thirty (30) days of the end of each year or quarter, in the case of annual and quarterly reports as the case may be, and within thirty (30) days of the date of any request for special reports. These reports should include, but not be limited to:
- The status of ongoing SBF projects;
 - Variance analyses of actual expenditure versus budgeted expenditure on all approved items and projects;
 - The classification, valuation and analysis of SBF Assets.
 - An evaluation of completed SBF projects vis-a-vis the approved budget, the expected benefits/extent of fulfilment of the relevant purpose or project objective, and the projected impact of the project on the grid and the company's revenues.

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.

8. ROLE OF OTHER IMPLEMENTING AGENCY

8.1 Should an entity other than JPS be designated to implement a SBF funded project, then such entity shall be responsible for the activities set out in paragraphs 7.1 c) through g) above in respect of its SBF funded projects.

9. ROLE OF THE OUR

9.1. In the administration and control of the SBF, the OUR shall ensure that the regulatory principles of transparency and efficiency are observed in all matters.

- 9.2. In the administration and control of the SBF, the OUR shall be held accountable and shall be responsible for:
- a) Establishing the required bank accounts for the efficient and effective management of the SBF;
 - b) Approving and adjusting the level of funding applicable to the SBF through electricity tariffs, if it deems fit;
 - c) Reviewing and approving all disbursements to JPS or any other entity that may be implementing a SBF funded project from the SBF;
 - d) Setting the broad investment criteria and/or limitations on instruments in which the SBF may be invested;
 - e) Ensuring that regular audits of the SBF are conducted in accordance with these rules and the EA;
 - 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;
 - g) Reviewing requests from JPS or an entity implementing a SBF funded project for additional funding beyond those initially approved in the project budget; and
 - h) Monitoring of SBF projects and movements in the SBF bank account(s) by way of reviewing and analysing quarterly, annual and special reports.

10. MANAGEMENT OF THE SBF ACCOUNT

- 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.
- 10.2. So as to ensure the prudent investment of the proceeds of the SBF, investments in the following financial instruments are prohibited:
- i. Foreign securities outside the stipulation of the Bank of Jamaica
 - ii. Derivatives, options and futures contracts
 - iii. Non-marketable securities
 - iv. Fiduciary participation in any real estate deal
 - v. Commodities

vi. Short sales

10.3. The Office or its designated officer(s) shall be required to give approval to all withdrawals from the SBF account.

10.4. The financial institution(s) in which the SBF account is (are) held shall be required to submit quarterly and annual reports to the OUR.

11. THE SOURCES OF FUNDING

11.1. The SBF shall be financed from:

- a) Electricity tariffs, as the Office may direct from time to time;
- b) Fines collected pursuant to the EA;
- c) Monies paid from the Consolidated Fund;
- d) JPS' outstanding liabilities to the EEIF;
- e) Other sources as may be designated from time to time.

12. THE FUND – TAXATION

12.1. By virtue of the fact that all tariff revenue inflows to JPS in relation to the SBF represents an immediate and direct expense to the SBF, such inflows shall not be subject to the company's corporate income tax.

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.

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.

13. TREATMENT OF ASSETS

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 adjustments to the tariff based on the status of these regulatory accounts and asset register.

- 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.
- 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.”
- 13.4. During the Five Year Rate Review Process, the OUR, shall make appropriate adjustments to the JPS asset base in order to account for SBF assets as recorded and reported in the regulatory asset register.
- 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.

14. ACCOUNTABILITY

- 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 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:
 - i. All inflows and outflows of the SBF; and
 - ii. The overall progress of the SBF projects.
- 14.2. The primary objective of the monitoring function is to ensure that the Fund is effectively maintained and managed thereby achieving the stated objectives for which it is established.

15. SBF REPORTS

- 15.1. JPS and any other entity implementing a SBF funded project shall provide rolling quarterly reports to the OUR within thirty (30) days of the end of each quarter. These reports shall contain inter alia:

- i. A statement showing the inflows of SBF proceeds received from the OUR and the outflows in acquiring SBF assets.
- ii. A statement detailing the variance between budgeted expenditure and actual expenditure for the SBF projects.
- iii. A summary of the capital items purchased and any associated expenditure from the SBF.
- iv. A summary of JPS' or the other implementing entity's total capital expenditure and O&M expenditure in relation to the projects that are being funded with proceeds from the SBF.
- v. Update on the overall progress of any SBF projects that are being implemented.

16. AUDITS

- 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.

17. APPEALS

- 17.1. In the event that JPS or another entity that is implementing a SBF funded project is aggrieved by a decision of the Office under these Rules (referred to in this section as an "aggrieved party:), the aggrieved party may request a review of the decision by the Office within thirty (30) days of its receipt of the decision.
- 17.2. The Office shall review the decision and issue its final position within thirty (30) days of receiving the request, or such longer period as may be agreed with the aggrieved party.
- 17.3. If the aggrieved party is dissatisfied with the Office's position after the review, then:
 - (i) In the case of JPS, it may appeal to the Appeal Tribunal established under Condition 32 of the Licence; or
 - (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.