
Office of Utilities Regulation

**DIRECTIVE TO JAMAICA PUBLIC SERVICE COMPANY LIMITED FOR
IMPLEMENTATION OF A REVISED BACK-BILLING POLICY**

DIRECTIVE



OFFICE OF UTILITIES REGULATION

November 24, 2011

DOCUMENT TITLE AND APPROVAL PAGE		
DOCUMENT NUMBER: ELE2011007_DIR001		
1. DOCUMENT TITLE: DIRECTIVE TO JAMAICA PUBLIC SERVICE COMPANY LIMITED		
2. PURPOSE OF DUCUMENT: DIRECTIVE TO JAMAICA PUBLIC SERVICE COMPANY LIMITED FOR IMPLEMENTATION OF A REVISED BACK-BILLING POLICY		
3. RECORD OF REVISIONS		
Revision Number	Description	Date
4. APPROVAL		
<p>This Directive is approved by the Office of Utilities Regulation and becomes effective on November 25, 2011.</p> <p>On behalf of the Office:</p> <p></p> <p>Ahmad Zia Mian Director General</p> <p>Date: November 24, 2011</p>		

OFFICE OF UTILITIES REGULATION

DIRECTIVE

ELE 201107_DIR001

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

IN THE MATTER OF:

INVESTIGATION OF THE JAMAICA PUBLIC SERVICE
COMPANY LIMITED BILLING AND METERING SYSTEM
FOR ELECTRICITY CONSUMPTION (October 2011)

AND

THE BACK-BILLING POLICIES OF THE JAMAICA
PUBLIC SERVICE COMPANY LIMITED

AND

THE AMENDED AND RESTATED ALL-ISLAND
ELECTRIC LICENCE, 2011

AND

THE OFFICE OF UTILITIES REGULATION ACT, 1995
(AS AMENDED)

TO: JAMAICA PUBLIC SERVICE COMPANY LIMITED

WHEREAS:

A. Pursuant to Condition 2(3) of the Amended and Restated All-Island Electric Licence, 2011, (the "Licence") the Jamaica Public Service Company Limited ("JPS") shall provide an adequate, safe and efficient service based on modern standards, to all parts of the Island of Jamaica at reasonable rates so as to meet the demands of the Island and to contribute to economic development.

B. Condition 16 of the Licence provides,

"Condition 16: Codes of Practice

1. *At the direction of the Office, from time to time, the Licensee shall prepare and publish Codes of Practice in respect of the various matters that affect customers. These would address such issues as Efficient Use of Energy; Payment of Bills;*

Disabled Customers and Customers of Pensionable Age; Handling Customer Complaints.

2. *Notwithstanding paragraph 1 above, the Licensee may issue Codes of Practice on its own volition.*
 3. *In drafting Codes of Practice in accordance with paragraph 1, and in carrying out any review in accordance with paragraph 4, the Licensee shall consult with such bodies as the Office may designate, from time to time, and shall have regard to any representations made by them about the Code of Practice or the manner in which it is likely to be or (as the case may be) has been operated.*
 4. *From time to time, and whenever required to do so by the Office, the Licensee shall review the Codes. The Licensee shall submit any proposed revisions to the Code to the Office for approval prior to implementation.*
 5. *The Licensee shall:*
 - (a) *send a copy of any Code of Practice prepared in accordance with paragraph 1 and of any revision of such code prepared in accordance with paragraph 4 (in each case, in the form approved by the Office) to the Office;*
 - (b) *draw to the attention of consumers the existence of the Codes and any significant revisions to it, and advise consumers how they may be inspected;*
 - (c) *make a copy of each Code available for inspection by the public during normal business hours at any of its premises usually open to the public; and*
 - (d) *give or send free of charge copies of the Codes (as from time to time revised) to any Person who requests it."*
- C. Pursuant to Section 4(1) of the Office of Utilities Regulation Act (the "OUR Act") the Office of Utilities Regulation ("OUR/Office") is empowered to regulate electricity services and on its own initiative or at the request of any person carry out such investigations in relation to the provision of electricity services as will enable it to determine whether the interests of the consumer are adequately protected.
- D. The OUR appointed an Independent Investigator at the end of August 2011 to investigate JPS' billing, meter replacement, meter inspections and audit, and meter testing practices and procedures. The investigation had its genesis in consumer concerns and reaction to the introduction of the electronic digital meters to replace the electromechanical meters that had been in use for decades.
- E. A Report entitled: **"INVESTIGATION OF THE JAMAICA PUBLIC SERVICE COMPANY LTD (JPS) BILLING AND METERING SYSTEM FOR ELECTRICITY CONSUMPTION"** (the "Report") was submitted by the Independent Investigator in October 2011, attached hereto at **APPENDIX "A"**.
- F. With respect to JPS' Back-Billing policy and practices, the Independent Investigator concluded that JPS' back-billing policies when compared to other jurisdictions such as

the US and UK, did not accord with "best practices". Also JPS' current back-billing policies (as exemplified by how they are presently being applied) were vague in areas such as fraud management and inaccurate meter registration. This "vagueness" in terms of possible interpretation and application accounted for, if not the majority of customer complaints, involving "back-billing" and alleged fraud and illicit power abstraction.

- G. The Independent Investigator also concluded that the application of JPS' back-billing policy lent itself to inconsistency and did not inure to the benefit of the protection of customer rights, especially in light of JPS' treatment of alleged fraud cases and their application of the statutory limitation period. Hence the JPS' back-billing policies (having been last reviewed ten years prior) were in need of review and amendment.
- H. The Independent Investigator inter alia, made the following recommendations in relation to the appropriateness of JPS' current Back Billing Policies and Procedures ("the Recommendations"):
1. *"The relevant policy documents are to provide that all new accounts (including those where a meter is already installed) should have the appurtenant meter checked and, if necessary, a new meter installed on the premises prior to activation of the said new account. This would serve to detect any meter registration problems and to have them eliminated at the time of the commencement of the account and the relevant service contract. It should also be stipulated that JPS will not be allowed to back-bill beyond this point of commencement of the new account. This may impact on the Guaranteed Standard (EGS 1), New Connections, in that the time for connection may have to be reviewed.*
 2. *JPS be required to check meters more frequently than the company does at present, (this could be statistically derived but the appropriate time should be determined after consultation between the Office and JPS). In the event that JPS fails to do the inspection within the stipulated time or takes a business decision not to do so, it will be required to accept the risk of a given meter being faulty, i.e. they should be prohibited from back-billing beyond the material time when they should have discharged their responsibility and duty of care to check the meters.*
 3. *JPS be required to revisit its back-billing policy and reformulate it to be in line with "best practice", particularly with regard to back-billing on the grounds of "fraud", alleged meter tampering and illicit abstraction. The period for which the company can back-bill an account must reflect the principle that the customer ought not to be disadvantaged because of an error by or the inefficiency of JPS. The current minimum period where stipulated as four (4) months should be changed to reflect the original intent – 2 billing periods or 2 months. In the case of the upper limits best practice suggest that these should be 1 year.*
 4. *In the event that meter tampering is alleged, the company be restricted to a maximum back-billing period of 2 years, subject to clear evidence that the customer has liability for a lesser period. Should this conclusion in any specific case be unsatisfactory to either party, either is free to refer the matter to the Office, in the first instance, or the courts, at any time, for adjudication.*

5. *If fraud is suspected, the company has to prove "deliberate" and "willful" actions of customers if it is to successfully apply the full period of retroactivity provided for in the statutes, or alternatively, routinely cause these matters to come before the courts.*

6. *The company be required to issue its back-billing policy and related issues as a Code of Practice to be made publicly available."*

I. 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) protect the health etc.*
- (ii) protect and preserve etc*
- (iii) afford to consumers etc"*

J. 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) Encourage the development and use of indigenous resources; and*
- (d) Promote and encourage the development of modern and efficient utility service;*
- (e) ..."*

K. Section 9 of the OUR Act provides that the Office may require JPS to take certain measures:

"9. Power to require measures to be taken.

9. (1) Where it appears to the Office that a licensee or specified organization, as the case may be, is not fulfilling its obligations under its licence or enabling instrument, as the case may be, the Office may, by Memorandum in writing to the licensee or specified organization, require the licensee or specified organization, within the time specified in that Memorandum, to take such remedial measures as may be so specified.

(2) Any licensee or specified organization which fails to comply with the requirements of a memorandum issued by the Office under this section shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding two million dollars..."

- L. On November 16, 2011 JPS submitted to the OUR its comments on the Recommendations ("JPS' Comments").
- M. The OUR has considered the Recommendations and JPS' Comments in light of the interests of the Jamaican consumer and the need to ensure the economic and financial viability of JPS and the electricity sector generally.

The Office **HEREBY DIRECTS** that JPS:

- 1. Effective December 5, 2011 all new accounts (including those where a meter is already installed) should have the appurtenant meter checked and, if necessary, a new meter installed on the premises prior to activation of the said new account. Under such circumstances, JPS shall not back-bill the customer beyond the point of commencement of the new account.
- 2. In a large-scale meter replacement exercise, customers' accounts showing an immediate increase in consumption post meter change should not be back-billed except in cases where there is convincing evidence of an unauthorized abstraction of electricity e.g. illegal abstraction and meter tampering.
- 3. Within thirty (30) calendar days of the effective date of this **DIRECTIVE**, amend the relevant policy documents to reflect the following:
 - a. Measures to ensure that the frequency of meter testing annually is in accordance with Overall Standards EOS7(a) & (b) of the Licence. Within one (1) month of the beginning of each year, JPS will be required to submit to the OUR an annual schedule designating the areas for which meter testing will be conducted for that year. Based on that schedule, a report detailing the number of meters tested, the date and result of the tests should be forwarded to the OUR within one (1) month of the end of each year. In the event that JPS fails to adhere to Overall Standards EOS7(a) & (b) of the Licence, it will be required to accept the risk associated with a faulty meter, i.e. JPS will be prohibited from back-billing beyond the material time when it should have discharged its responsibility to test the meters.
 - b. The period for which the company can back-bill an account must reflect the principle that the customer ought not to be disadvantaged because of an error by or the inefficiency of JPS. The current minimum period where stipulated as four (4) months should be changed to reflect the original intent of two (2) billing periods or two (2) months. In the case of the upper limits, in accordance with best practice, this should be one (1) year.
 - c. The back-billing policy should be reformulated to be in line with "best practice", particularly with regard to back-billing on the grounds of "fraud", alleged meter tampering and illicit abstraction. In the event that meter tampering is alleged, the company is restricted to a maximum back-billing period of two (2) years, subject to clear evidence that the customer has liability for a lesser period. Should this conclusion in any specific case be unsatisfactory to either party, either is free to

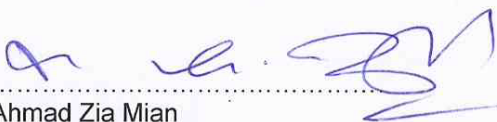
refer the matter to the Office, in the first instance, or the courts, at any time, for adjudication.

- d. In the event that fraud is suspected, JPS shall be required to prove "deliberate" and "willful" actions of customers if it is to apply the full period of retroactivity provided for by statute, or alternatively, routinely cause these matters to come before the courts.
4. Submit the revised back-billing policy to the Office by December 23, 2011 for its review and approval.
5. Within five (5) calendar days of receipt of the Office's approval, issues the amended back-billing policy and related issues as a Code of Practice and make it publicly available.

TAKE NOTICE that failure by JPS to comply with this Directive within the time specified herein, will render it liable to prosecution pursuant to the provisions of Section 9 of the OUR Act with respect to any of the Directive provisions set out above that are not complied with by the Licensee.

AND TAKE FURTHER NOTICE that this Directive becomes effective on the 25th day of November 2011.

BY ORDER OF THE OFFICE OF UTILITIES REGULATION:


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Ahmad Zia Mian
Director General
November 24, 2011