

Media Release

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OUR rejects JPS' J\$4.2b compensation claim

The Office of Utilities Regulation (OUR) has rejected a claim from the Jamaica Public Service Company Ltd. (JPS), which was seeking to recover J\$4,273 million from consumers under the Z-factor provision of the All Island Electricity Licence of 2001 in respect to payments made to its workers following a reclassification exercise.

The JPS had proposed that consumers pay the J\$4.2b over a two year period by adding 6.75 cents per kilowatt-hour to the bills of all its customers.

The reclassification exercise was commissioned in 2000, completed in 2002 and the results, which were challenged by the company, were submitted to the Industrial Disputes Tribunal (IDT) for a ruling. The IDT ruled in favour of the workers in 2003 and the company took the matter further to the Supreme Court and then to the Court of Appeal which in 2007 upheld the lower court's ruling in favour of the workers.

The management of the company then proceeded to implement the reclassification exercise and in mid 2008 paid out J\$2.3 billion to workers and ex-employees. As part of its application for a rate review in 2009, the JPS submitted a claim to recover what it denotes as the cash flow impact associated with the award.

The Office decided then that the matters should be separated and that the application with regard to the wage claim should be treated on a standalone basis.

Under Schedule 3 of the Licence *the Z factor is the allowed percentage increase in the price cap index due to events that:*

- a) affect the Licensee's costs;*
- b) are not due to the Licensee's managerial decisions; and*
- c) are not captured by the other elements of the price cap mechanism."*

Among the Office's conclusions are:

- a. The claim does not qualify under the Z-Factor provision since the costs incurred were as a consequence of managerial decisions, in that; JPS agreed with the labour unions in 2000 to embark on the reclassification exercise and must have had in its contemplation before undertaking the exercise that it would result in a likely increase in overall workers' compensation.
- b. JPS aggravated its costs by submitting the IDT's ruling in favour of the workers to the Supreme Court.
- c. JPS further aggravated its costs by filing an Appeal in the Court of Appeal.
- d. On the basis of the Licence these costs if they were to be considered as legitimate (and this is not conceded) ought properly to have been submitted with JPS' 2004 tariff submission.

The Office has therefore determined that the claim has no merit and is inconsistent with the criteria set forth in Schedule 3 paragraph 2 (c) and 3 (b) of the Licence respectively.

The full determination is now available on the OUR's website at www.our.org.jm.

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