



**OFFICE OF UTILITIES REGULATION**

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*Regulating Utilities for the Benefit of All*

## **Media Release**

**FOR RELEASE: Friday May 27, 2011**

### **“OUR wins case at Tribunal saving JPS customers J\$4.2b”**

The Office of Utilities Regulation (OUR) has been successful in its bid to spare customers of the Jamaica Public Service Company Ltd. (JPS) from paying over an additional J\$4.2b to the company.

This as the OUR was successful in its defence of an appeal filed against a ruling of the regulator which had last year rejected a claim from the JPS, which was seeking to recover J\$4,273 million from consumers. The claim was made by the Company 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.

Following the OUR’s ruling, the Jamaica Public Service Company filed an appeal on the grounds that the OUR had misinterpreted and acted outside of the provisions of the All Island Electricity Licence 2001 and had based its decisions on irrelevant considerations. The JPS had sought to have the OUR’s March 02, 2010 decision reversed so it could recover the J\$4.2b.

The Tribunal in its ruling handed down on Thursday May 26, 2011 found that the Office of Utilities Regulation (OUR) *“was correct to find, as a matter of law, that the application of the JPS did not qualify to be considered under the Z-factor provision of the Licence, and was rightly rejected.”*

The JPS had commissioned a reclassification exercise in 2000, completed it 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 then were:

- a. The claim did 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 therefore determined then that the claim had no merit and was inconsistent with the criteria set forth in Schedule 3 paragraph 2 (c) and 3 (b) of the Licence respectively.

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