

# “Fifteen Years Of Effective Regulation”

*Fifteen years ago the Office of Utilities Regulation (OUR) began its service to the people of Jamaica.*

*The Office has had many challenges over the years but first and foremost it has scored many victories in the public's interest. It has managed a liberalised telecommunications market thus facilitating the entrant of new players. It has also recommended the granting of over 400 telecoms licences. More than US\$1 billion has been invested in the sector which speaks to the confidence investors have in the regulatory framework and the regulator's conduct.*

*In the area of electricity, OUR oversaw the transition of the then state-owned electricity provider to private ownership and is now managing the project to establish 480MW of new generating capacity for load growth and to replace ageing inefficient plants. Provision has also been made for small renewable energy suppliers to sell their excess capacity to the grid.*

*Good things have also flowed in the water sector with the establishment of cost based tariffs within a regulatory framework which sets out targets, standards and reporting requirements. A mains replacement programme funded by the K-factor initiative is designed to reduce the level of non-revenue water thus resulting in stable tariffs but increased revenue for the state run water provider.*

*The independence of the Office of Utilities Regulation was challenged in previous years; however, the organisation was vindicated by the highest court (Privy Council) thus re-affirming its independence.*

*In continuing to act in the public's interest, the OUR has sought to protect consumers in various ways. Having recognised the need for consumer advocacy, the Office established over 10 years ago, the independent consumer advocacy group known as the Consumer Advisory Committee on Utilities (CACU). The primary aim of CACU is to make representation to the regulator on behalf of the consumer.*

*Through various mechanisms, the regulator has saved the Jamaican utility consumer over \$42 billion. This has been achieved through the tariff review and claims revision processes. With the price cap period still continuing, consumers are to benefit from even more savings. Additionally, as a result of its efforts through the appeals handling process, amounts averaging \$6 million per annum have been credited to utility customers' accounts.*

*As we look forward to another 15 years and more, the Office of Utilities Regulation will continue to live up to its mission of contributing to national development by creating an environment for the efficient delivery of reliable and affordable utility services to the customer whilst ensuring that service providers have the opportunity to make a reasonable return on their investments.*

*We promise to continue regulating utilities for the benefit of all.*



TELECOMMUNICATIONS / ELECTRICITY / TRANSPORT / WATER & SEWERAGE



## Committed To National Development

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- SuDoKu

*Regulating Utilities for the Benefit of All*

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## OUR's Directive to JPS regarding Back-billing

The Office of Utilities Regulation (OUR) has instructed the Jamaica Public Service Company Limited (JPS) to make several changes to its *Back-Billing* policy. This decision follows the investigation into the billing and metering systems of the electricity provider. The Directive, which was issued on November 25, 2011, states that effective December 05, 2011:

1. The meter for new account holders (including those where a meter is already installed) should be checked. Where necessary, a new meter is to be installed on the premises prior to activation of the new account. Under these 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 after the meter change should not be back-billed, except in cases where there is convincing evidence of an unauthorized abstraction of electricity (e.g. illegal connection or meter tampering).
3. Within thirty (30) calendar days of the aforementioned effective date, JPS must amend the relevant policy documents to reflect:
  - 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; meaning, JPS will not be allowed to back-bill beyond the time when it should have discharged its responsibility to test the meters.
  - b. **The period for which the company can back-bill an account.** This must reflect the principle that the customer ought not to be disadvantaged because of an error by or the inefficiency of JPS. As such, 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.

*Cont'd on page 4*

## SuDuko answers from last edition

9	7	1	5	6	3	4	2	8
6	5	2	4	7	8	3	1	9
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# OUR's Objectives

- To ensure that consumers of utility services enjoy an acceptable quality of service at reasonable cost.
- To establish and maintain transparent, consistent and objective rules for the regulation of utility service providers.
- To promote the long-term efficient provision of utility services for national development consistent with Government policy.
- To provide an avenue of appeal for consumers who have grievances with the utility service providers.
- To work with other related agencies in the promotion of a sustainable environment.
- To act independently and impartially.

## The funding of the O.U.R

### (Regulatory Fees)

The Office of Utilities Regulation is funded by licence and regulatory fees which are mandated according to law.

Assessments on regulated companies are the most common method for obtaining the money necessary for the functioning of regulatory agencies. The reasons it is the most common method for raising funds are rooted in both economic and political/juridical theory, and on practical grounds as well. The economic basis is simply that the cost of regulation should be borne by the users of regulatory services, namely the consumers of the regulated product. Regulation is simply another cost component of providing service in a regulated sector of the economy, and should, for purposes of pricing the services provided, be treated no differently than any other cost thereof.

The OUR does not receive a subvention from the consolidated fund (treasury) to meet its budgetary requirement but instead, its budget is funded by an annual levy on the various entities it regulates. These entities are National Water Commission (NWC), Jamaica Public Service Company (JPS), all telecommunications service providers and the Jamaica Urban Transit Company (JUTC). In addition, regulatory fees are also imposed on small water and sewerage service providers and the National Irrigation Commission (NIC).

The authority to make this levy is enshrined in law and the OUR can enforce payments through the courts. The levy payable by each regulated utility is determined by the OUR's estimate of the total annual cost of regulating each sector and levied on the basis of applying weights derived from reported regulatory revenues.

Section 6 subsection (a) of the Office of Utilities Regulation Act of 1995 (as amended in 2000) states clearly that: *"The funds of the Office shall consist of sums received by the Office as licence fees and regulatory service fees in accordance with this Act"*. Subsection (c) continues *"all other sums or property which may in any manner*

*become payable or made available to the Office in respect of any matter incidental to its functions"*.

For the 2010/11 financial year, the sector and percentage contributions were as follows:

SECTOR	PERCENT CONTRIBUTION
Telecommunications	44
Electricity	38
Water	17
Transport	1
TOTAL	100

Significantly the OUR's budget and corporate plans are subject to parliamentary scrutiny and as part of its transparency and accountability mechanism, the annual budget is also subject to public consultation and review by stakeholders.

The OUR adopts this approach as part of its effort to ensure that it cannot be legitimately accused of failing to operate in a transparent manner or of lack of accountability.

The imposition of regulatory fees on the organisations which are being regulated is a global standard practice. In the United States, the annual regulatory fees for the Federal Communications Commission (FCC) are mandated by Congress, pursuant to Section 9 of the Communications Act of 1934, as amended. Section 9 requires the Commission to collect regulatory fees to recover the regulatory costs associated with its enforcement, policy and rulemaking, user information and international activities.

A report done for the Anguilla Public Utilities Commission and prepared by The Executive Director of the Harvard Electricity Policy Group, Ashley C. Brown, says *"the most common method for funding regulation, and perhaps the most logical, is by assessing the costs of regulation to the regulated companies, and then allowing them to simply pass those costs directly on to the consumers. It is logical because it internalizes regulatory costs to the regulated sector, treats regulatory assessments as fees for service rather than taxes, is a stable, reliable source of funds, is easy to administer, is consistent with regulatory independence, and is transparent on its face."*

The Harvard Electricity Policy Group which is located at the John F. Kennedy School of Government at Harvard University says *"the second most utilized method is through an appropriation from general tax revenues. That methodology is less common because it facilitates, even though it does not always attract, political interference in the operation of the agency, may not be as reliable or stable as assessments, and does not internalize regulatory costs into the sector. The third, and least common methodology, is specific fees for services/activities."*

Incidentally the OUR is not the only regulator in Jamaica which is funded by fees levied on the entities which it regulates. The Financial Services Commission (FSC) is another example of a regulatory body which is funded by regulatory fees levied on the securities industry, the insurance industry and the private pensions industry which fall under its remit. Other regulators also receive funding from licence fees imposed on regulated entities.

The OUR falls within the category of independent regulatory institutions. Although the notion of independence is sometimes hard to define, in the context of the OUR it is perhaps best illustrated in terms of the extent of the autonomy that it enjoys in its decision making, the source of its funding, the lack of direct control by the political executive and the extent of its authority to exercise regulatory control over the providers of utility services.

## OUR's Directive to JPS regarding Back-billing

*Cont'd from page 2*

c. **The policy 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* (the executive arm of the OUR), in the first instance, or the courts, at any time, for adjudication.

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.

The revised policy must first be submitted to the *Office* for review and approval. Where such approval is given, the JPS is required to publish the new policy and related issues as a Code of Practice within five days and make it available to the public.

These measures are intended to continue our efforts to protect the interest of consumers while we promote and encourage the development of a modern and efficient utility service

## Mission Statement

To contribute to national development by creating an environment for the efficient delivery of utility services to the customers while ensuring that service providers have the opportunity to make a reasonable return on investment.

**B**e an informed consumer – get information on your Rights under the **Guaranteed Standards Scheme** and submit your claim for breaches to the service provider, where compensation is not automatic. Copies of the Guaranteed Standards are available at the JPS and NWC offices islandwide as well as the OUR website at [www.our.org.jm](http://www.our.org.jm). You can also get information on utility subjects through our Information Centre. If you remain dissatisfied with the service provider's response to your complaint, you may **appeal** the utility company's decision to the OUR in writing.

## SuDoKu

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But how do I do it?

The object is to insert the numbers in the boxes to satisfy only one condition: each row, column and 3x3 boxes must contain the digits 1 through 9 exactly once.

## OUR's Role

The Office of Utilities Regulation Act of 1995 established the Office of Utilities Regulation (**OUR**) as a body corporate. Under the Act, the OUR is charged with the responsibility of regulating the provision of utility services in the following sectors:

- Electricity
- Telecommunications
- Water & Sewerage
- Public transportation by road, rail and ferry

The OUR is headed by the Director General, who along with the Deputy Directors General comprise '**the Office**'. The Director General is appointed by the Governor General and the Deputy Directors General are appointed by the Prime Minister.