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Office of Utilities Regulation

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# **DIRECTIVE**

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**DIRECTIVE TO JAMAICA PUBLIC SERVICE COMPANY LIMITED (JPS) TO  
CEASE AND DESIST THE CURTAILMENT OF SERVICE TO THE COMMUNITIES  
DESIGNATED BY JPS AS EXHIBITING HIGH LEVELS OF THEFT**

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**OFFICE OF UTILITIES REGULATION**

**MAY 13, 2014**

## DOCUMENT TITLE AND APPROVAL PAGE

1. DOCUMENT NUMBER: 2014/ELE/006/DIR.001

2. DOCUMENT TITLE:

**DIRECTIVE TO JAMAICA PUBLIC SERVICE COMPANY LIMITED (JPS) TO CEASE AND DESIST THE CURTAILMENT OF SERVICE TO COMMUNITIES DESIGNATED BY JPS AS EXHIBITING HIGH LEVELS OF THEFT.**

3. PURPOSE OF DOCUMENT:

To direct the Jamaica Public Service Company Limited (JPS) to cease and desist its actions to curtail service to communities designated as "High Theft" areas, as set out in its News Release of May 11, 2014.

4. RECORD OF REVISIONS

5. APPROVAL

This Directive is approved by the Office of Utilities Regulation and becomes effective on May 13, 2014

By Order of the Office:



**Albert Gordon**  
**Director General**

**Date: May 13, 2014**

# **OFFICE OF UTILITIES REGULATION**

## **DIRECTIVE**

**[2014/ELE/006/DIR.001]**

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

**IN THE MATTER OF:**

**INVESTIGATION OF THE JAMAICA PUBLIC SERVICE COMPANY LIMITED (JPS) INITIATIVE TO CURTAIL SERVICE TO COMMUNITIES DESIGNATED BY JPS AS EXHIBITING HIGH LEVELS OF THEFT**

**AND**

**THE OFFICE OF UTILITIES REGULATION ACT, 1995**

**AND**

**THE AMENDED AND RESTATED ALL-ISLAND ELECTRIC LICENCE, 2011**

**AND**

**THE JAMAICA PUBLIC SERVICE COMPANY LIMITED'S STANDARD TERMS AND CONDITIONS OF SERVICE**

**AND**

**THE PUBLIC UTILITIES PROTECTION ACT, 1984**

**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/Licensee") 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 2 of the Licence provides that the Licensee shall not show any undue preference to or unduly discriminate against any Person or class of Persons as respects the sale or purchase of electricity or opportunity or access to the same.
- C. Sheet No. 2008 of the Jamaica Public Service Company Standard Terms and Conditions of Service ("Terms and Conditions of Service") provides the basis on which the JPS can discontinue service to its customers:

### **"DISCONTINUANCE OF SERVICE**

*The Company may discontinue its service to the Consumer for any of the following reasons:-*

- (a) For non-payment on due date of bills for electric service. In this case, if the consumer has a deposit with the Company as a guarantee of payment of bills, the amount of the deposit may be applied to the payment of bills for service then due and the remainder, if any, returned to the consumer. The application of such deposit to the payment of unpaid bills shall not affect the Company's legal right to collect unpaid balances by available legal methods.*
- (b) For refusal or failure to make a deposit or increase a deposit, when requested, to assure payment of bills.*
- (c) When the Company has reasonable evidence that the consumer has been previously disconnected for non-payment at his present or any other location and is receiving service for his own use under a different name in order to avoid past payments due to the Company.*
- (d) Because of a dangerous condition on the consumer's premises in wiring or energy consuming devices.*
- (e) Because of a fraudulent use of the service or tampering with the Company's equipment.*
- (f) For any other violation of its Terms and Conditions which the consumer refuses or neglects to correct within 10 days of the date of a notice in*

writing from the Company specifying such violation and requiring its correction.

- (g) On the request of the consumer, subject to any exercise agreement between the consumer and the Company as to unexpired term of service.

D. Section 3 of the Public Utilities Protection Act provides protection against “tampering or illegal interference” with the works of JPS. Section 3 of the Public Utilities Protection Act reads as follows:

**3.-(1)** *Subject to the provisions of this section, any person who, as respects any public utility-*

*(a) trespasses upon the works or any part thereof; or*

*(b) unless acting pursuant to the express authority of the licensee or owner of the public utility or pursuant to a licence duly issued to him in relation to such works under any law for the time being in force, meddles, interferes or tampers with the works or any part thereof, commits an offence under this Act.*

**(2)** *Without prejudice to any liability under contract, subsection (1) shall not apply in respect of a consumer in relation to works which are located on his premises and which, having regard to a contract relating to such premises between the consumer, in his capacity as such, and the public utility, are intended to be used or dealt with by the consumer in the ordinary course of his enjoyment of the service provided under that contract, unless in relation to such works located as aforesaid any act is done which-*

*(a) is expressly forbidden by the consumer’s contract with the public utility or is inconsistent with the terms of such contract;*  
*and*

*(b) is detrimental to the safety or efficient operation of the works.*

**(3)** *It shall be a defense to a charge against a consumer pursuant to subsection (2) for him to prove that there were reasonable grounds on which he assumed that the act constituting the alleged offence would not be detrimental to the safety or efficient operation of the works.*

**(4)** *In this section “consumer” means any person who holds a contract with a public utility for the supply of services by that utility.”(Emphasis added)*

- E. 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.
- F. JPS issued a News Release on May 11, 2014 entitled "JPS Curtailing Service to Communities with High Levels of Theft". The News Release stated as follows:

***"JPS Curtailing Service to Communities with High Levels of Theft  
May 11, 2014***

*As part of continuing efforts to reduce the impact of electricity theft on its operations, JPS is cutting the number of hours that power is provided to communities where more than 70% of the electricity is stolen. This is part of the Company's efforts to get more persons to pay for the electricity they use, and reduce the overall cost to paying customers.*

*The communities to be affected in the initial phase of this curtailment strategy are: Jones Town, Seaward Drive, Trench Town, Denham Town, Rema, Maxfield Avenue, Central Village, and Spanish Town Road. JPS has been working with these communities for some time, with limited success, and continues to encourage illegal users to take immediate steps to have their service regularized.*

*The Company has indicated that, in recognition of its obligation to serve paying customers in the affected communities, it will make an effort to provide electricity for not less than 12 hours per day, and will remain sensitive to the safety concerns of the residents.*

***"We have tried everything"***

*"We have tried everything to reduce electricity theft," explained Gary Barrow, JPS' Senior VP for Energy Delivery. "Our efforts have included a combination of initiatives, such as the removal of illegal 'throw up' lines, account audits and meter investigations, arrests in collaboration with the police, community intervention and the installation of costly technology solutions. The Company also has more than 200 employees working to reduce losses," he said.*

*In 2013, JPS removed over 197,000 illegal lines, carried out more than 113,000 account audits and meter investigations, and facilitated the arrest*

*of more than 1200 persons for theft of electricity. The company also installed over 7,600 Residential Automated Metering Infrastructure (RAMI) meters, but most of the potential customers targeted have not signed up for legal service.*

### ***Equipment Damage & Service Interruptions***

*JPS has indicated that its efforts to serve paying customers in communities with high levels of theft continue to be hampered by extensive damage to the Company's equipment, and ongoing power outages caused by illegal connections. Customers also suffer significant damage to their appliances and equipment as a result of the system overload caused by illegal connections."*

- G. It has come to the attention of the Office by way of numerous complaints from customers in the designated communities as well as the News Release that JPS has effected the curtailment of service in the designated communities. Further the said curtailment has affected not only consumers carrying out the illicit abstraction of electricity as intended by JPS, BUT ALSO legitimate customers who have not acted in violation of the Terms and Conditions of Service.
- H. Following the receipt of the said complaints, the Office summoned JPS to a meeting which was held on May 13, 2014 in which JPS presented certain explanations and clarifications subject to further submissions.
- I. Having heard the representatives of JPS and considered the information given by JPS, the Office is of the view that the aforementioned actions amount to **BREACHES by JPS** of the provisions of the Licence, as well as the Terms and Conditions of Service.
- J. Further, the Office holds the position that in the instant case JPS does not have the right to disconnect its customers pursuant to Section 3 the Public Utilities Protection Act. The Office is of the view that legitimate consumers ought not to have been affected by JPS' actions in this regard.
- H. 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”*

I. 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) *....”*

J. Section 9 of the Office of Utilities Regulation Act (the Act), the Office may require measures to be taken, as set out below:

***“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...*”



The Office **HEREBY DIRECTS** that JPS, from the effective date of this **DIRECTIVE**, take remedial measures to **IMMEDIATELY CEASE AND DESIST** its current actions that serve to curtail electricity services to the communities designated in its News Release and is **PROHIBITED** from taking any similar actions in any other community.

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

**AND TAKE FURTHER NOTICE** that this Directive becomes effective on the 13<sup>th</sup> day of May, 2014.

**BY ORDER OF THE OFFICE OF UTILITIES REGULATION**

  
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**Mr. Albert Gordon**  
**Director General**

**May 13, 2014**