

## **Consumers spared over \$9b on JPS bills as OUR wins Privy Council Appeal**

**(KINGSTON, Jamaica; 2017 July 16):** The Office of Utilities Regulation (OUR) has welcomed the Privy Council’s recent decision dismissing the appeal, brought by the Jamaica Public Service Company Limited (JPS), to overturn the ruling of the Court of Appeal that it cannot recover from its customers, billions of dollars in back pay which was paid out to JPS employees in a reclassification exercise in 2008. The payments were retroactive to 2001 January 1.

JPS’ claim at the time of submission to the OUR was for J\$4.27 billion and had it been successful in its appeal to the Privy Council, customers would have had to repay the \$4.27 billion plus interest from 2010 to 2017 at a rate of 12.56% (JPS’ cost of debt in 2010). The OUR estimates that the total amount on this basis would have been J\$9.78 billion to date.

The Privy Council which heard the matter on 2017 June 7, delivered judgment on 2017 July 6. It dismissed JPS’ appeal, a confirmation of the OUR’s refusal to allow JPS’ reclassification costs to be borne by customers.

On 2009 March 11, JPS filed a claim, seeking approval to recover \$4.27 billion incurred for salary payments to employees and related taxes, by way of a tariff adjustment using the Z-factor provision in its licence. JPS asserted that the claim fell within the Z-factor provision because it resulted from factors that were outside of managerial control and that to deny the recovery of such costs would be to unfairly penalize the company.

In a Determination Notice issued on 2010 March 2, the OUR dismissed the claim. In arriving at its decision, the OUR acknowledged that the Z-factor provision recognizes the fact that the company’s costs may be affected by random factors that might cause its costs to increase independent of any decision or action on the part of the company. However, the salary compensation claim did not qualify under the Z-factor provision since it was the 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 that it would result in a likely increase in overall workers’ compensation.

The OUR further argued , that if the reclassification costs were considered legitimate, they ought rightly to have been included in JPS’ 2004 five-year tariff review submission which followed the Industrial Dispute Tribunal’s August 2003 decision on the reclassification.

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JPS appealed the OUR's decision to the All-island Electricity Appeal Tribunal which on 2011 May 26, dismissed its appeal, stating that the OUR was correct to conclude that the costs and financial liability incurred as a result of the reclassification exercise did not fall within the Z-factor provision. The Tribunal also agreed that given the regulatory scheme of the licence, the reclassification costs should have been included in the company's submission for the 2004 five-year tariff review.

JPS applied for, and was granted permission to seek judicial review of the Tribunal's decision. The Supreme Court on 2013 March 22 dismissed JPS' application to reverse the Tribunal's decision, and the Court of Appeal on 2015 March 13 upheld that decision. JPS then applied and was granted leave to appeal to the Privy Council.

The OUR commends the work of its staff on this case and also wishes to thank its external counsels, Dr Lloyd Barnett and Ms Annaliesa Lindsay who so ably provided representation in this matter. The defence of co-respondent, the All Island Electricity Appeal Tribunal, was led by Attorney General, Marlene Malahoo Forte Q.C. and Althea Jarrett.

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