

MEDIA RELEASE

FOR IMMEDIATE RELEASE

OUR affirms Independence in response to OCG's Report on Base Load Capacity Project

(KINGSTON, Jamaica; September 27, 2013): The Office of Utilities Regulation (OUR) has affirmed its regulatory independence and rejected claims made by the Office of the Contractor General (OCG) in its report entitled **“Report of Special Investigation- Right to Supply 360 Megawatts of Power to the National Grid- Office of Utilities Regulation, Ministry of Science, Technology, Energy and Mining” (September 2013)** (“OCG Report”).

The OUR's response is contained in a 22-page document sent to Mr Dirk Harrison, Contractor General of Jamaica; the Hon Michael Peart, Speaker of the House of Representatives; the Hon Floyd Morris, President of the Senate; Mrs Heather Cooke, Clerk to the Houses of Parliament; Delroy Chuck, Leader of Opposition Business in the House; Senator Arthur Williams, Leader of Opposition Business in the Senate; Mrs Hillary Alexander, Permanent Secretary in the Ministry of Science Technology, Energy and Mining; Mrs Pamela Monroe Ellis, Auditor General of Jamaica and Ms Paula Llewellyn, Director of Public Prosecutions.

The full response is available on the OUR's website: www.our.org.jm.

The OUR, after conducting its full assessment of the OCG's Report, disagrees with its conclusions regarding the OUR's conduct of the procurement of additional generating capacity.

The OUR reiterates that at every relevant point in this procurement process it has diligently sought to ensure that the process is conducted fairly and equitably. The OUR has also diligently sought to maintain the integrity and transparency of the process. The OUR as a statutory body continues to be guided by the provisions of the Procurement Regulations and the Procurement Handbook in pursuit of the imperative to reduce the real cost of electricity to Jamaican consumers; the need to secure capacity in the shortest possible time; and ensuring that the procurement process is conducted fairly and equitably whilst maintaining our commitment to the rule of law, and transparency and integrity.

The OUR states that the OCG's findings and conclusions, "are patently incorrect and unsupported by the requirements of government policy and the Law." It continues: "The Contractor General in this instance has displayed, at best, a deficit of understanding of how the government's procurement guidelines would apply to this process or apparently had a preconceived notion of process and therefore found it expedient to redefine an informal process into a formal one to make the case."

The OUR, in its full response to the OCG has presented the following conclusions:

- The Contractor General ("CG") applied the incorrect procurement procedure. The CG failed to highlight that the procedure it prescribed that the OUR should follow is one relating to the PROCUREMENT OF CONSULTING SERVICES - EXPRESSION OF INTEREST which would result in the OUR acting in breach of the Public Sector Procurement Regulations, 2008 ("Procurement Regulations") promulgated pursuant to the Contractor General Act and the GOJ Handbook of Public Sector Procurement Procedures ("Procurement Handbook").
- The National Contracts Commission ("NCC") used the term 'expression of interest' only in relation to the outcome of the OUR publicized unsolicited proposals process. That is, the failure of the proposals to meet the standard required for qualification to be unsolicited proposals since it could not have intended for the OUR to act in breach of the procurement rules.

- The CG's conclusions regarding the effect of the March 15, 2013 deadline that it was the termination date for a formal procurement process, which should be strictly adhered to, is completely erroneous and is predicated on the unlawful application of a procurement procedure applicable to consulting services.
- Based on the informal nature of the process in which the OUR was engaged, it could lawfully and in accordance with the procurement guidelines accept and consider Energy World International's (EWI) bid for inclusion in the shortlist of proposers.
- EWI's proposal was assessed by the OUR's Technical Team for inclusion in the subsequent selective tender process.
- The CG has misquoted the facts since there is no evidence to support the claim that the Minister of Science, Technology, Energy and Mining, the Hon. Phillip Paulwell made any request whatsoever of the OUR. The request for consideration of EWI's proposal came from Cabinet for which the OUR sought the guidance of the NCC to assist in its decision making.
- The independence of the OUR's decision making process from political pressures has been firmly established by a landmark case determined by the Judicial Committee of the Privy Council. At all times, the OUR has acted independently in its decision making process from all political as well as other lobby pressures from stakeholders and the public.
- The Minister's statement in Parliament did not compromise the process or undermine the OUR's independence.
- The OUR disagrees that there was a dereliction of duty which resulted in it falling short of ensuring and maintaining the integrity of the process.

The OUR reaffirms its adherence to the rule of law, and its commitment to diligently uphold the integrity and transparency of the procurement process, in the face of external pressures from stakeholders.