

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

(Act 13 of 1995)

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SCHEDULES.

AN ACT to Repeal the Public Utility Commission Act and to make new provisions with regard to the supervision of utility services and for connected purposes.

Short title. 1. This Act may be cited as the Office of Utilities Regulation Act.

Interpretation. 2. - (1) In this Act -

"approved organization" means any organization or any body of persons which, by virtue of an enabling instrument, or this Act is made subject to the jurisdiction or control of the Office as respects the operation of a utility undertaking;

"Deputy Director-General" means a Deputy Director-General of the Office;

"Director-General" means the, Director-General of the Office;

"enabling instrument" in relation to an approved organization, means -

(a) any enactment; or

(b) any licence or other instrument in writing issued pursuant to a statutory power,

by which the organization is authorized to operate a utility undertaking;

"licence" includes any instrument in writing referred to
in the definition of "enabling instrument"; and

"licensee" shall be construed accordingly;

"responsible Minister" means, as respects any utility
service, the Minister having portfolio
responsibility for that utility service;

"the Office" means the Office of Utilities Regulation
established under section 3;

"utility services" means services provided to the public
or to another approved organization by an approved
organization through the operation of a utility
undertaking;

"utility undertaking" means the whole or any part of an
undertaking operated by an approved organization for
the purpose of providing goods or services in
relation to any item specified in the First
Schedule.

First
Schedule.

(2) The Minister may, by order subject to negative
resolution, amend the First Schedule.

Office of
Utilities
Regulation.

3. - (1) There is hereby established for the purposes of
this Act, a body to be known as the Office of Utilities
Regulation which shall be a body corporate to which section
28 of the Interpretation Act shall apply.

Second Schedule. (2) The provisions of the Second Schedule shall have effect as to the constitution of the Office and otherwise in relation thereto.

Functions. 4. - (1) It shall be the duty of the Office to receive and process all applications for a licence to provide any utility service required by virtue of the provisions of any Act, and to make such recommendations to the responsible Minister in relation to the application as the Office considers necessary or desirable.

(2) For the purposes of subsection (1) the Office shall take into account, in so far as reasonably practicable, the necessity to ensure that the service provided by an applicant pursuant to a licence referred to in that subsection will *inter alia* -

- (a) meet the needs of the community to which the application relates;
- (b) be operated efficiently and in a manner designed to protect the health and well-being of users of the service and such elements of the public as would normally be expected to be affected by its operation;
- (c) take into account the need to protect and preserve the environment;
- (d) afford to its customers economical and reliable

service; and

- (e) be on terms which allow to the applicant and to any other persons financing the operation of the utility service a reasonable return on capital invested in providing the service.

(3) On receipt of a recommendation from the Office pursuant to subsection (1) the responsible Minister may -

- (a) grant the licence; or
- (b) refer the recommendation back to the Office for further consideration; or
- (c) refuse to grant the licence.

(4) For the purpose of this Act the Office shall have power -

- (a) to enquire into the nature and extent of the utility services provided by an approved organization or, as the case may be, proposed to be provided by an applicant for a licence referred to in subsection (1);
- (b) to determine, in accordance with the provisions of this Act and any enabling instrument, the rates or fares which may be charged in respect of the utility service;
- (c) to monitor the operations of an approved organization in relation to its enabling instrument and to

- enforce the provisions of the enabling instrument and, if the Office thinks necessary, propose for the consideration of the responsible Minister, recommendations for the modification of that instrument;
- (d) to specify in a licence financial penalties which may be incurred by a licensee consequent on the breach by the licensee of any term of the licence, and stipulate the manner in which the penalty may be recovered from the licensee; and
 - (e) to perform such other functions as may be conferred on it by any enabling instrument.

(5) The Office may, by order published in the *Gazette* -

- (a) prescribed the unit of measurement and the type of measuring device to be used by an approved organization in relation to utility services;
- (b) prescribed standards for the measurements of quantity, quality, pressure, initial voltage or other conditions relating to utility services;
- (c) provide for the inspection and testing of any utility services or of any equipment or measuring device used in connection therewith;
- (d) prescribe minimum standards of quality and accuracy in relation to any equipment used or any commodity

supplied by an approved organization in connection with utility services;

- (e) prescribe the system of accounts to be kept by an approved organization as respects utility services;
- (f) make such provisions as the Office considers necessary to ensure the safety of the public as respects utility services;
- (g) imposed licence fees to be paid by approved organizations at such rates as may be specified in the order.

(6) The Office shall -

- (a) before making an order under subsection (5), notify each approved organization for the time being concerned or which, in the opinion of the Office, is likely to be affected by the order and afford each such organization an opportunity to be heard; and
- (b) ensure that the order, if made, is consistent with the enabling instruments applicable to the approved organizations referred to in paragraph (a).

Review of
Recommen-
dation for

5. Where an application for a licence to provide utility services is refused, the responsible Minister -
- (a) shall direct the Office to notify the applicant

refusal.

accordingly and shall afford to the applicant an opportunity to show cause why the licence should be granted; and

- (b) may, having regard to the cause shown, grant the application subject to such terms and conditions as he thinks necessary.

Funds.

6. The funds of the Office shall consist of -

- (a) sums received by the Office as licence fees in accordance with this Act;
- (b) sums collected by way of a cess imposed pursuant to section 7 on rates or fares charged by approved organizations for utility services;
- (c) 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.

Cess.

7. - (1) Subject to subsection (2) the Office may impose a cess on rates or fares charged by an approved organization for utility services.

(2) No cess imposed under subsection (1) shall be of any effect unless and until approved by the Minister by order and for the purposes of this section the Minister -

- (a) shall satisfy himself that the cess is fair and reasonable having regard to the needs of the Office; and

(b) may have an assessment made by an independent auditor in accordance with paragraph 12(2) of the Second Schedule.

8. - (1) The Office may, upon its own motion or upon a complaint by any person, hold an enquiry into the operations of any utility undertaking operated by an approved organization.

(2) The provisions of the Third Schedule shall apply to every enquiry conducted by the Office pursuant to this section.

9. - (1) Where it appears to the Office that an approved organization is not fulfilling its obligations under its enabling instrument the Office may, by memorandum in writing to the organization, require the organization within the time specified in that memorandum to take such remedial measures as may be specified.

(2) Any approved 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 fifty thousand dollars, and, if the failure in respect of which it was so convicted continues after the conviction, it shall be liable on summary

conviction before a Resident Magistrate to a fine of ten thousand dollars for each day on which the failure so continues:

Provided that the court by which any approved organization is convicted of an offence may fix a reasonable period from the date of conviction for compliance by the organization with the requirements of the memorandum and where a court has fixed such a period, the said daily penalty shall not be recoverable in respect of any day before the expiration thereof.

Power to
require
returns.

10. - (1) The Office may require an approved organization to furnish such information or submit such returns at such intervals as the Office may require in relation to the operations of that organization.

(2) An approved organization which fails to comply with subsection (1) shall be guilty of an offence and liable on summary conviction before a Resident Magistrate to a fine not exceeding fifty thousand dollars and in the case of a continuing offence to a further fine of ten thousand dollars for each day on which the offence continues.

Power to
fix rates.

11. - (1) Subject to subsection (3), the Office may, either of its own motion or upon application made by an approved organization (whether pursuant to subsection (1) of section

12 or not) or by any person, by order published in the *Gazette* prescribe the rates or fares to be charged by an approved organization in respect of its utility services.

(2) For the purposes of this section, the Office may conduct such negotiations as it considers desirable with an approved organization, industrial, commercial or consumer interests, representatives of the Government and such other persons or organizations as the Office thinks fit.

(3) The provisions of subsections (1) and (2) shall not apply in any case where an enabling instrument specifies the manner in which rates may be fixed by an approved organization.

Application 12. - (1) Subject to subsection (2), an application may be by approved made to the Office by an approved organization by way of a organization proposed tariff specifying the rates or fares which the to fix rates. organization proposes should be charged in respect of its utility services and the date (not being earlier than the expiration of thirty days after the making of the application) on which it is proposed that such rates should come into force (hereinafter referred to as the specified date).

(2) As respects an approved organization referred to in section 13 an application made under subsection (1) of this section shall take into account the provisions of section 13.

(3) Where an application by way of a proposed tariff is made under subsection (1) notice of such application and, if so required by the Office, a copy of such tariff, shall be published in the Gazette and in such other manner as the Office may require.

(4) A notice under subsection (3) shall specify the time (not being less than fourteen days after the publication of the notice in the Gazette) within which objections may be made to the Office in respect of the proposed tariff to which the notice relates.

(5) Subject to the provisions of this Act, the Office may, after the expiration of the time specified in the notice under subsection (3), make an order either -

- (a) confirming the proposed tariff without modifications or with such modifications as may be specified in the order; or
- (b) rejecting the proposed tariff.

(6) If, after publication of notice of an application in accordance with subsection (3), no order under subsection (5) has been made prior to the specified date, the proposed tariff shall come into force on the specified date.

(7) An order confirming a proposed tariff shall not bring into operation any rates or fares on a date prior to the date of such order.

Limit on
rates.

13. - (1) Where the enabling instrument of an approved organization contains provisions in relation to the returns or profits to be received by such organization or by any person who invests in such organization, in respect of the operations of the organization, any rates or fares prescribed under this Act by the Office shall, subject to subsection (2), be so fixed as to ensure compliance with such provisions.

(2) Where a project which relates to the utility undertaking of an approved organization is assisted by loan funds furnished by a financial institution on terms approved by the responsible Minister any rates or fares prescribed or approved by the Office under section 11 or 12 shall be such as to ensure that, while the legal obligation to the financial institution remains outstanding, the approved organization shall receive such minimum return on its rate base as the responsible Minister may prescribe.

(3) For the purpose of determining the rate base of an approved organization the Office may assess in accordance with the enabling instrument of that organization the

value of the whole or any part of the property of that organization.

(4) In this section "rate base" in relation to an approved organization means its rate base as determined by the Office in accordance with the principles set out in the enabling instrument of that approved organization.

Special
contracts.

14. - (1) Notwithstanding any other provisions to the contrary in this Act an approved organization may enter into a special contract providing for the imposition of rates or fares other than those prescribed or approved by the Office under section 11 or 12.

(2) Every such special contract shall come into force upon being filed with the Office and shall, unless otherwise sooner terminated, remain in force unless and until it is disapproved by the Office by notice served on the parties to the contract.

Acquisition
of land,
otherwise
than by
agreement.

15. Where provisions of the Lands Clauses Act which do not include the enactments therein with respect to the purchase and taking of lands otherwise than by agreement are incorporated with the enabling instrument of an approved organization, those enactments shall nevertheless apply to the purchase and taking of land by the approved organization on any occasion on which the Office by notice published in the Gazette declares that the purchase and

taking of such land are necessary for the purposes of the utility under-taking of the approved organization.

Regulations. 16. - (1) The Minister may make regulations prescribing anything which may be or is required to be prescribed under this Act or imposing on an approved organization obligations in relation to the supply of information to the Office and members of the public of the rates or fares payable in respect of its utility services.

(2) Regulations made under subsection (1) may provide for the imposition of penalties on summary conviction in a Resident Magistrate's Court not exceeding a fine of fifty thousand dollars or imprisonment for a term not exceeding six months or both such fine and imprisonment.

Offences. 17. Any approved organization which fails to comply with the requirements of any order made pursuant to section 4 (5) shall be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a penalty not exceeding four hundred thousand dollars.

Transitional. 18. From and after the 25th day of April, 1995, unless the context otherwise requires, any reference in an enabling instrument to -

(a) the Public Utility Commission Act, shall be construed as a reference to this Act;

(b) the Public Utility Commission, shall be construed as a reference to the Office constituted under this Act.

FIRST SCHEDULE

(Section 2)

Goods and Services provided by Utility Undertakings

1. The supply or distribution of electricity.
2. The provision of telecommunication services.
3. The supply or distribution of water.
4. The provision of public passenger transportation by road, rail or ferry.
5. The provision of sewerage services by the construction of sewers and their accessories.

SECOND SCHEDULE

(Sections 3 and 7)

Constitutional of the Office.

1. The Office shall consist of the Director-General and such number of Deputy Directors-General as may be appointed pursuant to this Schedule.

Appointment of Director-General

2. - (1) Subject to the provisions of this Schedule, the Director-General shall be appointed by the Governor-General on the recommendation of the Prime Minister from among persons who are qualified as having had experience of and shown capacity in, matters relating to industry, finance, economics, engineering, accountancy, commerce or law.

(2) The appointment of the Director-General shall be for a period of not less than three years nor more than seven years and the person so appointed shall be eligible for reappointment.

(3) The Governor-General may at any time revoke the appointment of the Director-General if he is satisfied on the recommendation of the Prime Minister that the Director-General is guilty of neglect of duty, inefficiency, incompetence, misconduct or malfeasance.

Appointment
of Deputy
Directors-
General.

3. - (1) Subject to the provisions of this Schedule, the Deputy Directors-General shall be appointed by the Prime Minister on the recommendation of the Minister and the Director-General shall assign to each Deputy Director-General so appointed responsibility for one or more of the items specified in the First Schedule.

(2) The appointment of a Deputy Director-General shall be for a period of not less than three nor more than seven years and each person so appointed shall be eligible for reappointment.

(3) The Prime Minister may at any time revoke the appointment of any person as Deputy Director-General if he is satisfied, after consultation with the Minister and the Director-General, that the Deputy Director-General is guilty of neglect of duty, inefficiency, incompetence, misconduct or malfeasance.

Disqualifi-
cation for
appointment
as Director-
General or
Deputy
Director-
General.

4. - (1) A person shall not be qualified for appointment as Director-General or a Deputy Director-General who -

- (a) is the holder of any office of emolument under the Crown in Jamaica;
- (b) holds or is interested in any stock, share, bond, debenture or other security of, or is otherwise interested in, any approved organization or any other company which is in competition with, or provides similar services to those supplied by an approved organization.

(2) The office of Director-General or Deputy Director-General, as the case may be, shall become vacant if any circumstances arise that, if he were not appointed as such, would cause him to be disqualified for appointment by virtue of sub-paragraph (1).

Temporary
appointment.

5. Any person qualified for appointment as Director-General or Deputy Director-General may be appointed to act temporarily in the place of the Director-General or Deputy Director-General in the case of the absence or inability to act of the incumbent.

Resignation. 6. - (1) The Director-General may at any time resign his office by instrument in writing addressed to the Governor-General and such resignation shall take effect as from the date of the receipt of such instrument by the Governor-General.

(2) Any Deputy Director-General may at any time resign his office by instrument in writing addressed to the Prime Minister and transmitted through the Director-General; and the resignation shall have effect from the date of receipt of such instrument by the Prime Minister.

Publication of appointment. 7. The names of any persons appointed as Director-General or Deputy Director-General of the Office shall be published in the *Gazette*.

Seal. 8. - (1) The seal of the Office shall be authenticated by the signature of the Director-General and shall be judicially noticed.

(2) All documents, other than those required by law to be under seal, made by, and all decisions of, the Office may be signified under the hand of the Director-General or any Deputy Director-General authorized to act in that behalf by the Director-General.

(3) The Office may sue and be sued in its corporate name and may for all purposes be described by that name.

Procedure and meetings. 9. - (1) The Office shall meet at such times as may be necessary or expedient for the transaction of business and such meetings shall be held at such places and times and on such days as the Office shall determine.

(2) The Director-General may at any time call a special meeting of the Office and shall call a special meeting to be held within seven days of a written request for that purpose addressed to him by any Deputy Director-General.

(3) The Director-General or, in the absence or inability to act of the Director-General, a Deputy Director-General shall preside at the meetings of the Office and when so presiding the Director-General or the Deputy Director-General as aforesaid, as the case may be, shall have an original and a casting vote.

(4) Subject to the provisions of this Act the Office may regulate its own proceedings.

(5) The validity of any proceedings of the Office shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

Remuneration of members.

10. The Office shall pay to the Director-General and the Deputy Directors-General such remuneration (whether by way of salaries or travelling or other allowances) as the Minister may determine with the prior approval of the Cabinet.

Power to appoint officers, agents.

11. - (1) The Office shall appoint and employ at such remuneration to and on such terms and conditions as it thinks fit a secretary and such other officers and servants as it thinks necessary for the proper carrying out of the provisions of this Act:

Provided that unless the Minister gives prior approval -

- (a) no salary in excess of the prescribed rate per annum shall be assigned to any post;
- (b) no appointment shall be made to any post to which a salary in excess of the prescribed rate is assigned;
- (c) no provision shall be made for the payment of any pension, gratuity or other like benefit to, or in respect of the service of, any officer or servant.

(2) In sub-paragraph (1), the prescribed rate means a rate of one hundred thousand dollars or such higher rate as the Minister may, by order, prescribe.

Accounts and audit.

12. - (1) The Office shall-

- (a) prepare an annual budget; and
- (b) keep proper accounts and other records in relation to the business of the office; and

(d) prepare annually a statement of accounts in a form satisfactory to the Minister, being a form which shall conform with the best commercial standards.

(2) The annual budget shall be subject to the approval of the Minister who may, if he thinks fit, appoint an independent auditor to examine its provisions and furnish to the Minister an assessment of the extent to which it represents a fair and reasonable projection of the income and expenditure requirements of the Office.

(3) The accounts of the Office shall be audited by an auditor or auditors appointed annually by the Office and approved by the Minister.

(4) Within four months after the end of each financial year or within such further time as may in special circumstances be allowed by the Minister, the Office shall send the statement of its accounts referred to in sub-paragraph (1) to the Minister, together with a copy of any report made by the auditor on that statement or on the accounts of the Office.

(5) The auditor's fees and any expenses of the audit shall be paid by the Office.

(6) The Auditor-General shall be entitled, on the direction of the Minister, at all reasonable times to examine the accounts and other records in relation to the business of the Office.

Annual
report.

13. - (1) The Office shall, within three months after the end of each financial year or within such further time as may in special circumstances be allowed by the Minister, cause to be made and transmitted to the Minister a report dealing generally with the activities of the Office during that financial year.

(2) The Minister shall cause a copy of the report together with the annual statement of accounts and the auditor's report thereon and on the accounts to be laid on the table of the House of Representatives and of the Senate.

(3) Copies of the Office's report together with the annual statement of accounts and the auditor's report on that statement and on the accounts of the Office shall be

published in such manner as the Minister may direct and shall be made available to the public by the Office at a reasonable price.

Protection
of members.

14. - (1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Office in respect of any act done bona fide in pursuance or execution or intended execution of this Act.

(2) Where any member of the Office is exempt from liability by reason only of the provisions of this paragraph, the Office shall be liable to the extent that it would be if the said member was a servant or agent of the Office.

THIRD SCHEDULE

(Section 8)

Power of
Office to
issue
summons
and obtain
information.

1. - (1) Subject to the provisions of this Act, the Office shall have power, for the purpose of the performance of its functions under this to Act -

- (a) by summons signed by the Director-General or by the secretary summons and obtain of the Office to summon and enforce the attendance of witnesses and parties concerned, and to compel the production of books, plans and documents by the same means and, so far as may be, in the same manner as provided in the witnesses' Expenses Act in the case of any legal proceedings before a Court;
- (b) to examine witnesses and parties concerned on oath, which oath the Director-General or secretary of the Office is hereby empowered to administer.

(2) Any person who -

- (a) without sufficient cause fails or refuses to attend before the Office in obedience to a summons under this paragraph or fails or refuses to produce any paper, book, record or document which he was required by such summons to produce; or
- (b) being a witness, leaves the Office without the permission of the Office; or

- (c) being a witness, refuses without sufficient cause to answer any question put to him by or with the permission of the Office; or
- (d) wilfully obstructs or interrupts the proceedings of the Office,

shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding ten thousand dollars or in default of payment thereof to imprisonment with or without hard labour for a period not exceeding six months.

Representa-
tion.

2. An interested party may be represented before the Office by an attorney-at-law and may call such witnesses as he may think necessary.

Notice of
enquiry.

3. Where the Office proposes to hold an enquiry, it shall cause to be published in the *Gazette* and at intervals of not less than three days in two issues of a daily newspaper printed and circulating in Jamaica, notice of such intention stating the purpose for which the enquiry is to be held and that representations with respect to the subject-matter of the enquiry may be lodged with the Office within fifteen clear days after the last of the publications required by this paragraph and otherwise in the manner specified in the notice.

Notifica-
tion of
Findings.

4. As soon as may be but not more than ninety days after the conclusion of an enquiry the Office shall cause to be served on any approved organization affected and on any person who was a party to the proceedings at the enquiry a copy of the findings of the Office and of any order made by the Office on such enquiry as well as, in the case of an order prescribing or approving rates, a detailed statement of the reasons considered by the Office to justify its decision.