

ABILL

ENTITLED

AN ACT to Amend the Office of Utilities Regulation Act.

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BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Office of Utilities Regulation (Amendment) Act, 2015, and shall be read and construed as one with the Office of Utilities Regulation Act (hereinafter referred to as the “principal Act”) and all amendments thereto.

Short title
and
construction.

2. Section 4 of the principal Act is amended—

- (a) in subsection (4), by deleting the words “The Office” and substituting therefor the words “Subject to subsection (4A), the Office”;

Amendment
of section 4
of principal
Act.

(b) by inserting next after subsection (4) the following—

“ (4A) The rates determined by the Office in respect of prescribed utility services for the generation, transmission, distribution and supply of electricity shall—

(a) be in accordance with—

- (i) the provisions of this Act and any regulations made under this Act;
- (ii) the *Electricity Act* and any regulations made under that Act;
- (iii) all policy directions issued by Cabinet with respect thereto; and
- (iv) the tariff provisions set out in all licences and enabling instruments with respect thereto;

and in determining the appropriate rate of return on investment required to satisfy the interests of persons investing in Jamaica, the opinion of the Bank of Jamaica shall be obtained by way of guidance, which opinion shall take into account relevant market benchmarks and provide an assessment of the appropriate country risk premium; and

(b) take into account—

- (i) the interest of consumers in respect of matters, including the

- cost, safety and quality of the services;
- (ii) Jamaica's economic development;
 - (iii) the best use of indigenous resources;
 - (iv) the possibility of including specific tariffs to encourage the regularization of and payment for, electricity usage by consumers who are unable to pay for the full cost of the services provided; and
 - (v) the possibility of including specific tariffs for special economic zones, and wholesale rates for large consumers, to enhance their competitiveness and Jamaica's economic development.”;
- (c) in subsection (7), by deleting the numeral “(a)”; and
 - (d) by inserting next after subsection (7) the following subsection—

“ (8) The Cabinet may issue to the Office General policy directions in respect of any prescribed utility service, and the Office shall adhere to those directions in the performance of its functions under this Act.”.

3. Section 9 of the principal Act is amended in the proviso to subsection (2) by deleting the words “the said daily penalty shall not be

Amendment
of section 9
of principal
Act.

recoverable in respect of any day before the expiration thereof” and substituting therefor the words “and the fine shall not be payable if the Court is satisfied that the requirements have been duly complied with prior to the expiration of that period”.

Amendment
of section 15
of principal
Act.

4. Section 15 of the principal Act is amended by deleting the words “taking or” and substituting therefor the words “taking of”.

Amendment
of section 16
of principal
Act.

5. Section 16 of the principal Act is amended by inserting next after subsection (1) the following subsection—

“ (1 A) Without prejudice to the generality of subsection (1), the Office may make regulations prescribing the procedure for, and analytical tools to be used in, determining, in accordance with section 4(4A), the tariffs applicable to prescribed utility services for the generation, transmission, distribution, supply, despatch and use of electricity.”

Amendment
of Second
Schedule to
principal
Act.

6. The Second Schedule to the principal Act is amended—

(a) by deleting paragraph 1 and substituting therefor the following—

“Constitution
of the
Office.

1. The Office shall consist of the persons appointed in accordance with paragraph 1 of the Fourth Schedule.”;

(b) in paragraph (2), by deleting—

(i) from sub-paragraphs (1) and (2) the words “the Director-General” wherever they appear and substituting therefor, in each case, the words “a Director-General”;

(ii) sub-paragraph (3), and substituting therefor the following—

“ (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—

- (a) the Director-General is guilty of inefficiency, incompetence, misconduct or malfeasance; or
- (b) the Director-General has—
 - (i) a physical or mental infirmity that renders the Director-General incapable of satisfactorily performing the functions of the office of Director-General;
 - (ii) failed to carry out any of the functions of the office of Director-General or is otherwise guilty of neglect of duty; or
 - (iii) engaged in, or is engaging in, any activity that can reasonably be considered to be incompatible with the functions of the office of Director-General”;
- (c) by inserting next after paragraph 2 the following paragraph—

“Functions of
the
Director-
General.

2A. The Director-General shall—

- (a) be responsible to the Office for the general manage-

ment and
adminis-
tration of
the Office;
and

(b) carry out
such func-
tions as
are as-
signed to
the Direc-
tor-Gen-
eral under
this Act or
any other
enact-
ment, and
such other
functions
as may be
delegated
to the Di-
rector-
General
by the
Office.”;

(d) in paragraph 3—

(i) by deleting sub-paragraph
(1) and substituting therefor
the following—

“ (1) Subject to
the provisions of this
Schedule, one or
more Deputy
Directors-General

may be appointed by the Prime Minister on the recommendation of the Minister, who shall make the recommendation after consultation with the Office.”;

- (ii) by deleting sub-paragraph (3) and substituting therefor the following—

“ (3) The Prime Minister may, at any time, revoke the appointment of a Deputy Director-General if the Prime Minister is satisfied, after consultation with the Minister and the Office, that—

(a) the Deputy Director-General is guilty of inefficiency, incompetence, misconduct or malfeasance; or

(b) the Deputy Director-

General
has—

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ably be considered to be incompatible with the functions of the Deputy Directors-General”;

- (e) by inserting next after paragraph (3), the following as paragraphs 3A and 3B—

“Functions of Deputy Director-General.

3A. A Deputy Director-General shall carry out such functions as are assigned to that Deputy Director-General under this Act and such other functions as may be delegated to Deputy Directors-General by the Office.

Special assignment.

3B. The Office shall assign to each Deputy Director-General responsi-

First
Schedule.

bility for one or
more of the items
specified in the First
Schedule.”;

- (f) in paragraph 4(1)(b), by deleting—
 - (i) the words “any approved” and substituting therefor the words “any specified”; and
 - (ii) the words “an approved” and substituting therefor the words “a specified”;
- (g) in paragraph 8(2), by deleting the words “other than those” and substituting the words “other than those”;
- (h) in paragraph 9, by deleting—
 - (i) from sub-paragraph (2)—
 - (A) the word “Director-General” and substituting therefor the words “chairperson of the Office”;
 - (B) the words “Deputy Director-General” and substituting therefor the words “member of the Office”; and

- (ii) sub-paragraph (3) and substituting therefor the following sub-paragraphs—

“ (3) The chairperson of the Office or, in the absence or inability to act of the chairperson, the deputy chairperson, shall preside at the meetings of the Office.

(3A) The quorum for meetings of the Office shall be four, and decisions shall be made by a majority of votes, with the person presiding at the meeting (as specified in sub-paragraph (3)) having both an original and a casting vote in any case where the votes are equal.”.

the Office to be the chairperson of the Office and another of the appointed members of the Office to be the deputy chairperson.

(7) In the case of the absence or inability to act of the chairperson of the Office, the deputy chairperson of the Office shall perform the functions of the chairperson during the period of such absence or inability to act.

Tenure.

2.—(1) Subject to sub-paragraph (2) and paragraph 3, the appointment of an appointed member of the Office shall be for a period of five years, and the appointed member shall be eligible for reappointment.

(2) The Governor-General may, at any time, revoke the appointment of any appointed member of the Office if the Governor-General is satisfied, on the recommendation of the appropriate person specified in sub-paragraph (3), that—

- (a) the member is guilty of inefficiency, incompetence, misconduct or malfeasance; or
- (b) the member has—
 - (i) a physical or mental infirmity that renders him incapable of satisfactorily performing the functions of the member;
 - (ii) failed to carry out any of the functions required of a member of the Office or is otherwise guilty of neglect of duty;
 - (iii) engaged in, or is engaging in, any activity that can reasonably be considered to be incompatible with the member's functions as a member of the Office; or
 - (iv) by virtue of paragraph 1(5), ceased to be qualified to be a member of the Office.

(3) For the purposes of sub-paragraph (2), the appropriate person is—

- (a) in the case of a member appointed under paragraph 1(2)(a), the Prime Minister after consultation with the Leader of the Opposition;

- (b) in the case of a member appointed under paragraph 1(2)(b) or (c), the person that recommended the member's appointment.
- Resignation. 3. An appointed member of the Office may, at any time, resign as a member by instrument in writing addressed to the Governor-General and copied to—
 - (a) in the case of a member appointed under paragraph 1(2)(a), the Prime Minister; and
 - (b) in the case of a member appointed under paragraph 1(2)(b) or (c), the entity that recommended the person's appointment.

(2) The resignation under sub-paragraph (1) shall have effect from the date of receipt of such instrument by the Governor-General.
- Temporary appointments. 4. Any person qualified for appointment as an appointed member of the Office may, subject to complying with paragraph 1(2), be appointed by the Governor-General to act temporarily in the place of an appointed member of the Office, in the case of the absence or inability to act of such appointed member.
- Publication of appointments. 5. The names of the appointed members of the Office, including any person appointed to act temporarily in the place of an appointed member appointed under paragraph 4, shall be published in the *Gazette*.
- Remuneration. 6. The Office shall pay to the appointed members of the Office such remuneration (whether by way of honoraria or fees), and such allowances, as the Minister with responsibility for the public service may determine.”.

Passed in the House of Representatives this 13th day of October, 2015 with one (1) amendment.

MICHAEL A. PEART
Speaker.

Passed in the Senate this 23rd day of October, 2015 with one (1) amendment.

A. BROWN
Deputy President.

MEMORANDUM OF OBJECTS AND REASONS

The Office of Utilities Regulation Act makes provision for the supervision of utilities services.

A decision has been taken to amend the Act in order to enhance the regulatory environment governing prescribed utility services by establishing a governance framework in keeping with best practices, so as to encourage development investment and growth while protecting the interest of consumers.

This Bill seeks to give effect to that decision.

PORTIA SIMPSON MILLER,
Prime Minister.

A BILL

ENTITLED

AN ACT to Amend the Office of Utilities
Regulation Act.

As passed in the Honourable House of Representatives.

As passed in the Honourable Senate.

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SECTION 4 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

4.—(1) Subject to the provisions of this Act, the functions of the Office shall be to—

- (a) regulate the provision of prescribed utility services by licensees or specified organizations;

...

(4) The Office shall have power to determine, in accordance with the provisions of this Act, the rates or fares which may be charged in respect of the provisions of a prescribed utility service.

...

SECTION 9 OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

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.

Provided that the court by which any licensee or specified organization is convicted of an offence may fix a reasonable period from the date of conviction for compliance by the licensee or specified 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.

SECTION 15 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

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 a specified organization, those enactments shall nevertheless apply to the purchase and taking of land by the specified 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 undertaking of the specified organization.

SECTION 16 OF THE PRINCIPAL ACT WHICH IT IS
PROPOSED TO AMEND

16.—(1) The Office with the approval of the Minister may make regulations prescribing anything which may be or is required to be prescribed under this Act or imposing on a licensee or specified 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 prescribed 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 two hundred thousand dollars or imprisonment for a term not exceeding six months or both such fine and imprisonment.

PARAGRAPHS 1, 2(3), 3(3), 4(1)(b) and 9(2) AND (3) OF THE
SECOND SCHEDULE OF THE PRINCIPAL ACT WHICH
IT IS PROPOSED TO AMEND

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

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.

...

(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.

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.

...

(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.

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.

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.

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