

JAMAICA

No. 14—2000

I assent,

[L.S.]

H. F. COOKE,
Governor-General.

10th day of October, 2000.

AN ACT to Amend the Office of Utilities Regulation Act.

[11th day of October, 2000]

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, 2000, and shall be read and construed as one with the Office of Utilities Regulation Act (hereinafter referred to as the principal Act). Short title
and con-
struction.
2. Section 2 of the principal Act is amended in subsection (1) by— Amendment
of section
2 of prin-
cipal Act.
 - (a) deleting the definition of “approved organization”;

- (b) deleting the definition of “enabling instrument” and substituting therefor the following—

“enabling instrument” in relation to a specified organization, means—

- (a) any enactment other than this Act;
- (b) any permit or other instrument in writing issued pursuant to a statutory power, by which the organization is authorized to provide a prescribed utility service;”;

- (c) deleting the definition of “licence” and “responsible Minister” and substituting therefor the following definitions—

“ “licence” means a licence issued pursuant to section 4B and “licensee” shall be construed accordingly;

“prescribed utility service” means a utility service specified in the First Schedule;

First
Schedule.

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

“specified organization” means an organization or body of persons which immediately before the date of commencement of the Office of Utilities Regulation (Amendment) Act, 2000 was providing a prescribed utility service pursuant to an enabling instrument;”;

- (d) deleting the definitions of “utility services” and “utility undertaking”.

3. The principal Act is amended by inserting next after section 2 the following as section 2A—

New section 2A of principal Act.

“Applica-
tion of
this Act.

2A. Notwithstanding anything to the contrary in any enabling instrument this Act shall apply to—

- (a) specified organizations; and
- (b) licensees,

for the purpose of regulating the prescribed utility services provided by such specified organizations or licensees.”.

4. Section 4 of the principal Act is repealed and replaced by the following sections 4, 4A and 4B—

Repeal and replacement of section 4 of principal Act.

“Functions
of the
Office.

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;
- (b) receive and process applications for a licence to provide a prescribed utility service and make such recommendations to the Minister in relation to the application as the Office considers necessary or desirable;
- (c) conduct such research as it thinks necessary or desirable for the purposes of the performance of its functions under this Act;
- (d) advise the responsible Minister on such matters relating to the prescribed utility service as it thinks fit or as may be requested by that Minister; and

- (e) subject to section 8A, carry out, on its own initiative or at the request of any person, such investigations in relation to the provision of prescribed utility services as will enable it to determine whether the interests of consumers are adequately protected.

(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 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; and
 - (ii) protect and preserve the environment; and
 - (iii) afford to its consumers economical and reliable service.

(3) In the performance of its functions under this Act the Office shall undertake such measures as it considers necessary or desirable to—

- (a) encourage competition in the provision of prescribed utility services;

- (b) protect the interests 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 services;
- (e) enquire into the nature and extent of the prescribed utility services provided by a licensee or a specified organization.

(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.

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

- (a) prescribe the unit of measurement and the type of measuring device to be used by a licensee or specified organization in relation to prescribed utility services;
- (b) prescribe standards for the measurements of quantity, quality or other conditions relating to prescribed utility services;
- (c) provide for the inspection and testing of any prescribed 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 a licensee or specified organization in connection with the relevant prescribed utility service;
- (e) prescribe the system of accounts to be kept by a licensee or specified organization as respects prescribed utility services;
- (f) make such provisions as the Office considers necessary to ensure the safety of the public as respects prescribed utility services; and
- (g) impose fees (to be known as regulatory service fees) to be paid by licensees or specified organizations at the rates specified in the order.

(6) The Office shall—

- (a) before making an order under subsection (5), notify each licensee or specified 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 licensee or organization, as the case may be, an opportunity to be heard; and
- (b) ensure that the order, if made, is consistent with the licence or the enabling instrument applicable to the licensee or specified organization referred to in paragraph (a).

(7) The Office shall give reasons for any decision taken by it pursuant to subsection (4) (a) or (5), to any person affected or likely to be affected by that decision.

Licensing
require-
ments.

4A. No organization or body of persons shall provide a prescribed utility service without first being issued with a licence granted by the Minister to provide such service.

Application
for a
licence.

4B.—(1) An application for a licence to provide a prescribed utility service shall be made in the prescribed form to the Office and shall be accompanied by such non-refundable fee as may be prescribed.

(2) The Office may, where necessary, require that the applicant provide such additional information as the Office considers necessary for the purpose of considering the application.

(3) In deciding whether to recommend to the Minister that an application be granted or refuse a licence, the Office shall satisfy itself that the prescribed utility service which is the subject of an application for licence—

- (a) will meet the needs of the community to which the application relates; and
- (b) will be operated efficiently, and for that purpose the Office shall have regard to the matters referred to in subsection (4).

(4) For the purposes of subsection (3), the Office shall have regard to—

- (a) whether the manner of operation is 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;
- (b) the need to protect and preserve the environment;
- (c) whether the consumers will be afforded an economical and reliable service;
- (d) whether the service will be provided on terms which will 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; and
- (e) such other factors as the Office considers relevant.

(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 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.

5. Section 5 of the principal Act is hereby repealed and replaced by the following section—

Repeal and replacement of section 5 of principal Act.

“*Secrecy.* 5.—(1) Except in so far as may be necessary for the due performance of its functions under this Act, every officer and employee of the Office shall preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any licensee or specified organization or of any customer of any such licensee or specified organization, that may come to his knowledge in the course of his duties.

(2) Any officer or employee who—

- (a) communicates any matter referred to in subsection (1) to any person other than the Office or an officer of the Office authorized in that behalf by the Registrar; or
- (b) allows any unauthorized person to have access to any books, papers or other records relating to any licensee or specified organization, or to any customer of any such licensee or specified organization,

shall be guilty of an offence and shall be liable on conviction thereof to a fine not exceeding five hundred thousand dollars or to imprisonment with or without hard labour for a term not exceeding three years.”

6. Section 6 of the principal Act is amended by—

Amendment of section 6 of principal Act.

- (a) inserting in paragraph (a) immediately after the word “fees” the words “and regulatory service fees”;
- (b) deleting paragraph (b).

Repeal of
section 7
of princi-
pal Act.

7. Section 7 of the principal Act is repealed.

Amendment
of section
8 of prin-
cipal Act.

8. Subsection (1) of section 8 of the principal Act is amended by deleting the words “any utility undertaking operated by an approved organization” and substituting therefor the words “the provision of any prescribed utility services by a licensee or specified organization”.

New section
8A of prin-
cipal Act.

9. The principal Act is hereby amended by inserting next after section 8 the following as section 8A—

“Discretion
to under-
take or
continue
investiga-
tion.

8A.—(1) The Office may, determine whether to undertake or continue an investigation under this Act and in particular, but without prejudice to the generality of the foregoing, may refuse to undertake or continue any investigation if it is of the opinion that—

- (a) the subject-matter of the complaint is trivial;
- (b) the complaint is frivolous or vexatious or not made in good faith;
- (c) the complainant has deferred for too long the making of his complaint to the Office;
- (d) the complainant does not have a sufficient interest in the subject-matter of the complaint; or
- (e) having regard to all the circumstances of the case, no investigation or further investigation is necessary.

(2) Where the Office decides not to undertake or continue the investigation of

a complaint, it shall inform the complainant of its decision and give reasons therefor.”.

10. Section 9 of the principal Act is amended by—

Amendment
of section
9 of prin-
cipal Act.

(a) deleting subsection (1) and substituting therefor the following—

“ (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.”; and

(b) deleting from subsection (2)—

- (i) the words “approved organization” and “organization” wherever they appear and substituting therefor in each case the words “licensee or specified organization”;
- (ii) all the words appearing after the words “not exceeding” and substituting therefor the words “two million dollars”.

11. Section 10 of the principal Act is amended by—

Amendment
of section
10 of prin-
cipal Act.

(a) deleting from subsection (1)—

- (i) the words “an approved organization” and substituting therefor the words “a licensee or specified organization”; and
- (ii) the words “that organization” and substituting therefor the words “that licensee or specified organization”;

(b) deleting from subsection (2)—

- (i) the words “An approved organization” and substituting therefor the words “A licensee or specified organization”; and
- (ii) all the words appearing after the words “not exceeding” and substituting therefor the words “two million dollars”.

Amendment
of section
11 of prin-
cipal Act.

12. Section 11 of the principal Act is amended—

(a) in subsection (1)—

- (i) by deleting the words “an approved organization” wherever they appear and substituting therefor in each case the words “a licensee or specified organization”; and
- (ii) by inserting immediately before the words “utility services” the word “prescribed”;

(b) in subsections (2) and (3) by deleting the words “an approved organization” and substituting therefor the words “a licensee or specified organization”.

Amendment
of section
12 of prin-
cipal Act.

13. Section 12 of the principal Act is amended—

(a) in subsection (1)—

- (i) by deleting the words “an approved organization” and substituting therefor the words “a licensee or specified organization”;
- (ii) by deleting the words “the organization” and substituting therefor the words “the licensee or specified organization”; and
- (iii) by inserting immediately before the words “utility services” the word “prescribed”; and

(b) in subsection (2) by deleting the words “an approved organization” and substituting therefor the words “a specified organization”.

14. Section 13 of the principal Act is amended—

Amendment
of section
13 of prin-
cipal Act.

(a) in subsection (1) by deleting the words “an approved organization” and substituting therefor the words “specified organization”;

(b) in subsection (2)—

(i) by deleting the words “the utility undertaking of an approved organization” and substituting therefor the words “prescribed utility services of a specified organization”;

(ii) by deleting the words “the approved organization” and substituting therefor the words “the specified organization”;

(c) in subsection (3) by deleting the words “an approved organization” and substituting therefor the words “a specified organization”;

(d) in subsection (4)—

(i) by deleting the words “an approved organization” and substituting therefor the words “a specified organization”;

(ii) by deleting the words “that approved organization” and substituting therefor the words “that specified organization”.

15. Subsection (1) of section 14 of the principal Act is amended by deleting the words “an approved organization” and substituting therefor the words “a licensee or specified organization”.

Amendment
of section
14 of prin-
cipal Act.

16. Section 15 of the principal Act is amended by deleting the words “approved organization” wherever they appear and substituting therefor in each case the words “specified organization”.

Amendment
of section
15 of prin-
cipal Act.

Amendment
of section
16 of prin-
cipal Act.

17. Section 16 of the principal Act is amended—

(a) in subsection (1)—

- (i) by deleting the words “The Minister” and substituting therefor the words “The Office with the approval of the Minister”;
- (ii) by deleting the words “an approved organization” and substituting therefor the words “a licensee or specified organization”; and
- (iii) by inserting immediately before the words “utility services” the word “prescribed”;
and

(b) in subsection (2) by deleting the words “fifty thousand” and substituting therefor the words “two hundred thousand”.

Amendment
of section
17 of prin-
cipal Act.

18. Section 17 of the principal Act is amended by deleting the words “approved organization” and substituting therefor the words “licensee or specified organization”.

Repeal and
replacement
of First
Schedule
of princi-
pal Act.

19. The First Schedule to the principal Act is hereby repealed and replaced by the following—

“ FIRST SCHEDULE (Section 2)

Prescribed Utility Services

1. The provision of telecommunication services.
2. The provision of public passenger transportation by road, rail or ferry.
3. The provision of sewerage services.
4. The generation, transmission, distribution and supply of electricity.
5. The supply or distribution of water.”

20. The Third Schedule to the principal Act is amended in paragraph 4 by deleting the words “approved organization” and substituting therefor the words “licensee or specified organization”.

Amendment of Third Schedule of principal Act.

21. A specified organization which, before the date of commencement of the Office of Utilities Regulation (Amendment) Act, 2000, has been providing a prescribed utility service pursuant to an enabling instrument, shall continue to provide such service until the expiration, suspension or revocation, whichever occurs first, of the enabling instrument.

Transitional.