

**AUDITOR GENERAL'S DEPARTMENT
PERFORMANCE AUDIT REPORT
OFFICE OF UTILITIES REGULATION**

REGULATING UTILITY SERVICE PROVIDERS



Auditor General of Jamaica
Auditor General's Department
8 Waterloo Road, Kingston 10
Jamaica, W.I.
www.auditorgeneral.gov.jm

Table of Contents

AUDITOR GENERAL’S OVERVIEW	5
EXECUTIVE SUMMARY	7
KEY FINDINGS	8
RECOMMENDATIONS	11
PART 1	13
INTRODUCTION	13
BACKGROUND	13
PART 2	16
OUR REGULATORY FRAMEWORK.....	16
OUR’S APPOINTMENT FRAMEWORK MAY IMPACT ON ITS INDEPENDENCE.....	16
SHORT TENURE OF REGULATORS RESTRICTS CONTINUITY OF REGULATORY PROCESS	18
OUR PLAYS A SUBORDINATE ROLE IN THE REGULATION OF THE TRANSPORT SECTOR.....	19
OUR REGULATORY ROLE IN THE COST OF ELECTRICITY IS LIMITED	20
PART 3	22
LEGISLATIVE FRAMEWORK AND ENFORCEMENT OF REGULATION	22
OUR LEGISLATIVE FRAMEWORK NEEDS STRENGTHENING	22
OUR IS OPERATING WITH DRAFT REGULATORY RULES AND PROCEDURES	23
OUR IS NOT EMPOWERED TO LEVY FINES FOR BREACHES OF REGULATIONS	23
OUR IS NOT SEEKING LEGAL REDRESS FOR NON-PAYMENT OF REGULATORY FEES.....	24
OUR EXPERIENCES DELAYS IN APPEAL TRIBUNAL PROCESS	24
OUR FACING CHALLENGES IN PROMOTING COMPETITION AMONG UTILITY PROVIDERS.....	25
PART 4	27
SCOPE AND QUALITY OF MONITORING	27
UTILITY PROVIDERS TARDY IN SUBMITTING REQUIRED REPORTS	27
OUR’S MONITORING STRATEGY IS LIMITED	27
COMPENSATION MECHANISM OF GUARANTEED STANDARDS DOES NOT PROMOTE EFFICIENCY	30
OUR DID NOT HAVE FORMAL POLICIES TO GUIDE ITS ACTIVITIES	31
APPENDICES	33
APPENDIX 1REGULATORS WITH POWERS TO LEVY ADMINISTRATIVE FINES	33
APPENDIX 2 TRIBUNAL MATTERS.....	34
APPENDIX 3 TARGETS AND STATUS OF COMPLETION.....	36
APPENDIX 4 TIMELINESS OF UTILITY PROVIDER’S REPORTS.....	39
APPENDIX 5 BREACHES OF GUARANTEED STANDARDS, POTENTIAL AND ACTUAL COMPENSATION BY NWC AND JPSCO	40

This page was intentionally left blank

Auditor General's Overview

The Office of Utilities Regulation (**OUR**) was established to regulate the provision of prescribed utility services. **OUR**'s mission is to contribute to national development by creating an environment for the efficient delivery of utility services to the customers whilst ensuring that service providers have the opportunity to make a reasonable return on investment. As such, **OUR** must put systems in place to effectively and efficiently provide regulatory oversight of utility providers.

I commissioned a performance audit to determine whether **OUR** is fulfilling its core mandate to effectively regulate and monitor utility providers. This report highlights inadequacies in the regulatory, legislative and monitoring framework of the **OUR**, which impair its ability to effectively fulfil its objective to assure the supply of quality service to consumers. The report further identifies an inconsistency with the appointment of the Director General and the Deputy Directors General, which could undermine the independence of the holders of these offices. The report also concludes that **OUR**'s monitoring strategy is reactive and does not facilitate the prompt detection, prevention and sanction of un-licensed activities. And that, **OUR**'s Guaranteed Standards Scheme is not achieving its intended objective to ensure that utility providers maintain an acceptable level of service delivery to consumers.

I wish to thank the management and staff of **OUR** for the courtesies extended to my staff during the audit.



Pamela Monroe Ellis, FCCA, FCA, CISA
Auditor General

This page was intentionally left blank

EXECUTIVE SUMMARY

The purpose of a performance audit is to identify opportunities to improve organizational economy, efficiency and effectiveness. As such, the emphasis is on reporting on issues affecting current performance and what could be accomplished by implementing the recommendations put forward.

The Office of Utilities Regulation (**OUR**) is tasked with the major responsibility of regulating Jamaica's utility sector. Over its 15 years of operation as a multi-sector regulatory agency it has taken great strides in making Jamaicans far more knowledgeable and competent about matters in relation to the major utilities, such as water, electricity and telecommunication. Although stakeholders may not always agree with **OUR's** decisions, they commented that the agency's commitment to consultation is good.

Overview of OUR

The Office of Utilities Regulation (**OUR**) which became operational in 1997 is the regulator of water and sewerage, electricity, telecommunications, and transportation sectors. Its remit is outlined in the Office of Utilities Regulation Act of 1995 (amended 2000) and the statutes and regulatory instruments specific to each regulated sector.

The role of **OUR** includes setting the framework within which the regulated entities operate, as well as, establishing the rates and service standards for some of the regulated sectors. **OUR** also provides an avenue of appeal for utility consumers.

Key Findings

Regulatory Effectiveness Framework

- 1. We identified an inconsistency with the appointment framework which governs the employment of the Director General and the Deputy Directors General, the key decision makers for the OUR.** The OUR Act requires that the Director General is appointed by the Governor General, whereas the Deputy Directors General are appointed by the Prime Minister on the recommendation of the Portfolio Minister. This appointment framework may give rise to the perception that there is interference in the regulatory decisions. Further, although the statute provides the option to grant the Director General and Deputy Directors General employment for terms ranging from three years to seven years, appointments are routinely for three years. While we accept that these decisions were in keeping with the Interpretation Act, it is our view that this practice could undermine the independence of the holders of these offices. A period of seven years will span more than one electoral cycle, thereby safeguarding the independence of the Director General and Deputy Directors General.
- 2. We identified overlapping functions in the OUR's Act (1995) and the Transport Authority Act (1987).** The OUR Act grants the regulator the authority to set fares for the transportation sector. While the Transport Authority Act (1987) empowered the portfolio Minister for Transport to set fares to be paid on public passenger vehicles. We noted that OUR's involvement has been limited to recommending economic rates, which may be adopted by the Minister of Transport. The recommended economical rates are not normally accepted, which in effect means that the Minister makes the final decision, thereby illustrating OUR's secondary role in regulating the transportation sector.

Legislative Framework and Enforcement of Regulation

- 3. The OUR Act does not permit OUR to impose fines on all utility providers for breaches of the regulations and/or conditions of their licenses.** The Telecommunication Act grants OUR specific legal authority to hold entities in the telecommunication sector accountable to improve service delivery and efficiency. However, there is no similar provision in the Acts that govern the electricity and water sectors. OUR had prepared and submitted a draft Cabinet Submission to amend the OUR Act to grant them similar powers to that in the telecommunication sector. At the time of our audit, the submission was with the Office of the Cabinet. In countries such as Bahamas and the United Kingdom, regulators are granted the power to impose fines.

Scope and Quality of Monitoring

- 4. OUR does not have in place formal policies and procedures relating to its regulatory and monitoring functions of utility providers.** All policies presented were in draft including the Rules of Practices and Procedures¹, which should guide the regulatory function and decision making process. **OUR** was yet to prepare a monitoring framework which would assist them in identifying *“elements that are required to design and implement an effective utility monitoring system.”* The absence of formal policies to guide its activities could result in unstructured and inefficient approaches. Although, a Utility Monitoring Unit was established in October 2010, the monitoring functions were still decentralized and undertaken by all staff in the Regulatory, Policy, Monitoring and Enforcement (RPME) Division and the Consumer and Public Affairs Division. We also found no evidence that **OUR** conducted and published the stipulated Regulatory Impact Assessments (RIA) to measure and communicate its regulatory effectiveness. The absence of a monitoring framework and RIA provide no assurance that **OUR’s** monitoring functions were being managed in an efficient and effective manner to meet its objective to undertake intensified surveillance of utility service providers.
- 5. OUR’s monitoring strategy is not proactive but is instead a reactive mechanism that is triggered by the receipt of reports from utility providers.** This approach is not consistent with **OUR’s** vision to ensure that *“the service providers will be monitored aggressively to encourage the delivery of superior, quality and efficient customer service”*². It is our view that effective monitoring should involve four key elements: detection, prevention, sanction and follow-up activities. We found that **OUR’s** current monitoring strategy was not designed to facilitate prompt detection, prevention and sanction of un-licensed activity and to ensure that providers are meeting the mandated requirements. **OUR’s** 2012-2015 Management Plan described the monitoring strategy as *“on-going and intensified surveillance of service providers”*. However, physical surveillance was not undertaken by **OUR** to detect practices which contravene the provider’s licence and Determination Notices, and to verify the accuracy of reported activities. **OUR** explained that it would *“not have the manpower for this type of monitoring. The **OUR’s** position is that best practice is to first define the required behaviour, then decide on the output and then the activities that will get output then measure the results.”* It is our opinion that **OUR** financial state of affairs provides it with the capacity to do more in this area. **OUR** was not able to advise on the number of utility providers operating in the market and the status of the licensed activity. For example, **OUR** could not indicate whether activity had commenced for 38 licences granted during 2008-12 period and the operational status of 200 telecommunication licences, with expiry dates as far back as 2004.

¹ In draft since 2007

² OURs MAF Business plan 2011-2014, paragraph 4.2

6. The deficiencies in **OUR's** monitoring was further highlighted by the delinquency in submission of the required quarterly reports by utility providers. We found that as at October 2013, five of seven small water providers have never submitted quarterly reports for review whilst the latest reports seen for the remaining two were for quarters ending September 2011 and December 2012. We found that the late submission of reports to **OUR** by NWC, prevented the early detection of NWC's use of funds collected through the K-Factor to meet operational expenses rather than agreed capital expenditure. These breaches which occurred during May 2008 to March 2009 were only detected in July 2010 when NWC's K-Factor programme audit report was submitted. The report disclosed that \$3 billion in K-Factor Funds collected from customers were not deposited in the K-Factor Fund Account and NWC consistently deposited fewer funds than what was collected. Additionally, \$100 million of the funds earmarked to address NWC non-revenue water issues and improve infrastructure was used for operational purposes. The amounts were subsequently paid into the Fund. However, the use of the funds for unauthorised purposes delayed the implementation of non-revenue water reduction, sewerage and other specifically approved operational efficiency projects.
7. **OUR's Guaranteed Standards Scheme that aims to improve the efficiency of service delivery of utility providers, is not achieving the intended objective.** The scheme has a mechanism that requires utility providers to compensate consumers for breaches of the standards. Some compensation is automatically credited to the account of the affected customer; while some require the customer to submit a claim. We found that for calendar years 2008 -2012, NWC and JPS compensation based on consumers' claims, was only \$206,000 (or 0.09 per cent) of \$223.9 million and \$59.9 million (or 8 per cent) of \$709.1 million respectively. The low level of claims has not acted as an effective driver of efficient performance for these utility providers to improve efficiencies and adhere to the required standards. Therefore, the compensation mechanism is not assisting **OUR** in achieving its legislated mandate to undertake such measures as it considers necessary or desirable to protect the interests of consumers. This was further compounded by **OUR's** decision to cease publication of breaches of the Guaranteed Service Standards and customers' entitlements since 2009.

Recommendations

8. The normal period of office for the principals of a regulatory entity should be of adequate length to ensure independence and continuity of approach. In this regard, we recommend that the tenure of the OUR principals should be for a period of seven years and may be re-appointed for periods not exceeding five years. Further, consideration should be given for the appointment of the principals to be done by the Governor General after consultation with the Prime Minister and the Leader of the Opposition. This will give the holders of such office the required security of tenure to allow for their independence and guard against the perception of political interference; to engender trust of citizens and stakeholders.
9. A strong legal framework is the foundation for effective regulation. **OUR** should therefore immediately meet with stakeholders to agree on a timeframe to accelerate the implementation of its proposed revision of the **OUR** Act. This period should not exceed 18 months as **OUR's** work is seriously hampered by the lack of appropriate provisions in its Act. These amendments should empower **OUR** to impose fines, including a graduated penalty clause to discourage continued breach by utility providers. **OUR** also needs to finalise its draft policies.
10. The **OUR**, in consultation with the Attorney General's Department should identify areas of conflict/overlap with the **OUR** Act and the Acts for state entities, such as the Transport Authority, and have such anomalies corrected. This will provide a clear and transparent framework for these organisations affected by overlaps in their regulatory functions. In addition, it will resolve the issue of accountability for the related overlapping functions relating to fare setting.
11. **OUR** needs to strengthen its monitoring function by accelerating its plans to engage a consultant to develop, for implementation, an appropriate monitoring framework, systems and policies to guide its activities. Such framework should facilitate detection, prevention and sanction for illegal or unfair practices in the utility sector. **OUR** should also strive to develop and implement the proposed central database for the management of utility providers' information within the next six months. This system would improve the efficiency of **OUR** monitoring and tracking of utility providers' performance and licensing status. In addition, **OUR** should periodically conduct the stipulated Regulatory Impact Assessments (RIA) so as to assess its operational efficiency and effectiveness and take the necessary corrective action. Over time, this monitoring and evaluation of performance will provide **OUR** with valuable historical information, which it can use to make more effective decisions for improving its strategies.
12. **OUR** should review the automatic and claimable compensation system with an aim to foster greater compliance with the Guaranteed Standards Scheme by the utility providers. The current system has not achieved its intended objective. **OUR** could consider levying a penalty on the utility providers for breaches, in addition to the

current payments being made to consumers. In the short-term, **OUR** should periodically publish details of all claimable breaches committed by the utility providers.

Part 1 Introduction

Background

- 1.1 The Office of Utilities Regulation (**OUR**), which became operational in January 1997, was established under the Office of Utilities Regulation Act in 1995. The Act established **OUR** as the regulator of the water and sewerage, electricity, telecommunications, and transportation by road, land, and ferry sectors.
- 1.2 The functions of **OUR**, as expressed in the Act (*Section 4(1)*) are:
 - to regulate the provision of prescribed utility services by licensees or specified organizations,
 - to receive and process applications for a licensee to provide a prescribed utility service and make recommendations to the responsible minister in relation to the application as the Office consider necessary or desirable;
 - to conduct such research as it thinks necessary or desirable for the purpose of the performance of its functions under this Act;
 - to 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
 - Subject to section 8A, carry out, on its own initiative or at the request of any person, such investigation in relation to the provision of prescribed utility services as will enable it to determine whether the interest of consumers are adequately protected.
- 1.3 **OUR** mission statement is: *to contribute to national development by creating an environment for the efficient delivery of utility services to the customers whilst ensuring that service providers have the opportunity to make a reasonable return on investment.*
- 1.4 In support of its mandate, **OUR**'s primary objectives are to:
 - establish and maintain transparent, consistent and objective rules for the regulation of utility service providers;
 - promote the long term efficient provision of utility services for national development consistent with Government policy;
 - provide an avenue of appeal for consumers in their relationship with the utility service providers;
 - work with other related agencies in the promotion of a sustainable environment; and
 - act independently and impartially.

- 1.5 The legal framework for utilities regulation comprises a mix of instruments. The general legislation establishing **OUR** (**OUR Act**) is also complemented by sector specific legislation as outlined in **Table 1**.

Table 1: Legal instruments currently used in utility regulation

Sector	Legal Instrument	Regulator
Telecom	OUR Act 1995 Telecom Act 2000 FTC Act 1993 Licences	OUR FTC
Electricity	OUR Act , 1995 All Island Electricity Licence 2001	OUR
Water	OUR Act	OUR
Transportation	OUR Act , Transport Authority Act, Public Passenger Transport (Kingston Metropolitan Transport Region) Act, The Public Passenger Transport (Rural) Act and Licences	OUR , Transport Authority

Source: AuGD

Staffing of **OUR**

- 1.6 A Director General and two Deputy Directors General, jointly referred to as ‘the Office’, head the **OUR**. Together they constitute the principal decision makers of the entity.
- 1.7 **OUR** employs technical and administrative staff to perform the work required for the regulator to discharge its mandate. The technical personnel carry out the investigative and analytical work relating to the various utilities and provide the principal officers with the advice that is needed to make decisions.

Funding of **OUR**

- 1.8 **OUR**’s financial viability is largely dependent on the regulatory fees collected from the regulated entities and to a lesser extent, fees charged for the processing of application for licences. Grants for the financing of projects are also received from multi-lateral agencies. **OUR** does not receive subventions from the Consolidated Fund to meet its budgetary requirement.
- 1.9 **OUR** collected \$2.147 billion and \$27 million in regulatory and application fees respectively over the six year period 2007-2012 (**Table 2**).

Table 2 Income from regulatory and application fees over period 2007-2012

Year	Regulatory Service Fee \$	Licence \$	Total \$
2012	503,219,000	8,851,000	512,070,000
2011	431,079,000	325,000	431,404,000
2010	400,113,000	9,395,000	409,508,000
2009	292,748,539	6,210,765	298,959,304
2008	275,056,627	803,905	275,860,532
2007	245,517,674	1,812,094	247,527,768
Total	2,147,733,840	27,397,764	2,175,329,604

Source: AuGD analysis of **OUR** financial information

Audit, Objectives, Scope and Methodology

1.10 We conducted this audit to answer the following questions:

- I. Is **OUR** efficiently managing the legal requirement to regulate and monitor utility providers?
- II. Is **OUR** able to operate efficiently and properly within the confines of the existing legislation?
- III. Is **OUR** efficiently managing the collection of fees required to cover its costs?
- IV. Is **OUR** learning lessons and listening to the concerns of utility providers and consumers?

1.11 The audit was planned and conducted in accordance with the Government Auditing Standards, which are applicable to Performance Audit and issued by the International Organization of Supreme Audit Institutions (INTOSAI). The planning process involved gaining a thorough understanding of the various factors that influence the efficient and effective management of **OUR** and using issue analysis to determine the scope of the audit.

1.12 Our assessment is based on the review of internal and external documents, interviews with senior management and staff, key stakeholders, observations and analysis of information provided by **OUR**.

Part 2 OUR Regulatory Framework

2.1 Section 4(1) (a) of the **OUR** Act states that the function of the Office shall be to “*regulate the provision of prescribed utility services by licensees or specified organizations*”. The First Schedule of the Act defines the following as prescribed utility services:

- telecommunication service
- public passenger transportation by road, rail or ferry
- sewerage services
- the generation, transmission, distribution and supply of electricity
- the supply or distribution of water.

2.2 A regulator needs to be independent to carry out its role effectively. To be independent a regulator needs to, at a minimum, have a legal mandate, the authority to make final decision on matters within its statutory domain, and clear rules limiting political appointments and dismissals³. We found that although **OUR** has a legal mandate, its regulatory independence is impaired because of the following: (i) the inconsistency of the appointment framework of the Director General and Deputy Directors General; (ii) it operates within a weak legislative framework and; (iii) **OUR** is prevented from making final decision on matters relating to the transportation sector for which it has statutory responsibility.

OUR’s Appointment Framework may impact on its Independence

2.3 **We identified an inconsistency with the appointment framework which governs the employment of the Director General and the Deputy Directors General, the key decision makers for the OUR.** The **OUR** Act⁴ stipulates that, the Director General is appointed by the Governor General on the recommendation of the Prime Minister and the Deputy Directors General are appointed by the Prime Minister on the recommendation of the responsible Minister⁵. This appointment framework may give rise to the perception that there is interference in the regulatory decisions. We conducted two focus groups with key stakeholders who also expressed concern about the above arrangement. Their apprehension was summed up in the words of one participant who asked: “*Can true independence come from this appointment framework, given Jamaica’s political framework and economy?*” In addition, a former Director General made the following responses to questions posed in his exit interview with **OUR** Human Resource Division shown in **Figure 1**:

³ Warren Smith, Utility Regulators-The Independence Debate, World Bank Group 1997

⁴ OUR Act second schedule

⁵ Second Schedule (3.1) of the OUR Act

Figure 1 Former Director General Exit Interview Responses to OUR Human Resource Division

Q. "If you had the opportunity to change anything that would make your job more satisfying, what would it be and why?"

A. "Getting the political interference out of the independence of the regulatory agency."

Q. "Is there is anything we could have done differently that may have affected your decision to leave?"

A. "Removing the political capture and interference of the organization is a single most important improvement that the Agency can obtain through legislative changes."

Source: AuGD review of information provided by OUR

- 2.4 **Case 1** provides an example where the independence of **OUR** to regulate the telecommunication sector was challenged by Ministerial directive. **OUR** resisted the Minister's directives by asking the Court to rule on the issue. Both the lower courts and the Privy Council ruled in **OUR**'s favour.

Case 1 -Privy Council Appeal No 0079 of 2009 Mossell (Jamaica) Limited (T/Digicel) v. Office of Utilities Regulation, Cable and Wireless Jamaica Ltd. and Centennial Jamaica Ltd.

On April 9, 2002 **OUR** received from the Minister of Commerce, Science and Technology, a Ministerial Direction which directed **OUR** 'as a matter of policy' as follows:

*"The **OUR** is not to intervene in the mobile (cellular) market by setting rates, tariffs or price caps on the interconnection or retail charges made by any mobile competitor.*

OUR was disinclined to accommodate the Minister's wishes as it felt that it would compromise the integrity of the regulatory process. For one, they had an obligation under the Telecommunications Act to ensure that the rates in question are fixed at cost-effective levels. Furthermore, they would be acting in contravention of the provision of the Act if they did otherwise. Also, **OUR** was of the view that the directive compromises its duty to balance the interest of investors versus that of the consumers in relation to ensuring that investors not only make a fair return on investment but that consumers receive service at least cost. In addition, their claim of being an independent regulator would be questionable as investors would not have the assurance that their investment in the utility sector will be free from political interference.

After consultations and legal opinions, **OUR** brought a suit against the Ministry on October 30, 2002. The hearings were finalized in January 2010 where the Privy Council ruled in favour of **OUR**.

Short Tenure of Regulators Restricts Continuity of Regulatory Process

- 2.5 **OUR's** decision making body comprises the Director General and two Deputy Directors General referred to as 'the Office'. Since its 15 years of operation **OUR** has had five Directors General, the most recent one being appointed November 01, 2013. According to Schedule 2 of the **OUR** Act:-

Section 2 (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."*

Section 3 (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."*

- 2.6 We observed that the statute provides the option to grant the Director General and Deputy Directors General employment for terms ranging from a minimum of three years up to a maximum of seven years. However, appointments are routinely three years in the first instance and granted incremental extensions up to a year (**Table 3**). For example, a Deputy Director General initial appointment was for three years ending June 2012 and since then has been granted two one-year extensions.

Table 3: Tenure of Director General's Deputy Directors General since the establishment of OUR

Directors General	Appointment Period		Remarks ⁶
Albert Gordon	01/11/2013 – 31/10/2016	3 years	
Maurice Charvis	10/10/2013 – 31/10/2013	22 days	Temporary Appointment
	10/02 2013 -- 09/10/2013	8 months	Temporary Appointment
Ahmad Zia Mian	10/02/2012 – 09/02/2013	1 year	Temporary Appointment
	10/02/2009 -09/02/2012	3 years	
George Wilson	18/08/2008 – 09/02/2009	6 months	Temporary Appointment
J. Paul Morgan	01/12/2005 -30/11/2008	3 years	Resigned with effect from June 30 2008
	01/10/2002 – 30/09/2005	3 years	
Winston Hay	01/10/1999 – 30/09/2002	3 years	
	01/10/1996 – 30/09/1999	3 years	
Deputy Directors General			
Maurice Charvis	01/07/2012 – 30/06/2015	3 years	Appointed Director General up to October 31, 2013
	01/07/2009 – 30/06/2012	3 years	
Hopeton Heron	01/07/2013 –30/06/2014	1 year	Temporary Appointment

⁶ Temporary appointments in keeping with Section 36 of the Interpretation Act

Directors General	Appointment Period		Remarks ⁶
	01/07/2012 – 30/06/2013	1 year	Temporary Appointment
	01/07/2009 – 30/06/2012	3 years	
Raymond Silvera	01/07/2007 – 30/06/2010	3 years	Resigned 01/09/2008
	01/07/2004 – 30/06/2007	3 years	
Courtney Jackson	03/04/2003 - 02/04/2006	3 years	Contract was not renewed
	03/04/2000 - 02/04/2003	3 years	
J. Paul Morgan	02/01/2000 – 31/12/2003	3 years	Appointed Director General (01/10/2002)
	02/01/1997 – 31/12/2000	3 years	
Delreo Newman	02/01/1997 – 31/12/2000	3 years	Resigned 01/03/1999

Source: AuGD extract from OUR documents

- 2.7 The practice of appointing the Director General and the Deputy Directors General at the three year minimum tenure could undermine the independence of the holders of these offices. While we accept that these appointments were in keeping with **OUR Act**, it is our view that a period of seven years will span more than one electoral cycle, thereby safeguarding the independence of the Director General and the Deputy Directors General.
- 2.8 **OUR**, in a Cabinet Submission dated December 12, 2012 regarding amendments to the **OUR Act**, states *“A minimum appointment of five (5) years for Members of the Office is felt to be more appropriate to ensure the proper development of the organization and full implementation of projects and policies. A three year appointment is felt inadequate to ensure stability, certainty and independence of the holder of the particular office.”*

OUR Plays a subordinate Role in the Regulation of the Transport Sector

- 2.9 We identified overlapping functions in the **OUR’s Act (1995)** and the **Transport Authority Act (1987)**. The **OUR Act** grants the regulator the authority to set fares for the transportation sector. While the **Transport Authority Act (1987)** empowered the portfolio Minister for Transport to set fares to be paid on public passenger vehicle.

Section 4(4) of the OUR Act

“The Office shall have the 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 16 of the Transport Authority Act (1987)

“The Authority may, with the approval of the Minister, prescribe, by order published in the Gazette, the fares payable on any public passenger vehicle.”

Section 7(3) of the JUTC sub-franchise licence⁷

“The Transport Authority may from time to time by order published in the Gazette revoke or alter any of the conditions as to the size, capacity or the number of buses, time and frequency of trips, routes, stage structure, departure point and fare structure upon the application of the licensee.”

- 2.10 We noted that **OUR's** involvement has been limited to recommending economic rates, which may be adopted by the portfolio Minister of Transport, rather than setting the rates in accordance with Section 4(4) of the **OUR** Act. Therefore, the status of **OUR** can be seen to be more of a subordinate authority with power delegated to it by the Minister of Transport, than a regulatory body with independent powers to set rates in the sector. This current practice denies **OUR's** of its statutory obligation to set rates within the transport sector.

OUR Regulatory Role in the cost of Electricity is limited

- 2.11 The specific tasks to **OUR's** regulation of the electricity sector includes:
- a) approval of retail rates for the Jamaica Public Service Company (JPSCo)
 - b) management of the procurement process for new and replacement capacity
 - c) establishment of rules for the sale of energy by Independent Power Providers (IPP's), and
 - d) ensuring compliance with terms and conditions of licences.
- 2.12 **OUR** does not have regulatory oversight regarding the full cost of electricity provided by the Jamaica Public Service Company (JPSCo). Fuel, a key component, which represents approximately 65 per cent of the cost of electricity, does not fall under the purview of **OUR** and is categorised as a pass-through cost to consumers. In correspondence dated July 28, 2009, **OUR** registered its unease regarding the lack of full oversight to the Office of the Prime Minister, stating that, *“Unless the regulator is empowered to examine and influence the procurement policy for fuel it is basically faced with a fait accompli with regard to a major portion of the cost of electricity to consumers. It is our view that **OUR** ought to be afforded the authority to insist on least cost procurement and impose sanctions in the event of failure to adhere to this.”* **OUR** indicated that it is desirable to have oversight of the petroleum sector in respect of economic regulation.
- 2.13 Recognising the challenges in regulation of fuel in the country, **OUR** instituted the following measures to curtail the negative effect of the non regulatory aspect of electricity, and made proposals that would reduce energy cost and expand its regulatory control over the sector:
- a. **Efficiency factors** have been introduced in **OUR's** price cap regimes to ensure that JPS does not pass on cost that has been incurred because of their inefficiency to customers.
- OUR** has so far presided over the implementation of three price cap regimes for JPS, the most recent of which was effected in October 2009. The price cap arrangements have sought to provide JPS with incentives to minimize costs to customers and to secure real

⁷ Issued under the Public Passenger Transport (Kingston Metropolitan Transport Region) Act (1998)

improvement in service standards. A noteworthy feature of the regime that came into effect in October 2009 was the increases in a number of efficiency targets in a bid to ensure lower real costs and improved quality of service to customers. The tariff also made express provision for the JPS to undertake a loss reduction programme wherein, specific funding was made available for the implementation of smart meters as a step towards the establishment of a smart grid.

- b. In April 2012, **OUR** submitted to the Office of the Cabinet an updated proposal to suspend the *“CARICOM Common External Tariff (CET) on fuel imports for the electricity generation sector for a four (4) year period...”* According to the proposal, *“removal of the CET would....reduce the cost of fuel to the electricity generating sector, and enhance competition among suppliers to that sector.”* Based on **OUR’s** analysis, the removal of the CET *“would have an immediate positive effect on the Jamaican economy, prior to the coming on-stream of newer and more efficient generating plants”*. **OUR** indicated that, to date, they have not received a response on the matter.
 - c. In addition, the Cabinet Submission proposed that the **OUR** Act be amended to grant **OUR** regulatory power over the energy sector.
- 2.14 In March 2013, **OUR** contracted the service of a consultant to carry out an audit of JPS Fuel Management Policies and Practices in order to facilitate regulatory oversight of the fuel cost component of electricity charges to consumers, and to create a database of fuel usage cost and efficiency in the system. The audit scheduled completion date is October 31, 2013.

OUR Legislative Framework Needs Strengthening

- 3.1 The Telecommunication Act grants **OUR** specific legal authority to hold entities in the telecommunication sector accountable to improve service delivery and efficiency. However, there is no similar provision in the Acts that govern the electricity and water sectors. It should be noted that these Acts predated the establishment of **OUR** and its Act. Nonetheless, **OUR** has prepared and submitted a draft Cabinet Submission to amend the OUR Act to grant them similar powers to that in the telecommunication sector. At the time of our audit, the submission was with the Office of the Cabinet.
- 3.2 This proposed revision of **OUR** Act also seeks to address issues such as overlap in regulatory functions, and absence of authority over fuel cost. It also contains recommendations to allow **OUR** increased authority to issue orders to regulate entities and to intervene in disputes between utilities companies where such dispute is likely to lead to service disruptions. **Table 4** chronicle the progress of the amendments to date.

Table 4: Chronology of events relating to amendment of OUR Act

Date	Event
March 22, 2010	Draft Cabinet Submission setting out recommended changes to the OUR Act sent to Cabinet Secretary.
July – August 2010	Received comments on the draft Cabinet Submission from various Government Ministries and Departments and public bodies including: <ul style="list-style-type: none"> • Ministry of Transport and Works • Fair Trading Commission • Ministry of Industry, Investment and Commerce • Attorney General’s Department • Office of the Prime Minister • Ministry of Finance and the Public Service • Ministry of Water and Housing • Ministry of Energy and Mining
November 26, 2010	OUR ’s responses to the comments on the draft Cabinet Submission were submitted to the Cabinet Secretary.
February 2, 2011	A further draft Cabinet Submission, adjusted to take into account some of the comments from the various public body organizations, was submitted to the Cabinet Secretary.
September 9, 2011	Another draft of the Cabinet Submission, amended after a further internal review of the document, was submitted to the Cabinet Secretary.
December 12, 2012	Another draft of the Cabinet Submission, revised to take into account recent amendments to the Telecommunications Act, was submitted to the Cabinet Secretary.

Source: AuGD compilation of OUR information

OUR is Operating with Draft Regulatory Rules and Procedures

- 3.3 We were presented with a draft document titled *Rules of Practice and Procedure (2007)* that outline the proposed rules that **OUR** should adopt to guide the administrative procedures related to its regulatory functions and decision-making. Paragraph 3 of the Abstract to the document states: *“It should be noted that the rules contained herein embody and reflect in large part the practices and procedures that have been developed and operated by the Office since inception. The Office is now seeking to formally adopt these rules and is by this draft Notice of Proposed Rule Making (NPRM) document seeking the input of the general public including stakeholders. The Office also wishes to indicate that even while awaiting adoption of the document it will continue to apply the principles embodied in the proposed rules to all proceedings before it.”*
- 3.4 The Rules of Practice and Procedure (2007) outlines regulatory course of action regarding:
- i. assessment of applications for licence and tariff review
 - ii. inquiries and complaints from the public,
 - iii. holding of public hearing, and
 - iv. communication of decision
- 3.5 We reviewed the performance of **OUR** with regard to the above process and found no deviation from laid down procedures. For instance, the method relating to the issue and renewal of licences were observed; final regulatory actions, and the basis for those actions were issued and made available to the public. Of note is the process of consultation which prohibits decision makers (**OUR** and portfolio ministers) from acting without first considering the expressed views of all relevant groups. We encouraged **OUR** to urgently formalise their Rules of Practice and Procedure.

OUR is not Empowered to Levy Fines for Breaches of Regulations

- 3.6 The **OUR** Act does not permit **OUR** to impose fines on water and electricity utility providers for breaches of the regulations and/or conditions in their licenses. This makes it difficult for **OUR** to compel utility companies to address breaches, without resorting to the Court. The imposition of fines is an effective enforcement measure by regulators to encourage compliance.
- 3.7 We found that the United Kingdom and Bahamian regulators are granted the power to impose fines ([Appendix 1](#)). **OUR** agrees that the authority to administer sanctions, would allow them to execute their mandate more efficiently, as their ability to impose fines could act a deterrent to regulatory breaches.

OUR is not seeking Legal Redress for non-payment of regulatory fees

- 3.8 The Telecommunication Act grants **OUR** the authority to take utility companies to Court to seek redress for non-payment of regulatory fees. Section 16(4) of the Telecommunication Act states that:

“Where a licensee fails to pay the amount of the regulatory fee within the time required by the office for such payment, the licensee shall be liable to such amount by way of a surcharge as the Office may determine, not exceeding twenty-five per cent of the amount unpaid.”

- 3.9 We have noted that OUR has had a long standing problem concerning late and non-payment of regulatory fees from small telecommunication providers. As at September 2013, such providers owed regulatory fees totalling \$9.6 million, for periods up to ten years. Despite the difficulty experienced in collecting regulatory fees, OUR did not seek redress in the Court as provided for in Sections 65 and 66 of the Telecommunication Act.

OUR Experiences Delays in Appeal Tribunal Process

- 3.10 **OUR** accountability framework includes an independent appeal and judicial review mechanism. Decisions made by **OUR** relating to telecommunications are subject to appeal by the Telecommunications Appeals Tribunal (TAT). Similarly, there is the All Island Electricity Appeals Tribunal that hears appeal on electricity decisions relating to JPSCo. Both tribunals are chaired by retired high court judges. A tribunal has not been established for the water sector.
- 3.11 **OUR** presented a document titled Schedule of Tribunal Matters which reflected appeals filed over varying periods since **OUR** existence. Review of appeals filed for the period 2005 to 2012 showed lengthy delays ranging from one to five years between the filing of an appeal, the actual hearing of the case and the ruling and date of the decision ([Appendix 2](#)).
- 3.12 The delays were due to various factors such as late constitution of respective tribunals; lapse between resignation/retirement and re-appointment of tribunal members, non availability of witness, attorneys and tribunal members at scheduled hearing dates. For instance, an appeal that was filed with the All-island Electricity Tribunal on September, 2005 was first heard in July, 2007 and the final decision was not given until October 2012. The delays were due to a number of issues: (a) the Tribunal was not officially constituted until February 2007 and had undergone reconstitution in 2009 where new members had to be appointed, (b) one of the witnesses was a resident of the USA which pose travelling and scheduling problems, (c) a member of the Tribunal migrated in the middle of his tenure also causing scheduling problems.
- 3.13 Also, we noticed that a matter before the Telecommunication Tribunal since May 2007 was put on hold for four months pending the replacement of the chairman. The matter was not finalized until May 2010. In addition, a matter that was filed in July 2011 has not been heard to date because a Tribunal has not been constituted.

OUR facing challenges in promoting Competition Among Utility Providers

3.14 We found that OUR was facing challenges in promoting competition among utility providers. We found that as at April 2013, seven tasks, that are critical to enhancing the competition within the telecommunications and electricity sectors, were delayed for periods up to five years (**Table 5**). These comprise Unbundling/Facilities Sharing, Mobile Termination Charges, Number Portability and Open Access (Wheeling) Accounting Separation. The other two codes: Generation and Metering and; Transmission and Distribution Code, were completed in August and October 2011 respectively up to 4 years and 11 months after the targeted date. **OUR** had to delay the implementation of critical tasks to enhance competition within the telecommunications and electricity sectors due to legal challenges by the regulated entities and changes in government policy. The delay in implementing these tasks denies consumers of the benefits of competition, such as price reduction and improved service delivery.

Table 5: Status of OUR competition related tasks

Sector/Tasks	Tasks' Effect on Competition	Status as at April 2013
Telecommunication		
Unbundling/ Facilities Sharing	Telecommunications providers after purchasing elements of LIME's service will be able to offer similar service at competitive prices.	<i>Incomplete- delayed 3 years</i>
Mobile Termination Charges	Encourage operational efficiency and assist the OUR in providing a level playing field for current operators and new entrants.	<i>Incomplete- delayed 3 years</i>
Number Portability	To provide incentive for service providers to improve quality, increases innovation in service offerings and enhance customer satisfaction.	<i>Incomplete- delayed 4 year</i>
Electricity		
Open Access (Wheeling)	Wheeling gives self-generators the option to effectively meet their energy needs while operating in multiple-locations Additionally, wheeling of electricity is important as it increases consumer choice and encourage competition	<i>Incomplete- delayed 4 years</i>
Accounting Separation -the break-down of costs and revenue associated with each service unit.	To introduce competition in the generation side of the market; that is competitors can adequately assess the reasonableness of costs charges by JPS	<i>Incomplete- 5 years</i>
Generation and Metering Code	The guiding principles, operating procedures and technical standards governing the operation of the Jamaican power system grid and all interconnected generating facilities	Complete 4 years and 11 months after targeted date

Sector/Tasks	Tasks' Effect on Competition	Status as at April 2013
Transmission and Distribution Code	The grid operators day-to-day procedures for both planning and operational activities, and cover both normal and exceptional circumstances	Completed 3 years and 4 months

Source: AuGD's compilation and analysis of OUR information

3.14 We examined 22 targets: 12 related to competition; and 10 to monitoring and regulatory activities. As at April 2013, of the 12 targets relating to competition: seven were outstanding; and five were completed. We found that as at April 2013 only eight (36 per cent) of targets relating to competition, regulatory and monitoring activities were completed. We also found that nine of the targets relating to monitoring and regulatory activities were not completed and the remaining one was completed one year and four months after the targeted date ([Appendix 3](#)).

Part 4 Scope and Quality of Monitoring

4.1 **OUR** recommends the issue of licences to operators for different activities. An operator may have more than one licence for each service that is provided. For example, a company providing cable and internet services would have separate licences for each service. Monitoring is critical as it is the medium through which **OUR** can detect and track utility providers compliance with its regulations. It is our view that monitoring involves four key elements: detection, prevention, sanction and follow-up activities. We found that **OUR's** monitoring of service providers to ensure that they operate in accordance with their licence, did not incorporate all the key elements referred to above.

Utility Providers Tardy in Submitting required Reports

4.2 **OUR** requires utility providers to submit quarterly, annual and special reports.

- Quarterly reports – These describe the licensees' operating performance and activities; statistical information on operation and customer service; compliance with quality of service standards; review of capital projects and other matters. These reports must be submitted within 45 days of the end of the quarter.
- Annual reports – These comprise audited financial statements of the licensees organizations; and
- Special reports – These are required particularly in regard to specified events, such as abnormal occurrences and breaches of licence conditions (example, all island power outage). These reports must be submitted within specified times.

4.3 The above reports provide the basis of **OUR's** review and assessment of licensees' compliance with the terms and conditions of license and tariff determinations. A review of **OUR's** records for 12 significant utility providers, revealed that five of the seven small water providers, have never submitted quarterly reports; whilst, the latest reports seen for the remaining two were for quarters ending September 2011 and December 2012. For the remaining five major utility providers, two presented reports for quarters ending June 2013, one up to December 2012, and the other three were up to March 2013. **Appendix 4** provides full details of the timeliness of submission of reports based on the audit team's research.

OUR's Monitoring Strategy is Limited

4.4 **OUR's** 2012-2015 Management Plan states that *"The Utility Monitoring Unit has primary responsibility for ensuring regulated entities are compliant with Office Directives, relevant pieces of legislation, license conditions and tariff requirements as well as KPI's. Its activities provide the Office with on-going assessments of its regulatory effectiveness"*. The Plan also described the strategy in monitoring as *"on-going and intensified surveillance of service providers;*

compliance/adherence to the existing rules and regulations, while assisting in the promotion of sector efficiency through policy recommendations and the monitoring of key utility projects". Notwithstanding the strategy outlined in the Management Plan, **OUR** did not establish specific guidelines describing the steps to be taken in the implementation of the plan. There was also no document outlining the areas of emphasis or the approach to be used to monitor the utility projects.

- 4.5 In 2010, **OUR** established a Utility Monitoring Unit within the Regulatory, Policy, Monitoring and Enforcement (RPME) Division. The unit comprised a Manager and two Utility Analysts. However, **OUR** did not formalise the activities that should be undertaken to effectively monitor the utility sector. **OUR** indicated that they intend to engage the services of a consultant to conduct a study, which would assist **OUR** to identify: a monitoring framework; monitoring system; data capture system; reporting system and; formation of Key Performance Indicators (KPI) of the various utility providers.
- 4.6 The Utility Monitoring Unit is responsible for commissioning periodic Regulatory Impact Assessments (RIA) to measure **OUR's** efficiency and the utility providers level of compliance with agreed service, quality and investment targets. We found no evidence that RIAs were being conducted and published; thereby allowing for stakeholders assessment of **OUR's** regulatory effectiveness.
- 4.7 We found that the monitoring activity was limited to the review/analysis of reports submitted by utility providers and complaints from consumers. **OUR** advised that it's regulatory monitoring approach, of carrying out desk audit of reports, is in line with their practice to avoid intrusive regulation.
- 4.8 We recognize and accept that information from reports, such as the extent of compliance or abnormal occurrences, can provide valuable insight into a licensee's conduct. Nonetheless, the absence of periodic physical surveillance of service providers' activities gives no assurance of the accuracy of the reports presented by the utility providers. And that non-compliant and prohibited activities are being detected promptly. **OUR** explained that it would *"not have the manpower for that type of monitoring. The **OUR's** position is that best practice is first to define the required behaviour, then decide on the output and then the activities that will get output and then measure the results."* However, we are of the view that this approach is not proactive, but instead is a reactive mechanism that is triggered by the receipt of reports from utility providers. Additionally, it is our opinion that **OUR's** financial state of affairs as illustrated in **Table 6**, provides it with the capacity to do more in this area. As shown in **Table 6**, **OUR** investment increased ten-fold, moving from \$22.1 million as at March 2007 to \$245 million as at December 2012.

Table 6 Investment balances as at financial year end and December 2012

Investment	Dec-12	Mar-12	Mar-11	Mar-10	Mar-09	Mar-08	Mar-07
	\$(M)	\$(M)	\$(M)	\$(M)	\$(M)	\$(M)	\$(M)
Amount	245	218.3	128.9	36.1	45.9	25	22.1
Change (%)	12.2%	69.4%	257.1%	-21.4%	83.6%	13.1%	

Source: AuGD compilation of OUR's financial information

- 4.9 Further, **OUR** supplied a schedule which revealed that as at December 2012, 200 licences for 104 telecommunication providers⁸ expired from as far back as 2004. However, as at March 2013, **OUR** was unable to indicate whether the licensed activity for these providers had ceased. **OUR** indicated that site visits are not conducted to determine whether these providers are still offering the specified service for which the licence was issued. Additionally, during 2008-12 **OUR** granted 38 new licences, but was unable to state whether the licensed activity had commenced. **Case 2** illustrates the deficiency of the desk review.

Case 2 OUR Unaware of the Status of a Provider's Licensed Activity

- An invitation for Carrier Licence application was issued by **OUR** on December 7, 2009 for the following category – Two Carrier licence for the construction and operation of international sub-sea fibre optic Cable Carrier Facility.
- The Company applied and was granted one such licence on December 3, 2010 which took effect from November 1, 2010 and shall be for a period of 20 years. The licence also indicated that the term shall commence on the 'Ready for Service Date' which shall be no later than the November 30 2012.
- On January 25, 2013 we queried, whether the project had started. **OUR** indicated that they did not know the status of the project. They subsequently, via letter dated January 28 2013, instructed the Company to provide an update on the status of the operation.

Source: AuGD compilation of OUR Information

- 4.10 **OUR's** monitoring of the NWC's K-Factor Fund also highlighted the weaknesses in its monitoring methodology (**Case 3**). **OUR** was unaware that the NWC was not complying with the requirement of a tariff determination until their receipt of NWC's audited reports -- 16 months after the occurrence of the breach.

⁸ One provider can have more than one licence

Case 3 OUR Monitoring of the K-Factor Fund

OUR approved a K-Factor Fund for NWC in the 2008 tariff determination to fund projects intended to reduce losses from non revenue water and to improve the infrastructure of sewage treatment and disposal. This is funded from the collection of an agreed percentage from NWC customers on a monthly basis. The amount is deposited into a designated K-Factor Fund account. We found that **OUR** monitoring activities of the K-Factor was limited to review of independent audited financial statements and quarterly reports prepared by NWC detailing progress on operational targets.

OUR only became aware that NWC was not in compliance upon receiving NWC's K-Factor Programme Audit Report (May 2008 to March 2009) in July 2010, which showed that funds were not being properly utilised. The report indicated that portions of the K-Factor Funds have been utilized in a manner inconsistent with that prescribed in the relevant tariff determination. NWC expended \$100 million of K-Factor funds to pay its electricity bills. In addition our review of NWC's audited financial statements disclosed that for the financial years ending March 31, 2010 and March 31, 2011, funds collected from NWC customers totalling \$1.07 billion and \$1.96 billion respectively were not lodged into the K-Factor Account.

OUR adjusted its method of monitoring the K-Factor Fund, based on the review of the K-Factor Programme Audit Report conducted by a private audit firm. The new approach is contained in a Memorandum of Understanding (MOU), signed between NWC and **OUR** in October 2010 and other directives issued by **OUR**. We noted that the outstanding balances were later settled by the NWC in full.

Source: AuGD compilation of OUR information

Compensation Mechanism of Guaranteed Standards does not Promote Efficiency

- 4.11 **OUR** established guaranteed service standards scheme for JPSCo and NWC as an incentive to improve efficiency in their service delivery. The scheme has a mechanism to compensate consumers for breaches of the standards. In some instances, compensation is automatically credited to the affected customer account, while the customer is required to submit a claim for other breaches. In relation to NWC, 41 per cent of breaches are automatic, while the other 59 per cent have to be claimed for. For JPSCo, automatic and claimable compensation is 30 and 70 per cent respectively.
- 4.12 This high ratio of claimable to automatic breaches is not serving as an incentive for better performance. A review of **OUR's** records disclosed that during the period, January 2008 to September 2012, there were 123,854 instances of breaches with claimable compensation amounting to \$220.25 million. However, compensation based on customers' claims was only \$206,000 or 0.09 per cent. Similarly, review of JPSCo quarterly reports for the period January 2008 to December 2012, disclosed that there were 269,134 instances of breaches with claimable compensation totalling \$709 million. However, customers' claims were only \$60

million or eight per cent. **Table 7** illustrates the total number of breaches and compensation made ([Appendix 5](#)).

Table 7: Compensation for Breaches of Guaranteed Standard by NWC and JPS, 2008 - 2012

Particulars	Breaches	Potential Compensation (automatic and claim) (\$)	Actual Compensation (\$)
NWC -13 Guaranteed Standards			
Automatic -5	3,743	3,616,800	3,616,800
Claimable – 8	123,854	220,250,400	206,000
Total	127,597	223,867,200	3,822,800
JPS – 13 Guaranteed Standards			
Automatic -4	13,621	45,750,769	45,750,769
Claimable – 9	269,134	709,059,158	59,908,974
Total	282,755	754,809,927	101,659,743

Source: NWC and JPS Quarterly Reports submitted to OUR

- 4.13 The low level of claims has not acted as an effective driver of efficient performance for these utility providers to improve service delivery and adhere to the required standards. Therefore, the compensation mechanism is not assisting **OUR** in achieving its legislated mandate to undertake such measures as it considers necessary or desirable to protect the interests of consumers.
- 4.14 **OUR** had also included the development of service standards for monitoring call centres in its 2008-2011 management plan; an indication of their recognition that an important feature of keeping an eye on the quality of service being offered to consumer is through the monitoring of call centres. However, the task was not completed. No plausible reason was given for the non-completion ([Appendix 3, item 21](#)).

OUR did not have Formal Policies to Guide its Activities

- 4.15 **OUR** has embarked on the development of a Quality Management System (QMS) with a view to becoming ISO 9001:2008 certified. We found that most of the necessary policies required for certification were either not prepared or in draft for periods up to six years (**Table 8**).

Table 8: List of policy, procedure and guidelines still in draft or being developed

Policy, procedure & Guidelines	Length of Time in Draft	Audit comments
Rules of Practices and Procedure	6 years	Document that sets out procedures related to regulatory functions and decision making. In draft since 2007
Code of Professional Ethics	2 years	Drafted in 2011
Information Technology: Policies and Operational Procedures	2 years	Development began 2011
Internal Procurement Procedures	1 year	Development began in 2012
Investment Policy	1 year	Development began in 2012
OUR Information Policy Handbook	1 year	Development began in 2012
Records Information Management & Procedures	Less than 1 year	Being developed 2013
Fixed Asset Policies and Procedure Manual	Less than 1 year	Being developed, 2013
Monitoring Framework	Not applicable	Awaiting the engagement of a consultant to guide the development of this document
Mobile Phone Policy	Less than 1 year	Being developed 2013

Source: AuGD compilation of OUR's information

- 4.16 We encourage **OUR** to develop a work plan for the formalisation of these policies, to attain ISO certification.

Appendices

Appendix 1 Regulators with Powers to Levy Administrative Fines

Country	Act/regulating Body	Power vested in regulator
United Kingdom	Water Industry Act 1991: Section 22A Penalties	(1)(b) in the case of any company holding a licence under Chapter 1A of this Part, that the company— has contravened or is contravening any condition of the licence; or has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any condition of the appointment, the Authority may, subject to section 22C below, impose on the company a penalty of such amount as is reasonable in all the circumstances of the case.
Bahamas	Bahamas PUC Act 1993: Section 9	<p>(1) Where it appears that a controlled public utility is not fulfilling its obligations under the law by which it is established or licensed the Commission, if so satisfied after a public inquiry in accordance with the provisions of this Act, may by order published in the Gazette require the public utility within the time specified in the order to take such remedial measures as may be so specified.</p> <p>(2) The Commission may impose a fine of ten thousand dollars on any controlled public utility which fails to comply with the requirements of an order by the Commission.</p>

Appendix 2 Tribunal Matters

Matter Name	Appeal Start Date	Appeal Hearing Date	Tribunal Decision Date/Status	Time Lapse Between Appeal Start Date and First Hearing Date	Time Lapse between Appeal Start Date and Tribunal Decision Date
Telecommunications Tribunal					
Appeal by Digicel of OUR's Reconsideration on Assessment of Dominance in Mobile Call Termination	June 1, 2007	June 12, 2007	Tribunal decision in OUR's favour: May 31, 2010	12dys	3 years
RIO 5 and tariff schedule RIO 5a	June 1 2007	June 12, 2007	Matter	12dys	5 years 9 months still pending before the Tribunal
Interconnection Pricing Between Cable & Wireless Limited's Fixed Network And Mobile Networks	June 1, 2009	August 12, 2009	February 2, 2011	2mths & 12days	1 year & 6 months
Appeal by Cable & Wireless Jamaica Limited against the Uniform Domestic Dialling Plan	February 13, 2009	Sept 10, 2009	Appeal was withdrawn on February 28, 2011	6mths	1 year 5mths
Appeal by Cable and Wireless OUR's in respect of Determination on Indirect Access: Two Stage Dialling	March 4, 2011	February 12, 2013	Matter still pending before the Tribunal.	1 year 11 mths	Matter still pending before the Tribunal.
All Island Electricity Tribunal					
JPS Z-Factor Adjustment	Sept 20, 2005	July 18, 2007	Tribunal decision partially in OUR's favour: October 24, 2012	1 year 10mths	5 years & 3 mths 5days
JPS Z-Factor Claim	April 1, 2010	May 10, 2010	Tribunal decision in OUR's favour:	1mth	1 year

Matter Name	Appeal Start Date	Appeal Hearing Date	Tribunal Decision Date/Status	Time Lapse Between Appeal Start Date and First Hearing Date	Time Lapse between Appeal Start Date and Tribunal Decision Date
			May 26, 2011		
JPS Tropical Storm Gustav Claim	March 10, 2011	A tribunal is yet to be established to hear the matter.	Matter still pending before the Tribunal		
Jamalco's Ropecon Aerial Power Generation Facility Energy Payment Rate"	July 14, 2011	No instruction has been received from the Ministry regarding constitution of the tribunal to hear this appeal.	Ministry to give directions regarding the establishment of the Tribunal.		

Appendix 3 Targets and Status of Completion

No. of tasks	Task name and definition	Task relates to: Competition/ Monitoring/ Regulation	Original schedule completion date	Actual completion date	Variance at April 2013
Telecommunication Sector					
1	Competition Investigation: Directory Enquiry - Investigation into whether C&WJ would allow the other entrants to the sector access to its directory database free of cost.	competition	Fri. March 21, 2008	Tue. May 13, 2008	None
2	Accounting Separation Implementation - Cost breakdown to allow competitors to adequately assess the reasonableness of each cost.	competition	Mon. July 7, 2008	Mon. May 19, 2008	None
3	Unbundling/Facilities Sharing - Local loop unbundling allow multiple telecommunication operators to use connections from the telephone exchange to the customer's premises.	competition	Mon. October 19, 2009	none	3 years & 6 months
4	Mobile Termination Charges - Differential rates exist. Customers have to pay more to call another mobile network.	competition	Fri. July 10, 2009	none	3 years & 9 months
5	Publish Quarterly Reports - In order to properly carry out its functions, the Office has decided to commence publishing Quarterly Telecommunications Reports.	regulation & monitoring	Fri. August 29, 2008	none	None, ongoing
6	CWJ Application for Declaration of Non-dominance -The Telecommunications Act 2000 provides for a carrier previously designated as dominant to make a formal application to be declared non dominant.	competition	Fri. August 29, 2008	none	4 years & 8 months
7	Dominance in Mobile Call Termination - OUR has determined that all mobile network operators are dominant with respect to call termination.	competition	Fri. February 29, 2008	Tue. August 12, 2008	None
8	Numbering Rules - The Guidelines which govern the assignment and use of Telecommunications Numbers	regulation & monitoring	Tues. Sept. 11, 2007	Mon. January 26, 2009	1 year & 4 months

No. of tasks	Task name and definition	Task relates to: Competition/ Monitoring/ Regulation	Original schedule completion date	Actual completion date	Variance at April 2013
	within Jamaica to provide an unambiguous guide to the management and use of numbers in relation to numbering policy				
9	Regime for Numbering Administration - Intended for the automation of specified numbering administration tasks and the development of a suitable technical solution for the administration of toll free numbers.	regulation & monitoring	Tues. Dec. 24, 2008	none	4 year & 4 months
10	Number Portability - The ability of customers to change service providers without having to change their telephone numbers.	competition	Fri. February 6, 2009	none	4 year & 2 months
Electricity Sector					
11	Least Cost Expansion Plan - An examination of the existing system to determine what is the least cost option for adding capacity subject to certain constraints	competition	Mon. August 25, 2008	December 2010	2 year & 3 months, ongoing
12	Regulatory Incentive for Demand Side Management - Instituting incentives to encourage demand side management	regulation & monitoring	Mon. January 12, 2009	none	4 year & 3 months
13	Open Access (Wheeling) - The transportation of electricity across transmission and distribution grid by an independent party other than the owner or operator of the grid	competition	Thurs. March 19, 2009	none	4 year & 1 months
14	Accounting Separation - the breakdown of a company's accounts to identify the costs and revenues associated with each production and/or service unit.	competition	Tues. February 12, 2008	none	5 year & 2 months
15	Generation and Metering Code - The guiding principles, operating procedures and technical standards governing the operation of the Jamaican power system grid and all interconnected generating facilities.	competition	Thurs. May 15, 2008	Aug-11	4 year & 11 months
16	Transmission and Distribution Code - The grid operators day-to-day procedures for both planning and operational activities, and cover both normal and exceptional circumstances	competition	Thurs. June 12, 2008	Oct-11	3 year & 4 months

No. of tasks	Task name and definition	Task relates to: Competition/ Monitoring/ Regulation	Original schedule completion date	Actual completion date	Variance at April 2013
17	IPP Monitoring - monitoring on a monthly basis of the independent power producers	Monitoring	Wed. April 13, 2011	none	None, ongoing
18	Service Standards for JPS Call Centre - The development and establishment of indicators for monitoring the electricity sector call centre	Monitoring	Fri. May 23, 2008	none	4 year & 11 months
Water Sector					
19	NWC Rate Making Principles - Consultation prior to rate review to deal with issues affecting the rate making to ease the decision made during rate review process	Regulation	Fri. March 6, 2009	none	None, ongoing
20	Review Customer Protection Issues in Water - Development of a Terms of Reference for the water sector to monitor and protect consumer given the increased presence of private water providers.	Monitoring	Thurs. Sept. 26, 2008	none	4 year & 7 months
21	Service Standards for NWC Call Centre - The development and establishment of indicators for monitoring the water sector call centre	Monitoring	Mon. Dec. 29, 2008	none	4 year & 4 months
22	Audit of NWC's system for additional water sector rules - Audit of NWC system if the water sector has a need for more rules	Monitoring	Wed. Dec.16, 2009	none	3 year & 4 months, aborted

Source: Compilation of Targets identified in OUR's 2008 - 2011 Management Plan

Appendix 4 Timeliness of Utility Provider's Reports

ENTITY	Period	Date received	Actual Days	Standard Days	Difference (Days)
Entity 1	April to June 2013	2-Oct-13	65	45	20
Entity 1	Jan to March 2013	2-Oct-13	128	45	83
Entity 1	Oct to Dec 2012	29-Apr-13	81	45	36
Entity 1	July to Sept 2012	17-Dec-12	55	45	10
Entity 1	April to June 2012	22-Aug-12	36	45	-9
Entity 1	Jan to March 2012	19-Jul-12	74	45	29
Entity 1	Oct to Dec 2011	7-Feb-12	26	45	-19
Entity 1	July to Sept 2011	30-Nov-11	42	45	-3
Entity 1	April to June 2011	30-Aug-11	42	45	-3
Entity 1	Jan to March 2011	13-May-11	29	45	-16
Entity 2	Oct to Dec 2012	March. 2013	41	45	-4
Entity 2	July to September 2012	outstanding			
Entity 2	April to June 2012	20-Aug-12	34	45	-11
Entity 2	Jan to March 2012	9-May-12	26	45	-19
Entity 2	Oct to Dec 2011	Feb. 2012	21	45	-24
Entity 3	July to Sept 2011	not dated	N/A	N/A	N/A
Entity 4	no report	N/A	N/A	N/A	N/A
Entity 5	no report	N/A	N/A	N/A	N/A
Entity 6	no report	N/A	N/A	N/A	N/A
Entity 7	no report	N/A	N/A	N/A	N/A
Entity 8	no report	N/A	N/A	N/A	N/A
Entity 9	January to March 2013	N/A	N/A	N/A	N/A
Entity 10	October to December 2012	N/A	N/A	N/A	N/A
Entity 11	January to March 2013	N/A	N/A	N/A	N/A
Entity 12	April to June 2013	N/A	N/A	N/A	N/A

Appendix 5 Breaches of Guaranteed Standards, Potential and Actual Compensation by NWC and JPSCo

Calendar Year	Breaches	Potential Compensation (automatic and claim)	Actual Compensation
NWC			
2012	17,988	33,960,600	300,200
2011	16,899	31,685,350	483,550
2010	23,766	44,467,600	687,800
2009	25,263	44,982,900	839,700
2008	43,236	68,348,000	1,088,800
Total	127,597	223,867,200	3,822,800
Automatic	3,743	3,616,800	3,616,800
Claimable	123,854	220,250,400	206,000
JPS			
2012	51,789	140,556,467	2,338,043
2011	44,860	103,129,706	6,463,200
2010	83,557	203,000,000	92,000,000
2009	24,821	37,865,328	417,500
2008	77728	270,258,426	441,000
Total	282,755	754,809,927	101,659,743
Automatic	13,621	45,750,769	45,750,769
Claimable	269,134	709,059,158	59,908,974

Source: Data extracted from quarterly reports submitted to OUR by NWC and JPSCo.