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**JAMAICAN OFFICE OF
UTILITIES REGULATION
Short-Term Needs Assessment**

Draft Report

U.S. Agency for International Development

Prepared for: USAID/Jamaica

**Prepared by: Bruce Carrie, Coopers & Lybrand, L.L.P.
Lawrence Spiwak, FCC
Jason Matechak, USAID Washington**

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I. EXECUTIVE SUMMARY

In April 1995, the Government of Jamaica passed the "Office of Utilities Regulation Act," which provides for the establishment of the Office of Utilities Regulation (OUR) to regulate all domestic utilities. The OUR Preparation Unit requested USAID to provide funds for training OUR staff and for a public education program. USAID decided to conduct a needs assessment before providing any funds for the OUR. An assessment team visited Kingston in early June 1996 to review the status of the OUR and the regulatory environment, report on the plans of other donors, and recommend an action plan for Mission intervention.

With the establishment of the OUR, Jamaica has a unique opportunity to revise the existing regulatory framework for the utilities controlled by the OUR: electricity, telecommunications, public transport, sewerage, and railways (to be added shortly). The OUR Preparation Unit, together with other Government agencies, has already commenced work on developing appropriate regulatory frameworks. As the Government plans to have completed the privatization of the local electricity company by the end of 1996, work on this sector is the most advanced. Any changes to the regulatory environment for the telecommunications sector is heavily constrained by the monopoly given by the previous government in 1987 to the already privatized telephone company. Work in this sector is a high priority as the government plans to pass a new telecommunications act in early 1997. This is likely to provide the only opportunity in the near future for any competition in this sector. Planning on the regulatory environment for the other sectors has commenced, but is not high a priority.

The OUR and the Preparation Unit face a number of significant challenges over the coming year. The tasks they must undertake include: developing specific regulatory frameworks for each of the sectors under their control; developing administrative procedures for data collection, processing license applications, etc; developing its own institution capabilities and training its staff; and, conducting a public education program. The OUR will require assistance in carrying out most of these tasks.

The World Bank, the Overseas Development Agency, and the Inter-American Development Bank (on behalf of the Multi-Lateral Investment Fund), are planning to provide, or are already providing, assistance to the OUR. USAID assistance will need to be coordinated with the assistance provided by these other donors.

As the funds available for USAID to assist the OUR are limited at this stage, in the short-term it will be necessary to focus assistance strictly on high priority activities and areas where USAID has a comparative advantage. If and when further funds become available, USAID can provide additional assistance. In order of priority, the recommended components of an assistance program for the OUR are:

- a. Provision of a U.S. Federal Communications Commission lawyer as a short-term consultant to review the current telecommunications licenses to identify potential areas where competition could be introduced into the telecommunications sector.

Subsequently, a lawyer should provide assistance with redrafting the new telecommunications bill to reflect these competition opportunities.

- b. Provision of a consultant from the Federal Communications Commission to provide assistance with the general development of the regulatory framework for the telecommunications sector.
- c. Assistance with developing the procedures for collecting information, processing license applications, and monitoring the performance and compliance with license terms of regulated utilities.
- d. General assistance with staff training through on-the-job training and seminars provided by the U.S. experts working with the OUR. This should be supplemented by seconding selected staff of the OUR to relevant regulatory bodies in the U.S. As additional funds become available, formal training of OUR staff should be included in the program.
- e. Assisting with the public education program. This should only be considered if the IDB does not fund the program.
- f. Provision of sector specific assistance as request by the OUR.

It would be desirable to provide at least some assistance under each of the items a - d above. As additional funds become available, further assistance should go first to extending the assistance given in these areas. Only when requests for assistance in these areas have been largely satisfied should assistance in new areas be undertaken.

II. INTRODUCTION

In April 1995, the Government of Jamaica (GOJ) passed the "Office of Utilities Regulation Act," which provides for the establishment of a single administrative agency to regulate all domestic utilities. A Preparation Unit was subsequently established with the aim of having the Office of Utilities Regulation (OUR) in operation by June 1996. In April 1996, the Preparation Unit requested USAID to provide funds for a public education program covering the work of the OUR and to provide training for the staff of the OUR. The request was made in part because USAID had provided assistance with both public education and training for the Fair Trading Commission -- a comparable, independent semi-judicial body created through legislation three years earlier.

USAID decided that before it provided any assistance, it would conduct a needs assessment of the OUR. A team consisting of Jason Matechak, USAID Washington Global Bureau; Larry Spiwak, Office of General Counsel, Federal Communications Commission (F.C.C.), Washington; and Bruce Carrie, Coopers & Lybrand, was assembled. The team visited Kingston from June 3-7, 1996. Together with Claudia Hunter of USAID, Jamaica, the team interviewed the OUR Preparation Unit, the utilities that the OUR will regulate, other Jamaican regulatory bodies, representatives of the private sector, and other foreign aid donors. (A full list of the those interviewed is provided in Annex I.)

This report details the findings and recommendation of the visiting team. In particular, it describes the current status of the OUR and the regulatory environment, reports on the work that other donors are undertaking to assist the OUR, and recommends an action plan for Mission intervention in the area of regulatory reform, and with the OUR in particular.

III. BACKGROUND

Starting in the 1970s, the GOJ entered into a large number of commercial ventures. This included acquiring the shares in the public utility companies that the Government did not already own, in particular the Jamaica Telephone Company and the local electricity company, the Jamaican Public Service Company (JPSCo). This was in line with the then-prevailing thinking that economic development required active involvement of the government in the productive sectors of the economy. The outcome was low efficiency and productivity in many government agencies and government-run businesses, and poor performance of the economy as a whole.

Beginning in the early 1980s, the Government began a program of economic reform that included privatization. This program was aimed at:

- a. increasing the efficiency of enterprises through a change of ownership;
- b. eliminating the fiscal drain caused by poorly performing public enterprises;
- c. creating opportunities to access foreign capital, technology and markets; and
- d. expanding the base of ownership and equity participation in the economy.

The Jamaica Telephone Company was the first major utility sold during this period. Under pressure to meet financial targets for the economy set by international lending agencies, in 1987 the Government created a joint venture company with Cable and Wireless. From 1987 through to 1991, the Government sold its share in the new telephone company to the general public.

The Government also began privatizing the electricity sector in the 1990s. The primary motivation for privatization stemmed from the fact that heavy capital investment was required to modernize the sector, and the GOJ itself lacked that capital. As a first step, the Government let the private sector build and operate the new generating capacity required, while retaining ownership of the existing generation, transmission, and distribution facilities. The Government is now in the process of selling its shares in JPSCo and hopes to have the deal completed by the end of 1996.

The national airline has already been sold, and the Government plans to have one of the two international airports also sold by the end of 1996. Buses already are mainly operated privately, although managed under a franchise arrangement with the Government. Negotiations are underway for the sale of at least part of the railways system, and plans are being prepared for the restructuring, and possible privatization, of government-owned water and sewage facilities.

Regulation of utilities was the responsibility of a number of bodies throughout this period. Initially, Rates Boards were used by the Government to consider rate increases; then, in the 1960s, a Public Utilities Commission was established. With the take-over of the utilities by the Government in the 1970s, the Public Utilities Commission was effectively abandoned, although the legislation was not repealed. During this period, regulation effectively reverted to the portfolio Minister. For the major utilities, most recently this was the Minister of Public Utilities and Transport.

In 1992, the World Bank financed a study on regulatory reform and the privatization of the Jamaican power sector. This study recommended the establishment of a single regulatory body to oversee the regulation of all public utilities. A similar recommendation was made in a study into the privatization of water services funded by USAID. The Government accepted these recommendations, and in April 1995 the Office of Utilities Regulation Act became law.

IV. THE OFFICE OF UTILITIES REGULATION ACT

The Office of Utilities Regulation Act (the Act) repealed the Public Utilities Commission Act and established the OUR. The OUR is a statutory corporation managed by a Director General. The Director General reports to the relevant portfolio Minister for each utility. This is in contrast to many other statutory agencies who report to the Governor General, the non-political head of State. The OUR is responsible for processing all license applications from approved organizations (those utilities included in a schedule to the Act), and reporting on the applications to the Minister. The Minister is ultimately responsible for issuing licenses and deciding on the applicable terms. The Minister may also make regulations relating to the Act. The terms of a

license may include economic, safety, and technical provisions. The OUR has the power to charge fees, to conduct investigations and to impose penalties. The OUR does not receive any budgetary support from the Government and, therefore, must raise its operating revenue from the fees it charges. Currently electricity, telecommunications, water, public transport and sewerage are covered by the Act. A more detailed description of the Act is included in Annex II.

The Act itself does not include any specific provisions as to the form that licenses should take, or how tariffs should be regulated or set. It is envisioned that for each utility, sector-specific legislation will be enacted, or existing legislation will be modified to take account of the OUR Act. In addition, the Minister will promulgate regulations that will cover the specific details of how each utility will be regulated. Ideally, for each sector, a regulatory framework would be decided on at the policy level first. Sector-specific legislation would then be drafted and enacted by Parliament. If needed, additional regulations would be adopted, and finally, with this framework established, licenses would be issued. For State-owned utilities, privatization would not take place until at least the regulatory framework had been decided on and sector specific legislation had been enacted. A description of the current situation with regard to sector specific legislation and licenses is given in Section VI below.

V. THE OFFICE OF UTILITIES REGULATION

Although the OUR Act was passed in April 1995, the OUR itself has yet to begin operations. In mid-1995, the Office of Utilities Regulation Preparation Unit (the Unit) was established to set up the OUR and to develop a general regulatory framework for each of the utilities planned to come under the control of the OUR. Currently, the Unit has a staff of three professionals and two support staff. It was intended that the OUR would commence operations in mid-1996, but because the Director General, who was recently recruited from the World Bank, is not available until October 1996, this target is unlikely to be met. The Unit is expected to complete its work in early 1997, some time after the OUR is operational.

Despite its small size, the Unit has already completed several tasks and is working on a number of others. These have covered both technical and administrative issues. Consultants have been employed to assist with most of these tasks. Extensive work has already been undertaken by consultants on developing a regulatory framework for the electricity sector as well as drafting the proposed terms for licenses. With respect to telecommunications, consultants have worked on the regulatory framework and the tariff review methodology. Work with consultants is also starting on the transport sector and airports.

On the administrative side, an action plan for the establishment of the OUR has been completed and a Director General appointed. Organization charts have been prepared for the first and second years of operation of the OUR. These plans provide for approximately 30 staff in the first year, and 40 during the second year. (Copies of the organization charts are included in

Annex III.) Recruitment of staff for the first year of operation, which is already under way, is planned to be completed for senior staff by October 1996, with more junior staff appointments continuing through early 1997. The appointment of two Deputy Directors General to cover electricity and telecommunications is the next task in this area. A training plan has been prepared by consultants, but in the absence of actual staff members the plan is necessarily very general.

The Unit commenced work on designing procedures for processing license applications, including accounting procedures and the format in which information must be supplied to the OUR. The Unit has also commenced work on the accounting procedures to be used by the OUR for its own internal administrative and financial management functions. The Unit has identified suitable office space for the OUR, and hardware and software requirements for the office are being defined. Overall, the major work of establishing the OUR should be completed by the beginning of 1997.

VI. THE CURRENT REGULATORY SITUATION

There are several well-established basic maxims about economic regulation. First, economic regulation is a *substitute for*, rather than a *complement of*, a competitive market. Second, regulatory policies must be carefully formulated, because ill-formulated regulatory policies may actually impose more economic costs than the public interest benefits these regulations are intended to achieve. And third, a regulated market with poor performance will never achieve the societal benefits that a rivalrous, unregulated market can achieve.

Given these maxims, regulatory policy should not simply strive to perpetuate the *status quo*, but should instead try to stimulate better market performance by promoting, to the extent practicable, pro-competitive policies. However, before a regulatory body can formulate its regulations, decision-makers must have a clear vision of what societal benefits they want to achieve, and what they want the market to look like in the near-, mid-, and long-term future.

With the establishment of the OUR, Jamaica is presented with a unique opportunity to revise the existing regulatory framework in most sectors to help improve market performance, facilitate the development of the economy, and thereby maximize consumer welfare. However, this process must be done with great care, as the OUR will probably only have one opportunity to do so. As demonstrated by the American regulatory experience, once a regulatory framework has been decided on, it is very difficult to revise it.

As explained in Section IV above, the OUR will have regulatory authority over all of the major utility and transport sectors of the Jamaican economy. These sectors will include: energy, telecommunications, water and sewage, railways and airports.

There are certain generic regulatory issues confronting all of the industries under the OUR's jurisdiction. Most significantly, prior to the creation of the OUR, the various portfolio ministers were responsible for the establishment of rates in most sectors. Political imperatives led to considerable pressure to keep rates extremely low and to minimize any increases. As a result, many of the sectors (with the exception of telecommunications) cannot recover all of their costs and are often operating at a deficit. This problem is exacerbated by the GOJ's policy of universal service and its inherent requirement that each sector achieve maximum coverage for the benefit of Jamaican citizenry.

The current status and specific regulatory issues confronting each sector are discussed below.

A. Electricity

1. Current Status

With donor advice and input, Jamaica is currently in the process of privatizing JPSCo, the State-owned portion of the electric sector. A World Bank study advocated unbundling JPSCo's assets into separate generation and transmission/generation companies. However, it appears that the Government has rejected this recommendation and will sell JPSCo's entire assets as an integrated package, including the supply contracts it has with private sector generators. There are apparently two prospective bidders at this point, with an estimated sales price of approximately US \$100 to \$200 million.

The OUR intends to regulate the privatized company using a price cap/incentive-based regulation. The OUR will also be responsible for technical, safety, and customer service regulation. Under the contemplated regulation, the utility will file performance data on a five-year basis. However, the National Investment Bank of Jamaica (NIBJ), which is responsible for the privatization, indicated that the OUR will not have all aspects of the regulatory framework in place by the time the privatization is completed. Although a considerable amount of work has already gone into developing the framework, and it has essentially been agreed at the policy level, the necessary legislative changes will not have been completed in time. According to the NIBJ, the Government intends to resolve regulatory concerns by drafting the initial contract to govern the privatized utility's conduct as if it were currently regulated by the OUR. At the end of the initial agreement, those contractual obligations would then be codified into regulation. The NIBJ stated that they expect this "interim" period to last for approximately three years. The OUR Preparation Unit staff are participating in the negotiations with the prospective bidders to ensure that this process goes smoothly.

2. Comment

While an unbundled transmission and generation model is probably most desirable, given the basic conditions of the Jamaican electric sector, the current privatization plan (i.e., one integrated utility subject to incentive regulation) will probably be sufficient to achieve the two crucial goals of electricity regulation, namely, reliability, and just and reasonable rates.

Specifically, by privatizing the electricity sector and drawing on the expertise of the private buyer, the utility will probably be able to operate in a more efficient manner. These efficiencies should be realized in the form of lower system costs and improved customer service, although, as explained below, not necessarily lower tariffs in the short term. Because the utility will make more money the more efficiently it operates, consumers will benefit from the utility's desire to maximize profits.

Moreover, as mentioned above, JPSCo has been operating at a loss for some time. This is primarily because of the substantial political pressures against any increase in rates. The last increase granted to JPSCo was in 1991. An application in 1994/5, submitted in a form designed to foreshadow the workings of the OUR, was declined. Although a portion of JPSCo's tariff is adjusted automatically in line with increases in offshore costs, such adjustments have not been sufficient to keep up with inflation. With the creation of the OUR, JPSCo should have a welcome public forum where it can file a rate case in which it can demonstrate that its current rates are confiscatory and that a rate increase may, in fact, be warranted.

B. Telecommunications

1. Current Status

Telecommunications of Jamaica (TOJ) has a monopoly over all telecommunications services (domestic and international) in Jamaica. Under a series of licenses entered into with the previous Government in 1987, TOJ is the exclusive operator of telecommunications systems for twenty-five years, with an option for another twenty-five years. At present, the GOJ is in the process of re-writing its telecommunications law. The Government has publicly stated that it intends to ensure that the new license regime which will emerge from the new legislation will honor the contractual obligations contained in the license.¹

The team was not able to obtain copies of the licenses to see how TOJ and the Government define "telecommunications systems." Under a draft telecommunications bill prepared before the OUR was established, telecommunications systems are defined as "a system for the conveyance through the agency of electric, magnetic, electromagnetic, electrotechnical, electromechanical or other appropriate energy" of:

- (a) speech and other sounds;
- (b) visual images;
- (c) signals serving for the impartation (whether between persons and persons, things and things, or persons and things) of any matter otherwise than in the form of sounds or visual images; or
- (d) signals serving for the actuation or control of machinery or apparatus.

¹ See TELECOMMUNICATIONS POLICY: A FRAMEWORK, Presented by the Minister of Public Utilities and Transport (January 1996) at 19 ("Minister's Report").

Moreover, the current Government has stated publicly that because TOJ has provided a major investment in cellular telecommunications services for which no specific license was ever granted, it is the Government's intention to grant TOJ a five to ten year license to operate cellular telephone and Personal Communication Services (PCS) systems. According to the GOJ, this "shorter" license period takes into account the rapid changes in the sector and gives the GOJ the opportunity to re-examine its policy based on changes in the technological environment.²

According to TOJ, its rates for POTS ("plain old telephone service") are among the lowest in the world. Unfortunately, such low rates are the result of high international accounting rates rather than operational efficiency.³ TOJ's ability to offer such low rates will undoubtedly be affected by the current U.S. policy aimed at achieving lower accounting rates.

Under the proposed plan, TOJ will be regulated by the OUR on a rate-of-return basis. To be able to effectively regulate under this methodology, the OUR must have access to accurate information about the true value of TOJ's rate-base. To date, this has been an extremely difficult task.⁴

TOJ maintains that because Jamaica is such a small and developing country, monopoly control is the only way to ensure universal service. Indeed, TOJ stated that competition "jeopardizes" universal service, because TOJ will be unable to use substantial revenues from captive high-usage areas to subsidize service to high cost/low-usage areas. Moreover, TOJ stated that a monopoly is necessary in order to construct a "mature" network -- a process that, according to TOJ, is expected to take at least ten to twelve years. TOJ therefore maintains that any proposed telecommunications regulation by the OUR must take into account the "special circumstances" of the Jamaican market.

2. *Comment*

Under accepted economic theory, good market performance results in better allocative efficiencies and also permits society to take advantage of dynamic economic efficiencies in the form of technological innovation. Achieving these goals is especially critical for a developing nation if it wants to advance the welfare of its people. Unfortunately, it is also well established that a monopoly is unlikely to achieve these goals.

The OUR recognizes that while it must deal with TOJ's exclusive license, there may be areas where it can promote competition. Unfortunately, under the definition described above, opportunities for competition in most Jamaican telecommunications sectors appear slim. The GOJ has publicly stated that value-added network services ("VANS") and value-added data

² Minister's Report at 24-25.

³ Indeed, TOJ just received GOJ approval to raise international rates by 25%.

⁴ See "Can We Afford TOJ's Expansion?" Sunday Gleaner (June 9, 1996) at 9A.

services ("VADS") -- such as e-mail, teletext, videotext, circuit switched data networks and other enhanced services -- will be open to competition.⁵ However, based on a careful review of the TOJ licenses, and with political support, there may be some additional areas, such as additional cellular, PCS, or paging services, as well as "non-switched" voice (i.e., voice Internet, interactive cable, LMDS) services, where the OUR may be able to promote competition.

The opportunity for the OUR to promote such competition comes through the proposed telecommunications bill referenced above. The telecommunications sector currently is governed by the 1893 Telephone Act. This Act is not in conformity with the licenses issued to TOJ, thus providing a major incentive to pass a new act. While the draft bill currently being circulated was originally prepared several years ago, the bill is expected to be taken up again sometime this fall. The Government plans to have the new legislation enacted by early next year. As explained above, the proposed bill essentially codifies TOJ's monopoly status. As it currently stands, the proposed bill fails to even reference the OUR's regulatory responsibilities over TOJ. If the bill becomes law in its current form, a crucial opportunity to maximize Jamaican consumer welfare will be lost. The OUR needs to participate actively in the legislative process and have a clear, long-term policy goal in mind during this process. As preparation for this process, TOJ's licenses should be examined closely to determine in which areas, if any, the OUR may be able to promote competition.

C. Airports

In addition to four domestic airports, Jamaica has two international airports: Sangster in Montego Bay, and Manley in Kingston. The Government intends to privatize the land-based operations of both international airports. Currently, the Minister of Public Utilities and Transport regulates the airports. The Civil Aviation Authority, however, is responsible for air safety. Although airports are not currently covered by the OUR Act, the Government intends (as part of the privatization process) to bring them under the jurisdiction of the OUR. The major item to be regulated by the OUR will be landing fees. In addition, the fees charged for concessions at the airports may also be subject to OUR regulation.

The privatization of Sangster is planned to be completed by the end of 1996. This will require a regulatory framework to be agreed by then. Some work has already commenced on developing this framework, and consultants employed by the Airports Authority will work on this issue again in July. At this stage the OUR is largely relying on the work of the Airports Authority to develop the framework.

⁵ Minister's Report at 19.

D. Railways

The GOJ is contemplating privatizing its internal railroad. At present, the railroads are used to transport bauxite from the mines to the ports. However, there are plans eventually to use the railroads for passenger/tourist use. As this privatization is still only at the drawing-board phase, the OUR is not focusing on this issue at present.

E. Water & Sewage

The National Water Commission (NWC) is a government-owned entity responsible for providing the majority of Jamaica with water and sewage services. According to the NWC, the water sector will be the last sector to be privatized. A plan for the development, regulation, and privatization of the sector is currently in preparation. It is likely that implementation of this plan will extend through early 1998. The GOJ has publicly stated that the water sector will not fall totally into private hands. It appears, therefore, that the GOJ is looking for some kind of private investment to improve existing infrastructure, together with private management of at least some of the assets. NWC stated that the OUR will regulate the "commercial" side of the sector, in the form of tariffs, drafting service requirements and performance standards, and implementing demand-side management programs. As with other sectors, the water sector is also confronted with the high cost/low volume, universal service dilemma.

VII. PRIORITIES FOR THE OFFICE OF UTILITIES REGULATION

A. Sector Specific Regulatory Frameworks

The OUR still has considerable work to do in all sectors which it will regulate. Work on the electricity sector is the most advanced, which is appropriate given the imminent privatization of JPSCo. However, even in this sector there is considerable work to be done before all aspects of the regulatory framework, including necessary legislative changes, are in place.

The telecommunications sector is the highest priority area for the OUR. The passing of the new telecommunications act, scheduled to be completed by early 1997, represents the one major opportunity the OUR is likely to have in the near future to introduce competition into the telecommunications sector. The OUR needs to review the existing TOJ licenses to determine potential areas for competition. The OUR should then provide input into the redrafting of the telecommunications bill to codify these competitive opportunities. This should be a top priority for the OUR.

Work on all other sectors is less well advanced, but this is not of great concern. Apart from airports, where privatization plans are well advanced, and possibly railways, there are no urgent demands forcing early decisions.

B. General Procedures

In addition to sector specific work, the OUR needs to develop the administrative procedures for collecting data, processing license applications, and subsequently monitoring the performance of the regulated utilities. Although the first full license application and rate review is not likely to occur until electricity is reviewed in three years, such a review is a major undertaking, and preparation for it should commence as soon as possible. Preparation for similar reviews in other sectors should also begin.

The OUR plans to monitor the performance of regulated utilities on an annual basis. This will be particularly important in the case of TOJ, for which a full license review will not occur for another 16 years. Preparing for these annual rate reviews and the more comprehensive license reviews will require the development of formats for all information to be supplied to the OUR, and procedures for handling the applications, reviews, and any appeals. As far as possible, these procedures should be common to all sectors. In addition, data bases and economic models of each of the regulated sectors will need to be developed. Establishing an appropriate rate base for TOJ will be a major exercise but is of considerable importance.

C. Institution Building

The OUR and the Preparation Unit need to recruit up to 30 staff in the next six months as well as develop all the necessary components of an independent office. This covers physical office space and facilities, as well as developing internal office procedures and building up administrative capabilities. Without these basics in place, the OUR will be unable to function efficiently.

D. Staff Training

With little indigenous experience in economic regulation, staff development will be a high priority for the OUR and Unit. It must be assumed that almost all of the staff recruited over the next year will require training. In some cases, this may mean sending the staff on full-time study overseas. In most cases, it will involve sending the staff on short-term training courses and seconding them for short periods to regulatory authorities overseas. In addition, consultants brought in to work on specific issues should provide on-the-job training for local staff. Consultants could also develop and present seminars in their areas of expertise. These seminars should be open to Ministry staff, officers of regulated utilities, as well as the OUR staff.

E. Public Education

Public education will be an area of considerable importance to the OUR for a number of reasons. First, a number of utilities, most importantly JPSCo, will be privatized in the next year or two. The public is concerned about the protection that it will have once these important entities are in the hands of the private sector rather than the government. The OUR will need

to explain to the public the OUR's role in regulating rates and, thereby, ensuring that rates are "just and reasonable" to both consumer and provider.

Secondly, the OUR is only one of several bodies to which the public can turn if they have concerns or complaints about the operations of utilities. As well as the OUR, there is the Fair Trading Commission (the FTC), the Ombudsman for Utilities, and the Consumer Affairs Commission. The OUR will need to explain to the public its relationship to all these other bodies, and to which entity they should approach with particular problems. The OUR would be hindered in its work by being inundated with inappropriate queries from the public in its early days.

Finally, and perhaps most importantly, for the OUR to function effectively as an independent body it will need the support of the public. Earlier statutory authorities in Jamaica report to the Governor General, who is independent of party politics. The OUR, however, reports to the portfolio minister. This means that the OUR potentially could come under considerable political pressure. Having the public support the OUR as an independent body will help prevent such pressures from arising.

The FTC provides a good example of public support working to the benefit of the regulatory body. Partially as a consequence of an effective public education campaign, the FTC has established itself as a strong independent body working in the interests of the public. The FTC, however, has benefitted from the fact that a number of the early cases it took to court were against large corporations. In these cases, the FTC could easily portray itself as protecting the rights of the general public. The OUR may well have the reverse problem. As noted above, many utilities are operating at a loss due to a history of political interference with tariff setting. If the OUR does its job properly, it may end up granting significant tariff increases. A carefully devised public education program will be required to explain that the OUR is in fact working in the best long-term interests of the public.

VIII. EXISTING DONOR COMMITMENTS

Three donor organizations other than USAID are planning to provide, or are already providing, assistance to the OUR. They are the World Bank, the Inter-American Development Bank (the IDB), and the Overseas Development Agency (the ODA). The IDB funds come from the Multi-Lateral Investment Fund, which the IDB manages on behalf of the Fund.

A. The World Bank

The World Bank already has provided loans to the GOJ for issues relating to utility regulation. Indeed, as noted above, a World Bank study regarding the Jamaican electricity sector led to the establishment of the OUR and the development of much of the regulatory framework for the electricity sector. However, this energy-related source of funds is no longer available to the OUR.

The World Bank is currently in the process of negotiating another loan (the Regulatory Reform and Private Investment Facility) with the GOJ. A portion of this loan will be set aside for OUR use. A final decision has yet to be made as to how much money will be set aside for the OUR or for exactly what purposes it should be used. The loan is currently at the appraisal stage. If the next stages in the loan process are expedited as quickly as possible, this new loan should be available for use in early 1997.

B. The Inter-American Development Bank

The IDB manages the largest source of funds presently available to the OUR. In May 1994, the IDB made available to the GOJ \$1.5 million of grant funds for use in establishing the OUR. The conditions precedent for the grant were met in September 1995, and the funds became eligible for disbursement. The funds were intended originally to be used to set up the office itself and to fund work on the electricity sector. However, as noted above, loan monies from the World Bank were used to fund the initial work on the electricity sector. For subsequent work, because the urgency of the work did not allow time to satisfy the procurement procedures required for the MIF funds, these funds were again not used. Instead, the Government drew on existing contracts and funds under an energy sector loan from the IDB.

By early 1996, very little of the MIF money had been used, and the IDB was considering canceling the facility. In May 1996, at the request of the IDB, the OUR prepared an action plan for the use of the remaining MIF funds. As most of the electricity sector work had been funded from other sources, the OUR requested that some of the remaining funds be diverted for use on other sectors. Initial indications from the IDB were that this would be acceptable, and virtually any aspects of the OUR's worked could be funded by the MIF funds. However, it now appears that at least for some sectors, transport in particular, that the MIF funds will not be available. The IDB has indicated that MIF could be used for public education purposes.

C. Overseas Development Agency

In April 1996, an ODA mission visited Jamaica and left an Aide Memoire pledging support for the OUR. The ODA envisions assisting the OUR with staff training, general institution building, and possibly by funding one economist to be seconded to the OUR for a period of one year. Funding in the order of \$450,000-600,000 is available.

The ODA has already financed a study trip for Earl Richards, the head of the Preparation Unit, to the Adam Smith Institute in England. The ODA has provided assistance with the privatization and regulation of airports, although this assistance has been directed to the Airports Authority of Jamaica rather than the OUR. This assistance will continue, with consultants returning to Kingston in July 1996.

IX. SPECIFIC ASSISTANCE NEEDS OF THE OUR

As described above, the OUR Preparation Unit is already making use of donor-funded assistance, particularly for the employment of consultants. The need to make extensive and intensive use consultants will continue for at least another year. Assistance from donors will be required in all of the areas listed above: developing sector specific regulatory frameworks; developing general procedures for processing license applications; institution building; staff training; and public education.

A. Sector-Specific Regulatory Frameworks

With only limited local capability, developing regulatory frameworks for each of the sectors under the control of the OUR will require considerable external assistance. The Unit has already made extensive use of donor funds and foreign consultants to undertake work on this task, particularly in the electricity sector. A program for completing most of the work in the electricity sector using IDB funds is already in place.

The telecommunications sector is a high priority area for short-term assistance. Some IDB funds have been allocated to this area, but additional short-term assistance will be needed. USAID is in a strong position to provide a significant part of this support. As indicated above, legal assistance will be needed to review the existing TOJ licenses to determine what opportunities exist for introducing competition while honoring the terms of the licenses. The outcome of that review would then feed into a commentary on the existing draft of the telecommunications bill, together with recommendations for changes to it. This work needs to be undertaken in the next few months.

The U.S. Government has articulated the view that the biggest obstacle to international telephone competition is monopoly or limited competition in foreign countries.⁶ The Federal Communications Commission specifically recognized that the freedom to enter foreign markets to provide international services to the United States, and deliver and price them according to competitive conditions, would decisively improve the performance of this market.⁷ Helping the OUR identify potential areas of telecommunications competition, and to assist the OUR to implement these opportunities within the context of new Jamaican telecommunications law, therefore, represents an excellent use of U.S. foreign assistance funds.

⁶ See *Policy Statement on International Accounting Rate Reform*, 11 FCC Rcd 3146 (1996); *Market Entry and Regulation of Foreign-affiliated Entities, Report and Order*, IB Docket No. 95-22, 11 FCC Rcd 3873 (1995) ("*Foreign Carrier Entry Order*"), recon. pending; *In re Motion of AT&T Corp. to be Declared Non-Dominant for International Services*, ___ FCC Rcd ___, FCC 96-209 (Rel. May 14, 1996).

⁷ *Id.*

The Unit has also requested on-going support in the area of developing the regulatory framework for the telecommunications sector. Specifically, the OUR has requested that a consultant be available for a period of up to two months over the coming year. Given the importance of the telecommunications sector, this request should be satisfied if at all possible.

Assistance with the development of the regulatory framework for other sectors could be provided, but this should not be a high priority for USAID unless substantial additional funds become available for this program. Provision of such assistance would need to wait on the development of a more detailed work program for each sector by the OUR, and a clarification of the assistance to be provided by other donors.

B. General Procedures

The Unit has already made limited use of consultants to start the development of administrative procedures for receiving and processing license applications, and subsequently monitoring the performance of the regulated utilities. MIF funds have been allocated to assisting with this task, but it is an area that USAID is in a strong position to support. There are a range of regulatory bodies in the United States that have well established procedures for collecting information from utilities, processing tariff applications, monitoring the performance of utilities, and handling appeals. These bodies could provide useful input to the process of developing appropriate procedures for the OUR. (In fact, in the electricity sector the OUR has been advised to adopt the accounting formats used by the Federal Energy Regulatory Commission (FERC).)

This assistance could be provided either by having specialists from U.S. regulatory authorities travel to Kingston for short periods or by having the staff of the OUR travel to the U.S. for similar periods. Delivery of this assistance will need to wait on the appointment of the relevant staff to the OUR.

C. Institution Building

The resources and advice needed to recruit staff, establish the office, and build up an administrative capability should all be available locally. The Unit is already using local consultants to assist with this process. Donor funding of the local consultants will be necessary. The ODA plans to make this an area of focus, so USAID funding need not be a high priority.

D. Staff Training

Virtually all OUR staff are likely to require training, a factor which implies considerable assistance needs. As noted above, the World Bank, the ODA, and the IDB all plan to provide assistance in this area. Given the magnitude of the task and the expertise the U.S. has in utility regulation, USAID should also provide assistance in this area.

The assistance provided under "A" and "B" above should make a significant contribution towards staff training. Consultants provided under these elements of the assistance program

should be required to provide on the job training and, as necessary, seminars. Seminars should be open to the OUR, relevant ministries, and the regulated utilities. To supplement this assistance, a program of seconding OUR staff to the U.S. to work with selected regulatory bodies for a period of a week or two at a time should be developed. Developing the details of such a program will have to wait on the actual appointment of staff to the so that specific needs can be identified. The OUR has already appointed a consultant to work on developing a training program. USAID should coordinate through the OUR with those consultants when developing their staff training assistance program.

Should sufficient funding become available to USAID, additional training could be provided by funding formal training for OUR staff at academic and training institutions in the U.S. This training could cover both short-term and long-term courses depending on the availability of funds. Formal training of ministry staff and officers of the regulated utilities could also be considered. A list of institutions that could assist with training is included in Annex IV.

E. Public Education

Although development of a public education program is important for the OUR, foreign consultants and donor agencies have little to offer in this area except for funding of local consultants. All the necessary resources to develop and deliver a public education program are available domestically. The experience of USAID assisting the FTC in developing their public relations program shows that this can be managed very effectively locally. The budget of J\$2,495,500 submitted to USAID by the OUR was based on the FTC program and, apart from some minor adjustments, appears reasonable. The IDB has indicated that MIF funds will be available to meet these costs. Should these funds prove unavailable, USAID should consider meeting these costs.

X. CONCLUSION

A properly functioning OUR is very important to the Jamaican economy. The OUR will control some of the largest enterprises in the economy. These enterprises have a direct impact on almost every member of the public and on all businesses in the country. It is essential that the public and the investing community, both domestic and foreign, view the OUR as performing a competent, professional, and fair job. Given the lack of experience in Jamaica in carrying out economic regulation and the small size of the OUR Preparation Unit, the OUR and the Unit will need assistance with virtually all aspects of their work in its early stages.

The OUR already has secured substantial donor funding commitments from the IDB, and additional funds will soon become available through the ODA and the World Bank. While significant resources already are available to the OUR, in a number of areas USAID can have a significant and positive impact on the OUR's development. This impact can be achieved, even with relatively limited funds, by building on the considerable U.S. experience with utilities regulation.

The highest priority area for assistance is in supporting the introduction of competition into the telecommunications sector. This will require the resources of a FCC lawyer to scrutinize the TOJ licenses and comment on proposed new legislation. Further longer-term assistance with developing the regulatory framework in this sector is also a high priority. The need for assistance with other sectors is not clear at this stage, but should be reviewed as the OUR refines its work program and if additional funds become available to USAID.

Developing the procedures for collecting information, processing license applications, and monitoring the performance of regulated utilities is an area where the United States has considerable experience which would be of benefit to the OUR. A program of short-term visits by experts from the FCC, FERC, and other regulatory bodies, or training of staff from the OUR at these U.S. bodies should be organized.

Staff training will be a major exercise for the OUR and is an area where USAID can provide valuable assistance. It is likely that virtually all the staff recruited for the OUR will require training. Visits, as described in the previous two paragraphs, to deal with particular issues will contribute significantly to meeting this need. To supplement this type of training, USAID should organize a program of visits by OUR staff to U.S. regulatory bodies and academic institutions specializing in regulatory issues (such as those described in Annex IV). Should additional funds become available, USAID should also consider funding of formal courses at training institutions.

General institution building at the OUR is important, but other donors appear to have assumed this task. Developing a public education program is also important for the OUR, but the IDB has indicated that it will provide funding for this activity. Should IDB funds prove unavailable and funds become available to USAID, based on its successful experience with sponsoring the FTC public education program, this is an area where USAID could consider providing assistance.

Given the substantial programs that other donors are planning and the fact that the OUR itself is not functioning at this stage, it will be important for USAID to liaise with all other donors and the OUR before planning and commencing each new stage in its assistance program.

XI. RECOMMENDED PROGRAM

As the funds available for USAID to assist the OUR are limited at this stage, in the short-term it will be necessary to focus assistance strictly on high priority activities. If and when further funds become available, USAID can provide additional assistance. In order of priority, the recommended components of an assistance program for the OUR are:

- a. Provision of a lawyer as a short-term consultant to review the current TOJ licenses to identify potential areas where competition could be introduced into the telecommunications sector. Subsequently, a lawyer should provide assistance with redrafting the new telecommunications bill to reflect these competition opportunities. A

minimum of two weeks of the consultant's time would be required for this assignment. Much of the work could be conducted in the U.S. A lawyer from the FCC would be most appropriate for the assignment. Larry Spiwak from the assessment team should coordinate this effort with the FCC.

- b. Provision of a consultant from the FCC to provide assistance with the general development of the regulatory framework for the telecommunications sector. Two months of assistance over a one year period would be an appropriate level of assistance. Larry Spiwak from the assessment team should coordinate this effort with the FCC.
- c. Assistance with developing the procedures for collecting information, processing license applications, and monitoring the performance and compliance with license terms of regulated utilities. This assistance initially will need to take the form of sending experts from regulatory bodies such as the FCC or FERC to the OUR and the Unit. Once appropriate staff have been appointed to the OUR, OUR staff could be seconded for short periods to regulatory bodies in the U.S. Larry Spiwak from the assessment team should coordinate this effort with the FCC. The Global Bureau will work with USAID/Kingston to coordinate this effort with FERC.
- d. General assistance with staff training. All experts sent to Jamaica to work on specific issues should provide on the job training and, as appropriate, offer seminars for the benefit of the OUR, relevant ministries, and the regulated utilities. This work should be supplemented by seconding selected staff of the OUR to relevant regulatory bodies in the U.S. As additional funds become available, formal training of OUR staff should be included in the program. Larry Spiwak and G/EG would coordinate this effort.
- e. Assisting with public education program. This should only be considered if the IDB does not fund the program. Assistance would be in the form of funding for local consultants, advertisements, printing of brochures, and the preparation of audio-visual material.
- f. Provision of sector specific assistance as request by the OUR. Consultants or specialists from the appropriate regulatory authorities would help develop regulatory frameworks or deal with specific issues.

It would be desirable to provide at least some assistance under each of the items a - d above. As additional funds become available, further assistance should go first to extending the assistance given in these areas. Only when requests for assistance in these areas have been largely satisfied should assistance in new areas be undertaken.

Chronological Listing of Appointments

Monday, June 3

- 1:30 Team Planning Meeting - Bruce Carrie, Larry Spiwak & Jason Matechak
- 3:30 Frank Kerber, First Secretary, U.S. Embassy, Econ Section
- 5:00 David Ehrhardt, London Economics

Tuesday, June 4

- 9:00AM Bill Craddock and Claudia Hunter, USAID/Jamaica
- 10:00AM Earl Richards and Paul Morgan from the Office of Utilities Regulation (OUR) Preparation Unit
- 11:45AM Valerie Marshall, Project Manager USAID/Kingston

Wednesday, June 5

- 9:30AM Andrew B.C. Atkinson, Project Analyst, National Investment Bank of Jamaica (NIBJ)
- 11:30AM Calvin Grey, Permanent Secretary, Ministry of Public Utilities and Transport
- 2:30PM Robert J. Kestell, Representative and Ancile E. Brewster, Sectoral Specialist InterAmerican Development Bank (IDB)
- 3:30PM Telecommunications of Jamaica (TOJ)
- 3:30PM Maxwell R. Wynter, President and CEO of Jamaica Digiport International

Thursday, June 6

- 9:00AM Mr. Hopeton Heron, Director of Corporate Planning, Jamaica Public Service Co. (JPSCo)
- 9:45AM Wayne McCook, Commissioner and Major E.N. Myles, Acting Executive Director Jamaica Broadcasting Commission
- 11:00AM E.G. Hunter, V.P Corporate Planning and Maurice Jarvis from the Finance Department, National Water Commission (NWC)
- 2:00PM Victor Anderson, Managing Director, Coopers & Lybrand Associates

Friday, June 7

- 8:00AM Bill Craddock and Claudia Hunter, USAID/Kingston
- 9:00AM USAID Mission Director Dr. Carol Henderson-Tyson: Debriefing.
- 10:00AM Earl Richards and Paul Morgan from the Office of Utilities Regulation (OUR) Preparation Unit
- 11:30AM Mr. Charles Ross, Executive Director, Private Sector Organization of Jamaica (PSOJ)
- 1:30PM Lucien Rattray, President Airports Authority of Jamaica and Ms. Pat Morgan, Project Director Sangster International Airterminal, Ltd.
- 3:00PM Marlene DeMercado, Jamaica Fair Trading Commission

Follow-up Discussions from Washington

Van Pulley, Jamaica Resident Representative, World Bank

Sue Goldmark, World Bank Washington, D.C.

Steven Hillow, ODA/British Development, LAC Division, Barbados

Wynn Jones, Coopers & Lybrand, London

Office of Utilities Regulation Act, 1995

The "Office of Utilities Regulation Act, 1995" (the Act) repeals the Public Utility Commission Act of 1961 and in its place establishes the Jamaican Office of Utilities Regulation (OUR). In addition to creating the OUR, the Act grants regulatory jurisdiction over "approved organizations" engaged in the supply and distribution of electricity and water as well as the provision of telecommunications, sewerage or transportation services (First Schedule, §§1-5).

Under the Act, the OUR is headed by a Director-General. The Director-General is appointed by the Governor-General, on the recommendation of the Prime Minister, for a three- to seven-year term (Second Schedule, §§2(1) (2)). The Director-General is subject to removal only for cause. (Second Schedule, §2(3)). Likewise, Deputy Directors-General may be appointed by the Prime Minister on the recommendation of the Minister and the Director-General with the same for cause removal provisions. (Second Schedule, §3(1-3)). Both Director-General and Deputy Directors-General appointments are required to be published in the Jamaican *Gazette*, the official publication of the GOJ. In order to ensure a degree of independence, the OUR is funded by license fees §6(a), sums collected by way of a cess §§6(b) & §7, and other sums that may become available with respect to any matter incidental to its functions.

Under §4 of the Act, the OUR is given the statutory authority to receive and process all license applications to provide any utility services. The Act requires the OUR to ensure that utilities are efficiently operated in a manner designed to provide economical and reliable service to the community, while protecting the health and well being of the users of the services and the environment as a whole. The Act also requires the OUR to ensure that utility owners receive a reasonable return on their investment. Specifically, §4(3) proscribes the power of the OUR to monitor performance, engage in rate making, and specify penalties for breach of license agreement. The Act also provides authority for the OUR to perform other functions that may be conferred by enabling instrument (eg. future enactments or powers proscribed under license). In order to provide the OUR with the technical and administrative authority to meet the above mandate, §4(5) allows the OUR to proscribe units of measure, conduct inspections and testing, prescribe minimum standards of quality, define a standard system of accounting and impose license fees. In addition to pure economic regulation, the Act also allows the OUR to make such provisions necessary to ensure the safety of the public. §4(6) specifies the notice and comment procedures for any order issued under §4(5). Under this provision, the OUR is required to notify "each approved organization...which, in the opinion of the Office, is likely to be affected by the order."

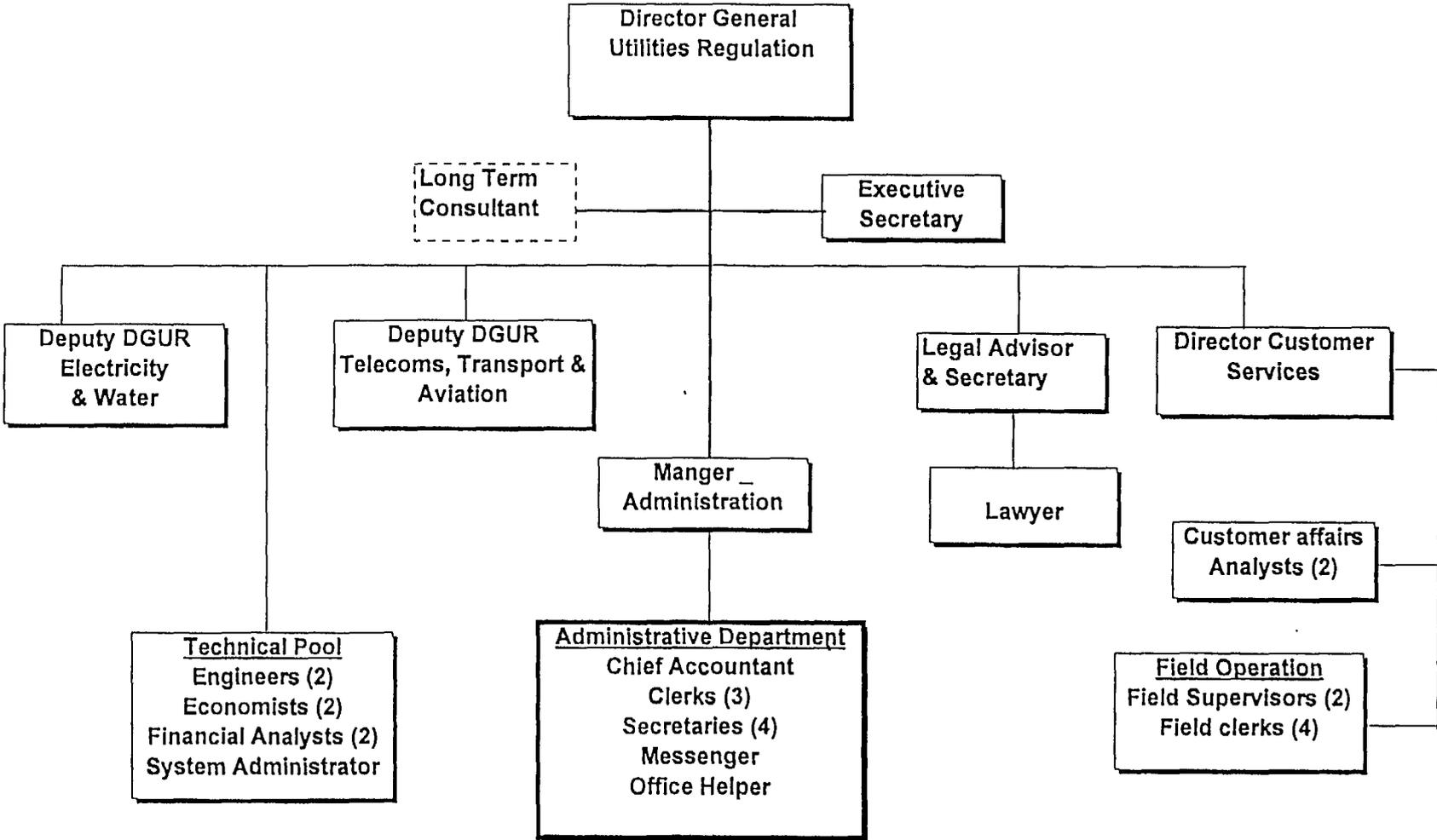
[While presumably the OUR could adopt such provisions, there does not seem to be a requirement for affected stakeholders to have either notice or an opportunity to be heard.]

For the license approval process the OUR makes recommendations to the cognizant minister under §4(3). The Minister may grant, refuse, or refer back to OUR for further consideration (§§4(3)(a)-(c)). If the Minister denies a utility license application, §5 of the Act provides the disaffected applicant with the statutory right to "show cause" why the license should be granted. [Despite this apparent transparency, the Minister may then accept or still reject the license application but there is no statutory requirement that the Minister explain his rejection decision in writing.]

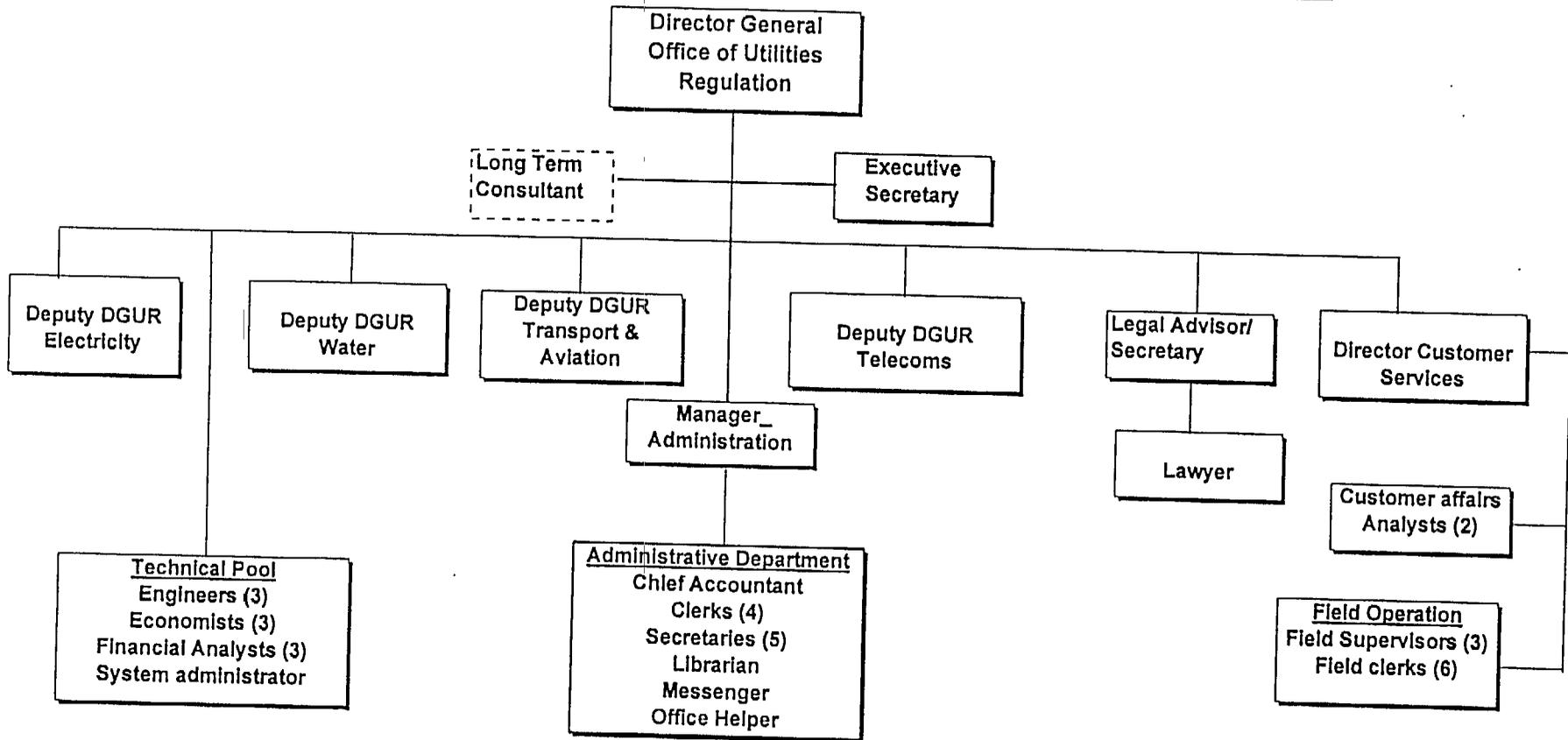
In order to carry out its legislative mandate, §8 empowers the OUR with significant enforcement powers including power to conduct hearings. These powers are regulated by the procedural provisions laid out in the Third Schedule. These powers include: summons and examination power; the power to conduct hearings; and criminal contempt powers for those parties that fail to cooperate with the OUR (including penalties up to \$10,000 or even six months imprisonment). (§1 of the Third Schedule) The Third Schedule also allows for the provision of counsel (§2), notice (§3) and notification of findings. (§4) In addition to the power to protect its jurisdiction, §9 grants the OUR extensive remedial powers including punitive fines up to \$50,000 for the initial offense and \$10,000 per day for continued non-compliance. The Act provides that such decisions will be enforced by Resident Magistrate.

Other important OUR powers include the power to require submission of returns (§10), and the ability to set rates on its own motion, (§11). The Second schedule also provides that the OUR may sue and be sued, Second Schedule, (§8(3)). Moreover, the Second Schedule grants the OUR the authority to impose certain accounting safeguards such as a degree of financial accountability, accounting standards, auditing and annual reports Second Schedule, §§12 and 13). Full personal immunity is provided for individuals acting in official capacity with respondeat superior (§14). Other powers include licensee application to change the tariff rate, with notice in the *Gazette* required §12 (3). Section §12(4) allows objections within a minimum of 14 days, but the provision does not spell out who may object. The final few provisions round out the OUR's powers. Section §13 limits the OUR's discretion in setting rates; §15 grants the OUR power to acquire land; and §16 provides the Minister with the power to promulgate regulations.

**ORGANISATION CHART - OFFICE OF UTILITIES REGULATION
FOR PERIOD APRIL 1996 - MARCH 1997**



**ORGANISATION CHART - OFFICE OF UTILITIES REGULATION
FOR PERIOD APRIL 1997 - MARCH 1998**



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