

PUBLISH DATE [.], 2024



STRICTLY PRIVATE & CONFIDENTIAL
MINUTES OF SPECIAL BOARD MEETING HELD
13 FEBRUARY 2025

BOARD SECRETARY
OFREG



Utility Regulation and Competition Office

Board Meeting Minutes – Special Board Meeting #02 of 2025

Minutes

Meeting Details

Meeting Date:	13 February 2025
Time:	0900 hrs – 1230 hrs
Minute Taker:	Joanne Conolly, Board Secretary
Venue:	OfReg Conference Room
Attendees:	<u>OfReg Voting Board Members</u> Samuel Jackson, Chair (Chair) Natasha Bodden, Deputy Chair (DC) Frank Balderamos, Member (FB) Mike Gibbs, Member (MG) Osbert Francis, Member (OF) Gavin Baxendale, Member (GB) Wrendon Timothy, Member (WT) <u>OfReg Non-Voting Staff</u> Sonji Myles, ICEO/EDI (ICEO) Alison Maxwell, Assistant General Counsel (AGC) McCleary Frederick, Executive Director Energy (EDE) Dwayne Tucker, Acting Deputy Director Energy (ADDE)

Agenda Details

AGENDA OVERVIEW	
1. General	Welcome
2. CUC Temp Gen	Draft Determination
3. CUC CON	Draft Determination
4. Adjournment	1230hrs scheduled

Meeting Minutes

1.	General		1
1.1	Welcome	Meeting was called to Order at 0938hrs.	2
		BoD confirmed the intent of the meeting was to go through the two matters and the draft determinations before them and get them out tomorrow/Monday in order to allow procedural fairness and give CUC 14 days to respond.	3
2.	Temp Gen		
		• AGC pointed out 2021 date which should be 2024 for revision	4


		<p>date.</p> <ul style="list-style-type: none"> • BoD indicated document needed to be clear that it is in compliance with s7(1). • AGC said document should be consistent throughout, referring to OfReg as the Office. ICEO pointed out the third paragraph of the document which states 'Office or Authority' as the licence refers to 'Authority'. Discussion around BoD's concern over the word 'Authority' as a legacy term from ERA. • BoD would like to add URCO in definitions. They suggested it be placed on the very first line as 'URCO/the Office'. • Discussion around BoD's concern there is no express provision in the URCA that expressly stated OfReg are required to regulate a licensee in accordance with their licence. It had been pointed out the ESRA legacy legislation inherited, in redacted form from ERA and BoD could not see it there either. It was thought the regulatory regime would be right to regulate a licensee and the obvious way to do that is to hold them accountable in their licence, importance of which is the consequent penal sanctions where they have not complied, these are the regulator's powers. • BoD ran through the background for the benefit of new EDE. BoD had grappled with the historical tranches of temp gen having been approved subject to certain conditions, however it would appear that communications to CUC following decisions have been severely distorted from what he has seen, the ramifications of which will need to be discussed by the BoD. • ICEO pointed out the ERA law s9(1) which says the Authority has the power to do 'all things necessary'; BoD commented the 'necessary and convenient' is broad enough an empowerment to give OfReg the ability to regulate in accordance with a licence. • ADDE confirmed the document had been amended to include the 5-year forecast requirement at condition 6(8) in the document. He confirmed nobody remembers seeing any annual forecast come into the Office from CUC. Comment was made that this was a breach of the licence as it is a requirement to send in such forecast. BoD would like the Office to make sure nothing has been received either in document or email or letter form in respect of forecasting. BoD said if the Office is satisfied it has done a comprehensive search of the records and cannot find such forecasts being submitted, then it is safe to say they have not been received from CUC. ICEO suggested going over the physical files in the warehouse. BoD Members found two documents in the Board folders which show forecasting, but only for specific submissions for temp gen, etc. • ICEO suggested the Office can work through the licence and tease out what CUC should be submitting periodically and speak to whether it is done or not. BoD agreed, as renewing the licence states if not in breach, with the magnitude of that being left for the BoD to adjudicate. They felt this was an important point as if CUC have failed to provide load forecasting, that is a breach of their licence, and they would not be entitled to request the temp gen they have. This appears to have been designed 	<p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p>
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		<p>to enable the ERA to regulate CUC more effectively as an express provision in their licence to do so. The ERA would have been able to say, with your forecasting you should have issued a CON within a certain timeframe. BoD requested the ICEO wordsmith an insert in the document to the effect of “notwithstanding despite clear requirements of condition 6(8) of the T&D Licence, the Office’s records indicate that CUC never submitted an annual 5-year forecast plan.” This needs to be mentioned in the CON draft determination also.</p> <ul style="list-style-type: none"> • BoD went through s6 asking if CUC provided the annual statements; quarterly report; fuel cost charge calculation; load forecasting; energy sales peaks demands and number of consumers; performance standards; EDE and ADDE confirmed all other reports are being received under s6 bar 6(8) forecasting. Discussion around whether if an accurate forecast had been submitted, it would have revealed a shortfall in generation capacity 2 years ago, so what would be the basis for CUC not placing this in the CON and if it is inaccurate, that gives rise to serious concern. • BoD raised the question of the empirical evidence that CUC has mentioned in their documentation. He pointed out that ICF did not consider anything empirical evidence, and the Office should make it clear that they are not accepting just anything as empirical evidence. AGC will make changes in the document to show ‘CUC has cited what they call empirical evidence.’ • Discussion around legal drafting and legislation going to the Ministry to be amended. BoD confirmed since their tenure, no amendments had been successfully completed. • BoD discussed para 9 on page 14 of the draft determination in respect of the decision made in October on temp gen, which was miscommunicated to CUC. This tranche saw the costs of \$3.5M passed through to consumers (excluding fuel and lube). It was decided on page 14 of the document a reference to the decision and the rationale behind it should be included. It was pointed out the 2021 decision on temp gen was made for CUC to absorb the costs, however they have just deferred recouping those costs for 10 years. • ICEO questioned why CUC were seeking 40% reserve capacity instead of the 35% reserve capacity in their Licence. BoD pointed out that in any event the document was inaccurate as the only time CUC had received temp gen was when engines had blown up after an extended economic life project and the capacity in the licence would still be the same. • BoD pointed out that this CON is so voluminous because it became a hybrid. Firm power has not been defined in the CUC T&D Licence; however it cannot be ‘semi-firm’ or ‘firm-ish’ as CUC have indicated. Discussion around other competitors wishing to enter the space, when CUC have manoeuvred themselves into a position it would not be easy to compete against, by way of purchasing land, wishing to have their own renewables project RESC overtake CORE, etc. • BoD pointed out wording in page 15 stating CUC submitted the 2024-6 temp gen application to the Office. It was suggested the 	<p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p>
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		<p>date be when it came before the Board as it went to the Office in March but was not seen by the Board until July as the former EDE – even with repeated requests by the Board – failed to acknowledge receipt, notify and properly present to the Board until July. Discussion around this point and the BoD suggested there be confirmation that there is no application, as this is an outlier. In the course of normal business there is no provision in the licence for the approval of temp gen unless an emergency. There was also no formal application made, merely an email to the former EDE. The BoD were a new Board in 2023 when they grappled with the decision to approve the last tranche 2, which was approved subject to the condition that consumers were not paying for it. That rationale was unfortunately misrepresented to CUC by the former EDE, which the BoD only recently discovered long after it had been implemented. Therefore the BoD's opinion is that the draft determination needs to note the BoD's position which has been consistent – any temp gen cannot result in any enhanced cost to the consumer base and the BoD are now determined to hold CUC to the standard of the most efficient generator to ensure that the customer does not pay anything more than they would pay if CUC had issued a CON which led to new generation. It was noted there is no separate line item on consumers' bills for temp gen.</p>	
		<ul style="list-style-type: none"> • Discussion around where the \$3.5M temp gen cost is in accounting; Bod confirmed CUC had called it a regulatory asset. ICEO clarified that was the rate being made up of various accounts, not based upon one cost. BoD's opinion was that the rate base is determined by RCAM so any outlier should be broken out, which means it is unclear what the effect of including the temp gen cost is, to the RCAM and whether this has an adverse effect. The costs of the purchase of land were not included in the rate base. Therefore CUC should be requested to account for outlier costs specifically. 	20
		<ul style="list-style-type: none"> • Discussion around accounting for costs and z factors, including how pass-through costs are accounted for. BoD clarified the first tranche of temp gen was to be recovered over a period of 10 years; the second one was \$3.5M which the BoD had instructed not to recover from consumers, but which is being recovered. The last tranche submitted now shows a 50/50 split in costs. BoD discussed whether the RCAM was therefore skewed in respect of CUC obtaining a higher rate for generation, and the consumer is therefore paying a higher rate for their electricity. BoD suggested obtaining information from CUC on how they are doing their calculations and then review the formula on RCAM. They would like to see that sent as an RFI. There can only be a decision made on the information available to the BoD at this point in time. 	21
		<ul style="list-style-type: none"> • BoD asked whether there was a register of z factor projects, or whether it was just z factor that was temp gen. ADDE confirmed they had included 3 applications which were z factor. 	22
		<ul style="list-style-type: none"> • AGC asked whether the decision on the last temp gen was to be included in this draft determination and the BoD was of the opinion it should be, as well as including information to say the 	23

		<p>current temp gen was brought in and was being used without approval, and the BoD had told CUC in order to avoid blackouts which they claimed would happen, they could use this tranche of temp gen to keep the lights on.</p> <ul style="list-style-type: none"> • Discussion on z factor and BoD pointed out this should be quoted in ¢/KWH. BoD requested Energy Sector look at the last tranche of temp gen (this one) and how they rationalised it in terms of charge to consumer. In order for the BoD to consider an application it would have to have the cost attached. Detail of temp gen was found to be 0.00259¢/kw, .0011 for RESC project and .0076 for BESS. That makes around \$7.83 combined for an average consumer bill, at a total 1.4¢/kw. • Document should be populated with as much rationale as possible to show the BoD's decision. BoD's observation that the information received from CUC should be processed in-house and that would speak to requiring a fully-fledged regulatory complement who can look at this data. • BoD would like to see a statement explaining the generation cannot be temporary when CUC are consistently making application for it. They speak of asking for a further 10MW and have made representations in their presentation last month, that they will require further again year on year. They keep using it despite expired deadlines. They would like to see in the document that these applications are not premised on genuine emergencies. • BoD spoke to the constant temp gen applications being a way to bypass the competitive bid process for generating power. The determination needs to say they have circumvented the competitive bid process which underpins their licence to which they are obligated by statute. • BoD is of the view the point should be made that they are not obligated to consider a temp gen application as there is no proper premise for it. It seems to have been assumed that everything CUC submits should be considered an application, but firstly the BoD should consider whether it is a legitimate application in accordance with their Licence. Unlike the CIP and CON, for example, which the BoD is obligated to review, as those are covered by the CUC Licence, the BoD is not obligated to consider temp gen when the application rests on the premise that it is necessary, when in fact it was necessitated by CUC breach of their own licence, by them failing to issue a CON years ago. If such novel applications are to be considered, then the licence will have to be amended to include such things. • Discussion over sending out an RFI for information. 	<p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p>
3	CON		30
		<ul style="list-style-type: none"> • Bod pointed out some points discussed in the temp gen determination will spill over to be included in the CON draft determination. • Discussion over the amount of MW of firm power sought and whether or not it will be sufficient. The 35MW of firm power listed in the CON will not be sufficient even for the 36MW of firm power they are going to retire over the next few years. 	<p>31</p> <p>32</p>

4	Adjournment	• Meeting was brought to a close at 5.41pm.	33
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Signed: 
Samuel Jackson, Chairman

Signed: 
Joanne Conolly, Secretary