



**Board of Directors Meeting of the
Utility Regulation and Competition Office ("OfReg")
held on Thursday, 10 October 2019,
at its Offices, 3rd Floor Alissta Towers
General Meeting 7 of 2019**

Minutes

In attendance:

Dr. the Hon. Linford Pierson, Chair (Chair)
Mr. Ronnie Dunn, Deputy Chair (RD)
Mr. Rudy Ebanks, Non-executive Director (RE)
Mr. Paul Byles, Non-executive Director (PB)
Mr. Phillip Ebanks, Non-executive Director (PE)
Mr. Gene Banks, Non-executive Director (GB)
Mr. Malike Cummings, Chief Executive Officer (CEO)
Mr. Gregg Anderson, Executive Director Energy & Utilities (EDEU)(by invitation)
Mr. Duke Munroe, Chief Fuels Inspector/Director Fuels Markets (CFI)
Dr. John Epp, General Counsel/ Secretary (GC/S)
Ms. Alison Maxwell, Assistant General Counsel/ Assistant Secretary (AGC/AS)
Mr. Christen Suckoo, Chief Operating Officer (COO) (by Board Directive)
Mrs. Melissa Powery, Financial Controller (FC) (for item 4.2)
Mr. Abraham Mathew, Risk & Audit Committee Chair (for item 4.1.2)
Apologies:
Mr. Alee Fa'amoe, Executive Director ICT (EDICT)

Start: 10:10 AM End: 3:20 PM

1. General

1.1 Welcome and Prayer

The Chair welcomed all members and the CFI said a prayer.

1.2 EDEU and Standing Invitation to attend

The EDEU had not yet been formally appointed to the Board by Cabinet in accordance with the provisions the Public Authorities Law ("PAL").

Motion, RE and seconded by PE: that the EDEU have a standing invitation to all meetings of this Board until his appointment to the Board by Cabinet was finalised. CARRIED.

COO and GC to seek update from the Cabinet Office on the progress of the appointment of the EDEU.

1.3 Approval of Agenda

Motion, RD and seconded by RE: that the agenda as amended (items 4.2 and 7.0 AOB) be adopted for this meeting. CARRIED

1.4 Remarks by Chair with a discussion on Dispute Resolution

1. It is instructive to note that in accordance with section 6 (1) (b) of the Utility Regulation and Competition Law (2019 Revision), ("URC Law"), the principal functions of the Office, in markets and sectors for which it has responsibility is, "to promote appropriate, effective, and fair competition."

2. Also, our Vision and Mission Statements support the promotion of fair competition. Further, a mandate of our Mission Statement specifically instructs regulators to "ensure that service providers operate in an environment which is fair and provides an opportunity to realise reasonable returns on investment".

3. The foregoing, notwithstanding, the Board needs to determine, to what extent it may become involved in disputes between intra-licensees, if at all (such as the current dispute between Clean Gas and Home Gas), bearing in mind that the Board is legally tasked with the responsibility of hearing appeals from its licensees, as appropriate. In this connection, I am aware of the consultative process now under consideration by the GC and would pause here to allow him the opportunity to briefly update us on the progress, thus far, in this matter.

The GC reported that the proposed Dispute Resolution Regulations consultation was ready for publication. He stated that the Board serves as an appellate body under the Dangerous Substances Regulations (reg.21-25). Also, he stated that anti-competitive behaviour investigations under Part 12 of the URC Law are apart from the proposed Dispute Resolution regime.

The Board indicated that it did not want to serve as appellate body in this additional area and that the consultation paper was to be amended by GC so as to remove this option.

4. The primary focus of the five-year Strategic Plan (2018-2022) is "innovation" and "the delivery of utility services at least cost." Through the Strategic Focus, OfReg's Office's 2018-2022 Strategic Plan will align with Government's 20-year National Energy Policy (2017-2037). I recommend that the new NEDs, in particular, read these two documents, and that the Board work towards the attainment of their objectives and successful outcomes.

5. Section 62 of the URC Law imposes on the Office an unambiguous mandate to promote innovation in each of sector in OfReg, as a means of facilitating economic development. Paragraphs 29-34 outlines the requirements for each sector. The CEO is therefore requested to meet with his Exco members (if this has not already been done) to ascertain compliance with these strategic requirements.

6. Also, of equal importance, paragraph 35 of the Strategic Plan requires the Office to foster Public-Private-Partnerships (known as "P3s") where these can be effective, and engage with other jurisdictions, industry

experts, developers, entrepreneurs and investors as necessary to promote and identify opportunities for innovation and the introduction of new technologies in the Cayman Islands. With the number of OfReg employees and board members with the "P3" expertise, it could be a potential source of revenue for OfReg, especially in providing such professional advice to Government and various Statutory Authorities and Government Companies (SAGCs), as necessary.

7. Further "P3" certification is one of the many regulatory training courses available through the Public Utility and Research Centre (PURC) training programme; thus one of the benefits available to OfReg and excellent reason for the Board to encourage and financially support our Board Members and senior staff wishing to avail themselves of this highly recognised training opportunity.
8. On Tuesday, 8 October 2019 the CEO emailed the following five (5) draft policies to the Board for consideration and subsequent approval, as appropriate. I agree with the CEO that the implementation of these policies is a top priority for OfReg's commitment to good governance and accountability. These policies are as follows: 1. Official Travel Policy; 2. Mobile Phone Policy; 3. Recruitment Policy; 4. Travel Policy Business Case; and 5. Training and Professional development Policy.
9. In view of the technical nature and significant contents of these policies it was not possible to study these documents and discuss them in a meaningful manner at this meeting, with only two days available to do so. Board members are aware, that items for inclusion on the Board's agenda should ideally be circulated to all Board Members, at least, 14 days prior to the date of the meeting; with the draft agenda being circulated to the members at least seven (7) prior to the Board Meeting. This is just a gentle reminder to the Exco Members to please submit their documents well in advance of a meeting at which it is intended to be discussed. Further, the Board had agreed that 'round robins' should be used only in exceptional circumstances (i.e., the exception rather than the rule.)
10. Further, it should be borne in mind, that unlike the full time Executives on the Board, the NEDs/Voting Members, are otherwise employed and therefore do not have the same amount of time to spend on OfReg's business as do full-time employees of OfReg. Further, it is not intended that our Board to become involved in 'Rubber Stamping' approvals of the Board, but that each resolution of the Board be carefully studied prior to approval; this therefore requires sufficient time for all members to carefully examine the many items on the agenda of our various Board Meetings.
11. I am therefore recommending to the Board that a Special Board Meeting be called to consider and if agreed approve these five policies, at the earliest possible date. Because I saw a comment from one of the Voting Members of the Board on this matter, I am hereby requesting him to offer to get together with his fellow NEDs and let me know the most convenient date/time for a "Special Board Meeting." I won't call the name of that member but would appreciate NED Phillip Ebanks' assistance in this

matter. I also understand from the CEO that the HR Handbook is currently being finalised and will hopefully be ready for inclusion on the agenda of the Special Board Meeting. Thanks Phillip, for your kind assistance.

12. You will also note that item 3.3.2 on the agenda for today's meeting (under the Board Action Item Log—"BAIL"), that the 2018 Annual Report has been progressed, and now includes elaboration on some of the highlights and achievements of the sectors, as was recommended and is being presented for final approval. Thanks to the CEO and his team for finalising the draft of this important report.
13. It has been confirmed by the CEO that funding is provided in the 2020/2021 budget to assist with minimum renovation costs of office space. The former ACEO reported at our August 2019 Board Meeting that a new configuration design for the current space was made and would be costed by 10 October 2019 (today). I therefore trust that the CEO and his team will now move ahead with the necessary renovation works as a matter of priority.
14. In closing, it has been confirmed by the Board Secretary, in his official position of General Counsel, that OfReg has regulatory reporting responsibility to three Cabinet Ministers, namely: Hon. Premier, Minister Alden McLaughlin (who has general responsibility for OfReg); Hon. Minister Joey Hew (on matters relating to Fuels) and Hon. Minister Julianna O'Connor-Conolly (on matters relating to Water). An MOU is now being prepared by the CEO and COO with legal assistance from the GC, and provision of background information to inform the preparation of the MOU by the responsible Executive members. It will take into account (The GC was directed to circulate his opinion to the members. The MOU should take into account the obligation in PAL to not communicate regulatory decisions.)
15. Post-script. CEO to communicate with Ministry concerning progress made on National Energy Policy.
16. P.S. COO to prepare a Board Paper on a reconfiguration of existing office space and the business case for a new office space.

2. Declaration of Interest

GB employed [REDACTED].

Redacted under Sec 23 (1) of FOI law 2020 revision Personal Information

3. Minutes of Previous Meetings

3.1 Approval of the Minutes of:

3.1.1. General Meeting no. 6, held 29 August 2019 version 5

Motion, RE and seconded by PE: that the minutes of the meeting of 29 August 2019 be approved as circulated. CARRIED

3.1.1. Special Meeting no. 2, held 18 September 2019 version 2

Motion, RE and seconded by PB: that the minutes of the special meeting of 18 September 2019 be approved as circulated. CARRIED.

3.2 Round Robin Resolutions

3.2.1 Budget and Outputs

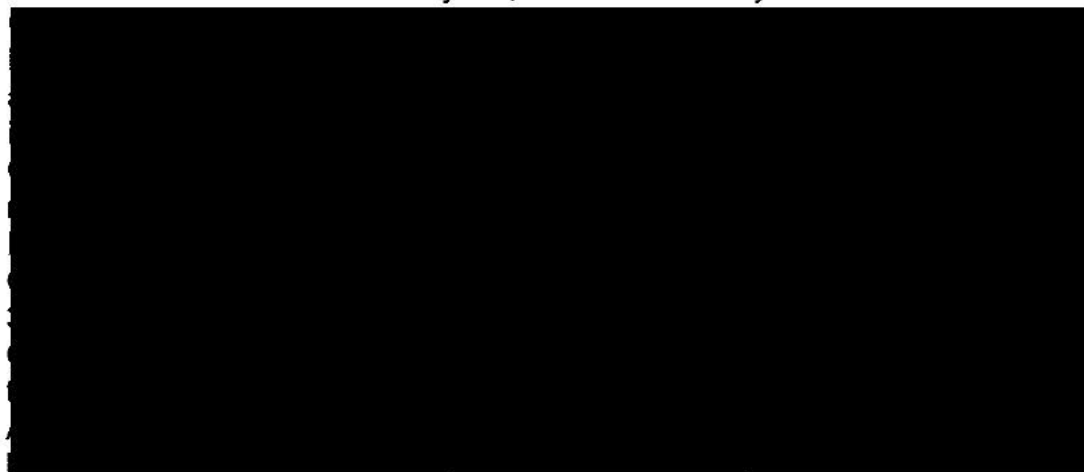


Round Robin Resolution (concluding 6 September 2019) moved by PB, and seconded by RD "approve the following documents:

1. The 2020-21 Budget as proposed on September 6th 2019;
2. The Purchase Agreement Jan-December 2020-21;
3. The Ownership agreement 2020-21 version 8 as amended to today's date." CARRIED

Affirmation and concurrent communication of result, and that this resolution has immediate effect: moved by PB, and seconded by RE. CARRIED

3.2.2



3.3 Matters Arising From Previous Minutes Redacted under Sec 19 (4) Public Authorities Law Regulatory decision

Matters arising:

- Board Action Item Log ('BAIL')

The Board noted that most of the tasks were done.

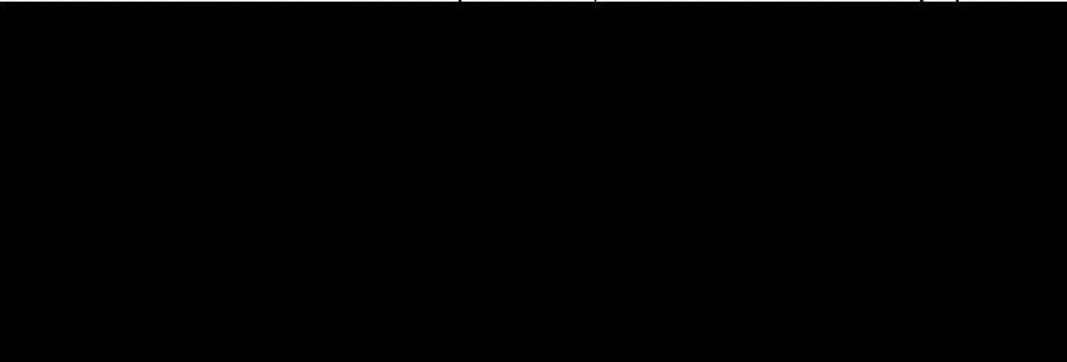
Update on matters:

14-02-2019/4.2 Redesign and content of Webpage extended to 10 October 2019. EDICT emailed to state that not complete due to lack of resources.

?14-02-2019/7.1 Board self-assessment framework – Done.

(Next step added to BAIL - Board to review assessment framework and agree it is appropriate by 10 October 2019.)

13-06-2019/7.3 Draft Annual Report 2018, current draft in Board papers.



Redacted under Sec 19 (5) (c) Public Authorities Law FOI exemption

4. Board Matters

4.1 Board Committee Reports



- 4.1.1 Remuneration and Human Resource (PE, chair, RD, RE, PB and EDICT)
Policies to be reviewed included: travel, payment system, corporate credit card, gifts, procurement, external communications, and asset disposal. Other draft policies had been recently identified as per item 1.4. COO agreed to provide a memorandum to the Committee outlining the proposed policies, and their origin and edits therefrom by 20 October 2019. PE, as Chair was to prepare a terms of reference statement for the committee. CEO to comment on the proposed CEO assessment document.
- 4.1.2 Risk and Audit Committee (Mr. Abraham Mathew, chair, RD, PB and PE) (Mr. Abraham joined the meeting for this item.)
The Board was introduced to Mr. Mathew, the chair of the Committee. The Committee's proposed Charter was to be reviewed by the Committee Members and then submitted to the Board by 21 November 2019.
- 4.1.3 Interim Financial Committee (RD, chair, PB, FC). No report
- 4.1.4 Interim Investigation Committee (GB, chair, PB, PE, COO)
The Committee recommended the acquisition of expert assistance. An RFP was placed in the Board Papers.
Motion, GB and seconded by PE: that the COO obtain quotations in the terms set out in the RFP and send the quotes to the Committee for consideration, and that this resolution has immediate effect. CARRIED.
- 4.1.5 Public Relations Committee (RD, chair, PB, PE, RE and CEO)
The Committee was formed to provide high-level policy and guidance, and it would not be involved in operational matters such as vetting proposed media releases. The members appointed were RD, as the chair, PB, PE, RE and CEO. RD agreed to present a paper on 21 November 2019. The CAPE was to assist the CEO as he spoke on behalf of the Office and the Chair as he spoke on behalf of the Board. The media consultant would continue to assist as needed including providing an outside, independent perspective.
- 4.2 Board Administration
- 4.2.1 Finance Report and Analysis
The FC joined the meeting and gave the Financial Report and answered questions. The report was placed in the Board papers. The proposed General Reserve Policy was to be given to the CEO by 21 October 2019 and the [REDACTED]
- 4.2.2 Auditor General's ISA 260 (2081) Management Letter
The letter was near completion and was with the CEO. It was to be presented at the next General Meeting. (FC departed meeting.)
- 4.2.3 Bank of Butterfield resolution
Deferred.
- 4.2.4 Funding Proposal
The CEO reported that he adopted the Chair's plan to define the financial needs of the Office and then determine if was appropriated to seek additional funding from Cabinet or [REDACTED]

Redacted under Sec 17 (1) (a) FOI Law 2020 revision Legal Privilege



5. Regulatory Matters

5.1



5.2 Anti-Competitive Practices Penalties Rules

Redacted under Sec 17 (1) (c) of FOI law 2020 revision. Record subject to legal privilege

The draft Cabinet Paper proposing the Rules was sent to the Cabinet Office and their action was still pending.

5.3 Truth in Advertising Rules

The draft Cabinet Paper proposing the Rules was sent to the Cabinet Office and their action was still pending.

5.4 Water Sector (Licence, Fee, Offence and Penalty) Regulations, Draft Determination

The draft Cabinet Paper proposing the Regulations was sent to the Cabinet Office and their action was still pending.

5.5 **Energy and Utilities**

5.5.1 E&U Monthly Report



CWC had made a revised proposal for a licence dated 8 October 2019, which was placed in the Board Papers folder. EDEU indicated that he was seeking a second legal opinion on the matter and had sought a price quotation. Redacted under Sec 19 (5) (b) Public Authorities Law Commercially sensitive

5.6 **Fuels**

5.6.1 Fuels Sector Monthly Dashboard

The CFI presented his report.

5.6.2 Amendments to Dangerous Substances Regulations ("DSR")

The CFI presented a Board Paper seeking endorsement of the proposed changes to the DSR. He had support for the project in the Cabinet office. Motion, PB and seconded by RE: that the proposed amendments are approved and the Office may move forward with a Cabinet Paper seeking Cabinet's approval of the amendments and that this resolution has immediate effect. CARRIED

5.6.3 Consultant for Fuels Market Assessment

The CFI stated that the consultant had begun work and was on Island.

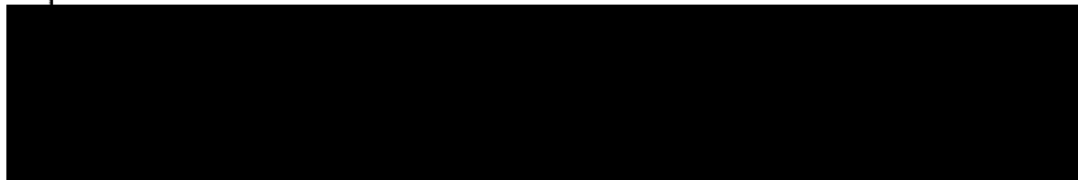
5.7 **ICT**

5.7.1 ICT Monthly Dashboard



The EDICT was excused from attending. His report was placed in the Board Papers.

5.7.2



Redacted under Sec 19 (4) Public Authorities Law Regulatory decision

6. **Chief Executive's Report**

The CEO gave a summary of his report, which was submitted and placed in the Board Papers. A discussion ensued.

7. **Any Other Business**

7.1 **Investigation into delay**

The GC agreed to meet with the [REDACTED] 15 October 2019 in relation to the complaint received by the [REDACTED] regarding the Office's investigation of alleged anti-competitive behaviour in the Fuels market.

Redacted under Sec 23 (1) of FOI law 2020 revision Personal Info.

7.2 **Board and Staff Christmas Luncheon**

The Board agreed to attempt to attend the annual luncheon with the staff. The date was to be set by the HR Team, and the Board will be notified accordingly.

7.3 **CEO and Credit Card**

Upon the review and approval of the credit card policy in the Special Meeting scheduled on 25 October, the case for the CEO having a corporate credit card would be considered.

7.4 **Succession Plan**

Reference was made to the responsibilities of the Board under section 16 (L) of PAL.

Motion, RD and seconded by RE: that the CEO present a succession plan to the Board for discussion by 21 November 2019, and that this resolution has immediate effect. CARRIED

8. **Date of next meeting**

Special 25 October 2019 1:00 pm

General 21 November 2019 10:00 am

Chairman:

Date:

21/11/19