



STRICTLY PRIVATE & CONFIDENTIAL
MINUTES OF GENERAL BOARD MEETING HELD
23 JANUARY 2025

BOARD SECRETARY
OFREG



Utility Regulation and Competition Office

Board Meeting Minutes – General Board Meeting #01 of 2025

Minutes

Meeting Details

Meeting Date:	23 January 2025
Time:	0930 hrs – 1741 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 Alison Maxwell, Acting General Counsel (AGC) Tessa Ryan, Acting Deputy Director Information (ADDI) for item 3.3.2 only Daniel Ebanks, Manager Infrastructure for item 3.3.2 only McCleary Frederick, Executive Director Energy (EDE) for item 3.2 only Dwayne Tucker, Acting Deputy Director Energy (ADDE) for item 3.2 only

Agenda Details

AGENDA OVERVIEW	
1. General	Welcome & Declarations of Interest Deputy Chair
2. Minutes of Previous Meeting	2.1 General BoD mtg #12-10Dec24
3. Sector Matters	3.1 Fuels 3.1.1 Dashboard 3.2 Energy 3.2.1 Dashboard 3.2.2 CUC Temp Gen 3.2.3 CUC CON 3.2.4 L&R Fee Adjustment 3.2.5 CUC RESC 3.2.6 CUC CIP 3.3 ICT 3.3.1 Dashboard 3.3.2 & FLOW Tower Sharing Dispute

4. Legal Advice	4.1 Legal Dashboard 4.2 Legal Opinion on Temp Gen & CON
5. AOB	5.1 Rewater Concession Grant Agreement 5.2 CWC 5.3 Governance - BS
6. Adjournment & Date of Next Meeting	4.30pm scheduled finish 13 February 2025
Please note changes made to agenda during the meeting	

Meeting Minutes

1.	General		1
1.1	Welcome	Meeting Called to Order with quorum at 9.36 am.	2
1.2	Declarations of Interest	None	3
2.	Minutes of Last Meeting	<i>Agreed as amended.</i>	D4
		Matters Arising: • BoD in agreement that CORE extension will be for 1 year once launched with new rates, from the time CUC start engaging with subscribers.	5
3.	Sector Matters		6
3.1	Fuels		7
3.1.1	Dashboard	BoD looked through the Fuels dashboard. DCFI not in attendance.	8
3.2	E&U	<i>EDE and ADDE join the meeting</i>	9
3.2.1	Dashboard	• BoD looked through the Energy dashboard. • They would like to see IEL RCAM in green as completed. • Request for the Little Cayman Temp Gen matter to be added.	10
3.2.2	CUC Temp Gen	• BoD ran through the history for EDE's benefit. • BoD's view that with interpretation of the Law and Licence, they are unable to approve Temp Gen. • Discussion around s7 of URCA which requires any decisions of public significance to be by way of a draft determination. • BoD abided by the rules of procedural fairness and heard CUC's submissions in support of their application. • The BoD discussed in depth, the definition of s7 of the URCA and whether it separates the 'Board' from the 'Office' and administrative determinations in s2. • It was pointed out that s4 speaks to the 'Office' with the 'Board' being established under s13. • BoD explained the Office does not have statutory decision-making authority without the Board, especially where it has a discretionary exercise to render a decision. The Law separates out Office from Board in the definitions and speaks specifically to the Office for administrative functions only. • BoD debated the matter of definitions of 'Office' and 'Board' within the Law for the purposes of decision-making and for matters clearly before the Board the law states 'administrative determination' in such terms that put the process squarely within the remit of the Board. • AGC read the PAA in tandem, looking at BoD responsibilities.	11

		<ul style="list-style-type: none"> • BoD was of the opinion this matter should proceed as other statutory authorities would – after giving the affected person a chance to be heard, the BoD make the best decision they can based upon the advice and rule of Law to provide a sound decision with clear, intelligible reasons for the same. Taking into account s19 of the Constitution which state the decision has to be lawful, rational, proportionate and procedurally fair. • The issue appears to be the fact that the specific legislation has all decisions under the header ‘administrative determinations’. What is exempt from s7 are decisions not of public significance. Therefore it is advisable for the BoD today to arrive at a draft decision. All were in agreement. • ICEO was invited to comment, and would like the BoD at a subsequent meeting to set out what actions it expects from staff as to decisions made within the Office, without the support of the BoD. Discussion around the table on the decisions taken on a day-to-day basis in the Office. Chair pointed out that s30(3) URCA states ‘<i>subject to the policies and delegated authorities of the Board</i>’, which implies staff can carry out the functions of the Office. DC quoted s30(4)(h) “<i>perform other such duties as the Board may direct.</i>” DC suggested ICEO could make a list of Office actions, such as radio licences, which are carried out on a daily basis that the BoD would not have an issue with understanding they would delegate the ICEO to do, who would then delegate to someone the Office, who would complete those tasks. • Discussion on the decision of licensing Temp Gen. BoD were asked if they agreed that they were unable to licence the Temp Gen via the diesel powered generators where CUC are allowed to use the Z factor to pass-through the costs to the consumer. • Members discussed whether the first question should not be whether the Temp Gen is even needed. Their view was that if it is, then the BoD should then find a way to be able to authorise it. Conclusion of the BoD was that this was not a decision for them but rather CUC’s, as to whether it was required or not. CUC base their decision on load forecasting like firm power requirements. The BoD were asked to remember that it should not cost the consumer any money at all. • BoD recapped to say this Temp Gen is the third tranche and the first tranche was approved before any of the current attendees to the meeting were BoD members. With the second tranche, the current BoD members approved an arrangement – as opposed to licensing it – and they would like to see the language used with the approval of the second tranche of Temp Gen. CUC had attended a meeting last week with the BoD and clearly stated they wished to now start charging the consumer for the costs of the second tranche which was not approved by the BoD previously. They would also like to see correspondence with CUC in respect of what was communicated from the Office to CUC regarding tranche 2. • BoD stated it may be necessary to revert to CUC and make it clear that the law only allows substantive decisions of the Office to be made by its Board (save for delegated authority) and 	
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		<p>reinforce the official decision with regard to the second tranche of Temp Gen, as it would appear a perversion of the BoD's decision at that time, was communicated to CUC by the then EDE. The BoD's duty of care to the public means decisions should be carried out to the letter and revisited if this has not happened.</p> <ul style="list-style-type: none"> • BoD questioned whether the first tranche of Temp Gen would have expired by now. • A lengthy discussion was held around the broader issue of performance and efficiency standards and how much the Temp Gen costs to run per KWH. BoD pointed out each generator CUC owns is listed in a schedule at the back of their licence. The Temp Gen units have not been added to that list and should only be required and used in exigent circumstances without punishing the public's pockets. Temp Gen units burn more fuel and cost more to the consumer base, as CUC have attested to. • BoD would like to see what data is received by the Office from CUC and would like to see a separate Board folder with these spreadsheets contained. Discussion around regulating the financial implications of the cost of Temp Gen to the consumer. This would be possible by reviewing data for the efficiency of fuel burning and taking an average of the last 5 years for units, structuring parameters into a decision to get per unit efficiency. BoD confirmed that if a new generator had been purchased under a CON the older more inefficient units would not be running; Temp Gen cannot be viewed as using something over the space of 3+ years. • BoD commented CUC would already have experienced fuel savings, as they have done a lifecycle upgrade on 3 out of their 5 engines. They questioned how often the Temp Gen is being used whilst work is being done on the lifecycle upgrades. • ADDE confirmed CUC report on which engines run, for how long and the gallons which burn and generation output, including the Temp Gen units currently being used. • BoD were of the agreement that the Temp Gen, as proposed, cannot be approved. Previous decision on the second tranche of Temp Gen was read out which stated that no costs should be borne by the consumer bar fuel and lube. BoD informed the Office that the decision they made was miscommunicated by the then EDE to CUC without the BoD's knowledge. They confirmed that within the decision made today on the third tranche of Temp Gen, the BoD need to highlight the approval of the second tranche in 2023 was at no pass-through cost to the consumers. BoD stated they can say <i>"we reserve the right to open a regulatory obligation to set up a corresponding regulatory liability to recover any costs that were inadvertently charged to consumers."</i> • BoD pointed out when wording the decision has to include that CUC are being allowed to use this Temp Gen only on the premise a genuine emergency arises. Section from CUC's Licence was read out which termed this <i>"disaster emergency."</i> This was agreed by the BoD as also being to avoid brownouts when running all engines and one has to be taken out for 	
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	<p>Redacted under FOI Act (2020 Revision) s23(1)</p> <p>Redacted under FOI Act (2020 Revision) s17(1) (a)</p>	<p>maintenance or has running problems or fails. This may not be a disaster or an example of force majeure, but an emergency which is defined as 'any event which prevents the licensee from performing.' BoD pointed out the Office may also grant a licence to another person which may be temporary in nature (see ESRA s26), which means this would prohibit the Office from granting Temp Gen.</p> <ul style="list-style-type: none"> • AGC confirmed the legal opinion in this case as it stands, [REDACTED] This was in the Board papers for viewing. • Discussion by the BoD around the ESRA and they suggested as the BoD cannot technically licence CUC with Temp Gen, it could be stated the BoD are allowing CUC an arrangement on this premise. They stated this would amount to requiring them to keep the lights on through whatever means necessary, providing it does not cost the consumer a penny. • BoD pointed out that, at CUC's own admission, they had brought in tranche 2 and tranche 3 without approval. Tranche 3 is in situ and running, again without approval [REDACTED] AGC pointed out CUC had confirmed they used this tranche of Temp Gen last summer also. • Question was asked about who is currently paying for the cost of the Temp Gen units running now, and BoD reiterated the argument by CUC when they attended for the meeting last week, which was that even if it was used, the benefits from the lifecycle upgrades to generators would offset the Temp Gen costs so there would be no real cost to consumers. He pointed out that the RCAM and CIP intertwine and the BoD approved those capital projects to make the energy more efficient and now it is, CUC cannot use that to offset any inefficiency. Chair said that CUC need to provide numbers to show this. • BoD are in agreement that the draft of the draft determination is required, which will be handled by EDE and AGC. This draft will include the legal reasons why Temp Gen cannot be approved under the Licence and a separate letter will be written in respect of tranche 2. ICEO told the BoD the legal rather than technical reasons around approving Temp Gen are required to be provided to CUC and BoD suggested AGC can take on board what has been discussed in today's meeting and provide a draft decision, which can be reviewed by ICEO before returning to the BoD. ICEO explained how things have been done is that a Board Paper containing a recommendation of the EDE who would have consulted with legal, economic and other advisors so the paper, when it comes to the BoD, is robust enough that they would be satisfied to make a decision on it. Chair agreed that the determination could have input from Energy Sector but needed to ensure this is done under counsel's supervision. • Discussion around decisions relayed which have been made at Board meetings. Licensees should get copies of the excerpts of decisions made which will mean minutes can be approved by round robin, ratified at the following Board meeting to ensure 	
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		<p>expediency in communicating decisions to Licensees. Chair confirmed if an urgent decision has to be made, in order for the Board to receive the technical advice it requires, hold an urgent Board meeting to make that decision.</p> <ul style="list-style-type: none"> • All Board Members in favour of approving the consideration that the Board are unable to approve the application from CUC of the next tranche of Temp Gen requested. A concession would be that CUC could use the Temp Gen in an emergency situation with no additional pass-through costs to the consumer. • Discussion in respect of incremental costs and agreeing an efficiency standard for analysis, which is justifiable and rational. BoD stated that because this exercise is like a consultation on the draft determination whatever the BoD includes, CUC will come back and ask where the figures are from and they can be discussed at that point. It was queried if the BoD's goal was to get the draft determination out to CUC prior to the next General Board Meeting on the 13th February. If that is the case, this would have to be with CUC on the 29th January to allow them 2 weeks in which to respond, which is a narrow window. BoD confirmed this may need a round robin approval. ICEO was of the opinion they would ask for more time to respond in any event. Discussion on when the Office would send out the draft determination and AGC to give consideration to the fact to grant CUC generation would require an amendment to their generation licence which is subject to competition. • BoD would like to see the draft determination and letter to CUC in respect of tranche 2 of the Temp Gen go out at the same time, with an emphasis on looking to renew the Licence. Also the Office should be clear to CUC that it does not have discretionary power to allow CUC to create a regulatory asset on an item which it cannot licence. In addition, when sending CUC a letter in respect of tranche 2, the Office should state that they reserve the right to recover this. 	
3.2.3	CUC CON	<ul style="list-style-type: none"> • BoD asked ICEO to think about asking CUC to put out the RFP on the firm generation in accordance with their Licence condition 29 so a draft determination on this matter can be made today. The Office issues the RFP for the 23MW under s32 for photovoltaic and battery and they can bid for that as a separate entity. • BoD asked for clarity around MW in the RFP. It was confirmed as 100MW. BoD asked whether this included the 23MW previously discussed. • ICEO confirmed that CUC came to the Office asking them to approve this CON, not for the Office to initiate the process. BoD was of the view this was to circumvent condition 32 of the Licence stating the power was 'semi-firm'. • BoD asked whether re-qualified people would again have to be approached. ICEO was of the view those who pre-qualified 3 years ago for the 100MW should be contacted again. • ADDE stated the timeframe on this would be July/August then a study which will take 3 months so December 2025 before the 	12


	<p>Redacted under FOI Act (2020 Revision) s23(1)</p>	<p>process is finished.</p> <ul style="list-style-type: none"> • BoD queried whether the amount of MW mattered. If an RFP for 23MW had qualified bidders from 3 years ago could the additional 100MW be put out together with the 23MW. ADDE confirmed this would simply be a matter of changing the MW amount and the dates. ICEO confirmed the ground work could begin on this now to save time. • Discussion on solar power with ADDE giving perspective in terms of size of land required for MW size. Current facility in BT is a 5MW plant sitting on 20-acres so a 23MW plant would be looking at having to be sited on around 100 acres. 100MW would require a massive land site. This did not include battery space and it was advised that it does not need to all sit in one place. • BoD pointed out the ICF report recommended 125MW of hybrid energy. Discussion around the report and amount of firm power required by CUC. BoD asked how much of the 36MW in the CON was additional capacity vs replacement of existing equipment. Chair pointed out in CUC's schedule it states 3 units retire in 2027 and one in 2026, with one July 2025. Thew BoD was told 25MW would be required to replace that alone. The BoD were reminded that [REDACTED] did state CUC would be returning in 2026 for 10-20MW of Temp Gen. It was suggested they were merely buying more generation and circumventing the solicitation process, passing all the costs through to the consumer. It was suggested the Board give consideration to whether this was a breach of CUC's Licence to have more generation units on site than it allowed. • BoD observed that CON is not Temp Gen and if the CON can be done by 2027 then emergency requirements cease to exist. This speaks to the timeline for the RFP in that case. • Discussion around ERA performance of standard rules. • BoD read relevant sections of the CON and discussion ensued. ADDE to research historical documentation on the process. Chair was of the opinion this should be handed to the Energy Committee to receive input. • Question surrounding 36.1MW of firm power required being less than the latent capacity of retiring assets at 37MW. Discussion around the NEP and diesel engines. • BoD were in agreement with informing CUC that they do not need to do a CON for battery and solar, because the Office will do an RFP. The Office cannot approve the rest of it because it does not sit under the provisions of Condition 29 of CUC's Licence and therefore are constrained to only approve the firm generation aspect of the CON. • Discussion around the RFP process and wording in CUC's document: 'thermal'. • BoD decided upon the wording to be communicated to CUC and discussed the amount of MW required and what could be immediately approved. BoD unanimously approved the requirement to approve. Chair confirmed CON can be approved under condition 29 for one part, and the other RFP under condition 32(1). The Office is constrained by the T&D Licence 	
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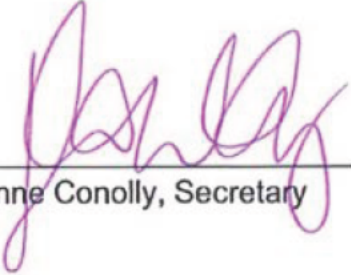
		<p>to only approve the CON insofar as it concerns firm power. There is nothing for the Board to consider that demonstrates the renewable aspect of the CON is firm power as defined by condition 29(1) therefore the Office is proposing an RFP for the renewables aspect of the CON, respecting CUC's projections.</p> <ul style="list-style-type: none"> • Legal to draft determination for CUC. • BoD were unanimously in agreement to immediately approve the firm power portion of the CON under condition 29(1) of the Licence. The renewables portion of the CON will be dealt with under s32(1) of the Licence by way of the Office issuing an RFP for the renewable component of the CON using a similar process to the RFP for 23MW. No objections. 	D12
3.2.4	L&R Fee Adjustment	<ul style="list-style-type: none"> • ADDE confirmed an update paper on this subject will be presented during the February General Meeting. 	13
3.2.5	CUC's RESC	<ul style="list-style-type: none"> • BoD explained this is CUC's alternative to CORE. • As the BoD had recently made a decision to have CORE floated for 12 more months with new rates, the decision on this initiative will be deferred. Discussion about how this will be relayed to CUC. • ICEO to inform CUC by letter that the BoD have deferred consideration of this matter. 	14
3.2.6	CUC's 2025-2029 CIP	<ul style="list-style-type: none"> • ICEO said it would be premature to make a decision on the CIP now, in light of the fact the EDE team and Economist had gone through it and identified a few issues which require further consideration, such as telco's pole attachments and costs. • This matter to be returned to the BoD in February. 	15
3.3	ICT		16
3.3.1	Dashboard		17
3.3.2	Logic & Flow Tower Share	<ul style="list-style-type: none"> • ADDI & DE came into the meeting to give a background to this matter as a determination had been arrived at. • DE provided the history as per ICEO's detail during the General December 2024 meeting, around the poor condition of the towers and imposing conditions on FLOW to bring the towers up to a safe standard. • Due to the condition of the towers it was not possible for Logic to attach to any FLOW towers. • DE working on rules in respect of minimum requirements for towers. • As this matter was not in the public interest as it is very technical, interested parties were engaged and therefore Duty to Consult as per s7 of the URCA does not apply. • BoD were unanimously in agreement to approve the determination placed before them in the Board Paper presented. No objections. 	D18
4.	Legal Advice		19
4.1	Legal Dashboard	<ul style="list-style-type: none"> • BoD read through the legal dashboard. No questions. 	20
4.2	Legal Opinion Temp Gen & CON	<ul style="list-style-type: none"> • Considered during 3.2.2 above 	21
5.	AOB		22

Redacted under FOI Act (2020 Revision) s21(1)(a)(ii)

5.1		<ul style="list-style-type: none"> • BoD explained this was for a concession for grey water. • It was decided this matter should go before the Water Committee. 	23
5.2	CWC	<ul style="list-style-type: none"> • BoD ran through the background to this matter, explaining that a meeting last September was thought to have been the final one, when the concession was discussed and finalised. In October the Chair received an email from Miguel Jacques (not copying anyone else in) effectively asking for a further draft to be approved, with changes which the Water Authority had made. • BoD has to make a decision today on the matter of the Water Authority's change to the concession which states that CWC would be unable to change their rates between the Government issuing the concession and the Office issuing the Licence. • BoD's view is that what was agreed originally was fair and reasonable and a matter for Cabinet to make the decision but if it impedes the forward progress of the concession, the Office would be unable to produce a Licence. • Discussion over what should be contained within the concession vs the Licence. • BoD looked at existing emails and instructions in terms of Cabinet and/or Government Office. • BoD were in agreement that ICEO will respond to state that the Office would recommend the Ministry adheres to the wording of the concession as agreed at the meeting held between the Ministry, OfReg representatives and CWC. BoD asked that everyone be copied into this correspondence. 	24
5.3	Governance	<ul style="list-style-type: none"> • Everyone has now completed a Board Self-Assessment Form. • Everyone has now completed the Annual Declaration. • Chair to check whether he had completed the SPL Declaration for 2024. • Some BoD Members tenure letters require sending by 6th February. BS to provide template. 	25
5.4	Compliance Presentation	<ul style="list-style-type: none"> • BoD spoke to requiring information from the sectors on what work is carried out on a daily basis which speaks to the compliance of Licensees. This will give the BoD a feel for the information reported to the Office and what happens to this information. These sessions can be separate to BoD meetings and looking to one sector per session. ICEO suggested at the end of the first quarter to give new members of staff time to familiarise themselves with what information the Office receives. 	26
5.5	Redactions	<ul style="list-style-type: none"> • BoD spoke to this matter of redaction to the Board meeting minutes in respect of the wording of the Law. • It was agreed the practical approach is to read subsections 4 and 5 of s19 of the PAA together. He pointed out the wording is not clear however more transparency and fewer redactions for minutes posted on the website would ensure regulatory decisions made by the Board are public. • BoD pointed out the law states minutes are only required to be made public 'if requested'. • BoD requested the historic minutes which have been redacted 	27

		and posted on the website be looked at as appropriate, for redactions to be reversed. ICEO will instruct CAPE to commence work on this, with assistance.	
5.6	OfReg to URCO	<ul style="list-style-type: none"> • BoD confirmed that previously the decision had been made unanimously by them to change the name of the Office to URCO. ICEO was instructed to make all necessary changes. This should be completed within the next few weeks, including changing email addresses to urco.ky. 	28
6	Adjournment and date of next meeting	<ul style="list-style-type: none"> • Next General BoD meeting will take place on 13 February 2025. • Meeting was brought to a close at 5.41pm. 	29

Signed:  _____
 Samuel Jackson, Chairman

Signed:  _____
 Joanne Conolly, Secretary