



**CAYMAN ISLANDS LEGISLATIVE ASSEMBLY  
COMMITTEE OF PUBLIC ACCOUNTS**

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EFFICIENCY AND EFFECTIVENESS OF  
THE UTILITY REGULATION AND COMPETITION OFFICE  
(OfReg)  
~June 2020~

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*Official transcript relating to the Official Report of the Standing Public  
Accounts Committee Meeting—15<sup>th</sup> July 2020*



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**PAC Members Present:**

Mr. D. Ezzard Miller, MLA, Chairman  
Mr. Bernie A. Bush, MLA, Member  
Hon. Barbara E. Conolly, MLA, Member  
Mr. Austin O. Harris, Jr., MLA, Member  
Mr. Christopher S. Saunders, MLA, Member  
Mr. David C. Wight, MLA, Member

**In attendance:** Mr. Kenneth Jefferson, Financial Secretary/Chief Officer  
Ministry of Finance and Economic Development

Mr. Matthew Tibbetts, Accountant General  
Ministry of Finance and Economic Development

**Audit Office:** Mrs. Sue Winspear, Auditor General

Ms. Angela Cullen, Deputy Auditor General (Performance Audit)  
Ms. Yolanda Clarke, Audit Project Leader  
Ms. Erin McLean, Audit Trainee

**Witnesses:** Dr. the Hon. Linford A. Pierson, Chairman of the Board,  
Utility Regulation and Competition Office (OfReg)

Mr. Samuel Rose - Cabinet Secretary and Chief Officer,  
Cabinet Office, Cayman Islands Government

Mr. Gregg Anderson - Executive Director, Energy and Utilities,  
Utility Regulation and Competition Office (OfReg)

**PAC Clerk:** Ms. Manesa Webb

**OFFICIAL VERBATIM TRANSCRIPT  
STANDING PUBLIC ACCOUNTS COMMITTEE  
WEDNESDAY  
15 JULY 2020  
10:00 AM**

*Meeting with witnesses*

**“EFFICIENCY AND EFFECTIVENESS OF THE  
UTILITY REGULATION AND COMPETITION OFFICE (OfReg)  
- June 2020”**

Verbatim transcript of the Standing Public Accounts Committee Meeting held on Wednesday, 15 July 2020, at 10:00am, in the Chamber of the Legislative Assembly Building, George Town, Grand Cayman.

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*[Mr. D. Ezzard Miller, Chairman, Presiding]*

**The Chairman:** Good morning, every one.

Let the record show that we have a quorum present. In fact, the whole Committee is present, so I call the Meeting to order.

First of all, let me welcome Mr. David Wight, the representative for George Town West, as the new member of the Public Accounts Committee (PAC). We look forward to working closely with you and the knowledge and experience that you will bring to the PAC moving forward. Welcome.

As usual, at this stage we will invite the Auditor General to give an overview of the report that is before us. Today we are dealing with the Office of the Auditor General's (OAG) report, *Efficiency and Effectiveness of the Utility Regulation and Competition Office*, commonly known as OfReg, which was done in June 2020.

We invite the Auditor General to give us an overview so that the listening public, who have not had the opportunity to avail themselves of the full report, will get a picture of what we are trying to achieve and what the Auditor General's findings were.

Auditor General.

**Mrs. Sue Winspear, Auditor General, Office of the Auditor General:** Thank you, Mr. Chairman.

Good morning, Mr. Chairman, members of the Committee; welcome to Councillor Wight, officials from the Ministry of Finance and those listening in.

Thank you for introducing a report which we published in June, 2020. This performance audit assesses the effectiveness of OfReg in its first three years of operation. The audit focused on four main areas:

- Legal framework and governance;
- Strategy and performance;
- Value for money; and
- Regulatory impact assessments.

I will briefly highlight some of the key findings in relation to each of these areas, but before discussing those four areas, I want to highlight the lack of proper planning by the Government for the merger resulted in a number of problems for OfReg in its early years. These problems included a lack of understanding of the funding needed to fulfil its role, a lack of strategic planning and direction for its first year, limited governance and oversight, and inconsistency in leadership. I will touch on some of these issues again.

In addition, it was anticipated that the creation of OfReg would generate savings of some \$250,000 a year, and we assessed through the audit that OfReg is actually costing more to operate than its predecessor bodies.

As a Statutory Authority, OfReg is governed by a Board of Directors. Governance has improved over time, but the board has not always functioned as we would expect. For the first five months of operation the board consisted of only the board Chairman and the chief executive.

Some of the principles of good governance have only recently been put in place or do not yet exist. For example, there is no risk management framework and the board has not been focusing on performance or holding management to account. An Audit and Risk Committee has only recently been established.

The make-up of the OfReg board is unusual: The Utility Regulation and Competition Law states that the executive directors are full board members, and the Chair of the audit and risk committee is independent of the board. These requirements are not in line with good practice or the Public Authorities Law and create risks for good governance.

OfReg developed a 10-year strategy plan for 2013-2023 which was a good start, although we identified some gaps summarised in Exhibit A on page 30 of the report. However, we found it impossible to assess OfReg's performance over the first three years

due to poor performance measures and a lack of performance measurement and reporting.

Through this report, and all of our financial audits of OfReg, I have reported on a number of weaknesses that resulted in poor value for money, particularly in regard to travel costs and the use of consultants. There is also one case of \$355,000 of public money being wasted on an office lease where the premises were never utilised.

However, it is pleasing to note that OfReg's financial performance has improved recently now that a range of policies and procedures are in place that, if complied with, should better control spending and improve value for money.

Finally, we looked at OfReg's approach to regulatory impact assessments. OfReg has not carried out any formal regulatory impact assessments between 2017 and 2019, although it does have some elements in place so it could easily shift to formalising these.

One of the main reasons for creating OfReg was to improve customer protection across all of the sectors. Work has started in this area, but more needs to be done to protect consumers.

In our report I made 16 recommendations, four to the Government and the remaining 12 to OfReg, and these are set out in Appendix 4.

I have with me today in the backrow, Ms. Yolanda Clarke and Ms. Erin McLane who worked on the audit along with Deputy Auditor General of Performance Audit Angela Cullen.

Thank you very much.

**The Chairman:** Thank you, Auditor General. I will invite the Deputy Sergeant- At-Arms to bring in the first witness; it will be Dr. the Hon. Linford Pierson, Chairman of the Board

**Mr. David C. Wight:** Mr. Chair, can I just say something?

**The Chairman:** Yes, sure.

**Mr. David C. Wight:** Just out of an abundance of caution, I would just like it to be known that, in light that OfReg will be in front of PAC for the next two days and even though we do not deal directly with OfReg, I want to let the PAC know that my family owns a gas station. So indirectly, we might have some dealings with OfReg. I just want that to be known.

Thank you.

**The Chairman:** That is appreciated and it will so be reflected in the record.

Thank you.

[Pause]

## UTILITY REGULATION AND COMPETITION OFFICE (OfReg)

### ADMINISTRATION OF OATH OR AFFIRMATION

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** I swear by Almighty God that the evidence I shall give to this honourable Legislative Assembly, shall be the truth, the whole truth, and nothing but the truth so help me God.

**The Chairman:** Good morning, Dr. the Honourable Linford Pierson.

We want to thank you for availing yourself to come to the Public Accounts Committee and we look forward to a very interactive and collaborative session here this morning. The only rule is that the first question that you answer, you state your name and position just for the Hansard records. We can do that when we get to the questions.

I guess I will lead off: Dr. Pierson, I believe that you were the Minister who started the liberation of the telecom sector and introduced the Information, Communication and Technology Law. I believe records will show that you were involved in the development of the legislation that established OfReg and have been the Chairman of the board since OfReg started in January, 2017.

Given the findings of the Office of the Auditor General, can you give the Committee a brief overview of the vision and objectives of OfReg and why it seems to have fallen short of public expectations?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Thank you, Mr. Chairman.

Good morning to you and the honourable members of the Public Accounts Committee (PAC) ladies and gentlemen.

Thank you for the opportunity for me, as the Chair of OfReg to comment on the report of the—

**The Chairman:** Not to interrupt you, but—

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** You need my name first.

**The Chairman:** Your name and your position.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Alright. I will give you the full thing. I do not like using the full thing but I will give it: Dr. the Hon.

Linford Ainsworth. Pierson, OBE, JP and my position is Chairman of OfReg, the Utility Regulation and Competition Office.

**The Chairman:** Thank you.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** I will start again.

**The Chairman:** Yes.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Good morning, Mr. Chairman, honourable members of the PAC, ladies and gentlemen.

Thank you for the opportunity for me as the Chair of OfReg, to comment on the report of the Office of the Auditor General – OAG, on the *Efficiency and Effectiveness of the Utility Regulation and Competition Office*, OfReg or the “Office”, and I shall be using ‘OfReg’ and ‘Office’ interchangeably throughout this hearing.

It is good, Mr. Chairman, to be an active participant in this honourable House once again, although at this time I have been summoned to participate as a witness of this PAC hearing. I however recall the privilege granted to me, during my first term in this honourable House from 1984 to 1988, when I was appointed Chairman of the Public Accounts Committee, during which time I developed a very close working relationship with the Auditors General.

Regrettably, however, I have not yet had the privilege of meeting and discussing issues relating to OfReg with the current Auditor General, although our board members were invited to the OAG office by the Deputy Auditor General to discuss certain matters relating to OfReg. However, no part of those discussions considered the uniqueness of OfReg as the only multi-tiered statutory authority in the Cayman Islands.

I pause here, Mr. Chairman, to say that I was in the backroom and I heard the opening comments and will be commenting on them also.

*[Inaudible interjection]*

**The Chairman:** Mr. Pierson, not to detract but you seem to be reading from a prepared statement. We took a decision some time ago, that we do not entertain prepared statements. What we would prefer is if you answer the question and you can give the same information that you are giving now in different answers. The forum on which we are operating on, it is better if we do it that way (questions and answers), as opposed to a lengthy opening statement, so I would appreciate it.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Thank you, Mr. Chairman.

This is precisely why I called you a few days back to ask you what procedure you would be accepting and I told you I would be making a few opening remarks thereon; and thereafter, I would be speaking freely from the notes, but I will follow your leadings in this.

I have notes here, Mr. Chairman, which I would wish to give to you and you could use them for your records.

**The Chairman:** That would be fully acceptable.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Together with six pages of OfReg’s accomplishments which, for whatever reason were not mentioned by the OAG, either in the report or in the opening remarks this morning.

**The Chairman:** We are open to any submission you have in writing.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** I will just deal with some of the issues as you said, without the notes that I may speak on.

**The Chairman:** The way we normally do it, we will ask you the questions because we have a limited timeframe and if we get too bogged down in too-lengthy statements we might not get to the questions.

I can assure you that you will get the opportunity from the questions that you are asked to give the same information that you would like to give now. It is just that, from a public understanding and point of view, we have found question and answer format to be much more collaborative and much more successful in the end. So I would appreciate it if we do it that way.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Thank you, Mr. Chairman.

I notice things have changed slightly since I was Chairman but that is how it goes.

**The Chairman:** Yes.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** So, if you wish I can take questions now. I may just speak on a couple issues that may arise during the question time, just to clarify those issues.

**The Chairman:** The question that I would like you to answer now is an overview of the vision and what you

believe were OfReg's objectives when it was conceived, because it was presented in the Legislative Assembly with quite an agenda.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Well, OfReg's overview is precisely what I was going to do, but I will do it in accordance with questions that I received.

What is important to the overview of the Office is that it was established based on certain vision and mission statements, and indeed, supported by a five-year strategic plan, but I did notice that within the Utility, Regulation and Competition Law (URCL) as an overview thought that section 42 called for this three-year performance audit. For whatever reason, my calendar tells me that three years is 36 months and I think that is also understandable but the OAG felt that they would start the audit from 2017 rather than wait until after the three years. I wanted to put that on record; they can reply to that if they wish.

**The Chairman:** I can clear that up for you, sir.

This report is, as a request of the Public Accounts Committee, because you and I will both know that the Public Accounts Committee cannot direct the Auditor General. This was a report that the Public Accounts Committee actually requested the Auditor General to make based on things that transpired in Finance Committee and Parliament, where we got to the position where Members of Parliament were threatening to defund OfReg and demanding that it be closed down. We believed this was an opportunity to establish the value of OfReg if we got things going in the right direction. So the reason it was done at this time, was at the request of the PAC.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Thank you very much, Mr. Chairman.

Of course, the law would supersede the request that you made because section 42 states that the performance audit shall be done every three years and that is what I am referring to. So, what we are discussing is the report of that performance audit and that, I am saying, should have been done after the three years and not during the three years, to be precise.

**Mrs. Sue Winspear, Auditor General, Office of the Auditor General:** Just to clarify, through you, Mr. Chairman, that, as the Audit Office, we have the ability to undertake audits of any entity at any time, as per the Constitution and Public Management and Finance Law (PMFL).

Thank you.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, I would like to thank the Auditor General for reminding me about her privilege under section 114 of the Constitution, as I was a part of putting that together. So, I thank her very much for reminding me of that, but the fact is the performance audit under section 42, and I got legal advice on this, should have been done after the close of the three years. We can argue that some other time.

**The Chairman:** My suggestion would be that you can look forward to that additional performance audit when the 36 months are up.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Yes.

The other point Mr. Chairman, on the overall review of this, is that there was no communication with me personally, as Chair during the audit, which is a rather unusual position protocol-wise. I was once asked to come with the other members of OfReg to the Auditor General's office which I did. However, one would have thought that if you are talking about early periods of OfReg, and that I was the Chair, and that for five months operated with the CEO, then anything to do with that period, somebody should have consulted me on, because regrettably, the former CEO is not with us any longer. He is a blessed memory.

**The Chairman:** Are you suggesting, Mr. Pierson, that the management's response to this report was not approved by the board?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** What I am suggesting is the manner in which it was done.

**The Chairman:** Oh.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** There are certain issues in it that I will raise, that I feel were not properly done.

**The Chairman:** Okay.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** And if I get the opportunity I will do that and then that can set the pace for the Auditor General and her staff to reply to me. That does not really matter to me much.

**Mr. Christopher S. Saunders:** Sorry, Mr. Chairman.



Out of my own curiosity, just to clarify this three year requirement: If the Office was started in January 2017, the full years 2017, 2018 and 2019 would have been three years and this report is dated June 2020, so anybody would expect, at a minimum, January 2020 is three years from January 2017. And the report does speak to the three years 2017, 2018, 2019. I am trying to understand in which way this report was premature. I know that we did request it as a priority from the Auditor General but, as far as I am aware this report does cover three years, unless I am missing something. Sorry.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Is that a question?

**Mr. Christopher S. Saunders:** No; it is a statement I wanted to make since we are on this issue of the three years. I do not want the listening public to believe that the Auditor General undertook a report that was outside of the three years because it does cover this three year period in which the law does require for it to be done and the report was actually dated June, 2020. So, as far as I know the request was done this year and it would have been after three years of operation for OfReg.

I am just trying to make sure there is no confusion as to what period the report covers, because it covers 2017, 2018 and 2019, which are three years.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, if I may?

I thought I was quite explicit in covering that, but I will go over it again. I am not suggesting that the report is not dated June, 2020.

If I can repeat what I said: The audit started before the end of the three years. So, it was during 2019, in like the beginning of the fourth quarter in 2019 that the audit was commenced, because we had information going from OfReg to the OAG stating that it was in relation to the report that was being done under section 42. I wrote to the Deputy Auditor General on this and I got the same reply I am getting now from the Auditor General, that the Auditor General has the authority to start an audit any time they wish. So I am prepared to leave it at that, but I shall be speaking on this same point, perhaps at some other forum.

May I continue, Mr. Chairman?

*[Inaudible interjection]*

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** What I also found in the overview of this whole audit, is that the Auditor General's Office made statements that I found rather strange considering that nobody, other than myself, would have had the infor-

mation at the time, and I can only surmise that it was done in the old-school type of audit to name and blame and for sensationalism.

I will tell you why I am saying that and if it is not so then I may be corrected; I am open to because as a member of this House for 16-plus years, I am used to being corrected.

Mr. Chairman, I wish to highlight some of the positive initiatives which I mentioned but this one in particular I want to mention now concerning what I am speaking of; the overall issue. If you notice in the Auditor General's report, I think it paragraph 12 on page 11, on fourth bullet point, on the question of leadership. If I had been consulted as the oldest serving member of OfReg's board of directors, I would have provided the OAG with the factual information on OfReg's board of directors and factual information on Mr. Morgan's succession plan.

I can therefore surmise, as I said, that the Auditor General was not looking for factual information at the time. If they had been doing so, I would have told them that Mr. Morgan had indeed prepared a succession plan, but nobody consulted me; so much so, that he had named one of the executive directors, Mr. Alea Fa'amoe, as his deputy, and made defined plans for the training of Mr. Gregg Anderson and Mr. Duke Munroe. I have a copy of the plan that Mr. Morgan had done for the training. I was not consulted, so I did not have the opportunity to be able to provide this information. As such, this part of the report is not only misleading, but leads to impugning the reputation of Mr. Morgan, of blessed memory, and I cannot let that slip up.

**The Chairman:** I can assure you that from the PAC's point of view, as I said earlier, we have deliberately moved away from being adversarial and confrontational, to trying to foster collaboration and cooperation.

Can you explain to the House why only the Chairman was appointed in January and why it took so long to get a full board appointed, I think, some five or six months later; and whether you were comfortable having been forced by the Government to operate in that environment of being the single member of a board and in the Chairman position, without a board to operate?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Thank you, Mr. Chairman.

Mr. Chairman, on the question of collaboration, this PAC should only be collaborating on the truth and that is why I am pointing out the misleading statement that was made there. I cannot collaborate on something that is not true.

**The Chairman:** Can you table a copy of that succession plan?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** I can do that.

**The Chairman:** Can you explain to us why that succession plan was not followed?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** We would have to go and dig Mr. Morgan up to find out. I do not know why it was not followed. I am just telling you that as the Chairman I was given a copy and I have that.

**The Chairman:** Okay, but I would assume that that succession plan was approved by the board and there are Minutes and documentation to substantiate that which you can let us have.

The question is: If the board adopted that succession plan, why was it not followed?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** That is a question that would be better answered by Mr. Morgan.

**The Chairman:** On Mr. Morgan's departure as CEO, from my point of view and from a governance point of view, it would not be Mr. Morgan's responsibility to implement the succession plan; that would have been the board, because the CEO—again, I speak subject to correction, [as] I do not have the Law. Can you get me a copy of the Law?—recruits and appoints the CEO and it would be the board that would be responsible for following Mr. Morgan's succession plan.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** I am quite aware of that, Mr. Chairman and that is why I say that it was being implemented by the appointment of the deputy CEO and training also started with the others. Now, I would need to go and check the records to see at which Minutes that was approved, but I can assure you that that happened.

**The Chairman:** Okay.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Alee Fa'amoe himself can also certify that that happened.

**The Chairman:** Okay.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** As a matter of fact, I even questioned on the board why he was appointed as deputy when it was

not provided in the Law at the time, but he said he wanted to prepare somebody for it.

The question will also arise, Mr. Chairman, since we are dealing with this, why did we not follow that succession plan and that is another story, but I am prepared to answer anything related to it here today, to say why that did not follow that trend.

**The Chairman:** That is the specific question I am asking: The board having accepted a succession plan put forward by the former CEO, why was that succession plan not followed?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** The succession plan was not followed because of certain management problems that we had at the time, with the person that we wanted to replace Mr. Morgan.

**The Chairman:** The OfReg Law.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** The matter reached as far as the Cabinet level, and I am not going to go into details of whom I spoke with because that was done in confidence but, if it needs to be done, I would recommend that we consult with the Premier himself. But, I am saying that was not possible and when that was not possible, I as the Chairman who had dealt with those four sectors as Minister, thus the reason I was asked to be the first Chairman, was asked to hold on in the position—since Mr. Morgan had left—until we could appoint a CEO and we know a lot of history about what happened after that. But the only reason that I was asked to do so was because it was felt that I was qualified to fill the position on a temporary basis.

I know that there has been a lot of speculation and other things said in the blogs about me wanting the position for the money. As a matter of fact, Mr. Chairman, I would like this to go on record, that I had told—and I think that the people I spoke to in the Government Administration Building will verify what I am saying—that I would have held on for the same amount I was getting as Chair; but I was told by someone in the administration that that would not be right, as I would be paid less than the people I was supposed to be directing. So, that is briefly what happened. There are more details to it, but I do not want to go into this without getting the permission from the Premier and the Deputy Governor who was Acting Governor at the time.

**The Chairman:** You want to say something, Auditor General?

**Mrs. Sue Winspear, Auditor General, Office of the Auditor General:** Thank you, Mr. Chairman, and through you.

My sincere apologies, Dr. the Honourable Pierson, if you feel I should have met with you. I did not personally meet with you, and I just wanted to explain to the Committee the context for the audits that we undertake.

Obviously, the majority of our work, we work with the executive not the non-executive side, but of course it is really important that we do meet with the non-executive side. I know my team had an extensive and lengthy meeting with you, Dr. Pierson, on the 13<sup>th</sup> November, and several meetings with the full board.

I will confirm that I did not personally meet but it is in the context of, there are always a number of performance audits going and forty-odd financial audits going and it is not an exception that I did not meet with that Board. I will meet if I am asked to come along or I feel there is a particular need to.

So I just wanted to extend apologies. If you felt that was a discourtesy; it is a consistent approach and not intended to be discourteous. We have, of course, met before several times.

Also, in the context in the report, we are at absolute pains to make sure that it is factually accurate. The interpretations and the judgments that I come to in the report entities may not agree with because they are mine, but the facts on which we base our reports, we really, really work hard to ensure that it is true and we went through extensive clearance with this entity on this report. So, it is somewhat disturbing and slightly alarming that Dr. Pierson still feels there are inaccuracies in there, because we believe we factually checked everything. I just wanted to explain the process.

Thank you.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, I look forward to meeting with the Auditor General as a matter of fact, I believe she may be a neighbour where I live.

It is nothing against any member of the Auditor General's Department. When I said facts, it would have been much better, had the Deputy or the Auditor General or one of the members of the [OAG] spoke to me on matters that only I and Mr. Morgan knew about. Now, how would they get this information if it was not from somebody else that did not have this information at the time?

You asked me earlier—I will allow you to speak in a minute—why Mr. Morgan and I had to operate for five months without a board. If you recall, this is a pioneer Statutory Authority. There is not one Member of this House, Mr. Chairman, who have held more authorities under his control as Minister, than I did, and this one was the most complicated to do.

There is no question that we had a problem with the merger to start with. We had a problem with financing. There were so many problems, so that is the reason why we were held up in getting the proper board started before the five months were up, but as regards to what I said about Mr. Morgan and the succession plan, I will table that; I will let you have that.

There was just one other mention that I wanted to make about overall operations and I would like to get the comments of the Deputy or the Auditor General on this. The implication that arises from the second point I was making is that I unilaterally—and I take exception to this—unilaterally, added \$2,500 to Mr. Morgan's salary when we started. Had the Auditor General's staff, or herself, asked me, I would have reminded her that the Law states in a statutory authority, that permission is given for you to bring that individual on a level that would be normally regarded within the private sector. And, a lot of discussions were held at the time with the Minister at the time, Mr. Tibbetts, and with some of the staff there —PLAHI (Planning, Lands, Agriculture, Housing and Infrastructure) I think it was at the time in office—and even the HR person, before we agreed on that salary.

The inference that I get from that statement is that I did something wrong. I want to make the record straight that never in my 16 years in the civil service and 16-plus as a politician, have I done anything that would have been wrong in my action knowingly; and, that was done with the knowledge of not only the Minister, but other Members. So, I did not unilaterally take that on myself, to offer Mr. Morgan \$2,500 more on his salary. It was agreed that that was the proper salary for someone like Mr. Morgan who was perhaps the leading regulatory technician and specialist within the Caribbean.

He was highly respected not only within the Caribbean, but also by the Public Utility Research Centre in the University of Florida. So, that to me was unnecessary. It could have been verified by just contacting me and asking me about it, and that is why I speak about name, blame and sensationalism.

**The Chairman:** I do not think that it was meant to attack you. I have not drawn any inference of any impropriety about it from the way I read the report, but I get back to my original question a while ago. This Law was passed in 2016 but it was not implemented until January 2017.

The question is: Why did the Government not use that period of that time in consultation with someone with the knowledge base that you have—it would have been a great idea—to properly establish the board and to lay the groundwork properly? The only reason for having clause 2 in this complicated legislation, where implementation is delayed from what it used to be when you and I served here in the 80's; once the Governor signed the vellum copy it was Law.

We have since introduced this thing that it has to be brought in by a Commencement Order by Cabinet and the explanation for that which has always been given to us is that that is the period of time that Cabinet believes it takes the Government to fully resource and set up the administration for the legislation.

So, it is particularly troubling to me as Chairman of the Public Accounts Committee, that the Government, having had the better part of a year to do that, did nothing and then put you in what I would regard as a very uncomfortable position of having to make those decisions with a board membership of one and yourself as Chairman, and still take another five months to find members to put on the board.

I do not draw that reference and I would encourage you not to take it personal. I think the point the report is trying to make is that these kinds of decisions should not be forced on a board Chairman and a single board member to make, when the Law requires other board members. It is a fact that it happened, but I did not draw any inference that it was done for any ulterior motive.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, I thank you for your interpretation of that. I just hope that the reading public will feel the same as you do; but I am telling you that reading that, the inference that would be drawn by a reasonable person, is that the Chair unilaterally took the decision to add \$2,500 to Mr. Morgan's salary.

I will leave it that, Mr. Chair.

**The Chairman:** In fact, that is what happened because you were the only member of the board and you were the only Chairman. For the Regulatory Authority to carry out the function and to properly adjust the gentleman's salary to what it should be, because you did not have a full board, the Government forced it to be a unilateral decision on you because the consultation that took place with those other people is not recorded in your board Minutes.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, with respect, you are totally wrong on that. As a matter of fact, the Minister who appointed me was the one who gave his okay on that.

**The Chairman:** That is illegal.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** It was not illegal because at the time we were just forming the whole board. It is not that a proper board was set up; it was just being formed and the decision was being made as to how we would pay

Mr. Morgan, who was only contracted for 18 months. It is not easy to say that a pioneer statutory authority . . . it's the only one in the Caribbean like it, a multi-tier.

So, it is even difficult for me to comprehend how the Auditor General's Office can audit a statutory authority like OfReg, without having some regulatory certification amongst them. I will not go into that but that I questioned also; but to ask why this was done, it was because it had to be done that way, and that happens with any new company. We were able to put it on the right status. It could not start with everything being right, that is why it is a pioneer statutory authority.

**The Chairman:** I beg to differ with you that it could not start right. The purpose of a year was intended—what we were told here on the Floor of this Assembly—to give the Government time to start it right.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** You know, this is a part of the day; I have to take exception to what you are saying because you were not there. You have no idea what it took to put that together and I do not think, with due respect, that you either have that sort of competence to speak about how it should have been set up. That is why we had somebody like Mr. Morgan there, who was a specialist in regulatory business and it was followed as closely as possible.

He was also responsible for doing the Utilities Regulation & Competition Authority (URCA) in the Bahamas and he stated that it was a similar process. You cannot start something in the first month that is going to take six months to do. So, it is easy to say it should have been done right from the start but as far as I am concerned (and my records here in the House will show that), I always try to do things the right way, and that was as easy that we could have gotten it done; that for the first five months it was Mr. Morgan and myself that had to wait.

When I tell you, Mr. Chairman, that the wheels of Government grind slowly, I am not blaming the Auditor General's Office for this but the Public Authorities Laws supersedes any other Statutory Authority Law. And because of that, we had an amendment passed by this House on the 29<sup>th</sup> of June, 2018 and it was assented to by the Acting Governor on the 1<sup>st</sup> of August, 2018. Do you know that the second clause in that Law, which is the Utility Regulations and Competition Law (Amendment) 2018 states that it shall not come into force until it has been brought into force by the Cabinet? To date, it has not been brought into force.

If one of the companies that we oversee brought a judicial action against OfReg, we could have been in a lot of trouble for operating without the

proper approval of what we were doing. Just to let you know; the wheels of Government grind slowly.

**The Chairman:** And I have no doubt that you have been pushing and prodding them to get that commencement order done.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Many times.

**The Chairman:** But . . .

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** To add to that Mr. Chairman, since you are talking and it seems that you need to know all of this information. There are four important papers that we have before Cabinet right now and that we are waiting on. We have been reminding them—the correspondence is there—over and over, and these four papers are still pending. So, that is what I have to work with, Mr. Chairman.

**The Chairman:** Well, we have the Cabinet Secretary coming this afternoon. If you give me a copy of that I will be happy to ask him why he has not done anything about it.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** He will have a copy of it, Mr. Chairman.

**The Chairman:** Okay.

Mr. Austin, I think you want to ask some questions.

**Mr. Austin O. Harris, Jr.:** Thank you, Mr. Chairman.

I have a number of questions to ask and certainly let me state at the onset that this hearing has certainly gotten off to a bit of a fiery start and it is my hope to reign that in a little bit, so we that can get down to some of the questions that were highlighted by the Auditor General's Report and thereby approve the effectiveness of this Public Accounts Committee.

I would also—as my colleague, the Member from George Town West acknowledged—like to acknowledge my personal and I believe affectionate relationship with the honourable member now giving testimony before this Committee; but to certainly acknowledge that his 16 years plus of membership in this honourable House, he will also understand that my constitutional obligation as a member of the Public Accounts Committee requires me to put that personal and affectionate relationship to one side for the time being.

I wonder if the honourable Chairman would help me understand the governance framework of the board of directors at OfReg. Is it such as it is with al-

most every other board, where the CEO reports to the board while the Executive Directors and Officers report to the CEO. Is that the correct arrangement?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** That is the arrangement on the board.

**Mr. Austin O. Harris, Jr.:** Thank you.

Also, to better understand the functions of the board, can you tell this Committee what those functions include on a day-to day-basis? Is it to provide the necessary checks and balances and/or strategic direction of operations of OfReg in line with Government policy, as it exists with almost every other board and statutory government-owned company, or is it purely to perform a regulatory role of the fuels, energy and telecommunication sectors?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** The responsibility of the Chair, the CEO and Directors are outlined in the Utility Regulation and Competition Law (2019 Revision). However, I can quickly tell you that the organisational chart of the line of command would be from the Executive Officers to the Chief Executive Officer, he is responsible also for appointing those same individuals.

The appointment of the Chief Executive Officer is done by the board. He reports to the board's Chair and the Chair reports to the Cabinet. So that is the line of command organisational chart.

Also, the details of the various sectors, the Energy and Utility sector, the ICT and the CPI sector, all fall under the purview of the Chief Executive Officer and they report directly to him.

**Mr. Austin O. Harris, Jr.:** Thank you for that response, however, I asked the witness if he would be able to explain to this Committee what the day-to-day functions of the board of directors are.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** The board of directors?

**Mr. Austin O. Harris, Jr.:** Yes.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Under the Law we should be meeting six months during the year, but in our first year we met 16 times because we wanted to catch up with what needed to be done.

The day-to-day workings of the board depend on the issues that we are dealing with at the time. We meet monthly now, and we look at this sort of dashboard of each of the sectors. That is why—when we get to it, it is so important, and I will explain later on

that— recommendation 4 of the Auditor General is not workable. Recommendation 4 states that they should be removed from the board but we can deal with that.

However, you are asking directly the day-to-day. When I took up the position I took it up as a part-time job. I have never done more work in my life full-time as a full-time person, even as a Minister of this honourable House. At any time during that 24-hour period I can be called on as Chair by the Chief Executive Officer or any of the Executive Directors on a matter, so it is an ongoing situation.

Why is that? It is because the four sectors that OfReg is dealing with are perhaps the sectors that are most important to the general public. You are talking about energy, my light bill, fuel, the amount I pay at the pumps and my water bill. They are the things that are constantly before the members and that the public are asking us about. So I am not quite sure what other part of your question I have not answered.

**Mr. Austin O. Harris, Jr.:** Well I think you answered it. I asked if it is to provide the necessary checks and balances and strategic direction on the operations of OfReg in line with Government policy—and I believe you answered in the latter—or is it to perform purely a regulatory role of the fuels, energy and telecommunication sectors and in your response moments ago, it was very much that—to perform a regulatory role of the fuels, energy and telecommunication sectors, but I presume from that, it is not to provide strategic direction on the operations of OfReg in line with Government policy. Is that your answer?

**Hon. Dr. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Through you, Mr. Chairman, we are also responsible for the strategic directions, and as you know, under the law the Cabinet may, at any time issue policies that they wish any of the statutory authorities to comply with, so we are open to that also. And that has happened in the past as you know.

**Mr. Austin O. Harris, Jr.:** Thank you to the honourable member.

Mr. Chairman, through you: The member mentioned earlier the uniqueness of OfReg. Surely one of the unique characteristics of OfReg is that both the CEO and the Executive Directors of Fuels, Energy and the Telecommunication sectors are members of the board albeit non-voting members, which is an unusual arrangement as noted by the Office of the Auditor General's report whereby it is observed on pages 2 and 3, if you are following along in the Office of the Auditor General's report on *Efficiency and Effectiveness of the Utility Regulation and Competition Office*, (OfReg), June 2020. This begins in the third line of the final paragraph on page 2 and continues on the first line of the first paragraph on page 3 which I will quote.

The report states: “**in most other boards of statutory authorities and government companies (SAGCs), the CEO (or equivalent) is the only executive who is a regular, non-voting member of the board, and other senior managers are invited to attend board meetings as necessary. The current board structure in OfReg means that the traditional roles and responsibilities of non-executive board members and senior management are blurred.**”

This is truly unique indeed and begs the question, Mr. Chairman, through you: How is the corporate governance and subsequent risk management of OfReg's operations achieved when the CEO, who has ultimate responsibility of operations, shares an equal non-voting role on the board as the Executive Directors?

This essentially, in my opinion, and certainly the witness may disagree, undermines the CEO and makes him subordinate to the Executive Directors who also sit on the same board. I wonder if the witness would agree.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, I would be happy to comment on that; I do not know about agreeing with the honourable member, but I will comment on that.

The comments made by the Auditor General in the Auditor General's report, she said this is unusual in most other boards of statutory authorities and government companies (SAGCs), the CEO (or equivalent) is the only executive who is a regular, non-voting member of the board. I think the OAG is really relying on the information they find in the Public Authorities Law (PAL).

The Public Authorities Law (PAL) was established three to six months after the URC. The PAL states that any other law is subservient to the PAL, but the PA Law, it was initially suggested or recommended not only by the former CEO but also by Justice Alex Henderson, QC, that the whole OfReg should have been exempted from the PA Law for various reasons; that I would be prepared to give to you, but to say that it is unusual and blurred really suggests to me a simplistic understanding of why the executive members are on the board of OfReg.

It is not unusual. It is unusual in the PAL, but the OfReg, which is a multi-tiered statutory authority, cannot be compared with a stand-alone statutory authority. If the Auditor General's Office had studied this in depth, they would have known that similar authorities—and I can tell you from my research—such as the Office of Gas and Electricity Market (OFGEM) in the UK, the board of ten members had two executive members on it; the Water Services Regulation Authority, (Ofwat) in the UK, board of ten had four executive members on it, the Office of Communications (OfCom)

in the UK, has a board of twelve with three executives officers. So what standard is the OAG using to say that it is blurred, was it the PA Law or using like with like? That is my question.

**Mr. Austin O. Harris, Jr.:** Respectfully, Mr. Chairman through you and I thank the member for giving the examples where this is not unusual in other jurisdictions, but this Public Accounts Committee is not able to certainly, oversee the action and rules that apply in other jurisdictions.

I wonder if you could advise this Committee where such an arrangement where executive directors sit on the board of directors together with the CEO in a non-voting capacity within this jurisdiction amongst the Statutory Authorities and government-owned companies. Does it exist in any other Statutory Authority of government-owned company within this jurisdiction?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, through you, to the Member: I can refer you to URCA in the Bahamas. Similar situation to what we have. It happens.

**Mr. Austin O. Harris, Jr.:** “In this jurisdiction” means, Mr. Chairman, through you, the Cayman Islands.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** The Cayman Islands has only one multi-tiered statutory authority so there is nothing to compare it with. Where is the precedent?

**Mr. Austin O. Harris, Jr.:** Fair enough. We will move on.

**The Chairman:** I have one question. Dr. Pierson: You keep referring to a multi-tiered statutory authority.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Hmm.

**The Chairman:** But this is a single statutory authority, and the whole idea and the way this legislation was introduced into the Parliament, was that we were bringing all of these four entities under one single authority. So, I do not understand the description of being multi-tiered; it is a single authority, not an authority with two or three other authorities under it. There are other authorities here who may have diverging entities under it.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Let me explain, Mr. Chairman.

**The Chairman:** Okay.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** OfReg is the only authority in the Cayman Islands where you have sectors under it:

- Energy (Utilities)
- ICT (Information Communications Technology)
- Fuel
- Water

All other authorities deal with one issue and that is why OfReg is different from say, CIMA or one of the others which deal with a specific issue; but why OfReg is referred to as multi-tiered is that there are more than one sector that are encompassed, amalgamated, into OfReg.

**The Chairman:** Right; but you just gave a good example. CIMA has banking, insurance, three or four other subsidies under them, but it is a single authority.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** That is true.

**The Chairman:** The Utility Regulation and Competition Law was specifically put in place to put a single authority to deal with these different sectors because all of those were individual authorities prior to the introduction of this legislation.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Would you like me to comment on that, Mr. Chairman?

**The Chairman:** Sure.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** I can see the confusion in this, Mr. Chairman.

If you take ICT, you will find that there are various different departments of ICT. You are going to be dealing with FLOW, with broadband, with different issues. The same thing with energy; you are going to be dealing with CUC and other issues. So, it is really similar to what CIMA has to the authority for financial activities, but what I am saying is that with OfReg you have four sectors and each one of those sectors can have various branches under it, so that is what makes it so complicated.

**The Chairman:** The point I am making is that this was the Government's solution to having individual authorities that dealt with those sectors because CIMA, under the banking section it has, what, over 100 that they deal with?

The purpose, as I understood it as a legislator debating the Bill in Parliament and questioning the Minister during Committee Stage, was that there was a need for efficiency and effectiveness to introduce a single authority to amalgamate what we then had, which was four authorities.

**Dr the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** You are correct in that, Mr. Chairman; and it was as the Auditor General I think it was, who spoke earlier or one of the staff, that it was hoped that in three years we would have been showing profits. But I am sure the Auditor General could tell you this too, you look into it and you see the issues that we had with even being able to collect the funding that we needed from the Water Authority; the funding we needed after we brought over the department of fuels into OfReg, that it got so bad. We were given the responsibility but we were not given the funding. Right now, we are still trying to get the necessary funding out of the Water Authority Cayman, even though we are doing the regulatory work.

We are not yet being paid the amounts we should. We are not being paid the amounts we should have been receiving in royalties through Cayman Water Company. There are a number of issues, just to inform this Committee, and I do not mind you knowing, that as regards the Cayman Water Company, that matter has been going on for now some 11 years. OfReg has been in operation for three years.

**Mr. Austin O. Harris, Jr.:** Mr. Chairman, if I can just make an observation particular to this multi-tier role of OfReg as you mentioned, and certainly the witness in his example used CIMA.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** It may be a bad example.

**Mr. Austin O. Harris, Jr.:** It was a bad example because—

**The Chairman:** It is a good example.

**Mr. Austin O. Harris, Jr.:** CIMA, to your point, Mr. Chairman, regulates financial activity and or financial services which banking, insurance and the other areas would otherwise fall under; funds, trusts, et cetera, all of which relate to financial services as a single tier.

Likewise, OfReg is the regulator for telecommunications, energies, and fuels which would otherwise be defined under the single definition of utilities; therefore it is not multi-tiered. It has multiple subjects, authorities, and sectors, but all of those sectors combined, fall under one single definition to this jurisdiction and that can be found under the word 'utilities'.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, if I may. This is a pledge for me in that I am having my very good friend there, on the opposition side asking questions.

This is fine, I still love you like a brother, but I wanted to enlighten you when we say multi-tier. Take ICT, and if you look at the Auditor General's report—and I want to give them credit for this—on page 7 it details what is regulated and the operating entities:

What is regulated	ICT Networks and services
Operating entities:	Cable companies Telecommunication Radios TV Domain KY ICT Critical Network Infrastructure (CNI) Emergency Notification Systems (ENS) 911

That is one. Now, I do not know if you want me to read them all, but each sector has a list just like CIMA, of various issues they have to deal it.

Just let me deal with one other since you asked me the question: Electricity/Energy. Looking at the four sectors as ICT, Energy, Fuels, and Water, under Energy you have electricity generation and transmission and distribution (T&D); then the operating entity under generation distribution T&D.

We are not just dealing with generation just through Caribbean Utilities; we are also looking at solar, renewable energies and that sort of thing. Caribbean Utilities Company, a public company; Cayman Brac Power and Light Company, a private company; Generation Only Bodden Town Solar System. We are looking at the whole thing.

Then we come to fuels, what are we doing there. We regulate importation, safety in the depot, safety in stations and establishments that have fuel storage (from a certain limit) and the operating entities, Mr. Chairman, through you, would be Rubis, Esso, Home Gas, Clean Gas, Refuel, two fuel depots and 24 gas station; Marine fuel: Scott Landing, Cayman Islands Yacht Club, and Harbour House Marina.

I can say the same thing for water, Mr. Chairman, but in the interest of time I will let the honourable member that asked the question read it himself.

**Mr. Austin O. Harris, Jr.:** Mr. Chairman, certainly not to belabour the point, but I phrased the remark in the form of an observation, not so much a question. I will again restate my observation, Mr. Chairman, that Energies, Fuels and Telecommunications, and all of its



moving parts still fall under the definition of a utility and that is what OfReg's role as regulator is for.

Before giving way to my colleague, the member for Bodden Town West, let me just make a remark. Whilst the witness correctly stated that he loves me as a brother, let me take it one step further to say that I love him as a father—

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Well, I did not want to say a son, because . . .

**Mr. Austin O. Harris, Jr.:** However, as I stated in the beginning, my constitutional obligation to this Public Accounts Committee requires me, obligates me to put that affectionate relationship to one side.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman.

**Mr. Austin O. Harris, Jr.:** Mr. Chairman, thank you.

I would appreciate the opportunity to come back; I might have three more questions.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, just a comment.

I am not looking for any favours in this House. As the honourable Member may not know, I am quite able to navigate around this House because, not only was I a member on the opposition side, but I served as a Minister for several years and also Speaker of the House, so I can navigate myself around. I do not need any help.

**Mr. Christopher S. Saunders:** Dr. Pierson, thank you very much.

I have actually been listening. I noticed the comparison used with the multi-tier and CIMA as an example, but there is one thing missing from all observations: that CIMA only has one Minister.

You have four entities and three Ministers to deal with. There is a Minister with responsibility for Water; a Minister with responsibility for Fuel, and then there is the Premier who has a different part of it. So there are three different ministries to some extent. As I am listening to all the challenges three years on, the question that we really have to ask ourselves is: If the board and management are so busy dealing with all of these underlying issues, who then is looking out for the public's interests?

There are clearly structural issues here and like with any legislation we need to ask ourselves if this something worth continuing or were we better off when we had the ICTA, the ERA and everyone else by themselves. That is one option that I think we need to realistically put on the table because from the pub-

lic's standpoint and expectation, and reading the reports, something as simple as even collecting the different revenues that are needed to sustain this entity. I mean, you and I both know if you cannot get the revenues that you are supposed to be collecting, that in itself creates a growing concern.

The question in all of that, Mr. Chairman, through you to the witness is: With four entities, three Ministers and still an organisation in its embryonic stage, what will it take for us to move OfReg to the efficiency level that we think it should be at so that it can basically do the function? Let us not kid ourselves, the entities that OfReg regulates are entities with very deep pockets, some of the brightest minds and we need to make sure that we also have the deep pockets and bright minds to go up against these people, because these are multi-million dollar businesses—these are not small businesses—with built-in expertise, et cetera.

Next week, when many of those same entities are in the House, I think the public will also get an opportunity to see and, I would dare say the level of intelligence that some of these organisations have, because we have some of the brightest minds in Cayman working in those entities.

To reiterate the question: In your opinion, what would it take to take OfReg to the next level?

I can tell you, Dr. Pierson, I spent a lot of time and even you would have seen some of the answers that were given, whether it is to Finance Committee or Legislative Assembly by some of the players within OfReg, compared to what we know exists say, inside a FLOW, CUC or elsewhere; and it almost seems as though there is a mismatch.

The whole idea behind this issue, just so that we are clear and the public understands, we all accept and agree that utilities needs to be regulated. There is no way we can have monopolies in this country running around unregulated and you yourself recognise that, having broken the Cable & Wireless monopoly. People seem to forget that a few years ago we were paying \$1.50 per minute to make a call to the United States in the daytime, so there is a need for these entities and this regulation.

However, what can we do to make it efficient to achieve its mandate? I can tell you that I have been on the website and there is still a lot more work to be done, in terms of even getting the information out, which is also a primary function listed for the office. I can also say, as I have said in this House already, that there are many consultations that go out for the public that the public do not even respond to, so there is a lot of work that needs to be done.

We accept that any organisation in its embryonic stage will have its teething problems, but what will it take to:

1. Get past these teething problems; and

2. Get to the efficiency level that we need to get to, so as to at least meet the public's expectations?

Earlier, you and I were discussing some of the issues of fuel and even from the public education perspective, I think people would be shocked to find out the amount of duty that is on the non-CUC portion of fuel that drives up the cost. Again, these are issues of public education that do not seem to be out there and I know that OfReg also has a public education standpoint as well.

That is really my question in all of that, Dr. Pierson. I know I took the long way around but it is really, how we get to the next level.

When we made the request originally, and we spoke about efficiency for OfReg, it was to make it better. No one here wants OfReg to fail, let us be straight with that. No one here believes that CUC or any of those companies should not be regulated, but the truth is that they are still getting away with murder to some extent in the lack of quality. Broadband I have a fundamental issue with. We are one of the most expensive countries when it comes to broadband, yet we get some of the poorest quality for what we are paying. These are the kinds of things that we need to tackle so that the consumer can see the value for money that they are looking for, and that is really what I am hoping to get from this series of hearings.

There is no future in the past in politics; it is what it is. What happened in 2017, 2018, and 2019, none of us this room can change. What we do in 2020, 2021 and beyond is what we are focusing on. There is nothing we can say here today that can change anything in 2019, and it is that next level that we really want to see as to what it will take.

I accept that any start-up will have its own teething problems and let us be honest too; there are some serious egos at play here from people who ran independently before this merger started, to what it is that we have today. There are egos inside any organisation too, just as there are inside this Chamber, but at the end of the day, we are still here to serve the public. And I can say honestly in my humble opinion, the public is not getting value for money from many of the utility companies that are serving this country and now, the one entity that we expect to stand up and deal with them, we need to do what we can do to make it better. That is ultimately where we need to get to.

Thank you.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Thank you. Mr. Chairman, may I answer the question?

I think you are right to say that the authorities are government authorities. I gave you an example earlier of some of the difficulties we have with things

being delayed. I will just say to you that the sectors under OfReg, it happens that I can answer you on those subjects, because I was the Minister for each of those in addition to Planning, National Roads Authority (NRA) and I could list them. I think I had the most SAGs under me as a Minister at the time and perhaps, ever in the House. The suggestion seems to be, that if they were still left on their own, they would be more profitable. Nothing could be further from the truth, because I was the Minister; I know.

One of the best things that happened was that in 2014, I think it was, the Acting Governor commissioned the accounting firm of Ernst & Young to examine the pros and cons of improving the efficiencies and effectiveness of statutory authorities. It was based on that study that it was decided to pull these four sectors under one control. I can assure you that it is not an easy deal because trying to pull some of those legacy companies under one direction takes time; so much so that at one stage I was accused of being a bully, when you try to bring things together.

So, it is not an easy job, but I do know that when those same sectors were on their own they were much less profitable; we had a problem—and it was brought over into OfReg—of wild spending. We were only able to correct that, after it came before us in OfReg. We had another problem of a lot of money being paid to consultants who rarely presented the bills that they should, but what I would have been happy with is if the report, and I am not going to criticise the OAG on this, because perhaps these were too numerous to list in the report, but it could have been taken.

Any Member of this House could have read the Annual Reports and would have seen then, what OfReg is doing; and from that Annual Report I was able to take a number of the accomplishments. All we are hearing now is the S-W-O-T (Strengths-Weaknesses-Opportunities-Threats) but we are only looking at weaknesses. What about the strengths? What about our accomplishments? Six pages, nothing is mentioned of it. Nothing is mentioned, yet we are saying if you do not better, let's get rid of you.

Nobody fully understands what we have accomplished in OfReg. All that is coming out are the important things to the public. Why aren't the gas prices at the pumps lower considering that there has been a slash on gas prices world-wide? Why are we not getting a reduction on our light bill when it should have been passed on to CUC? And those questions are reasonable. The question should be asked; as a matter of fact, I am suffering from it too, so I have asked the questions.

The answer that you get normally is, *look they are more expensive fuels*. I know that David—sorry, (another one of my sons) the Member for George Town West has declared his conflict of interest, but he will tell you that it is not that easy, because there is a

cut in oil prices, for you to extend it right away to the public in the Cayman Islands because there is already fuel in those tanks that are much more expensive and that fuel has to be used up before you can get to the cheaper fuel.

There are many pros and cons in this whole thing and I know about it because in my first job I was a pump man at the Shell station in George Town. I served gas and I had to check the gas every day; so I know about this sort of thing. The same thing applies with your light bill. Nobody knows that when you do a pyramid of that... Do a pyramid of it and see the different layers. How much is Government getting out of that? Government is getting a sizeable amount of revenue out of it. How much are they getting out of gasoline at the pumps?—a sizeable amount. So, we need to bring all those factors into account.

Those are things beyond the control of OfReg; when we are waiting for years not months, to get a Law that was passed and assented to 2018, and yet not put into action? Who are we blaming for that?

**Mr. Austin O. Harris, Jr.:** Mr. Chairman.

**Mr. Christopher S. Saunders:** Hold on. Sorry.

Thank you very much, Dr. Pierson for that answer.

Just two observations: We looked at the structure that is currently set up, and I am very happy that we have someone with your vast experience to try to basically bring all of it together. And I am glad you listed your résumé and that is exactly the problem that I have with OfReg; because when the time comes that you decide you will walk away, we cannot have an institution that is predicated on finding someone again of your expertise and your vast knowledge, et cetera.

Therein is one of the fundamental problems because any institution that we set up—and at the end we are still trying to build an institution here—it still has to be able to function, regardless of some of the skillsets that you can find. Like I said, you are an exception within the rule; and I can say without any fear of contradiction that there is nowhere in the Caribbean that we can find someone serving in any utility board that has the level of experience and qualifications that you have brought to the world. As a matter of fact, I would even dare say the UK also, that you can find a former parliamentarian with over 30 years of public experience in that kind of role.

The second observation is that, regardless of the achievements of OfReg, respectfully, the only achievement that really matters to me is ultimately the consumers of this country getting value for money. One of the questions I remember asking in a previous parliamentary sitting is the very policies—because there is a part of the Law where OfReg is required to: (a) get directives from the Minister; and (b) also to provide policy advice to some extent, to the Minister in terms of what can be done.

Slice it and dice it anyway you want, but the last time I looked, I think we are 190-something out of maybe 210 countries that were in a survey of the highest broadband prices in the world. And I can tell you as a consumer, that paying for 25 Megs and sometimes getting only 4, 5 or 10 depending on the time of day, regardless of what OfReg achieves, the fact that somebody can still take money from me and not provide me with service and not be punished for it, or I am not getting back some rebate, is still a problem.

When we look at fuel the other day, we are still waiting on that three-month lag where by June we should have gotten cheap fuel in this country based on the price that, for the first time in history, oil went to negative price. We still cannot find anything, even if you add the Government's duty on it and take off everything.

I can tell you, Dr. Pierson that I do read the OfReg Annual Reports. I can also say to you that even this weekend I sat down and took 8 years of CUC's Financial Statements and looked at the kilowatts and the fuel. I can give you the cost and everything. I can tell you that I looked at the ESO reports of the average prices. I can tell you that I also looked at the Port Authority Website and can tell you the volume of everything that comes into this country. I have also looked at the average prices of fuel across the United States whether using Platts prices and everything else. I can also tell you that it was a lot of work to get that done; ate up my entire weekend when I should have been celebrating with my wife for our anniversary. I can also tell you that I have found zero—zero—correlation between the prices.

There is literally no relationship between what is the average price in the United States, the Gulf and the Cayman Islands, other than somebody's whim. Even if you factor in supply LIFO/FIFO or whatever, even with the lag, you do not have it. You can go on Rubis' website and use some of the information that you want from Rubis—you have to pay to get some of the analyses that you want. I have done the work and I can honestly say to you that this country is not getting value for money.

People are being ripped off and until prices in this country come down, people will continue to question the level of regulation that these entities are getting. If there is a situation where there is a lapse in the legislation or a weakness in what we are doing, then we expect those who we are paying to do it, to advise us what we need to do; because the one standard question that I personally have asked every entity that has come before this body, whether as a member of the Public Accounts Committee or as a Member of the Legislative Assembly is: *What can we do to make this better?*

That is really what I need to understand. What needs to be done so that we can get the fuel prices that we should have gotten in June when fuel were at

the lowest in March and April. We cannot see it in June or July and if you even look at what Rubis is saying, and the amount of fuel that they keep in tanks, we have now passed those up and we still cannot get the cheap fuel.

So, until the public starts seeing that value for money, it does not matter what we say or do here; it does not mean anything. This is the reason why we decided to bring the players in next week, for them to also answer these questions because OfReg can regulate one way. Having worked at both Cable & Wireless and Digicel, I can tell you the mind-set that goes into these companies to make sure that they get away with what they get away with; and now, those very same people are going to come face-to-face with me next week, when I do know the tricks that they actually play because I was a CFO in the utilities. So, I do understand what they do.

I can tell you, that what they are getting away with, the Government needs to tie up many of these loopholes to deal with them. This is where the problem is, and what I want to expect from OfReg is those recommendations to deal with them. I can tell you, I have said to other governments—I do not care to say it here, I have said it out there—even when I was being regulated I said to them, *Here is what you need to do to close this loophole because we are taking advantage of it* and do you know what they have done? Nothing!

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, I must agree with much of what the member mentioned except for all the praise he gave to me. I think there are other people around that can also fill the position but thank you very much for your confidence.

I would just like to say on the competition, as you rightly said earlier for whatever reason I was the Minister that brought liberalisation to the telecoms market and I was also at that time, before I was unceremoniously removed as a Member of the House for one term, looking at CUC.

The liberalisation that was brought to the ICT market brought prices down, but they seem to be having a problem again. It is not very easy to bring in price controls and that is why we depend on proper competition within the market.

Right now we have before Cabinet, a paper that was submitted in September 2019, dealing with the proposed anti-competitive prices and the penalty rules. This is one thing that we are awaiting to be approved by Cabinet. Since we are looking at this, we are also looking on amendments to the Dangerous Substances Regulation submitted just February 2020, but nothing yet.

When I hear you speak, I share your sentiments, because I am questioning the same thing

when I have to pay a bill to the water company or CUC, but until—and I made the same statement just after the liberalisation of Cable & Wireless, I think it was in 2002 or 2003—we can get proper competition for CUC, we are going to have very little choice in determining what level of prices they will charge.

As a matter of fact, we are now looking at renewables as you know, but CUC is also looking at renewables and you can bet that the competition in that market is going to be so severe, that other people competing in that market will probably have to fold up. That is the situation you have when you are dealing with a monopoly.

**Mr. Christopher S. Saunders: Sorry.**

I will use ICT as an example: Going back to the liberalisation, having worked at the time in telecoms. When we look back at the interconnect rates that were agreed between—and I am going to say it because I am in this House, I can say it and get away with it—Cable & Wireless and Digicel in 2004/2005, at the time, I think it CI \$18.5 or USD \$22.5 was the rate for the mobile interconnect rate. At that time the cost to terminate a call on the MCI network was around USD 2 or 3 cents so to make an international call was USD 2 or 3 cents, but to make a call from a Cable & Wireless land phone to a Digicel cell phone was USD 22.5 cents.

Slice it and dice it anyway anybody wants, you cannot tell me that to call my neighbour next door who was on a different network, the cost to the company would have been USD 22.5 cents, thereabouts, but to call a relative all the way in Florida, New York or elsewhere, the actual cost would have been USD 2 or 3 cents and, depending on the time of day you could even get it for USD 1 cent. This is the kind of short-sightedness where we started out in this regulatory business. That is my first issue on telecoms.

My second issue on telecoms is that, unlike CUC, where there is an RCAM-type rate of return and everything else, which I will be honest, is far more regulated even than the telecoms. We now have a telecoms company that have not invested as much as they should in technology, have not invested in the assets that they have, and the return that they are making on assets that are probably either fully depreciated or have depreciated is unbelievable. That would not have been allowed to happen on the electricity side, because we basically get a rate of return on the assets that we have which forces people to innovate, become more efficient and everything else.

These are the kinds of analyses that I can tell you I am sitting back and as we ask the questions of the technocrats—not yourself, the technocrats, people in that industry—where do we want to move this to?

We have a Maya1 cable, our only connection to the world, that is literally past its useful life and people have no idea. For the financial services indus-

try that needs the internet and every other single connectivity to not have another undersea cable at this point in this country, is a serious risk to this entire country in terms of our connection to the world.

These are the kinds of things that as a legislator and a representative of the people, I am expecting my regulator to be pushing and emphasising. These are the kinds of things that we are expecting and we have spent enough years in the teething issues that we are not focusing on many of the forward-looking issues.

I think that is really where the public, me, and as you have indicated, yourself, are really becoming frustrated because we see the advertisements in the United States of what people are getting for broadband speeds; we travel to the States and see what they are paying up there. It is not as if we do not know, we do know; the internet allows everyone to see everything.

Even something as basic as Netflix, as much as they do, we still have problems downloading movies here in terms of the buffering, et cetera, for what we are paying for. And when you start getting into the details they start with contented vs. not contented and all of that. We are still not getting value for money and ultimately, this is where I think we need to move to the point of what needs to be done.

As I said before, I am not interested in what happened in 2017, 2018 and 2019, other than the lessons learned from it, in terms of what we can do going forward. That is really what I am hoping to get from these sessions. However, I cannot have telecoms companies in this country with very little investment in infrastructure, still making the money that they are making and at the same time paying what we are paying with networks already paid for to some extent.

Likewise with CUC, I can tell anyone without fear or contradiction, if you look at CUC's numbers, the evidence in the computer industry, their peers, et cetera, is an efficiently-run company. The fundamental problem with CUC is the fuel factor on their bill; that is where the problem is. And when fuel comes into this country and the government cannot even tell you the value of the fuel and how much Rubis or SOL pays for the fuel, it is a problem in this country because it is charged on volume as opposed to value. We still do not know; we can only make a guesstimate and estimate, and I am telling you, we are overpaying for fuel in this country. So, as the fuel arrives, we do not know what we are getting for it and these are the kind of things that we expect OfReg to put in place or suggest.

Perhaps it has been done and Cabinet is sitting on it; then that is a different story for us to deal with at a political level, but we cannot have things coming into this country that even Customs cannot tell you what the value is or what was paid. I can tell you, they buy fuel from companies that they own, so you never get to see the true value they are paying for.

I can tell you when I compare even CUC prices, some years CUC prices are higher than retail prices in the States even when converted from US gallons to imperial gallons. And there is no way you can buy fuel in the wholesale market and paying what we are paying. Those are the kinds of things that need to be stopped and until those things are addressed, we will keep going on this merry-go-around.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, just one quick answer to what was raised by the last member. I would like very much, Mr. Chairman, if you could circulate this list I have here to members.

The member just raised the question of the Maya cable and if he reads the list of things here he will see the progress that is being made right now in getting a brand new system in place. So, it is important. We have all of the accomplishments here; it will satisfy you all. Rather than saying you want to know where we are going, read this and you will know where we are going.

#### Point of Order

**Mr. Austin O. Harris, Jr.:** Mr. Chairman I have to bring a point of order and I almost regret giving way to the Member for Bodden Town West.

It is not the role of the Public Accounts Committee to give long preambles or otherwise what may be considered political statements that take side-swipes casually at the Government of the day, but it is to ask questions relative to government spending. "Questions" being the key word here, Mr. Chairman.

**The Chairman:** Mr. Austin—

**Mr. Austin O. Harris, Jr.:** Time is running out on us; we are not managing our time properly.

**The Chairman:** I agree with that but we are all guilty of our preambles and I do not want the environment in which we operate because I think it is up to each individual member to set the stage and the context of his question.

**Mr. Bernie A. Bush:** Thank you very much.

**Mr. Austin O. Harris, Jr.:** Respectfully, I just wanted to continue the questions that I started but, since the witness opened the door to the questions included in the Member for Bodden Town West's observations; the prices on CUC when fuel is down, the prices at the pumps when markets are down to zero—has there been any independent investigation by the regulator as to the reason for these prices which is very much within the remit and role of OfReg?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, the honourable Member is quite aware of the procedure at OfReg as he is the Councillor with responsibility for OfReg, and he should also be aware of exactly what OfReg is doing and I can give him this list to help him refresh his memory.

Yes; the answer is yes; and the answer, if you want more details, can be asked to the director tomorrow when he is here. Now I can go on, but I know you are talking about wanting to keep this within your time limit. Well, I have to answer the questions when they are asked.

**Mr. Austin O. Harris, Jr.:** Mr. Chairman, going back to the question of the board make-up before we change direction, I want to consider the accountability factor along the same lines.

What happens if the CEO who sits as a non-voting member of the board requires direction from the board? If for example, the CEO strays from the policy direction of the Government, do you believe it is appropriate that the executive directors, who are normally subordinate to the CEO, should be privy to that direction of the CEO by the board? In the same vein, what happens if the executive directors, as appears to occasionally be the case, where they stray from government policy to pursue their own ambitions and require the CEO to express concern over their performance to the board? How can he be expected to do that in a board setting where the same members are present in that same meeting? It would appear to me, Mr. Chairman that this unique arrangement undermines the risk-management role that the board of OfReg is obligated to follow.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, I believe that the honourable Member would have this information because he has a copy of the Utility Regulation and Competition Law. Section 23(6) states: “**When considering decisions on regulatory issues including regulatory measures, the Board shall have due regard to the advice and recommendations of the executive members.**”

There is no question that the executive members have no voting power on the board, but to take them off would mean that you need to look for them when you need immediate information. Also, to remove those members from the board would mean that there is only one member of that board that has any regulatory certification left, namely I. None of the non-executive members have regulatory certification but the executive members do. So they know exactly what should be happening, but there is provision in the Law that states what the executive directors should be doing.

As regards to them undermining the CEO in any way, that is a myth. That does not happen because if there was an issue of conflict, they would remove themselves under the section of the Law that declares conflict of interest. They are there to present what they are doing to assist the board in making decisions, but not to question the CEO or make a decision on the work of the CEO. The CEO makes his report and the executive directors provide relevant information for the CEO's report. So there is no conflict there, but to take them off would be reducing the effectiveness of OfReg.

**The Chairman:** Mr. Bush.

*[Inaudible interjection]*

**Mr. Bernie A. Bush:** Through you, Mr. Chair.

In the Auditor General's report it was highlighted that a lease was signed and a significant amount of money wasted. The member for Prospect does not want us to do a preamble, so I am cutting this as close as possible.

In your mind, Mr. Chairman, what was the justification for the decision taken by the Board to move offices, given the existing lease in office space that was already being used by OfReg?

Mr. Chairman through you, many people think you are only a lawyer, but you are also a qualified CPA if I remember correctly.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** I am a CPA, not a lawyer.

**Mr. Bernie A. Bush:** Oh, sorry; CPA.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** My wife is the lawyer.

**Mr. Bernie A. Bush:** Okay, sir; but I was right on the CPA. As a successful businessman and as a CPA, you would accept the fact that such a commitment represents a large expense to OfReg, the Government, and in turn, the people of this country; and when it goes to where it is described as a waste of money—Who made the decision? Was it the board? And, when the decision was made, did you as Chairman tell the decision makers that something was wrong or did someone tell you it was wrong? What happened around that, because something definitely did not go right with this and it is a large amount of money?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Through you, Mr. Chairman. That is a very

good question; I am glad it is asked, really so that we can put some light on it.

It was an unfortunate situation to start with. The people who come to OfReg, even the auditors, will tell you that we are like sardines in a little office that we are in now, so we are trying to find better accommodations. As a matter of fact, it started from the early days when the former CEO was in office; and what we did on the board was select a committee to look into that excluding the Chair—I told them I did not feel it was proper for me to be on that as well—but I take responsibility for the action that was taken, because the former CEO is not able to answer for himself.

The reason it was allowed to go on for the period that it did, was mainly because of certain promises that we were relying on to get assistance with the financing which never came about. I do not want to go into details of that, but that was the main reason. When it got to the point that we realised that we were just paying out money, and that the funding we expected would not be coming in, we decided to cut off the agreement with the Smith Road people.

It took a long time—because they then sued us for breach of contract—for us to be able to get a settlement on that and that is really, in brief, what happened. We were depending on some financing to assist us and that did not come through. So, during that period of depending on that we spent quite a lot of money with the Smith Road people. From the beginning some of us, and I will say this here, wanted to cut it short much earlier but when we considered that it was even an open-ended sort of a contract, it was difficult to cut it off any earlier and as a result we had to pay a premium to get out of the contract but we decided to cut the contract. Those are the facts, Mr. Chairman.

**Mr. Bernie A. Bush:** Mr. Chairman, what exactly is the policy and benefits package at OfReg regarding post-retirement benefits for employees?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** You are asking some very good questions.

Right now, we have about four people in our office, and I do not want to call names, that we feel may be eligible. We also have to comply with what is happening in the civil service with post-retirement health benefits. So, in order for somebody say, coming from the civil service to OfReg or other statutory authority to be able to justify being paid that amount or qualify for it, they have to spend at least ten years. Some of the officers that we have now—and I am sure that the Auditor General's Office will be looking closely into this—have spent less than the ten years, but they have also applied for these post-retirement benefits.

Now, we are in the process of seeking a legal opinion from the Attorney General's office on this, and

I think we have received that. We are now in discussions to determine exactly who amongst the four should, if any of them, receive these post-retirement health benefits. That is where we are now with that, but the matter got to the point where we had to seek legal advice from the Attorney General's office.

**Mr. Bernie A. Bush:** Mr. Chairman, through you, is this policy consistent across the board for everyone, or are there people who have different programmes or an individual who may have a different retirement plan?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** This policy is still in the making because we want to have it enshrined within our HR manual. The HR manual for OfReg has not yet been fully completed. We had approval of a document that did not contain most of the requests from the executive side, so it was transferred to the Portfolio of the Civil Service (PoCS) for them to have a look at the document before it is put into effect. However, as regards the four, two of the people are some distance away from retirement; one is nearing retirement and the other will soon be nearing retirement. I do not want to mention the names of the individuals.

**Mr. Bernie A. Bush:** Through you, Mr. Chairman, I did not expect any names, sir, but does any of the individual have a lifetime package or something? I want to quash this rumour that is out there that they have a special different from everybody else. Is there such a thing?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** I am not aware of any special deals with anybody. That is why we sought the legal opinion of the Attorney General, so nobody has any special deals with OfReg on that.

**Mr. Austin O. Harris, Jr.:** Mr. Chairman, just in follow up to the witness' defence of the executive members remaining as non-voting members of the board.

I would simply put to the member through you, Mr. Chairman, that certainly, should the board of directors require the expertise of the executive directors, surely they could put in place a framework upon which they could gain that expertise without having the executive directors sit as members of the board of directors.

In addition, to his comment *we are like sardines working in a little office*, under that provision, it should not be difficult to find the executive directors when the board needs that technical guidance.

If I can move on, Mr. Chairman, to the question: The Office of the Auditor General report states that during the first five months of the operation the

board of directors had only two members, namely the Chairman and the CEO. It was also noted the absence of succession planning for the CEO post which, for the record has earlier been dealt with, and certainly the record will state that the Chairman of the board was in fact in possession of that succession planning, which of course, the Office of the Auditor General concluded, resulted in inconsistent leadership.

My question: During the interim when the substantive CEO role remained vacant, all three of the current executive directors served at one time or another as interim CEO I therefore wonder if the Chairman believes, Mr. Chairman through you, or if he can share his opinion, that in the generally accepted circumstances where Caymanians are asked to train their otherwise foreign replacements. Is there any room to expect or is there any evidence to support the possibility that the current executive directors could undermine the work, role and responsibilities of the present CEO, simply on the basis that they believe the post of the CEO should in fact be theirs in the first place?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** I am getting some ticklish questions, Mr. Chairman, and the member has really touched on one of them.

I will just say that the post of CEO was applied for by each of the executive officers and you can in your mind decide what sort of atmosphere you may find going on for a while. However, as far as I am aware, the new CEO is doing a wonderful job and he is trying very hard to work with all members of OfReg. There are of course, some members—it is a human tendency—that if they applied for a position and somebody else got it and they are working in the same area they might feel a little resentment, but I believe that is fast disappearing. It was there for a while, I would not be telling any untruths here in the House; it was there and maybe some of it still exists, but I will say on a whole, most of the executive directors and the whole senior management team work together very closely. So, I think OfReg is benefitting from the appointment of the new CEO.

**Mr. Austin O. Harris, Jr.:** Thank you to the witness. Through you, Mr. Chairman, my final question.

Picking up from where the Member for Bodden Town West alluded that past performance is no guarantee for future results; I certainly agree with that, particularly in the context of the current Chairman whom I believe, and he still maintains my confidence, that he is certainly well-placed to correct the existing gaps that obtain. But certainly the old adage of past performance is no guarantee for future results is intended as a warning, that if we discount the past then we are destined to repeat it.

The Office of the Auditor General's report states, page after page, that the operational model of OfReg is not perfect, but it is improving. I would assert, as per my previous questions in terms of the make-up of the board that the governance model is not working, or is in need of improvement.

The Office of the Auditor General's report identified that there is no risk-management process, there is no performance management measures and there appears, though in the past, to be little regard to adopt the expected value for money protocols to achieve one of OfReg's primary functions, which is protecting the consumers of this country.

I wonder how, through you Mr. Chairman, the Chairman would respond to what appears to be a number of gaps in the functioning and overall governance model OfReg and how he, as a capable Chairman, intends to redirect the attention of OfReg to filling this gap. Again, with the primary function of protecting the consumers of the Cayman Islands.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, if I may.

I like the quote that the honourable member mentioned, 'past performance is no guarantee for future progress', something to that effect, but I also like the quote that I often heard from Mr. Haig Bodden of precious memory: *a little learning is a dangerous thing; drink deep, or taste not the Pierian Spring*: and I would say that before we are critical, we try to exactly understand what is happening and what is ongoing in OfReg. I know it is not easy because it is a very technical authority, but I would say before we ask too many questions and make speculations, take the time to read the accomplishments of OfReg over the past three years. I know it is a little lengthy, six pages, but take the time to read it. Once you read that, it might satisfy many misgivings.

Now, it is true that some of us have been in positions in the past and benefitted from that experience, but it is also true that in technology, one has to keep up to date because it can become redundant within six to nine months. And, I am glad that you are not asking me today again about 5G, but that would be one of the areas.

So, to say that this should or should not happen because something else might have happened in the past, or make the implication that we should go along with what is being recommended now, I think we can only inform our decisions on the knowledge that we have obtained, which would have been in the past, and that is how you inform your future decisions, so you need this knowledge.

I hope I answered that, Mr. Chair.

**Ms. Barbara E. Conolly:** Mr. Chairman, through you to Mr. Pierson.



Paragraph 33 of the Auditor General's report states: **"In August 2018, the Cabinet directed OfReg to adopt a number of CIG policies and procedures, including official travel policy; anti-fraud policy; policy on offering or receiving hospitality, entertainment or gifts; procurement code of conduct; and Procedural Guidelines for Crown Estate Matters. With the exception of the procurement manual and a gifts policy that were already in place OfReg did not adopt the policies at that time."**

It is noted that these policies and procedures have only recently been approved by the board. My question is: Can the Chairman state the reasons for not adopting the Cayman Islands Government's policies and procedures as directed by Cabinet in August 2018, almost two years later?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Another good question.

Let me say, Mr. Chairman, in answering it that we have worked very closely with the Cabinet. Cabinet has helped us with our legacy problems and they have helped us with putting policies in place. So I would not want to give the impression that we have not received a lot of support from the Cabinet. The truth is, however, as I said earlier, it takes time to get these things done. One has to work within a government institution to find out how difficult it is to get some officers to complete their tasks and if you want a more trying job, try to fire one of them, you know? So we have been working on things for a while.

It is true that Government has held up certain things but I am sure they have a reason. I cannot accept what I have heard, that perhaps the matter fell through the cracks, so I try to put that in the back of my mind. I hope that is not true but I know that especially now with the COVID problem that we have, the Government has to be given a lot of kudos for what they have been doing.

We are working very closely with Government but we are talking freely here today and you are asking me questions about delay in getting certain things done and I am saying yes, we have done certain things. For instance, the questions raised by the Member for Bodden Town West, about the sub-sea cable. We are working very hard in trying to complete that right now, when it started from March, 2017; but it shows you how long it takes because we cannot make a decision at that level without receiving compliance from the Cabinet and their caucus; as it should be, because I have been there before. I would hate to know that one of the statutory authorities under me made a decision that would create expense for the government. So, we work as closely as possible with the Government in these matters.

As regards to the question raised by the honourable member, yes, we have all the policies in place

now, to the chagrin of some of the people involved because they did not like the idea of the travel policies and so on, but we had to insist that we comply with them because it was costing a lot of money. So, I thank you for that question.

**Ms. Barbara E. Conolly:** Through you, Mr. Chairman to Mr. Pierson.

What I was trying to determine was, even though Cabinet instructed OfReg to adopt these policies, they were only approved recently by the board, so that was another question: Why has it taken the board so long to approve these policies?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** No; I should have clarified that. What we were asked to approve was acted on, as the honourable member might want to check on.

What we have done in addition to those, to do with the gifts and so on policy, we have added another string of policies known to the OAG's office and they are now into effect. So, we have at least six to eight policies that have been approved including those that were recommended by Cabinet earlier.

**Mr. Bernie A. Bush:** Mr. Chairman, through you, going back a bit.

You mentioned that you have the paperwork for succession planning, which leads me to this question that I need some clarity on. Could you be specific, who asked you to take over as CEO?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, with your understanding, I am not in a position to give that information directly now; but I will say this much, it was at Cabinet level.

**Mr. Bernie A. Bush:** Okay. Thank you, Mr. Chairman. I appreciate, sir. Thank you.

**The Chairman:** *[Inaudible]* by Cabinet.

**Mr. Austin O. Harris, Jr.:** Mr. Chairman.

**The Chairman:** Mr. Austin.

**Mr. Austin O. Harris, Jr.:** I was not planning to but the witness repeatedly encouraged this Committee to read the six pages that outline the performance accomplishments of OfReg over the last three years.

I just want to again redirect his and this Committee's attention of the purpose that we are here and that is the Office of the Auditor General's report. If you are following along, paragraph 79 found on page 33 states: **"Organisations are better focused on achieving results and outcomes and are better able to improve their performance when they have**

**well designed performance measure and targets and can take corrective action as a result of effective monitoring and reporting.”**

Paragraphs 80 to 85 which are contained starting on page 33 but extend to page 35, state that it was difficult to assess OfReg’s performance because of poor performance measure and the lack of monitoring and reporting. **“The 5-year strategic plan did not specify any key performance indicators (KPIs) that would help measure success or demonstrate delivery of the strategic objectives. The 2018 Annual Plan included fourteen KPIs that were organised into five broad categories, but these focused on a number of statutory and operational functions rather than on outcomes.”**

The 2019 Annual Plan had an altogether different set of KPIs, making it impossible to measure performance over time; the 2019 KPIs were a set of actions rather than measures to demonstrate or drive improvement.

My question therefore, Mr. Chairman through you is, whilst the member gave testimony urging this Committee to read the six pages of accomplishments of OfReg, how did the Board oversee and get assurances about OfReg’s performance, given the lack of performance measures, lack of monitoring and lack of reporting?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, in answering that I will personally refer the honourable member to Exhibit 10 on page 34 which speaks to OfReg’s Key Performance Indicators for 2018. I totally agree that we need improvement in this area, thus the reason I agreed with recommendation 10, that **“OfReg should develop a set of KPIs that clearly link to its strategic objectives, are comparable over time and will drive improvement.”** And for the benefit of this PAC, I agree with much of the report, it is just those two areas, recommendations 3 and 4 that I have an issue with, mainly.

**Mr. Austin O. Harris, Jr.:** Thank you, Mr. Chairman.

**The Chairman:** I have a few final questions, Dr. Pierson.

You referred to the Utility Regulation and Competition (Amendment) Law 2018. Is there a particular reason why the funding that you fell short of in 2017 and 2018 was not addressed in those amendments?

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** That amendment, Mr. Chairman, was really to address the inconsistencies between the Public Authorities Law (PAL) and the URCL. We were anx-

ious to get that done and why it is of concern to me now, is that it has not been put into effect.

If for instance, one of our sectors we are dealing with brought a judicial review against us. We would be seen to have been operating from the initial stages in breach of the PAL. That is why there is a validation section of that Law, which was assented to from 1<sup>st</sup> August 2018, stating that all measures—and I am paraphrasing—taken up to that point would have been validated by this particular amendment Law.

**The Chairman:** Agreed.

The other curiosity—and I believe I raised it at the time the amendments were tabled—is that you took the appointment of the executive directors away from the board, and gave it to the Chief Executive Officer. The board is no longer responsible whenever this comes into effect, for the appointment of the executive directors, but the Law also retains the clause in the original Law that says, **“The Executive Directors and the Chief Fuels Inspector, under the day-to-day management of the Chief Executive Officer, shall be principal advisors to the Board.”**

I am just curious to know why they are not the principal advisors to the Chief Executive Officer and not to the board, because I think that may cause you some conflicts in terms of authority and reporting mechanisms.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** The executive directors work directly under the supervision of the Chief Executive Officer and within that are also senior members of the senior management team. So, the executive directors cannot override the Chief Executive Officer; they work together and in agreement with policies.

I am not sure that I am answering the question directly, but that is how it works in the office. Even though the executive officers have their responsibilities, they must work together with the Chief Executive Officer.

**The Chairman:** Any other questions?  
Mr. Saunders.

#### POINT OF ELUCIDATION

**Mr. Christopher S. Saunders:** Thank you, Mr. Chairman. It is not a question but I just want to clarify something for the record.

Earlier, the Member for Prospect accused me on a Point of Order of making a side swipe at the Government. I do not want anyone inside here to believe that Chris Saunders or the Member for Bodden Town West does not know how to make a proper swipe, because if I wanted to make a proper swipe, I could have also asked that, just like the Member for

George Town West had declared his conflict of interest, that the Member for Prospect, who has served as temporary Minister with this very same responsibility under OfReg; that even just earlier this year he was touring the OfReg office with the Governor when he was Acting Minister, would have also declared his conflict as a temporary Minister. That would have also dealt with some of this governance issues that he has been raising here today.

If I wanted to make a swipe, that is what I would have swiped with. So I do not want anyone to think that I am getting soft or that I do not know how to make a swipe. So, just set that on the record for me, please. You can point-of-order that, Mr. Chairman.

Thank you.

**Mr. Austin O. Harris, Jr.:** Mr. Chairman, I have to respond to the Member of Bodden Town West's remarks.

Whilst it was stated at our last Public Accounts Committee hearing why the Government Members of the Public Accounts Committee Councillors, who occasionally sit and hear witness testimony from those persons that fall within the Ministries which we share responsibility for, I simply would remind the Member for Bodden Town West that in my capacity today, and in the questions which I am directing to the witness, I am not the Temporary Minister with shared responsibility in this instance, not even for a ministry, but largely for the responsibilities that are obligated or directed specifically to the Premier himself.

I am not in conflict today, as I do not have decision making authority for the Premier or the Ministry; and again, I am not acting in capacity as a temporary Minister, so there is no swipe to be given.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman.

**Mr. Christopher S. Saunders:** Mr. Chairman, sorry.

Earlier the witness mentioned about presentations to Cabinet in caucus of which the member is a member, if memory serves me right; and it is noted in the media. As a matter of fact, at one time I think OfReg had some board issues where it was also reported in the media, that the very same Member for Prospect was also the Acting Minister at the time those governance issues were going on at OfReg.

So, unless there is a situation where you are just becoming a Temporary Minister, which I am assuming that you're paid an acting allowance for, and Erskine May also speaks about people who have a pecuniary interest in these things of recusing oneself. I just want to put that out there for the record to maintain the integrity of this Committee; that at least it is actually noted and I have stated my objections for the record which, as a member of this Committee, I am entitled to do.

**Dr. The Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, if I could just comment on the point you raised regarding the 2018 Law: It is ready to be acted on and I am going to request the Councillors if they could intervene and have a word with the Ministers and ask them to do it because it is a serious situation.

If for instance, FLOW or one of them brought a judicial review against us, they could charge us for breach, that we were not acting in accordance and that is one of the reasons why at the end of the Law, the framers, you guys, quite rightly put there the validation of acts which reads: **Any acts, decisions or proceedings of the Board that were carried out prior to the commencement of this Law shall not be invalid by reason only of those acts, decisions or proceedings being inconsistent with the Public Authorities Law, 2017.** That is why we are very anxious to have this approved.

Further, Mr. Chairman, if I were sitting in your chair I would question the validity of the Point of Order, but that is left to you, sir.

**Mr. Christopher S. Saunders:** Hold on, Mr. Chairman, sorry.

**The Chairman:** No, no, no.

**Mr. Christopher S. Saunders:** I just want to clarify something here that the witness just said: When the witness is asking the Councillors to make whatever representation, I just want to object that there are no Councillors that are sitting on this Public Accounts Committee, member.

There are no Councillors in the Constitution; it is not an established position, and we do not want any influence of this Committee taking anything back to the Executive.

**The Chairman:** I agree with you.

**Mr. Christopher S. Saunders:** That is not the purpose of this Committee. So, I have to respectfully ask the witness that the Committee cannot accept that, or he should not be saying that.

**The Chairman:** I was about to make the same intervention.

Any other questions? Okay. I have a few but we have gone a long time and we have other witnesses coming that I can ask those, so I will reserve those for them.

Just want to take this opportunity, Dr. Pierson to thank you for your time and to say that it was a lively discussion that was appropriate.

Thank you very much.

**Dr. the Hon. Linford A. Pierson, Chairman of the Board, Utility Regulation and Competition Office (OfReg):** Thank you Mr. Chairman and I hope that I am still going to be getting lunch here today?

**The Chairman:** Absolutely.

The meeting is suspended until 1:30pm.

**Proceedings suspended at 12:40pm**

**Proceedings resumed at 1:45 pm**

**The Chairman:** Good afternoon.

Let the record show that we have a quorum. The meeting is called to order and I invite the Deputy Serjeant-at-Arms to bring in the witness.

[Pause]

## CABINET OFFICE

### ADMINISTRATION OF OATH OR AFFIRMATION

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** I, Samuel Rose, do solemnly, sincerely, and truly declare and affirm that the evidence I shall give to this Legislative Assembly, shall be the truth, the whole truth, and nothing but the truth.

**The Chairman:** Good afternoon, Mr. Rose. Let me take the opportunity to thank you for taking the time from your busy schedule to attend the Public Accounts Committee meeting.

As you would have been made aware, this afternoon we are dealing with the *Efficiency and Effectiveness of the Utility Regulation and Competition Office*. I think that you have constitutional responsibility under your subjects, so we look forward to an interactive session with you, sir.

You know the rules: The first time you answer a question, please state your full name and your position for the Hansards.

I will start off with some friendly questions.

[Laughter]

**The Chairman:** I think it is fair to say that in addition to this report by the Auditor General, the public and especially the perception of the Members of the Legislative Assembly who are not in the Executive Branch are concerned. We do not believe that OfReg is achieving its full objectives; so much so, that you would have been aware that at the last Finance Committee there was an effort to defund OfReg and therefore close it down.

Can you tell us how the Government plans to address that perception in the public?

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Thank you, Mr. Chair. For the record, my name is Samuel Rose; I am the Cabinet Secretary.

Thank you for your kind welcome and for starting out with such an easy question.

[Laughter]

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Obviously, we would not be taking tales out of school or it is no surprise to anyone in the public that OfReg has had its teething pains.

I do believe that with the arrival of the new CEO and, of course, with further clarity around the board (we have recently re-appointed the Chair), there are a number of ongoing matters that the Cabinet has made very clear to OfReg from time to time that should be the areas of focus and priority.

In fact, going back as far as May 2018, from the outset, it was fraught with challenges. The premise under which OfReg was created, amongst other things was to create a super-regulator but also to create efficiencies; and that is obviously the theme of this report; to seek efficiencies.

Quite early on, it was evident that with the merging of the two statutory authorities and, of course, then the removal from the central Government of the CPI and placing that into OfReg, the starting premise of this now achieving the same regulation for a lesser cost—if you want to put it very basically—was going to be a bit difficult. They would obviously present their regulatory plan in the sense of some of the costs that would be necessary to, for instance, regulate the fuels market. That precipitated an equity injection and an increase in appropriations of \$1.15 million to output URC8, in order to fund the fuel sector.

The reason for that choice of funding the output, as opposed to allowing them to charge that directly to their licensees, was obviously in an effort to prevent the licensees, because we all know what happens. If you pass that on to licensees, what are they going to do with that cost? They are going to pass it on to the consumer, the end user. Therefore, the Government has had a policy of no new taxes or fees unless there is a requisite new service being offered. In essence, we could not look at the public and say, *Well, because we created OfReg they need to charge the licensees an addition amount of money* and so the decision was made to fund that output directly.

Immediately after that, a rider was issued with the approval for that funding. I am going to read that rider and this is correspondence with the then Chief Executive Officer, if I may have your permission, Mr.

Chair. It said: “The Cabinet issued the following riders with the approval of the funding:

- Official travel must be reduced;
- Greater focus should be placed on core tasks, specifically fuel regulation, fibre optics and water licensing;
- All and best efforts must be undertaken to expeditiously complete the license negotiations with Cayman Water Company.” [UN-VERIFIED QUOTE]

That was very clear, very clear, guidance being issued; because the Government is obviously aware of what is of concern to the public, to the consumers, and they wanted energy and efforts to be focused on those very important matters.

Now, the Government as you will understand from a governance perspective, the governance around a Statutory Authority is very important, especially one that is an independent regulator. I took the opportunity to read the Auditor General’s report, and a bit further it references the Organisation for Economic Co-operation and Development (OECD) guidance on regulatory practice and it notes that independent regulators are referees of markets. They have to balance between public authorities, the private sectors, users, and consumers, so it is a juggling task.

OfReg does not have an easy task and we did not set them up to have an easy task. The very nature of their work is exceedingly challenging and, of course their role is to guide, protect, and support a critical national infrastructure. All those things I mentioned just now in that rider are critical national infrastructure—our water, our fuels and our ICT (fibre-optic) connectivity. So, we have to ensure a balance between due and undue influence over their work and so the Government is going to continue to insist because there is no one else to manage the negotiation of these agreements and to deal with the licensees and what have you. Again, from time to time, more directions are being issued to OfReg, in terms of things that they need to do with specific sectors. Therefore, they are going to keep a very close eye on things while not crossing that line of blurring independence because, again, you do not want to ever do anything that is going to bring it into question.

Government is not seeking a specific outcome as it relates to a specific licensee; that is to be determined by the negotiating process, but we cannot have negotiating processes that have no end.

**The Chairman:** I guess the question that comes to mind immediately is: Why would Cabinet re-appoint the board with such blatant ignorance of the directives? Because the evidence we have, and certainly the report bears this out, none of those things that you just talked about have been achieved by OfReg.

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Well, we have had a change in board members. You know our process is a very unique process in the public service; there is no process for identifying board members like this across the public sector. You would be very aware of that process yourself, Mr. Chair, as you would have nominated an individual to serve under the nominating committee. Ironically enough, that same OECD report speaks to the importance of a nomination process rather than direct appointments.

Ultimately, Cabinet makes the final decision, but we have had some changes on the board and I believe we have a board capable of helping to guide and drive things forward. However, the other point that I think we need to bear in mind, is that we have a new CEO. There was a period in time in which there was a leadership gap there.

I think I should point out that the record should show that as it relates to my own role *vis-à-vis* the board, this is a board for which the Cabinet Office... In fact, no Chief Officer—the Chief Officer with responsibility for ICT and infrastructure, or the Chief Officer with responsibility for water—none of the public services are represented at all on the board. Now, a number of other boards will have one, two or three ex-officio roles on their statutory authority’s board, but that does not exist there, so that creates an even further distance from central Government and I think perhaps some things get lost in that distance.

They kindly share board minutes with me, they do their best to communicate but I am only seeing things after the fact; there is no ability to say, *what about this, what about that*. Nonetheless, with a new CEO there and a new board or newer members, who are very clear and strong and forthright, I think we have an opportunity. We have to continue to give them the support. Failure is not an option and I think that is the most important message: Failure is not an option.

**The Chairman:** You are referring to the expectations of the newly appointed CEO, but certainly this CEO does not have the pedigree of the first CEO and I would argue that many of the problems that are identified in the OAG’s report are as a result of the way things were established, or not established, by that CEO and that board at the time. I welcome your expectations of the new board.

We were given evidence this morning that part of the problems that the board has, is that they are making requests of Cabinet and those are not forthcoming. For example, the amending legislation to the Utility Regulation and Competition Law, which was passed in June 2018 has not yet commenced. The Chairman was very concerned about a judicial review getting them in trouble. Is there an explanation why this has not commenced?

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Thank you, Mr. Chair.

I believe this a point that you have raised from time to time in the past about adding commencement clauses and not having a specific date or time by when something needs to be done.

It will be commenced shortly; we ran into one small a snag—a very small snag—which we had to clarify because there was a subsequent revision. As you can see, the Law is a 2019 Revision, which I think was completed in—

**The Chairman:** February 2019.

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:**—February 2019 which, in retrospect, when reminded about the commencement order by OfReg we had to scratch our heads and wonder whether one would usurp the other; but I am sure that it does not cause any harm, we can still commence it and it needs to be done. For that I must take responsibility in getting the Cabinet Paper forward.

**The Chairman:** So, are you saying that the changes that were passed in 2018 are not incorporated into the 2019 Revision because they had not commenced?

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Correct.

**The Chairman:** I have one curious question.

Part of what is identified in the OAG's report and many of the questions this morning were around the governance structure and the fact that the executive directors sit on the board as equal members, while not having a vote; but if you are persuasive or can intimidate through technicality, you do not need to vote.

Why was the change made to give the authority to appoint the executive directors to the Chief Executive Officer and not the board? The Law also says: **"The Executive Directors and the Chief Fuels Inspector, under the day-to-day management of the Chief Executive Officer, shall be principal advisors to the Board..."**and not to the Chief Executive Officer.

Do you see the governance conflicts that exist in that kind of a relationship?

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** I cannot speak exactly to the rationale but from the outset when OfReg was being formulated, I do recall that there was this dichotomy of roles identified and I do believe the consultant in the Ministry at the time spoke to the importance of ensuring that the voices of those direc-

tors. Again, I think the OAG's report speaks to the fact that some of the members of the board, I cannot recall if it is non-executive or executive, but some members of the board do not necessarily have expertise or experience in some of the specific sectors.

The thought process was that you would have individuals at the executive level with the technical capacity and expertise, and it would be important that the non-executive members in coming to decisions especially on a sectorial issue should listen and consider the advice being provided by that executive director. Now, is there perhaps a more orthodox way of achieving that? I do think that individuals could be invited to board meetings and there is an alternative arrangement but we have also seen that this similar arrangement exists elsewhere; so I think it is about figuring out what works best for our context.

Having never attended a board meeting, not being a member in a board or having a designate from my office participate in board meetings, I cannot tell you about the mechanics and dynamics of those relationships and how that works; I cannot speak to that. It would be unfair for me to project any views or opinions on that but I think, to say the least, it is uncommon for our context.

**The Chairman:** The more accepted way is that when you need those kinds of technical presentations made for a matter in the agenda those people are brought in; because there was a famous saying here from one developer who was on a board. He said that when it came to his business, he would just tell the fellows, *I am going outside while you approve this for me* so having these people there, I think, is something we need to look at carefully down the road.

Another concern was that the OfReg regiment of legislation, when it was presented here in Parliament, was supposed to give teeth, give substance, and give functionality to Government's ability to control prices and quality of product being delivered in these entities, especially in the fuel sector. I was here; I listened to the Minister moving the Bill and that was the genesis and the justification for creating this bureaucracy. We are still waiting on regulation of prices.

You mentioned that the Government took a decision to directly fund OfReg, as opposed to allowing OfReg to collect even the fees that were already being collected without the introduction of new fees. I also noticed that there is a conscious absence of any changes to the Law that dealt with funding, when you did the 2018 amendment. Is the reason for that the same? That the Government saw it as going against its policy of introducing taxation and therefore the funding mechanism for OfReg was not addressed in the amending legislation in 2018?

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Thank you, Mr. Chair.

I guess the well-publicised financial management issues at OfReg would not help the cause for additional fees. It is pretty difficult to ask for more money for regulation when people are not seeing the results and when there are concerns raised about these other governance issues.

You understand the politics involved in these things better than I do, but I believe we have an obligation at the end of the day to ensure that the public is being best served. And, if we can find a way to absorb the cost from central Government, underwrite that—in a sense what has happened—I think it has worked out fine for now because nobody can say that they have had to raise their fees as a result of our regulatory fee. That is not being blamed for anything.

Perhaps those are things that can be looked at in the future, when efficiencies are being achieved and when the public is starting to see value for money. We have capable people there, sir, we have people who care. I think it just got off to a very bad start and so, again, the Government is doing its part to support the ongoing implementation and effective functioning of the regulator.

**The Chairman:** The OAG's report identified several areas of legislative conflict none of which were addressed in 2018. Can you give us some comfort that they are likely to be addressed in the near future, and do you have a time frame for their presentation to the Legislative Assembly?

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Mr. Chair, I can offer comfort but not a time frame, sir. That is the very best I can do.

**The Chairman:** My comfort requires a time frame.

*[Laughter]*

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Well, my apologies for your discomfort, sir.

**The Chairman:** It is appreciated.

*[Pause]*

**The Chairman:** So what you are saying is that you are trying to address these legislative conflicts, but you do not know when it is going to happen.

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Thank you, Mr. Chair.

We undertook, in reviewing the report by the Auditor General. Obviously we provide feedback as well, and I think it would be important for us to have an iterative process. I am sure the coming board will have views as well; you want to take that into consideration.

At the end of the day the Government will bring the legislation forward. We also have the situation now where we have the un-commenced piece of legislation; you would probably need to commence that prior to anything else coming into force as well, so we are getting a bit of a back-up there.

I do believe that if we are going to give OfReg the support it needs to have the very best chance of achieving the goal for which it was created, then I think it is quite clear that further legislative amendments are required. We have undertaken to consider that, and I will do my part to do so.

**The Chairman:** Is there a possibility that the inability of the Government of the day... because the Law was first passed in 2016 and brought into force January, 2017.

Is this unwillingness of the Government to introduce taxation to fund this OfReg thing part of the problem why it was never resourced properly and therefore we had a situation where we did not have members appointed for some five or six months, we had one person appointed as CEO, another person appointed as Chairman of the board, running the whole operation; in my view, totally *ultra vires* of the Law.

Was it a question of resources why the board could not be constituted or was it a deliberate act? Is has to be one of the two; it has to be that the Government decided deliberately that they were not going to appoint a full board or they did not have the resources to do it.

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** If I may, Mr. Chair.

I think it is important that we have some context around the original board the original start-up of OfReg. I think the URCL, which is the legislation that brings this life, makes it quite clear that Cabinet is responsible for appointing the Chair, but the rest of appointees must be brought on board by the nominating process. As you have been a member of Cabinet, you understand that usually with a board, you have your conversations, you have your discussions, you have your list of names, they all agree and you put them forward. You can get that done overnight, if needs be.

This was a completely different process which required advertisements; you were not the Leader of the Opposition at the time, but I had to get the then Leader of the Opposition's nominee and the Premier's nominee to sit on the panel—the committee that reviews all of these applications. So this was a full-on

recruitment process which you know, takes a period of time.

**The Chairman:** But you had a year. Remember the Law set all of that up in place in 2016. The whole justification for this new process of commencement at a later date after the Law is signed is to allow Government to provide the resources and put in place the administrative staff.

Why would you appoint a Chairman before you recruited a board? What was he chairing?

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Well, if I may draw your attention to section 105 of Part 17 of the Law, it says, “**On the date of commencement of this section, the Cabinet shall appoint the non-executive member who shall be the first Chairman of the Board, and the first Chair shall serve an initial term of three years.**”

It was right there in the legislation itself. It says, “**The Cabinet shall appoint the remaining four non-executive members of the first Board in accordance with the procedure set out in this Law and two such non-executive members shall serve an initial term of two years and the other two non-executive members shall serve an initial term of four years.**”

I am not sure how you could operate under the Law, if the Law had not commenced. I could not put out the advertisements or officially have the Leader of the Opposition’s nominee, et cetera.

**The Chairman:** The simple administrative solution to that was for Cabinet to commence different sections at different times by Commence Notice. We have precedent; the National Conservation Law is a good one, some of that might not even be invoked yet, although it was passed way back when.

My concern and my dilemma is that the Law clearly sets out the process, but the Law does not say that Cabinet shall appoint the remaining four executive members after appointing the Chairman of the board. We understood—

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Actually, Mr. Chair, if I may, on that point: The Chair of the board is a member of the nominating committee; so I could not have a nominating committee properly constituted without the Chair being appointed.

**The Chairman:** All the Government had to do to put in place the proper governance structure was to bring in section 105 six months before they brought in the whole law.

Anyway, that is all behind us now.

The problem we have now is how to get from here to where the public believes that OfReg is worth the money that government spends on it, which I would suggest very strongly to you, is not the public’s opinion at the moment.

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Mr. Chairman, just for the record.

If I could just clarify that it is my view that funding was not tied to the appointment of the board. The issue of the funding was not tied to that in any way, shape or form. Thank you, sir.

**The Chairman:** Mr. Harris.

**Mr. Austin O. Harris, Jr.:** Thank you Mr. Chairman, and certainly thank you to the witness for being here this afternoon, and for answering the questions, I believe, as honestly as he possibly can.

I only have one question and it emanates from your responses to the Chairman.

Mr. Chairman through you: The witness agreed with the statements that emanated from the Chair which expressed concern about the viability and benefit of OfReg as an entity by both members of the general public, as well as Members of this honourable Legislative Assembly which, I might add, includes Members of the Executive as you also gave evidence which suggested that the Cabinet itself has had to give specific policy guideline reminders to OfReg from time to time over the past three and a half, almost four years, in terms of what the Government and therefore the public expects from them. Things like:

- Affordable prices in petroleum prices;
- Affordable prices in energy utilities;
- Further development in renewable energies and a move away from fossil fuel dependence; and
- The expansion of broadband and telecommunication options to the wider Cayman Islands, specifically to the Eastern districts and the Sister Islands.

I know this question has been asked a number of ways; I suppose I am just going to add another. Why has it been so difficult to keep OfReg’s attention focused on these policy directions versus the apparent total independence they appear to enjoy, allowing them to dance to their own beat and timeline, spare no expense?

Also, how have we, the Government, attempted to provide an alternative to what is the generally perceived impression of OfReg’s viability and benefit. How have we tried to correct the course the good ship OfReg is sailing under?

I will just add, given that OfReg consists almost entirely of former private sector employees coming



from practically one specific former private sector company, what efforts are being done to change the culture within OfReg to one that reminds them that we are all, at the end of the day, public servants and that is what separates the public service from the private sector?

Specifically, as opposed to generally, are my questions directed. Thank you, Mr. Chairman.

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Through you, Mr. Chairman and thank you to the member for that question.

[Pause]

**The Chairman:** Mr. Rose, go ahead.

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Thank you, Mr. Chair.

I believe that the honourable Member has touched on a point which I think has been best summarised in a little saying that, *culture eats strategy for breakfast*.

No one can say that they do not know what Government wants them to focus on. I think anyone who watches the procedures of the Legislative Assembly or has heard the comments from Members of the Opposition, whether it is in this honourable House or on the radio, or seen the correspondence between the central Government and the authority, there is clarity as to what the areas and concerns are. We all live in this community, we know what is worrying people, what is concerning people, and the impact they can have on that. So, I do not think strategy has necessarily been the issue. I think culture has been the issue and when you have a vacuum in leadership, as we did for a period of time there, it did not help.

However, you also have a challenge—an inherent challenge—and I think that was brought to bear in the points around a merger plan. We had one Ministry that worked on the project of creating OfReg and the legislation, et cetera and perhaps, as an overall public service we fell short in seeing the project through.

The project was not just getting the individuals nominated; I was very clear what my role was. My role was to get the board constituted by chairing the nominating committee as it is set out in the Law. I was very clear in my role from the outset but there is an inherent challenge. Anybody who is married or has been married, two becoming one is not an easy thing, sometimes it is virtually impossible.

You are talking about taking three and four and making one out of them, that is even more challenging. So we had a marriage of ERA, ICTA, and CPI, and of course trying to pull in the Water Regulation side of things and each of those groups of indi-

viduals come with their own histories, cultures, practices, et cetera. You would have a mixture of individuals who would be considered public servants, because they work for the statutory authorities and others who would have come on-board with extensive private sector experience, et cetera. All of that does not just become a single culture overnight.

One of the things that we have done as Cabinet office, again not overstepping our bounds, but to support and facilitate, especially with the arrival of the new CEO; we recognised, *Listen we have to do everything to give him the opportunity to get his feet on the table and to kind of bring everybody around the table*. Because obviously there would have been some challenges, I think it was touched on earlier, you are now overseeing three individuals who applied for the same job that you did; so, there are some cultural issues in getting people together.

In recognising the challenges and gaps as a relatively young organisation, the Cabinet Office's Deputy Chief Officer facilitated a two-day retreat in December, 2019 covering best practices on OfReg's purpose and mandate, their current reality and challenges, leadership qualities, visioning, core values, performance indicators, change management, and team building best practices like breaking down silos. Because again, one of the fundamental challenges I think, with OfReg, in terms of funding, is that the way it was designed if I recall correctly, the Law almost stated that while you were one organisation—I think ICTA probably brings in the most revenue—you could not technically use the revenue from that sector to support the other elements under that umbrella.

Each sector was supposed to be almost self-supporting and autonomous; and you can understand the underlying premise behind that, but it leads to the hardening as opposed to the softening of silos. If you have one sector that is doing well and flourishing, and the other one is not doing so well, or one brings in more money than the other, in many organisations there is a tendency to feel money and importance seem to go hand in hand.

I am not saying that is the case, but the way we even wrote that legislation, I never quite understood in practical terms how that was supposed to operate. Nonetheless, we looked at breaking down silos, performance management, training and development, stakeholder engagement and reviewing the strategic plan and annual plan; and one of the important things with that exercise was that it was not just for senior management, it was not just for the board, but it included the staff themselves, the individuals who, when we are criticising OfReg, these are the individuals that do not have the "glamorous jobs".

I know that people have their own impressions about OfReg, pay packages and those kinds of things. I am not getting into that, but I know that in any organisation, the back bone is the staff, the individuals who are unseen, who come in day in and day out, do their

jobs with commitment, integrity, and passion because they believe in what they do and there is no glamour, glitz or glory in what they do and they are often forgotten.

So, we brought everybody around the table to be able to talk to one another, to see each other in a different light; there was no boss-man and no subsidiary, everyone was one and it gave people an opportunity to speak their minds, to open up, to share their views and to highlight their strengths and what have you. I received rave reviews from the Chair, the CEO, other members of the staff thanking me, and really, I deserve no thanks we have a brilliant Deputy Chief Officer, Mr. Robert Lewis, who is a passionate trainer and I think he has also been offering his policy workshops which would have been available to individuals there.

I just shared that to point out that we recognise culture will eat strategy for breakfast, so it was a small step. At the end of the day, they have to implement these things, but they were committed to it and people really got into it and I think it was an important step in allowing the new CEO to get a sense of who his team was and for his team to get a sense of who he was. They did not go anywhere fancy; they just went to George Town Yacht Club and we had a conference room so do not worry, no pile of expense was incurred, but the benefit of what that did for boosting morale because clearly, if you are hearing your organisation's name not in the best light, day in and day out, morale cannot be good.

Again, my view is that failure is not an option and if that is something small that we can do to help create a positive impact on the culture of that organisation, then that is the least that we can do and I am committed to seeing it through.

**Mr. Christopher S. Saunders:** Mr. Chairman, through you.

First of all I want to thank Cabinet Secretary Rose for coming here today. He is one person that I have a lot of time for because I have always found him to be a very decent but, more importantly, a very competent person.

Through you Mr. Chairman, I just want to read a section of the Utility Regulation and Competition Law 2016, in particular section 6(2)(g); it reads: **“In performing its functions and exercising its powers under this and every other law the office may establish and maintain an official website.”**

In this day and age, 2020, where a website is literally mandatory for anybody to do business with, if you were to go on OfReg.ky, which is their official website, and go into the *About Us* section and you look for the members of the management team, as you click in all their names it will say, *Coming soon*. If you look on the Board of Directors and you click on their names, it will say *Coming Soon*. Mr. Chairman,

*coming soon* appears to be the mantra with OfReg and unfortunately, in this day and age, especially with the challenges we have now, where many families are struggling, coming soon needs to come.

The public accepts that these utility companies need to be regulated but at the end of the day, when you go back to the Law it clearly says, **“the principal functions of the Office, in the markets and sectors for which it has responsibility, are to protect the short and long term interests of consumers in relation to utility services...”** and it continues.

That is the reason we are here today, Mr. Chairman, and my question to the witness through you is simply: When can we expect to see cheap fuel prices and better internet service? While culture eats strategy, what tastes better is the proof in the pudding and that is what we want to know—when can we start eating the pudding that we have been promised and we cannot see yet?

That is the only question I have and I know that ultimately it is not the Cabinet Secretary's responsibility, but that is the OfReg culture that needs to change; and I think, to some extent, my colleague from Prospect touched on it; when it comes down to culture, there needs to be a cultural shift in this country—and it is not just in OfReg, because we had the same issue with pensions and different industries.

I know that to some extent it is not a question the Cabinet Secretary can answer because some of it is policy related, but from a governance standpoint, something as basic as getting the website up. You know who the members are; I am sure each of them has a short bio and this is a cut and paste job of taking their bio and putting it on a website which would have been so much better. To have *Coming Soon* on the website of an entity that regulates ICT and other multi-million dollar companies in 2020, almost four years since this Law passed, is unacceptable.

It is a culture that needs to change. Get the low-lying stuff done, get the small things done. That is the kind of thing you need to build up credibility, because if you cannot get the small things done such as taking a bio, copying and pasting it onto the website to comply with the law, how can we expect that you will comply with the bigger things the law expects you to do?

We have been on this website thing and it is not just in OfReg, it is in government. If you look at the GIS website; last time I looked at it was a month ago, and there was a picture of the Premier with the former Governor, Helen Kilpatrick on the very front page of GIS. And if you go on GIS' page, you do not even see any of the current events that they are pushing. That is a culture that needs to change and like I said, it has permeated into other sectors in Government. And that is what I would really like to see from the Cabinet Sec-

retary and those in position in Government—get the small things done. That is all I am asking for.

Thank you, Mr. Chairman.

**The Chairman:** You mentioned earlier that separate Ministries have Water, ICTA, Fuel. Explain to me how that is possible. If we have a regulatory authority that is responsible for all these, for which you have responsibility, what are the Ministries doing with these subjects?

*[Inaudible interjection]*

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** If I can attempt to explain, Mr. Chairman.

During the formulation of OfReg, the view was to have the administrative functions, dealing with the budget and those matters, placed with the Premier. That is where we come in; we are obviously the Portfolio that has that administrative oversight, but it was understood that you could very well have subject areas, the actual subjects themselves and the policy that drives those subjects, under a different Ministry.

This is how it was created, this was no mistake. It is exactly how it was designed. For instance, that allows the direction of general ICT policy and such things to be handled by a different Ministry. As it turned out, after the last election we ended up with infrastructure subjects being under one Ministry with Water under another Ministry.

I think even the legislation itself speaks to Minister with responsibility for the sector. So there is an identification in there that there could be times where the Ministry responsible for the sector itself—

**The Chairman:** You cannot have an overarching regulatory authority for which a portfolio or a Minister has responsibility, but then you are telling me that we have a sector (Water and Fuel), which another Minister can do. So what is OfReg doing? If the Minister is driving policy for Water, what is OfReg, that is regulating Water doing?

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Perhaps an easier example would be the ICT side.

It is very clear that the responsibility not for regulation rests with the Ministry for that sector. For instance, a new product is coming to the market; I do not think it would be appropriate for new players in the industry to discuss or negotiate any concessions or whatever they want to bring in directly with the regulator.

The regulator would have to decide on the licence, conditions, et cetera, but as overall government policy, whether we want this particular product, goods or service available in Cayman, that is within bounds of the Executive to determine. The healthy

separation exists because the regulator then has the ability to provide the licensing conditions and what have you. You would not want those two in the same house, under the same roof.

**The Chairman:** Under the current governance structure, Water has a separate board other than OfReg's board which manages what?

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** If I can clarify, Mr. Chair.

The Water Authority rests under the Ministry of Employment, Youth, Sports, Agriculture and Lands. The Ministry is responsible for the Water Authority, but OfReg regulates the Water Authority. So, the subject of Water sits with that Ministry but the regulation sits with another.

**The Chairman:** So you could have a situation where a government could develop a whole new policy from what the regulators would approve, take it to Cabinet and get it approved. Who resolves a conflict?

This whole thing is beginning to sound to me like it was nothing more than an intended exercise in futility designed not to achieve what the public is asking for, which was better internet and lower fuel prices; because everything we try to find out we hear that there is some other body that is doing some other thing.

I would assume that the Minister who had responsibility for OfReg, automatically Water is already in OfReg and the regulatory section of that—because that is all the government should be doing, regulating the industries. Water Authority is a sector of government, right?

Anyway, maybe I am missing something here that some genius with a higher paygrade than me can put together, but I can't connect the dots. Coming soon; the dots will soon be connected. I have a couple of other questions, though.

None of these authorities, other than OfReg, is new. ICTA, the Water Authority, the Electrical Regulatory Authority were functioning well for years. How is it possible that we can create an entity which can be so disruptive and destructive, in trying to merge things that are working, so that nothing is working now and everybody falls back on this thing, *well you know, it is coming soon but we have not really gotten there yet or this person or that person is not cooperating*, when we have an overarching body that was created to do this. I do not know if you can answer that, because I cannot. That is okay.

We were told this morning that one of the problems that the Auditor General identified was the lack of a succession plan. We were told this morning that the first CEO, Mr. J.P. Morgan, did a complete succession plan and that it was approved by the

board. Have you seen that succession plan and can you then explain to us why it was not followed?

We are expecting to get a copy of it delivered to us later.

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Mr. Chair, I honestly cannot recall receiving the succession plan.

I do recall discussions about what would happen at the end of Mr. Morgan's tenure, but I would need to refresh myself on what that succession plan entailed. I do not have it to hand, sir.

**The Chairman:** Is a new succession plan under development of the board for the organisation as it is now?

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Again, Mr. Chair, because of my position, and not being on the board, I would not be in a position to answer that question; perhaps someone within the board would be able to.

**The Chairman:** So, not included in the directives from Cabinet to the board, were the development, funding, implementation, timelines, et cetera, of a proper succession plan? That was not a directive that was sent to the board?

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** I do not believe so, sir. I do not recall any such directive.

**The Chairman:** Okay. Thank you. Mr. Bush.

**Mr. Bernie A. Bush:** Through you, Mr. Chair.

When the chairman decided to throw his hat into the arena as CEO, how did this affect the running of the board and the recruitment process?

Thank you.

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Again, I could not speak to how it affected the running of the board. I can just recall that at the time of that suggestion coming forward there was no permanent CEO; there was a rotation of Acting CEOs and a number of challenges existed. That was the time at which that suggestion was brought forward.

**The Chairman:** Was there an objective to having Acting CEOs? In other words were the CEOs who I believe happened to be—what did the Chairman call them—sectorial directors, being tested for their CEO capability? How did the suggestion for rotation of these executive directors come about?

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Again, given that the board appoints, it would be a board decision to appoint the Acting Chair.

I would not necessarily be privy to those discussions or decisions and I would not have been in the room at the time or have representation on it. Obviously there were comments made; it would be unfair of me to infer that the Chairman would not reach out to share what was happening, but I could not speak to that otherwise.

**The Chairman:** Not to interrupt you but, correct me if I am wrong. The first CEO was appointed by Cabinet. Succeeding CEOs is intended to be the responsibility of the board.

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Yes, sir. It is a process outlined in the—similar to the Public Authority Law (PAL).

It is cemented in the PAL and that is another thing; by the time it came around for the full recruitment of the CEO, the PAL would have been in effect.

**The Chairman:** So you are not aware that the purpose of the rotation of existing—I think they are called executive directors in the sectors, were a methodology for testing their ability to be CEO and whether that was part of what J.P. Morgan set in place as part of his succession plan?

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Mr. Chair, through you.

I cannot speak to what Mr. Morgan set in place and whether that being part and parcel of that, but quite clearly, as in the public service, when you give people an opportunity to act, you would imagine that the next logical step for each of the individuals who are acting or had a period acting, would be the CEO's position, potentially, and it would be for them to apply.

Clearly, having that opportunity to act would give them, as well as the board and others, an opportunity to see how they conduct themselves in the position.

**The Chairman:** And in the absence, as identified in the Auditor General's report, of any kind of performance standards, there would not be any existing records as to the standards at which either of those performed during those periods of time?

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Mr. Chair, if such records exist, they would be kept at OfReg and

would be something the board is privy to; it would not be something that is retained at central Government.

**The Chairman:** Any other questions?

Mr. Rose, thank you very much for coming, sir. We hope that we will be in a position to make some recommendations that will get to the two things that the public wants and for which this regime was set up for; lower prices at the pump and better internet in North Side.

*[Inaudible interjection]*

**The Chairman:** That is not coming at all.

I did an analysis of my CUC bill, June 2019, 1,300-odd kilowatt hours, my fuel bill was \$164; June [2020], last month, 1,300-odd kilowatt hours, my bill was \$99, representing a 40 per cent reduction on the fuel factor on the bill, on the same kilowatt hours. And when I look at the North American market, particularly around the published Gulf Coast, I am seeing that same 40 per cent reduction at the pump.

However, here OfReg is pounding itself on the chest, tapping itself on the head, putting on this top hat and dancing shoes and taking credit for 14 per cent. Do you have any insight as to why the public in Cayman are not getting the same 40 per cent reduction in fuel cost that CUC obviously is getting? I do not know what CUC pays for fuel, but I am just using what I pay on my bill, as an example.

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Mr. Chairman, like you, I am eagerly awaiting the results of the study that OfReg has undertaken around the whole fuel pricing. My understanding is that it is very close to being wrapped up; it may, in fact, be finished. I am not sure how COVID would have impacted that, but I know that they were getting close to the finish line.

Of course, we asked questions just like the rest of the public when we saw markets prices at zero and below. Of course, we recognise it is not a simple factor of whether the market is at this price; then that is a direct correlation to what we pay at the pump. However, we have been told, as others have been, that this study is almost completed now. I think that is an important piece of work, hopefully it will give us all a greater sense of clarity and we will take it from there when it arrives, sir.

**The Chairman:** Well, to repeat the slogan that started “soon come”.

Is there any particular reason why you used the terminology study, rather than investigation? Because you see, maybe I am wrong again, but I think it is a simple formula. The cost of fuel in the Cayman Islands should represent basically three factors: the original cost price; the cost of transportation, storage,

et cetera, into the Cayman Islands; and the cost to distribute it locally.

Those two, the cost to distribute it locally, and the cost of to get it to the Cayman Islands, do not vary a lot. They may vary annually, but they do not vary monthly or quarterly because shipping prices do not escalate like that. What changes is original price. So, if the original price goes down, the price should go down. I can assure you that I am not aware of a single instance where that original price went up that the price at the pump did not go up in Cayman.

Again, maybe I missed a few but I drive a lot. I live in North Side; my four year old truck has 87,000 miles on it. Those people who live in George Town and drive 500 miles for the year do not know what the cost of fuel is. So, I do not think it is a complicated thing. It seems to me that OfReg insists that this is such a complicated formula that it takes them months to calculate it. They should have this formula in the computer and they should be able to put in these three things and say what they are.

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Mr. Chair, if I may. From the bits of information that I have seen, I think there are quite a few more factors than three.

**The Chairman:** Such as?

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** I cannot recall all the various ones but—

**The Chairman:** Then there cannot be; because if you cannot remember them, then there cannot be.

*[Laughter]*

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** I remember a number of different colours and things but it all depends on a number of regional factors as well. Where is our fuel coming from, what is the refinery process? You have to take that into consideration.

You are taking me down a road that is not my area of expertise and I am not going to venture into that. I believe that you probably will have other individuals who could speak to that more clearly but what I can say, in fairness to those individuals, is that there are a number of other factors. And I do also understand that one of the key challenges is getting the information from the companies themselves as well, because that is not a simple process.

**The Chairman:** Part of the reason we cannot get the cost now is that Customs charges duties on volume.

Mr. Chris and I are taking care of that on the 27<sup>th</sup> though. We are bringing a Private Member's Motion to change the Customs Duty from volume to CIF

like everything else, because then they will have to declare the price so Government will know what is the original cost and the cost of getting it to Cayman on every shipment of fuel that comes here.

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Suffice it to say, sir, it passes through many hands before it gets here.

**The Chairman:** It should not.

**Mr. Christopher S. Saunders:** Through you, Mr. Chairman, just to point out something to the Cabinet Secretary.

If you go on RUBIS Cayman Islands website, there is a section called Fuel IQ and in the different parts like import, if you click on that it will take you to another website called global prices and you can actually see the day-to-day cost, you can convert it to UK gallons.

You can see the cost across many different countries around the Caribbean that are listed there; Jamaica, Cayman, Haiti, Puerto Rico, et cetera, and you can see how much extra Cayman is paying compared to countries around us. I went through it last night but it only gives you the price at a particular day, so it is current, it does not give historical information, but for those in the listening public they can see how much more Cayman is actually paying compared to other places and draw their own assumptions.

I have always been about the future. In politics we always say there is no future in the past; what has happened has happened. After listening to the Cabinet Secretary, the last question I want to ask is: if there was one governance thing that you could change in your office, something you could do differently that you think could improve OfReg in their governance process, what would that be? Because it appears that somehow, the teething problems have them a little bit distracted in terms of what they should be focusing on and we have spent more time on administrative and governance as opposed to, say, regulation.

What do you think would make OfReg better, because at the end of the day, the utility companies have to be regulated. We need to find an effective and efficient way to regulate them. Non-regulation is not an option, but if we have to regulate them, what is the best way to do it. I have said earlier, even when the Chairman was here, that this started out as an exercise to grant certain synergies and, based on the Auditor General's report, they are costing the country more when you combine them than when they were separate.

An error does not become mistake until you fail to correct it. There is nothing wrong if we are going to say, *You know what, we tried a grand experiment it did not work*; maybe we need to go back to the way

things were so that we can get concentrated expertise on different things because you look at the membership on the board. You are trying to find five non-executive members to govern an area with four responsibilities and you will literally probably find one of each and then, of course, you have the executive members on the board also.

The question I have to ask myself looking at the ICTA board, there were 7-10 members before just on ICTA alone. We look at the ERA board and there was more specialised expertise there. Maybe the board is too small; maybe you need to expand it. Maybe you need more sub-committees. This is what I am trying to get to. What can we do to make this more efficient, because there are still teething problems after three and a half years and I have not yet seen anything to give me any level of comfort that this is going to change in a year or two so?

If there was one thing you could change or that you think would improve the process, what would that be?

Thank you.

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Thank you, Mr. Chairman.

In considering this question, obviously what we want going forward is to make a positive impact in the lives of our citizens and residents and that will always be evidenced by some of the key things that the Chair has pointed out and things that the Cabinet has emphasised for a very long time.

I think it would be great if they could achieve. I know that they are doing some good work on looking at this important long-term issue of our connectivity with the rest of the world and I know they are making progress on that. But if I reflect on our own experience within the civil service, governance is critical. If your governance framework is not right, it is going to create problems in terms of your culture and you will have challenges in implementing your strategy, so I think we cannot brush over the governance issues and I think that is where my responsibility and role as envisioned under the Public Authorities Law, as a Chief Officer, comes in, to support that.

I think also, that that is where we can provide help because if I look at the civil service, our journey to world class has not been an easy journey. It has not been simple, but I must recognise the work of thousands of civil servants who have committed to the Deputy Governor's vision of a world-class civil service. When we look at some of the historical governance issues that we faced when it came to our own accounting procedures and practices, I don't think we ever dreamt of a day when the Chairman would be inviting individuals down here to receive a plaque of an award.

I know there was a time when the morale was challenged because we had all of these outstanding accounts and annual reports were not done. There were questions around financial reporting; there was never a real question about the probity, but there were issues around the timeliness of getting these things done. We were lagging behind and it would be pretty hard to talk about a world-class civil service, if there is a pile of things still outstanding.

Winning is like a magnetic force, when you start getting those little victories. For instance, performance management is an expectation within the civil service. Everyone understands that when you are a civil servant you are going to sit down and do a performance assessment; you will have a set of goals, not just KPIs [Key Performing Indicators]. When our assessment is done, the Deputy Governor sits with the Premier to find out what to do for the next coming year; what do you want the Cabinet Secretary to focus on. So, I know going into it what I have to do, and so I study the mark and feed that down to my team and all in my team understands.

Mr. Chairman, I can honestly say, that while we are not in a place to do a victory lap, because of dealing with the governance issues—the Deputy Governor tackled that right away and got on board resolving some of these legacy issues—that helped to build a culture of excellence.

There are many things we do not get right, but I think it all came together recently in our response to COVID. I think people can see a civil service that cares, that of people stepping outside the box and understanding. We had to spend money and this and that, the governance around that was there, even in an emergency. It was not the Wild West. We had people placing themselves in harm's way to serve, because they believe in the organisation they work for, they understand their role and responsibility and there is a culture of excellence.

So, I urge that we continue to support the development of that culture of excellence within OfReg. The little things like performance management—they are not little, not small—consistency across the board within the organisation, when it comes to remuneration and all these kinds of things. I think that all those things are absolutely critical; adherence to the travel and procurement policies. Taking all of these things on board and ensuring that becomes part and parcel, becomes second nature in there. That will help; that will help tremendously, because it will dial down the distractions. I think, so many of these other issues have eaten up so much time, used so much energy. No pun intended.

My view is that whatever we can do to continue to help them. I believe this Auditor General's report does go a significant way to outlining some simple steps. And what it points, and I think the previous witness would have pointed to the fact, is that there are wins, but it is hard to see the wins when people are

seeing other things and other issues. The Auditor General's report spoke to the wins and the things that are going better and things that are going in the right direction.

I think we have to ensure that they remain going in that direction and that is what we can do to support them from the Cabinet Office.

**Mr. Christopher S. Saunders:** Thank you very much for that answer.

I can honestly say to you that there has been a big improvement. I have had dealings with many Chief Officers and even Managing Directors and CEOs of statutory authorities and government-owned companies. I can say for the record and I have said it before: you, Wesley Howell, Ken Jefferson, Gloria McField—all switched on.

I can also tell you from my own engagement dealing with people in the private sector that there is a certain amount of professionalism and calibre that you guys bring to the table. The challenge, and this is more something for the Deputy Governor and the Governor himself, is how do we roll out that culture? Because if we go back to the genesis of the Public Authorities Law (PAL), it is also to recognise that there were entities that were ran away.

I really do feel bad because entities like CIMA, whose work I look at a lot, is more switched on than others. Unfortunately, when the sun shines on the righteous, it is shining on the unrighteous too. I mean, when a law is passed, it affects the good operating entities as opposed to some of the bad ones, and I really do feel back for those that get caught in this net.

What we ultimately need to do is take that culture that some of you have achieved and I can say wholeheartedly, that I absolutely have full confidence in some chief officers. I can equally say that some chief officers better pray to God that the Government does not change, because they will not be there. I can say that to you based on different stuff.

From that standpoint, it is about rolling that culture out. Mr. Rose, I really wish to God that some of what you and the others I have listed have—Gloria, Wes, Ken—can be rolled out elsewhere across the public service and in particular, the statutory authorities. Looking at the Public Service Pensions Board, (and we looked at pensions recently), what they have done over there has put many of the private sector pensions to shame.

Sometimes the public has the belief that government is inefficient. I can say to you, based on a lot of stuff, that there are parts of Government that are actually world-class already and are already exceeding expectations, but unfortunately, when people say the civil service or the public service, everybody comes under that umbrella and I really do feel bad.

What is actually missing is that those who are not performing, are not being fired; they are either being transferred to another department and the problem

is going somewhere else, and until we start firing people, terminating them for incompetence, et cetera, we will not achieve world-class. For those entities and Chief Officers that are listening, I hope to God they take an example and a page out of your book and others', to say, *You know what, at least you can accept that we have problems*; and that is the first point of fixing problems, to accept that there is a problem. Many have come and are very dogmatic in their defence of incompetence.

At the end of the day, as I said, the public will only measure OfReg by faster internet speed and cheaper fuel; anything else really does not matter.

I want to thank you very much for coming here; I think you have been frank and straight-forward. Thank you and keep up the good work.

**The Chairman:** I would like to add my thanks but would also suggest that your current Chairman's view of the Auditor General's report does not jive or coincide with your view. I think it is important that we see these reviews as an opportunity for collaboration and correction, where correction is necessary, and we try to stay away from that combative attitude that we see in some sectors.

Thank you for your time and have a good evening.

**Mr. Samuel Rose, Cabinet Secretary, Cabinet Office, Cayman Islands Government:** Thank you, Mr. Chair and members.

[Pause]

## UTILITY REGULATION AND COMPETITION OFFICE (OFREG)

### ADMINISTRATION OF OATH OR AFFIRMATION

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** I swear by Almighty God that the evidence I shall give to this honourable Legislative Assembly, shall be the truth, the whole truth, and nothing but the truth.

**The Chairman:** Good afternoon, Mr. Anderson. I welcome you to the Public Accounts Committee and thank you for finding the time to come and give evidence before us. As you would have been made aware, this afternoon we are talking about the Efficiency and Effectiveness of the Utility Regulation and Competition Office, commonly referred to as OfReg.

You have been invited in your position as Executive Director. I think you are responsible for the electrical component of it? Anyway, when you answer

the first question, please give your full name and title so it can be recorded into the Hansard.

**Mr. Gregg Anderson, Executive Director-Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Vanguard Anderson; my position at OfReg is Executive Director-Energy and Utilities, with responsibility for electricity, water and wastewater sector.

**The Chairman:** One of the things identified in the Auditor General's report is the relationship of the Executive Directors like yourself sitting on the board, and my question is: Do you find a conflict in that role and does it present any difficulties to you in managing your operation?

**Mr. Gregg Anderson, Executive Director-Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, my answer will be as candid and succinct as possible.

I do not find it a conflict of interest; as a matter of fact, the URC Law specifically stipulates that Executive Directors are considered the primary advisors to the board because of their specialties, and it is interesting to note that OfReg was formulated off the UK regulatory model which was the first one that started looking at liberalising markets.

If you look at the regulatory authorities there, ranging from Scottish Water right through to the Office of Roads and Railroads, they all have executive directors on their boards. And Mr. J.P. Morgan, affectionately known to us as J.P. as he preferred to be called, followed that model and recognised that the importance of having the Executive Directors on the board was because any decision the entity makes regarding regulatory matters could be subject to judicial review.

The other issue that arises there is that none of the non-executive directors have any experience in the respective sectors that they regulate. So, if they make a decision on any matters regarding the licensees, then those decisions could be subject to judicial review, and that is why the Law says that the board shall give due regard—"shall", not "may"—to the advice the Executive Directors.

**The Chairman:** The normal way that is done in the public authorities in Cayman is that whatever matter is before the board and needs that kind of technical expertise to advise the board, the person that has it comes in, makes a presentation to the board, and gives them the recommendation.

I think if you look at the boards that you mentioned, the executive directors are outnumbered on the board. In this situation, although everybody says that it is okay because you do not vote, there are only four appointed non-executive members plus the



Chairman and four executive directors plus the CEO. Am I correct? I think that is the make-up of the board.

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, no; that is incorrect. It was recently changed to comply with the Public Authorities Law where there is 60/40 representation of non-executive directors versus executive directors on the board.

I would also like to add that even the *Public Sector Good Governance Handbook* recognises that the expertise of people like us, is required on the board, so it makes proper decisions. That is found on page 22 of that handbook.

**Mr. Christopher S. Saunders:** Thank you very much, Mr. Chairman. I want to thank Mr. Anderson also for coming down here today.

The make-up of the board is not really my primary concern; I am more concerned with the effectiveness of the board. Through you to the witness, Mr. Chairman, can he explain to this Committee and the listening public, what goes into the regulation of these entities? For example, Caribbean Utilities Company (CUC); what does the day-to-day or month-to-month or quarterly-to-quarterly regulation of CUC entail? What does your office do in regards to protecting the public from a monopoly like CUC? How is it regulated?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, through you, to MLA Christopher Saunders.

Our primary responsibility is enshrined in the URC Law as well. It is to ensure that consumers pay the least affordable cost for electricity and, secondly, to ensure that the licensee makes a reasonable rate of return. When CUC licences were issued in 2008 and the Electricity Regulatory Authority Board was set up, several mechanisms were enshrined in those licences to ensure that CUC does not over charge consumers. It is called a rate cap adjustment mechanism. CUC cannot just simply raise its rates; it has to apply to OfReg for us to either agree or disagree on the rates. That licence requires CUC to do quarterly reporting so that we have a real feel of what their spending and operational statistics are, of anywhere from how much diesel they are consuming to how many outages there are; and what was their revenue for the particular quarter. They also have to give us a report.

One of the things I instituted with regards to outages is that we have a real-time outage reporting mechanism that let us know what is happening to the network at any point in time. I purposely left my phone off because it buzzes almost instantaneously with outages.

Another thing that we do according to the licence and the Law as well, is that any capital expenditure CUC has to make, they have to submit to OfReg a 5-year capital expenditure plan for us to analyse, to pore through, and agree whether these business cases make sense or not, or whether it is in the best interest of the consumers. At the end of that evaluation, if we feel that it is beneficial to the consumers and also meets the revenue requirements of the licensee, then our team puts together a board paper which we present to the board with our recommendations on whether or not to approve that capital expenditure plan. We do something similarly with any rate requests that we get from CUC.

**Mr. Christopher S. Saunders:** Thank you very much. Has there ever been a case where CUC has made a request and it was turned down by the board?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** A request - a general request, or any?

**Mr. Christopher S. Saunders:** In terms of going back to the assets.

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Yes. We have had capital expenditure business cases that were submitted and we have rejected them and asked them to supply more information. We would consider them at a different point in time if they met certain thresholds.

**Mr. Christopher S. Saunders:** Going through all the different things that CUC charges for in their bill, based on my own research and looking at industry trends, once I take out the fuel factor, I find them to fall within some of the better-performing Key Performance Indicators in the industry. However, that fuel factor in the bill is a serious bone of contention for me; it is the one part of the bill that is literally almost unregulated and is roughly 50, or in some cases, 55 per cent of the bill. My question through you Mr. Chairman, to Mr. Anderson is: What is OfReg doing with regards to that fuel factor part?

Now, when the fuel prices went negative, I reached out to Mr. Malike [Cummings] at the time, and he did mention to me that OfReg had proactively reached out to CUC with regards to some future options and so forth, and I will ask him to provide an update on that tomorrow.

What I am trying to understand here is that because it is a pass-through cost it does not seem to be something that has been given a lot of focus, because some months it represents 50 to 55 per cent of the bill. What can be done to regulate that? How is that fuel factor part of the bill being regulated? What is

being done, looked at, considered, and what are the components that are going into that analysis?

Thank you.

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Thank you for that question.

Mr. Chairman, through you to MLA Saunders: I can assure you that we monitor the fuel factor regularly; actually on a monthly basis. I am pleased to say that it has gone tremendously, to which consumers will see a significant impact on their bills this month, next month and subsequent months.

In regards to what OfReg is doing about the fuel factor, you are quite correct; it is a direct pass through to consumers. One of the things that we have been actively pursuing is the prospect of getting alternative fuels here in the Cayman Islands for CUC to burn versus diesel, as well as trying to speed up the implementation of more utility-scale solar PV plants as well as other renewable energy plants.

Also, one of the things we have done is a consultation paper with regards to a renewable energy auction scheme so that we can go out and have people bid for the capacity that is currently identified in the integrated resource plan which is another 20 megawatts. We have been in several discussions with several suppliers of anywhere from liquefied natural gas to compressed gas to compressed petroleum. And one of the logistical problems we faced before is that there is a sweet spot at which it makes economic sense for any of those fuels to replace diesel.

We had a meeting about three weeks ago with somebody who has come up with a solution that enables the conversion of these diesel engines to natural gas without having to face this 'not in my backyard' scenario with another storing facility at South Sound or elsewhere.

So, there are containerised solutions that are available right now for natural gas, and compressed natural gas as well as petroleum. And we are actively pursuing that with CUC and having discussions with these suppliers with the intention of trying to bring forward the conversion of these diesel engines to natural gas, as well as adding more renewables to the grid.

**Mr. Christopher S. Saunders:** Thank you very much.

Earlier, you said that before CUC can do certain things they have to reach out to obtain permission from OfReg, et cetera, and in some cases those requests have been denied. Is something similar being done for the fuel companies? How are they regulated as opposed to say, CUC, because CUC's contract is actually quite clear. As a matter of fact, I noticed that CUC actually has two licences; one for the generation which was issued in 2008, and the latest one for

transmission and distribution which was done, I think, in 2014.

From that standpoint, CUC is well regulated based on going through the licences and looking at the different conditions and everything else. Where does that exist for say, SOL, RUBIS or the other fuel companies? How are they actually regulated?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, through you to MLA Saunders.

I cannot speak on behalf of the fuel sector. One of the things being done right now, I will say, is that there is a market assessment study being done in regards to how a regulatory mechanism could be put in place to regulate these fuel suppliers. I think he can elaborate on that more for you.

**Mr. Austin O. Harris, Jr.:** Mr. Chairman.

Yes sir, just on the matter of CUC that is presently on the table. First of all, I thank the witness for his attendance here this afternoon and I shall try not to keep him too long.

In recent months we have heard cries from the public that CUC energy rates charged to the public have not matched the price of petroleum products, which, at one time within the past three months have dropped to zero dollars per barrel in terms of global market price.

Now, whilst we accept that CUC prices are paid on a two-month delay, surely CUC, like Cayman Airways and every other major consumer of petroleum products, are buying fuel today for the supply it intends to use two months from now; yet the public rarely ever fully benefits in price reduction at the same discount that suppliers and distributors enjoy from time to time, based on significant price fluctuations in the global market.

How therefore has OfReg, but specifically your sector, achieved its function to protect the short and long-term interests of consumers in relation to utility services? Specifically, what independent investigation of CUC by the regulator OfReg, if any, has been done to ensure fairness in prices being charged, particularly during these economically depressed times such as COVID, or do we simply take CUC's word for it?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, through you to MLA Austin Harris.

I can assure you that in our sector CUC does not get away with anything. All of the information that they supply to us is heavily scrutinised. One of the things we did when we heard some mumbling about the fuel factor not being passed on to the consumers,

we did an audit of a sampling of CUC bills to ensure that these costs, whatever savings CUC was recognising from the fuel price drop, were actually being passed on to the consumers and through to form and it turned out that they were.

Something else we have done from as far back as ERA [Electricity Regulatory Authority] days, and I was a member of the ERA board, is that there was a fuel hedging mechanism that was put in place to ensure that the cost of fuels was minimised. I have been in touch with CUC over the past three weeks in regards to current fuel prices and how we can look at hedging future prices for consumers again. That is currently being explored and I am waiting on CUC to revert to us with what the cost will be for hedging these fuel prices so that consumers can benefit from the current low prices of oil and for future periods.

**Mr. Austin O. Harris, Jr.:** Thank you, Mr. Chairman. Thank you for to the witness for his answer; I just want to again, make a brief observation before moving on.

Unlike a great many persons in the Cayman Islands public domain who during the last three months have been in lockdown with themselves, their family, home-schooling, et cetera, many of the Members, if not all of the Members of the Legislative Assembly, including in particular, Members of this Government, have still gone to work every single day for the last four months; if not working more hours than previously, yet neither my March, April, or May utility bill at home has decreased by any margin that would otherwise represent the significant drops in prices of fuel. So, I would just simply add, that whilst usage for a great many in our populace may have gone up and therefore masked any discount in price for the utility provided by CUC, that formula is flawed. Certainly, I should have at least seen a decrease in my bill when I am absent from my home 14 out of the 24 hours of single every day and everything is off.

I would simply say to the witness that sampling of a few of CUC's bills, in my opinion and the opinion of a great many people, is not enough but as you stated, perhaps you are doing other things.

What can you say you are doing on the subject of energy to progress the Government's agenda on renewable energy, or the licence agreement with Cayman Water Company, which as we heard early on from the Chairman of the Board, has been languishing for over ten years?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman through you to MLA Austin Harris.

I just wanted to firstly add that there is a lag between oil price drops in the larger developed countries and what happens here, purely because of the delivery delays that occur. However, I just wanted to let you know that we did an assessment and since

March, we have seen the average residential consumer bill who consumes 1,000 kilowatts per month has dropped from \$240 to \$199 and that will continue to drop because of the fuel factor.

No two residential bills or even commercial bill will be the same. We could be staying in the same apartment complex but our usage habits are different, and this is not just evident here in the Cayman Islands; Bermuda reported it, Bahamas has reported it, Florida Power and Light Company, which is a good analogue to use, has shown the same thing. We also did a further analysis and I have a graph here that shows how the consumer consumption pattern has changed simply from staying home, working from home, et cetera.

I will turn to your question about the negotiations with Cayman Water Company. One of the things that I have to make clear is that OfReg inherited this from the Water Authority. That negotiation has been going on for nine years previously and was not concluded. I joined the negotiating team in November 2017, and we have had active discussions with Cayman Water Company since then. We have reached the point where we are in agreement with the licensing, the contents of the licence and most of the terms and conditions, but there are a few outstanding items that still have to be sorted out.

For instance, we are not satisfied with the rate of return and one of the things we have done, and is actually taking place now, is conducting a cost of service study to see what it actually costs Cayman Water Company to produce water and whether that is truly representative of what they are charging consumers.

We hope that study will commence within August and will take about two months to complete. Once that has been completed we will have a better idea of what Cayman Water Company's rate mechanism should be and then we can go back and resume negotiations with them, in regards to closing the gap where we differ on rates and rate of returns and other terms and conditions of that licence.

**Mr. Austin O. Harris, Jr.:** Thank you to the witness.

Just to follow on to that evidence that you gave. You have been responsible for the energy and utility sector since 2017; that is three years on.

I accept that certainly the negotiation with Cayman Water Company existed prior to your arrival, but how have you progressed that licence agreement over the course of three years; or is it your testimony that it has taken OfReg, and specifically the energy and utilities sector, three years to achieve feedback on reports that have been submitted to the supplier to determine a fair price? I mean, what takes three years and we still have no licence agreement? Surely the shareholders of Cayman Water Company (CWC) are at risk when their company is providing a service without a licence agreement. And, certainly, the consumers of the Cayman Islands are at risk in terms of

future pricing in the absence of a licence agreement that will hold them to any sort of committed price or price increases similar to what we see in the utility sector of CUC.

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, through you, to MLA Austin Harris.

It has not been three years. As I said earlier, I only joined the negotiating team in November 2017. When December rolls around there are many things that do not get addressed, either from their side or from our side. So, what have we accomplished with our team thus far? We have agreed on a mechanism that allows whatever savings that CWC sees that they share with consumers; that did not happen in the previous negotiations. We have come to an agreement on most of the terms and conditions of the licence, and like I mentioned earlier, there are about five to six different areas where we are at variance and those have to be closed before the proper licence has been granted.

To say that they are operating without a licence, is not correct; the licence extension that they had expired on 31<sup>st</sup> December, 2018. We have competent legal advice that says that they are currently operating on a licence at will, which is under the auspices of OfReg by virtue of my having responsibility for that sector. One of the other things we did while this licence negotiation has been going on, is that there was a water rate increase that CWC wanted to do and we refused it. So, we are looking for the best interests of the consumers and that is why we do not feel compelled to rush into a licence agreement that is not going to be beneficial to the consumers at the end of the day.

**Mr. Austin O. Harris, Jr.:** Thank you again. Through you, Mr. Chairman, to the witness and his response:

Earlier, the witness gave testimony that the URC Law was created using the UK Law as a guide when he defended the participation of the Executive Director for Energy and Utilities being a non-voting member on the board. I would first merely observe that the UK has a population of 67 million with a much-broader consumer base and an even more-broader utility base, as compared to the Cayman Islands with a population of 65,000, in terms of the board make-up and therefore really, we are not comparing apples to apples.

I wonder if the witness, through you, Mr. Chairman, can state to this Committee what role the witness plays in board meetings?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition**

**Office (OfReg):** Mr. Chairman, through you to MLA Austin Harris.

First of all I would like to correct that I did not say that OfReg was formatted off the UK Law. I said it was a model that was looked at and followed with regards to regulation.

In my role on the board, I participate in board decisions. I bring to the board our recommendations on matters that CUC bring to us that need board approval and have discussions about that. I also bring the same on the water sector. I will contribute to other matters that the board has on the agenda and is discussing.

One of the things I have gone to lengths to try to clarify is that, even though the Law says that we are primary advisors to the board in our capacity, but we are still directors of the board and a director of the board is at will to contribute to any discussion or any matter that comes before the board. Therefore, we participate in matters of the board and advise the board if a decision they are taking is not in the best interest of consumers.

**Mr. Austin O. Harris, Jr.:** Just a follow on.

We were told that the participation of the executive directors—which there are three of them—as non-voting members on the board, was specifically and reservedly restricted to providing technical advice with regards to your specific sector.

At no time today of the two witnesses prior, has any evidence been given to this Committee that the executive directors provide other services to the board outside of providing technical advice in your specific sector. I would again ask you: Outside of the technical advice to your specific sector, would it be true to say that you offer no intrinsic value to the board otherwise? And, if I am wrong perhaps you can identify specifically what those other intrinsic values are.

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, through you to MLA Austin Harris.

If you were to look at any corporate governance model or even public sector and private sector, and look at the definition of the director of the board, it tells you that the director is involved in the decisions of the board. So, I just wanted to clarify that misconception because as a director of the board, not only am I non-voting but you and the other MLAs in here and people who have served on the Executive Council, are quite aware that any decision made by the voting members of the board, we are bound by collective responsibility for those decisions. Therefore, I think it would remiss of me as a director, not to contribute to the discussions and see that good governance is fol-

lowed by contributing to discussions that are dealing with issues that come before the board.

We are recused and the board governance principles that we follow ensures that any matter that comes before the board that deals with any of us personally, we are automatically recused and we will announce right upfront in the agenda if there is any conflict of interest that arises inside that agenda for the day. And so, matters that may be on the agenda that warrant discussion and seeks input from different views, those are what we contribute to.

**Mr. Austin O. Harris, Jr.:** Thank you again to the witness for his response, but if I may respectfully correct him: As was identified in the Auditor General's report, the construct of the present OfReg board with the inclusion of three executive non-voting members is quite unusual in this jurisdiction.

It may be found in larger jurisdictions as I mentioned earlier of the UK 66 million as compared to the Cayman Islands, population 65,000, but there is no other board in the Cayman Islands that is of a statutory authority or government-owned company that allows the executive directors to sit as regular board members. Again, I draw your attention to pages 2 and 3 of the Auditor General's report which stated that surely one of the unique characteristics of OfReg is that "both the CEO and Executive Directors are members of the board, which is an unusual arrangement.

"In most other boards of statutory authorities and government companies, the CEO is the only executive who is a regular non-voting member of the board and other senior managers are invited to attend board meetings as necessary." [UNVERIFIED QUOTE]

It goes on to state that "the traditional roles and responsibilities of non-executive board members and senior management is blurred in the OfReg sense." [UNVERIFIED QUOTE]

So, OfReg's construct is quite different than any other board that exists in the Cayman Islands. I just point that out as a matter of fact.

Just a final question, Mr. Chairman, through you to the witness: In terms of strategic planning, the Office of the Auditor General's report stated on paragraph 70, which is found on page 29, and I quote: "It is good practice for an organisation to have a strategic plan to help it direct its activities." [UNVERIFIED QUOTE]

To this end, it went on to state in paragraph 71, also found on page 29 and I quote: "... that OfReg prepared its first strategic plan in 2017 for the period of 2018 to 2022." [UNVERIFIED QUOTE] Naturally, this would have included the Government's expectations or policy guidance.

Can you state for the record what Key Performance Indicators (KPIs) and outputs were required for your sector during these last three years since you took over the post in 2017 and what progress, if any,

has been achieved during this time? How would you measure success in the energy and utilities sector in regular practice?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, through you to MLA Austin Harris.

First, I will make my final comment about board composition because I think the Bahamas has a similar board, and so, if you are going to compare apples to apples, then you should compare regulator to regulator. I will leave it at that point.

The five-year strategic plan, I was not party to that. When I joined OfReg first as a member of the board, that five-year strategic plan had already been started, so I had no input to that plan. The Auditor General has specified that it does not have specific KPIs within it and you asked how I measure success in the energy and utility sector. Well, rather than sitting on our hands, we looked at what we could do in the energy and utility sector and we developed what I call KPIs to measure CUC's performance. One of the outcomes of that was how do we keep a better lid on the outages that consumers are experiencing? And what we did was the real-time outage reporting system.

We also measured success by how quickly we respond to CUC's request for changes in their capital investment plan; what kind of turn-around time we do on the capital investment plan that they submit, which is required to be submitted every five years. The first iteration comes before us in November and we look at doing a 60-day turn around on that and I am pleased to say that most of the times we have. Unless we did not get information from CUC on a timely fashion, that may have extended beyond the 90 days.

I also want to talk about some of the accomplishments we achieved in the energy and utility sector for the period 2017 to 2019.

**Mr. Austin O. Harris, Jr.:** Sorry, if you are about to read from the list of accomplishments you do not need to; we have it as a matter of record.

I just want to state in conclusion, certainly again going back to the board point. Sorry to belabour the point, Mr. Chairman, but it has been a day of correction.

CIMA is a regulator; Civil Aviation Authority is a regulator; the Department of Labour and Pensions is a regulator; and the Maritime Authority of the Cayman Islands is a regulator. None of these regulatory bodies operate under the same construct that OfReg does. Within this jurisdiction, the member again gave the example of the Bahamas and again I use the English language, this jurisdiction, the Cayman Islands, which includes Grand Cayman, Cayman Brac and Little Cayman.

Thank you, Mr. Chairman.

**Mr. Bernie A. Bush:** Mr. Chairman, through you: Who at OfReg approves CUC to offset their cost of alternative energy that typically is owned by account holders that are quite wealthy?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, through you to MLA Bernie Bush.

Back in 2011, I believe, the ERA board in conjunction with CUC started the customer-owned renewable energy programme as a way of incentivising and stimulating the introduction of renewables on the grid, and they followed what has been good practice because the early adoption models showed that you needed to pay the people who install these systems a rate above the normal rate that CUC would have paid for diesel.

Over a period of time, that rate has been constantly reduced and as it currently stands, it is still above the cost of fuel but it is something that we are looking at very carefully. As a matter of fact, we have also done a consultation paper with regards to how we are going to allow these rates paid for customers generating energy in the future. That paper will be coming out fairly shortly and I can say that one of the things we are seriously considering is that it will not be above the avoided or levelled cost of energy; in other words, what CUC currently pays.

**Mr. Bernie A. Bush:** Mr. Chairman, through you: Who approves this?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, through you, to MLA Bush: The previous boards approved it.

**Mr. Bernie A. Bush:** Okay. Through you, Mr. Chairman: There is a renewable cost on people's bills; what does that represent?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, through you: That represents the cost that CUC currently pays to consumers for that energy that they purchase from them, as well as the cost that they pay to the 5-megawatt utility-scale plant in Bodden Town.

**The Chairman:** When you spoke earlier about your analysis of CUC fuel costs, in 2011 in an article in the Compass, CUC identified three cost areas to make up the total fuel costs: The original price that they pay to the fuel company before it arrives - 22 cents per gallon to cover shipping, Port Authority fees, storage and handling; and another 75 cents per gallon for government duty to get up to the \$4 that they pay.

Are they still submitting their fuel cost to you in this type of breakdown? For instance, we know that the government duty has been reduced now from 75 cents to 25 cents since that, but do you still get that kind of breakdown from them or do you have to generate it yourself?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, we do. They have to report these costs to us on a monthly and quarterly basis, so we have a good handle of what they have to do.

**The Chairman:** Okay.

We were told this morning that J.P. Morgan did a succession plan which the board approved. Are you aware of that succession plan?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, no, I am not aware of it.

**The Chairman:** But you are board member?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Yes sir, I am a board member but I would imagine if that identified who his successor would be, he would probably not want us to be privy to that or at some point in time he would come and discuss it with us but I did not see that.

**The Chairman:** Okay.

So, that would have been decided by the board in the absence of the executive directors?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, I would hazard a guess to say probably yes.

**The Chairman:** Okay.

There was a period of time when there was a rotating Acting CEO. Was that a Board decision and were you party to that decision? Also, can you give us some insight into what the purpose of that rotation of CEOs was and whether that was possibly linked to some kind of succession plan?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, when this decision was made by the board because both Mr. Munroe and I were identified as Acting CEOs, we quite rightly were recused from the meeting.

The acting started with Mr. Munroe who acted until November 2018 and went on vacation after that. Thereafter, I was appointed as Acting CEO at the time. I am not privy there was any discussion that this was preparation for us to fill the role because, when the role became vacant, both of us applied for it and were interviewed for the position.

**The Chairman:** Did you receive any kind of performance appraisal on the period of time that you acted as CEO?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** No, Mr. Chairman.

**The Chairman:** So, I guess my question is: Was it just a way of filling a position? There does not seem to be any rationale, or were you only appointed Acting CEO because Mr. Munroe needed to go on vacation?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, after the first CEO's term ended, it was recognised that the board needed to appoint an Acting CEO whilst they recruited a new one and so, the decision was made (like I said, I was not privy to the decision) to appoint Acting CEOs out of the executive directors at that point in time.

**The Chairman:** And it was only two? Mr. Aleo was not one of those who acted.

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** No, he was subsequently appointed acting.

**The Chairman:** To your knowledge, would you say it is fair to assume that if you did not receive a performance appraisal, none of the others received one?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, I cannot categorically say.

**The Chairman:** No, that's expected.

You say you applied for the position of CEO. Did you referenced the period you were Acting CEO as part of your application?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, no, not specifically.

I referenced my 30 years' experience in Cable & Wireless; I referenced my breadth of experience in different areas, anywhere from management consulting, banking; and I referenced that I have full

knowledge and familiarity with three of the sectors that OfReg regulates. The only one I was not fully up to speed with would have been fuel sector and that is only because the fuel sector was previously an arm of the civil service.

**The Chairman:** I guess my other curiosity is that Mr. Munroe was a fuel inspector, and you and Aleo represented head of two of the entities prior to the amalgamation of OfReg because you were involved with the electrical sector prior to the amalgamation, right?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, I was a member of the board of the Electricity Regulatory Authority (ERA); and I also referenced that as part of my application as well.

**Mr. Christopher S. Saunders:** Thank you, Mr. Chairman; through you to Mr. Anderson.

Earlier, you mentioned that any rate increase that CUC puts through has to be approved by OfReg. Can you explain to this Committee and the wider public what would be the reasons why CUC would actually ask for a rate increase? Thank you.

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, though you to MLA Saunders: As I mentioned previously, CUC is well regulated and one of the conditions in their transmission and distribution of the licence, talks about the mechanism by which they apply for a rate increase. It says in June of each year that they would submit an application for a rate increase based on a formula that is contained therein that looks at both the United States Producer Price Index (PPI) as well as the Cayman Islands Consumer Price Index (CPI). That is submitted to us and we evaluate it, we check that the calculations are correct, and we will present to the board what our findings are, and it is up to the board's decision to approve or disapprove because the Utility Regulation and Competition Law categorically states that one of the powers of OfReg is to approve or disapprove rate applications that are submitted to it.

**Mr. Christopher S. Saunders:** Sir, I just want to drill into the genesis of the rate increase itself.

In the old CUC agreement, pre-2008, there was a guaranteed rate of return of 15 per cent or something like that. Post-2008 some changes were made to the licence which resulted also in the fuel pass-through, which prior to the 2008 licence were not necessarily there. I am just trying to understand the components of what is it that they have to make or they are guaranteed to make that would justify a price increase.

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, subsequent to the 2008 licence that was signed, CUC was not guaranteed a return. There is a rate cap adjustment mechanism that is in that transmission and distribution licence which talks about a band within that, where CUC is expected to perform and the rate of return would be expected, based on capital investment, their rate base, certain factors called the x-factor that looks at socio-economic market conditions, and all of those are components of this rate increase.

I am pleased to say that when we did an examination of what CUC return has been since the 2008 licence was signed, it has averaged 7.4 per cent. If you take that in comparison, and I know a comment may come about where you are looking at bigger jurisdictions again, but what analogue are you going to use but to look at what is happening elsewhere?

The public utilities commissions in the US, the average rate of return that they have granted to any utility provider has been 8 per cent, never more than 10 per cent, mainly averaging around 8.2 per cent.

**Mr. Christopher S. Saunders:** Earlier, you said rate base; I am trying to understand what makes a rate base, what goes into the rate base. I am trying to understand what drives it because ultimately, the issue in all of this is what incentive does CUC have to reduce cost, expenses or anything? I am trying to understand what is built in there that will incentivise them, as opposed to the current situation that we have.

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman through you to MLA Saunders: CUC's rates are regulated through income, rate base, the x-factor I mentioned in the US and the Cayman Islands CPI.

The rate cap adjustment mechanism that I mentioned earlier is to ensure that CUC is efficient with its capital investments. So, it is no longer enabled to earn a fixed return. There is no incentive for them to pad their investments. In fact, if they overspend, then they will not be able to meet their dividend policy, for starters, which will in turn affect their share value and more importantly, their credit rating.

So, CUC's returns are regulated by this rate cap adjustment mechanism and that forces them to manage and cut their costs but not at the expense of compromising the reliability and instability of the grid and their performance standards.

One of the things we also do with regards to regulating them, there are very strict performance standards enshrined in that licence agreement that penalises them for under-performance or may reward

them for over-performance, and they have been penalised in the past for under-performance.

**Mr. Christopher S. Saunders:** I am trying to figure out how R-CAM and all of that fits into this entire process. Let me kind of backtrack and tell you what I am trying to get at so that we are clear.

One of the issues I have, and this is a broader legislative issue, not just at a Public Accounts Committee level. When questions are asked of the area of governance (I will use the HSA for an example) the person that would give the advice or the answer sometimes is the very same person from the HSA. My issue has always been that the Ministry is buying a service and the HSA is selling a service. We just need comfort that the Ministry—and again I am using HSA as an example—knows what they are buying, because the HSA sure knows what they are selling.

What we are trying to understand here and what I am trying to get at is in terms of the overall OfReg. This is why we chose to invite all of the executive directors and is something that is going to be coming for everyone, which is for them to explain to us fully what goes into their thought process in terms of regulating. I can tell you I have gone through the licences and have looked at both of them and it is complex. What I am looking for is a kind of comfort level that OfReg's board, its members and everyone are aware of what goes inside because I have already broken it down to a point where I can understand it, but I want something where the public can understand what it is that OfReg is looking at.

When we talk about the rate base, I am assuming included in that rate base is the power generation expenses. However, when we factor in the power generation expenses, which can go anywhere from 69 to 79 per cent of the CUC's total expenses in any given year, and that is included in it, and that is primarily driven by even fuel, then it comes back to the issue of what CUC is doing to make sure that the largest part of their expense, which is power generation, is something they are looking at.

This goes back then to the conversation I had with the CEO at the time concerning what CUC was doing to ensure that that cost which also factors in... Because at the end of the day, if CUC makes a certain amount of money they are fine—no rate increase. If they do not make a certain amount of money, then they apply for a rate increase.

What I am trying to understand or to get to, are those expenses that go into the rate base. What can we do or what is it that OfReg is doing to monitor those expenses within the rate base to ensure that CUC is actually getting the best value for money? At the end of the day, from looking at the contract, I could not find the incentive. Like I said, it could be there, I just could not find the incentive for CUC to go out, other than the fact that we are glad some of them



choose to do a very good job, and I have said it publicly in terms of where they fall within their industry. I am trying to understand OfReg's culture for how those expenses are monitored, especially when it comes down to power generation, which deals with a lot of oil, lubricants and everything else.

I am trying to get to that so the public can understand because one thing people do not realise, is that CUC charges for the generation of the entire power, not just for the use, so it is in the public's interest for CUC to actually become quite efficient. If you have a capacity where you need 900,000 megawatts and CUC is producing a million, that 100,000 which is generated is also shared amongst the consumers based on a percentage of what they use.

I am trying to understand the relationship between generated versus what is being used. I am looking for comfort that the regulators understand that relationship as well, because you mentioned the x-factor but there is also the z-factor. I am looking for that level of comfort for the public; that all the different things that make up or go into the rate adjustment and everything else, are being looked at. I understand it is very technical, but that is the comfort level I am looking for right now.

Thank you.

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, through you to MLA Saunders, I hope I can provide the correct answer for that.

Yes, one of the things that we actually monitor is the efficiency of the generators they run because one of the things that we specify is that they should be run at their most optimum efficiency so that less fuel is burned at that point in time. We also stipulate that they should dispatch the most efficient generators. CUC has, if I am not mistaken, up to 25 generators ranging from older ones right up to the ones that were put in, in 2014 and we stipulate that when you are generating power, the most efficient generators, which are the ones that burn the least fuel, must be the ones that you put on line.

They have to submit fuel efficiency plans to us, they have to submit a fuel monitoring plan, their cost purchasing renewables; any cost that would be passed through to consumers, whether it is fuel cost or generation cost, is heavily scrutinised by us to ensure that CUC does not overcharge consumers.

You also spoke about rate base. This is why we pay special attention to the capital investment plans that they submit. If they submit a plan that we believe is not in the best interest of the consumers, then we do not take it to the board. We tell them we do not agree with what you submitted; it is not in the best interest of the consumers and therefore it does not pass the gate. I hope that answers your question.

**Mr. Christopher S. Saunders:** Let me put it in a different way.

I have here the 2018 Compendium of Statistics published by the Economics and Statistics Office (ECO). To put what I am saying in context, on page 186 it gives the year, [electrical] capacity, production and consumption. So, for us to look at 2010, the total consumption was 552,593 and the total production was 605,119, so in terms of a relationship between consumption and production, that was 91 per cent.

Looking at 2018, the total consumption was 628,822 and the total production was 641,800. In essence, that was 98 per cent. In other words, looking at the factors, I have said it publicly, it is an efficiently run company. You are producing 98 per cent of what is being used. I compared industry standards and seeing where they are coming from historically, and that report goes all the way back to 1996. I can see over the years where they have actually improved the relationship between what is actually consumed versus what is actually produced. At 98 per cent, I really do not have any complaints. I must say that for the record.

The issue is that that two per cent difference in terms of the non-consumption, because it is actually generated and this is why people look at the side of their light bills they see down the bottom on the summary, there are some numbers right after each before there is a dollar figure. On this bill, it is 108, 108, 108, 108; it is my understanding that that 108 is pretty much the other part that is actually used to allocate the two per cent that is not used, based on overall usage. So, when you start looking at it, we are paying not just for what we used but also for what is generated that we did not use and that is apportioned to us as a percentage of our bill. I wish to God mine was this low. Sorry. Mine is like 4,000 something that I get hit with.

In 2010, 9 per cent of what was not consumed was actually distributed to everyone because someone has to pay for it. Power is out there, they have generated it, the cost has to be paid and it is based as a percentage. If I use 1 per cent, I pay 1 per cent of whatever that amount is. As I said, it is an efficiently-run company.

When I start getting down now into understanding how the adjustment is made, it is a combination of the Rate Cap Adjustment Mechanism (RCAM) plus a certain amount of expenses that go into the generation of the fuel so they have a set return on their assets, which is what the RCAM looks at, then there are fixed costs to some extent and non-fixed costs expenses. It is that non-fixed cost expense because that one is already set and you manage that by allowing them to agree or disagree what assets they add to it.

I have gone through ten years' of their balance sheet and I directly can see which year assets went up versus which year assets went down. By going through the annual statements, they will tell you

what assets they buy. I do not need to ask those questions, they are already in the public domain. But then, there are the non-fixed costs, the other costs, which for me are the biggest problem because when you look at CUC's financial statements, their biggest line of expense is still power generation and that is driven by fuel. That is part of what goes into their other rate base and my issue is, considering the issue that we have with fuel, which you already indicated that you do not regulate the fuel factor part of the bill, but the largest part of CUC's expenses is still fuel. The fuel still comes back to bite us, not once in the fuel factor pass-through, but also twice in their generation which goes into the rate base. And that is what I am trying to understand—what CUC does separately to reduce that power generation cost because, ultimately, if they reduce that and meet the targets they have, it means that they will not be coming to anyone for any rate increases or anything.

So, my question in all of that is: What is being done to incentivise CUC, because fuel seems to be a runaway issue right now? Again, as you said, in future bills maybe CUC found a way to get a benefit from the cheap fuel out there. If that is the case, then is the same benefit also on the fuel factor? How are these relationships going? That is what I am trying to understand here: What is being looked at? How are processes being managed or monitored?

At the end of the day, even if we add the government duty and transportation, and we look at what Platts prices were in the Gulf in March and April compared to what I am waiting on right now, I can assure you looking at my own analysis that I have done, that the cost we are paying, in terms of fuel factor, is even higher in some years than what retail prices were in the United States—and you are talking about people buying in the wholesale market.

That is really what I am very uncomfortable with. It is that fuel price that CUC is paying and also the fuel factor that is being passed through. That is the part I really and truly believe that you, regulating that part of the bill that deals with power generation, and Mr. Munroe, who deals with fuel, need to put your heads together and say, *Guys what can be done to reduce this?* And CUC, in every one of their annual reports puts the average price for the Imperial gallon for the entire year and that is where we are able to look at it, analyse it, and that is really where (I will use the word) the “criminal” part of the bill is. It is on the fuel and the power generation.

Whatever it is they pay for that fuel, the bottom line is it still goes to that rate base to some extent. Look at the RCAM and that is where the price increase comes from. That is really what needs to be managed; fuel. Fuel is the problem.

Now, in the old CUC bills, and this I can say I disagree with, in the old agreement where the fuel was not a pass-through, there was a little bit more

transparency. If I had to choose between CUC managing fuel in this country and going out to get the best price versus the other fuel companies, I would take CUC any day of the week and twice on Sundays. The truth is the money they thought CUC was actually making from fuel, it is way worse now, with what the fuel companies are doing. We were better off leaving CUC to go and deal with this fuel issue as opposed to the arrangement we have now.

At some point, as we start looking through and reviewing some of these licences, I think the Trade and Business licence has a five-year renewal. The last one I think was November, 2014 and so, the last one should have been November 2019. From that standpoint, that we start looking at some of these things as we start reviewing the licence and looking at them to see how we can make them more efficient. I think that is what needs to be done, and ultimately, I think that is the comfort that the public is looking for—that something is being done about this and we are not just taking it as it is.

As I said to the Chairman, this is a problem in this country, that fuel is coming here and Customs cannot tell you its value because the invoices that are produced to Customs are from subsidiaries owned by these other companies and nobody knows what the true cost is. Until we deal with that white elephant in the room, all of this will mean nothing because fuel is one of the biggest things that drive the entire high cost of living in Cayman.

I know I went off a little bit far on it, but, Mr. Anderson, it is really what is needed to be done by OfReg to add value; not just from CUC but also from the fuel standpoint. Until people start seeing reduction at the pump and the plug, none of these other successes, nothing means anything. Until the consumer feels that they get something from it. That is really and truly the culture that we want to see start pushing through.

Like I said, my issue is not CUC. They can come in here next week and defend themselves. Their only crime is that little one line, that fuel factor on their bill that they pass through to us; that is what we need to regulate because that part is unregulated on the bill and that is really where I feel badly. If we do not deal with that, all of this means nothing.

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman through you to MLA Saunders: I do not know that I can recollect all that you said, but there are a couple of things afoot and you mentioned generation. We have done a consultation about regulatory accounting rules and what that is intended to do is to separate generation from transmission and distribution, so that we have a truer picture of what are the actual generation costs that CUC incurs. A decision will be made on that in due course,

and that is one of the things that have been actively pursued.

The other thing I talked about earlier, is conversion to alternative fuels, whether it is compressed petroleum, propane, liquefied nitrogen or compressed nitrogen gas, if you were to look at the prices of any of those components today, you would see that there is a great disparity between what diesel costs and natural gas costs are; and, when that is extrapolated over a period of 20 years, it shows very little movement in the cost of natural gas because there is so much of it.

What OfReg is actually pursuing is how soon. Yes, you have 20-something generators there that are burning diesel. The price of diesel is here, the price of natural gas is here; how soon can we bridge that gap by converting these diesel engines to natural gas? That is something we are actively pursuing. And yes, I do not do this in isolation; I do talk with my colleague Mr. Munroe as to how we can get this fast-forwarded.

One of the things we have been actively talking about is to have a forum where all the players involved sit down and we discuss how we resolve this matter. However, I can assure you that the integrated resource plan talks about conversion to natural gas taking place in 2025. We have raised the question of why? If there is technology allowing earlier conversion, why can we not bring that forward two years? These are the things that we are looking to, from OfReg's perspective and we do not, like I said, sit on our hands and not monitor what is going on.

**Mr. Christopher S. Saunders:** I know other Caribbean jurisdictions have looked at going the Liquefied Natural Gas (LNG) route and the issue they ran into was getting a steady supply of LNG. Now, many of them were actually depending on Trinidad and I think a few years ago Trinidad made some changes in terms of the amount they could export, et cetera, which affected other Caribbean islands that were looking for that steady LNG supply. The question is then, is it a situation now that we have found a steady source of LNG?

One of the things that we find and have seen recently with the fracking issue, is that the minute you find something to challenge petroleum, all of a sudden prices go down to basically nothing. We have seen where the Sheiks and the red necks . . . sorry, not that term. There is an article I remember seeing where those guys were basically doing fracking versus the Saudis and what happened with the price of oil at that point was seen where those guys went crazy with the price of oil that it made it literally almost discouraging for anyone to basically continue, the moment that oil is challenged.

One of the biggest issues has always been getting a steady supply of LNG and the question is: For this region, have we found someone who can give us a steady supply of LNG? I mean, the last thing we want is, you know we can find diesel anywhere

around, but we convert to LNG and then all of a sudden we cannot find LNG or whichever gas we are looking for, then we are back to square one.

It has always been a situation where fuel or diesel has always ended up dominating. My issue is that, even right now (I am not waiting until 2025), the prices that we are paying in this country for diesel are still way above what they should have been, and LNG would have been a big difference, in terms of savings; but I think we can get some of those savings now, if we just deal with the fuel issue right now.

*[Inaudible interjection]*

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, through you to MLA Saunders: The answer is yes; we have had discussions with three suppliers who have certain infrastructure in place to supply LNG to the Caribbean and they are actively pursuing the Cayman Islands because of our economic condition.

*[Inaudible interjection]*

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** But to the point of, why can't we get it now is that one of the things we have to consider, and you would appreciate this, is that we cannot just go to the licensee and say tomorrow morning . . . we have to consider stranded costs. There has to be a mechanism where stranded costs are recovered. That is why we are saying *well, we talked about 2025*; well, we are not satisfied with that because of developments that have happened. Let us look at bringing it forward as far as possible and we were looking at 2022/2023, if it is practical to get it done.

**The Chairman:** I have a question on the distribution network.

As I understand it, the distribution network was basically paid for by the consumers due to a fee that was added after Ivan when most of the distribution network had to be replaced. That is correct, right? It was \$7 per month or something like that.

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, there was a recovery fee paid after Ivan but there has been network expansion since then. At the end of the day, the consumer pays.

**The Chairman:** Yes, but here is the problem I have: They are allowed under their licence agreement to put their distribution network on National Roads Authority (NRA) reserved property for free. We do not charge them any lease for the property.

If they put it on somebody's private property, that person can demand a lease from the company for the pole being on their private land. Although we allow them that free access to the NRA road reserve, whenever the NRA has to move a light pole, CUC is allowed to charge back that reconfiguration of the distribution to the NRA. Can we do something about that? Can that be offset?

If they get it for free, and then you tell me I want you to move two light poles and you say well, to fix this road here, there is a \$37,000 cost for CUC to move these two light poles and the NRA has to pay them that cost. I agree that the consumer is paying, but we seem to be paying all the time because we pay for the original claim for the stuff; when they move it now for the NRA, although they are getting the location free, they charge the NRA a substantial cost. We are not talking about \$10 to move a light pole; we are talking thousands and thousands of dollars. I cannot imagine what the cost is going to be for the rerouting of the area around Hurley's, because there are substantial things that need to move there.

Can the regulators do something to offer the consumer some kind of protection on this, or is that just part of the licence and we have to wait until the licence is expired and then come up with a lease agreement per pole that would allow government to pay them to move it?

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, respectfully, OfReg is constrained by what the terms and conditions are in those two licences.

The representative from Bodden Town West did mention earlier that parts of the licence are subject to review every five years and we have that scheduled to be done this year. I would believe that it would be up to the NRA to negotiate some kind of agreement with CUC to offset these costs.

A case in point is the street lights, the high pressure sodium street lights. The project was approved by us that talked about replacing, I think it was 7,000 of those which in turn saved fuel costs, and saved the government money, and the NRA paid for the installation of the lights. The cost for the street lighting dropped because those were installed and so, I would think it would be up to the NRA to sit with CUC and perhaps subsequent to that come and have a discussion with us as to how we could approach this.

**The Chairman:** I think that part of the distribution licence is being renewed now. Can I invite OfReg to have a conversation with NRA as to how we can save public funds in having to move light poles when the whole grid work is on government land for free.

**Mr. Gregg Anderson, Executive Director, Energy and Utilities, Utility Regulation and Competition Office (OfReg):** Mr. Chairman, I welcome that suggestion and will act on it.

**The Chairman:** Any other questions?

Thank you very much, Mr. Anderson. We apologise for keeping you so long. I think we are about an hour and a half past the limit but we know we got a late start. Thank you very much and we want to thank you for your candid responses and we really enjoyed the conversation with you.

The meeting is therefore adjourned until 10:00 o'clock tomorrow morning, when we will have Mr. Duke Munroe followed by Mr. Alea Fa'amoe and after lunch we will have Mr. Malike Cummings.

**At 4:51pm the Public Accounts Committee stood adjourned until 10:00am Thursday, July 16<sup>th</sup>, 2020.**