

CANADA / JUDGMENT

Anfield Energy Inc. (Re)

2024 BCSC 2201

COURT

Supreme Court of British Columbia

DECIDED

29 November 2024

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2024 BCSC 2201 Anfield Energy Inc. (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Anfield Energy Inc. (Re),

2024 BCSC 2201

Date: 20241129

Docket: S247447

Registry: Vancouver

In the Matter of Section 288 of the Business Corporations Act

(British Columbia), S.B.C. 2002, c. 57, as Amended

And

In the Matter of a Proposed Arrangement Involving

Anfield Energy Inc. and IsoEnergy Ltd.

- and -

Docket: S248090

Registry: Vancouver

Between:

Anfield Energy Inc.

Petitioner

And

Uranium Energy Corp.

Respondent

Before: The Honourable Mr. Justice Coval

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner:

P.J. Sullivan

N. Chang

L. Gnanasihamany

Counsel for Respondent:

K. McEwan, K.C.

J. Wiebe

J. Roberts

Place and Date of Hearing:

Vancouver, B.C.

November 27, 2024

Place and Date of Judgment:

Vancouver, B.C.

November 29, 2024

- [1] THE COURT: Uranium Energy Corp. ("UEC") applies to vary the interim order for a proposed plan of arrangement between Anfield Energy Inc. and IsoEnergy Ltd., by extending the shareholder meeting record for the upcoming shareholder vote on the proposed arrangement.
- [2] UEC seeks the order under s. 291(2) of the Business Corporations Act, which allows the court to make any order considered appropriate regarding a proposed arrangement.
- [3] UEC says the record date should be extended because, as a holder of a substantial number of Anfield warrants, it did not receive advance notice and particulars of the arrangement, which it says was required under section 4.7 of an Anfield Warrant Indenture dated May 12, 2022.

- [4] Anfield says the record date should not be varied, i.e. extended into the future, because doing so would imperil the arrangement at great prejudice to Anfield and its shareholders. Anfield also says that, as a matter of contractual interpretation, UEC was not entitled to the s.4.7 notice it relies on. Further, even if it was, it had effective notice of the record date, and particulars and opportunities for information about the arrangement, equal to or beyond what s.4.7 requires.
- [5] Because the shareholder vote on the proposed arrangement is scheduled for December 3, Anfield understandably requested this decision by this morning.
- [6] For the reasons that follow, UEC's application to vary the record date of October 21, 2024 in the Interim Order is dismissed.

The Parties

- [7] Anfield is a B.C. company in the mineral development and production business. As I understand it, it owns rights to uranium mining lands in the United States.
- [8] IsoEnergy is an Ontario company.
- [9] On October 1, 2024, Anfield signed the arrangement agreement with IsoEnergy, by which IsoEnergy would acquire all of Anfield's issued and outstanding shares. The value of the transaction is approximately \$127 million. The exchange ratio provides Anfield's shareholders with a 32% premium and shares in a company with a larger and more diversified portfolio.
- [10] UEC is a large uranium energy corporation headquartered in Wyoming. It is a significant shareholder and warrant holder of Anfield and a competitor of IsoEnergy's.
- [11] UEC owns around 9.5% of Anfield's shares and has warrants that would represent around another 9.5% if exercised. These UEC shares and warrants in Anfield came from an April 19, 2022 debt settlement agreement, where Anfield settled its debt to UEC by a combination of cash, shares and warrants.
- [12] The exercise price of the warrants is \$0.18 per Anfield share, and their expiry date is May 12, 2027. The strike price is currently uneconomic, being above the market price for Anfield's shares which is low double digits. The UEC warrants are not being affected by the proposed arrangement.

The Interim Order

- [13] The Interim Order was granted on October 31, 2024.
- [14] As mentioned, under the Order, the record date to establish the Anfield shareholders entitled to vote on the proposed arrangement was confirmed as October 21, 2024.

[15] The vote itself is on December 3, 2024, and the approval hearing is scheduled for December 6, 2024. Thus, both are scheduled for next week.

Positions of the Parties

[16] UEC says Anfield failed to give it 14 days' notice, under s. 4.7 of the Warrant Indenture, of its intention to fix a record date for the proposed arrangement.

[17] Section 4.7 says this:

Notice of Special Matters.

The Corporation covenants with the Warrant Agent that, so long as any Warrant remains outstanding, it will give notice to the Warrant Agent and to the Registered Warrantholders of its intention to fix a record date that is prior to the Expiry Date for any matter for which an adjustment may be required pursuant to Section 4.1 Such notice shall specify the particulars of such event and the record date for such event, provided that the Corporation shall only be required to specify in the notice such particulars of the event as shall have been fixed and determined on the date on which the notice is given. The notice shall be given in each case not less than 14 days prior to such applicable record date. If notice has been given and the adjustment is not then determinable, the Corporation shall promptly, after the adjustment is determinable, file with the Warrant Agent a computation of the adjustment and give notice to the Registered Warrantholders of such adjustment computation.

[18] UEC says this right under the Warrant Indenture was incorporated into its Anfield warrant rights under s. 4.1 of the parties' Debt Settlement Agreement, which says these settlement warrants are on identical terms as the warrants issued under the Warrant Indenture.

[19] UEC's written submissions say the crux of its complaint is that:

This deprived UEC of the ability to exercise its settlement warrants for shares in time to vote the shares at the meeting and/or assert dissent rights.

[20] In the hearing, UEC submitted that a further s. 4.7 right that was breached was the right to engage with Anfield to obtain further information, before the record date, about the transaction, to better assess how to respond and perhaps influence the votes of other shareholders.

[21] UEC alleges that important details of the arrangement were not disclosed until the information circular on November 6, 2024, and some further information even after that date, all of which it says will be an issue at the final order hearing.

[22] In its reply submissions, UEC became more specific about its position regarding the proposed arrangement. It indicated an intention to oppose the arrangement because of concerns about value to shareholders.

- [23] Anfield says UEC, in fact, had effective and adequate notice and information about the arrangement to make its warrant decisions well before the record date. It had notice, information and opportunities, both in the public realm and through discussions between the companies' respective CEOs.
- [24] Anfield further says that UEC is not entitled to the notice and information that it claims under s. 4.7. It says that the s. 4.7 rights are not incorporated into the UEC Settlement Warrants. In any event, even if they were, s. 4.7 is not about rights of advanced notice and information of a record date for a shareholders' meeting, as warrant holders cannot vote at such meetings. Rather, it is about advance notice of a record date for adjustment to the warrants under section 4.1 of the Warrant Indenture.
- [25] Anfield points to the risk that any extension of the record date poses for the tight schedule it faces to conclude the proposed arrangement by the outside date of December 31, 2024, and the severe prejudice to its shareholders if the arrangement fails. It points to the fact that, of the 41% of shareholders who have voted so far, 99% of votes have been cast in favour of the arrangement.
- [26] Anfield also cast doubt on UEC's reasons for challenging the arrangement. It suggests UEC may be opposing for reasons other than concern about shareholder value from the deal, due to its being in competition with IsoEnergy.

Analysis

- [27] In my view, UEC's request to vary the Interim Order and set a new record date in the near future is not in the interests of justice as between Anfield and UEC, or in the overall interests of justice for those with a stake in the proposed arrangement.
- [28] First, doing so would create confusion, potential unfairness, and put the proposed arrangement at risk. The outside date to complete the arrangement of December 31, 2024 would be put in serious jeopardy by any extension, even if time periods were abridged. Extending the record date entails the additional step of then establishing who the shareholders are as of that new date. Then a new information circular would need to be prepared and distributed. That is a particularly challenging and uncertain process in the face of the possibly continuing postal strike.
- [29] The arrangement would, of course, require ultimate court approval, perhaps over the period where the court is typically closed and where, by all appearances from what I heard at this hearing, the final order will be contested in a complex application that will likely require a reserved decision. If approved, the arrangement would then, of course, need to be completed.

- [30] There may well be confusion about the new process, particularly for some of those who have already voted. There might also be potential unfairness, as shares have been bought and sold in reliance on the status quo, which includes the Interim Order process which UEC wishes to vary.
- [31] Second, I accept Anfield's submissions, not specifically contested at this hearing by UEC, that if the arrangement is not completed by December 31, Anfield is at serious risk of insolvency. In brief, its debt of over \$15 million will become imminently due and payable. It is a debt load which Anfield submits it cannot pay or manage. Here I refer to Anfield's written submissions, paragraphs 103 to 108. There is, of course, the related point that 99% of the votes cast so far are in favour of the arrangement.
- [32] Third, at least on the current record and submissions, I am not persuaded that UEC has been deprived of effective notice of the record date, and whatever particulars it might have been entitled to assuming s. 4.7 does apply to its warrants.
- [33] The chronology of UEC's visibility into Anfield's potential arrangement transaction is this:
- May 7, 2024, their respective CEOs discussed business and collaboration opportunities, as part of Anfield's market outreach and review process seeking potential buyers.
 - August 8, 2024, the CEOs discussed the letter of intent reached the day before between Anfield and IsoEnergy for the proposed arrangement.
 - October 2, 2024, Anfield announced the proposed arrangement by press release. This included the exchange ratio of the shares, the 32% premium on Anfield's shares, the value of the transaction, and the business rationale.
 - October 8, 2024, the notice of meeting and record date of October 21 were announced on SEDAR. The CEOs again discussed the proposed arrangement. The evidence is that Anfield's CEO asked if UEC wanted any further information, to which UEC's CEO replied that they had read the release and appreciated being kept in the loop.
- [34] Given this chronology, UEC's size, sophistication, and position as a large Anfield shareholder, and the line of communication between the CEOs, I cannot see what information or opportunities UEC might have been entitled to under a s. 4.7 process that it did not receive by October 8, well before the record date.
- [35] Fourth, and finally, there is a legitimate issue about whether UEC was entitled to the s.4.7 information regarding the proposed arrangement. As that issue was argued on this application, it involves what appears to be a somewhat complex analysis of the Settlement Agreement between Anfield and UEC that gave rise to the warrants, the Warrant Indenture referred to in section 4.1 of that agreement, the warrant certificates issued under the Warrant Indenture, and the Anfield warrant certificates issued to UEC.

- [36] For these reasons, UEC's application to vary the record date established in the interim order is dismissed.
- [37] The alternative relief in paragraphs 2 and 3 of UEC's notice of application was not pursued in this application.
- [38] Due to lack of hearing time, and time pressure for an expedited decision, Anfield did not pursue the hearing of its petition for a declaration that UEC's settlement warrants do not include the s.4.7 rights. Counsel advised they may seek to have this petition heard as part of the final order hearing.

"Coval J."

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Prepared on 25 October 2026 · Esheria