Office of the Sark Electricity Price Control Commissioner

DECISION ON SEL APPLICATION

TO VARY A PRICE CONTROL ORDER

26th of October 2026

INTRODUCTION

1. On the 17th of April 2026 I received a request from Sark Electricity Limited ("SEL") to vary the Price Control Order ("PCO") pursuant to section 15(6) of The Control of Electricity Prices (Sark) Law, 2016 ("the Law"). This PCO has been in effect from the 1st of October 2025 and is valid for a period of two years.

2. SEL's stated grounds for this variation request were:

    a. To properly reflect the impact of the significant decline in demand since the PCO was made,
    b. To properly reflect material matters as described in recent Court Submissions, and
    c. To permit recovery of legal fees

3. Since this request, I have sought certain clarifications from SEL. In particular, I have asked SEL to identify the Court Submissions referred to above and why it considered that these merited a variation to the PCO.

4. I also commenced an investigation and issued SEL with section 5 and 8 notices, pursuant to the Law, requiring other information and documentation.

5. SEL only provided me with these clarifications on the 18th of August 2026. SEL has also refused to provide the information and documentation requested in my section 5 and 8 notices.

THE LEGAL CONTEXT

6. Pursuant to section 15(6) of the Law, a PCO may be varied. Pursuant to section 20(1)(e) of the Law, a person can appeal to the Court of the Seneschal if I fail or refuse, when requested by a regulated electricity supplier, to vary a PCO.

7. Pursuant to section 16(1) of the Law, when making or varying a PCO, I must take all material considerations into account including those specifically referred to in section 13(2) of the Law.

8. I note that this requirement applies to when "*making or varying a PCO*". It does not apply, per se, to the consideration of a request to vary a PCO. Nevertheless, it seems to me that section 13(2) of the Law still provides a useful framework for considering such a request.

MY APPROACH

9. In this application I am particularly interested in any new and material considerations which have come to light since the making of the PCO, and which are relevant to any of the three stated grounds for the variation request.

10. I am also interested in any other new and material considerations which may merit a variation to the PCO on other grounds. This was mainly the reason for serving my section 5 and 8 notices referred to above.

11. In the rest of this paper, I will consider each of the stated grounds for the variation request in turn and set out my decisions.

12. My investigation into other potentially material considerations remains on-going and I will report on this investigation once it is completed.

DECLINE IN DEMAND

13. In its variation request letter, SEL's first ground for varying the PCO was:

> *"To properly reflect the impact of the significant decline in demand since the PCO was made"*

14. SEL also copied this variation request to 21 Sark Conseillers. In the cover e-mail SEL stated:

> *"Our current forecast places full year 2026 demand at only 1,170,583 units which is only 15,000 units higher than the full year 2020, when the Island was in the height of the Covid Pandemic. I have included Chief Pleas in this distribution and The Policy and Resources Committee as this will have an impact on Sarks feasibility and affordability study if they ever complete a purchase of SEL by compulsory means; which, we maintain, is highly unlikely".*

15. Demand for the first 12 months of the PCO, from October 2025 until September 2026, was 1,236,353 kwhs . This was 12% lower than that forecast in the PCO. Therefore, SEL is correct in stating that there has been a significant decline in

demand. However, as I will explain below, SEL is not correct in its assertion that the PCO needs to be varied to properly reflect the impact of this.

16. The maximum unit price in the PCO, expressed in pence/kwh of electricity, is calculated from a formula. This formula contains: (i) a fixed allowance (in pence) for fixed operating costs, depreciation and return on capital employed. This fixed allowance is divided by forecast demand (in kwhs), and (ii) a variable allowance (in pence/kwh) for forecast fuel costs.

17. The maximum unit price in the PCO was initially set in October 2026 at 52 p/kwh using forecasts for monthly demand and fuel prices. It was then adjusted, ex post, to reflect actual fuel prices and actual demand in the relevant month.

18. The result of this monthly correction mechanism is that electricity consumers in Sark, rather than SEL, are exposed to the risk of a decline in demand and/or to the risk of an increase in fuel prices. SEL continues to receive its fixed cost allowance irrespective of the level of demand or fuel prices.

19. Over the past 12 months demand has been 12% lower than forecast and fuel prices have, on average, been 38% higher than forecast (for September 2026, fuel prices were 88% higher than forecast). This has resulted in the maximum unit price increasingly from 52 p/kwh to 74 p/kwh. Electricity consumers in Sark, rather than SEL, have had to pay for these changes.

20. The monthly correction mechanism was first introduced from January 2021 in a variation to the PCO in place at that time when demand had fallen during the Covid pandemic. This mechanism continued in the two subsequent PCOs. SEL is fully aware of this, and I was therefore rather surprised that SEL sought a variation to the PCO for this reason.

21. In an e-mail to SEL on the 14th of July 2026, I pointed to the existence of the monthly correction mechanism in the PCO to cater for a decline in demand and invited SEL to make further representations on this point. No further representations were made and in an e-mail to SEL on the 16th of August 2026 I concluded that the PCO did not need to be varied to cater for the decline in demand. In an e-mail from SEL on the 18th of August 2026, SEL noted my conclusion but stated that it did not accept my analysis. SEL did not however explain why it did not accept my analysis.

22. In my view, SEL's application to vary the PCO because of a fall in demand has no merit. My decision therefore remains that there is no need to vary the PCO for this reason.

23. The issue of recent high fuel prices and a fall in demand has raised one other material consideration which I now wish to consider.

24. The hike in international diesel prices over the past year has largely been because of the conflict in the Middel East. The resulting high electricity prices are also likely to have contributed to the fall in demand. This has been particularly harmful to electricity customers in Sark because SEL's only source of electricity generation is relatively inefficient diesel generators.

25. In determining whether a price is, or is not, fair and reasonable, one of the material considerations listed in 13(2) of the Law is:

> "… *the economy and efficiency with which the supply of electricity is generated and distributed*"

26. In this regard, the issue about whether SEL's cost recovery should be based on the costs associated with its existing technology, or on alternative more efficient technology, has been the subject of previous PCO consultations and featured in the 2018 PCO appeal. The position of my predecessor on this point has also been stated in published policy statements in 2018 and 2019.

27. To date, SEL has been allowed to recover the full fuel costs associated with its relatively inefficient diesel generators and electricity consumers, rather than SEL, have been exposed to the hikes in international diesel prices.

28. Previous studies have demonstrated that moving to a more modern combined system of wind turbines, solar panels, batteries and more efficient diesel generators would reduce electricity prices and the exposure to international diesel prices. On the other hand, maintaining a system which is 100% based on relatively inefficient diesel generators would increasingly render this technology economically obsolete and it would be increasingly unlikely that full fuel cost recovery would be allowed in future price control orders.

29. It is my understanding however that, following compulsory purchase of SEL's assets, Chief Pleas intend to transition to such a combined system over time, and that initial control of the existing assets would facilitate this orderly transition and ensure that security of supply is maintained.

30. I**n these circumstances, I am not therefore minded to vary the PCO based on this consideration.**

MATERIAL MATTERS IN RECENT COURT SUBMISSIONS

31. In its variation request letter, SEL's second ground for varying the PCO was:

> *"To properly reflect material matters as described in recent Court Submissions."*

32. On the 20th of April 2026 I asked SEL to clarify what precisely these Court Submissions and material matters were and why SEL considered that these justified a variation to the PCO.

33. Initially SEL suggested that it was my statutory duty to determine this for myself. Eventually, on the 18th of August 2026 SEL referenced:

    a. A court direction hearing on the 19th of May 2025 on the appeal of the November 2024 variation to the PCO then in force,
    b. A court hearing on the 22nd of August 2025 on my application to dismiss the above appeal by way of summary judgement or by striking-out,
    c. A court judgement on the 22nd of December 2025 on the above application, and
    d. A court hearing on the 24th of April 2026 on my application to dismiss, by way of summary judgement, an alleged breach of contract claim by SEL.

34. From the above, SEL identified the following matters which it considered to be material:

    a. The 2018 Settlement Agreement between SEL and my office, including the associated policy statement, has not been reflected in the current PCO,
    b. I accepted (at the August 25 hearing) that the 2018 policy statement refers to the regulated price of electricity being based on the costs associated with SEL's existing assets. SEL claimed that this was inconsistent with the asset valuation approach adopted in the current PCO,
    c. In paragraphs 105-106 of the December 2025 judgement, the judge referenced the relevance of the 2018 policy statement, and

d. The Court made observations (at the August 25 hearing) that I exercise an indirect influence on SEL's commercial decisions including on capex, director's remuneration and reserves, and that the framework as operated creates a binary position in which SEL must either accept or appeal every PCO decision.

35. I will respond to the first three points together because they all relate to the 2018 policy statement.

a. First, SEL's claim that this policy statement was not reflected in the current PCO is not correct. The consultation paper on the 1st of September 2025, at paragraph 30 stated: "I *am also guided by the published policy statements as described on paragraphs 27 and 28 above*". I note that SEL did not respond to this consultation paper.

b. Second, I do not agree with SEL's claim that the asset valuation approach in the current PCO is inconsistent with setting a regulated price based on the costs associated with the existing assets. The asset valuation approach in the current PCO was based on the market value of the existing assets, derived from the share sale price in 2020 and the then liabilities which SEL informed me of. The cost allowances in the current PCO were also based on the operation of the existing assets.

36. Regarding the last point, it is hardly surprising that the commercial decisions of a regulated monopoly will be influenced by the price controls that it is subject to. That is the nature of monopoly regulation which attempts to mimic the outcome that might be achieved in a competitive market. Section 13(2) of the Law requires me to consider the costs associated with the supply of electricity, and to also consider the economy and efficiency of that supply. That is why the design of price controls has been based on cost allowances rather than the actual outturn costs.

37. I also do not agree that the regulatory framework creates a binary position in which SEL must either accept or appeal every PCO decision. Determinations about if prices are, or are not, fair and reasonable and the subsequent PCOs involve several cost and other considerations as set out in section 13(2) of the Law. Statutory consultations provide SEL with the opportunity to engage on these considerations prior to final decisions. This provides the opportunity to narrow down or even eliminate areas of disagreement. The outcome of this is that either an appeal can be avoided or the issues that need to go to appeal are minimised. This process worked successfully for the 2021 PCO variation and

the 2023 PCO, with an appeal (and the associated costs) being avoided on both occasions. It is, in my view, unfortunate that SEL choose not to participate in the two consultations associated with the current PCO.

38. In my view, SEL's application to vary the PCO because of the Court Submissions identified above has no merit. I have decided therefore that there is no need to vary the PCO for this reason.

RECOVERY OF LEGAL COSTS

39. In its variation request letter, SEL's third ground for varying the PCO was:

> *"To permit recovery of legal fees"*.

40. It is important to note that the recovery of legal was already considered in some detail in the two consultations leading up to the making of the existing PCO. SEL choose not to participate in those consultations. Recovery of legal costs was also a stated ground for SEL's appeal of this PCO and application for interim relief. I have already submitted a detailed response to this application and this court hearing is pending. In this paper I have generally not repeated the points already made in those previous papers.

41. In an e-mail to me on the 18th of August 2026, SEL elaborated on this third ground by referencing comments made by the judge about recovery of legal costs in paragraphs 127-135 of the court judgement on the 22nd of December 2025. These comments were made in the absence of consideration by the judge of the PCO consultations, appeal application and response referred to above. Furthermore, SEL has not referenced paragraph 136 of that judgement which stated:

> "*I have of course, and I emphasise, heard no proper argument about the above matters, or about the reality of the detail of the actual costs and charges being permitted, or not permitted, to be taken into account for regulating SEL's maximum charge at present, because this is an interlocutory Application and not a full hearing. My comments above are therefore superficial and impressionistic, only as to questions which arise, and not as to any eventual result……"*

42. For convenience, I have set out paragraphs 127-136 of the judgement in an appendix to this paper. I will return to them later in this paper. First however, I will set out how the current PCO addresses the recovery of legal costs.

43. In its August 2025 tariff announcements, SEL introduced a levy of 40 p/kwh to challenge the compulsory purchase of its assets. SEL later confirmed that this challenge would be by way of judicial review. SEL also introduced a levy of 20 p/kwh to cover the costs of responding to investigations and consultations, pursuant to sections 3(1), 14(1) and 16(2) of the Law.

44. The PCO decision paper, on the 31st of September 2025, disallowed the continuation of the two additional levies referred to above. The overall allowance for fixed operating costs in the PCO did however include an allowance of £20,000 per year for legal and other regulatory costs, and noted that the compulsory purchase valuation process may result in some additional costs for SEL. The paper also noted however that SEL would have already raised funds from the levies imposed in September 2025 and that SEL had not participated in the two statutory consultations leading up to the PCO.

45. SEL has recently confirmed that, as of the 25th of September 2026, it had received £32,705 from electricity customers for the levies imposed in September 2025, and that £27,310 remained outstanding. SEL also received an additional £20,000 from electricity customers for legal and other regulatory during the first 12 months of the PCO and is due to receive another £20,000 during the remaining 12 months.

46. Consumers have already therefore paid SEL £52,705 for costs relating to compulsory purchase of its assets, and to respond to regulatory investigations and consultations. This will have increased to £72,705 in 12 months' time.

47. SEL has not sought a judicial review of the compulsory purchase decision and did not participate in either of the two consultations leading up to the current PCO (and hence did not incur external costs). SEL provided financial information to me as part of my investigation leading up to my determination and PCO. However, this information was readily available to SEL and would not have required any external support.

48. The PCO decision paper recognised that the compulsory purchase valuation process may result in some additional professional services costs for SEL. I would anticipate that the services required are likely to be financial in nature more so than legal. SEL has not provided me with any details of any likely additional costs. However, I would be surprised if SEL's total costs for such services needed to be more than the £72,705 which electricity consumers will have already paid.

49. It should also be noted that, whilst the PCO sets an overall allowance for fixed costs, SEL is free to manage individual costs as it sees fits. There will inevitably be an element of "swings and roundabouts". For example, SEL projected income to its managing director for 2025-26 was £96,022 whilst the allowance in the PCO was £58,671. However, the PCO allowance for 5 other staff was £205,349, even though SEL now only employs 3 other staff. I had hoped to review the overall financial performance of SEL to date in this PCO, but SEL has refused to provide me with the required financial information. This included profit and loss accounts and cash distributions to the shareholder.

50. I now wish to respond to paragraphs 127-136 in the December 2025 court judgement. I would make the following points:

    a. Sark is a very small economy and SEL is a small business within this economy, as demonstrated by the figures below from their accounts. The issues of economy of scale and affordability of legal costs therefore apply equally to both SEL and the Sark government (who fund my office).

	Sark Government 2025	**SEL 2024-25**
Income	2,381,770	800,846
Expenditure	2,206,689	676,990
Margin	175,081	123,856

    The liquid reserves of the Sark government at the end of 2025 were £1.2m. SEL is given an allowance of £80,000 for reserves in the PCO. I was unable however to determine the actual reserves held by SEL because it refused to provide me with its accounts and shareholder distributions.

    b. The Sark government has an SLA for legal services with the Law Officers at a cost of c£85,000 per year. My office has only limited access to these services and I represent myself in court appeals of PCOs to minimise costs.

    c. The issues that arise in the economic regulation of monopolies tend to be economic and financial in nature, more so than legal. This is no different

in Sark and is obvious from the considerations set out in section 13(2) of the Law.

d. Appeals of price controls in the UK and elsewhere are heard by expert bodies like the Competition and Markets Authority rather than by the courts, and utilities are typically represented by economic advisors more so than by legal advisors.

e. The regulatory framework for Sark, as set out in the legislation, is much simpler compared to other jurisdictions, and the capital employed in SEL is vanishingly small relative to that employed in UK utilities.

f. It is incumbent on all parties to try to avoid an appeal of a PCO (or to at least narrow down the issues in dispute) by participation in the statutory consultation processes. This is even more important in jurisdictions like Sark that suffer from economies of scale and affordability. SEL fully participated in the consultations leading up to the 2021 PCO variation and the 2023 PCO, and appeals were avoided. It is unfortunate, in my view, that SEL choose not to participate in the consultations leading up to the 2025 PCO.

g. We also now have the experience of four PCOs and two PCO Variations in Sark since 2018. The first of these was set aside, the next three were accepted, and the last two have been appealed. With this experience, there should be no need to revisit issues that have been previously accepted and, in turn, the need for professional external support should decrease over time.

h. Neither party should be guaranteed the recovery of legal costs associated with an appeal. SEL has previously agreed with this point, and it is noteworthy that appeal costs are not included in the 2018 policy statement.

i. In my view, it is also incumbent on all parties to use the regulatory and legal processes effectively and efficiently, and to avoid any abuse of the processes, such that legal and other costs can be minimised. For the following reasons, this has not been my experience with SEL with this PCO:
    i. SEL refused to participate in both statutory consultation processes leading up to the making of the October 2025 PCO.

ii. On the 24th of October 2025, SEL submitted substantial appeal and interim review applications for the October 2025 PCO, and I subsequently submitted a substantial response. On the 18th of August 2026, SEL applied to materially change the grounds for these applications. If this application is accepted, I will need to make another substantial response.

iii. SEL refused to provide information and documentation, pursuant to a section 5 notice under the Law, and which I required for the October 2025 PCO. SEL also refused to provide this same and other financial information, pursuant to another section 5 notice, which I required for my consideration of this variation request. On the 6th of October 2026, SEL applied to the court for urgent directions and interim projection regarding this notice.

iv. This is the third application by SEL to vary the PCO, which would appear to be inconsistent with its earlier application to the court on the 24th of October 2025 to have the PCO set aside.

1. On the 12th of November 2025, SEL requested an immediate variation of the PCO by increasing the maximum unit price by 40 p/kwh tariff for 25 months. This was to recover estimated legal costs of £1.2m to recover c£30,000 of outstanding debt from 203 customers relating to the September 2025 levies. For obvious reasons, this variation request was refused.
2. On the 19th of December 2025, SEL requested that the PCO be varied from the 1st of January 2026 by increasing the maximum unit price by 100 p/kwh. This was to fund SEL's legal costs to fund a court application alleging a breach of contract by my office. Again, for obvious reasons again, this variation application was refused.

51. In my view therefore, SEL's application to vary the PCO to allow the recovery of legal cost has no merit and, in any case, this issue is already the subject of an existing appeal and interim relief application before the court. I have decided therefore that there is no need to vary the PCO for this reason.

APPENDIX:

5) Inclusion of recovery of legal costs

127. This raises a point which seems to me to have very far reaching and serious implications., and as I have said is a recurring point of dispute between SEL and the EPCC.

128. SEL has incurred, in the past, significant legal costs, both in dealing with Mr Moerman as noted above at [122] (and possibly in other legal disputes) and in dealing with the EPCC itself, and no doubt taking advice on whether the EPCC has been within his powers in taking the steps and making the decisions which he has done. The 2018 Policy Statement relied on by SEL (see [99] above) seems to contain an agreement by the then EPCC that the costs of engaging with the EPCC itself would properly be treated as part of the costs of "providing the supply of electricity", for the purpose of assessing a fair and reasonable charge. However, it refers only to the "costs" of engagement with the EPCC in particular respects.

129. It seems that the EPCC will not allow SEL to recover, through the electricity charges, its actual legal costs, previously incurred as mentioned (in particular as regards disputes with Mr Moerman) nor on other historic matters, nor will he accept that such costs in the future should be generally recoverable. Instead, the EPCC has allowed only a relatively modest sum, (modest in the light of Advocates' known charging rates - it is £17,000 per annum) as an annual sum for provision for legal expenses, to be within SEL's allowable expenses to be fed into the assessment of what is a fair and reasonable charge which it can make for the supply of electricity to its customers.

130. The EPCC justifies this general allowance approach as being in accordance with good and/or standard regulatory practice. He points out that legal costs are not costs of, or even reasonably incidental to, the supply of electricity, even if viewed as the regulated supply of electricity. Their incidence is hopefully not a recurring cost. He points out that the effect is really one of transfer of risk and incentivisation to keep extraneous costs down. If the electricity supplier can keep its legal costs below the level allowed, then it keeps the difference as additional profit. If it does not do so, then it loses the excess from the profit it would otherwise make. I understand a similar approach is taken with consultancy fees for reports where these are commissioned by SEL but are not regarded as part of the actual costs of or incidental to the functionality of generating and distributing the supply of electricity.

131. Mr Witney-Price argues that this is unreasonable, and creates unacceptable problems in running a company such as SEL. SEL is a small company, and its only source of income is the charges which it can make to its electricity customers. If the Law is interpreted as not allowing SEL to recover major costs which it actually incurs in its business, from its income, because it is argued that these cannot be interpreted as being the costs of supplying the electricity, then, in the first place, the level of profit allowed to the company, and agreed to be a reasonable return will be depleted, initially

just to an unreasonably low return, unfairly depleting the company's value. But beyond this and because the incurred costs can be very significant, there comes the risk that the company either cannot obtain legal advice or representation which it reasonably needs, or even that the company will be obliged to fold into insolvent liquidation, because it will be unable to pay its debts and would risk committing the offence of trading while insolvent. The only way out of this then becomes for the owner/shareholder, ie himself, to be obliged to pay these costs from his personal assets. This, it is submitted, is grossly unfair and completely undermines the principles of legal personality and the separation of a company's assets from those of its owners.

132. I have to say that I am very disturbed by this matter and the contentions surrounding it. I consider that the questions which it raises as to the proper interpretation of the 2016 Law in this context are real and serious.

133. Whilst I recognise that Mr Lynch has considerable experience of regulatory practice in other jurisdictions, I would have questions as to how far such other jurisdictions are fairly comparable with Sark. Sark is a very small island, with a population of only a few hundred persons. SEL is a small company whose only source of income, to keep itself running as a going concern, is its receipts from its electricity charges. Larger entities supplying electricity under regulated conditions will have economies of scale which can well mean that there is no problem about there being funds available to pay for costs such as legal costs not directly attributable to the function of supplying electricity, and such costs can be, and are, simply absorbed as overheads, without this causing structural problems with the economies of its business model. But that cannot be assumed to be the case with a small company, where it may have an effect even to an existential degree.

134. An inability to set a company's legal costs (or other possible overheads) off against a company's only income is also highly distorting to its business operations, to the point where the company may not feel able to incur, even reasonably, such legal costs. What adjustments can and should be made for this in the context of a regulatory statute which seems likely to have been derived from laws operating, unexceptionably, in jurisdictions where the operating conditions for utility suppliers are very different in practical terms from those on Sark seems to me to be quite a difficult and problematic field. At its extreme, the question might become whether the terms of the regulatory restrictions are such that they must unavoidably be construed in a particular way even though this might cause the collapse of the supplier. Such a situation could well, it seems to me, become so serious as indeed to lead potentially into questions of human rights compliance

135. Again, in this context, it strikes me that there are other questions relating to true comparability with "good regulatory practice" in other jurisdictions which may require examination. It is notable that on Sark, as I understand it, the only relevant legislation is

the 2016 Law, which regulates the “reasonableness” of electricity charges, within the otherwise minimalist area of Sark laws. In other jurisdictions, it would seem to be commonplace for the price of electricity to be regulated, but in the context that electricity suppliers will have statutory rights to wayleaves as well, and also, possibly, public supply obligations. This is quite apart from the difference in size, here, of the regulated enterprise and its potential customer base. The context of other electricity charges, and the extent to which they can be fairly compared to the Sark situation, which I should have thought was approaching being unique, therefore seems to be a matter which is, once again capable of serious argument.

136. I have of course, and I emphasises, heard no proper argument about the above matters, or about the reality of the detail of the actual costs and charges being permitted, or not permitted, to be taken into account for regulating SEL’s maximum charge at present, because this is an interlocutory Application and not a full hearing. My comments above are therefore superficial and impressionistic, only as to questions which arise, and not as to any eventual result. My only concern at present is as to whether such arguments as it would appear would or could be made in relation to this Appeal raise some matter of such significance that they provide a special reason for this Appeal to continue.