



The Office of the Electricity Price Control Commissioner

## **DETERMINATION OF A FAIR AND REASONABLE PRICE**

Issued on the 16<sup>th</sup> of September 2025

### **BACKGROUND**

1. Sections 3(1) and 13(1) of the Control of Electricity Prices (Sark) Law, 2016 (“the Law”) requires me to determine whether a price which is charged by a regulated electricity supplier for the supply of electricity is, or is not, fair and reasonable.
2. This determination follows an investigation and takes account of all material considerations including, without limitation, a number of matters set out in Section 13(2) of the Law.

The price increase:

3. On the 26<sup>th</sup> of August 2025 Sark Electricity Limited (“SEL”) announced that it was increasing its unit price from 49 p/kwh to 93.6 p/kwh. This included what SEL referred to as a “*Legal Levy*” of 40 p/kwh.
4. On the 27<sup>th</sup> of August 2025 SEL announced that it was increasing its unit price again to 113.6 p/kwh. This followed my statement that I would be investigating and consulting on the first price increase and SEL’s increase included what SEL referred to as a “*2025 EPC Price Consultation Levy*” of 20 p/kwh.

These two announcements, taken together, equated to a price increase of 132%, with 5-6 days’ notice, from the 1<sup>st</sup> of September 2025.

The section 5 information request:

5. On the 28<sup>th</sup> of August 2025, I issued SEL with a formal notice, pursuant to Section 5 of the Law, requiring specific information relating to its price increase by the 1<sup>st</sup> of September 2025. A person who fails to comply with

such a requirement, without reasonable excuse, is guilty of an offence. SEL provided a written answer on the 15<sup>th</sup> of September 2025.

6. SEL was issued with another formal notice, pursuant to Section 5 of the Law, on the 5<sup>th</sup> of September 2025, requiring further information and documents by the 12<sup>th</sup> of September 2025. SEL provided a written answer on the 15<sup>th</sup> of September 2025 but did not provide the documents required.

#### The statutory consultation

7. On the 1<sup>st</sup> of September 2025, pursuant to Section 14(1)(b)(i) of the Law, I issued a consultation paper to SEL and to the Policy and Finance Committee of Chief Pleas. Pursuant to Section 14(1)(b)(ii) of the Law, this paper clearly set out my proposed determination in regard to the price charged by SEL, together with my reasons. Pursuant with Section 14(3) of the Law, I requested that any representations be made by the close of business on the 15<sup>th</sup> of September 2025.
8. I did not consult with any other person, pursuant to Section 14(1)(a) of the Law, although, for the purposes of transparency, I published the consultation paper on my website.
9. On the 12<sup>th</sup> of September 2025, SEL sought an extension until the 19<sup>th</sup> of September to make written representations on the consultation paper. This request was not granted.
10. On the 15<sup>th</sup> of September 2025 (at 16.22 hrs), the last day and the last hour of the two-week consultation period, I received a letter from advocates acting on behalf of SEL. The letter stated that SEL would not be engaging further with the purported consultation paper under Section 14 because SEL did not believe that the process was a lawful one.
11. SEL did not make any other written representations on the consultation paper.
12. I did not receive any representations from the Policy and Finance Committee of Chief Pleas.
13. SEL was also offered a 2-hour time slot (5 available times were offered) to make verbal representations on the consultation paper. SEL did not take up this opportunity.
14. As I have received no responses to the consultation, Section 14(2) of the Law is not engaged, and I am able to proceed to a final determination pursuant to Section 13 of the Law.

## **MY DETERMINATION**

15. Following completion of my investigation and consultation under the Law, and after taking all material considerations into account, I have today determined, pursuant to Section 13(1) of the Law, that a unit price of 113.6 p/kwh charged by SEL for the supply of electricity is neither fair nor reasonable.

## **REASONS FOR MY DETERMINATION**

16. Section 13(3)(b) of the Law requires me to set out the reasons for my determination. My reasons are as follows:
17. The overall unit price charged by SEL from the 1<sup>st</sup> of September 2025 is essentially made up of three components: a “standard” component for fuel and fixed costs of 53.6 p/kwh, the “legal levy” of 40 p/kwh, and the “consultation levy” of 20 p/kwh.
18. The standard component of 53.6 p/kwh for fuel and fixed costs, when taken together, does not appear to render the overall unit price of 113.6 p/kwh unfair and unreasonable.
19. I base this judgement on a comparison of SEL’s price of 53.6 p/kwh with my overall modelling result of a price of 53.35 p/kwh. This model takes into account, amongst other things, matters set out in 13(2) of the Law and it has been shared with SEL.
20. However, when taken individually, SEL’s fuel cost component of 18.3 p/kwh appears to be too low, and SEL’s fixed cost component of 35.3 p/kwh appears to be too high.
21. This is something about which I will be consulting SEL further in a forthcoming consultation on a price control order.
22. However, the addition of the legal levy of 40 p/kwh and/or the consultation levy of 20 p/kwh have, by themselves, result in an overall unit price which is neither fair nor reasonable. I have set out my reasons for this determination below.

## THE CONSULTATION LEVY (20 p/kwh)

23. SEL stated in a public notice that this 2025 Consultation Levy was to recover the legal costs of responding to my investigation and consultation, which I had just announced following SEL's first price increase.
24. I calculate, using SEL's forecast demand, that a levy of 20 p/kwh would amount to SEL collecting, on average, c£23,000/month. SEL claimed, in response to a Section 5 notice, that it would only collect £12,300 per month and that its expectation was that it would need to collect this levy for eight months. I am satisfied, from my calculations, that SEL would collect c£23,000/month.
25. SEL stated that such funds would be held by its legal advisors, Collas Crill, spent on a FIFO basis, and any remaining surplus would be returned to customers.
26. Legal costs associated with responding to investigations and consultations are not identified in Section 13 (2) the Law as a specific cost of supplying electricity that must be taken into consideration when making a determination.
27. However, my office has accepted in published policy statements and in previous price control orders that the reasonable costs associated with responding to investigations and consultations, under Sections 3(1)(a), 14 and 16 of the Law, should be recoverable.
28. The issue then comes down to what is a reasonable cost for this activity and how this cost should be recovered. I will now consider each of these aspects in turn.
29. The electricity system in Sark, and the process for making determinations and price control orders, are very straight forward relative to those in other jurisdictions. The current owner of SEL now has experienced these processes for over five years and was able to respond to the consultation for the 2023-25 price control order without any external professional support.
30. Nonetheless, it is reasonable to expect that some external professional support, to help with responding to investigations and consultations, may well be required. This support would normally be required from economic advisors however more so than from legal advisors.
31. The allowance for this cost in the last price control order (in 2025 prices) was c£20,000 per year. As I set out in the earlier consultation paper, on average, SEL may need to respond to three investigations/consultations over the two years of a price control, which equates to c£13,000 per response.

32. However, as noted in paragraphs 11 and 19 above, SEL did not respond to my consultation on if its price increase was, or was not, fair and reasonable.
33. An allowance of £20,000 per year equates to c1.4 p/kwh and such an allowance, and the basis for it, may be revisited again in any future price control orders. This value of 1.4 p/kwh is however materially less than the charge of 20 p/kwh by SEL.
34. I will now turn my attention to how this reasonable cost should be recovered.
35. Section 13(2)(c) of the Law requires me to take into account the efficiency and economy of supplying electricity. In utility regulation, this is achieved by setting an ex-ante allowance for operating costs. The utility owner then has an incentive to be efficient and economic, and to seek to out-perform this allowance.
36. In the last two price controls (and their variations), this is the approach which has been used and accepted SEL.
37. What SEL has introduced with its 20 p/kwh levy is however inconsistent with this approach. It amounts to SEL recovering its actual incurred costs in full on an ex-post basis. Such an approach is completely inconsistent with the efficiency requirements of section 13 (2)(c) of the Law, the ex-ante allowance approach used in price control orders to date in Sark and accepted by SEL, best regulatory practice, and the approach used in the UK and elsewhere.
38. I am also concerned that this fund may also be used to settle any outstanding fees already owed to Collas Crill.
39. For the reasons set out above, the inclusion of this consultation levy of 20 p/kwh renders the overall unit price of 113.6 p/kwh neither fair nor reasonable.

#### **THE LEGAL LEVY (40 p/kwh)**

40. On the 26th of August 2025, SEL publically announced that it was introducing a "Legal Levy" of 40 p/unit from the 1st of September until further notice.
41. I calculate, using SEL's forecast demand, that a levy of 40 p/kwh would amount to SEL collecting, on average, c£47,000/month. SEL claimed, in response to a Section 5 notice, that it would only collect £25,000 per month and that its expectation was that it would need to collect this levy for up to two years. I am satisfied, from my calculations, that SEL would collect c£47,000/month.

42. SEL has stated that this money would be used to fund a judicial review of the government's decision to compulsory purchase its assets, and that the fund would also be managed by Collas Crill.
43. Pursuant to Section 13(1) of the Law, I must only determine if the price which is being charged **for the supply of electricity** is, or is not, fair and reasonable. (my emphasis).
44. Legal costs associated with challenging a government decision are not identified in Section 13 (2) the Law as a specific cost of supplying electricity that must be taken into consideration when making a determination.
45. In any case, I do not consider legal costs, associated with challenging a government decision to compulsory purchase SEL's assets, to be a cost that must reasonably be incurred to supply electricity. Electricity can continue to be supplied irrespective of such a challenge.
46. The issue about the recovery of costs associated with the sale of SEL has arisen before. Indeed, the updated policy statement in November 2019 makes specific reference to this, as set out in my earlier consultation paper. This policy very clearly, and explicitly, rules out legal costs associated with the sale of the company.
47. In my consultation paper, I also explained that the allocation of legal costs associated with appeals of price control orders are determined by the court, or by out-of-court settlements, rather than recoverable up front in electricity prices. SEL has also previously accepted this approach.
48. If the legal costs of an appeal against a price control order are not recoverable in electricity prices, it is difficult to see how the legal costs associated with a judicial review against a third party should be either.
49. It is also the case that price control orders in the UK utility regulation do not include allowances for the regulated company to judicially review government decisions enacted in legislation.
50. The mechanism for recovery set out by SEL is the same as that for the recovery the Consultation Levy. As I have already explained, under this approach, SEL would recover whatever legal costs it incurred. Such an approach is however completely inconsistent with the efficiency requirements of section 13 (2)(c) of the Law, the ex-ante allowance approach used in price control orders to date and accepted by SEL, best regulatory practice, and the approach used in the UK and elsewhere.

51. I am also concerned that this fund may be used to settle any outstanding fees already owed to Collas Crill.

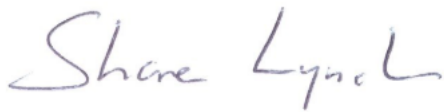
52. For the reasons set out above, the inclusion of this consultation levy of 40 p/kwh renders the overall unit price of 113.6 p/kwh neither fair nor reasonable.

## **NEXT STEPS**

53. Having determined that the unit price charged by SEL for the supply of electricity is neither fair nor reasonable, pursuant to Section 15(1) of the Law, I now intend to make a price control order which will set a maximum price which SEL can charge.

54. Before making such an order however, pursuant to Section 16(2)(a) of the Law, I must consult with SEL. I do not intend to consult with any other persons, pursuant to Section 16(2)(b) of the Law.

55. It is my intention to make a price control order to take effect from midnight on 30<sup>th</sup> September at the latest.

A handwritten signature in blue ink that reads "Shane Lynch". The signature is written in a cursive, flowing style.

Shane Lynch

Sark Electricity Price Control Commissioner