

ISLAND OF SARK

EXTRAORDINARY (EMERGENCY) MEETING of the Chief Pleas to be held
on 21 June 2021 at 6 pm in the ASSEMBLY ROOM.

1. To CONSIDER a Report with Propositions from the POLICY and FINANCE COMMITTEE entitled “**Electricity**” (copies of the Report will be distributed immediately before the Meeting).

Lt Col RJ Guille MBE
Speaker of Chief Pleas

18th June 2021

POLICY & FINANCE COMMITTEE

**Report with propositions to Chief Pleas Extraordinary (Emergency) meeting 21st
June 2021**

**PURCHASE/COMPULSORY PURCHASE OF ELECTRICITY
INFRASTRUCTURE**

Summary

At the Policy & Finance Committee meeting on the 20th June 2021, the Committee discussed the strategic threat to Sark's community that would be created if Sark Electricity Limited (SEL)/Sark Electricity Holding Limited (SEHL) ceased to trade without any reasonably certain arrangements being in place to ensure continuity of its operations. In light of the seriousness of such an eventuality, it was agreed that the Chief Pleas should be asked as a matter of urgency –

- (A) to authorise the Committee, or an agent or representative appointed by the Committee, if the Committee so determine, to enter into negotiations with SEL/SEHL to purchase the company or some or all of its assets and/or any other plant and/or equipment located on Sark, and which is used for the Island-wide generation and/or distribution and/or supply of electricity, and
- (B) to request the Law Officers of the Crown to prepare a Projet de Loi enabling the compulsory purchase of SEL or SEHL and/ or assets owned by SEL/SEHL and/or any other plant and/or equipment located on Sark, and which is used for the Island-wide generation and/or distribution and/or supply of electricity,

in order to ensure that electricity can continue to be supplied to islanders on a stable and predictable basis.

It was further agreed that any Projet should be submitted for the approval of the Chief Pleas as soon as reasonably possible and that the Projet, following receipt of Royal Sanction, should be implemented and commenced in the event that the supply of electricity to residents ceased or was at immediate risk of being discontinued, or efforts to purchase by agreement did not succeed.

Background

During the week of 14 June 2021, the Policy & Finance committee were made aware that Sark Electricity Limited were making statements to stakeholders, including the Price Control Commissioner, that the company would likely cease trading in the coming days or weeks. It is understood that the statements being issued by SEL were prompted by a belief on the part of its current management that there might be insufficient revenues available to the company to fund its continued operation.

The Committee is unable to confirm the intent of SEL or whether the company may cease the supply of electricity.

Contingency plans

The community in Sark can be assured that Chief Pleas have robust contingency plans in place should there be an interruption in supply. These have been developed further following the threat of

the cessation of supply in 2018. The Bailiwick's Civil Contingencies Authority has been briefed on this matter should there be an interruption in that supply which would result in an emergency occurring. This will ensure that Chief Pleas acting in tandem with the Civil Contingencies Authority will be in a position to act quickly to avoid, or limit the timescale of, any disruption to a very short period.

If these short-term interim measures need to be put in place on a long-term footing to assure continuity of supply, there will need to be a transition to a more stable longer-term arrangement. Such an arrangement will require, at the very minimum, long-term access to the existing infrastructure at present owned or used by SEL/SEHL in order that it can be operated lawfully by an operator other than SEL or someone authorised by SEL. However, it is most likely that the only viable method of ensuring stable and predictable supply will be the negotiated purchase of SEL/SEHL or the assets currently used to provide Island-wide generation and distribution, or the compulsory purchase of SEL/SEHL or those assets further to a Projet of the type described in this Report. In the circumstances, the Committee is of the view that if ownership cannot be acquired by the consent of each party (by a negotiated purchase) then it would be proportionate and necessary to acquire SEL/SEHL or any relevant assets through compulsory purchase.

Proposals

In these circumstances the Committee believes that it should be authorised to negotiate on behalf of the Chief Pleas, the purchase of SEL/SEHL or its or other relevant assets. This would be on the basis that any provisionally agreed terms and conditions of purchase would be referred back to the Chief Pleas for approval. A successfully negotiated purchase would then enable the Chief Pleas, or an operator authorised by the Chief Pleas, to use the current Island-wide generating facility and distribution infrastructure to continue the supply of electricity to residents.

In tandem with endeavouring to agree a consensual sale and purchase of SEL/SEHL or relevant assets, suitable compulsory purchase legislation should be progressed with the assistance of the Law Officers of the Crown. Compulsory purchase legislation is used in other jurisdictions to acquire rights or ownership over private property where is in the wider public interest. The option for compulsory purchase could then be exercised in defined time period set by Chief Pleas if negotiations are not successful.

Compulsory purchase legislation would address matters such as identifying the property in question and providing for an independent process to determine the compensation to be paid. The legislation would be drafted so as to enable a fair balance between the interests of the wider community with the interests of the individual property owner to be reached, in a way that respects the international obligations to which Sark is committed, including the European Convention of Human Rights.

Funding

If a purchase is negotiated then the capital funding required will need to be raised, through negotiations on lending and investment either with the States of Guernsey or through commercial borrowing, possibly by private equity investment. These options are being explored and would need to be brought back before Chief Pleas for agreement before any acquisition is finalised.

Propositions: -

- 1. That Chief Pleas authorises the Policy & Finance Committee by way of an agent or representative appointed by the Committee, if the Committee so determine, to negotiate the purchase (subject to the final approval of the Chief Pleas) of Sark Electricity Limited/Sark Electricity Holding Limited and/or its assets and/or any other assets located on Sark, and which are used for the Island-wide generation and/or distribution and/or supply of electricity.**

2. **That Chief Pleas authorises the Policy & Finance Committee to direct the Law Officers of the Crown to draft legislation to enable the compulsory purchase of Sark Electricity Limited/ Sark Electricity Holding Limited and/or its assets and/or any other assets located on Sark, and which are used for the Island-wide generation and/or distribution and/or supply of electricity.**

John Guille
Chairman, Policy & Finance Committee

SEL update
21 June 2021

Background

Sark Electricity Limited (SEL), a privately-owned company, is the sole commercial provider of electricity on the island of Sark. The island is dependent on the supply from SEL, save for a few properties that have gone “off grid”. The supply of electricity is regulated in relation to cost to the consumer under the Control of Electricity Prices (Sark) Law, 2016. This established the Office of the Sark Electricity Price Control Commissioner¹ (PCC), the current appointment being Dr Anthony White. The present Price Control Order (PCO) was varied from 1st January 2021² and is adjusted time to time. The last adjustment was made on 23rd April 2021, lowering the price from 55 p/kWh to 53 p/kWh.

Threat to supply 2018

The first PCO determination was made in March 2018. Following this there was a dispute between SEL³ and the PCC when SEL appealed the price determination. Tensions rose between SEL and the PCC with threats from SEL to cease supply. On 7th November 2018, SEL wrote to all its customers to advise that it would cease to offer electricity for sale on 30th November 2018⁴. This timing was aligned with a hearing in the appeal in relation to the PCO lodged by SEL. At this stage the Bailiwick’s Civil Contingencies Authority (CCA) were engaged as the deadline approached should the Authority need to act in the event of an emergency or to prevent an emergency occurring.

On the evening before the SEL imposed deadline of 30th November, the PCC and SEL settled out of court. There were alleged deficiencies in the consultation process for the PCO which were taken into account when a settlement was agreed. An agreement was made on price in the immediate term. Chief Pleas and SEL agreed to discuss possible purchase of SEL during 2019, however no agreement could be found on the terms of valuation at that time.

SEL was reportedly bought by Alan Whitney Price (formerly called Alan Jackson at that time) in March 2020, following the death of David Gordon Brown, the previous director, in February 2020⁵.

¹ [Home \(sark.gg\)](http://Home.sark.gg)

² [210101 final variation.pdf \(sark.gg\)](#)

³ Which was owned by David Gordon Brown and family at the time

⁴ [T \(sarkelectricity.com\)](http://T.sarkelectricity.com)

⁵ [Sark Electricity has been sold; ITV News Channel](#)

SEL - 2020 onwards

In mid-2020 Mr Whitney Price contacted Deputy Al Brouard relating to issues he was having accessing business banking facilities due to a previous conviction for perjury and fraud in 2009. This was reported in the local media at the time⁶. It is not known if this matter has been resolved.

In October 2020, one of the tenement holders, who had disconnected from the SEL grid, launched proceedings to have some of the SEL equipment removed from his land citing safety concerns. As a result SEL removed this equipment and as a consequence 19 other homes were cut off from the SEL grid. Chief Pleas stepped in to connect those homes to mobile generators. These homes remain disconnected from the SEL grid and this temporary arrangement is still in place, at significant cost to Chief Pleas. SEL has not sought to reconnect these homes. Permission was sought by SEL to the Douzaine and was granted. SEL declined to commence works until a wayleave agreement was in place, this was signed by SEL & the Seigneur in June 2021, permission was given to extend the original scope of works, however to date no works have commenced.

Mr Whitney Price has more recently been in dispute with the PCC relating to the PCO and the methodology used to determine the unit price of electricity. The dispute, at least in part, is down to principles of price control/regulation. SEL want to be able to recoup broader expenditure, including certain legal costs, through the tariff charged to consumers in Sark. They argue that the PCC has not taken these costs into account, and that as a result the price per unit cause the business to not be profitable/cause a deficit. SEL claim that the PCC will cause the company to run out of funds and cease trading.

The PCC model limits this in line with what is understood to be the normal approach in a regulated market. The PCC's position is that only reasonable costs may be factored into the calculation used to determine the unit price. The PCC's evaluation of SEL accounts is that the company would have made a profit, but for some expenditure which its considered to be unreasonable to claim from SEL consumers, and further suggests that these additional cost are a consequences of, in its view, ill-judged actions of its management.

It would appear that the focus of the pressure being exerted by Mr Whitney Price is on the PCC, in order to seek a change in the PCO. The PCC is maintaining its position that PCO is based on the evidence available, detailed reasoning and standard regulatory practice.

Update on current situation

⁶ [Bank ban for new Sark Electricity owner | Bailiwick Express](#)

During the week commencing 14th June 2021, Mr Whitney Price appears to have decided run down the company, claiming that the financial position mean the company is unsustainable as a going concern.

He has advised that this week he will instruct the company to stop buying fuel. The PCC has estimated that would leave only a couple of months of reserves.

Mr Whitney Price advised the PCC, on 15th June 2021, that SEL will shortly cease trading. Mr Whitney Price also advised that he intends to keep the financial position confidential as long as possible to prevent a negative impact on Sark during the tourism season.

On the 14th June 2021, Mr Witney Price informed His Excellency, Sir Ian Corder by telephone that SEL would run out on funds by Saturday 19th June and the electricity supply would be switched off.

This underlines the uncertainty about Mr Whitney Price's intentions relating to the trading position of SEL and whether he intends to cease all supply. However, due to the nature of this risk and the potential consequences, the recent exchanges have led to the Policy & Finance Committee briefing the CCA. The statement in Appendix 2 was issued on 18 June 2021, following this briefing.

Policy & Finance Committee is seeking the direction of Chief Pleas to negotiate a purchase of SEL/SEHL and or its assets as necessary. If this is not possible, Policy & Finance is seeking a direction to ask the Law Officers to prepare compulsory purchase legislation.

Due to the unpredictable nature of the present situation this strategy will provide one last, and recorded attempt to purchase SEL before proceeding with an option for compulsory purchase.

This remains one of the last remaining options to acquire the company/its energy assets following previous attempts by Chief Pleas, attempts by private investors and discussions with Guernsey Electricity.

This is seen as proportionate step in order to retain a stable energy supply and protect the welfare of the Sark community.

Appendix 1 – Recent Emails outlining possible closure of SEL

From: Pipet, Tina

Sent 15 June 2021 12:29

To: Cobb, Elaine

Subject Sark Electricity – news bulletin!

Importance: High

Hi Elaine,

In haste.....on behalf of HE (Marco is on leave)

- Alan Witney-Price (formerly Jackson) telephoned this office this morning to advise that there are only sufficient finances in SEL to last until Saturday, when the electricity will be switched off
- I have informed HE, who asked me to check with Conseiller John Guille(President of P&F) to make sure they were aware.
- P&F are aware – they have been in talks this morning with Alan Bates (Guernsey Electricity) and Jo Reeve.
- The matter will be raised at CCA on Thursday.

I hope that all makes senseof sorts!

We'll keep you posted.

Tina M Pipet

PA/Engagements Secretary to the Lieutenant-Governor

Appendix 2: Recent public Statements

Given the uncertainty and the nature of the communications, the Policy & Finance Committee issued the following Statement on Friday 18th June 2021:

The Policy & Finance Committee would like to address the concerns in Sark about the ongoing supply of electricity by Sark Electricity Limited. The Committee is aware of these rumours but unable to confirm the intent of Sark Electricity Limited and whether the company are planning to cease supply at the weekend.

The community should be reassured that Chief Pleas has robust contingency plans in place should there be an interruption in supply. In addition, the Bailiwick's Civil Contingencies Authority has been briefed on this matter should there be an interruption that would result in an emergency occurring. This will ensure that Chief Pleas is able to act quickly to limit the timescale of any disruption to a very short period.

Chief Pleas have been informed about these matters and will be considering if any other steps can be taken to protect the wellbeing of the community in Sark.

Also on Friday 18th June the PCC issues the following letter:

Dear Residents of Sark,

I am writing to inform you that the Managing Director of SEL has notified my Office, the Governor of Guernsey and the Seigneur of Sark, that the company "will shortly cease trading" due to financial difficulties.

We are all aware of the very deep concern this prospect poses to the people of Sark who rely on SEL as the sole supplier of electricity on the island.

Mr Alan Witney-Price (formerly known as Alan Jackson) claims that the closure of the power company is due to the Price Control Order (PCO) of 2019, later modified by the "Variation", not allowing SEL to cover the costs of operation and make a return. However, my recent analysis of SEL's (unaudited) financial information suggests that, were it not for SEL's discretionary expenditure on legal advice, SEL would have been profitable during 2020, according to UK accounting practice. A similar pattern is emerging in 2021, although I am still waiting for some information and comments from SEL which would provide further clarity.

Residents may remember that the PCO was designed to protect SEL's profits from variations in electricity consumption and fluctuations in the price of fuel. However, as

I explained in the Variation, I do not believe it would be fair to expect customers to protect the company from the consequences of, in my view, ill-judged actions of its management. These have led to the loss of sales to “own generators”, as well as to the 19 properties at La Tour. SEL has also, in my view, unnecessarily incurred substantial legal costs. I do not believe it would be reasonable to expect customers to bear the consequences of such unfortunate decisions.

Against the above background, and as I have indicated to SEL's management, I remain open to discussions with representatives of SEL and am prepared to consider any representations made on the company's behalf in connection with the views I have formed and decisions I have taken in the discharge of my duties under the Control of Electricity Prices (Sark) Law, 2016.

I have kept Chief Pleas up to date with SEL's announced intentions and I understand that plans are in place, should SEL cease trading.

SEL has not provided my Office with the figures I require to adjust the maximum unit price of electricity, as required by the recent Variation. Given the current level of diesel fuel prices, I will leave the price for July at 53 p/kWh. I may adjust future prices when the information becomes available.

*Anthony White
Commissioner
commissioner@epc.sark.gg*

18th June 2021