

2016.03.22

3.12 Deputy S.M. Wickenden of St. Helier of the Chief Minister regarding the decision not to exercise the 18-month infrastructure buyout option clause within the previous fuel farm contract:

Could the Chief Minister explain when the decision was taken not to exercise the 18-month infrastructure buyout option clause within the previous fuel farm contract with Rubis, who took the decision and under what authority, and the reasons for the decision?

Senator I.J. Gorst (The Chief Minister):

I just want, before I ask Senator Ozouf to answer this question, to offer my apologies to Deputy Mézec. In the heat of the previous questions, I think my first riposte to him in his final question was inappropriate and I apologise but could Senator Ozouf answer this question on my behalf? Thank you.

The Deputy Bailiff:

Thank you, Chief Minister.

Senator P.F.C. Ozouf (Assistant Chief Minister - rapporteur):

I have put my stop watch on. The Chief Minister has asked that records are reviewed into all the relevant meetings that took place around that time that the Deputy is asking. Indeed, there is a written question by Deputy Higgins that sets out a chronology, although it has got a health warning that the time allowed has been limited in order to find a full review of what happened when. I think it is important to say - and of course this is perhaps with the benefit of hindsight - that the notice to buy the fuel farm in July 2014 would have needed effectively to happen much earlier. Funding would need to have been agreed by the Assembly in the 2013 Budget and that could have been substantial. In fact, at the time, there were no other companies that were interested and expressed an interest in owning a fuel farm; that came later, as Members are aware. Now, in fact what is, I think, a positive way forward we are now, and almost in a sense that issue is old, is that the new lease gives effectively antecedent precedents that if there is a non-conformance with the obligations of the merger, that is a termination event which would come to the Royal Court, irrespective of who owns the fuel farm. In a competition sense, it should not matter. If we fail, we should nationalise it. If we do not, if we get fair and non-discriminatory access for it, then it should work. That is 90 seconds, Sir.

The Deputy Bailiff:

Slightly under, I think, in fact, Senator.

Senator P.F.C. Ozouf:

I can have a few more seconds if you want.

The Deputy Bailiff:

A supplementary, Deputy Wickenden?

3.12.1 Deputy S.M. Wickenden:

I understand that obviously we would have had to have looked at this much earlier, so it was missed out by the previous Council of Ministers, is that correct?

Senator P.F.C. Ozouf:

I think that what is emerging from the discussions is that there were discussions, as is clear from the correspondence that is being documented, within both the then Economic Development Department and Property Holdings and those are really the issues that are there. Where we are today is that I am content. Members will know how much I think ... perhaps Members do not see sometimes the forthright discussions that happen with Ministers. I totally respect my good friend the Minister for Infrastructure. He has got to deal with property issues; the Minister for Home Affairs on safety and security. Competition came third but, my goodness me, with the help of the Law Officers and others, we have got some pretty strong new provisions in that lease and I am determined to make them work.

3.12.2 Deputy A.D. Lewis:

I wonder if I can ask the Assistant Minister, was there a full valuation of the equipment on the site undertaken and, if not, why not? How could any informed decision be made as to the future of that site without that valuation?

Senator P.F.C. Ozouf:

I do not mind making a statement about this so Members can interrogate me for 15 minutes at some point on it because it is quite complicated; as always, these things are not simple. The fact is, is that there was a tricky clause which I argued for, as the Deputy will know, in 2002 and caused chaos. The then Harbours and Airports Committee, because it did not have a non-discriminatory fuel farm, it was not basically sufficiently open and opaque with transparency, and basically it did not meet the muster of what I wanted as a competition thing without the Competition Board being in place and I blatantly blocked it with members of the Industries Committee. What I can now say is because of the decisions and because of the work that went on in Council to get an agreement which has got some real teeth, which has got antecedent precedents, a single breach of the merger conditions is going to result in, if it happens - I do not know; that is a matter for C.I.C.R.A. to sort out - but if it does happen, an application to the Royal Court will be made effectively to bind. For me, nationalisation would be failure. I want competition to work and that is what I seized upon the agenda of 23 actions overseen by Professor Sir John Vickers. But he says it is hard but the benefits can be substantial, and I agree.

3.12.3 Deputy A.D. Lewis:

The Minister has not answered the question. Was a valuation done of the equipment on the site in order that the Government could make an informed decision on whether to nationalise it or not?

Senator P.F.C. Ozouf:

No, I do not think there was but we would have to check all the records. But what we do know, of course, is that the parties which were then engaged in a merger ... I made my views, as did my good friend the Minister for Economic Development, Tourism, Sport and Culture, to C.I.C.R.A. at the time and I think that we have all learnt quite a lot about that whole situation. The fact is, is that we were faced with a merger of Esso and Rubis which itself had bought the Shell controlling interest some time earlier which some of us said might happen, then effectively you would have been faced in a right old battle ground. What I want is effectively what I wanted in 2002: a non-discriminatory fuel farm operated fairly so that fuel companies can bring in their fuel at an efficient cost, a throughput agreement which has got new arbitration procedures in it, tough sanctions. I am going to be looking into it, I will do a 64 request under the Competition Law in case there is any absence of understanding within the Competition Regulatory Authority of my determination to understand what the issues are and we are going to get a fuel market that is going to work in the interests of

consumers because we can cut fuel prices. We are seeing it in heating oil. Hooray! That is going to give more Jersey people more money in their pockets.

Deputy M. Tadier:

Have the clocks gone forward yet or is it next week? It is just that we seem to be stuck in a time warp here where the Minister seems to be allowed much more than 90 seconds to answer.

3.12.4 Deputy G.P. Southern:

I thought my watch had stopped. The Minister says that it is a very complicated thing but for me it is very simple. The Minister for Infrastructure has said that it was not anyone in his department responsible for missing this opportunity, so it must have been someone in E.D. (Economic Development). The question was: who and when was this opportunity missed; was this decision made? By whom?

Senator P.F.C. Ozouf:

That will come out of the review. But in a sense, I have to say to Deputy Southern, that it is almost a wasted endeavour to kind of pinpoint the fact that when you think about it ... and my thinking on this is blurred because of the benefit of the excellent discussions I have had with C.I.C.R.A. and their advisers and Oxera and the Oxera review. Nationalisation and regulation always has to be the second choice. Making markets work by effective competition with throughput arrangements which are fair, non-discriminatory and transparent with appellate reasons is the way you get effectively fuel markets to work. I am going to be working with my good friend the Minister for Economic Development, Tourism, Sport and Culture and Deputy Norton in order to get more transparency. I declare an interest; I own a garage. I have no particular pecuniary interest in it but effectively more transparency on prices, just like George Osborne said on the M62 last week.

3.12.5 Deputy G.P. Southern:

The question still remains, who failed to take this decision back then? Was it the Assistant Minister or was it the Minister?

Senator P.F.C. Ozouf:

I have said, the Chief Minister has asked for this to be reviewed and we will get there. The facts always come out and I cannot answer that question. But effectively where we are now, I say again, it does not matter who owns it, whether or not is Bloggs, Shell or Rubis. If the fuel farm is operating on a non-discriminatory basis that plays fair, that there are appellate procedures in relation to the throughput price on which of course there has been an interchange, it is not fair really to push Deputy Noel on these competition issues. I will take the flak for the competition issues and I do not mind standing accountable for those issues. My goodness me, I was irritating, and I did get some additional safeguards into the lease but the good Minister and the Assistant Minister had to deal with safety and security because we would not be and wanting to be in a position where we would basically have chaos which was threatened in relation to our fuel market.

3.12.6 Connétable J.E. Le Maistre of Grouville:

Would the Assistant Minister concede that the 3.4 pence throughput charge at the fuel farm covers the purchase price of the plant and buildings, the depreciation of the same and indeed gives a return on the investment, so the cost to the States, having decided to purchase the plant and buildings at the time 18 months ago, would have been, at worst, cost neutral?

Senator P.F.C. Ozouf:

I do not think that is right because the fact is, is that we do not know what the valuation would be. We have got another experience in the fuel farm issue and that is what happened with the fuel farm at the airport. My goodness me - and I am not going to abuse parliamentary privilege - but the players in this market play hard. They want their pound of flesh. Now making markets work is about having strength, standing up to the strong and standing up to companies that want to basically use their dominant position, if that is the case. I want C.I.C.R.A. to be shining the torch into this area and to get to the truth. I believe fuel prices and energy prices we can do better but I need consumer support to do that. They need to vote with their feet rather than be, if I may say, slightly lazy and just accept high prices. We need consumer advocacy and consumer action. That is an issue that we can all agree on.

3.12.7 Deputy S.M. Wickenden:

Obviously the P.A.C. have just written-up terms and conditions today to look into this, so I look forward to that review. My question is, obviously at the end of a contract or lease, going out to tender is the best way to get value for money, would the Minister agree? If we would have taken the point to buy this infrastructure we would have had more options at the end of the current lease, does the Assistant Minister agree?

Senator P.F.C. Ozouf:

I think I did agree that a month ago but where we have got to is effectively now a lease which gives what I sought with the former Deputy Dubras and my colleagues on the Industries Committee way back in 2002 which is a non-discriminatory fuel farm. It does not matter who owns it. If I fail, if C.I.C.R.A. fails - and they are jolly well not going to because I am confident in their ability with their new powers and their new support that they have got - we are going to basically not worry about who owns it because it is going to be fair and consumers are going to get a better deal. It is a favourite specialised subject of mine and I look forward to examination. I could talk about it for hours but I do not think Members want me to.