



Environment Scrutiny Panel

Energy Policy Review hearing with the Channel Islands Competition and Regulatory Authorities

WEDNESDAY, 22nd MAY 2013

Panel:

Deputy J.H. Young of St. Brelade (Chairman)
Deputy S.G. Luce of St. Martin
Mr. R. Levett (Adviser)

Witnesses:

Mr. A. Riseley (Chief Executive Officer, Channel Islands Competition and Regulatory Authorities)
Mr. M. Byrne (Deputy Chief Executive Officer, Channel Islands Competition and Regulatory Authorities)

[16:01]

Deputy J.H. Young of St. Brelade (Chairman):

Good afternoon, everybody. Welcome, ladies and gentlemen, to this fourth session of the Environment Scrutiny Panel carrying out a review of the Minister for Planning and Environment's draft Energy Plan 2012-2050. We have seen a number of people. This particular session, welcome to our guests from the Channel Islands Competition and Regulatory Authorities. Thank you for coming to see us this afternoon. I will briefly introduce ourselves for the record. Deputy John Young, I am Chairman of the Environment Scrutiny Panel.

Deputy J.H. Young:

I have to give apologies for Constable Rondel, who is a member of the panel but has to leave to be at the hospital this afternoon, so he sends his apologies. Gentlemen, could you please introduce yourselves for the record?

Chief Executive Officer:

Certainly.

Deputy Chief Executive Officer:

I am Michael Byrne. I am the Deputy C.E.O. (Chief Executive Officer) of C.I.C.R.A. (Channel Islands Competition and Regulatory Authorities).

Chief Executive Officer:

I am Andrew Riseley. I am the Chief Executive of the Channel Islands Competition and Regulatory Authorities.

Deputy J.H. Young:

Thank you. We are in a public hearing this afternoon and so there will be an opportunity after the event, later on, you will see the transcript and there is a podcast earlier that you will have a chance to correct detail in the transcript. I do not know if you are familiar with these meetings, but there is a notice there setting out your protection that you are afforded within these public meetings. Make sure I get this right, my colleagues will probably write if I do not. We are setting aside a maximum of one hour for this meeting. Hopefully we can do our best to cover that in that time. We have seen before us the letter that was sent by yourself, Mr. Riseley, on 14th March, which sets out some comments but it does refer to obviously a meeting you had with the Director of Environmental Policy. We are happy to deal with this letter on its own, but it does say in its opening comments: "Following the meeting." Are there additional points that were relevant at that meeting you would like to expand on and make to us today? I think I would like to give you a chance to do that.

Chief Executive Officer:

Okay, that would be helpful. If the panel is comfortable, it might be helpful if we could set a little bit of a scene for our ...

Deputy J.H. Young:

Yes, that would be fine.

Chief Executive Officer:

... interest in the topic. We are very grateful to the panel for seeing us. Again, to set some context around C.I.C.R.A.'s interest in this report and in the Energy Plan, in Jersey we do not regulate from a sectoral point of view any aspects of energy. We regulate the telecoms and postal markets, but in Guernsey we do have a role as the regulator of the electricity sector. So that has

required us within C.I.C.R.A., albeit sitting in the Guernsey office, to have a degree of expertise in electricity and energy. Michael, in fact, prior to his time at the O.U.R., the Office of Utility Regulation as it then was in Guernsey, now the Guernsey Competition and Regulatory Authority, spent some time as the head of retail ...?

Deputy Chief Executive Officer:

Retail markets, yes.

Chief Executive Officer:

... markets at Ofgem, the U.K.s (United Kingdom) energy regulator so has a considerable amount of expertise. Another of our colleagues, Jonathan Tooley, has been heavily involved in regulating Guernsey Electricity. Much of our interest, I guess, and our background comes through our role as the regulator of electricity in Guernsey with an ability to, if you like, look at how some of the issues are being dealt with in Jersey. The role that we have had to date with respect to energy in Jersey has really arisen in the context of our competition functions. So wearing our competition hat, we do 2 things: firstly, we enforce the provisions of the Competition Law. To give you an example, we scrutinise mergers and acquisitions to ensure that they do not substantially lessen competition. One of the mergers, in fact, that we have before us at the moment is the proposal by Rubis to acquire Esso's share of the La Collette fuel terminal, which obviously has an implication for energy supply. We also conduct market studies, which are reviews of particular markets. They are undertaken not because we have a belief that there is a breach of the law going on, but we want to investigate whether the market is working well and delivering for consumers. So in that vein we undertook a review of the electricity market in Jersey last year and have an intention at some stage, probably in the latter half of this year, possibly at the start of next year, to look at a pan-Channel Islands market study into gas. These market studies are typically the result of a request by the Minister for Economic Development under Article 6(4) of the Competition Regulatory Authority (Jersey) Law. Interestingly, the electricity one was not the result of a request from E.D.D. (Economic Development Department). It was one that we decided to conduct ourselves and we had a significant degree of cooperation from J.E.C. (Jersey Electricity Company). I think they were keen to have individual review and scrutiny of their policies and pricing and our intention as part of that review was really to give Jersey consumers a sense of whether they were getting fair value from their electricity company. In the course of looking at electricity, we made some observations towards the end of our report about policy areas that we thought might be worthy of more investigation. It was, in fact, those particular policy areas that we sought to explore with the department in the discussions referred to in our submission on the Energy Policy, particularly around connections policy. So we had during the course of our market study submissions from a number of larger customers who felt that the existing connections policy of Jersey Electricity dissuaded them from engaging in development within the Island because they

were being required to bear all of the costs of expanding the electricity network to satisfy the increased demand on it. We also looked at feed-in tariffs and I guess made the observation that it would be worth a body such as the department or the Scrutiny Panel thinking about the policy that should inform how you set feed-in tariffs and whether the existing policy of J.E.C., which we understand is primarily driven by setting those tariffs at the marginal cost of the energy that they import from France ... but also, thirdly, I guess, to look at demand management, so whether it would be open, for example, for large consumers of electricity within Jersey to pay less for supplies that are interruptible. In fact, there was scope for J.E.C., perhaps with the encouragement or, indeed, within a more formal legal framework, to be encouraged to look at the opportunity for demand management and more tariff variation. I think the States is to be commended for undertaking the policy review and endeavouring to come up with an energy policy that satisfies Jersey's energy needs for the years to come. The O.U.R. (Office of Utility Regulation) in Guernsey, our predecessor body, was quite critical of the States of Guernsey for the lack of policy direction, the net effect of which was to essentially put on to Guernsey Electricity responsibility for coming up with policies around things like security of supply. I think it is very helpful that it is acknowledged as part of the energy plan that it is perfectly proper for politicians and Government to have a role in deciding on issues such as security of supply and to weigh in on some of the trade-offs that are involved between having more on-Island generation and greater amounts of security of supply versus the cheaper tariffs that might come if you chose to rely on less resilience in energy supply. In the absence of policy direction, I think ultimately to date it really has been J.E.C. making those sorts of determinations and I think it is entirely proper that that is a matter for Government and politicians.

Deputy J.H. Young:

Do you think that, therefore, that conclusion means that in looking to a new future, if you like, for energy in the Island it is right that we look at the regulatory framework establishing a new regulatory framework compared with what we have now?

Chief Executive Officer:

I think so. In particular in terms of putting in place the energy plan, I think there are other aspects of the regulatory framework that it might be opportune for the department to use the energy plan as the hook for. Some of those issues were also ones that were covered in the discussion that we had.

Deputy J.H. Young:

You have obviously thought about it a great deal. One of the subjects that has come up for us is this question of feed-in tariffs, that in getting micro generation opportunities we have heard from a number of witnesses consistently that the absence of having a feed-in tariff is an inhibitor on those

opportunities being taken, which seems to us that, therefore, that seems to be a relevant factor for a new regulatory framework to have a look at how that tariff is structured.

Chief Executive Officer:

I think that is something that we would support. It may well be that when you look across the water to the U.K., for example, that it does not necessarily provide a fantastic model for feed-in tariffs. There has clearly been a great deal of fluctuation in feed-in tariffs and an uncertainty that has, in fact, come from the policy vacillations that have occurred in the U.K. But our impression at present is that things like feed-in tariffs are almost exclusively driven by the commercial objectives of J.E.C. One might say that if you are to have a growth in micro renewables and micro generation that it is perfectly proper for there to be a policy input and a governmental input into determining those things. Obviously, as the U.K. bears out, feed-in tariffs, if you choose to set them at a level above marginal cost of electricity, have to be financed somehow. So the comments are not meant as a criticism of J.E.C.

Deputy J.H. Young:

No, I think what we are seeking to do is talk about future change.

Chief Executive Officer:

Yes.

Deputy J.H. Young:

It is useful to know where we are now but I think our prime focus is looking ahead. Deputy Luce, I think you wanted to get in.

The Deputy of St. Martin:

Yes. It is obviously very interesting for you as well as for us that we have 2 Islands side by side, relatively similar, but certainly when it comes to generating energy and using energy very similar, and yet we regulate one and we do not regulate the other.

[16:15]

I just wondered if there is a direct comparison on the price that we pay for our electricity connection costs, which you mentioned just recently, Andrew, feed-in tariffs and just generally whether there are tariff variations between the 2 Islands that we can directly put down to regulation.

Deputy Chief Executive Officer:

Yes, part of that is almost certainly down to the fact that Guernsey is a bit further out at sea and so needs a bit more of an asset investment structure to support that. It also has a particular security of supply policy that means they have more on-Island generation, as I understand it, than you have in Jersey. So there is a different approach to resilience there. Whereas Jersey has the 2 cables coming in or did have the 2 cables coming in ... **[Laughter]**

The Deputy of St. Martin:

That is the result of our approach to ...

Deputy J.H. Young:

Yes, I think you might be correct. **[Laughter]**

Deputy Chief Executive Officer:

Guernsey has far more on-Island generation and has relied much more on that, certainly in the winter months particularly. It has meant there has been a price differential and that has varied a fair bit. Roughly speaking, I think you will find variations of somewhere between 7 and 18 per cent over the years. It depends how far back you go.

Deputy J.H. Young:

Seven and 18?

Deputy Chief Executive Officer:

Yes, the range is quite high. I think roughly 10 per cent on average over the past ten years would not be far off.

The Deputy of St. Martin:

Is that directly attributable to the fact that they are generating more electricity over there using oil?

Deputy Chief Executive Officer:

It is a number of factors. We have carried out efficiency reviews of Guernsey Electricity and if you want to simplify it there are 2 issues. One is efficiency, and the reviews have found that there are levels of inefficiency in that business, but the other is plain and simple that it is further out at sea. It has a different security of supply policy. To some extent, it is belt and braces and then some, but as you saw with the failure sometimes that can be helpful. These things are long-term cost/benefit analyses and it is not necessarily easy to know what the right answer is. But clarity at least of what is expected of the utilities can lower costs just because of the clarity, and that is certainly something that is critical in Guernsey.

The Deputy of St. Martin:

Specifically to the connection costs and the feed-in tariffs, is the differential similar in those between both Islands?

Deputy Chief Executive Officer:

In terms of the total amount paid out by the electricity businesses I do not know the answer but it is very, very low, negligible. I think you are talking about something in the order of £20 to £50 in total payouts for a given year in Guernsey. It really is something very small. Now, that may be a symptom in that perhaps there would be more take-up or maybe it is just the fact that micro renewables are very expensive. Then the question is should they be supported. If they are supported, how should they be? Do you go with the grain of commerce and create commercial incentives or do you have direct action, state action?

The Deputy of St. Martin:

How does that sit within your regulatory authority when you start potentially charging the people more for their electricity, in other words allowing the J.E.C. to use that profit to pay back people who are feeding in? Is that allowed? Can you do that or is Government going to have to intervene here and actually subsidise it?

Chief Executive Officer:

The view that we have taken in respect of G.E.L. (Guernsey Electricity Limited) is typically that there is a need for a policy framework that then drives those sorts of subsidies if they are going to exist because it is very difficult for a regulator who is price regulating Guernsey Electricity to, if you like, sign off on tariffs that build in a subsidy that is ultimately almost a political judgment about whether you should or should not be supporting particular types of renewables. So it is part of why the O.U.R. over the years called for the States of Guernsey to be more explicit about the policy framework it was setting on things like security of supply but also on feed-in tariffs.

The Deputy of St. Martin:

Basically, what you are saying is by Government interfering and saying: "We want more micro renewable feeding in but you are going to have to subsidise it" it is almost Government saying we are going to be anti-competitive, which goes against what you guys are trying to do in a way.

Chief Executive Officer:

It may not necessarily be anti-competitive. It is saying that there is an explicit decision being made about how electricity is to be generated and a recognition that you are, by doing that, taking account of economic externalities that otherwise would not be taken account of. So it is not necessarily anti-competitive but it does require, I think ...

The Deputy of St. Martin:

Distorts the market?

Chief Executive Officer:

I guess it distorts what would otherwise happen, what the market purely would deliver. It seems to us perfectly appropriate that the Government provide policy direction.

Deputy J.H. Young:

Can I simplify that discussion? Does that mean that within the spirit of the law, the law that you administer in Jersey, we can have Government setting policies that discriminate in favour of renewables and so on?

Chief Executive Officer:

Yes.

Deputy J.H. Young:

We just have to be explicit in our policies about that?

Chief Executive Officer:

Yes. Typically, under the Competition Law, where Government is stepping in and making policy decisions, it is not acting as an undertaking, as a commercial undertaking, and therefore its policy prescriptions lie outside the law. If, on the other hand, Jersey Electricity Company were to say: "Right, we are going to discriminate in favour of this particular group of customers" for no apparent reason, then it would potentially open itself up to an allegation that it is abusing a dominant position and people could beat a path to our door.

The Deputy of St. Martin:

Could you say then in Jersey if, for example, Government decided they wanted the feed-in tariffs to be 3 times the price of what you purchase your nuclear power for that that would be discriminating in favour of those people who could afford to install micro energy in their house and those that could not? Would they be discriminated against?

Chief Executive Officer:

Well, people may say that it is discrimination one way or the other. It is almost certainly not discrimination that would be actionable under the Competition Law.

Deputy J.H. Young:

But it is obviously a question of social policy?

Chief Executive Officer:

Yes.

The Deputy of St. Martin:

I guess we are just trying to find ways of ... through this micro energy we want people obviously to take it up as much as they can and I would imagine we are going to want to encourage it.

Deputy J.H. Young:

I just want to check out where that takes us because I think politicians would need to have this clear. I think what you are saying is regulation does not work per se in the absence of policy. Regulation works within the policy framework that Government is free to set.

Chief Executive Officer:

Yes.

Deputy J.H. Young:

What the regulation system then does is try to create fairness within that policy.

Chief Executive Officer:

Well, it tries to ensure particularly that the suppliers acting within that policy are operating efficiently.

Deputy J.H. Young:

Is there any conflict there, the fact that, for example, just using this as an example, with the electricity company Government is the majority shareholder in the company? Does that distort the picture?

Chief Executive Officer:

The Government is ...

Deputy J.H. Young:

Or complicate it perhaps?

Chief Executive Officer:

It complicates it perhaps. It does complicate it. The States of Guernsey is 100 per cent shareholder of G.E.L.

Deputy J.H. Young:

We are 67, are we not?

Chief Executive Officer:

Indeed. I think it gives an added dimension to policy and it can complicate it. I think one of the things that we have often said in Guernsey over the years is it is very important for Government to recognise that it has very separate roles. It is a shareholder but it also needs to be the setter of policy. Things can end up being very muddy if it chooses to use its shareholder role in order to engineer particular outcomes and where those are not made very explicit.

Deputy J.H. Young:

Right, but does it help regulation in the area of achieving a move towards more renewables and micro generation if we were to have, say, 100 per cent share ownership compared with having the kind of share ownership we have now? Is there a case for having a greater say or does it not matter?

Chief Executive Officer:

I do not think ultimately it matters. I think the company is required, whether it be 67 per cent state owned, 50 per cent, 30 per cent, 100 per cent, the company acts within a statutory framework and a policy framework. I guess what we would emphasise is the need for Government to be very explicit in the way that it sets that policy framework and not necessarily to deliver mixed messages to the company about ...

Deputy J.H. Young:

Yes, no sleight of hand in other words?

Chief Executive Officer:

Indeed, that it should be there as a shareholder asking for a return and equally it should have a very separate role in setting up the framework within which the company needs to act.

Deputy J.H. Young:

So really we can dismiss this issue of the percentage ownership, it is not a factor?

Chief Executive Officer:

I do not think it is an important factor.

Deputy Chief Executive Officer:

No. If anything, it perhaps makes it more incumbent on the States to be absolutely transparent and clear and coherent in what it is trying to achieve. It should not be the case that ownership of Jersey Electricity somehow dilutes the ability to make proper policy. That cannot be right either.

Deputy J.H. Young:

That helps a lot, but obviously policy needs to be worked up in enough detail to be meaningful?

Deputy Chief Executive Officer:

Yes.

Deputy J.H. Young:

It would not be enough just to say ... or would it? Would it be enough just to say we should have tariffs that give preference to micro renewables, increased use of micro renewables, renewable energy resources? Would it be okay to have a generalised policy like that?

Deputy Chief Executive Officer:

I think that sounds potentially problematic in the sense that you would want something more objective. The sort of things that might come out specifically would be some sort of assessment of what the external costs are of burning carbon fuels, the idea of a shadow price, somehow building that into potentially a decision framework. Another in the case of renewables might be the fact that localised micro generation means there are far lower distribution losses because the source of generation is close to the point of consumption. So the price that that renewable source attracts should benefit from the fact that it is saving the existing utility provider some of these costs. To some extent, micro generation is less of a candidate for this, but if you get enough micro generation it can potentially delay the need to augment the capacity of the network. So the ability to recognise objectively real savings helps immensely in putting the policy together so that all the parties can respond in a way that achieves what you are trying to get.

Deputy J.H. Young:

That sounds like a lot of detailed work to do that, to pull that together.

Deputy Chief Executive Officer:

One of the big benefits of being next to large jurisdictions who put a lot of resources into these things ...

Deputy J.H. Young:

Is you could borrow it.

Deputy Chief Executive Officer:

... is that you can borrow it. It will not be the first time.

The Deputy of St. Martin:

I just wondered how you as regulators find you are allowed to express a preference as to whether ... in Jersey where you have Government and private individuals owning the energy-generating company, which is not regulated, is that preferable to Guernsey, where it is completely Government owned and regulated? What are the pros and cons of the 2 if there are such a thing?

Chief Executive Officer:

We were reasonably ... when we got to the end of our electricity market study for Jersey, we did consider during the course of it whether there was a need to recommend a change to the regulatory environment. Ultimately, because we found on a range of customer variables that actually Jersey Electricity, when you looked at it from a perspective of customers' interests, was performing well, it was difficult to make a case for why a change to the regulatory system was necessary. We did say that we thought there was potentially a need for us to be looking at J.E.C. on a semi regular basis, not necessarily because we had found anything that would cause undue alarm but recognising that J.E.C. is a large utility ... well, a monopoly within the Jersey economy, that electricity bills are a significant proportion of household expenditure and that it helps consumers if they get reassurance that actually the prices they are paying are fair. But ultimately if we were to do that it would at the moment be on our own initiative under our competition functions rather than because we had a formal statutory role. There are pros and cons about subjecting energy to more formal regulation. To give you an example, we have provided some advice to Chief Pleas in Sark about whether Sark Electricity should be subjected to regulation. In fact, Chief Pleas is currently in discussions with Sark Electricity about how best to proceed with respect to tariffs there. Tariffs in Sark are very, very high. The company itself is 100 per cent privately owned. The message that we gave to Chief Pleas and, in fact, to Sark Electricity was that given the context in which electricity arose in Sark - this is a tiny economy with 600 people - there are costs involved in regulation. In that particular context, it made really good sense for everything else to be exhausted before you moved to something that was a form of regulation because the very cost of implementing regulation would impose quite a considerable burden on consumers.

Deputy J.H. Young:

But it is worth it in Jersey?

[16:30]

Chief Executive Officer:

Well, we did not call for it so I think it might be that if Jersey Electricity was less efficient or if there was more concern around its tariffs vis-à-vis comparable jurisdictions there may be a case for it, but we did not find it when we looked.

Deputy J.H. Young:

One of the things that has been said to us is about this question of having tariff structures that recognise, for example, that for everybody having a certain amount of energy is a necessity. After that then increasing consumption of energy is more of a choice.

Chief Executive Officer:

A luxury.

Deputy J.H. Young:

Yes. Well, I was going to try to avoid it because that carries pejorative baggage with it, but basically it is a choice, whereas there is a core ... so one of the suggestions I think is called rising block tariffs. That struck me as being an example where we are aware of opinions being expressed that that sort of thing should be there in Jersey as a means of encouraging consumers to invest in energy conservation measures because we can have less consumption without damaging low income and vulnerable groups. Is that the sort of thing that can be done and introduced within the regulatory framework, we could have those sort of tariff structures?

Chief Executive Officer:

I think the driver for any move to something like those sorts of tariff structures would probably best come from Government. If it is informed by a particular social objective or if it is motivated by a desire to create incentives for people to take up micro renewables, for example, arguably it is better that it be backed by an explicit policy decision on the part of Government.

Deputy J.H. Young:

So that could be part of ... if this strategy results in a States decision, those are the sort of States decisions which would enable a regulatory framework to be set to achieve that?

Chief Executive Officer:

Yes.

Deputy J.H. Young:

I think you mentioned interruptible tariffs. Was that just allowing consumers a choice where they can have a less dependable supply as opposed to a totally dependable supply? I think you mentioned it earlier.

Deputy Chief Executive Officer:

Yes. If I can go back a step perhaps to better explain the point, when you have networks the networks that supply our electricity tend to be around generation sources that are centralised, single source, more or less continual supply. They cope well with small increments close to the grid. This is how the networks and the generation sources work. When you are dealing with renewable generation you are dealing with distributed sources. They are smaller. They are not large sources. The whole way in which electricity is managed in the grid is potentially very different. It places demands of price; what is the right price for coping with those inputs into the grid? It presents technical problems of how do you cope with the actual electrons moving in different ways, but also there is this behavioural challenge for the incumbent, who is used to behaving ... and you see this in all the utility industries pretty much, where there are existing monopolies, which is it is their network. They have a particular approach and pattern of working. So when somebody comes along and says: "I would like to put in 2 kilowatts of micro generation capacity here", it is a very different challenge for that business. So that is the context for it. For the specific issue of interruptibles, in the conversations we had with different parties, some of this behavioural challenge potentially emerging was there are parties such as financial businesses who have back-up generation and telecom businesses who also have back-up generation which potentially can be used to supplement, particularly at peak times, demand. Those arrangements are not developed despite the willingness apparently, according to our interviews, of parties to want to make that available. It did seem that there are benefits potentially to Jersey if those parties could actually work out arrangements, but it was not clear there were ... the incentives did not seem to be sufficient to get that going. Whether the capacity that is available is enough, whether the discounts would be sufficient for those businesses to provide it was not clear, but it did seem that it was a very untapped source of generation potentially.

Deputy J.H. Young:

Can I just clarify? Does regulation of utilities have to be price driven or can it be driven on energy consumption or could it be even driven on carbon emissions? Is the price mechanism always the incentive, always the measure?

Deputy Chief Executive Officer:

No. I think price often is a proxy for a variety of things but the issue is an objective measure. So it could be carbon. It could be the carbon equivalent of electricity. So, for example, efficiency pressures on a business could be related purely to carbon emissions or price. So it does not necessarily hang off price, but it does need to be objective in some sense.

Deputy J.H. Young:

So in our policy setting, then, we need to be very clear about those choices as to where we are going to adopt those different measures?

Deputy Chief Executive Officer:

Yes. Perhaps it illustrates it better by just giving you the contrast between, say, where you go with the grain of the market and commercial decision-making versus where there is direct intervention. So direct intervention might say: "You may not emit any more carbon emissions than this limit." Alternatively, you could achieve the same thing by simply saying: "We estimate that the cost to our Health Department, our society and to all sorts of other factors of carbon emissions means that you should add a premium when you make a decision to generate, fire up the oil generators, of one pence a kilowatt hour or 2 pence a kilowatt hour." What you inject into the decision-making framework is a premium but when they are making decisions between importing, say, from France or generating on-Island, your on-Island generation decision has a premium attached to it. So you can go with the grain of decision-making or you can set absolute levels.

The Deputy of St. Martin:

I just want to change tack on something that we have just been touching on there. That is the distribution and the costs. Jersey Telecom has an infrastructure in the ground which is being opened up to other people to use and, if I am correct, those arrangements are being put in place along similar lines. Certainly, in the U.K. you have any number of different energy suppliers who do not have any number of different cables in the ground coming into your house. You have one cable coming in and the arrangements are made. Is there a case in Jersey that we should be looking for another supplier and enforcing that supplier on the J.E.C. network? If so, have we looked at that? I presume if I could find another energy source in France that was cheaper than Flamanville that I could then come to you guys and say: "Hey, I can provide cheaper energy to the Jersey public but I want to cut out the J.E.C. I am going to buy it from Monsieur Frenchman and the St. Martin Electricity Company is going to supply everybody." Is that possible?

Chief Executive Officer:

At present, I think the answer under the existing regulatory regime would be no. I guess in theory someone could come to us and say: "I want access to J.E.C.'s energy network and they are refusing to give it to me so that is an abuse of dominance under the Competition Law", but it is a very, very blunt tool. But I agree, I think when we thought about competition in the context of the market review that we just did, we did not consider in any great detail the prospect of having a second retailer. Within the existing framework, given that there is really a single source of most of the electricity that comes into the Island, being via the cables, it was difficult to see necessarily how at present you would end up with a great deal of benefit from having multiple suppliers. If you

did have multiple suppliers it would almost certainly just be at the retail level because the electricity ultimately would be coming mainly from a single source. The one caveat I would add to that is in the context of renewables. I do not mean micro renewables; I mean large-scale renewables. Because there is the prospect, I suspect, in the medium term for, for example, a wind farm off the coast of Jersey, for development of tidal energy in the medium term. At present, I think our view, and it is not something we have looked at in a huge amount of detail, but our feeling from having looked at the existing regulatory framework was that it did not provide at the moment for someone to come in and set up a rival source of generation because they would have no ability under the existing law to insist that J.E.C. provide access to the grid. So within that existing policy framework, therefore, all new renewables efforts are likely to be driven by J.E.C. as the controller of the grid. Now, there may be an argument to say that if the Electricity Law was amended in such a way as to provide some sort of an automatic right to connect, I suspect it would not happen overnight but at the very least you might see that if someone who was a specialist in wind energy, tidal energy, saw the sorts of resources that were available around Jersey could say to themselves: "I am very good at doing this and I know I am an expert in wind or an expert in tidal and I would like to set something up next to Jersey in order to provide new generation. Because there is an existing right for me to connect, I am therefore able to go to J.E.C. and say: 'I am interested in doing this. Let us talk about the arrangements that would be required for me to do that.'" At present, that just does not exist. The Electricity Law was not necessarily part of the remit of the Environment Department when they looked at it. The Electricity Law 1937 is creaking.

The Deputy of St. Martin:

Yes, because the other thing I was going to say, to come from the other angle, as an individual would I be in a position to go to the J.E.C. and say: "I would like to buy all the electricity for St. Martin in bulk at a discount price" and then sell it on to those individuals in my parish at a slightly increased price? If I could do that cheaper than the J.E.C. could supply it, if I was a multimillionaire and decided to subsidise the price, for example, would I be allowed to do that?

Chief Executive Officer:

You might be able to construct an argument under the Competition Law, which would then involve us and the courts probably in trying to arbitrate on how you ended up with access, but the much better way of doing it is not to rely on the general Competition Law, but, if that were a desirable policy outcome, to have provisions within the sectoral law that gave rise to an ability for someone to have access to the grid if they wanted to, recognising that ...

The Deputy of St. Martin:

I do not know that I am particularly proposing either of those. All I am doing is I am saying, as you well know, J.E.C. are in a monopoly situation and they need to realise that there are a number of things that they will need to do in order to maintain that monopoly position.

Deputy J.H. Young:

Following up that point, because I think what Steve has done is drawn a parallel between, if you like, our evolution in terms of telecoms, looking ahead to renewables. Is that an open-ended access or are there limits to it? Are we open to having a whole multiplicity of different providers?

Chief Executive Officer:

I think I will bring Michael in on this as well, but clearly there would have to be limits because I do not think necessarily J.E.C. ultimately as the controller of the grid would be able to deal ... well, it would be unreasonable I think to expect it to simply give access on whatever terms to whomever turned up.

Deputy J.H. Young:

I agree.

Chief Executive Officer:

On the other hand, the fact that there is no right at the moment means that the discussion does not even happen.

Deputy J.H. Young:

It prevents it, so maybe there is a balance, is there? In other words, there is a journey, there is a policy to be worked out here. At the moment, no, there is not the access, which means that it blocks anybody even thinking about it. It is not the only block but it is one of them. Open it up and then I think I am hearing from you criteria. You need some measures. You need to have some policy as to on what basis you would do that.

Chief Executive Officer:

Yes.

Deputy J.H. Young:

I have no idea. I have no understanding of telecoms and what the criteria are. I assume it is not open access, anybody could just plug in.

Chief Executive Officer:

No, it is not. **[Laughter]**

Deputy J.H. Young:

We cannot have a Steve Luce Telecoms Limited.

[16:45]

Chief Executive Officer:

Well, not at the moment. Luce Telecoms is potentially 3 years away. At the moment, when Sure or Newtel provide services to households, they typically use the J.T. (Jersey Telecom) fixed line network. One of the things we are looking at in the medium term in telecoms is whether to do what has happened in the U.K. and to give other operators the right to essentially put equipment in the telephone exchange, which then means that ultimately the final mile to your house will still be J.T.'s mile but there will be equipment in the exchange that will then mean that you can establish a rival central network if you like and, therefore, provide competing services, still relying on some of the network but including equipment at the exchange. That does not happen at the moment but it is something we have an eye to potentially in the future. I think electricity is somewhat different in that actually it is harder to see how you would necessarily at present end up with real competition in generation other than via a new source of renewables, for example.

The Deputy of St. Martin:

Could you instruct the J.E.C. where they would ... this is just another hypothetical. Say a new power station is built in Le Havre powered by natural gas and the J.E.C. make a decision; actually, we quite like this, we get on very well with the manager and we are going to take all our supply from this new power station. But you guys know that actually the nuclear power would be a little bit cheaper but the J.E.C. are going to put their costs up because it was their choice to change power suppliers. Are you in a position to regulate and say to them: "No, you will not"?

Chief Executive Officer:

No, almost certainly not. The only tool that we would have at our disposal is to say that they would be abusing a dominant position by engaging in excessive pricing, but that is really about times when people are earning monopoly profits. If they are merely choosing a higher cost source of energy, again the general Competition Law does not really go to that. On the other hand, under the specific regulation of electricity that happens in Guernsey, it would be absolutely open to the G.C.R.A. (Guernsey Competition and Regulatory Authority), or C.I.C.R.A. through the G.C.R.A., to say to Guernsey Electricity: "Why on earth are you choosing a higher cost source of power?" Now, there may be a perfectly good reason, but because tariffs are regulated in Guernsey and any tariff increase would have to be approved by us, they would have to have that discussion with us. Not in Jersey.

The Deputy of St. Martin:

In Guernsey, for example, could you regulate that they would have to change their generators to natural gas from oil because that might give the consumers a lower price?

Deputy Chief Executive Officer:

No. At the moment, we would not require them to do that. What there is is there is a cost efficient onus on them in the licence condition. Now, that is not an unequivocal cost efficiency burden. So, for example, they will burn less environmentally damaging coal, for example, so lower sulphur content. That is more expensive. We would not say: "No, you need to get the worst coal and the highest sulphur content because your licence says you need to be cost efficient." That would be naïve. So there is some give and take on the issue but the fundamental remit that Guernsey Electricity has is it must produce electricity in a cost efficient manner.

Deputy J.H. Young:

One of the things that has been said to us strongly is if we are looking at renewables we need to think in terms of pan-Channel Islands initiatives, joint working. Does all our discussion really lead us to the conclusion that we have to have a common approach to regulation for renewable energy sources across the Islands? If we had completely different criteria in Guernsey and Jersey it would seem to be really problematic working. Would you agree with that? Have I understood that correctly?

Chief Executive Officer:

If you are going to draw on common generation sources, it certainly helps if there were a common policy framework.

Deputy J.H. Young:

Well, there might not be common generation but there are certainly common connectors and so on.

Chief Executive Officer:

Yes. Well, if, for example, I were in theory an island to the north of Guernsey and Jersey that had an interest in tidal energy, say ...

Deputy J.H. Young:

I was thinking of them. [Laughter]

Chief Executive Officer:

... for example, clearly there would be benefits. If I was someone looking to invest millions and millions of pounds in a new power source and one of the markets I was looking at was Guernsey and Jersey, for example, it would clearly help if there was a common understanding within Guernsey and Jersey about the policy priorities for renewables. That said, there are all sorts of instances where on telecoms, for example, the regulatory system copes with different priorities between Jersey and Guernsey. So it is probably preferable but it is not absolutely necessary.

Deputy J.H. Young:

But it is dependent on the extent of cooperation?

Chief Executive Officer:

Yes.

Deputy J.H. Young:

It sounds as if, if we got it wrong, if we did the wrong thing, we could end up with a bad result vis-à-vis Alderney, for example.

Chief Executive Officer:

Well, I think anyone who is investing millions and millions of pounds in a project with a very long lifespan wants some sort of policy certainty because in some ways if you do not have a degree of policy certainty you, therefore, just do not get the investment. If they were looking, for example, to exporting this electricity to Jersey and Guernsey, I can only imagine that it would help them if there was a pan-Channel Islands understanding about priorities in terms of renewables generation.

The Deputy of St. Martin:

When we are talking about utility-scale renewables, and this is changing the subject a little bit, but if Jersey identified, let us just say for argument's sake, 10 square nautical miles of seabed that they would like to produce energy from, would you be stepping in if we decided that we wanted to give all that 10 to one particular person or would you be saying: "Hang on a second, you cannot go putting all your eggs in one basket. We want you to hold some back in case somebody comes along"?

Chief Executive Officer:

If we were to do it, we would almost certainly be wearing our Competition Law hat. I do not think we would necessarily 'second guess' it to that extent. What we might do in terms of the Competition Law is insist, to the extent that the States was acting as a commercial undertaking in doing that, that it had tendered, for example, and had sought the best valued use for the ...

The Deputy of St. Martin:

At least look to the alternatives or something?

Chief Executive Officer:

Yes, indeed. It may even be that it was not necessarily the person who paid the most for it but that at least there was a rational basis for choosing them. But I cannot envisage a situation where we would micro manage the process down to saying: "No, you have to hold those 5 square miles off for someone else." Not under the Competition Law, no.

Deputy J.H. Young:

I am going to ask Roger, our expert adviser, to pick up on this subject.

Mr. R. Levett:

Thanks very much. This has been very interesting. I follow your argument that on a competition consumer protection basis there is no argument for extending regulation to Jersey Electricity. However, this energy plan has very ambitious targets, as you are well aware. Just this afternoon's discussion has shown there is an awful lot of interventions might have a role in achieving these: rising block tariffs, season or time-dependent tariffs, interruptible tariffs. We have talked about feed-in tariffs; social tariffs we have not mentioned that is another dimension to this; environmental obligations on energy suppliers; least cost planning. Michael, you have been round the houses on all of these, I am sure. You have said I think very clearly that deciding on these is ultimately a political decision because they are interfering with what the market would otherwise do. However, designing them, looking out for the unintended consequences, implementing them, monitoring them, correcting them, fine-tuning and so on and so forth is a highly technical job, but it seems to me there is a bit of an institutional vacuum about that. It is not something politicians could do. It is not something I think the department would think it has the expertise to do. You people have expertise in this field. Would this be a role that you would wish to adopt or do you think something else should be set up to do this if you accept the train of reasoning that this kind of active intervention is going to be needed to deliver the Energy Plan?

Chief Executive Officer:

Wearing our electricity regulator hat in Guernsey, I think we would clearly envisage that if there were to be a policy direction for investigating a range of tariffs that we would ultimately seek or expect to have a role in monitoring that, implementing that, just as, dare I say it, Ofgem has in the U.K. The policy framework is clearly set by D.E.C.C. (Department of Energy and Climate Change), but a lot of the detailed work around implementing it is done by Ofgem. I guess we have always had a very clear eye to the fact that if there were to be formal regulation of energy in Jersey it is not really for us to put that in place. It is very much a political decision. The States

would need to say: "Right, we are now going to formally regulate electricity and we hereby confer on you, J.C.R.A. (Jersey Competition Regulatory Authority), a formal role as the electricity regulator." But if you were going to have that sort of tariff variation, I accept the chain of logic that says you may well need the technical expertise around those sorts of tariffs and I would like to think that given we wear various utility hats within Jersey we would be an obvious body to oversee it.

Deputy J.H. Young:

Would we need a new law or can we adapt the Electricity Law or can we adapt the law that you work under?

Chief Executive Officer:

Well, the Electricity Law, in my humble opinion, already requires quite considerable ...

Deputy J.H. Young:

A complete rewrite?

Chief Executive Officer:

It is very out of date.

Deputy J.H. Young:

Does that mean, then, that that could be a critical factor to achieving this strategy?

Chief Executive Officer:

I think there are issues around, for example ... well, we have talked about interconnection; we have talked about feed-in tariffs. I think if that were to have a statutory underpinning, and it would need to, you would end up having to amend or introduce an entirely new Electricity Law. My understanding is J.E.C. is quite comfortable with the existing regulatory framework ...

Deputy J.H. Young:

I am sure they are. [Laughter]

Chief Executive Officer:

... because it is a known quantity for them. As soon as you have departments and politicians ...

Deputy J.H. Young:

How many pages is it, about 3 pages, that?

Chief Executive Officer:

It is brief. There are copious references to the electricity commissioners in England, who have not existed since 1953. **[Laughter]** It is chronically out of date.

The Deputy of St. Martin:

Tell me if I am wrong - I am sure you will - but we are getting the vibes here that if we are going to move to something like this document where there might be variations and tariffs and stuff like that, that you feel that you would be far happier working under a regulatory scheme other than what you have at the moment, which obviously is no regulation because we do not regulate the electricity industry. So what I think I am getting is if we are going to start to do something slightly different in the future we really need to be looking at rewriting this, giving you guys the power to go in after we have regulated for the industry.

Deputy J.H. Young:

Before you answer that, though, I think it is clear that your question, Steve, is not for regulation's sake, it is to help achieve the statutory ...

The Deputy of St. Martin:

Well, that is right, yes. I am not doing it just because the law is creaky. I am just saying that if the political decision is that we want to move ahead with this type of document and we are looking at the different types of tariffs that we just mentioned and other things, we might need to regulate because we may not be able to achieve it otherwise. Would that be a fair comment?

Deputy Chief Executive Officer:

I guess the way I would perhaps think about it is that, first of all, there is this assessment of: is there market failure?, and then the second test is: is the intervention cost effective? Once you reach that stage, it is deciding who are the right people to achieve these different objectives. I think with regulation it is probably useful to add that there are limits to what regulation can achieve and deliver. We are rather good, we think, at delivering price and quality. We are less good at delivering, if you like, some of the more technical aspects. We could not tell you what the right piece of cable is to have. We would not be able to tell you what is the most efficient condenser boiler for that matter. So I think it is important just to caveat that there are limits to what economic regulators like us can achieve and perhaps we could certainly contribute immensely to part of it. I am not sure we could achieve all of it.

The Deputy of St. Martin:

But I do not think we are facing by any stretch of the imagination either market failure or problems with cost effectiveness. I think what we are saying is that maybe to implement this document

Government are going to have to make a policy decision which goes away from where we are at the moment. That does not mean to say that the marketplace is failing, we are just deciding that we are going to go down a different route.

Deputy J.H. Young:

Yes, the way we see this strategy is there is a whole host of things in there. The strategy is saying reduce carbon emissions. The strategy is saying a major thing is demand management.

[17:00]

Demand management will bind tightly on certain groups. That suggests strongly about change in tariffs. There is a whole policy base about a move towards renewables in the longer term, which brings in the question of access to the network, opens out the whole question of the terms on which people are connected and so on. I think what I am picking up from this is the facilitative element of regulation, not expecting to do the whole story.

The Deputy of St. Martin:

The other thing, if I might interject, is we mentioned carrot and stick. If we decide to adopt this, we could go down a carrot approach in encouraging people to do things, but if we get to a point where it is not happening and we really are committed, we then have to look at the stick approach, which is regulation to get to the targets we set for ourselves.

Deputy J.H. Young:

I think perhaps, Steve, we might need both.

The Deputy of St. Martin:

Well, yes, I am sure we will.

Deputy J.H. Young:

I think, Roger, you wanted to get in there?

Mr. R. Levett:

Thanks, yes. Just as an example, a lot of the discussion we have been hearing is about how do you persuade the people who can afford to pay to do insulation. Now, one possible policy tool to do that is a rising block tariff where you actually make the price for your last unit so expensive that it motivates you to stop doing things, but working out how that would affect people in Jersey, what the dissolution effects would be, what the commercial effects would be so that J.E.C. could still turn a profit on the new electricity tariffs, all of that is quite detailed technical work. Now, it is not

exactly market failure, as Steve said. It is policy objective, which could be achieved partly through market intervention but requires some very canny and well-informed judgment about how you design the thing to achieve multiple objectives and how you implement it, which seems to be the sort of thing that you guys know about.

Deputy Chief Executive Officer:

I guess in the expression “addressing market failure” it is trying to achieve something that the market at the moment is not delivering for you. In that sense, I would express it as a market failure. So the very fact that you need policy means you are compensating for something that the existing paradigm is not delivering for you as an economy.

Deputy J.H. Young:

But you said about the limitations. Being practical about it, does that mean that if you were to have a regulatory framework that brought in a number of these elements, would that mean that your organisation would not handle this on its own, we would have to plug in somebody else or some other organisation to pick up these other objectives, or would you feel confident that you can cope with this? You cope with telecoms. This would be a doddle, really.

Deputy Chief Executive Officer:

I am struggling to think that this would be easy. **[Laughter]**

Deputy J.H. Young:

But you are up for the challenge?

Deputy Chief Executive Officer:

Certainly. There are several stakeholders in this and ensuring that there is a fair playing field for those that are trying to participate in it is critical. That is certainly the role that we play and we play in all sorts of sectors. We obviously have the skills to do it in this sector.

Deputy J.H. Young:

Excellent. That is good news. Any follow-up, Roger?

Mr. R. Levett:

Could go on for hours but I think I will leave it there.

Deputy J.H. Young:

Steve?

The Deputy of St. Martin:

No.

Deputy J.H. Young:

Now, I think we have had a very comprehensive coverage. Is there anything else on your list there? I see you have your note of things you wanted to say to us.

Chief Executive Officer:

No, we have covered everything.

Deputy J.H. Young:

Well, thank you. I am going to close the session now and say thank you for a very informative afternoon. I was not quite sure where a session on regulation would take us. I have learnt an enormous amount and I think we have been able to focus it on the subject.

The Deputy of St. Martin:

The time has gone very quickly, which must be a good sign.

Deputy J.H. Young:

So thank you for your time and, as I say, Malcolm, you will get the transcript ...?

Scrutiny Officer:

About this time next week for you to check.

Deputy J.H. Young:

An opportunity to check some detail. **[Laughter]** It is not an opportunity to strike out. I will close the session. Thank you very much.

Chief Executive Officer:

Thank you very much.

[17:04]