

OUR REF: T&D/385/07/03
YOUR REF: CB1/BC/10/01

4th November 2002

BY FAX AND BY POST (Fax No. 2121 0420)

The Honourable Mr. Lau Ping-cheung
Chairman, The Bills Committee on the Land
(Miscellaneous Provisions) (Amendment) Bill 2002
Legislative Council Secretariat,
3rd Floor, Citibank Tower,
3 Garden Road,
Central,
Hong Kong.

Dear Mr. Lau,

LAND (MISCELLANEOUS PROVISIONS) AMENDMENT BILL 2002

We refer to the letter from the Clerk to Bills Committee of 25th October 2002 and would like to list out our comments on the above bill for your consideration.

1. The Proposed Section 10A - Issue of Principal Excavation Permit Clause (4) (b)

Quoted:

(b) the permittee of the permit is unable to have access to the land concerned for the purpose of making or maintaining the excavation after the commencement of the excavation for reason other than the fault of the permittee, the contractor for the excavation or their employees,

the Authority may, without payment of any prescribed fee or any other part thereof (other than that paid under subsections (1) and (3)), extend that period by the number of days for which the permittee is so unable to have access to the land.

Unquoted.

We suggest amending the section as follows:

(b) the permittee of the permit is unable to commence or continue excavation or related work for reason other than the fault of the permittee, the contractor for the excavation or their employees,

2/Cont'd.....

the Authority may, without payment of any prescribed fee or any other part thereof, extend that period by the number of days for which the permittee is so unable to commence or continue excavation or related work.

We consider that the original wording 'unable to have access' is too restrictive while our proposed wording 'for reason other than the fault of the permittee, the contractor...' mirrors the spirit of refund of economic charge.

On the other hand, we would like to propose the reasons shown in the attached sheet for agreement among Highways Department and utility undertakings as satisfying the reasons for the application of section 10A(4)(b). The list can be formulated from time to time together with Highways Department once a broader sense of exemption is written into the bill.

2. The Proposed Section 10F - Nominated Permittee Clause (c)

Quoted:

(c) the Authority approves the nomination under section 10I.

Unquoted.

We suggest deleting the proposed requirement of approval by the Authority (under section 10I - Approval by Authority of nomination) on nomination of nominated permittee by the permittee.

As explained to Highways Department in the discussion sessions on the draft conditions of permit held on 7th and 18th October 2002, it is an existing practice in the trade that utility undertakings will definitely arrange their trenching contractors as nominated permittees to carry out the trenching works. The proposed requirement will disturb the commercial operation of our company and affect the smooth running of works.

3. The Proposed Section 10Q - Provision of Safety Precautions and Support Clause (2)

Quoted:

(2) A permittee and nominated permittee who contravenes subsection (1) shall each be guilty of an offence and shall each be liable on conviction to a fine at level 5 and to imprisonment for 6 months.

Unquoted.

We suggest deleting the imprisonment sanction against the permittee under this section 10Q (2) since it is unfair to take imprisonment sanction against a permittee under such situation. We were given the understanding that it was concluded in the Bills Committee Meeting held on 24th October 2002 that the imprisonment sanction under this section would be dropped.

4. The Proposed Section 14 Schedule 3 Fees Part I 2 (b)

Quoted:

- (b) economic costs in the following scale for the whole duration of the extend period ---
- (i) \$18,000 per day for a strategic street;
 - (ii) \$7,000 per day for a sensitive street;
 - (iii) \$1,500 per day for a remaining street.

Unquoted.

The economic costs stated in this section are based on LEGISLATIVE COUNCIL BRIEF WB(W) 249/38/02 [TC 13/2001]. In Annex B - Methodology in assessing the Additional EP Daily Charge based on Economic Cost due to Traffic Delay, item 3 stated that the economic loss in dollars per day was converted from traffic delay due to loss of road capacity resulting from excavation works. With this basic assumption, we suggest any period with the number of vehicular traffic lanes fully maintained should not be charged with economic costs. We also suggest a new item be added under Section 10K (Refund of daily fee and economic costs) to cater for refund of economic costs under such situation. Again this provision has to be explicit.

Our previous letter to the Secretary of Works dated 20th November 2001 detailing our comments on the consultation document for the above-mentioned bill is also attached for your reference. We would be grateful if you could give serious consideration to our comments.

Yours sincerely,
THE HONGKONG ELECTRIC CO., LTD.
香港電燈有限公司

A. Fretwell
ACTING GENERAL MANAGER (ENGINEERING)

Encl.
HWL/kml

0L2K199L.DOC(02)

Section 10A (4) (b)
List of Reasons for Exemption

1. Site not made available by the Authority at the commencement of EP.
2. Site not made available by other parties at the commencement of EP.
3. Climatic constraints due to hoisting of cyclone warning signal number 3 or above.
4. Rainstorm warning amber or above.
5. Daily rainfall exceeding 20mm in a day.
6. Progress of work is suspended or restricted by additional working conditions under the instruction or order of the Authority or other Government departments after the issue of the EP and not due to the fault of the permittee or nominated permittee.
7. Suspension or restriction due to interference from the public, e.g. objection or work period restriction from pressure group/shop owner/resident/hospital/school.
8. Unforeseeable underground obstruction, e.g. work can only be resumed after completion of diversion work by other utility undertakings.
9. Unforeseeable underground situation, e.g. cutting of hard rock, filling of voids, etc.
10. Delay by other party, e.g. in a series of trench work, the commencement of work by the 2nd or 3rd utility undertaking is delayed due to the delay by the 1st utility, delay in tree transplantation by LCSD, etc.
11. Any other factor which is beyond the control of the permittee that hinders the progress of work and/or restricts the access to the work site.
12. Pending for confirmation from Authority, e.g. waiver of shallow cover installation.

OUR REF.: T&D/386/16/13(U)

20th November 2001

By Fax and By Post (Fax No.: 2536 9299)

Mr. S.S. Lee, JP,
Secretary for Works,
Works Bureau,
Murray Building,
Garden Road,
Hong Kong.

Dear Mr. Lee,

CONSULTATION DOCUMENT ON THE PROPOSED
CHARGING AND PENALTY SYSTEM FOR STREET EXCAVATION WORKS UNDER
THE LAND (MISCELLANEOUS PROVISIONS)
AMENDMENT ORDINANCE

Thank you for your letter dated 8th October 2001 and giving us an opportunity to express our comments on your Consultation Document on the proposed charging and penalty system for street excavation works.

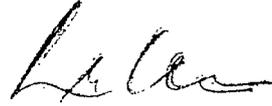
While we appreciate the purposes of your proposal to tighten the control over promoters and contractors in connection with street excavation works, we have the following comments.

- (1) The proposed charging and penalty system for street excavation works will create unnecessary administrative work to both the Government and utility undertakings, hence additional cost and time which will eventually be borne by the public.
- (2) In order to better control the street excavation works, the one-stop-shop service by Government departments proposed in the workshop conducted by the consultant, Booz-Allen & Hamilton (HK) Ltd., commissioned by the Finance Bureau in 2000 should be pursued. By the implementation of the one-stop-shop service, the Government, the utility undertakings and the public will benefit.
- (3) If the Government insists on implementing the additional daily charge for unreasonable delay in completion of street excavation works, which amounts to \$18,000/day, a set of fair, equitable, open and clear criteria to determine the excavation permit duration and the circumstances where the cause of delay is beyond the control of the permittee is crucial, otherwise bribery and/or corruption may arise.

2/Cont'd.....

We will be very pleased if you could consider seriously our above comments.

Yours sincerely,
THE HONGKONG ELECTRIC CO., LTD.
香港電燈有限公司



F.L.Y. Lee
DIRECTOR & GENERAL MANAGER (ENGINEERING)



KWL/SYW