

立法會
Legislative Council

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by the Administration)

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Panel on Economic Development

Minutes of special meeting
held on Friday, 3 February 2012, at 4:00 pm
in Conference Room 2 of the Legislative Council Complex

Members present : Hon Jeffrey LAM Kin-fung, GBS, JP (Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Fred LI Wah-ming, SBS, JP
Hon CHAN Kam-lam, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew CHENG Kar-foo
Hon Vincent FANG Kang, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Starry LEE Wai-king, JP
Hon Paul CHAN Mo-po, MH, JP
Dr Hon LEUNG Ka-lau
Hon Tanya CHAN

Members attending : Hon LEE Cheuk-yan
Hon James TO Kun-sun
Hon LAU Kong-wah, JP
Hon LEE Wing-tat

Members absent : Hon Paul TSE Wai-chun, JP (Deputy Chairman)
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon IP Wai-ming, MH

Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Dr Hon Samson TAM Wai-ho, JP
Hon Albert CHAN Wai-yip

Public officers attending : Agenda Item I

Mr Edward YAU
Secretary for the Environment

Miss Vivian LAU
Deputy Secretary for the Environment

Miss Linda CHOY
Political Assistant to Secretary for the Environment

Miss Katharine CHOI
Administrative Assistant to Secretary for the Environment

Miss Teresa CHIU
Press Secretary to Secretary for the Environment

Miss Dora TUNG
Acting Principal Assistant Secretary for the Environment (Financial Monitoring)

Attendance by invitation : Agenda item I

The Hongkong Electric Co., Ltd.

Mr K S TSO
Managing Director

Mr C T WAN
Director of Engineering (Planning & Development)

Mr Neil D MCGEE
Group Finance Director

Mr K M WONG
Group Manager, Finance & Accounting

Ms Mimi YEUNG
General Manager (Public Affairs)

Ms Esme LAU
Public Affairs Manager (Media & Community)

CLP Power Hong Kong Limited

Mr Richard LANCASTER
Managing Director

Mr S H CHAN
Managing Director – Nuclear
CLP Holdings

Mr P C LO
Corporate Development Director

Ms Daisy CHAN
Public Affairs Director

Mr Stephen CHOI
Strategic Planner

Ms Anthea CHENG
Senior Public Affairs Manager

Ms Grace SEK
Public Affairs Manager

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)6

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Sarah YUEN
Senior Council Secretary (1)6

Ms Michelle NIEN
Legislative Assistant (1)6

Action

I Annual tariff reviews with the two power companies

- (LC Paper No. CB(1)979/11-12(01) — Administration's paper on the supplementary information provided by the power companies in respect of five-year development plan and annual tariff review
- LC Paper No. CB(1)901/11-12(01) — Administration's response to the Chairman's request for the provision of further information regarding the 2012 tariff reviews with the two power companies
- LC Paper No. CB(1)791/11-12(01) — Administration's paper on the 2012 tariff reviews with the two power companies
- LC Paper No. CB(1)733/11-12(01) — Paper from CLP Power Hong Kong Limited
- LC Paper No. CB(1)733/11-12(02) — Paper from The Hongkong Electric Co., Ltd.
- LC Paper No. CB(1)760/11-12(01) — Supplementary information paper provided by The Hongkong Electric Co., Ltd.
- LC Paper No. CB(1)738/11-12(01) — Administration's paper on the progress of annual tariff reviews with the two power companies
- LC Paper No. CB(1)716/11-12 — Motions moved by Hon Emily LAU Wai-hing and Hon CHAN Kam-lam
- LC Paper No. CB(1)675/11-12(01) — Administration's paper on annual tariff reviews with the two power companies
- LC Paper No. CB(1)675/11-12(02) — CLP Power Hong Kong Limited's paper on CLP Power 2012 Tariff Review – Clarifications
- LC Paper No. CB(1)672/11-12(01) — Supplementary information paper provided by CLP Power Hong Kong Limited
- LC Paper No. CB(1)662/11-12(01) — Administration's letter dated

- 16 December 2011 on information concerning the two power companies requested by Hon Fred LI Wah-ming (LC Paper No. CB(1)572/11-12(01))
- LC Paper No. CB(1)662/11-12(02) — The Hong Kong Electric Co., Ltd.'s letter dated 16 December 2011
- LC Paper No. CB(1)554/11-12(03) — Presentation materials provided by The Hongkong Electric Co., Ltd.
- LC Paper No. CB(1)554/11-12(04) — Presentation materials provided by CLP Power Hong Kong Limited
- LC Paper No. CB(1)633/11-12(01) — Presentation materials provided by the Environment Bureau
- LC Paper No. CB(1)572/11-12(01) — Letter from Hon Fred LI Wah-ming on "Annual tariff reviews with the two power companies" dated 8 December 2011
- LC Paper No. CB(1)554/11-12(05) — Paper on annual tariff reviews with the two power companies prepared by the Legislative Council Secretariat (Background brief))

At the Chairman's invitation, the Secretary for the Environment (SEN) briefed members on the Administration's paper on the supplementary information provided by the two power companies in respect of five-year development plan and annual tariff review (LC Paper No. CB(1)979/11-12(01)). Members noted that certain business-related confidential information (Confidential Information), including financial and related information on electricity tariff, proposed tariff increase, five-year development plan and fuel procurement, had been provided by the two companies to members for perusal in the Legislative Council (LegCo) Library four hours before this meeting on the understanding that the Confidential Information would only be used for the purpose of discussion at this meeting and would not be disclosed or released to other third parties (the proposed confidentiality arrangements). Copies of the Confidential Information would be tabled at this meeting for discussion in camera if members agreed.

Justifications for the proposed confidentiality arrangements

2. Miss Tanya CHAN opined that to facilitate debate on the motion to be moved at the Council meeting on 8 February 2012 to authorize the Panel under section 9(2) of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) to exercise the powers conferred by section 9(1) of the Ordinance to order the Administration to produce all papers, books, records and documents in relation to the 2012 tariff adjustments (the P&P motion), all Members should be allowed access to the Confidential Information under similar confidentiality arrangements. The Administration noted her view.

3. Mr Fred LI considered the proposed confidentiality arrangements undesirable on the ground that there was difficulty in understanding the large amount of data in the Confidential Information within just four hours prior to the meeting. Miss Tanya CHAN and Mr Andrew CHENG shared Mr LI's view. Mr Ronny TONG added that after perusing the Confidential Information, he found it difficult to understand the data if not given time to ask questions about them.

4. SEN responded that to help members interpret the Confidential Information, the Administration had made cross reference to it in LC Paper No. CB(1)979/11-12(01). Mr Richard LANCASTER, Managing Director of CLP Power Hong Kong Limited (CLP), added that he and his colleagues were ready to explain the Confidential Information to members in the closed session of this meeting. The Confidential Information would also be retained in LegCo after the meeting to allow members' continued access for as long as the Panel considered necessary. Mr K S TSO, Managing Director of The Hongkong Electric Company Limited (HEC), assured members of HEC's readiness to explain the Confidential Information to members.

5. Claiming that some of the details in the Confidential Information were in fact not commercially sensitive, Mr Fred LI expressed reservation about switching the meeting to a closed session to examine the Confidential Information, thereby restricting members from quoting the relevant details after the meeting. SEN responded that the provision by the two power companies of certain financial figures on a confidential basis at the meeting on 23 December 2011 had not prevented members from referring to such figures when interpreting and discussing the Administration's analysis of the 2012 tariff adjustments during the meeting.

6. The Chairman opined that details in the Confidential Information which were already in the public domain could be quoted. Mr Paul CHAN concurred that details which had already been disclosed in the two companies' annual reports or press releases, or in previous information papers provided to the Panel on a non-confidential basis could be quoted. At the Chairman's invitation, Mr LANCASTER of CLP gave the following examples in the Confidential Information which had been classified commercially sensitive –

- (a) the budget for purchase of equipment overseas – the disclosure of which would compromise CLP's bargaining power and in turn affect CLP's customers; and
- (b) bulk purchase of fuels – the contract details of which would adversely affect fuel prices if disclosed.

7. Mr K S TSO of HEC likewise confirmed that details in the Confidential Information which were already in the public domain could be disclosed. He, however, emphasized that HEC would like to keep details on its purchase of fuels and equipment confidential because HEC's share prices would be affected if its capital expenditures were disclosed.

8. Mr Paul CHAN opined that while LegCo attached great importance to transparency in its operations, to him the major consideration was whether sufficient information had been made available for detailed examination to enable members to evaluate the justifications for the 2012 tariff adjustments, and to decide whether to support the P&P motion. In recognition of the commercial sensitivity of the Confidential Information and of the need to comply with relevant listing requirements, Mr CHAN proposed that members might consider first examining the Confidential Information in camera, so as to decide which details therein could be disclosed and which should be kept confidential.

Members' need to quote information to facilitate their explanation to the public

9. Ms Emily LAU pointed out that in performing the role expected of them, members had to seek information to ascertain whether the 2012 tariff adjustments were reasonable and if so, explain to the public why they considered the adjustments were justified. Members would be placed in a very difficult position if they were forbidden to quote the details concerned for such purpose, unless the need for confidentiality could be soundly established.

10. SEN responded that members should interpret on their own their obligations to be accountable to the public and to keep the Confidential Information confidential respectively. He, however, reiterated that arrangements similar to the proposed confidentiality arrangements had been made for the Panel meeting on 23 December 2011, at which members had discussed how information could be provided to enable them to evaluate Government's role in monitoring tariffs without affecting the commercial operation of not only the two power companies but also the commercial sector as a whole. As a result, LC Paper No. CB(1)979/11-12(01) had been provided, explaining how the Government monitored the two power companies and the major concerns and queries so raised, as well as specifying the details that would be provided for discussion at this meeting on a confidential basis to address members' queries and concerns about the tariff adjustments.

11. Mr Andrew CHENG expressed grave concern that if relevant listing requirements could be quoted to justify the proposed confidentiality arrangements, there would be significant implications on LegCo's duty to monitor the Government and public utilities, including MTR Corporation Limited which was also a listed company. In his view, if members agreed to ascertain whether the tariff adjustments were reasonable simply through examining and discussing the Confidential Information under the proposed confidentiality arrangements and undertook not to disclose the relevant details, they would have defaulted their duty. Support of the proposed confidentiality arrangements would also set a precedent and was dangerous. Mr Ronny TONG indicated agreement with Mr CHENG, and said that if the details provided could not be used to explain to the public why the 2012 tariff adjustments were reasonable, members' credibility would be queried. Mr Andrew LEUNG, however, opined that it was the Government's role to monitor the two power companies and not members' duty to directly monitor them.

Need for keeping certain information confidential

12. Mr Paul CHAN opined that notwithstanding the proposed confidentiality arrangements, disclosure of the details in the Confidential Information which covered the rationales and calculation methods of the original and final proposals on the Basic Tariff including "Increase in Average Net Fixed Asset", "Increase in operating expenses" and "Increase in local electricity sales" should be allowed. If not, members would have difficulty in explaining to the public how the 2012 tariffs had been worked out, and the situation would be undesirable.

13. Mr LANCASTER of CLP responded that some of the information provided in the Confidential Information was historical information related to CLP's development plan and hence had already been disclosed in CLP's public accounts. There was therefore no problem in disclosing it. Information relating to 2011 would also be shortly released in CLP's accounts and could be made public within a matter of weeks. However, some details were really commercially sensitive because they involved projections on future tariff levels and future capital expenditures and hence were related to profits. Mr K S TSO of HEC added that the information highlighted by Mr Paul CHAN above was in HEC's view confidential.

14. Mr Paul CHAN considered the proposed confidentiality arrangements unacceptable and not conducive to achieving a meaningful discussion at this meeting, especially as many of the details in the Confidential Information were in fact summary information which should not be classified as confidential. Mr Vincent FANG shared his views, highlighting the need to explain to the public how the final 2012 tariff increase rate had been worked out.

15. Mr C T WAN, Director of Engineering (Planning & Development) of HEC,

responded that some of the relevant figures presently classified as confidential would shortly be released in HEC's annual report in March 2012 and could then be quoted to explain the 2012 tariff increase. Only figures which were related to the five-year development plan would need to be kept confidential though HEC was willing to examine with members whether any of these figures could be released as necessary. Such figures, however, would not include those on the basis of which HEC's profits could be deduced because such information would be price-sensitive. Mr S H CHAN, Managing Director – Nuclear, CLP Holdings, added that as this meeting aimed at enabling members to clearly understand how the 2012 tariff adjustments had been worked out, some figures involved were really confidential. As such, to provide all relevant figures while enabling members to ascertain which of them could not be disclosed, CLP would willingly highlight such figures for members' reference if allowed the time to do so.

16. Endorsing the need to explain to the public how the 2012 tariff level had been worked out, Ms Starry LEE urged the Administration to ensure that the two power companies would really, as proposed above, highlight in the copies of the Confidential Information to be kept at the LegCo Library which details could be disclosed.

17. In response, SEN made the following points –

- (a) To facilitate members, the Administration had already supplemented an open document (LC Paper No. CB(1)979/11-12(01)) for this meeting, not to mention that many open documents had also been provided earlier. As such, all relevant details which could be disclosed had already been made open; and
- (b) As reported by CLP above, historical figures or figures already released in annual reports could be quoted. However, details that involved projections should not be disclosed lest they affected share prices or procurement prices. The two power companies could help differentiate between the above two types of data by using footnotes or other means.

18. Mr Fred LI queried whether all details in the Confidential Information were confidential and should be perused under the proposed confidentiality arrangements. The points he raised to support his query were firstly, it was well known that both companies sought to earn the maximum permitted rate of return of 9.99% on the average net fixed assets for the year under their current Scheme of Control Agreements. Hence there was no need to keep details from which the two companies' profits could be deduced confidential. Secondly, the two companies' financial information was not commercially sensitive because they were already monopolizing the power market. Thirdly, their five-year development plans had

already been approved. If details on such approved plans were still undisclosed, members would not be able to assess whether the Administration had performed its monitoring role satisfactorily. He further opined that members should have a say on what details should be classified as confidential rather than allowing the two companies to decide on that all by themselves. The Administration noted his views.

19. Ms Miriam LAU considered it difficult to decide whether to accept the proposed confidentiality arrangements because members could not ascertain whether the details in the Confidential Information were genuinely confidential. Mr Ronny TONG concurred, and said that whether the Confidential Information should be examined in camera would in fact hinge on what it was.

Implications of accepting the proposed confidentiality arrangements

20. Mr Andrew LEUNG enquired how long the Confidential Information would be embargoed, and about the legal liabilities of members and of their family members if members agreed to peruse the Confidential Information under the proposed confidentiality arrangements.

21. In response, Assistant Legal Adviser 2 (ALA2) made the following points –

- (a) According to the general principle of law, if the Panel agreed to hold a meeting in camera, or certain information was provided to members under confidential cover, so that members were aware that the discussion and information concerned were confidential, or would be regarded as having been made aware of the confidentiality of the discussion and information, members would have the duty to keep the above confidential, and should not disclose them without agreement of the information provider(s). If members disclosed the information or discussion to any third party, they would be regarded as having breached their duty of confidentiality and could be held legally liable. However, there were exceptions to the above principle. For example, the above duty of confidentiality would no longer exist if the confidential information concerned was in fact already in the public domain, or was subsequently made public on other occasions; and
- (b) Where LegCo was concerned, the Committee on Members' Interests had already issued guidelines related to the use and handling of information, including the "Advisory Guidelines on Matters of Ethics in relation to the Conduct of Members of the Legislative Council of the Hong Kong Special Administrative Region in their capacity as

such" issued in June 2009, according to which a Member "should not take advantage of, or benefit from, information that is obtained in his capacity as a Member of the Council and which is not generally available to the public", but "should ask for information only about matters of public interest and should not seek information for private or personal interest".

22. Mr Ronny TONG opined that to enhance certainty and serve as reminders, the two power companies should specify which parts of the Confidential Information would cause damage if disclosed and hence should be kept strictly confidential, instead of classifying the whole document concerned as Confidential Information. Mr Vincent FANG shared his views.

23. The Chairman expressed concern that if the Confidential Information had to be presented in the manner proposed by Mr Ronny TONG above, the planned closed session of this meeting could not be held. He reminded members that while members could discuss whether certain details should be kept strictly confidential, once they agreed to conduct the ensuing part of this meeting in camera to examine the Confidential Information, they would be regarded as having agreed to keep those confidential details so disclosed and examined confidential.

Provision of information if the P&P motion was passed

24. Mr Ronny TONG asked ALA2 whether the two power companies would still have the legal power to refuse to provide certain information on grounds of commercial confidentiality if the P&P motion was passed and, if they agreed to provide the information under Cap. 382, whether they could still oblige members not to disclose the information. If so, given the relevant legal liability, it might be safer not to peruse the information.

25. ALA2 responded that according to section 13 of Cap. 382, a person ordered to give evidence or produce papers could refuse to do so "on the ground that the same is of a private nature and does not affect the subject of inquiry". Procedurally however, select committees or any other committees set up under section 9 of Cap. 382 could determine their own practice and procedure and how to exercise the powers conferred by section 9(1) of Cap. 382. Such practice and procedure normally covered how confidential information obtained should be handled, and the conditions under which claims for privilege from disclosure of evidence on grounds of public interest immunity might be granted. If the P&P motion was passed, the Panel could determine similar practice and procedure of its own.

The types and extent of information that should be provided

26. Mr Paul CHAN referred to the rationales and calculation methods of the final tariff proposals of CLP and HEC (item 3 of Annexes 1B and 2B to LC Paper No. CB(1)979/11-12(01)), and sought details, preferably in tabular form, on the changes between their original and final proposals, so as to enable members to ascertain whether the adjustment of their tariff increase rates was reasonable or was in fact only cosmetic. The Administration and the two power companies noted his request.

27. Miss Tanya CHAN expressed concern that the Confidential Information alone might not suffice to enable members to understand whether the 2012 tariff adjustments were justified. Ms Miriam LAU asked the two power companies whether the Confidential Information contained sufficient disclosable details on how the rates of the 2012 tariff increase had been worked out, and on the two companies' five-year development plans to satisfy members and the public without compromising commercial sensitivity.

28. In response, SEN assured members that the Government was in fact willing to provide all necessary details to enable members to understand how it monitored the two power companies. Mr LANCASTER of CLP supplemented that CLP had already provided large quantities of information for the Panel meetings on 13 and 23 December 2011 and, as follow-up to these meetings provided additional details on CLP's five-year development plan and annual tariff review. However, while CLP would be happy to provide further information to facilitate the Panel's discussion, details which were of a confidential or sensitive nature would need to be provided under an arrangement that could protect their confidentiality. Mr K S TSO of HEC confirmed that the Confidential Information already covered sufficient details to enable members to understand why HEC had to increase its tariff by 6.3%, and on HEC's five-year development plan.

29. Mr LEE Wing-tat highlighted the Environment Bureau's reservation about the two power companies' five-year development plans, in particular their capital investments. Pointing out that such differences of views might not be covered in the Confidential Information, he sought details on the differences, and asked ALA2 to confirm whether passage of the P&P motion as presently drafted at the Council meeting on 8 February 2012 could empower members to seek the above details.

30. Pointing out that the P&P motion sought to seek "detailed information on the five-year Development Plans of the two power companies", ALA2 said that the motion's scope was in fact sufficiently wide. However, even though the motion was passed, provision of details on the differences between the two companies and the Government during tariff negotiation would still hinge on whether the Government would provide the relevant details.

31. SEN reiterated that the Administration was willing to explain to LegCo, in particular the Panel, at this meeting and the two previous meetings how it had conducted the annual tariff review. He had already clearly elaborated to the Panel the Administration's queries of the two companies' financial data, and included such information in papers provided for the above meetings. In particular, how the above queries had been sorted out, together with the relevant figures, had already been included in the Confidential Information. The Administration and the two companies were also attending this meeting to supplement details should members still see need to seek further information.

32. In response to Ms Starry LEE, SEN further advised that the Confidential Information had essentially been provided in response to members' questions raised on various occasions, namely, at previous Panel meetings held to discuss the 2012 tariff adjustments, during a relevant motion debate at an earlier Council meeting, and in the Chairman's letter to the Administration requesting a number of additional details.

33. Notwithstanding the above response, Mr Fred LI stressed the need to give members the full picture concerned, in particular the funding and works involved in the capital investments which according to the Administration had been prematurely included in CLP's tariff calculation.

Discussion on the way forward

Access to Confidential Information

34. Ms Starry LEE asked whether further meetings would be scheduled to follow up the 2012 tariff issue if members still had questions after examining the Confidential Information at this meeting, and whether the Confidential Information had to be returned to the Administration after this meeting. In her view, the issue could be followed up more effectively if the Confidential Information could be kept for further examination, so that members could raise additional questions as appropriate for a consolidated response by the Administration for follow-up at another meeting.

35. The Chairman advised that the copies of the Confidential Information to be tabled at this meeting would be retrieved at the end of this meeting but copies already deposited in the LegCo Library would be kept there for members' reference as necessary. SEN added that the two power companies and the Administration would readily respond to further questions members might have on the Confidential Information. However, if members would not agree to examine the Confidential Information under the proposed confidentiality arrangements, little progress could be made in this regard.

Meeting arrangements for discussing Confidential Information

36. Mr Ronny TONG opined that since members needed time to consider whether discussion on the Confidential Information should be held in camera, the relevant discussion had better be deferred to the following Monday or Tuesday. The Chairman, however, said that since the Confidential Information contained technical details, it might be more advisable to first hold a closed session to enable the two power companies to brief members on the details. Mr TONG considered it necessary for members to ascertain whether certain details should be classified confidential before agreeing to discuss them in camera. Ir Dr Raymond HO, however, said that members nonetheless had to agree on whether a closed session should be held to discuss the Confidential Information even though the closed session would be deferred.

37. Mr LEE Cheuk-yan drew members' attention to the fact that, if the powers under Cap. 382 were not invoked to order production of papers, the mere act of perusing any details provided on a confidential basis would by itself constitute agreement to the confidentiality of the details concerned even though queries might be raised about it subsequently. As such, whether certain details were confidential was in fact determined by the two power companies and not the Panel unless the powers under Cap. 382 were invoked by passing the P&P motion to authorize the Panel to make the determination.

38. Mr James TO, however, said that members could still seek to persuade the two power companies to make open their classified information, failing which members would have stronger grounds for urging other LegCo Members to support the P&P motion. Only when both of the above steps failed would members be obliged to keep the classified details confidential. He also opined that a closed session of this meeting, if any, would provide an opportunity for the two companies to explain the need to keep the classified details confidential, and for members to convince the companies to make such details open.

Marking up confidential items in the papers

39. Mr CHAN Kam-lam opined that discussion on the Confidential Information should be deferred as Mr Ronny TONG proposed above to allow the two power companies time to prepare marked-up copies to highlight details in the Confidential Information that should be kept strictly confidential. He, however, urged that the marked-up copies be provided as soon as practicable, preferably on the coming Monday.

40. Ms Starry LEE indicated support for this meeting to go into closed session to examine the Confidential Information but would respect other members' wish to defer the closed session. The Administration and the two power companies

confirmed that the sets of Confidential Information already deposited at the LegCo Library would be kept there for members' perusal until they were replaced with the marked-up copies.

41. In response to the Chairman on the time required for preparing the marked-up copies of the Confidential Information, both power companies said that the copies could be provided on the coming Monday. Mr LANCASTER of CLP added that if members had any particular concern about the need to keep certain information in the Confidential Information confidential, CLP could explore and confirm whether such details could be made disclosable. Mr K S TSO of HEC supplemented that details, the confidentiality of which would be difficult to agree upon, were in fact not too many.

42. Noting CLP's response above, Ms Emily LAU considered it unacceptable that members had to peruse the Confidential Information under the proposed confidentiality arrangements, and were obliged to keep relevant details confidential and could not use them to perform their duty unless such was confirmed disclosable. She urged the two power companies to co-operate with LegCo by providing information to the Panel without disclosure restriction for discussion to help members understand how the 2012 tariff increase had been worked out.

43. Mr CHIM Pui-chung likewise urged the two power companies to note that members had the right and duty to seek the companies' financial information to ascertain on behalf of the general public whether the 2012 tariff adjustments were reasonable. As such, the companies should readily provide the above information on the coming Monday to facilitate Panel discussion on the coming Tuesday, trusting that members would not lightly disclose any confidential information. If not, some members might support the P&P motion at the Council meeting on 8 February 2012.

The need to produce "all" relevant information

44. In response, Mr LEE Wing-tat cautioned that the Confidential Information might not be as comprehensive as that which members could order to produce under Cap. 382 because, under the P&P motion, the two power companies and the Administration would be required to produce "all" papers, books, records and documents in relation to the 2012 tariff adjustments. As such, unless the Administration could confirm that the Confidential Information already contained all relevant details, time might be wasted if members agreed to examine the Confidential Information under the proposed confidentiality arrangements but subsequently found that it was incomplete and had to seek more details.

45. SEN responded that the Administration had already provided or ensured that the two power companies had provided all necessary details to enable members to

understand how the 2012 tariff adjustments had been worked out, including how the Administration had monitored the process and the two power companies. He therefore suggested that in addition to requesting the two companies to specify which parts of the Confidential Information were confidential, members should also go through the Confidential Information at this meeting in camera to grasp the essential details of the matter, so as to seek further information as necessary from the two companies to address any questions which members might have after perusing the information.

46. Noting the response above, Messrs LEE Wing-tat and James TO asked whether the Administration could, before re-submitting the Confidential Information to the Panel, confirm that it already covered all relevant details. The Chairman said that members should also specify the details which they thought should be provided. In response, Mr TO stated that his request was that all papers related to the 2012 tariff adjustments should be provided to assure members that there was no need to invoke the powers under Cap. 382.

47. Mr Ronny TONG opined that to be fair, the two power companies should at present only be requested to provide sufficient papers to enable members to ascertain whether the 2012 tariff adjustments had been properly worked out. This was because members could still invoke Cap. 382 to seek further documents if they were dissatisfied with the details provided in the Confidential Information. As such, it might not serve much purpose to argue whether the Confidential Information already contained all relevant details. Instead, the current task should be to decide whether the Panel should examine the Confidential Information under the proposed confidentiality arrangements, in recognition that members would not be able to decide whether the P&P motion should be supported unless they had gone through the Confidential Information.

Voting on meeting arrangements

48. The Chairman requested members to vote on the following two options –
- (a) Whether this meeting should go into closed session to examine the Confidential Information; and
 - (b) Whether the Panel should schedule another meeting to examine the Confidential Information after the two power companies had re-submitted the Confidential Information with details that should not be disclosed duly marked up.
49. The Chairman put the above two options to vote. Six members voted for option (a) and seven voted for option (b). The Chairman declared that option (b) would be adopted and said that he would liaise with the Administration and the two

power companies on when the marked-up copies of the Confidential Information would be available, in order to fix a date for the Panel meeting to examine the documents.

(Post-meeting note: The Panel held a meeting on 7 February 2012 to discuss the marked-up copies of the confidential information provided by the two companies.)

II Any other business

50. There being no other business, the meeting ended at 5:30 pm.

Council Business Division 1
Legislative Council Secretariat
24 September 2012