

立法會
Legislative Council

LC Paper No. CB(1)2608/11-12
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by the Administration)

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Panel on Economic Development

Minutes of special meeting
held on Tuesday, 7 February 2012, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon Jeffrey LAM Kin-fung, GBS, JP (Chairman)
Hon Paul TSE Wai-chun, JP (Deputy Chairman)
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Fred LI Wah-ming, 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 WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Starry LEE Wai-king, JP
Hon Paul CHAN Mo-po, MH, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Dr Hon Samson TAM Wai-ho, JP
Hon Albert CHAN Wai-yip

Members attending : Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon LAU Kong-wah, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon LEE Wing-tat
Hon CHAN Kin-por, JP
Hon Alan LEONG Kah-kit, SC

- Members absent** : Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon CHAN Kam-lam, SBS, JP
Dr Hon LEUNG Ka-lau
Hon IP Wai-ming, MH
Hon Tanya CHAN
- 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
Ms Vyora YAU
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

I

Annual tariff reviews with the two power companies

- (LC Paper No. CB(1)1009/11-12(01) — Administration's paper on the confidentiality arrangements regarding the supplementary information provided by the power companies in respect of five-year development plan and annual tariff review
- 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)

The Chairman informed members that in response to members' request at the meeting on 3 February 2012, the two power companies had already provided for members' perusal in the Legislative Council (LegCo) Library since 6 February 2012 marked-up copies of the companies' business-related confidential information (the Confidential Information), with the details that had to be kept strictly confidential duly highlighted.

2. At the Chairman's invitation, the Secretary for the Environment (SEN) briefed members on the Administration's paper (LC Paper No. CB(1)1009/11-12(01)) on the confidentiality arrangements regarding the Confidential Information. Members noted that the Administration had agreed that, in consideration of the reasons explained in the paper, the highlighted details in the Confidential Information should be kept strictly confidential. The Chairman then asked members to indicate whether, in recognition of the commercial sensitivity of such highlighted details and of the need to comply with

the relevant listing requirements, they agreed to examine the Confidential Information in camera, and to return it and not to disclose the highlighted confidential details thereafter.

Access to Confidential Information

3. Mr Andrew CHENG expressed disappointment that the Administration considered it reasonable to keep certain details in the Confidential Information strictly confidential, and questioned the validity of the following reasons given therefor –

- (a) That such details might have significant impact on the share prices of the two power companies if disclosed;
- (b) That such details were related to the two companies' contract requirements and cost estimates; and
- (c) That such details involved business forecasts and if disclosed, might affect the two companies' bargaining power and hence give rise to cost increases.

In Mr CHENG's view, Government policies should be consistent. If commercial sensitivity and listing requirements could be quoted to justify confidentiality arrangements, similar public utilities, notably MTR Corporation Limited which was also a listed company, could refrain from disclosing their operation details quoting the above three reasons. LegCo's monitoring role would then be seriously weakened.

4. SEN responded that only a small part of the Confidential Information had been marked as strictly confidential due to the above three highlighted reasons. He further pointed out that as far as he understood, LegCo Members had not sought to make open not-yet-released price-sensitive financial information of public utilities when performing their monitoring role because they recognized that disclosure of the information might at the end adversely affect consumers or shareholders. He assured members that apart from those details marked confidential, all information regarding the 2012 tariff adjustments had in fact been made open either in open papers provided to members, or at Panel meetings previously held to discuss the issue.

5. Mr LEE Cheuk-yan opined that by restricting disclosure of certain details in the Confidential Information, the Administration had failed to maintain a balance between public interest and commercial interests, especially as the two power companies were in fact already monopolizing the power market.

6. Mr Richard LANCASTER, Managing Director of CLP Power Hong Kong Limited (CLP), responded that CLP had already provided detailed information on

its 2012 tariff adjustment and five-year development plan, although information which if disclosed would easily compromise CLP's commercial position with its suppliers and hence adversely affect consumers had been classified. CLP was, however, happy to work with the Panel on whether such classified information could be made public where feasible. For example, Annex 1B to the Confidential Information had been revised with certain originally confidential information incorporated in a format that would not affect its confidentiality.

7. Mr Fred LI agreed that he could gain better understanding of the two power companies' five-year development plans through perusing the Confidential Information at the LegCo Library. Ms Miriam LAU said that through the reading of the Confidential Information, she was able to acquire a clear picture of the subject concerned. Ms Starry LEE and Mr Vincent FANG also agreed that the Confidential Information provided for this meeting was more comprehensive having incorporated supplementary information requested at the meeting on 3 February 2012, such as a breakdown of the expenditure items in the five-year development plans.

Discussion on how the meeting should proceed

8. Members then discussed how this meeting should continue to examine the Confidential Information. While some members stressed the need for the meeting to remain open, others agreed that it could be conducted in two parts, a closed session and an open session. The points these members respectively put forward were set out below.

Need for the meeting to remain open

9. Mr Andrew CHENG opined that to ensure effective monitoring of the two power companies, the Administration should not agree to discuss the Confidential Information in camera. He urged the Administration to explain its stance, and emphasized that the Confidential Information should be examined openly.

10. Noting that apart from forecasts for 2012-2013, most details in the Confidential Information could be discussed openly, Mr Fred LI saw no need for the meeting to go into closed session to examine the Confidential Information, especially as many historic figures therein warranted open discussion. He cautioned that discussion of the Confidential Information in camera would place members in an embarrassing situation, where they would be restricted from clearly explaining to the public how they formed their views on the 2012 tariff adjustments. He therefore proposed that discussion on the Confidential Information should be conducted openly as long as members could refrain from mentioning details therein marked strictly confidential.

11. Mr LEE Cheuk-yan shared Mr Fred LI's views above, and supplemented the following points –

- (a) Conduct of closed meetings would affect the effective operation and monitoring role of LegCo, which used to operate with high transparency; and
- (b) If 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) was passed, it would be the Panel instead of the two companies which decided whether certain details should be discussed in camera, thereby enabling members to perform their monitoring role actively instead of passively.

12. Ms Emily LAU said that she was not convinced of the need to examine the Confidential Information in camera after going through it though she also agreed that care should be exercised not to contravene listing requirements. She stressed the need to be accountable to the public by explaining to them how the 2012 tariff adjustments had been worked out, and indicated support for Mr Fred LI's proposal to discuss the Confidential Information openly.

Need for holding both a closed session and an open session

13. Ms Miriam LAU agreed that to grasp the full picture regarding the 2012 tariff adjustments, the Confidential Information had to be perused in full but some of the details therein were really confidential because they involved forecasts which, if disclosed would understandably affect the share prices of the two power companies. However, there would be difficulty in remaining accountable to the public if closed session was held to discuss the issue. She therefore proposed that the Confidential Information should first be perused in a closed session, followed by provision of copies of it with all confidential details therein deleted for discussion in an open session, so that members could gain access to details of the five-year development plans to ascertain whether the adjustments were reasonable while keeping the public posted of the relevant discussion.

14. Noting Ms Miriam LAU's proposal, the Chairman enquired whether copies of the Confidential Information with the commercially sensitive information therein deleted could be provided to the Panel later. SEN replied in the affirmative.

15. Mr Paul CHAN indicated support for Ms Miriam LAU's proposal above for the following reasons –

- (a) Since LegCo attached great importance to transparency and accountability, open meetings should be the norm and closed meetings should be an exceptional arrangement made only when soundly

justified;

- (b) Details in the Confidential Information marked strictly confidential mainly involved forecast expenditures. Such details, in particular those regarding fuel prices, should really not be disclosed lest the public would be affected because, through the Fuel Clause Recovery Account (FCA), the difference between the standard cost of fuels as agreed between the Government and the two power companies, and the actual cost of fuels to the companies (Fuel Cost Account Adjustment) would be captured and passed on to consumers by way of rebates or charges; and
- (c) The open information provided could already enable members to assess whether the 2012 tariff adjustments were justified, in particular how FCA had, together with the Tariff Stabilization Fund, provided flexibility to ameliorate tariff increases or facilitate tariff reduction where appropriate. Moreover, various past expenditures in the five-year development plans, such as investments in emissions control and in transmission and distribution networks, could in fact be disclosed. Ms LAU's proposal could enable members to explain to the public how the adjustments and subsequent changes thereto had been worked out.

16. Ms Starry LEE likewise considered those details, which the two power companies had classified confidential, in general reasonable in recognition that the tariff level might be affected if their business forecasts and fuel costs were disclosed. She therefore proposed that, to strike a reasonable balance between the public's right to information and protection of commercial data, the meeting should be conducted in two parts, an open session followed by a closed session. During the open session, members should refrain from mentioning the classified details in the Confidential Information and, if detailed discussion would not be feasible without referring to these confidential details, the meeting should go into closed session. She further urged the Chairman to quickly decide on how the meeting should proceed to enable members to discuss the 2012 tariff adjustments as soon as practicable.

17. Mr Alan LEONG pointed out that Members belonging to the Civic Party were of the view that all relevant arrangements should aim to address public concerns about the 2012 tariff adjustments. Noting that details in the Confidential Information classified confidential were in fact numbered, and that the open details could already suffice to address the above concern, he indicated agreement with the above views that the meeting should not be fully conducted behind closed doors but there should be an open session afterwards to enable the public to understand how the 2012 tariff adjustments had been worked out. Moreover, if there was no open session, there might be difficulty in inviting experts to provide assistance in interpreting relevant financial data where

necessary.

Other views

18. Ir Dr Raymond HO pointed out that after discussing the 2012 tariff adjustments a few times already, the Panel should immediately switch this meeting to a closed session to allow members as much time as necessary to examine the Confidential Information, so as to enable members to really focus on and in turn ascertain whether the adjustments were justified.

19. Stating that he had no time to go to the LegCo Library to peruse the Confidential Information, Mr Albert CHAN proposed that it be tabled at the meeting first for members' perusal to facilitate their decision on whether it should be examined in camera.

20. Mr Vincent FANG considered the details marked confidential in the Confidential Information reasonable, and opined that discussion on the Confidential Information should commence as soon as practicable because there was difficulty in understanding the details without briefing by the two power companies. Moreover, the P&P motion would be discussed by the Council on the following day. He therefore opined that, if copies of the Confidential Information with the confidential details therein deleted were available for discussion, discussion on the Confidential Information should proceed in open session. If not, the discussion should be conducted in camera.

21. Ms Emily LAU considered it undesirable that the tariff adjustment rates for 2012 had been revised time and again, indicating that the Administration might not have done its best in performing its gate-keeping role. She opined that there was a need to improve and enhance the credibility of the tariff review mechanism to ensure all relevant details would be made available to members to facilitate monitoring, and to rectify the current undesirable situation that not even the Energy Advisory Committee had access to all relevant information. The Chairman opined that how the tariff review mechanism could be improved should be discussed at another meeting.

Voting on meeting arrangements

22. In response to Mr Paul CHAN and the Chairman, the two power companies confirmed that the Confidential Information with the commercially sensitive information therein deleted could be made open after this meeting, and that members could freely quote the disclosable details therein.

23. The Chairman asked members to vote on the following two options –

- (a) That the meeting should go into closed session to examine all details in the Confidential Information and an open meeting would then be

scheduled separately to discuss the Confidential Information with all marked-up details therein deleted. In the closed session, the Panel will meet with CLP and HEC one after the other in recognition that neither of them would allow the other party access to their operation details; and

(b) That the meeting should continue to be conducted as an open meeting.

24. The Chairman put the above two options to vote. Eight members voted for option (a) and three voted for option (b). The Chairman declared that option (a) should be adopted, and the meeting would be switched to a closed session at this point. Copies of the note on confidentiality arrangements were tabled at the meeting.

Closed session

25. The session of the meeting from 3:30 pm onwards was held in camera. Members examined the Confidential Information with representatives of CLP and HEC attending the session in turn to answer members' questions.

(Post-meeting note: The Confidential Information provided by the two power companies for discussion at this meeting was tabled at the closed session and subsequently re-provided with the commercially sensitive information therein deleted vide LC Paper No. CB(1)1024/11-12(01) on 8 February 2012)

II Any other business

26. There being no other business, the meeting ended at 6:40 pm