

LC Paper No. CB(1)500/99-00
(These minutes have been
seen by the Administration)

Ref: CB1/BC/9/98/2

**Legislative Council
Bills Committee on
Electricity (Amendment) Bill 1999**

**Minutes of meeting held on
Monday, 15 March 1999, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon Fred LI Wah-ming (Chairman)
Dr Hon Raymond HO Chung-tai, JP
Hon Ronald ARCULLI, JP
Hon CHAN Kam-lam
Hon SIN Chung-kai
- Public officers attending** : Mr Eric JOHNSON
Principal Assistant Secretary for Economic Services
- Mr Roger LAI Sze-hoi
Regulatory Services Controller
Electrical and Mechanical Services Department
- Mr CHAN Hung-cheung
Chief Electrical & Mechanical Engineer
(Electricity Legislation)
Electrical and Mechanical Services Department
- Mr SIU Kam-wah
Senior Electrical & Mechanical Engineer
(Nuclear & Utility Safety)
Electrical and Mechanical Services Department
- Mr J L ABBOTT
Senior Assistant Law Draftsman
- Ms Phyllis POON
Government Counsel

Clerk in attendance : Ms Estella CHAN
Chief Assistant Secretary (1)4

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Mr Daniel HUI
Senior Assistant Secretary (1)5

I. Discussion with the Administration

(LC Paper No. CB(1)982/98-99 - sample plans provided by the power companies

LC Paper No. CB(1)1004/98-99(01) - letter dated 12 March 1999 from the Administration)

Recapitulating developments since the last meeting on 12 February 1999, the Chairman said that as requested by members the Administration had provided sample plans made available by the power companies showing the existence and alignments of underground electricity cables which could be provided to contractors on request. Furthermore, three members of the Bills Committee visited a construction site on 4 March 1999 to observe the operation of a cable detector in locating underground electricity cables.

2. Referring to the letter dated 12 March 1999 from the Administration, the Assistant Legal Adviser 2 (ALA2) advised that the Administration had agreed to accept two of the three comments set out in her letter dated 10 February 1999 to the Administration (LC Paper No. CB(1)787/98-99(01)). The Administration however did not agree to render in the Chinese version of section 15(5) of the draft Electricity Supply Lines (Protection) Regulation (the draft Regulation) the words "from a code of practice approved under this section" where such wording had been included in the English version of section 15(5) of the draft Regulation. In response, the Government Counsel advised that the Administration did not see any need to amend the Chinese version of section 15(5) of the draft Regulation because the current drafting was clear and reflected the policy intent.

3. The Chairman referred to section 9(4) in the Gas Safety Ordinance (Cap. 51) which was similar to section 15(5) of the draft Regulation, and pointed out that the English and Chinese versions of the former were consistent in making reference to a code of practice issued under the Ordinance. After deliberation, the Government Counsel agreed to amend the wording of the Chinese version

of section 15(5) of the draft Regulation to include the Chinese rendition of "*from a code of practice approved under this section*".

Penalty provisions

4. Mr Ronald ARCULLI objected to the proposed penalty provisions in the Bill and the draft Regulation which included imprisonment not exceeding 12 months. He said that unlike gas pipes, the position of underground electricity supply lines could shift after being laid underground and it would therefore be more difficult to find out the exact depth and alignment of underground electricity supply lines. Moreover, the location maps provided by power companies showing the alignment of underground electricity supply lines might not be 100% accurate. In response, the Chief Engineer/Electricity Legislation (CE/EL) advised that the site demonstration on 4 March 1999 on the operation of a cable locating device showed that it could achieve high precision in detecting the depth and alignment of underground electricity supply lines. He added that in the case of a site contractor, the engagement of a "competent person" to help locating the electricity supply lines in accordance with the Code of Practice on Working near Electricity Supply Lines (Code of Practice) would be a due diligence defence under the draft Regulation. The Principal Assistant Secretary for Economic Services (PAS/ES) further advised that the penalty provisions in the draft Regulation was in line with the penalty provisions in the Gas Safety Ordinance (Cap. 51) applicable to damage of gas pipes.

5. Mr SIN Chung-kai noted that there were different types of cables and pipes including electricity supply lines, optical fibre cables, gas pipes, water pipes etc buried underground, and enquired whether the Administration would consider, as a matter of policy, different penalties for damage of different types of cables or pipes on the basis of their potential risks to human life and property. In response, PAS/ES advised that past records showed that damage to electricity supply lines had resulted in fatalities and the seriousness of the consequences of damage to electricity supply lines was no less than those caused by damage to gas pipes. The Administration was therefore convinced that the penalty for damaging gas pipes and electricity supply lines should be aligned. As regards penalty for damaging underground telecommunication lines, etc. PAS/ES said that the Administration would consider the need to introduce legislation for the protection of other types of underground cables and pipes but he noted that there was no safety consideration in relation to damage of telecommunication lines. Mr SIN Chung-kai opined that from the safety perspective, it would be acceptable to align the penalty provisions for damaging electricity supply lines and gas pipes.

6. Mr CHAN Kam-lam observed that imprisonment was the maximum penalty under the draft Regulation and the court might not impose the maximum penalty on all cases. Noting that there was a due diligence defence provision in the draft Regulation and the cable locating devices could also

achieve high precision in detecting the depth and alignment of underground electricity supply lines, he supported the proposed penalty provisions.

7. Dr Raymond HO Chung-tai opined that he did not agree with the proposed imprisonment penalty because a mistake could still be made by a "competent person" or a contractor even though every step as set out in the Code of Practice had been followed. He considered the penalty of imprisonment too severe. He urged the Administration to discuss with the industry in working out other options.

8. The Regulatory Services Controller (RSC) reiterated that the objective of the Bill and the draft Regulation was to ensure that persons performing activities in the vicinity of electricity supply lines would take all reasonable measures to avoid damaging the electricity supply lines. The imprisonment penalty was proposed in order to achieve a deterrent effect. He emphasized that the due diligence defence provision and the Code of Practice would provide a mechanism for contractors and competent persons to defend themselves if the measures in the Code of Practice had been followed.

9. The Chairman said that as there were mixed views on the proposed penalty provisions among members of the Bills Committee, the Bills Committee would not propose any Committee Stage Amendments to the relevant provisions.

Defence provision

10. Mr ARCULLI enquired whether by engaging a competent person to locate underground electricity supply lines a contractor could claim due diligence defence under the draft Regulation. Referring to sections 17.1(b) and 39 of the draft Code of Practice, he pointed out that a site contractor still had the responsibility of properly verifying and recording the work of the competent person employed. He sought clarification on how a contractor could fulfill the requirement for due diligence defence under the draft Regulation. In response, CE/EL explained that a site contractor would have a due diligence defence by engaging a competent person to locate the underground electricity supply lines. Requiring a contractor to verify and record the work done by a competent person was to create evidence on the work done by the competent person and this served to protect the interest of the contractor should any underground electricity supply lines be damaged.

11. The Chairman was concerned whether the heavy legal responsibility conferred on "a competent person" by the draft Regulation would deter qualified workers from applying for registration as "competent persons". CE/EL advised that a competent person could have due diligence defence if he followed all the measures set out in the Code of Practice even though electricity supply lines were damaged accidentally. Under such circumstances disciplinary

action on the competent person concerned would be considered by the Electrical and Mechanical Services Department.

12. In reply to Mr ARCULLI's question on whether the industry had been consulted in drawing up the Code of Practice, CE/EL advised that concerned trade bodies including the Hong Kong Construction Association, the power companies, etc., had been consulted in drawing up the Code of Practice. At the moment, a draft of the Code of Practice had been sent to relevant parties for comments. The draft would be reviewed in mid-March 1999 when comments from relevant parties were received.

13. Referring to sections 18(1) and (2) of the draft Regulation, Mr ARCULLI enquired whether compliance with the Code of Practice by a contractor or a competent person would be considered as having taken all reasonable steps to ascertain the existence of underground electricity supply lines within the work site and to prevent the occurrence of an electrical accident as required under sections 10(1) and (2) of the draft Regulation. In response, the Senior Assistant Law Draftsman (SALD) advised that under section 18(1), compliance with the Code of Practice would constitute a defence to a charge under section 10(3) of the draft Regulation. Under section 18(2), compliance with the Code of Practice would be deemed to constitute the taking of all reasonable steps or measures as required under sections 10(1) and (2).

14. Mr ARCULLI and Dr Raymond HO pointed out that despite compliance with all the steps set out in the Code of Practice, electricity supply lines could still be damaged by a site contractor when performing activities in a work site due to various unforeseen reasons. Mr ARCULLI suggested the Administration to consider deletion of the word "all" from section 18(2)(a)and(b) of the draft Regulation. In response, SALD reiterated that if a person had followed the Code of Practice, he would be deemed to have taken all reasonable steps as provided in section 18(2) of the draft Regulation.

15. Members agreed to hold the next meeting of the Bills Committee on 12 April 1999 at 8:30 am to further deliberate on the Bill.

(Post-meeting note : At the Administration's request, the meeting was subsequently rescheduled for 25 May 1999 at 4:30 pm with the concurrence of the Chairman)

16. There being no other business, the meeting ended at 12:00 noon.