

政府總部經濟局的信頭

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條例草案委員會秘書

(經辦人：劉國昌先生)

劉先生：

1999 年電力（修訂）條例草案委員會

此函取代本人在一九九九年十一月二十二日發出的信件。

助理法律顧問何瑩珠小姐與當局透過電話商討有關事宜後，我們已對擬訂的《供電電纜（保護）規例》再作出若干修訂。

在一九九九年九月二十三日會議上，條例草案委員會審議了擬訂的《供電電纜（保護）規例》，並要求當局修訂某些條文，使其更加清晰。

隨函夾附經修訂的規例中英文擬本，請注意以下修訂部分。

第 10(1)及(3)條

正如我們早前同意（請參閱我於一九九九年九月二日發給助理法律顧問的信件中第 7 段），“工地內及在該等工地附近”一句中的連接詞已由“或”改為“及”。

新的第 10(4)條

條例草案委員會同意把第 18(1)條有關“當作爲…”的條文移前，成爲第 10(4)條。

第 10(5)(a)及(b)條

第 10(5)(a)條(即上一擬本的第 10(4)(a)條)已予修訂，規定合資格人士進行勘測〔以確定是否有地下電纜及該等電纜的準線及深度〕時，不得將進行勘測的職能及責任轉授予另一人。

該規例已增訂第 10(5)(b)條，明文規定在進行該項勘測時，合資格人士可由其他人士協助，但該等人士在進行勘測的過程中須由該身在擬定的工地內的合資格人士直接監督。

新增的第 11(7)及(8)條

委員要求該規例更清楚訂明，就有關在供電電纜附近進行工程時沒有採取一切合理步驟或採取一切合理措施的指控而作免責辯護時，有關遵守實務守則與遵守敦促補救通知書兩者之間的關係。

這方面的現有條文如下：

- (a) 新增的第 10(4)條訂明，就符合第 10(1)及(2)條有關在供電電纜附近進行工程的規定而言，遵守實務守則的條文即當作已採取一切合理步驟或已採取一切合理措施（視屬何情況而定）；以及
- (b) 除其他事情外，現時第 18(2)條訂明，有關人士若倚賴另一方（即合資格人士或供電商）所提供的資料，則可以此作爲免責辯護。

在考慮委員有關遵守敦促補救通知書的意見後，我們在新增的第 11(7)條內訂明，在符合取得合資人士的報告的規定下，遵守實務守則的條文和機電工程署署長所發出的敦促補救通知書的指示，即當作已採取一切合理步驟或採取一切合理措施（視屬何情況而定）來確保在供電電纜附近進行的工程可安全地進行，不會導致電力供應中斷。此外，新增的第 11(8)條訂明，凡實務守則的條文與敦促補救通知書的指示互相衝突或抵觸，則以後者爲準。

第 18 條

由於上一擬本的第 18(1)條已移前成為新的第 10(4)條，第 18(2)條改為第 18 條。

未來路向

當局將把經修訂的規例擬本再交由行政會議審議。

《1999 年電力（修訂）條例》（1999 年第 69 號）第 4 條規定，該規例須經立法會通過。

經濟局局長
（莊誠代行）

副本送： 機電工程署署長
（經辦人：陳鴻祥先生）2895 4929 不連附件
律政司
（經辦人：潘漢英女士）2521 3275 不連附件

一九九九年十二月一日

Letterhead of The Hong Kong Construction Association Ltd

24 January 2000

Our Ref: PC/c:010:00:IA15

By Fax & Mail
2895 4929

Director of Electrical & Mechanical Services
Electrical & Mechanical Services Department
98 Caroline Hill Road
Hong Kong

Attention: Mr K W Siu

Dear Mr Siu,

Re: Electricity Supply Lines (Protection) Regulations and Code of Practice

We enclose for your consideration our comments for the Regulations. These are strict forward comments and we do not anticipate much difficulty for them to be included into the Regulations. Since the concerned Subcommittee of Legislative Council is going to have a discussion on the Regulations we have sent the comments to our representative the Hon. Ronald Arculli and the representative of HKIE the Hon. Raymond Ho.

Our Colin Wall has also sent our comments for the Code of Practice to your office earlier today. We hope your Department will also take these comments into consideration.

Thank you for your attention.

Yours sincerely,

Patrick W T Chan
Secretary General

Encl.

c.c. The Hon. Ronald Arculli
The Hon Raymond Ho

Electricity Supply Lines (Protection) Regulation

Comments of HKCA

1. The wording of clause 3(3) may give rise to confusion as to whether the Director is obliged to grant unconditional approval to a competent person if the requirements in sub-clauses (a) and (b) are satisfied. If (as we strongly suspect) that is not what is intended, we would suggest that the initial part of the clause be re-worded.

"Subject to subsection (4), the Director shall, upon such conditions as he reasonably thinks fit, grant an application for approval as a competent person if"

The concluding two lines of the clause as drafted ("*and the Director thinks fit*") would thereupon be deleted.

2. It is difficult to see why on the renewal of an application under clause 5(1) the applicant should only have to show three months experience in the preceding three years, whereas on an initial application clause 3(3) requires 6 months experience in the preceding three years.
3. In clause 6(1), we would suggest that the deletion of the words "*that there is evidence*". The test ought not to be whether or not there is any evidence that a person has failed to come up to the required standards, as such evidence may not prove anything and in any event might be rebutted on a hearing under clause 7(3). The suggested amendment would make it clearer that if the Director unreasonably and wrongly suspends a competent person on the basis of flimsy evidence or accusations, that decision could be overturned.
4. The criterion for suspension in clause 6(1)(b) that the competent person has failed to perform his work "*in good faith and with all due diligence*" is rather vague. We would suggest that a more objective standard similar to that applicable for common law negligence ought to be applied. We would suggest the following alternative wording for the sub-clause:

"has failed to perform his work as a competent person with all due diligence and for to the standard that might reasonably be expected of an experienced individual competently carrying out the work of locating underground electricity cables"

- 5 It is noted that there is no facility for "emergency" suspension of approval for a competent person. Presumably, it has been decided that such power is unnecessary.
- 6 In clause 10(3) it is not clear to whom the competent person should provide the prescribed written report. It is noted that sub-clause 10(5)(d) requires the provision of a report to "*the person requesting the investigation*" but that is not enough. It is quite possible that a person procuring building works to be carried out will not expressly request such an investigation. We suggest that after the word "*report*" there should be inserted words along the following lines:
- "(to those persons who have requested, or undertaken responsibility for the carrying out of, the relevant works)"*
- There should also be an obligation on the person whom the report is submitted to retain that report until after the works, have been safely completed.
- 7 In clause 11(7), after the word "*where*" there should be inserted the words "*a remedial notice has been served and*"
- 8 In clause 14(c)(I) the words "*in respect of*" should be deleted and the word "*that*" in the second line should be replaced with "*has been or may be used in committing*". The words "*has been committed*" would thereupon be deleted.
- 9 In clause 17(4) and (6) there are references to "*a fine of \$200,000*" or "*of \$10,000*". We would suggest that these be replaced with "*a fine not exceeding*" the relevant figure.
- 10 Likewise, references to imprisonment in clauses 17(3) and (4) should be to imprisonment for a period not exceeding that stipulated.