

立法會
Legislative Council

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Panel on Economic Development

Minutes of meeting
held on Tuesday, 11 December 2012, at 4:00 pm
in Conference Room 2 of the Legislative Council Complex

Members present : Hon Jeffrey LAM Kin-fung, GBS, JP (Chairman)
Hon CHUNG Kwok-pan (Deputy Chairman)
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Dr Hon LEUNG Ka-lau
Hon Paul TSE Wai-chun, JP
Hon Albert CHAN Wai-yip
Hon Michael TIEN Puk-sun, BBS, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Frankie YICK Chi-ming
Hon WU Chi-wai, MH
Hon YIU Si-wing
Hon CHAN Han-pan
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP
Hon TANG Ka-piu

Members attending: Hon LEE Cheuk-yan
Hon Vincent FANG Kang, SBS, JP
Hon WONG Kwok-hing, MH
Hon Cyd HO Sau-lan

Dr Hon LAM Tai-fai, SBS, JP
Hon Charles Peter MOK
Dr Hon Kenneth CHAN Ka-lok
Dr Hon KWOK Ka-ki
Ir Dr Hon LO Wai-kwok, BBS, MH, JP

**Public officers
attending** :

Agenda Item III

Mr YAU Shing-mu, JP
Under Secretary for Transport and Housing

Ms Jenny CHAN
Principal Assistant Secretary for Transport and
Housing (Transport) 10

Mr CHENG Yeung-ming
Chief/Marine Accident Investigation and
Shipping Security Policy
Marine Department

Mr WONG Sai-fat
General Manager/Shipping Registry and
Seafarers
Marine Department

Agenda Item IV

Mr Clement CHEUNG Wan-ching
Commissioner of Customs and Excise

Mrs Alice CHEUNG CHIU Hoi-yue
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry) 3

Mr HA Yung-kuen
Deputy Director-General (Telecommunications)
Office of Communications Authority

Mr CHAN Chi-keung
Head of Trade Controls
Customs and Excise Department

Mr Sanda CHEUK Sing-tak
Assistant Director (Market & Competition)
(Acting)
Office of Communications Authority

Mr LAM Po-chuen
Head of Trade Descriptions Ordinance Special
Planning Group
Customs and Excise Department

Agenda Item V

Ms Carol YUEN, JP
Deputy Secretary for Commerce and Economic
Development (Commerce and Industry)¹

Mr Raymond WU
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and
Industry)²

Mr Arthur NG
Deputy Judiciary Administrator (Operations)

Ms Wendy CHEUNG
Assistant Judiciary Administrator
(Development)

Agenda Item VI

Mr WONG Kam-sing
Secretary for the Environment

Ms Christine LOH
Under Secretary for the Environment

Miss Vivian LAU
Deputy Secretary for the Environment

Ms Vyora YAU
Principal Assistant Secretary for the
Environment (Financial Monitoring)

**Attendance by
invitation**

: Agenda item VI

The Hongkong Electric Co., Ltd.

Mr K S TSO
Managing Director

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

Mr CHAN Loi-shun
Executive Director

Mr K M WONG
Group Manager, Finance & Accounting

Ms Mimi YEUNG
General Manager (Public Affairs)

CLP Power Hong Kong Limited

Mr Richard LANCASTER
Managing Director

Mr S H CHAN
Director

Ms Quince CHONG
Chief Corporate Development Officer

Mr T K CHIANG
Planning & Development Director

Mr Stephen CHOI
Strategic Planner

Ms Cecila SO
Senior Public Affairs Manager

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Mr Noel SUNG
Senior Council Secretary (1)5

Ms Michelle NIEN
Legislative Assistant (1)5

Agenda Item III

Ms Clara TAM
Assistant Legal Adviser 9

I Information paper issued since last meeting

(LC Paper No. CB(1)253/12-13(01) —Administration's paper on tables and graphs showing the import and retail prices of major oil products from November 2010 to October 2012)

Members noted the information paper issued since the last meeting.

II Items for discussion at the next meeting

(LC Paper No. CB(1)260/12-13(01) —List of outstanding items for discussion

LC Paper No. CB(1)260/12-13(02) —List of follow-up actions)

2. Members noted that at the next meeting to be held on 28 January 2013, the Secretary for Commerce and Economic Development, the Secretary for Transport and Housing, and the Secretary for the Environment would brief the Panel on the relevant policy initiatives in the Chief Executive's 2013 Policy Address.

III Implementation of the Maritime Labour Convention 2006 in Hong Kong

(LC Paper No. CB(1)260/12-13(03) —Administration's paper on implementation of the Maritime Labour Convention, 2006 in Hong Kong)

3. The Under Secretary for Transport and Housing (USTH) briefed members on the legislative proposals in respect of the Merchant Shipping (Seafarers) Ordinance (Cap. 478) (MSSO) for implementing the requirements under the Maritime Labour Convention, 2006 (MLC), by highlighting the salient points in the paper. USTH said that the Administration planned to introduce the legislative proposals into the Legislative Council within the current legislative session.
4. Mr TANG Ka-piu noted the proposed amendment to the MSSO that under certain circumstances, seafarers were entitled to request for repatriation to their place of origin without paying for the relevant expenses and enquired about what such circumstances were.
5. USTH replied that the circumstances included situations where, for instance, a seafarer suffered from serious sickness or injury, the ship was involved in an accident, the ship owner became bankrupt, or the seafarer refused to continue to work on the ship which would enter a war zone.
6. Mr TANG Ka-piu enquired about the role of the Government if a complaint could not be resolved on board a ship which was in Hong Kong waters, especially when the ship had to depart from Hong Kong shortly.
7. USTH said that the Marine Department would handle complaints which could not be resolved on board of a ship in Hong Kong waters.
8. Mr TANG Ka-piu expressed concern that the MLC did not cover retirement protection for seafarers and that the legislative proposals did not include the seafarers' right to collective bargaining.
9. USTH said that the legislative amendments were proposed in accordance with international standards, which did not require legislation on the right to collective bargaining. As for retirement protection of seafarers, the arrangements would be based on the relevant legislation of the State where the ships were registered.
10. Noting that the labour legislations did not cover crew members working on passenger ships plying between Hong Kong and Macao, Mr LEE Cheuk-yan

enquired whether the present legislative proposals would cover such crew members.

11. USTH remarked that in accordance with the MLC, the aim of the proposed legislative amendments was to cover ships registered in Hong Kong, of 500 gross tonnage or over and engaged in international voyages, taking into account that the ships would not be in any port for a long time. There were provisions in the MSSO covering the working conditions of crew members on passenger ships plying between Hong Kong and Macao.

12. Mr Frankie YICK said that the Hong Kong Shipowners Association supported the legislative proposals. Noting that the requirements under the MLC would take effect from 20 August 2013, Mr YICK expressed concern whether the legislative proposals would be implemented in time so that ships registered in Hong Kong would not encounter problem when visiting overseas ports.

13. USTH said that the Administration aimed to implement the legislative proposals as soon as possible within this legislative session. In the unlikely event that the legislative proposals could not be enacted on or before 20 August 2013, the Administration would authorize recognised organizations to issue provisional compliance certificates to ships which met the requirements of the MLC in order to enable the ships to operate in overseas countries.

14. Pointing out that a Maritime Labour Certificate was valid for five years and the renewal of the certificate was subject to inspection, Mr Frankie YICK enquired whether the same standards would apply to issuance and renewal of the certificate. Mr YICK opined that where appropriate, the inspection procedures should be streamlined during the renewal of the certificates to facilitate the operation of the ships.

15. USTH replied that the scope of inspection for renewal of the Maritime Labour Certificate was the same as that for certificate issuance in order to meet the requirements of MLC. USTH remarked that the Administration would consider the views of members and relevant organizations regarding ways to streamline the renewal procedures.

16. Noting that the Hong Kong Shipping Registry was ranked fourth in the world, and Hong Kong was one of the most reputable ship flag administrations, Mr YIU Si-wing enquired whether the Administration had encountered any difficulties in the past in enforcing relevant requirements, and what measures would be taken to ensure that the ship owners would comply with the new requirements of the MLC.

17. USTH remarked that based on the feedback from overseas maritime authorities, Hong Kong had performed well in ship flag administration. The Marine Department would conduct inspections in order to ensure that the ships complied with the requirements under the MLC. There had been minor non-compliance cases, such as inadequate fire prevention or fire-fighting installations on certain ships. In these cases, the Marine Department would ensure that the ship owners took remedial actions.

18. The Chairman concluded that members generally supported the proposed legislative amendments as set out in the paper.

IV Draft enforcement guidelines and other enforcement matters in respect of the fair trading provisions in the Trade Descriptions Ordinance (Cap. 362)

(LC Paper No. CB(1)260/12-13(04) —Administration's paper on Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 – Draft enforcement guidelines and other enforcement-related matters

LC Paper No. CB(1)275/12-13(01) —Administration's public consultation paper on draft enforcement guidelines for the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012

LC Paper No. CB(1)260/12-13(05) —Paper on draft enforcement guidelines and other enforcement matters in respect of the fair trading provisions in the Trade Descriptions Ordinance (Cap. 362) prepared by the Legislative Council Secretariat (background brief))

19. The Commissioner of Customs and Excise (C of C&E) briefed members on the progress of the preparatory work for the commencement of the Trade Descriptions (Unfair Trade Practices)(Amendment) Ordinance 2012 (Ord. No. 25 of 2012) (the Amendment Ordinance) and the public consultation exercise, by highlighting the salient points in the paper.

Public consultation

20. Mr YIU Si-wing considered that the Administration should actively publicize the consultation exercise, e.g. by distributing the consultation papers to the business operators through the relevant trade associations and organizations in order to encourage relevant stakeholders to give their comments on the draft enforcement guidelines as set out in the paper. The Administration should also consider extending the consultation period to more than six weeks. Mr YIU opined that separate consultation sessions should be held for different sectors as the modes of operation of the various sectors were different. Mr Charles Peter MOK shared Mr YIU's views. Mr MOK said that as the communications industry had to comply with the requirements of several ordinances, the Administration should conduct consultation sessions separately for operators in the industry with a view to facilitating them to comply with the Amendment Ordinance.

21. C of C&E responded that arrangements had been put in place for consulting the public and individual sectors on the enforcement guidelines to facilitate the implementation of the Amendment Ordinance. Nine consultation sessions had been arranged for different sectors, out of which six had been conducted including three sessions for large trade associations including the association for the communications industry; two sessions for small and medium sized enterprises (SMEs), and individual business operators; and one session for District Council members. C of C&E pointed out that members of the public could obtain the consultation paper through the relevant websites, offices of the Home Affairs Department and the Consumer Council.

Cooling-off period

22. Dr Elizabeth QUAT remarked that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong were concerned that the Amendment Ordinance did not cover the provision of cooling-off period, nor include provisions against accepting payment without the intention or ability to supply the contracted goods or services. Dr QUAT enquired about the Administration's plan regarding the proposal to introduce legislation for provision of a cooling-off period in order to protect the interest of consumers. Mr CHAN Han-pan and Mr WU Chi-wai echoed Dr QUAT's concern. Mr CHAN said that the provision of a cooling-off period would best protect the interest of the consumers, as most consumers would have difficulty in providing evidence to prove that they had been harassed or threatened when purchasing a product or service. Mr WU asked whether there were any previous court cases to which the enforcement agencies and relevant trades could make reference. Mr WU opined that the enforcement guidelines should provide examples of cases to facilitate the business operators to comply with the requirements under the Amendment

Ordinance.

23. C of C&E pointed out that the subject of cooling-off had been discussed at length during the legislative consultative period and even at the Bills Committee for the TDO (Amendment) Bill. Various difficult and controversial issues involved regarding the introduction of a cooling-off period were discussed, e.g. the types of trades to be covered, the amount of payment involved, the treatment of short contractual period or short lived product and service concerned, the administration costs involved and the impact on consumer behaviour, etc. Given the divergent views on the subject matter, further review and study of the subject would be needed and further public consultation might be required. In order not to hold up legislative proposals on which a general consensus had been reached, the TDO (Amendment) Bill proceeded without a provision on cooling-off. C of C&E remarked that the Amendment Ordinance provided for sanctions against "accepting payment without the intention or ability to supply the contracted goods or services" and "aggressive commercial practices", which would in fact be able to tackle problems that a cooling-off period was intended to tackle.

24. C of C&E added that past experience showed that it was possible to find evidence to support enforcement actions and prosecution in cases where a consumer was found to be a victim of aggressive or high-pressure trading practices. After gaining more experience in implementing the Amendment Ordinance, the Administration would review the arrangements and consider whether further amendment(s) to the Trade Descriptions Ordinance (Cap. 362) (TDO), such as the provision of a cooling-off period, was necessary, and would make proposal to the Legislative Council where appropriate. C of C&E further supplemented that the Administration had taken into consideration the court cases in countries like the United Kingdom and Australian in drawing up the Amendment Ordinance and the draft enforcement guidelines. The draft enforcement guidelines also provided examples for reference by the relevant trades.

Co-ordination among enforcement agencies

25. Pointing out that consumers would usually report undesirable trade practices to the Police, Mr CHAN Han-pan enquired about the arrangements on referral of cases among the various enforcement agencies.

26. C of C&E responded that the Customs and Excise Department (C&ED), the Police, the Office of Communications Authority (OFCA) and the Consumer Council had maintained close liaison in enforcing the TDO, and the existing co-operation arrangements had proved to be effective. From time to time, C&ED and the Police carried out joint operations. The Consumer Council mainly played the role of an arbitrator and would refer cases which involved

criminal offences to the Police or C&ED. In anticipation of an increase in reports of undesirable trade practices as a result of the implementation of the Amendment Ordinance, an electronic platform would be established for referral of cases between the Consumer Council and C&ED. C&ED and the OFCA would enter into a memorandum of understanding, with details to be publicized in due course, regarding the arrangements for enforcing the TDO after the enactment of the Amendment Ordinance.

27. Citing the Lehman Brothers incident as an example, Mr Ronny TONG opined that it was undesirable for two separate departments to undertake responsibilities for enforcing the Amendment Ordinance. He enquired whether consideration would be given to designating a single regulatory authority to enforce the Amendment Ordinance. The Chairman shared Mr TONG's concern. Mr TONG opined that the disclosure of the names of the companies involved in undesirable trading practices such as the disclosure made by the Consumer Council was an effective means to deter companies from committing the malpractices. Mr TONG asked whether provisions would be made in the Amendment Ordinance for the disclosure of companies found to have breached the legislation.

28. C of C&E remarked that the responsibilities of C&ED and the OFCA in enforcing the Amendment Ordinance were clearly defined. The OFCA was responsible for enforcing the fair trading sections of the TDO in relation to commercial practices of licensees under the Broadcasting Ordinance (Cap. 562) (BO) and the Telecommunications Ordinance (Cap. 106) (TO), which were directly related to the provision of a broadcasting service or telecommunications service under the respective Ordinances. In cases where the undesirable trading practices were found related to both the above services in question as well as other goods/services, the C&ED would lead the investigation, with the technical support of OFCA, as C&ED had more enforcement experience and expertise in investigating other areas. C of C&E stated that under the compliance-based mechanism of the Amendment Ordinance, C&ED might make any disclosure of undesirable trading practices, including the name of the relevant company which had made an undertaking to stop and not to repeat a specific conduct. The Consumer Council would also continue its practice to disclose the names of companies which had repeatedly committed offences in relation to undesirable trading practices.

Training for enforcement staff

29. Given that the coverage of the TDO would be extended to services, the Chairman enquired about the provision of training for enforcement staff.

30. C of C&E remarked that the Administration had arranged for enforcement officers to attend training in the United Kingdom and Australia on the enforcement of the Amendment Ordinance and would provide appropriate training programmes including one conducted by an Australian expert in the relevant field for enforcement officers in Hong Kong. In collaboration with the Department of Justice, C&ED and the OFCA would provide training for the enforcement officers regarding criminal proceedings against serious contraventions of the fair trading sections as well as relevant legal cases in overseas countries.

V Proposed creation of a permanent post of Judge of Court of First Instance (JSPS Point 16), and a permanent post of Deputy Registrar, High Court (JSPS Point 13)

(LC Paper No. CB(1)260/12-13(06) —Administration's paper on proposed creation of judicial posts for the establishment of a Competition Tribunal in the judiciary

LC Paper No. CB(1)260/12-13(07) —Paper on the proposed creation of two judicial posts for the establishment of the Competition Tribunal prepared by the Legislative Council Secretariat (background brief))

31. The Deputy Secretary for Commerce and Economic Development (Commerce and Industry)1 (DS(C&I)1) briefed members on the proposal to create two judicial posts for the establishment of a Competition Tribunal in the Judiciary as set out in the paper. DS(C&I)1 pointed out that the Finance Committee had just approved the revision of the salary scale for the Judiciary, and the salaries for the two new posts would be revised on the basis of the new salary scale when the staff proposal was submitted to the Establishment Subcommittee and the Finance Committee.

32. Mr Ronny TONG opined that given the complexity of the cases related to the Competition Ordinance (Cap. 619) (the Ordinance), it would be more appropriate to appoint a very experienced judge, instead of a newly appointed judge, as the President of the Competition Tribunal. Mr TONG opined that arrangement should be made for the Chief Judge of the High Court to appoint a senior judge as the President of the Competition Tribunal, similar to the arrangement for the Insider Trading Tribunal.

33. The Assistant Judiciary Administrator (Development) (AJA(D)) clarified that every judge of the Court of First Instance (CFI) would, by virtue of his or her appointment as a CFI judge, be a member of the Competition Tribunal. The actual appointment to the post of the President of the Competition Tribunal would be based on the recommendation of the Judicial Officers Recommendation Commission, and subject to the approval of the Chief Executive.

34. Mr Ronny TONG was of the view that given the complexity of the responsibilities and the anticipated heavy workload of the President of the Competition Tribunal, a judge with ample experience in dealing with commercial litigation cases should be appointed to the post.

35. AJA(D) agreed to relay Mr TONG's view regarding the appointment of the President of the Competition Tribunal.

36. Mr WONG Ting-kwong said that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong supported in principle the proposed creation of the judicial posts. Mr WONG enquired about the timing for introducing to the Legislative Council the subsidiary legislation relating to the Competition Tribunal.

37. AJA(D) remarked that the Administration would implement the Ordinance by phases. The Administration had tabled a commencement notice at the Legislative Council on 28 November 2012 in order to enable the provisions relating to the Competition Tribunal to come into operation on 1 August 2013. The Judiciary would draw up the subsidiary legislation (i.e. rules) concerning the Competition Tribunal by making reference to, among others, relevant legislations in overseas countries. The Judiciary would consult the Legislative Council on the subsidiary legislation in accordance with the usual arrangements.

38. In response to the Chairman's enquiry regarding the estimated expenditure on implementation of the Competition Ordinance, the Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry)2 (PAS(C&I)2) remarked that the estimated expenditure for setting up the Competition Commission was about \$80 million which did not include the expenditure for the establishment of the Competition Tribunal and the remuneration for the holders of the two permanent judicial posts. AJA(D) supplemented that the annual expenditure for the Competition Tribunal would, subject to developments, be about \$22 million, including about \$13 million for staff costs and about \$9 million for office and other expenses. The one-off setting up costs for the Competition Tribunal would be around \$2.6 million. The Judiciary would include the funding proposal in the Draft Estimates of 2013-2014 and subsequent years to meet the expenditure of the Tribunal.

39. In reply to the Chairman's enquiry regarding the time-table for setting up the Competition Tribunal, AJA(D) remarked that subject to the approval of the Legislative Council, the posts would be created in April 2013. The Judicial Officers Recommendation Commission would be invited to make recommendation for appointment of the President and Deputy President of the Competition Tribunal for approval by the Chief Executive. Upon the commencement of the relevant provisions in the Ordinance on 1 August 2013, the Judiciary would take forward the preparation of the subsidiary legislation for the Competition Tribunal.

40. The Chairman said that members generally supported the proposed creation of the two judicial posts.

VI Annual Tariff Reviews with the two power companies

(LC Paper No. CB(1)260/12-13(08) —Presentation materials provided by The Hongkong Electric Company Ltd.

LC Paper No. CB(1)260/12-13(09) —Presentation materials provided by CLP Power Hong Kong Ltd.

LC Paper No. CB(1)260/12-13(10) —Paper on annual tariff reviews with the two power companies prepared by the Legislative Council Secretariat (background brief))

Presentation by The Hongkong Electric Company Ltd.

(LC Paper No. CB(1)297/12-13(01) tabled at the meeting and subsequently issued via e-mail on 11 December 2012)

41. With the aid of Powerpoint, Mr K S TSO, Managing Director of The Hong Kong Electric Co. Ltd. (HEC), and Mr C T WAN, Director of Engineering (Planning & Development) of HEC, briefed members on HEC's proposed tariff adjustment in 2013 and the considerations behind. Members noted that HEC's proposed adjustment was as follows –

Tariff Components	Current 2012 (Cents/kWh)	Effective 1 January 2013 (Cents/kWh)	Adjustment (Cents/kWh)
Basic Tariff	94.1	94.7	+0.6
Fuel Clause Charge	37.0	40.2	+3.2
Net Tariff	131.1	134.9	+3.8 (+2.9%)

Presentation by CLP Power

(LC Paper No. CB(1)297/12-13(02) tabled at the meeting and subsequently issued via e-mail on 11 December 2012)

42. With the aid of Powerpoint, Mr Richard LANCASTER, Managing Director of CLP Power Hong Kong Ltd. (CLP), and Mr T K CHIANG, Planning & Development Director of CLP briefed members on CLP's proposed tariff adjustment in 2013 and the considerations behind. Members noted that CLP's proposed adjustment was as follows –

Tariff Components	Current 2012 (Cents/kWh)	Effective 1 January 2013 (Cents/kWh)	Adjustment (Cents/kWh)
Average Basic Tariff	84.2	84.2	-
Fuel Clause Charge	17.8	22.4	+4.6
Average Total Tariff	102.0	106.6	+4.6 (+4.5%)
Rent and Rates Special Rebate	-3.3	-2.1	-
Average Net Tariff	98.7	104.5	+5.8 (+5.9%)

Provision of confidential information

43. The Chairman said that the documents tabled by the two power companies at the meeting (LC Paper Nos. CB(1)297/12-13(01) and CB(1)297/12-13(02)), but with confidential information unmasked would be made available for

members' perusal at the Archives office of the Legislative Council Secretariat from 12 December 2012 onwards, on the understanding that the confidential information therein would not be disclosed or released to third parties.

Overall rate of tariff increase

44. Mr WONG Kwok-hing opined that CLP's proposed increase in tariff of 5.9% was unreasonable as the rate of increase was much higher than HEC's proposed increase of 2.9% and the inflation rate of 3.8%. Mr WONG was of the view that even if the cost for procurement of natural gas had risen by threefold, CLP should shoulder its social responsibility by keeping its tariff increase to less than the inflation rate of 3.8%. Mr WONG remarked that CLP's proposed increase in tariff would have a knock-on effect on the price of commodities.

45. Mr Richard LANCASTER of CLP said that the existing natural gas contract had been signed about 20 years ago when the oil price was below US\$20 per barrel and since then fuel prices had surged considerably. As the existing natural gas supply was about to deplete, a new supplier had to be commissioned resulting in significant increase in the cost for supply of natural gas in line with prevailing market situations. Mr LANCASTER pointed out that as the average total tariff of CLP was lower than HEC's net tariff, the percentage of increase for CLP was higher than that of HEC partly because of the lower base figure for calculation of the increase.

46. Mr TANG Ka-piu opined that the proposed increase in tariff was unacceptable. Mr TANG asked whether the Administration's approval was required for the tariff adjustment proposed by CLP and HEC. Mr TANG noted that in future, no rent and rates special rebate would be provided, the supply of cheap natural gas from Yacheng would deplete, and the use of natural gas in the fuel mix would increase from about 20% to 50%. He expressed grave concern that these factors would lead to a sharp increase of electricity tariff. Mr TANG asked whether the Administration would take any measure to reduce the rate of increase in electricity tariff.

47. The Deputy Secretary for Environment (DSE) said that electricity tariff was made up of two parts, namely Basic Tariff and Fuel Clause Charge. If the two power companies' proposed increase in Basic Tariff for a particular year did not exceed 5% of the projected Basic Tariff for that year in the prevailing Five-year Development Plan approved by the Executive Council, approval from the Administration for the adjustment of Basic Tariff was not required. The Secretary for the Environment (SEN) added that electricity supply was regulated through the Scheme of Control Agreements (SCAs) signed between the Administration and the two power companies respectively, and an interim review of the SCAs would be conducted in 2013 to review the regulatory arrangements.

48. The Deputy Chairman opined that while the proposed tariff increase of 2.9% by HEC was acceptable, consideration should be given to reducing the average tariff increase of 5.9% proposed by CLP.

49. Mr Richard LANCASTER of CLP remarked that CLP had made every effort to minimize the fuel cost by getting the best performance out of its coal-fired plants and making use of the cheapest gas available, although there was pressure on the fuel cost as the company had to meet the statutory emission cap and fuel prices fluctuated in the international market.

Impact on customers

50. Noting that HEC would revise its tariff structure by increasing the tariff blocks from three to four, Mr Andrew LEUNG enquired about the impact of tariff adjustment on the fourth block and the non-domestic customers who consumed 1,700 units of electricity or more.

51. Mr C T WAN of HEC remarked that the tariff for non-domestic customers who consumed 500 or less units a month would remain unchanged. The percentage increase in tariff for non-domestic customers consuming 1,700 units a month was about 2.18%, slightly less than 2.9%. Only for those non-domestic customers consuming more than 5,000 units a month, the percentage increase would be higher than 2.9%. The maximum percentage increase would be that for those non-domestic customers consuming more than 50,000 units a month, which was about 3.2%.

52. Mr Andrew LEUNG enquired about the percentage increase in CLP's tariff for non-domestic customers, including SMEs, at different consumption levels.

53. Mr S H CHAN, Director of CLP remarked that the tariff for non-domestic customers, including about 130,000 SMEs, who consumed less than 400 kWh a month would remain unchanged. The tariff for some of them would even reduce in 2013 if they consumed a very small amount of electricity. Mr CHAN pointed out that the average increase in tariff for those consuming over 400 kWh a month was 5.4%.

54. Ms Cyd HO remarked that despite the power companies' comment that the tariff for small business consuming a low level of electricity would remain unchanged or would be slightly increased, there were few companies which would consume less than 2,000 units (for CLP customers) or 1,700 units (for HEC customers) of electricity. Ms HO opined that the two power companies should not aim to attain the maximum 9.99% of permitted rate of return, and should reduce the tariff increase which would have a knock-on effect on other businesses and the inflation rate.

55. Mr Richard LANCASTER of CLP remarked that CLP had tried to minimize the impact of the tariff increase on the SMEs, as the tariff for 44% of CLP's business customers (i.e. 130 000 business customers) would remain unchanged, or even reduced because of the newly introduced Energy Saving Rebate. Mr C T WAN of HEC remarked that the tariff for 44% of HEC's non-domestic customers remained the same, and HEC customers using less than 5,000 units of electricity would have their tariff increased by less than 2.9%.

56. In response to Mr Ronny TONG, Mr C T WAN of HEC said that the rates of tariff increase for domestic customers with a monthly electricity consumption of 1,000 units, 1,500 units and 2,500 units of electricity were 2.34%, 2.7% and 6.45% respectively. Mr TONG and Mr WU Chi-wai requested that the two power companies provided details of the increase in tariff, in terms of percentage, for different tariff blocks of residential and business customers. Mr TONG also enquired about the reasons for the increase in operating costs of HEC which was much higher than that of CLP.

(Post-meeting Note: The information provided by the Administration and the two power companies was issued to members vide LC Paper No. CB(1)378/12-13(01) on 7 January 2013.)

57. Mr WU Chi-wai was concerned that no increase in tariff was proposed only for customers who consumed a very low level of electricity. Mr WU opined that in order to encourage energy saving, all customers who consumed less electricity than in the previous year should be exempted from the tariff increase.

58. Mr Richard LANCASTER of CLP remarked that under the progressive tariff structure, consumers who consumed more electricity would be required to pay a higher rate of tariff, and no tariff increase was proposed for customers who consumed a low level of electricity. CLP's Energy Saving Rebate was designed to encourage these customers to use less energy and by doing so they would save on their electricity bills.

Reasons for tariff increase

59. Mr Dennis KWOK noted that HEC had to pay a penalty of \$95 million for excess generation capacity in the past three years, and asked whether the penalty amount was regarded as part of the operating cost of HEC for the purpose of calculating the tariff increase. Mr KWOK also asked whether CLP had to make similar payments.

60. Mr K S TSO of HEC replied that the payment of \$95 million was borne by the shareholders of HEC and had not been included in the operating costs of the company nor would be passed onto consumers in the tariff. Mr Richard LANCASTER of CLP said that CLP had not made any penalty payment relating to excess generation capacity as it had not triggered that penalty.

61. Mr Dennis KWOK enquired about the impact on the operating costs and electricity tariff when the two power companies were required to meet the new statutory emission caps to be implemented in 2015.

62. Mr C T WAN of HEC said that the impact of the statutory emission caps to be implemented in 2015 on HEC's electricity tariff would depend on the price of natural gas in the coming few years. Mr S H CHAN of CLP remarked that the challenge would be great in meeting the statutory emission caps to be imposed in 2015, as CLP would need to change its fuel mix by doubling its gas usage and the price for the new gas sources would be much higher than the current Yacheng gas price.

63. Mr CHAN Han-pan enquired why electricity tariff continued to rise in the past five years despite the supply of natural gas from Yacheng at relatively low price in the past 20 years. Mr CHAN also expressed concern that although the rate of increase for HEC's tariff was relatively small, the tariff increase was based on a tariff higher than that of CLP.

64. Mr Richard LANCASTER of CLP remarked that electricity tariff was made up of two parts, namely Basic Tariff and Fuel Clause Charge. Basic Tariff was affected by several factors such as the level of investments and operating costs of the power companies, and hence the permitted return. In fact, CLP had kept its Basic Tariff broadly stable since 1997 with its efforts in keeping its cost and investment to the minimum. The fuel cost factor was, however, beyond the control of the power companies as it was subject to price fluctuations in the international market. The natural gas from Yacheng had been supplied at a relatively low price benefitting CLP customers in the past 20 years. With the exhaustion of natural gas supply from Yacheng, and a keen competition for natural gas supply in the region, a new source of supply from the West-East Natural Gas Pipeline had to be obtained and the new gas price was, which was comparable to the current market price, much higher than that of Yacheng. Mr LANCASTER said that CLP had made every effort to minimize its operating costs and maintain a reliable and clean supply of electricity. Mr C T WAN of HEC added that as the number of CLP's customers was three times that of HEC, and since CLP had imported nuclear power from Guangdong it was not impacted by increases in fossil fuel prices, so its tariff was lower than that of HEC.

65. Ir Dr LO Wai-kwok was concerned whether the increase in tariff was mainly a result of the maintenance of a high level of reserve capacity of the two power companies.

66. Mr Richard LANCASTER of CLP said that the reserve capacity was maintained by the power companies in order to ensure a reliable supply of electricity, and CLP's reserve margin in 2011 was 33%, which was in line with international practice of 20% to 35%.

Tariff Stabilization Funds

67. Dr Fernando CHEUNG opined that given the significant profits recorded in the mid-year financial reports of the two power companies, the companies should not aim to maximize their profits based on the permitted rate of return allowed under the SCAs. Dr CHEUNG enquired about the position of the Tariff Stabilization Fund (TSF) and the Fuel Clause Recovery Account (FCA) of the two power companies. Dr CHEUNG remarked that the two power companies should propose a tariff increase lower than the current proposal. Dr CHEUNG enquired about the strategy which the Administration would adopt during the interim review of the SCAs in 2013 and whether it would include regulating the electricity market through legislation instead of SCAs.

68. SEN responded that the Administration would start as soon as possible the interim review of the SCAs and would take into consideration the views of members and the public in the review. Mr C T WAN of HEC remarked that by the end of 2012, the balance of HEC's TSF was about \$440 million and the balance would be reduced to about \$90 million as \$350 million would be used to offset part of the increase in tariff. As at the end of 2012, HEC's FCA could have recorded a deficit balance of \$860 million which would be reduced to about \$500 million by the end of 2013. Mr S H CHAN of CLP remarked that currently CLP's TSF had a balance of about \$700 million which would be reduced to about \$200 million as a result of using the fund to alleviate the tariff increase. CLP's FCRA was estimated to record a deficit of \$1 billion by the end of 2013.

69. The Deputy Chairman remarked that based on the SCAs, the two power companies had set up loan funds to assist non-government organizations to use energy saving installations. Since the funds held by CLP and HEC amounted to about \$125 million and \$60 million respectively and there were few applications for the loan fund, the two power companies should consider transferring the funds to the TSF of in order to alleviate the pressure on the annual tariff increases.

70. SEN remarked that the interim review of the SCAs in 2013 would cover the use of the loan funds.

Fuel mix and fuel cost

71. Mr Ronny TONG enquired why there was a discrepancy in the average increase in fuel cost of the two power companies, i.e. 1.4% for HEC and 6.3% for CLP.

72. Mr Richard LANCASTER of CLP remarked that the difference in fuel cost increase was mainly because CLP and HEC used different suppliers for natural gas, and the new natural gas source for CLP would replace the existing Yacheng gas which was charged currently at below market price.

73. Ir Dr LO Wai-kwok enquired whether the rate of tariff increase could be reduced if more supply of natural gas could be obtained from Yacheng for generation of electricity. Ir Dr LO was also concerned whether adequate supply of natural gas in future had been assured by completing the agreement with the new supplier.

74. Mr Richard LANCASTER of CLP remarked that as the supply of natural gas from Yacheng was near depletion, the amount of natural gas that it could produce was highly uncertain. If more Yacheng supply was available, it would be used thereby lowering fuel cost with savings flowing through to customers. Mr LANCASTER added that the agreement with the new supplier of natural gas would be completed within 2012 and details would be announced in due course.

75. Dr Elizabeth QUAT asked whether CLP would consider reducing the expenditure on fuel through hedging on fuel prices. Dr QUAT also enquired about the reasons for the increase in fuel cost in 2013 to about \$2.3 billion. Dr QUAT further enquired about the arrangement on the tariff adjustment if the expenditure on fuel cost in the previous year had been over-estimated.

76. Mr S H CHAN of CLP remarked that CLP would not consider hedging fuel prices as it would incur expenses in hedging activities. Mr CHAN said that the increase in fuel cost in 2013 was mainly due to the increase in the use of natural gas and the higher price in the supply of natural gas. Mr CHAN added that any over-estimation or under-estimation of the fuel cost in a particular year would be reflected in the FCRA balance. Given the rapid upsurge in fuel prices in the past few years, a deficit had been recorded in CLP's FCA.

77. The Deputy Chairman pointed out that based on a Government consultation paper issued in 2010, the fuel mix for generation of electricity in 2020 would consist of 50% natural gas, 40% nuclear energy and 10% coal. The information provided by CLP showed that by 2015, the fuel mix for generation of electricity would be 45% natural gas, 30% nuclear energy and 25% coal. The Deputy Chairman enquired whether CLP had any plan to increase the use of

nuclear energy, which was cheaper than the use of natural gas, so that electricity tariff could be maintained at a lower level.

78. SEN remarked that the fuel mix of 50%, 40% and 10% for generation of electricity by nuclear energy, natural gas and coal respectively was proposed in 2010 with a view to reducing carbon emission. As a result of the Fukushima nuclear incident in Japan, the proposal was held in abeyance. The Administration planned to discuss with the power companies and the stakeholders again in 2013 regarding the fuel mix for generation of electricity.

79. Mr Michael TIEN enquired why HEC's expenditure on fuel was two fold of the expenditure of CLP.

80. Mr C T WAN of HEC remarked that the fuel cost of HEC was higher than that of CLP mainly because HEC had not used nuclear energy for generation of electricity, and the price of natural gas and coal had been extremely volatile in the market. Mr WAN said that the installation of relevant infrastructure for use of nuclear energy would be relatively expensive, in particular if the use of nuclear energy was on a small scale and whether HEC would use nuclear energy in future would be subject to the Government's review of its fuel mix policy.

81. Mr Michael TIEN enquired why the rate of increase in fuel cost for CLP in 2013 was about 30%, which was much higher than the 8% increase of HEC.

82. Mr S H CHAN of CLP remarked that the estimate on the fuel cost in 2013 was made based on the estimated price of fuel in 2013.

Government rent and rates rebate

83. Mr WU Chi-wai was concerned about the arrangement for the special rebate of rent and rates to customers, in case that CLP lost in the relevant court case with the Government on over-charge of rents and rates.

84. Mr Richard LANCASTER of CLP said that the court case had been going on for about ten years and the Company was waiting for the final outcome. CLP had committed to fully return refunds from Government, and did so through the Rent and Rates Special Rebate. So far the Government had refunded to CLP over \$1 billion. In anticipation of further reimbursement by Government, a 2.1 cents per kWh rebate would be provided in 2013 and by the end of 2013, CLP would have returned to its customers all of the overcharged rent and rates money refunded by the Government.

85. Mr SIN Chung-kai asked whether CLP would recover the special rent and rates rebate from the customers, in the event that CLP lost the court case with the

Government regarding the overcharge of rent and rates.

86. Mr Richard LANCASTER of CLP remarked that in a similar case involving the HEC, the Court of Final Appeal ruled that the Government should refund to the company the overcharged rents and rates. CLP had been providing the special rent and rates rebate to its customers since 2012, and by the end of 2013, all the refunds from the Government would have been returned to CLP customers.

Opening up the electricity market

87. Mr Albert CHAN opined that under the SCAs, consumers had little choice but to accept the annual tariff increase proposed by the two power companies. Mr CHAN enquired whether the Administration had any plan to open the electricity market bringing in more competition, e.g. by introducing a third electricity supplier. Mr CHAN expressed concern that the Administration and the two power companies proposed to use natural gas for electricity generation in the 1990s partly because the price of natural gas was relatively low at the time, and yet the cost for using natural gas was expected to increase considerably in the coming years. Mr CHAN enquired about the development on the use of renewable energy.

88. SEN responded that in some places, where the electricity supply market had been opened up, the electricity tariff and annual adjustments were higher than those of Hong Kong. SEN remarked that in the coming years, issues such as the possibility of opening up the electricity market and the appropriate fuel mix would be discussed.

Interconnecting power networks

89. Mr LEE Cheuk-yan opined that the electricity tariff would continue to rise if the electricity market was not open, especially when the fuel cost was expected to surge significantly in the coming years. Mr LEE was also concerned about the development of the proposal on interconnection of the networks of the two power companies. Mr LEE was dissatisfied that the two power companies aimed to achieve the maximum rate of return of 9.99%, and pass on all the increase of fuel costs to their customers. Mr LEE enquired about the Administration's plan in interconnecting the networks of the two power companies and opening the electricity market, during the interim review in 2013 and the overall review of the SCAs before 2016.

90. SEN remarked that the feasibility of interconnecting the networks of the two power companies and opening the electricity supply market would be considered during the coming reviews on electricity matters.

Other ways to mitigate the rate of increase

91. Dr Elizabeth QUAT enquired about the income from the sale of electricity to the Mainland, and whether the income was used to offset part of the tariff increase.

92. Mr Richard LANCASTER of CLP remarked that part of the reserve capacity of CLP had been used for sale of electricity to the Mainland, and 80% of the profit generated from the sale was transferred to the TSF to offset part of the increase in tariff. Since 2002, about \$5 billion had been injected into the TSF and in the past two years, a reduction of about 1 cent to 1.8 cents per kWh in the tariff had been achieved through the income from the sale of electricity to the Mainland.

93. The Chairman advised members that he received a motion proposed by Dr Elizabeth QUAT in relation to the agenda item and that he would deal with it when members finished deliberation on the agenda item. To allow sufficient time for discussion, the Chairman repeatedly extended the meeting time by 15 minutes up to 7:40 pm.

Government's gate-keeping role

94. Given that the CLP and HEC had recorded a profit of about \$9 billion for last year (2011), Dr KWOK Ka-ki queried whether the proposed increase in electricity tariff was justified. Dr KWOK opined that the two power companies had great incentive to increase their capital expenditure so as to maximize profits. Dr KWOK doubted whether the Administration had performed its gate-keeping role in order to safeguard the interest of the public. Dr KWOK enquired what measures the Administration would take in the review of the SCAs to control the rate of return of the power companies, reduce the tariff and open the electricity supply market.

95. SEN responded that currently the supply of electricity was regulated through the SCAs, and an interim review of the SCAs would be conducted in 2013. As far as the tariff review was concerned, at the request of the Administration, the power companies had submitted the tariff proposals in October 2012 so that the Administration and the power companies had more time to discuss the proposals. DSE supplemented that in accordance with the SCAs, the Administration had carefully examined the tariff review proposals from the two power companies, including the estimated electricity demand, sale of electricity, operating costs, capital investments, and TSF and FCA balance. DSE said that the two power companies had already revised downward their tariff adjustments after discussion with the Administration.

96. Dr LAM Tai-fai said that as the two power companies had in effect monopolized the electricity supply market, given a guaranteed rate of return, and yet transferred all the increase in fuel costs to the customers in order to maximize their profits under the SCAs. Dr LAM said that he did not appreciate the way the power companies proposed their tariff increase either. On the one hand, they proposed increase in the tariff whilst on the other, they suggested the customers to save energy and yet they made the maximum return under the SCAs. Dr LAM asked how the Government would perform its gate-keeping role to control the tariff increase of the power companies, during the interim review of the SCAs in 2013, and the long-term review before 2016.

97. SEN remarked that the Administration would take into consideration the views of members and the public in the coming reviews, with a view to striking a balance between a reliable, safe and environmentally friendly supply of electricity and reasonable price. SEN pointed out that with the change in tariff structure proposed by the two power companies, the tariff for SMEs and households which consumed a low level of electricity would remain unchanged.

Request for information

98. Mr CHAN Han-pan requested for information on the actual rate of return of the two power companies in 2012 and the estimated rate of return in 2013 as a result of the proposed increase in tariff. The Administration and the two power companies agreed to provide the information.

99. At the request of Mr SIN Chung-kai, the Administration and the two power companies agreed to provide information on the actual rate of return of the two power companies in 2012, and the estimated rate of return in 2013 as a result of the proposed increase in tariff.

100. Mr LEE Cheuk-yan requested that CLP should provide information on the reasons for the discrepancy on Fuel Clause Charge between the figures in the Five-year Development Plan Forecast and the Annual Tariff Review for 2013 (Table A3 of Annex CLP-A).

101. At the request of Mr Michael TIEN, the Administration and the two power companies agreed to provide information on the projected increase in fuel costs of the two power companies on the basis that electricity was generated by nuclear energy, natural gas and coal in the fuel mix ratio of 50%, 40% and 10% respectively.

(Post-meeting Note: The information provided by the Administration and the two power companies was issued to members vide LC Paper No. CB(1)378/12-13(01) on 7 January 2013.)

Motion proposed by Dr Elizabeth QUAT

102. After discussion, the Chairman invited members to consider the motion proposed by Dr Elizabeth QUAT which was tabled at the meeting. Members agreed to proceed to deal with the motion. Dr Elizabeth QUAT then moved the following motion –

對於中電第二年提出高於通脹的電費加幅，本委員會表示無法接受，促請政府當局必須督促中電應本着其公共事業負有的社會責任，盡力透過各種方式，包括：調節燃料價條款賬及電費穩定基金結餘，把2013年的電費調整幅度壓低，以減輕廣大市民的經濟負擔。同時，政府亦應趁着明年與兩電展開《管制計劃協議》的中期檢討時，要求兩電擴大「電費穩定基金」的資金來源，例如把電力公司若干地產發展收益撥入該基金，以紓緩電費的上升壓力。

(Translation)

That, with regard to the higher-than-inflation electricity tariff increase proposed by CLP Power Hong Kong Limited (CLP) for the second consecutive year, this Panel finds it unacceptable, and thus urges the Administration to press CLP, as a public utility company, to be aware of its social responsibility and strive to suppress the level of tariff adjustment for 2013 so as to ease the financial burden of the general public by making use of every possible means, including adjusting the balances of Fuel Clause Recovery Account and Tariff Stabilization Fund ("TSF"), and in the meantime, the Government should also, when conducting the mid-term review on the Scheme of Control Agreements next year with the two power companies, grab the opportunity to require them to expand the sources of funds of TSF, such as by allocating certain proceeds from property development to TSF, so as to mitigate the pressure of tariff increase.

103. Dr Fernando CHEUNG commented that the Administration should also request HEC to be aware of its social responsibility and to suppress its tariff adjustment in 2013.

104. The Chairman put Dr QUAT's motion to vote. Six members voted for the motion and no member voted against it. The Chairman declared that the motion was passed.

(Post-meeting Note: The Administration and CLP's response to the motion was issued to members vide LC Paper No. CB(1)378/12-13(01) on 7

January 2013.)

Special meeting

105. Mr Ronny TONG requested that a special meeting be convened to discuss in detail the tariff review proposals made by the two power companies, taking into consideration the supplementary information to be provided by the Administration and the power companies. Dr KWOK Ka-ki said that a public hearing should be held to receive the views of the experts and the public on the tariff review proposals, and where possible, the Legislative Council Secretariat could assist in consolidating the information received. Dr Fernando CHEUNG supported Mr TONG and Dr KWOK's proposals and said that members might request the Administration and the power companies to provide further information.

(Post-meeting Note: A special meeting was held on 8 January 2013 to further discuss the tariff reviews with the two power companies.)

VII Any other business

106. There being no other business, the meeting was adjourned at 7:40 pm.

Council Business Division 1
Legislative Council Secretariat
22 February 2013