

**For discussion
on 10 December 2013**

Legislative Council Panel on Economic Development

Creation of two supernumerary posts for the review of the future regulatory framework for the electricity market

PURPOSE

This paper seeks Members' views on the proposal to create the following supernumerary posts for a period of two years from mid February 2014 to take forward the review of the future regulatory framework for the electricity market after the expiry of the current Scheme of Control Agreements (SCAs) in 2018-

- (a) one Administrative Officer Staff Grade C (AOSGC) (D2) post in the Environment Bureau (ENB); and
- (b) one Assistant Principal Government Counsel (APGC) (DL1) post in the Department of Justice (DoJ).

BACKGROUND

Energy supply in Hong Kong

2. Power supply is an essential infrastructure underpinning the social and economic developments of Hong Kong. It is the Government's energy policy to ensure that the energy needs of the community are met safely, reliably, efficiently and at reasonable prices, while minimising the environmental impact of electricity generation.

Existing regulatory framework

3. The Government has been regulating the economic aspect of electricity supply mainly through the SCAs signed between the

Government and the two power companies¹. The SCAs respectively set out the returns in respect of electricity-related² operations for shareholders of the power companies, and the arrangements by which the Government monitors their financial affairs in so far as they are electricity-related. The current SCAs run for a term of ten years and will expire in 2018, with an option exercisable by the Government to extend the term for five years until 2023.

JUSTIFICATION

Need to review the regulatory framework for the electricity market

4. As stipulated in the current SCAs due to expire in 2018, before implementing any changes to the regulatory regime, the Government will take into account all relevant factors, including the availability of new reliable and environmentally sound supply sources, safety, reliability and efficiency, and compatibility with the environmental and economic needs of the community. The Government will discuss with the power companies market readiness, potential future changes to the electricity supply regulatory framework and transition issue before 2016.

5. Meanwhile, in accordance with the relevant provisions of the SCAs, the Government conducted a mid-term review of the SCAs with the two power companies in 2013, outcome of which was reported to Legislative Council and the public in November 2013. During the course of the review, we received comments on how the future electricity market should be regulated and how the SCAs regime should be modified if it remains to be the future regulatory tool. We have undertaken to take into account these comments and views in reviewing the future regulatory framework.

Scope of the review

6. With a view to exploring the feasibility of introducing more competition to the electricity market to bring benefits to electricity users,

¹ The two power companies are CLP Power Hong Kong Limited, ExxonMobil Energy Limited and Castle Peak Power Company Limited on one hand (collectively referred to as CLP), and the Hongkong Electric Company Limited (HEC) and Power Assets Holdings Ltd on the other.

² Activities that are directly or indirectly appertaining to the generation, transmission, distribution, sale of electricity, energy efficiency and conservation, or emissions reduction are regarded as “electricity-related” for the purposes of the SCAs and this paper.

we will commence the review of the regulatory framework for the post-2018 electricity market. The review will have a profound impact on the way that electricity will be provided and how this important public utility will be regulated. It will cover a wide range of policy, economic, legal, technical and financial issues that require thorough examination, and entail substantial work, including -

- (a) studies on possible regulatory options that may be suitable for Hong Kong, segregation of electricity generation from the power grid, enhancing the interconnection of the two power grids and other possible sources of electricity supply;
- (b) public consultation and stakeholders engagement to gauge the views of the public and various stakeholders;
- (c) discussion with the two power companies;
- (d) financial analyses relating to determination of Stranded Costs under existing SCAs to be recovered by the power companies arising from any major market change, and measures to mitigate such costs; and
- (e) transitional arrangements which have to be put in place, if changes are to be made to the post-2018 electricity supply regulatory framework, to minimise any possible impact on the reliable supply of energy in Hong Kong and Stranded Costs implication for electricity users.

7. On the legal side, the review and formulation of the future regulatory framework for the electricity market require extensive research, in particular, on the legal regulatory framework adopted in other jurisdictions. The regulatory issues involved are wide-ranging, complex and technical. For example, legal research will be required on local and overseas legislation relevant to supply of electricity, as well as contractual and other arrangements adopted in this connection. Related legal issues need to be examined, and legal analysis of the possible regulatory options will be required.

8. Moreover, opening up the electricity market is a highly controversial topic and will likely generate various legal issues. For example, segregation of electricity generation from the power grid to allow access to power grids, if pursued, may give rise to Basic Law and

human rights issues, and specialist legal advice from outside Counsel may be required. Moreover, with the enactment of the Competition Ordinance (Cap. 619), careful examination of related competition law issues will also be necessary.

9. Further ahead, subject to the results of the review and public consultation, negotiations with existing and prospective electricity suppliers may be needed. To protect the position of the Administration in these subsequent steps, it is important that the decisions or actions taken by the Administration during the course of the review, the conduct of the public consultation (including the preparation of consultation papers) as well as the formulation of the future regulatory framework for the electricity market are legally in order.

Need for Dedicated Teams

10. Taking into account the nature, scope and complexity of the tasks to be performed, as well as the timeline that the Government needs to discuss with the power companies potential future changes to the electricity supply regulatory framework (i.e. before 2016), we consider that a dedicated team headed by one directorate post should each be set up under ENB and DoJ respectively to undertake the review in time. This will ensure that adequate resources would be dedicated to undertake the mammoth and highly-demanding tasks involved in the review. The job description of the proposed AOSGC and APGC posts are at **Annexes A and B** respectively.

11. It is proposed that the AOSGC in ENB be underpinned by a team of four non-directorate posts. One of the four posts will be redeployed from the Energy Division (EGD) of ENB, and the other posts will be created on a time-limited basis. The new team will work closely with the Financial Monitoring Division (FMD) and the Electricity Team (ET) in ENB in undertaking the review. Headed respectively by an Assistant Director of Accounting Services (D2) and a Chief Electrical and Mechanical Engineer (D1), FMD and ET are responsible for monitoring the existing power companies from the financial and technical aspects.

12. For DoJ, it is proposed that the APGC in the Commercial Unit of the Civil Division (CD) be supported by a team of three time-limited non-directorate posts.

13. The existing and proposed organisation charts of ENB and DoJ showing the proposed posts of AOSGC and APGC are at **Annexes C**

and D respectively.

ALTERNATIVES CONSIDERED

14. Under the current establishment, the EGD of ENB is headed by one AOSGC (D2) (designated as PAS(EG)) to oversee all energy policy matters in Hong Kong. In the past few years, amidst rising public concerns over electricity tariffs and escalating community's aspirations to more efficient use of energy, the energy portfolio has been expanding substantially. PAS(EG) is responsible for overseeing energy efficiency and conservation policies and initiatives, which include the Energy Efficiency (Labelling of Products) Ordinance (Cap. 598), implementation of the District Cooling System in the Kai Tak Development; promotion of energy conservation in government buildings; and launching of various Energy Saving Charter Schemes and publicity activities to promote public awareness of energy efficiency and conservation as well as application of renewable energy. The workload has risen significantly due the introduction and implementation of the newly enacted Buildings Energy Efficiency Ordinance (Cap. 610) and the conduct of reviews of various energy efficiency standards and relevant codes under the concerned legislation.

15. Apart from the regular duties, PAS(EG) has already absorbed new tasks arising from the provision of secretariat support to the Task Force on External Lighting which has been set up to advise the government on the appropriate strategy and measures for tackling light nuisance and energy wastage problems caused by external lighting, having regard to international experience and practices. She is also responsible for supporting an inter-departmental Steering Committee on the Promotion of Green Building set up in January 2013 to coordinate efforts by various bureaux and departments in promoting green building in Hong Kong in a holistic manner. The post is therefore fully stretched and cannot absorb further duties arising from the electricity review.

16. In fact, as the existing EGD has already been fully stretched, a six-month supernumerary AOSGC post was created under delegated authority from August 2013 to January 2014 to undertake two time-critical tasks, namely, the 2013 mid-term review of the SCAs as well as the review on future fuel mix for power generation. The mid-term review of the SCAs entailed drawing up of proposals to improve the SCAs, negotiations with the two power companies on the proposals and implementation of the review outcome. For the fuel mix

review, the post holder has been tasked with the formulation of various fuel mix options, liaison and engagement with stakeholders and relevant parties, as well as the preparation of a major public consultation exercise to solicit views of the public, which will provide important parameters to the review of the future regulatory framework for the electricity market. The current supernumerary post will lapse in end January 2014.

17. We have also considered the possibility of redeploying other Directorate officers in ENB to undertake the review but found it not feasible. The FMD and ET have already been fully engaged with the ongoing tasks in monitoring the power companies from the financial and technical aspects. In addition to their regular duties, they would also be working closely with the newly created team on the review of the regulatory framework for the electricity market, which as noted above will involve lots of financial and technical issues and studies. The Sustainable Development Division in ENB, head by a AOSGC, is responsible for handling policy matters relating to sustainable development and providing secretariat support to the Council for Sustainable Development (SDC). The latter includes supporting the SDC's territory-wide public engagement process on key sustainability issues, and arranging publicity and education programmes relating to sustainable development. All these ongoing work requires full-time attention of the directorate officers in ENB, and they cannot be redeployed to undertake the review on the regulatory framework for the electricity market.

18. In the case of DoJ, advice on electricity-related matters falls within the purview of the Commercial Unit of the CD. The alternative of absorbing the workload generated from the review of the regulatory framework for the electricity market post-2018 has been carefully considered but considered not feasible.

19. The Commercial Unit advises Government bureaux and departments on all aspects of commercial law relating to the Government's own commercial activities and the Government's regulation of certain commercial activities. On top of the drafting and interpretation of commercial contracts, and contract negotiation, it also advises on a broad range of legal matters generated by the government's own commercial requirements, regulation of utilities, franchisees and licensees, and certain commercial services provided to the community. The Commercial Unit also advises on legislative amendments to statutes governing commercial activities in the market and the exercise of statutory regulatory powers.

20. The Commercial Unit has been experiencing a consistently high level of workload with considerable and growing complexity. The existing Directorate structure of the Commercial Unit of the CD comprises one Principal Government Counsel (PGC) (DL3), three Deputy Principal Government Counsel (DPGC) (DL2) and two APGC (DL1). The PGC, DPGC and existing APGC are already heavily over-committed with their existing duties in respect of the whole range of subjects mentioned in paragraph 19 above. It is not possible to further stretch the manpower at the APGC (or DPGC) level to absorb the additional work arising from the legal support required for electricity market review exercise without adversely affecting the discharge of their duties and compromising the quality of work.

FINANCIAL IMPLICATIONS

21. The proposed creation of two supernumerary directorate posts will bring about an additional notional annual salary cost at mid-point of \$3,204,600. The additional full annual average staff cost, including salaries and staff on-cost, is \$4,405,000. For the six time-limited non-directorate civil service posts mentioned in paragraphs 11 and 12 above, the notional annual salary cost at mid-point is \$4,578,420 and the full annual average staff cost, including salaries and staff on-cost, is \$6,668,000. Subject to the Finance Committee's approval of the above directorate posts, we will include sufficient provision in the draft Estimates of the relevant financial years to meet the cost of the proposal.

ADVICE SOUGHT

22. Members are invited to comment on the proposal. Subject to Members' views, we will seek the recommendation of the Establishment Subcommittee in January 2014 and approval from the Finance Committee in February for the creation of the posts.

**Environment Bureau
Department of Justice
December 2013**

Job Description
Principal Assistant Secretary for the Environment
(Electricity Reviews)

Rank : Administrative Officer Staff Grade C (D2)

Responsible to : Deputy Secretary for the Environment

Main Duty and Responsibilities –

- (a) To conduct stakeholders engagement activities on the future fuel mix for power generation.
- (b) To take forward the outcome of the public consultation on the fuel mix review and liaise with the power companies and other relevant parties as appropriate to implement the outcome.
- (c) To formulate possible options for the future regulatory framework for the electricity market, having regard to the financial, technical, legal and economic implications.
- (d) To handle with other relevant teams consultancy studies to be conducted in relation to the possible changes to the regulatory framework for the electricity market.
- (e) To launch a public consultation exercise on the future regulatory framework for the electricity market and conduct related engagement activities.
- (f) To consolidate the feedbacks received during the public consultation exercise and take forward the outcome.
- (g) To formulate plans to implement changes to the regulatory framework for the electricity market.
- (h) To discuss and negotiate with the two existing power companies on possible changes to the regulatory framework for the electricity market and the implementation arrangements, etc.

Job Description
Assistant Law Officer (Civil Law) (Commercial)

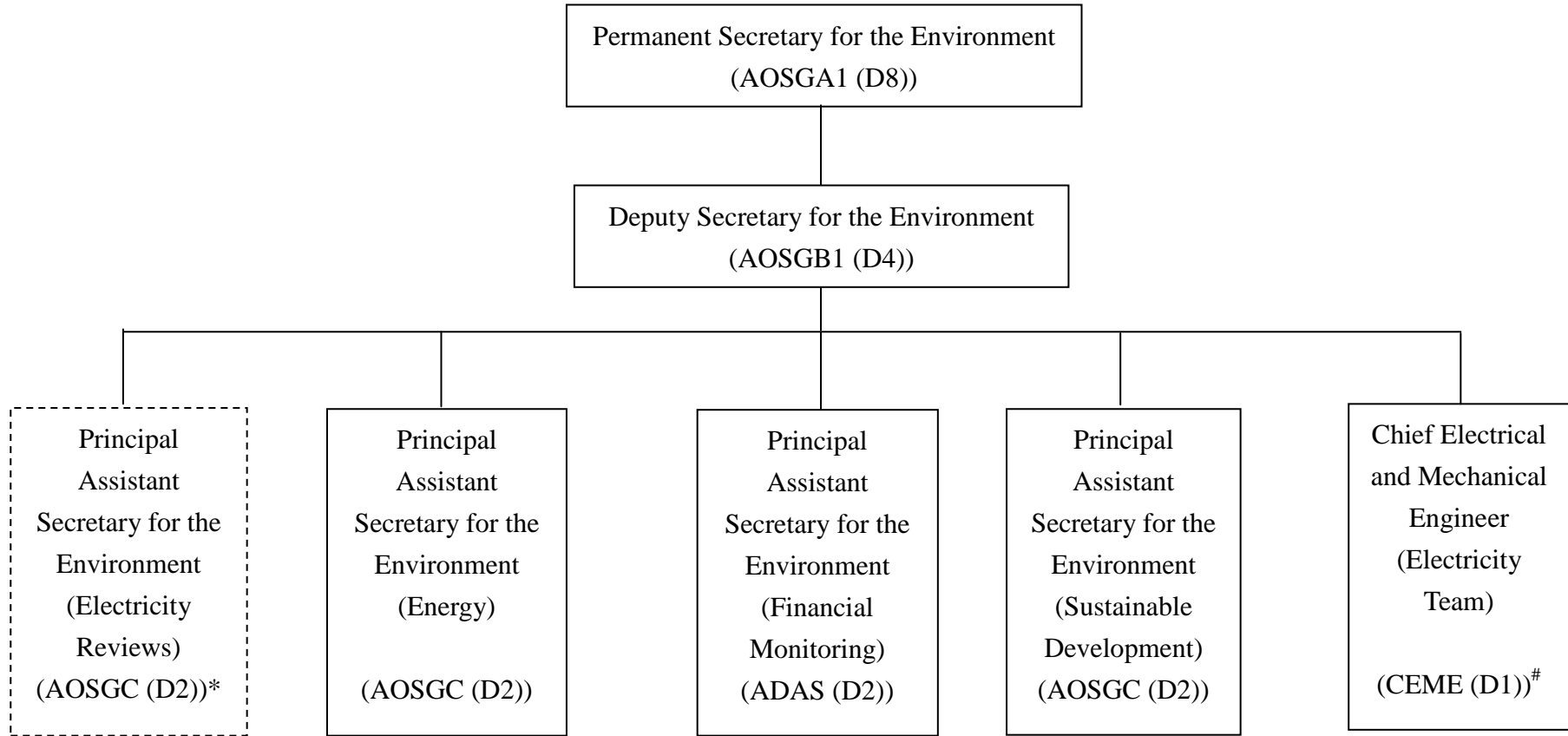
Rank : Assistant Principal Government Counsel (DL1)

Responsible to : Deputy Law Officer (Civil Law) (Commercial)

Main Duty and Responsibilities –

- (a) To lead and guide the dedicated team in the Commercial Unit to provide legal support for the review of the regulatory framework for the electricity market after the expiry of the current Scheme of Control Agreements in 2018.
- (b) To provide legal advice on more complex matters relating to the review, in particular on financial and commercial law issues arising from the review, and implementation of appropriate regulatory and other market changes.
- (c) To conduct necessary legal research on more complex issues relating to the legislation, and contractual and other regulatory arrangements adopted in other comparable jurisdictions for regulating the electricity market.
- (d) To advise on all the drafting of legislative proposals that may be required.
- (e) To advise on legal issues arising from any transitional arrangements of the electricity market that may need to be devised and implemented.
- (f) To draft and settle a broad range of consultancy agreements and instructions to Counsel as may be necessary for the review.
- (g) To attend meetings and negotiations with the existing power companies and other stakeholders.

Existing and Proposed Organisation chart of ENB



* Proposed post.

This post was created under Head 42 - Electrical and Mechanical Services Department.

In addition, a Principal Assistant Secretary is on loan to Environmental Protection Department.

Organisation chart of DoJ Existing and Proposed Organisation Chart of the Civil Division

