

立法會
Legislative Council

LC Paper No. CB(1)544/14-15
(These minutes have been seen
by the Administration)

Ref : CB1/BC/02/14/1

Bills Committee on District Cooling Services Bill

Minutes of fifth meeting
held on Thursday, 29 January 2015, at 8:30 am
in Conference Room 3 of the Legislative Council Complex

Members present : Ir Dr Hon LO Wai-kwok, BBS, MH, JP (Chairman)
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan, JP
Hon CHAN Hak-kan, JP
Hon Alan LEONG Kah-kit, SC
Hon Tony TSE Wai-chuen, BBS

Member absent : Hon WU Chi-wai, MH

Public Officers attending : **For item I**

Mrs Dorothy MA
Principal Assistant Secretary for the Environment (Energy)

Miss Sheena YAP
Assistant Secretary for the Environment (Energy)2

Mr Harry LAI, JP
Assistant Director/Electricity & Energy Efficiency
Electrical and Mechanical Services Department

Mr Patrick CHEUNG
Chief Engineer/Energy Efficiency B
Electrical and Mechanical Services Department

Mr YIP Man-kit
Senior Engineer/Professional Support 3
Electrical and Mechanical Services Department

Mr Peter SZE
Senior Government Counsel (Law Drafting Division)
Department of Justice

Mr Henry CHAN
Senior Government Counsel (Law Drafting Division)
Department of Justice

Clerk in Attendance : Ms Shirley CHAN
Chief Council Secretary (1)1

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Miss Lilian MOK
Senior Council Secretary (1)1

Ms Mandy LI
Council Secretary (1)1

Action

I. Meeting with the Administration

Follow-up to issues arising from previous meeting

(LC Paper No. CB(1)490/14-15(01) — List of follow-up actions arising from the meeting on 13 January 2015

LC Paper No. CB(1)490/14-15(02) — Administration's response to the issues raised at the meeting on 13 January 2015

Clause-by-clause examination of the Bill (starting from clause 15)

LC Paper No. CB(3)10/14-15 — The Bill

File Ref: ENB CR 4/2061/08 — Legislative Council Brief

Action

- LC Paper No. LS5/14-15 — Legal Service Division Report
- LC Paper No. CB(1)272/14-15(01) — Assistant Legal Adviser's letter dated 13 October 2014 to the Administration
- LC Paper No. CB(1)272/14-15(02) — Administration's reply to Assistant Legal Adviser's letter dated 13 October 2014
- LC Paper No. CB(1)272/14-15(03) — Background brief prepared by the Legislative Council Secretariat

1. The Bills Committee deliberated (index of proceedings attached at the **Annex**).

2. Given that under clause 15 of the District Cooling Services Bill, the Director of Electrical and Mechanical Services ("DEMS") was vested with the discretionary power to reduce, waive or refund, in whole or in part, a charge, a fee or a deposit payable or paid in respect of a building subscribing to district cooling services, the Administration was requested to provide –

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- (a) the criteria for exercising the above discretionary power by DEMS; and
- (b) examples of the possible circumstances under which DEMS might exercise the above discretionary power.

3. The Chairman reminded members that the next meeting of the Bills Committee had been scheduled for Monday, 9 February 2015, at 8:30 am.

II. Any other business

4. There being no other business, the meeting ended at 10:33 am.

Bills Committee on District Cooling Services Bill

**Proceedings of the fifth meeting
on Thursday, 29 January 2015, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with the Administration</i>			
001038 - 002005	Chairman Administration	The Administration briefed members on its response to the issues raised at the meeting of the Bills Committee held on 13 January 2015 (LC Paper No. CB(1)490/14-15(02)).	
Clause-by-clause examination of the Bill (The Bill [LC Paper No. CB(3)10/14-15])			
002006 - 002807	Chairman Administration Mr WONG Ting-kwong	<p>Part 3 – Charges for District Cooling Services</p> <p><u>Clause 15 – Reduction etc. of charge, fee and deposit</u></p> <p>Mr WONG Ting-kwong enquired about the possible circumstances under which the Director of Electrical and Mechanical Services ("DEMS") might reduce, waive or refund, in whole or in part, a charge, a fee or a deposit payable or paid in respect of a building subscribing to district cooling services.</p> <p>The Administration responded that –</p> <p>(a) the District Cooling Services Bill ("the Bill") might apply to any district cooling systems ("DCS") as specified in Schedule 1 to the Bill. Although Schedule 1 currently covered only the DCS in Kai Tak Development ("KTD"), the Bill might cover other DCSs constructed by the Government in future as and when necessary subject to amendments to the relevant Schedules to the Bill. To cater for any unforeseeable circumstances in future, clause 15 could provide DEMS the discretion to reduce, waive or refund, in whole or in part, a charge, a fee or a deposit payable or paid in respect of a building subscribing to district cooling services on a case-by-case basis; and</p>	

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		(b) similar provision was provided in section 22 of the Waterworks Ordinance (Cap. 102) which stipulated that the Water Authority might in any particular case reduce, waive or refund, in whole or in part, a charge.	
002808 - 002850	Chairman Administration	<p>Part 3 – Charges for District Cooling Services</p> <p><u>Clause 16 – Recovery of charge and fee</u></p> <p>Members raised no query.</p>	
002851 - 010203	Chairman Administration Mr WONG Ting-kwong Assistant Legal Adviser 10 ("ALA10") Mr Tony TSE Mr Alan LEONG	<p>Part 3 – Charges for District Cooling Services</p> <p><u>Clause 17 – Application of charge and fee received etc.</u></p> <p>In response to Mr WONG Ting-kwong's enquiry about the application of district cooling services charges and fees, the Administration explained that –</p> <p>(a) district cooling services charges sought to achieve full cost recovery within the project life of DCS (which is estimated to be 30 years);</p> <p>(b) the provision of district cooling services would incur substantial expenses on the part of the Electrical and Mechanical Services Department ("EMSD"). However, according to section 3(1) of the Public Finance Ordinance (Cap. 2), any charges received for the purposes of the Government would form part of the general revenue unless there were express statutory provisions to provide for alternative arrangements;</p> <p>(c) to empower EMSD to make use of the district cooling services charges and fees received to settle the operation and maintenance fees for the DCS operator as well as the utility charges for operating the DCS plants, it was considered necessary to expressly stipulate in the Bill that subject to the approval of the Financial Secretary ("FS"), district cooling services</p>	

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		<p>charges and fess received would not form part of the general revenue and might be used to cover the expenses incurred by EMSD in the provision of district cooling services;</p> <p>(d) should the district cooling services charges and fees received by the Government exceed the operating costs incurred by EMSD for the provision of district cooling services, the "surplus" would be transferred to the Government's General Revenue Account. If there was any "surplus" in that context, it would largely be the recoupment of the capital costs of the DCS project. DCS tariff review would be conducted at least once every five years; and</p> <p>(e) approved consumers might pay any charge, fee or deposit in respect of the district cooling services provided to their buildings by cheque made payable to "The Government of the Hong Kong Special Administrative Region". EMSD would then make the necessary accounting arrangements.</p> <p>ALA10 supplemented that there were similar arrangements provided in section 43 of the Waste Disposal Ordinance (Cap. 354).</p> <p>Mr Tony TSE expressed concern that the costs of running DCS might be shouldered by only a few DCS users if DEMS exercised the discretionary power under clause 15 to reduce, waive or refund, in whole or in part, a charge, a fee or a deposit payable or paid by some other DCS users. The Chairman expressed concern that the district cooling services charges or fees received by the Government might not be able to cover the operating costs incurred by EMSD for the provision of district cooling services.</p> <p>The Administration responded that –</p> <p>(a) DEMS would not exercise the discretionary power under clause 15 hastily. Rather, DEMS would carefully assess and consider various factors when deciding whether it would be necessary</p>	

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		<p>and advisable to exercise the power on a case-by-case basis, having regard to the circumstances of each particular case;</p> <p>(b) clause 17 concerned only the application of district cooling services charges and fees received. It did not imply that EMSD had to achieve a balance in revenue and expenditure at any point of time; and</p> <p>(c) Government buildings using district cooling services would not be subject to the charging regime provided in the Bill, but they would pay the utility costs arising from the provision of the services to EMSD in the form of allocation warrants. Notwithstanding this, the notional "revenue" from user departments (which could have been received by EMSD if Government departments were to be charged for district cooling services in the same way as non-Government buildings using district cooling services at KTD) would be incorporated into the financial model for assessing DCS's financial performance and for calculating the appropriate tariff that could achieve full cost recovery. In this connection, the DEMS's discretionary power to reduce, waive or refund in whole or in part, a charge or fee payable or paid in respect of a building subscribing to district cooling services in a particular case should not have substantial impact on the level of district cooling services charges.</p> <p>Mr Alan LEONG enquired whether the damages claimed by EMSD against an approved consumer for his/her behaviour or activities jeopardizing the satisfactory operation of the DCS at KTD or the fines paid by a person committed an offence under clause 21(1) would be considered as part of the general revenue under the Public Finance Ordinance (Cap. 2).</p> <p>The Administration responded that –</p> <p>(a) according to clause 17, subject to the approval of FS, the district cooling services charges and fees received by the Government under the Bill that were</p>	

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		<p>required for either of the purposes stated in clause 17(2) might be applied for those purposes; and</p> <p>(b) any damages claimed by EMSD or fines paid for offences would form part of the general revenue of the Government and would not be covered by clause 17.</p>	
010204 - 013624	<p>Chairman Administration Mr Tony TSE Mr WONG Ting-kwong</p>	<p>Part 4 – Administration of District Cooling Services</p> <p><u>Clause 18 – Improvement notice</u></p> <p>Mr Tony TSE and Mr WONG Ting-kwong expressed concern about –</p> <p>(a) whether EMSD would carry out repair and maintenance works for a building subscribing to district cooling services if the approved consumer for the building failed to do so within the period specified in an improvement notice issued by DEMS; and</p> <p>(b) in case where an approved consumer for a building subscribing to district cooling services had failed to comply with the direction contained in an improvement notice issued by DEMS to him and had even ceased to exist, whether and how EMSD would handle such situation and communicate with individual occupiers/tenants of the building who might be seriously affected if the provision of district cooling services was suspended or terminated.</p> <p>The Administration responded that –</p> <p>(a) an approved consumer for a building subscribing to district cooling services should be responsible for the management and maintenance of the air-conditioning systems installed in the building for connection to DCS;</p> <p>(b) the Administration considered it not desirable to require a person who was no longer an approved consumer for a building subscribing to district cooling</p>	

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		<p>services to comply with the direction contained in an improvement notice issued by DEMS, as this requirement might deter the newly approved consumer from taking the remedial measures that were necessary for connection to DCS (including the DCS substation);</p> <p>(c) depending on the circumstances of individual cases, adequate time would be allowed for an approved consumer for a building subscribing to district cooling services to remedy his behaviour or an installation in the building which was jeopardizing or would jeopardize the operation or reliability of district cooling services. In the event of an operational emergency arising from a fault in DCS, DEMS might take immediate action to rectify the problem;</p> <p>(d) in case where an approved consumer of district cooling services for a building had ceased to exist, DEMS might approve a new applicant's application as the approved consumer if the conditions specified in clauses 4(1) to 4(3) were satisfied. Such conditions included the giving of an undertaking to be responsible for, and to bear the cost of the maintenance of the facilities for the building to receive district cooling services;</p> <p>(e) EMSD would explore various possible administrative measures to inform the affected parties of DEMS' decision to suspend or terminate district cooling services having regard to the circumstances of each particular case. For example, EMSD might notify the affected parties in writing, put up a notice at a conspicuous place at the main entrance of a user building about the suspension or termination of district cooling services and set up an enquiry hotline to handle public enquiries; and</p> <p>(f) EMSD might seek compensation from an approved consumer of district cooling services for a building if his behaviour or</p>	

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		<p>an installation in the building caused a failure in DCS through civil proceedings.</p> <p>In response to the Chairman's enquiry, the Administration advised that from the engineering perspective, the possibility that the behaviour of an approved consumer or an installation in a building subscribing to district cooling services could jeopardize the operation or reliability of the entire DCS should be very slim.</p>	
013625 - 013656	Chairman Administration	<p>Part 4 – Administration of District Cooling Services</p> <p><u>Clause 19 – Authorized officers</u></p> <p>Members raised no query.</p>	
013657 - 014441	Chairman Mr WONG Ting-kwong Administration	<p>Part 4 – Administration of District Cooling Services</p> <p><u>Clause 20 – Access for inspection and maintenance</u></p> <p>In response to Mr WONG Ting-kwong's enquiry about clause 20(3), the Administration advised that normally, an authorized officer would seek assistance from the DCS operator to carry out inspection and maintenance works in a user building. Nevertheless, the authorized officer might exercise any power under clause 20 with the assistance of any other person that the authorized officer thought fit.</p> <p><u>Clause 21 – Offences</u></p> <p>Members raised no query.</p>	
014442 - 020216	Chairman Administration Mr Tony TSE ALA10	<p>Part 5 – Appeal</p> <p><u>Clause 22 – Appeal to appeal board</u></p> <p>Mr Tony TSE enquired whether the calculation of district cooling services charges was subject to appeal. The Administration responded that –</p> <p>(a) decisions subject to appeal were decisions that were made by DEMS, which included a decision not to approve a person as a consumer of district cooling services, a</p>	

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		<p>decision to refuse to provide, suspend or terminate district cooling services and a decision relating to an improvement notice issued (including a direction contained therein);</p> <p>(b) it did not seem necessary to enable a person to lodge an appeal against the calculation of district cooling services charges, as the calculation methods were clearly set out in Schedule 2 to the Bill and not subject to DEMS' decision; and</p> <p>(c) neither did it seem necessary to enable a person to lodge an appeal against DEMS's decision made under clause 15 as it was at the discretion of DEMS as to whether or not to reduce, waive or refund, in whole or in part, a charge, a fee or a deposit payable or paid in respect of a building subscribing to district cooling services.</p> <p>Given that under clause 15, DEMS was vested with the discretionary power to reduce, waive or refund, in whole or in part, a charge, a fee or a deposit payable or paid in respect of a building subscribing to district cooling services, Mr Tony TSE requested the Administration to provide –</p> <p>(a) the criteria for exercising the above discretionary power by DEMS; and</p> <p>(b) examples of the possible circumstances under which DEMS may exercise the above discretionary power.</p> <p>ALA10 sought to clarify –</p> <p>(a) whether the Chinese rendition "任何人如因就該人作出的以下任何決定<u>或</u>指示" of the English text "A person who is aggrieved by any of the following decisions <u>and</u> direction made in respect of the person" should be refined such that the meaning of the words underlined in the respective texts would tally with each other; and</p> <p>(b) whether a person who was aggrieved by or did not agree with the DEMS's opinion under clause 7(1)(d), (e) or (f) might lodge</p>	<p>Admin (paragraphs 2(a) and (b) of the minutes refer)</p>

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		<p>an appeal pursuant to clause 22 and requested the Administration to provide the relevant considerations or justifications.</p> <p>The Administration responded that the decision to suspend or terminate district cooling services to a building made under clause 7(1)(d), (e) and (f) was related to works required to be carried out in a building connecting to DCS and therefore was not subject to appeal.</p> <p>The Chairman said that the Bills Committee would further discuss clause 22 at the next meeting scheduled for 9 February 2015.</p>	
020217 - 020307		Closing remarks	