

The Information and Consultation Agreement

entered into by

**The Government of the Hong Kong
Special Administrative Region**

and

The Hong Kong and China Gas Company Limited

INFORMATION AND CONSULTATION AGREEMENT

THIS AGREEMENT is made on the 31st day of March 2009.

BETWEEN:-

- (1) THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA ("Government") acting through the Secretary for the Environment; and
- (2) THE HONG KONG AND CHINA GAS COMPANY LIMITED ("Company"), a company incorporated in Hong Kong and having its registered office at 23rd floor, 363 Java Road, North Point, Hong Kong.

WHEREAS:-

- (A) In the interest of consumers of gas supplied by the Company and in the interest of the Company, the Government has invited the Company to increase the transparency of its tariff and Fixed Monthly Maintenance Charge setting mechanism, Major System Additions; and demonstrate the reasonableness of its proposed tariff and Fixed Monthly Maintenance Charge adjustments, and any Major System Additions, and the Company has voluntarily agreed to comply; and
- (B) In pursuance of this increased transparency the Government and the Company have agreed upon a process of disclosure by the Company of certain corporate, financial, operational, environmental and safety information and a process of consultation.
- (C) The agreement referred to in Recital (B) above was set out in an Information and Consultation Agreement entered into between the Government and the Company on 3 April 1997. Such Agreement was subsequently amended by a supplemental agreement dated 30 March 2000 and a second supplemental agreement dated 2 April 2003 (which said Information and Consultation Agreement, as amended by the said supplemental agreement and second supplemental agreement, is hereinafter referred to as the "Original ICA").

- (D) The Original ICA was further extended for three (3) years subject to amendments by an Amended and Restated Agreement dated 31 March 2006 (“Amended and Restated Agreement”). The Amended and Restated Agreement is due to expire on 2 April 2009.
- (E) Both parties now wish to enter into a new Information and Consultation Agreement (“Agreement”) for a term of three (3) years on the terms hereinafter appearing.
- (F) The overall objective of the parties is exhaustively stated in Recitals A and B. It is not the intention of the parties that this Agreement should be the basis of any form of rate of return regulation or mandatory price controls.

NOW IT IS HEREBY AGREED AS FOLLOWS

1. **INTERPRETATION**

- 1.1 Words and expressions appearing in this Agreement (including the Recitals) except where the context otherwise requires shall, in relation to the Company, have the respective meaning thereby assigned to in Schedule 1 hereto.
- 1.2 This Agreement shall include the Schedules hereto.
- 1.3 References to Clauses, Subclauses and Schedules shall mean the clauses and sub-clauses of, and schedules to, this Agreement.
- 1.4 Where the context so admits, the masculine gender shall include the feminine and neuter and the singular number shall include plural and vice versa.

2. **TERM OF AGREEMENT**

- 2.1 This Agreement is made and entered into on 31 March 2009 but is deemed to be effective as of 3 April 2009.
- 2.2 Subject to Clause 9, this Agreement shall have a term of three (3) years commencing from 3 April 2009 and ending on 2 April 2012.

2.3 For the avoidance of doubt, nothing in this Agreement shall constitute a waiver of the rights and claims accrued to either party under the Original ICA or the Amended and Restated Agreement.

3. **APPLICATION OF THE AGREEMENT**

This Agreement applies to the areas of consultation specified in Clause 5 of this Agreement and relates to the corporate, financial and operational affairs of the Company so far as they refer to its Core Gas Business and its Gas-related Activities in Hong Kong excluding those associated with export sales of gas.

4. **DISCLOSURE OF CORPORATE INFORMATION**

4.1 The Company shall on or before 30 June of each year provide the Government with a written statement containing the information specified in Schedule 3 in respect of the preceding Financial Year. At the time of submission of the statement to the Government the Company shall also make available the information contained therein to the general public.

4.2 The Company shall, in addition to the information provided in accordance with Subclause 4.1, submit to the Government such financial and operational information about the Company as the Government may reasonably request orally or in writing subject to the limitation that the Government shall only request and the Company shall only be obligated to supply information which is directly relevant to the clarification of tariff and Fixed Monthly Maintenance Charge setting mechanisms and tariff and Fixed Monthly Maintenance Charge adjustments. Information so provided may be disclosed by the Government to any third party only with the prior written consent of the Company.

4.3 In addition to the information provided in accordance with Subclauses 4.1 and 4.2, the Company shall, on or before 30 November of each year, provide the Government with figures showing its planned capital expenditures by major asset categories, with highlights of major new projects, and network repairs and maintenance expenditure in respect of the following Financial Year and, on or before 30 June of each year, provide the Government with figures showing the actual expenditures incurred for each of the items above in respect of the preceding Financial Year. The information provided under this Subclause 4.3 shall not be

disclosed by the Government to any third party without the prior written consent of the Company.

4.4 In addition to the information provided in accordance with the preceding Subclauses, the Company shall, on or before 15th day of each month, provide the Government with the following information:-

- (a) total gas sales by sectors for the preceding month;
- (b) total costs of naphtha, natural gas and landfill gas used for feedstock, all in naphtha energy equivalent, for the preceding month;
- (c) total quantities of naphtha, natural gas and landfill gas used for feedstock, all in naphtha energy equivalent, for the preceding month;
- (d) an estimate of the Fuel Cost Variation Charge applicable for the current month together with the estimated total costs and quantities of naphtha, natural gas and landfill gas used for feedstock, all in naphtha energy equivalent; and
- (e) percentage savings in gas charge resulting from use of natural gas as feedstock, in respect of the current month.

The information provided under this Subclause 4.4 shall not be disclosed by the Government to any third party without the prior written consent of the Company.

5. **CONSULTATION**

5.1 The Company shall consult the Government in accordance with the provisions of this Clause 5 prior to any tariff adjustments, Major System Additions or changes in the Fixed Monthly Maintenance Charge.

5.2 Tariff adjustments

- (a) For the purpose of consulting the Government in relation to proposed tariff adjustments, the expression “tariff adjustments” means changes to the Tariff Table or to the Fuel Cost Variation Charge formula.
- (b) The Company shall, not less than three (3) months prior to the Intended Implementation Date of any tariff adjustment, provide the Government with particulars of the adjustment. The particulars will include matters which are relevant to the tariff adjustment including the data and information set out in Schedule 2.

5.3 Major System Additions

The Company shall, not less than twelve (12) months prior to making a Major System Addition to its Core Gas Business, submit to the Government particulars of the Major System Addition including the capital outlay (by year) and the predicted increase for the subsequent five (5) years in (i) the gas sales volume, and (ii) the future tariff adjustments, which supported the decision to invest in such Major System Addition.

5.4 Fixed Monthly Maintenance Charge

- (a) For the purpose of consulting the Government in relation to changes in the Fixed Monthly Maintenance Charge, such changes include changes to the level of charges and changes to the basis of charging.
- (b) The Company shall, not less than three (3) months prior to the implementation date of each and every proposed change to the Fixed Monthly Maintenance Charge, provide the Government with particulars of the change. The particulars will include matters which are relevant to the change including historical information and future projections.

5.5 Government Response

- (a) The Government may request further information which is reasonably necessary for clarification of the information provided by the Company under this Clause 5 and for the

purposes of this Clause 5. The Company will provide such further information when so requested.

- (b) The Company acknowledges that the Government may refer any submission made and information provided by the Company under this Clause 5 to the Energy Advisory Committee for advice.
- (c) The Government may give its views to the Company on the merits of the tariff adjustment, the changes to the Fixed Monthly Maintenance Charge and intended Major System Additions. Such views are to be in the form of a recommendation to the Company consistent with Recital F to this Agreement.

5.6 Subject to Subclause 5.5(b), information supplied to the Government under this Clause 5 of the Agreement is provided in confidence and may be disclosed by the Government to any third party only with the prior written consent of the Company.

6. **BRIEFING TO THE ENERGY ADVISORY COMMITTEE AND THE PANEL ON ECONOMIC DEVELOPMENT OF THE LEGISLATIVE COUNCIL**

The Company undertakes that, upon being requested to do so, it will provide briefings to the Energy Advisory Committee and the Panel on Economic Development of the Legislative Council on matters under consultation in accordance with this Agreement or other matters concerning the provision of gas to the public. For the purpose of such briefings, the Company will, as necessary, arrange for a representative to attend meetings.

7. **LIMITATION ON USE OF INFORMATION**

7.1 Without prejudice to Subclause 5.5(b), the Government undertakes that it will use the information provided by the Company under this Agreement pursuant to Subclauses 4.2, 4.3, 4.4 and Clause 5 of this Agreement (but not Subclause 4.1) only for the purposes set out in Recitals A and B and will not allow it to be used for any other purpose within the Government unless the same has already become public knowledge.

7.2 Notwithstanding anything herein to the contrary, the restriction on disclosure or use of information in Subclauses 4.2, 4.3, 4.4, 5.6 and 7.1 shall not apply:

- (a) to the disclosure of any information to any officer, employee, agent, adviser, consultant or contractor employed or engaged by the Government for the purposes mentioned in the Recitals A and B;
- (b) to the disclosure of any information already known to the recipient other than as a result of disclosure by the Government;
- (c) to the disclosure of any information which is or becomes public knowledge other than as a result of disclosure by the Government;
- (d) to the disclosure of any information in circumstances where such disclosure is required pursuant to any law of Hong Kong or an order of a court of Hong Kong, or for the purposes of arbitration pursuant to Clause 8;
- (e) to the disclosure of any information to the Executive Council of the Hong Kong Special Administrative Region; or
- (f) to the disclosure of any confidential information with the prior consent in writing of the Company.

8. **ARBITRATION**

All disputes or differences touching any matter or thing connected with this Agreement or the interpretation thereof between the Government and the Company shall be referred, following written notice of the existence of the dispute or difference given by one party to the other, for arbitration in Hong Kong by a single arbitrator nominated jointly by the parties, failing which such arbitrator shall be nominated by the Hong Kong International Arbitration Centre. The Arbitration Ordinance, Cap 341 of the Laws of Hong Kong as amended from time to time shall apply to any such arbitration. The dispute shall be arbitrated as a domestic arbitration for the purposes of Part II of the Arbitration Ordinance. Unless the parties agree to the contrary, the Hong Kong International Arbitration Centre Domestic Arbitration Rules shall apply to any arbitration instituted in accordance with this Clause 8.

9. **TERMINATION**

If either the Company or the Government is at any time during the term of this Agreement of the opinion that the provisions hereof are not operating in the interest of consumers of gas supplied by the Company or in the interest of the Company it may in writing notify the other party of that opinion and reasons in support and may by not less than twenty eight (28) days notice in writing terminate this Agreement.

10. **AMENDMENT**

No amendment shall be made to the provisions of this Agreement otherwise than by deed entered into by both the Government and the Company.

11. **EXTENSION**

Commencing one year prior to the expiry of this Agreement, the Government and the Company shall institute discussions regarding extension of this Agreement including such amendments as may be agreed.

12. **GOVERNING LAW**

This Agreement shall be governed by and interpreted in accordance with the laws of the Hong Kong Special Administrative Region of the People's Republic of China.

In witness whereof the parties hereto executed this Agreement as a deed on the date first above written.

The Common Seal of)
 THE HONG KONG AND CHINA)
 GAS COMPANY LIMITED)
 was hereunto affixed in the presence of)
 Mr Alfred W K Chan, Managing Director)
 and Mr James Y C Kwan, Executive)
 Director & Chief Operating Officer :)

and witnessed by:

.....
 Name: Mr John Ho
 Title: Chief Financial Officer & Company Secretary

SIGNED, SEALED AND DELIVERED BY)
 Mr Yau Tang Wah, Edward)
 Secretary for the Environment)
 for and on behalf of THE GOVERNMENT)
 OF THE HONG KONG SPECIAL)
 ADMINISTRATIVE REGION OF)
 THE PEOPLE'S REPUBLIC OF CHINA)

and witnessed by:

.....
 Name: Mr Lam Wai Man, Frankie
 Title: Principal Assistant Secretary for
 the Environment (Financial Monitoring)

SCHEDULE 1

Definitions

(1) **“Core Gas Business”**

means the supply, distribution and marketing of gas where supply means production of gas and/or purchase of gas for resale.

(2) **“Energy Advisory Committee”**

means a committee of persons appointed by the Government whose functions will be to advise the Government on energy policy and related matters, and all other matters referred to it by the Government.

(3) **“Financial Year”**

means the financial year of the Company being a period from 1 January in any year to 31 December in the same year, both days inclusive.

(4) **“Fixed Monthly Maintenance Charge”**

means the monthly charge for maintenance service rendered to domestic customers, which charge is specified in the Tariff Table published by the Company.

(5) **“Fuel Cost Variation Charge”**

means the figure in cents per megajoule representing the difference between the standard cost of fuels and the actual cost of fuels to the Company, calculated monthly. Any fuel cost variation adjustment will be passed on to the consumers by way of rebates or surcharges.

(6) **“Gas-related Activities”**

means activities directly or indirectly appertaining to the Core Gas Business, namely involving gas, appliances, services and contracting.

(7) **“Maintenance Service”**

includes labour for appliance maintenance and repair, on-demand appliance check-ups, and safety inspections.

(8) **“Intended Implementation Date”**

means the date on which the tariff adjustment will first be used in billing consumers.

(9) **“Return on Assets”**

means the figure expressed in ratio or percentage measured by dividing the Profits of the Company by its total assets in a Financial Year.

(10) **“Return on Equity”**

means the figure expressed in ratio or percentage measured by dividing the Profits of the Company by its total shareholders' equity in a Financial Year.

(11) **“Tariff Table”**

means the table of tariffs published from time to time by the Company.

(12) **“Major System Additions”**

means any new investment in fixed assets which has the effect of increasing the total fixed assets of the Company by a substantial increment.

(13) **“Profits”**

shall be determined after taking into account revenue from all sources and expenses and losses of all kinds which are properly attributable to the Company's activities.

SCHEDULE 2

Data and information to support tariff adjustments under Clause 5:

- (i) the volume in megajoules of gas sold and revenue received from the sales of gas;
- (ii) details of expenditures in connection with the Core Gas Business including cost of labour, direct production costs, cost of materials, distribution, sales and marketing, training and development, accountancy and finance, depreciation, and other operating costs;
- (iii) revenue, expenditures, Profits before and after tax for each of the Gas-related Activities;
- (iv) productivity data including the number of customers per employee and the amount of gas sold per employee;
- (v) if specifically and reasonably requested by the Government, a forecast of Profits and Return on Assets and Return on Equity for the current Financial Year and subsequent Financial Year;
- (vi) if specifically and reasonably requested by the Government, a forecast of Profits and Return on Assets and Return on Equity for the current Financial Year and subsequent Financial Year without the proposed tariff adjustment;
- (vii) operating and economic assumptions employed in the forecasts; and
- (viii) forecast of capital expenditure for the preceding, the current and at least the next five (5) successive Financial Years.

SCHEDULE 3

Financial, operational, environmental and safety information to be provided by the Company under Subclause 4.1

(1) **Financial**

- (i) annual review of the business of the Company;
- (ii) profit and loss account of the Company;
- (iii) balance sheet;
- (iv) auditor's report;
- (v) number of directors within different bands of remuneration and the analysis of directors' remuneration including -
 - (a) directors' fee;
 - (b) basic salaries and allowances;
 - (c) contributions to pension schemes for directors;
 - (d) directors' bonuses;
 - (e) sign-on fees and terminal payment; and
- (vi) revenue and expenditures of the Fixed Monthly Maintenance Charge account.

(2) **Operational**

- (i) service standards;
- (ii) efficiency (including measures to improve efficiency);
- (iii) customer liaison;
- (iv) performance pledges;

(v) Maintenance Service under Fixed Monthly Maintenance Charge including -

- (a) Scope of the service;
- (b) Statistics of actual work done as follows :
 - regular safety inspection visits;
 - on-demand maintenance visits;
 - maintenance - related calls; and

(vi) Fuel Cost Variation Charge including -

- (a) description of Fuel Cost Variation Charge formula;
- (b) annual savings, if any, to customers as a result of using natural gas.

(3) **Environmental**

- (i) environmental policy and objectives;
- (ii) relevant environmental aspects and environmental performance of the Company's activities and facilities;
- (iii) environmental actions, programmes and education;
- (iv) environmental promotional activities;
- (v) energy saving;
- (vi) significant environmental achievements;
- (vii) awareness and outreach programmes such as community environmental programmes; and
- (viii) statistics of environmental performance.

(4) **Safety**

- (i) safety policy and objectives;
- (ii) safety promotional activities and education;
- (iii) production plant safety;
- (iv) statistics of network safety including -
 - (a) incidents in respect of third party damage;
 - (b) trench inspections;
 - (c) emergency incidents per km of distribution pipeline per year;
- (v) customer safety including -
 - (a) statistics of gas incidents;
 - (b) response time for gas incidents;
- (vi) occupational safety; and
- (vii) safety service pledge.