A Discourse on the Legal Framework of China’s Public Utility Enterprises

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I. Introduction

China’s public utility enterprises (PUEs) refer to enterprises that provide public utility services, including the supply of water, electricity, heat, gas, postal services, telecommunications, railway, civil aviation and other basic facilities. After more than twenty years of market liberalization and economic reform, both central and local governments as well as the public have begun focusing on the reform and liberalization of PUEs, resulting in a fairly impressive ‘anti-monopoly movement’ at the turn of the century.1

Based on China’s current legal regulations on PUEs, the following three main approaches are used to regulate the actions of such enterprises: (1) ‘Improper Competition Law’ and ‘Protection of Consumers’ Rights Law’;2 (2) various industry-specific laws like the ‘Civil Aviation Law’ and ‘Postal Services Law’;3 (3) ‘Rules Concerning the Prohibition of Restrictive Competitive Actions by Public Utilities Enterprises’.4 However, these legal regulations are ineffective to regulate China’s PUEs – they are not only unable to protect consumers’ rights and realize social justice but are also unable to increase economic efficiency. Therefore, China needs to consider the uniqueness of her monopoly phenomenon when formulating her anti-monopoly

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3 Passed by the NPCSC on the given dates: Civil Aviation Law on 30 October 1995, Postal Services Law on 2 December 1986.

4 Issued by the National Administrative Bureau for Industry and Commerce in December 1993.
laws in future so as to handle acts of unfair competition\(^5\) committed by naturally monopolistic PUEs,\(^6\) a product of natural and administrative monopolistic behaviour. This combination is where China’s monopolies differ from those of Japan, Korea and other industrial countries in east Asia, and even more so from those of the United States and European countries. Therefore, the author will focus mainly on analyzing the causes, characteristics, advantages and disadvantages of PUEs’ unfair competition behaviour and propose legal solutions in order to reform China’s legal framework on PUEs.

II. THE UNIQUE CHARACTERISTIC OF CHINA’S PUBLIC UTILITY ENTERPRISES: COMBINING NATURAL AND ADMINISTRATIVE MONOPOLY

At the moment, although China’s PUEs involved in the supply of water, electricity, gas, railroads, civil aviation and related areas have all started exploring administrative reforms, they continue to retain characteristics of natural and administrative monopolies.

A. Co-Existence of Monopolization and Nationalization

These industries are monopolistic in character because of the indispensable nature of the goods and services they provide, the huge amount of investment capital and sunk costs involved, the restrictions imposed by economies of scale and technical conditions, and the special requirement of efficiency in resource allocation. In addition, with the influence of a planned economy, PUEs are essentially state-owned and state-managed.

B. Co-Existence of Public Interest and Profit Motive

On one hand, these industries are involved in the provision of fundamental infrastructural facilities and services for the public, and thus have a very strong public interest element in them. However, as profit-motivated entities, they also seek profit and efficiency, and thus have a commercial interest element at the same time. Consequently, China’s

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5 Unfair competition in this article includes monopolistic actions, actions to restrict competition and improper competitive actions.

6 Naturally monopolistic due to production technicalities, average costs decrease with the increase of scale of production. From the perspective of the smallest efficient scale requirement, there can only be one producing enterprise. See Bei Fangang, *Market Mechanism and Economic Efficiency* (China, Shanghai San Lian Bookshop, 1992), 177–178.
PUEs are caught in a dilemma between public interest and commercial interest.

C. Merger of the Industrial and Administrative Character

Among China’s PUEs, it is very common to find that an industry administrative authority is not only the government’s functional department but also the overall representative (regulator and beneficiary) of that industry’s state-owned assets. For example, in the railroad transport industry, besides being the administrative authority, the railway department also governs and receives the gains of that industry’s assets. As such, government executive powers permeate the sphere of the industry’s management, resulting in the unusual cycle of ‘power-for-money transactions’, as well as the phenomenon termed by some commentators as ‘government-enterprise unions’. First, being both governmental administrative authority and the industry’s regulatory authority, it is impossible for them to be impartial and treat all market participants on equal grounds; new market entrants and private enterprises are likely to be discriminated against. Second, it is entirely possible that the formation of such ‘government-enterprise unions’ may look upon the strength of consumer interest groups or new enterprises with disdain, and disregard their legal rights during the process of making or enforcing laws. Third, as the current administrative legal system is still unable to break up such ‘government-enterprise unions’, when the governing authorities abuse their administrative powers, the corollary effect is to reduce the resource allocation efficiency of the supervised enterprises to shockingly low levels.7

D. Necessity Coexists with the Absence of Choice

To consumers, the products and services provided by these industries are daily necessities. Without these necessities, it is impossible to maintain the basic standard of living in modern society, let alone improve it. Due to its monopolistic nature, there is only one operator in a given area, with no alternatives available. Consumers are therefore left in a helpless and unfavourable position as they have to pay high prices for low quality products and services.

E. Low Efficiency Coexists with High Remuneration

There is an imbalance of the availability of information regarding the industry between consumers and PUEs: consumers have virtually no means and also no right of knowing PUEs’ operational situation (including investment and profit); PUEs have the ‘right of confidentiality’ over almost all their information. Their natural monopoly status also leads to the fact that they face no competition. Therefore the market mechanism ‘malfunctions’ and the state has to assume the ‘vacant position’ of the property holder, inevitably leading to inefficient methods of resource allocation and astonishingly high remuneration of the workers since they can obtain excess monopoly gains and be ‘rent seeking’.

The unique character of China’s PUEs is thus created upon the merger of natural and administrative monopoly.

III. Structural Reasons Behind the Unfair Competition Conducted by Public Utility Enterprises: Inflated State Executive Power and Underdeveloped Corporate Society

Theorists will base their analysis of the structure of the Chinese society on the two-tier framework of ‘citizen society-political country’. However, the author would argue that this theory is not appropriate for Chinese society and a three-tier framework of ‘citizen society-corporate society-political country’ should be adopted. Evaluating the structural reasons behind the unfair competition conducted by our country’s PUEs from the perspective of the three-tier framework, we will uncover more convincing viewpoints.

A. The Over-Inflation of Executive Power has Resulted in the Use of Power and Wealth to Mutual Benefit

Even though the People’s Republic of China has weathered more than twenty years of reform and liberalization, the unclear goals of reform

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8 It is thought that the law should be categorized according to its nature as ‘private law-public law’ corresponding to the ‘Citizen Society–Public Country’ societal framework. The former is a ‘private domain’ that is not influenced by any public rights, whilst the latter is a reflection of political life in a ‘citizen’s society’.

and the deep-seated effects of planned economy have created societal conditions for the infiltration of executive power into PUEs. Consequently, the following scenario emerges: first, because investment in PUEs has been carried out by the industry administrative authority (IAA) as representative of the country, the IAA takes on the ‘three-in-one’ role of investor, manager and watchdog in reality. Second, the goods and services of the PUEs are priced by the IAA. The feature of natural monopoly in PUEs in the presence of a ‘malfunctioning market’, coupled with the ineffectiveness of market machinery to act as ‘price indicator’, and the inelastic nature of demand for public goods and services means that their prices can be dictated by the whims of the IAA. The IAA holds an absolute right to fix prices. Third, every PUE has to have its own unique financial management system as a result of individual IAAs coming up with different systems designed for the latter’s convenience and ease of management. No one can find out about the operational state of the enterprises’ financial report or other finance related materials. Thus, each IAA possesses absolute power and monopoly over their respective PUEs’ information. Since IAAs hold vast powers as described above, PUEs will employ persuasion and negotiation in attempt to convince the appropriate authorities to grant favors or differential treatment, reaching the goal of satisfying self-interest. A great many ‘rent seeking’ activities arise, thus completing the process of ‘using power and wealth to mutual benefit’ with IAAs.11

10 Infra, note 11.
11 Looking at the railway industry, this ‘power-for-money exchange’ system has caused many problems: on the one hand, the investment mechanism behind railway construction has not undergone due reform and the funds it can attract from society amounts to a pittance; on the other hand, various railway transport service providers, including railway line owners and non-owners have raised a plethora of questions. The price of railway transport may, on the face of it, be decided by the state, along with strict controls. On the other hand, additional charges are payable on top of the stated price (including central and provincial collection of railway construction funds). The situation whereby passenger fares are consistently and flagrantly increased is one of the most prevalent amongst all the industries and there is no effective price control. Practically every provincial railway line faces problems in sharing trains or integrating themselves into the cartel of the national railway network. The railway department, originally meant to be the authority for the whole industry, has not been able to go beyond considerations of the central railway’s interest in their decision-making. Therefore, fair competition regulations for this industry cannot be formed and weaker groups are unable to receive the protection they should get. Many railway construction projects and transport services deserving of subsidies because of the element of public interest (including the development of border regions, disaster relief, poverty aid, social welfare, political and military uses) are unable to obtain funds from government organizations responsible for these subsidies. As a vital infrastructural industry, it has not even drawn up a comprehensive national railway plan that is recognized in order to form the basis for guiding railway construction in the various areas. There are further scenarios involving overlapping and ill-defined areas
B. The Stunted Development of Citizen Society Results in Repeated Infringement of Consumer Rights

The modern significance of ‘citizen society’ inevitably follows the development of market economy. The logic behind market economy springs from the hypothetical ‘economic person’ and the starting point of logic behind citizen society is the ‘citizen’, both being ‘self-interested persons’. However, once the ‘citizen society’ that revolves around the ‘citizen’ meets ‘natural monopoly’, nothing can be done about the resulting ‘malfunctioning market’ syndrome. Furthermore, given the influence of the idea of the ‘obedient citizen’ in Chinese culture, the ‘citizen’ under the framework of citizen society will only experience repeated infringement of his rights when faced with mighty PUEs.

C. Undeveloped Corporate Society and the Absence of Mechanism for Consumers to obtain Social Protection

For a long time, Chinese society has been controlled by a plan dictated by the central government. National executive power has practically permeated every corner of society, every unit is ancillary to the executive organ and every person has become an ancillary of the various units. Thus, everyone faces the danger of abuse by the state, lacking the protection of a median sector in society. PUEs are seemingly able to subordinate executive power such that a consumer is faced with the double-barrelled threat of PUEs and the executive power that breaks it up. Even as economic reform progresses, reforms in other societal domains are halted. Although there has been a major shift in perspective from the unitary system and the individual person is no longer as reliant on his unit as before, the public has, for a long time, lacked a tradition of protest and social movement cannot take off. Various management, consequently nobody is responsible for certain area. The ills of non-separation of government and enterprise are not easily eradicated. The division of the railway network by the railway authority cannot be overcome. The department is too big, ‘eating free meals from the public welfare kitchen’, causing grave ‘rent seeking’ phenomena (as the government is the sole employer and everyone gets the same remuneration, there is an incentive to seek additional benefits via improper means.) Schemes are overly focused on the railway industry and are unable to adapt to the increasingly fierce competition in the transportation market. At the same time, normal competition within the railway industry is prevented as newcomers are discriminated against. See Rong Zhaohe, ‘Discourse in China’s Policy on Reform and Liberalization of Controls in the Railway Industry’, Zhang Xinzhu ed., China’s Regulations and Competitive Theories and Policies, Social Science Books Publisher, 2000, at 132–133.

In traditional China, traditional culture, based on Confucianism, preaches a system of ‘obedient citizens’, with imperial examinations being meticulously integrated into the
societal groups including consumer groups are not developed and the individual consumer cannot play out his role in reality—the relevant right cannot be obtained as of course. Therefore, when faced with inflating executive power and increasing condescension from the PUEs, consumers lack the protective mechanism offered by corporate society in order to resist the violation committed by PUEs.

IV. Obstacles to Social Justice and Violations of Consumer Rights: The IAAS Plaguing PUEs in China

Various countries adopt measures of governmental control over their respective PUEs, which provide basic necessities, in order to meet the basic needs of their citizens. However, due to reasons analyzed above, the PUEs in China have been unable to realize their aims, and conversely, are plagued with the following problems.

A. Obstacles to Social Justice

China’s railway, electrical, postal and telecommunications services, etc., have serious problems, including excessive and complicated billing, poor standards of service and low productivity. The average annual wages of employees in the industries of finance, electrical supply, postal and telecommunications, gas, water supply etc. are double those of employees in other lines of work. This gap is still widening in recent years.13 Furthermore, not only do employees of China’s PUEs enjoy generous paychecks while generating low levels of output and other unjust scenarios, the state’s fiscal policies dole out generous subsidies to these PUEs, undoubtedly increasing the burden on taxpayers.

13 Yangtze Evening Post, 15 October 2000, citing a state development planning commission official. See also News Express, 10 October 2000; an investigation of prices of goods in Guangdong province showed that unjustified telecommunications charges amounted to 300 million yuan, while unjustified electrical charges amounted to 1 billion yuan.
B. Violation of Consumer Rights

It is difficult to enforce the five internationally recognized consumer rights:\textsuperscript{14} the right of safety, the right to information, the right of choice, the right of proposal and the right to compensation, against China’s PUEs.

Safety

(i) In providing goods and services, a prolonged lack of supervision and absence of meaningful cost calculations over PUEs such as gas works, water supply, railway transport, civil aviation etc. have caused recurring incidents involving consumer injuries, fatalities, as well as economic loss.

Information

(ii) PUEs operate in accordance with regulations laid down by IAAs, which have been lacking in transparency all along. Hence, the IAA and the PUEs have effectively monopolized the information available to consumers, and the consumer right to information cannot materialize.

Choice

(iii) Since PUEs are monopolistic and set up according to administrative districts (with the exception of rail transport and civil aviation), the consumer at large does not have a right of choice when it comes to products and services provided by these PUEs.

Proposal

(iv) In theory, PUEs are state-owned and state-managed, therefore all citizens of the People’s Republic of China have the right to supervise, censure and make suggestions. In practice, the consumers’ rights of suggestion is only a ‘right on paper’; there are no concrete measures to guarantee that this ‘right on paper’ can be transformed into a right enforceable by law.

Compensation

(v) As China’s procedural law does not provide for the right to bring corporate actions, actions in the public interest, class actions, small

claim actions and other legal mechanisms that protect the right of consumer compensation, the legal costs in bringing an action are very high and prevent a consumer from enforcing his right to compensation.

V. REBUILDING THE RULES AND MECHANISMS, FACILITATING THE DEVELOPMENT OF A CORPORATE SOCIETY: THE REMAKING OF CHINESE PUEs

Given the multiplicity of problems within Chinese PUEs, the Chinese government has implemented a series of reforms: China’s telecommunications industry has broken out of a monopolistic situation by segregating the industry into four smaller parts – fixed-line networks, mobile phone services, satellite services and paging services – each managed by one company independent of the others. The nation’s railway industry will be reorganized into number of passenger transport companies, freight companies and one land transport company, the last of which will be responsible for building railways, distributing road networks as well as the directing and controlling their use (akin to the Railway Department); the government will henceforth only manage the land transport company, leaving the areas of freight and passenger transport to open competition. The aviation industry has also undergone a similar, though less consistent, reorganizing process. Various local airlines have undergone mergers and/or acquisitions, but there has been no major structural change to the market; in July 2000 the Civil Aviation Administration of China [CAAC] proposed to have three major airline companies, namely Air China, China Southern Airlines and China Eastern Airlines, integrating the smaller, local airlines scattered throughout the country into these three major airline companies, eventually evolving into a scenario of tripartite competition.15 With regard to industries such as water and fuel supply, private capital has already been involved in some cities. In addition, the State Development Planning Commission of the People’s Republic of China has promulgated the relevant regulatory framework and policies for PUEs: (1) to reform the pricing mechanism; (2) to establish mechanisms to control costs; and (3) to have comprehensive regulations on transparent pricing.16 However, ‘the Chinese government has obviously just begun its anti-monopoly journey. The ‘dismantled’ super-enterprises have only been reorganized according to functions, but such reorganized enterprises are still gigantic and still maintain a

15 Xing Pao (Hong Kong Economic Journal), 10 October 2000.
monopolistic operation in a now more specific market; if the market is to be truly open and attractive to competitors, the Chinese government still has a very long way to go.  

In view of the unique monopolistic behavior of China’s PUEs, the existing situation and the direction taken by the Chinese government in the reforms implemented to resolve these problems, a more feasible plan for reform is suggested below: this requires firmly establishing a regulatory framework, completing with enforcement mechanisms that satisfy the needs of a socialist market economy, and enhancing and facilitating the formation of a corporate society.

A. Establishing the Independence and Mutual Accountability of the Legislator, Investor, Manager and Supervisor within the Operation System of PUEs

Currently, the Chinese PUE IAA plays the role of legislator, investor, manager, and supervisor concurrently, which accounts for the fact of administrative monopoly encompassed within the general monopolistic behavior of PUEs. Therefore, there is a need to first break out of the present system of operation: first, since PUEs have a very strong public interest element in them, coupled with the fact that it is an industry that naturally gravitates toward a monopoly, the market mechanism is unable to operate, thus legislation in this sector should be passed by the overall representatives of the people, the National People’s Congress [NPC], and not the various levels of the executive branch of government (including the State Council).  

Upon implementing legislative pricing, it is only with the approval of the NPC that PUEs can raise prices for their goods or services.  

Second, the right to invest in PUEs (including the Associated Right of Management)
can only be exercised by state-owned asset management departments; once private capital is involved as an investment, these state-owned asset management departments should only exercise their management powers on behalf of the state for that portion of investment that came from the state. Third, the IAA should be reorganized into PUE industry associations to provide directional guidance for the industry. Fourth, supervisory powers over PUEs should be exercised by the fair competition regulatory department created under the anti-monopoly act, or consumers’ associations of the various industries in accordance with the Anti-Monopoly Act. These reforms would bring about a new era of integrating social regulation with administrative regulation.

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20 In September 2002, the Chinese Central Government reiterated its desire to build a new and unified state-owned asset management agency, the PUE Industry Administration Authority. Being targets of the Central Government’s plans to reduce their powers, the existing bodies are expected to resist, thus making the road to establishing a unified and specialized State-owned Asset Management Agency and the subsequent smooth transition much longer.

21 The administrative monopoly is so serious in China that Chinese PUEs are not exempted from the governance of the Anti-Monopoly Act. On the issue of who should exercise supervisory powers over PUEs, the Chinese academe offers different views, one of which proposes to create a specialized law enforcement agency – the National Anti-Monopoly Committee or the National Trade and Commerce Union – to be responsible for the supervision of PUE’s unfair competition behavior; another view proposes establishing a PUE Regulatory committee specially to supervise the PUEs. See Wang Xianlin, ‘The Establishment and Responsibility of an Anti-Monopoly Law Enforcement Agency – Problems and Analysis’, Chinese Studies of Law and Politics, 2000, vol.8, 30; Xue Zhiguo, Xu Qiu & Wen Li, ‘An Analysis of the Irrationality of PUEs’ Monopoly Model – Causes and Legislative Reform’, Contemporary Legal Science, 1999, vol. 7, 26. The author opines that either of these two are acceptable, but not the third view because it is perfectly possible for a specialized supervisory agency to be motivated by profit and, in order to maximized self-interest, become the invisible spokesman for the supervised, and hence the ‘imprisoned supervisor’. A fairly interesting phenomenon is that once a supervisor leaves his supervisory position, he often finds a fairly good job in the supervised industry. (See Bei Duoguang, Economics for Securities, Shanghai People’s Publisher, 1994 at 154.) In either of the two earlier propositions, be it a specialized, independent anti-monopoly body or a reasonable trade and commerce management organization, they are less likely to become ‘imprisoned supervisors’ because they do not only supervise the PUEs.
B. **Reorganize IAA, Establish Industry Associations**

The functions of the various IAA need to be dissected and reorganized into industry associations, each responsible for guiding its own industry: setting the developmental direction for its industry; regularly publishing information regarding the financial health of the industry to enable the public at large to play a supervisory role; applying and competing for financial subsidy from the state; and facilitating improvements in the standard of good and services. However, it should not take collective actions such as unifying prices and service agreements as these are prohibited by the Anti-Monopoly Act; it should promulgate a unified accounting standard for the industry without contradicting the Accounting Act and Accounting Principles or Accounting Regulations.

C. **Reform Consumers’ Associations and Allow the Formation of Various Consumers’ Organizations**

According to the constitution of the People’s Republic of China, the public has the freedom of association. According to China’s consumer rights law, consumers have the right to form associations. Therefore, the current societies registration regulations should be repealed; existing local consumers’ associations, controlled by Trade and Commerce Administration Departments should be reformed, and consumers allowed to form various kinds of consumers’ associations such as water and electricity consumers’ associations, railway consumers’ associations and so on. In addition, there should be at least two or more such organizations per administrative district to compete against one another. In this way, there will be competition between consumers’ associations and this will encourage each association to truly serve its members.

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22 Constitution of the People’s Republic of China, adopted in 1982, art. 35.
23 PRC Consumer Rights Protection Law, promulgated on 31 October 1993 by the Standing Committee of the National People’s Congress, effective on 1 January 1994.
24 Having diverse consumers’ associations will not only overcome PUEs’ neglect of consumers’ rights, but will also resist excessive governmental interference in the economy. Because there exists a state of competition between consumers’ associations, it benefits consumers by providing a choice between them, thus compelling these associations to provide good quality service for consumers. See Zheng Shaohua, ‘A Discourse on the Corporate Body in Economic Law – Beginning From a Societal Perspective Legal Science’, 2000, vol. 2, 16.
D. Establish a System for the Disclosure of Industry Information

The public interest aspect of PUEs demands the establishment of compulsory disclosure systems in each industry – this includes PUEs’ financial position, personnel matters, development plans and directive proposals etc.25 Information relating to individual PUEs should be published at fixed intervals; information pertaining to the entire industry is to be disclosed by the various industrial associations so as to protect the public’s right to information thereby facilitating the supervision of PUEs.

E. Establish a System for Public Participation

A fundamental tenet of socialist countries is the supremacy of sovereignty vested in the people with active public participation in social matters. Greater emphasis should be placed on public participation in PUEs that deal with basic necessities. First, representatives from various interest groups should meet to ascertain the price and workers’ remuneration. Second, members of the public should be allowed access to information on PUEs upon presentation of their identification card.26 Third, anyone ought to have the right to sue a PUE, industry association or the IAA for its improper conduct as a consumer or representative thereof. Fourth, various interest group representatives ought to be able to participate in the enacting of laws pertaining to PUEs.

F. Establish Litigation Mechanisms Beneficial to Consumers

The positive realization of substantive law depends largely on the guarantee of procedural law. Therefore litigation mechanisms that benefit public participation in the protection of consumer rights ought to be established: First, a system of public interest litigation should be established; as long as any individual feels that there has been an

25 Since the late 1990s, PUEs have encouraged the supervision of industry ethics, adopted the practice of public assurance etc. which was a positive attempt towards establishing an information disclosure system. However, such a move was voluntary and not compelled by law, but given the nature of PUEs, enforcement by law is needed. According to the 2002 People’s Bank of China’s operating plan, China’s four main state-owned commercial banks will build up a system of compulsory disclosure in 2002-2003. It also reflects the feasibility of such an information disclosure system.

26 Presently in China, the public has no access to information on PUEs. Even the access of basic, registered information requires payment of a fee. The monopoly of information by the relevant government departments has seriously undermined consumers’ right to information.
infringement of consumer rights by a PUE, IAA or industry association, an action should be allowed against these bodies without a requirement for personal direct involvement of the plaintiff. Second, a public interest litigation mechanism should be established to allow group actions to be brought by consumer associations, other social organizations, or their representatives. The third point pertains to small claims. When a consumer brings a claim, the defendant, such as a PUE, industry association or IAA, should have to pay for both the litigation costs and counsel fees, as well as the damages claimed. Additionally, if they lose in the litigation, they have to compensate the consumer for lost wages, consumer’s counsel fees and other associated costs. Fourth, there is a need to revamp the existing system of class litigation. Even though China has such a system in place, it is seldom used in practice because courts use the destabilizing effect on society as an excuse to reject and break up class actions into individual ones, thereby artificially increasing litigation costs for the consumer. The law ought to lay down clear guidelines for class actions. Those litigants who fulfill stipulated criteria should be allowed to litigate as a class; otherwise the increased costs should be waived by the courts.

G. Attract Private Investment and Facilitate the Formation of Competitive Environment

It has been suggested that some of the reforms needed in the P.R.C. include the ‘attraction of private investment, break up of monopoly held by PUEs, conversion of PUEs into share-holding companies, promotion of share ownership by both private sector and state’. However, the author would argue that the above measures are unable to deal with the source of the problem of monopoly by PUEs. Thus, besides insisting on other aspects of reform, private capital ought to be encouraged to be involved in water and electric utility enterprises so as to increase competition among such companies within a particular region.27

H. Reform the Public Pricing System

According to China’s pricing law, PUEs need only to hold consultative meeting when fixing their prices. Strictly speaking, the system of fixing

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27 As PUEs require substantial investment, only a few wealthy investors will be in the position to challenge the PUEs, but their entry into the industry results in de facto control of the whole industry because of their alliance with the local government. This has become the trend in China in recent years. In the meantime, the concept of using private investment to break up a monopoly is like a burst bubble. The above emerging scenarios require an innovative system and timely regulatory intervention.
public pricing also includes the following. Calculation of PUE costs should be left open to the public for discussion and debate; a system of assessment and nomination should be set up by the participants of these meetings, which should include representatives from the various consumer groups, finance departments, industry associations, people’s representatives, government officials and experts.28

I. Establish a System of Public Financial Subsidy and Purchase

China’s current PUE subsidy system is led by the administration and suffers from a lack of transparency; it should thus be reformed to develop an open public financial subsidy system, so that the NPC would come up with an independent budget and calculation method of calculation after consulting the various consumers’ associations and industry associations. If there be persistent loss, other enterprises or groups should take over management so as to limit the loss to their budget estimates. Also, purchases by PUEs should be considered as public purchase and ought to give due weight to the view of the various consumer groups.29

VI. Conclusions

From the perspective of the future legal framework of China’s PUEs, it is necessary to give sufficient consideration to the above-mentioned issues, possibly including an independent section regulating the monopolistic activities of PUEs in the future anti-monopoly law, amending the improper competition law and protection of consumer right law, reforming executive-led legislation system, amending electrical power law and other industry-specific laws, giving due consideration to the above mentioned systems, so as to establish a just legal framework for China’s PUEs, thereby facilitating social justice and the protection of consumer rights.

The transformation of the legal framework governing China’s PUEs is an integral part of China’s political and economic liberalization. Considering the PUE regulatory framework from a purely economic

28 The Government Purchase Law enacted in 2002 sets out the system to regulate the use of financial capital to purchase goods and service. Although PUEs do not make use of financial capital to purchase goods and service, their strong public interest element and drawing of subsidies characterizes them as public purchasers, and they should thus be regulated by the Government Purchase Law.

29 One liberal view propounded by economists during the discussion of pricing of services provided by PUEs is that pricing should not determined by consultative meetings but rather by free market forces. The existence of the market malfunctioning phenomenon due to natural monopoly of PUEs, coupled with a strong public interest element, have resulted in the inability of the market to fix a price. Reform of these consultative meetings and other public pricing mechanisms is necessary.
view would be incomplete and the reform will not succeed in practice. Only through political and social democracy and the continued expansion of the scope of the electorate’s and consumers’ right to participate can China build a positive legal framework for PUEs.

On March 10, 2003, the National People’s Congress of the People’s Republic of China approved a proposed plan for the restructuring of certain ministries under the State Council. According to the final resolution, a new State Asset Regulatory Commission [SARC] will be established at central government level while provincial, municipal and prefectural governments should set up State property management organizations. The SARC, together with its local counterparts, will now regulate the PRC’s state-owned asset regime. As one kind of state-owned enterprise, the PUEs will be affected by the new reform. The restructuring has just been approved, and the detailed responsibilities of the various new ministries remain to be determined by the State Council at a later stage.