

26 July 2021

Ms Cecilia Kwei  
Director, Standard Setting  
Hong Kong Institute of Certified Public Accountants  
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213 Queen's Road East  
Wanchai, Hong Kong

Dear Cecilia,

1. On behalf of CLP Power Hong Kong Limited (CLP Power) and The Hongkong Electric Company, Limited (HK Electric), which have collectively been supplying electricity to 100% of the Hong Kong population since the beginning of the last century, we are writing to offer our comments on IASB Exposure Draft ED/2021/1 Regulatory Assets and Regulatory Liabilities. Note that both CLP Power and HK Electric are the wholly owned major subsidiaries of their parent companies who are publicly listed in The Stock Exchange of Hong Kong.
2. We acknowledge ED's objective is to provide relevant information that faithfully represents how regulatory income/expense affect an entity's financial performance, and how regulatory assets/ liabilities affect its financial position [BC28]. However, we are of the view that the proposed treatment under ED paragraph B15 of deferring the return on 'asset not yet available for use' (which we shall refer to as 'asset under construction' ('AUC')) until the relevant assets are commissioned and be allocated over the remaining periods in which the electricity companies recover the carrying amounts of the assets through the regulated rates ('Proposed AUC Return Treatment') fails to achieve such objective in our case. The Proposed AUC Return Treatment deviates from the regulatory regime in Hong Kong, causing the IFRS financial statements mis-representing the economic and financial substance of the electricity companies in Hong Kong and potentially causing adverse impacts to the electricity sector and thus the Hong Kong community.

## **THE ELECTRICITY SECTOR AND ITS REGULATION IN HONG KONG**

3. Hong Kong has a population of 7.5 million that is heavily reliant on a reliable supply of electricity. Excluding the transportation sector, electricity accounts for close to 80% of local end-use energy<sup>1</sup>. The electricity sector in Hong Kong comprises two companies – CLP Power and HK Electric. Both operate a vertically integrated electricity supply networks from generation, transmission, distribution to retail in their respective supply areas.
4. Since the 1960's, the electricity sector has been regulated by the Scheme of Control ('SoC') regime under which each of the two companies separately enters into successive agreements

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<sup>1</sup> EMSD, Hong Kong Energy End-use Data 2020

with terms of 10 or 15 years<sup>2</sup>. The SoC regime has enabled the electricity companies to invest, build and maintain an electricity infrastructure to meet the local demand with the world's highest reliability of over 99.999%. Furthermore, their average tariff to customers is among the lowest among most metropolitan cities. Apart from enabling a highly reliable supply, the SoC regime has also steered the electricity sector towards a greener fuel mix with carbon neutrality by year 2050 as the ultimate goal set by the HKSAR Government.

5. In fact, under their respective SoC agreements,
  - a. the electricity companies are obligated to contribute to the development of Hong Kong by:
    - i. Providing, operating and maintaining sufficient facilities
    - ii. Supplying electricity to meet the demand and
    - iii. Making continuing efforts to support Government in addressing climate change and improving regional air quality.
  - b. Recognising the risks involved and the capital invested in and retained in their business, the electricity companies and their shareholders are entitled to earn a return which is calculated based on the electricity companies' average net fixed assets value, including AUC.
  - c. Government thoroughly reviews and approves/disallows the capital investment plans of the electricity companies by making reference to the electricity demand of the city and the city's long-term strategic objectives (e.g. decarbonisation and smart city), which are developed through engagement with the public, while achieving the objective of the lowest reasonable cost of supply.
  - d. Upon the end of the SoC regime and if the electricity companies have incurred stranded costs (including those on investments made), the electricity companies are entitled to recover from the market such stranded costs.
  
6. Significantly, allowing the electricity companies to earn return on the average net fixed assets value of their AUC is one of the regime's key contributors contributing towards the stability of the electricity sector in Hong Kong. Under most circumstances, the development and construction of electricity facilities involve substantial capital investment, both equity and debt, with long lead times. It is not uncommon to have electricity infrastructure taking more than 5 – 10 years to complete. Nowadays, capital requirement and project development lead times are both on an upward trend. This is mainly due to a range of factors including:
  - a. an increasing diligence over environmental impacts of infrastructure projects along with greater public scrutiny and more stringent government permitting processes;
  - b. diminishing number of easily accessible sites available resulting in projects with more challenging site conditions;
  - c. scarcity of renewable resources requiring cross-jurisdictions cooperation which introduces significantly greater complexity and multiple regulatory authorities, etc.

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<sup>2</sup> The relevant agreements can be downloaded at the website of Environment Bureau, Government of the Hong Kong Special Administrative Region: [Agreement | Environment Bureau \(enb.gov.hk\)](#)

Not to mention the newly realised risk arisen from a pandemic. All such developments point to the importance of letting investors be timely compensated through the returns on AUC so that Hong Kong customers continue to enjoy a highly reliable, increasingly environmental and economical electricity supply.

7. Currently, the IFRS reporting standards are well aligned with the SoC in terms of the recognition of the SoC returns arisen from AUC as earnings and distributions can be made in the year when the capital expenditures are incurred. Investors are therefore timely compensated. Such timely compensation of capital cost and risk borne has been consistently in place in the past 60 years in the Hong Kong electricity sector. It has also faithfully reported the nature of such returns on the financial statements and is well understood and well accepted.

## OUR VIEWS ON THE PROPOSED AUC RETURN TREATMENT

### Deviate from the principle of the SoC

8. At the centre of the issue is that the Proposed AUC Return Treatment disregards a large part of the electricity companies' obligations to the Government, who acts in the interests of Hong Kong electricity customers under the regulatory agreements. Under the SoC regime, the electricity companies have an obligation (refer 5a. above) to provide (through investment) sufficient electricity facilities and infrastructure to support the development of Hong Kong, address climate change and improve air quality. Such obligations are duly recognised through the entitlement of the permitted regulatory return on the totality of net fixed assets, including AUC. It is therefore inappropriate to confine the services to the end-consumer as only the electricity delivered, and the resulting effect is the distortion or misalignment of the financial results reported under IFRS following the Proposed AUC Return Treatment with the actual results under the SoC regime.
9. Government's recognition of the electricity companies' contribution starts not only from the point at which assets are commissioned, but rather, from the moment when investment is first made and is further reflected in the following characteristics:
  - Electricity companies are not required to refund any regulatory return charged to customers in case the capital projects are discontinued, while they are allowed to recover through the electricity tariffs the discontinued capital investment cost written off.
  - The stranded costs provision (5d. above) entitles the electricity companies to recover from the market the stranded costs, which may arise as a result of future changes to the market structure which adversely impact on the electricity companies' ability to recover and to earn returns on existing investments made in good faith in accordance with the regulatory agreements.

The Proposed AUC Return Treatment will cause issues to us as follows:

### Adverse impact to investors and the community

10. The Proposed AUC Return Treatment will defer the recognition of the SoC return from AUC as earnings on the IFRS financial statements, thereby deferring the distribution of the relevant amounts as dividend. The timing at which investors contribute capital (and incur cost of capital) will no longer be aligned with the timing of the return generated from capital projects. This will affect investors' decision in making capital investment in the electricity sector. Even if investors choose to continue to invest in the sector, such deferral in regulatory returns from AUC will inevitably adversely impact the risk profile of the sector, making it more costly for the sector to finance their capital projects. As a consequence, the Hong Kong community as a whole will be affected in various aspects including enjoyment of clean energy and reliable electricity. Even worse is that Hong Kong's transition to a carbon neutral community by 2050 will also be impacted.

### Misleading financial statements that cannot faithfully reflect the underlying business

11. The principle of the SoC is faithfully reflected under the current IFRS that regulatory return derived from the totality of net fixed assets balance including AUC are reported as earnings of the prevailing period. On the other hand, if the Proposed AUC Return Treatment is applied, the electricity companies would be forced to report a regulatory liability which, under the SoC regime, is legitimate earnings arisen from the electricity companies' performance of their obligations through investing in government-approved capital projects in the prevailing period, and does not actually meet the definition of a regulatory liability under the ED. The financial statements would no longer faithfully report and represent, and could potentially mislead stakeholders with respect to the financial performance of the electricity companies.
12. In addition, if the Proposed AUC Return Treatment were implemented in our case, misleading information with respect to the permitted rate of return entitled by the companies under SoC would be provided to the users of financial statements (please refer to the Illustrative Example in the Appendix).

### Practical considerations

13. Definition of AUC. Very often in the electricity sector, the machinery parts, cables, facilities, etc. that are being constructed are integrated with the overall network and such works are conducted on almost an ongoing basis. It may not be possible to demarcate and separately identify the boundary of an AUC; nor it is practical to establish the 'start date' and the 'end date' of a 'capital project'. It will also be an inaccurate picture to exclude AUC on the ongoing nature of the activities for fulfilling the required service level. Any attempt to attribute return to a particular 'AUC' rather than the whole portfolio disregards the specificity of the industry.
14. It is worth noting that it is usual for regulatory businesses especially those in electricity power sector to have an extensive assets base and huge volume of capital projects on an ongoing basis. If the Proposed AUC Return Treatment were implemented, the electricity companies would have to incur undue operational costs and efforts to keep track of the

regulatory return during the construction stage for different asset categories (with asset lives ranging from 5 years to 100 years) involved in each capital project and recognise regulatory liability for each category. Also given our regulatory agreements have been in force for over 50 years and are renewed for every 10 or 15 years with revisions in the permitted rate of return for each renewal, it will be impracticable to trace the financial implication on implementation of Proposed AUC Return Treatment. We believe the costs and effort involved will far outweigh the relevance and usefulness of the information.

### Suggestion to the IASB

15. The Proposed AUC Return Treatment disregards the electricity companies' performance obligation to the Government through investing and constructing AUC under the SoC agreements. Implementation will only cause mis-representation of the companies' financial performance, undermine investors' return, distort the industry's risk profile and ultimately adversely affect the community in Hong Kong. We strongly recommend the IASB to either:
  - a. simply remove the Proposed AUC Return Treatment from the ED; OR
  - b. consider the regulated return arisen from AUC as a consideration to the electricity companies' performance of their contractual obligations to the Government, similar to the IASB's acceptance of treating performance incentives as a reward to an entity performing construction work under paragraph B18 of the ED.

## **FEEDBACKS TO OTHER QUESTIONS**

### **Response to Question 1 - Objective and scope**

16. We would like to seek clarification on the following relating to the scope and ED application:
  - (i) For CLP Power, its generation business is owned through a 70% subsidiary known as CAPCO. While both CLP Power and CAPCO are parties to the SoC agreement, between CLP Power and CAPCO is a power purchase agreement under which CLP Power is obligated to purchase all output by CAPCO and remunerate CAPCO all operating expenses including fuels plus the SoC regulated return calculated based on the average net fixed assets value of CAPCO. Note that CAPCO does NOT recover its expenditures and return by charging end electricity users the regulated rates directly.

With the above, CAPCO's financial performance is recognised based on IFRS 16 Leases. We would like to seek clarification from the IASB as to whether arrangements such as CAPCO's, fall into the scope of the ED and how such arrangements will be accounted for in the separate financial statements of the regulated entities under the ED.

- (ii) The SoC regime has a mechanism that captures certain (but not all) timing differences through regulatory fund balances which are currently accounted for as financial asset or financial liability based on their specific characteristics under existing IFRS Standards. It is unclear, with the implementation of the ED, should such regulatory fund balances continue be accounted for as financial assets/liabilities or which standard is applicable. We would like the IASB to provide guidance in this respect.

**Response to Question 2 – Regulatory assets and regulatory liabilities**

17. We would like to seek clarification in relation to the definition of Regulatory Assets and Regulatory Liabilities as follows:

- (i) We understand from Paragraphs 13 to 17 of the ED that regulatory assets/liabilities arise when there are differences between the Total Allowed Compensation (as defined under paragraph B2) and the revenue recognised under IFRS 15 Revenue. How should we account for the situation in which a regulated rate received is directly offset with the relevant allowable expenses (in accordance with the “Offsetting” under IAS 1) instead of being recognised as Revenue? It is unclear from the proposals in the ED whether that timing difference in recovery of allowable expense should also be accounted for as regulatory assets/income and regulatory liabilities/expense notwithstanding that the regulated rate received is offset to the relevant expenses.
- (ii) A specific feature of our regulatory agreement (the SoC) is that it requires the regulated entities to reduce a regulated rate in a future period if the entities have over-recoveries of allowable expenses in previous years. However, the regulated entities cannot recover the under-recoveries of total allowed compensation in a year by adding an amount in the rate determination for future period – i.e. no enforceability to recover the under-recoveries in a year if there is no outstanding balance in the regulatory liability account.

It is unclear whether the specific feature as mentioned above (i.e. where contractually only a regulatory liability can be recognised) would lead to this being out of scope of the ED.

**Response to Question 3 – Total allowed compensation**

18. We generally agree with the IASB’s proposed guidance in respect of performance incentives except that regulated entities should make estimates on the ‘most likely amount’ or ‘expected value’ of those performance incentives that are measured across multiple reporting periods and then allocate an amount to the prevailing reporting period.

Performance incentives which require the entities to meet performance criterion over a time frame may not relate to supply of goods or services (as opposed to the IASB’s conclusion in BC108). One instance in the SoC regime is that the electricity companies are required to meet certain energy saving target over a five-year period. The rights to incentives only arise after the performance criteria is met upon the end of the five-year period. The “most likely amount” or “expected value” method to recognise performance incentives/penalties for financial reporting periods before end of the time frame as proposed by ED will create a “right” or “obligation” not provided under the regulatory agreement and is inconsistent with the definition of regulatory assets or regulatory liabilities of the ED. Also, as the uncertainty is high, the estimate becomes less relevant to users and it is highly probable a significant reversal may occur.

### Suggestion to the IASB

19. We suggest the IASB to consider performance incentives/penalties are recognised only in the reporting period when the performance criterion are actually met in accordance with the regulatory agreement, or setting a higher recognition threshold for performance incentives.

### Response to Question 5 – Measurement

20. For the measurement of regulatory assets and regulatory liabilities, we are of the view that discounting of future cash flows for regulatory assets and regulatory liabilities is not necessary, if the regulatory agreements have already provided regulatory interest on the regulatory assets and liabilities. That means, time value of money has been considered in the regulatory agreements. Creating a theoretical time value of money would distort the spirit of the regulatory agreement and have no value added to readers.

### Suggestion to the IASB

21. We suggest the IASB to ignore discounting if regulatory agreements have already provided regulatory interest on the regulatory assets/liabilities balances.

### Response to Question 6 – Discount rate

22. We consider that in situations where the cash flows arising from regulatory assets and regulatory liabilities are discounted for their measurement, a consistent approach should be adopted i.e. using the regulatory interest rate as specified in the regulatory agreement, as this represents the amounts to be recovered or fulfilled as agreed under the regulatory arrangement.

We would also like to seek clarification on how the discounting should be applied if the regulatory interest rate is a floating interest rate which make references to market interest rate.

### Response to Question 9 – Disclosure

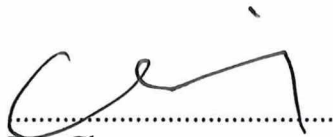
23. We are concerned with the level of details for the separate items as set out in paragraphs 78, 80 and 81 of the ED. It would be misleading to segregate the financial implication of the regulatory agreement into piecemeal information if the disclosure is made in such level of details as required in the ED, and readers may lose focus of the big picture.

### Response to Question 10 – Effective date and transition

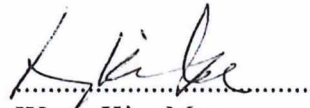
24. As set out in paragraph 14 above, we have great concern on the effort and the practical difficulties of the retrospective application of the ED for Proposed AUC Return Treatment.
25. We also have a question on how to apply the ED, retrospectively to part of the business, but allows an election to apply the business combination exemption to the other part of the business, while the business as a whole is governed by a single regulatory agreement.

In the case of CLP Power, the electricity service is provided by two key companies, while one of it is greenfield (CLP Power), the other (CAPCO) has a more complicated history of shareholding. CLP Power was once a joint venture partner of CAPCO, and has acquired additional shareholdings and obtained control of CAPCO in 2014. If following the ED's transitional provisions, it would suggest full retrospective application should be applied to CLP Power, but CAPCO is allowed to elect not to apply in full retrospective. It would result in different transition applications creating inconsistency and misleading information.

We thank you in advance for considering our comments and suggestions on the ED and would be pleased to have the opportunity to discuss our views in further detail with you.



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CLP Power Hong Kong Limited



Wong Kim Man  
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The Hongkong Electric Company, Limited



### Illustrative Example

Assumptions:-

1. Permitted rate of return of the regulatory agreement 8.00%
2. For simplicity sake, there are only two AUC projects, namely "Project A" and "Project B". Project A starts from Year -1 to Year 1 and commissions in Year 2 with total construction costs of \$50. Project B starts from Year 3 to Year 5 and commissions in Year 6 with total construction costs of \$60. Project A and B will be operating over a five year period.

	[a]	8%	8%	8%	8%	8%	8%	8%	8%	8%
		Year -2	Year -1	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
		\$	\$	\$	\$	\$	\$	\$	\$	\$
<b>Under prevailing IFRSs</b>										
Assets under construction (AUC)		-	20.0	30.0	50.0	-	40.0	50.0	60.0	-
Assets in use (AIU)		200.0	210.0	230.0	280.0	280.0	300.0	330.0	350.0	360.0
Total net fixed assets		200.0	230.0	260.0	330.0	280.0	340.0	380.0	410.0	360.0
Average net fixed assets	[b]		215.0	245.0	295.0	305.0	310.0	360.0	395.0	385.0
Regulatory return	[c] = [a]x[b]		17.2	19.6	23.6	24.4	24.8	28.8	31.6	30.8
Calculated rate of regulatory return	[c]/[b]		8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%	8.00%
y-o-y change (%)				0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>Under ED proposal</b>										
Regulatory return	[c]		17.2	19.6	23.6	24.4	24.8	28.8	31.6	30.8
Less: Deferral of regulatory return on AUC as proposed by ED	(Notes 1&4)		(0.8)	(2.0)	(3.2)	(2.0)	(1.6)	(3.6)	(4.4)	(2.4)
Add: Recognising regulatory return on AUC			-	-	-	1.6	1.6	1.6	1.6	4.0
Total regulatory return calculated in according to ED	[y]		16.4	17.6	20.4	24.0	24.8	26.8	28.8	32.4
Calculated rate of regulatory return	[y]/[b]		7.63%	7.18%	6.92%	7.87%	8.00%	7.44%	7.29%	8.42%
y-o-y change (%)				-5.8%	-3.7%	13.8%	1.7%	-6.9%	-2.1%	15.4%

#### Note 1

Average carrying amount of Project A		10	25	40	25				
Regulatory return on Project A (Deferred to Year 2 to Year 6)		0.8	2.0	3.2	2.0	8.0			
Average carrying amount of Project B						20	45	55	30
Regulatory return on Project B (Deferred to Year 6 to Year 10)						1.6	3.6	4.4	2.4
									12.0

#### Note 2

The calculated return as proposed by ED will result in variability in return and also deviation from the regulatory return as illustrated above. This may result in the financial statements become less relevant to the key stakeholders including the regulators and investors.

#### Note 3

The calculation of return as proposed by ED will cause undue efforts and costs in keeping track on adjusting and recognising regulatory returns on AUC which are invested on an ongoing basis.

#### Note 4

The deferral of return is an accounting construct and not created by the regulatory agreement. This is inconsistent with the definition of ED on regulatory assets and regulatory liabilities.