

Letter of Comment No: 37  
File Reference: EITF03-1  
Date Received: 09/30/04

September 28, 2004

Mr. Lawrence W. Smith  
Chairman of Emerging Issues Task Force  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

**RE: Proposed FASB Staff Position Nos. EITF Issue 03-1-a, *Implementation Guidance for the Application of Paragraph 16 of EITF Issue No. 03-1, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments"* (EITF 03-1-a) and EITF Issue 03-1-b, *Effective Date of Paragraph 16 of EITF Issue No. 03-1, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments"* (EITF 03-1-b)**

Dear Mr. Smith:

Exelon Corporation appreciates the opportunity to respond to the proposed FASB Staff Positions (the "Proposed FSPs"), *Implementation Guidance for the Application of Paragraph 16 of EITF Issue No. 03-1, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments"* and *Effective Date of Paragraph 16 of EITF Issue No. 03-1, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments."* We have the following comments and observations for your consideration. This letter is being submitted to provide the FASB with our company's specific considerations and positions. We respectfully request your consideration and clarification on these issues. We would be happy to meet with you to discuss this issue further.

Exelon Corporation is one of the nation's largest electric utilities with approximately 5.1 million customers and more than \$15 billion in annual revenues. Exelon Corporation has one of the industry's largest portfolio of electricity generation capacity including ownership interests in 23 nuclear generating units. As of June 30, 2004, Exelon Corporation had approximately \$4.9 billion of debt and equity securities invested in nuclear decommissioning trusts. These assets are held to decommission our 23 nuclear generating units once their operating licenses expire. We estimate that the majority of decommissioning expenditures will be paid by the trust assets beginning in 2029 and could continue through 2109.

#### **Historical Accounting Perspective**

We account for these investments in debt and equity securities under the provisions of SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities* (SFAS No. 115), and these investments have been and are currently classified as available-for-

sale securities. Under requirements from the Nuclear Regulatory Commission (NRC), Exelon is required to meet certain minimum funding requirements for decommissioning obligations and the investments are required to be managed by a third party, except for certain passive index investments which are allowed to be managed by Exelon. However, Exelon has elected to have the passive index investments managed by third party managers as well. Investments in the trusts cannot be withdrawn from the trusts other than to pay for decommissioning expenditures. We provide investment guidelines and performance benchmarks to the fund managers who in turn execute the investment strategies. The overall economic purpose of our investment strategy has been to match the portfolio mix of the investments to the long-term nature of the liability with the goal of obtaining investment returns necessary to fully fund the cost of decommissioning at the time when our nuclear units eventually retire and require the majority of decommissioning expenditures.

Exelon Corporation takes responsibility for establishing investment guidelines, performing asset allocations, setting performance benchmarks and selecting third-party investment managers. The investment managers are held responsible for the overall performance and management of these funds. The investment managers have the discretion to buy or sell individual securities as a means to maximize the long-term after-tax performance of the funds within the investment guidelines established by Exelon. We consider the assets on a long-term horizon; however, the fund managers may view the individual securities within the trust funds on a much shorter time horizon and may buy or sell securities in order to maximize the long-term after-tax performance of the funds, as necessary.

In determining the appropriate classification of our decommissioning trust assets, management has evaluated the economic purpose of our investment strategy to match the timing of the investment returns and proceeds to the the associated obligations, and the historical process in which our funds have been managed in terms of purchase and sales activities. As these investments historically are not purchased and sold for short-term profits and the duration of the investments are not measured in hours or days; it has been Exelon Corporation's judgment that the decommissioning trust funds be classified as available for sale.

### **New Accounting Interpretation**

The FASB Staff's position, as described in the response to Question 1 of the FSP EITF 03-1-a, is that an investor should assert its ability and intent to hold to a forecasted recovery at the individual security level. The interpretations of the EITF 03-1 guidance as it relates to decommissioning trust funds results in a "lower of cost or market" model which was not contemplated in our historical decommissioning trust classification evaluation process. This "one-way" mark-to-loss model is contrary to the long-term investment horizon that has been historically utilized to assess impairments.

This new lower of cost or market model for the accounting for decommissioning trust investments is a significant change from the practices applied by Exelon Corporation and

the utility industry under SFAS No. 115. Had we considered this new accounting model during our historical evaluation of investment classification, our judgment that these securities were to be classified as available for sale securities may have been different. Therefore, the issuance of the FSP EITF 03-1-a has a direct impact on our viewpoint of these securities as available for sale.

The release of the FSPs and the resulting change in viewpoints from which to assess the need to record other-than-temporary impairments, leads us to contemplate a change in classification of our investments in debt and equity securities to be considered trading securities. Paragraph 15 of SFAS No. 115 states that transfers into the trading security category should be rare. We believe that the interpretation of EITF 03-1 which redefines our view that third-party fund managers have had the ability and intent to hold an investment until recovery of the cost of the investment, is considered a rare event.

We appreciate the opportunity to provide our comments to you and respectfully request that the FASB Staff include commentary to the final FSPs stating that the issuance of the FSP and the new interpretative guidance associated with the implementation of EITF 03-1 are considered to be rare circumstances; as such, the transfer of securities between categories of investments, as defined in SFAS No. 115, would be acceptable. Also, due to the significant changes associated with the implementation of the guidance prescribed by EITF 03-1 and the FSP, we respectfully request that the FASB Staff contemplate transition provisions for this initial transfer of securities to be considered a cumulative effect of a change in accounting principle.

As a member of the Edison Electric Institute (“EEI”) our company participated in the drafting of EEI’s letter on the Proposed FSP EITF 03-1-b and would request your consideration to the viewpoints shared in this letter also.

Sincerely,

Matthew F. Hilzinger  
Vice President and Corporate Controller  
Exelon Corporation