701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2696
Telephone 202-508-5527

Letter of Comment No: 32
File Reference: 1099-001

EDISON ELECTRIC INSTITUTE

July 30, 2004

Mr. Lawrence Smith
Director – Technical Application & Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Subject: File Reference No. 1099-001

Dear Mr. Smith:

The Edison Electric Institute (EEI) appreciates the opportunity to comment on the Financial Accounting Standards Board's (FASB or the Board) Exposure Draft (ED) of a Proposed Interpretation, *Accounting for Conditional Asset Retirement Obligations an interpretation of FASB Statement No. 143* (Statement 143).

EEI is the association of the United States investor-owned electric utilities and industry affiliates and associates worldwide. Its U.S. members serve over 90 percent of all customers served by the investor-owned segment of the industry. They generate approximately three-quarters of all the electricity generated by electric utilities in the country and serve approximately 70 percent of all ultimate customers in the nation. EEI members own a majority of the transmission and generation facilities in the nation.

EEI supports the Board's desire to promote consistent application of Statement 143 and commends the Board for this effort. However, we believe that the proposed Interpretation will result in more diversity in practice in the application of Statement 143 than currently exists today. Although the proposed Interpretation includes examples of various types of conditional asset retirement obligations (AROs), a company's individual facts and circumstances could

change the determination of whether a conditional ARO exists. The determination of whether a settlement date is indeterminate could vary from company-to-company and the calculation of how to include a measurement of uncertainty in the calculation of the ARO would likely vary from one company to the next.

EEI believes that the current requirements to record obligations for which a company could be held legally liable will yield a more consistent result. Statement 143, versus the proposed Interpretation, provides a more objective basis on which to determine whether an ARO exists because it is based upon legal requirements. The law will remove much of the subjectivity in determining whether an ARO exists. In connection with the initial adoption of Statement 143, legal counsel was consulted to identify asset retirement obligations. Application of the proposed Interpretation would likely result in the recording of obligations on the financial statements that are not considered obligations from a legal perspective, resulting in internal inconsistencies.

Further, the scope of Statement 143 includes any obligations under the doctrine of promissory estoppel. The current exposure draft intends to expand liability recognition such that any requirement to handle waste appropriately upon the removal of the asset or any component of the asset should fall within the scope of an ARO. Some parties could interpret the recording of these types of liabilities, for which a company is not legally liable, as a promise to perform a future action or event. This would then scope these liabilities, not previously legally required, into the category of legally required liabilities through the doctrine of promissory estoppel, *e.g.,* examples 1 through 3 in the exposure draft or any other similar instances where a legal obligation under Statement 143 does not currently exist. EEI believes that this proposed accounting could expose companies to risk in this respect and is an inappropriate and unintended result.

Issue 1: *The Board concluded that the uncertainty surrounding the timing and method of settlement should not affect whether the fair value of a liability for a conditional asset retirement obligation would be recognized but rather, should be factored into the measurement of the liability. Do you agree with the Board's conclusion? If not, please provide your alternative view and the basis for it.*

EEI agrees, in general, with the Board's re-affirmation in Issue 1 of the ED of the paragraph A17 as found in Statement 143, which defines a conditional ARO. However, EEI fundamentally *disagrees* with the Board's specific

interpretation of a conditional obligation as stated in the ED. EEI understands that Statement 143 provides that uncertainty regarding the amount and timing of cash flows of a *legal obligation*, does not exempt a company from recognizing a conditional ARO. However, the proposed Interpretation incorrectly scopes an ARO obligation that does not meet the definition of Concepts No. 6 as follows:

1. The entity has a present duty or responsibility to one or more other entities that entails settlement by probable future transfer or use of assets at a specified or determinable date, on occurrence of a specified event, or on demand.

Paragraph B9 states that "if an entity is required by current laws, regulations, or contracts to settle an asset retirement obligation upon retirement of the asset, that requirement imposes a present duty." When a company is constructing or acquiring a facility, the event that imposes the duty to perform certain activities has not yet occurred. In the example of asbestos, the specific event that actually and legally obligates the entity to incur costs is when the asbestos becomes friable, or when that company elects to demolish the facility, at which point the determination that asbestos will be removed has been made. Up to that point, there are no legal obligations that would require the removal of asbestos. A company does not record a liability on the day it acquires or constructs a facility for the costs, excluding asbestos, to demolish or dismantle the facility because, under SFAS 143, there is no legal requirement for this activity to occur. It seems inconsistent that the timing of the obligating event is viewed differently for certain components of the facility (normal demolition cost versus asbestos related costs) solely because of the nature of the costs to be incurred. FASB's proposed Interpretation should not generalize issues to fit every situation. Statement 143 relies on legal review of obligations by attorneys representing a particular company. It appears that FASB may be imposing their own definition of a legal commitment that obligates a company on top of a company's legal analysis.

2. The duty or responsibility obligates a particular entity, leaving it little or no discretion to avoid the future sacrifice.

Paragraph B10 indicates that the Board believes that a company's ability to indefinitely defer settlement of an ARO does not provide the entity discretion to avoid the future sacrifice and that, implicit in this conclusion, is the belief that no tangible asset will last forever. EEI does not agree with the Board's conclusion. A company does have discretion on whether or not it will remove an asset to

the extent that there is no legal obligation for the company to remove that facility. While a company may not be able to operate a facility indefinitely, or may determine to discontinue operations early because of performance or economics of the unit, a company may elect to mothball a facility indefinitely and would not elect to incur dismantling/disposal costs unless it was economically feasible to do so or some other event occurred which would trigger a requirement or decision to dismantle the facility.

3. The transaction or other event obligating the entity has already happened.

Paragraph B11 concludes that "Statement 143 states that the obligating event is the acquisition, construction, or development and (or) the normal operation of the long-lived asset. Thus, the obligating event occurs when there is a duty or responsibility and the existence of the condition relating to the duty or responsibility. The obligating event is not the retirement of the asset."

As discussed above, EEI does not believe that the obligating event has occurred until the point in time where a company elects to demolish a facility. The discussion of Statement 143 relating to the existence of a condition relating to the duty or responsibility is still based upon the existence of a legal obligation for the company to incur such costs at a future point in time. If a company has placed a facility in reserve shutdown, or mothballed a facility indefinitely, as long as the unit is not demolished, there would be no law that would require the company to incur these costs. In the example of treated utility poles, a company has no legal liability to remediate the poles when the poles are removed from service unless it elects to dispose of the pole as a solid waste. A company also may decide to donate or sell that pole to another user for use as a treated wood product and would have no liability regarding treatment or disposal of the pole. Because there is no legal requirement for these types of costs, based upon the normal use or operation of the asset, EEI does not believe they would qualify as an ARO under Statement 143.

Issue 2: *Are there instances where law or regulation obligates an entity to perform retirement activities but allows the entity to permanently avoid settling the obligation? If so, please provide specific examples.*

Most environmental regulations of which EEI is aware require an entity to dispose of certain materials in a particular fashion to the extent that the material

is considered contaminated. EEI is not aware of specific regulations that allow a company to permanently avoid settling an obligation of this sort, to the extent that an event has occurred, which requires disposal under the appropriate regulations. However as noted above, an item such as a treated utility pole may be settled by removing the pole from service and selling or donating the pole in its current condition to another user (for use in parking lots or some other form of secondary use). EEI's understanding is that any future liability regarding the disposal of the pole would transfer to the party who took possession of the pole and that liability is not triggered until when, and if, the party that owns the pole decides to dispose of it as a solid waste. Additionally utility transformers, which may contain polychlorinated biphenyls (PCBs), are typically taken out of service when one fails or will be replaced for operational reasons. A company may elect to warehouse or store that transformer without removing the PCBs thereby avoiding any obligation as the disposal regulations covering this material are not triggered unless the oil is removed or is spilled, or the electrical device is scrapped or recycled.

Additionally, as also discussed above, a company may permanently avoid settling an obligation such as asbestos to the extent the facility is left intact and no issues arise which require clean up of a spill or release of a material such as friable asbestos.

EEI commends FASB in providing diverse examples in the ED. However, EEI believes that Example 2 should be changed to reflect the indeterminate useful life of wood poles (consistent with Example 4 on oil refineries) and, as covered in these comments, a company may have no liability to remediate the poles when they are finally removed from service.

EEI appreciates the opportunity to respond to the proposed Interpretation. We hope that our comments will be helpful and look forward to working with the Board in the future.

Sincerely,

/ s /

David K. Owens
Executive Vice President, Business Operations