Southern Company Services, Inc. 241 Raiph McGill Boulevard NE Atlanta, Georgia 30308-3374

Letter of Comment No: 30 File Reference: 1215-001

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Energy to Serve Your World\*

September 12, 2005

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

Subject: File Reference No. 1215-001

Dear Director:

The Southern Company appreciates the opportunity to comment on the Financial Accounting Standards Board's (FASB or the Board) Exposure Draft of a Proposed Interpretation (the Interpretation), Accounting for Uncertain Tax Positions an interpretation of FASB Statement No. 109 (Statement 109).

Southern Company (NYSE: SO) is one of the largest generators of electricity in the United States. Southern is the parent firm of Alabama Power, Georgia Power, Gulf Power, Mississippi Power and Savannah Electric, all integrated, cost-based regulated utility companies, as well as Southern Power, a market-based generation company. We are concerned about how the changes proposed in the Interpretation would affect our company and our industry. Through this letter, as well as our support for the comments contained in the utility industry response coordinated by the Edison Electric Institute, we hope to provide some additional information for consideration before the tentative conclusions on these issues are finalized.

## **General Comments**

The Board cites current diverse accounting practices with respect to uncertain tax positions as the reason for issuing the Interpretation. The Board anticipates that the application of the proposed Interpretation would result in increased comparability in financial reporting of income taxes, as all uncertain tax positions would be evaluated for recognition, derecognition, and measurement using the same consistent criteria. We

do not believe that the Interpretation, as written, would result in an improvement in financial reporting of income taxes. It would more likely result in material misstatements in financial statements, with the proposed "probable" standard causing overstated tax accruals followed by reversals of such upon the completion of tax audits and/or expiration of the statute of limitations.

## The Probable Standard

The Interpretation would allow recognition of tax benefits only if the tax position is probable of being sustained on audit based solely on the technical merits of the position. The probable standard is more stringent than what is required by the tax law for taking a position on a tax return. Most taxing authorities use a "more likely than not" threshold as the most stringent standard required to avoid penalties. In addition, the Interpretation would require derecognition of tax benefits when it becomes more likely than not that the tax position would not be sustained on audit. We believe this dual standard will be problematic. There should be one standard for both recognizing and derecognizing tax benefits, with that standard being similar to the "more likely than not." Otherwise, financial statements will likely not reflect management's true expectations regarding the impact of tax benefits.

## The Asset Approach

Application of the "Asset Approach," as proposed in the Interpretation, will assure no more accounting consistency than now exists. In fact, the Asset Approach would actually create diversity by treating contingent tax liabilities differently from all other contingent liabilities.

We also believe that the Asset Approach described in the Interpretation is too complex and would be difficult to apply. The level of precision and certainty it attempts to impose is simply not consistent with the often ambiguous US tax laws and regulations. The "asset" associated with a tax item materializes when a tax return containing the item is filed. The asset is cash, which the taxpayer now has more of if the tax item was a tax benefit. It is not clear how one could possibly not recognize this additional cash even if it were associated with an uncertain tax position. It is, however, clear that the current establishment of a liability should be considered to the extent any of the cash is expected to be returned to the IRS in the future as a result of the uncertain tax position not being sustained in full on audit. This would be consistent with the "Impairment Approach" mentioned in the Interpretation.

In accounting for income taxes, tax assets and liabilities are initially recorded in accordance with the tax returns, as filed. FAS 5 requires a valuation allowance for any deferred tax asset if it is more likely than not that any recorded assets will not be realized (not considering whether the underlying position will be allowed). FAS 5 also requires that a loss contingency reserve be accrued if: (a) it is probable the tax position will be challenged on audit, (b) it is probable that a liability will be incurred as a result of such challenge, and (c) the amount of the liability can be reasonably estimated. It

should be noted that this initial recording of taxes in accordance with the returns, together with the annual actualization of the tax accounts and the tax returns, as filed, is essential for proper income tax accounting. This reconciliation process would be complicated by the current proposal, as the tax effects of some transactions would be reported in periods subsequent to the tax return year. The FAS 5 method facilitates the proper accounting for income taxes and results in a better matching of income and tax expense.

## **Conclusion and Recommendations**

In summary, we do not believe the Interpretation will accomplish the Board's goals of consistency and increased comparability in the accounting for income taxes. If there is, in fact, a lack of consistency in the accounting for income taxes, that problem should be addressed via additional guidance and encouragement to consistently use the FAS 5 provisions to account for uncertain tax provisions. We do not believe the Interpretation should be adopted. If it is adopted, implementation would require significant time and effort due to the complexity of the proposed requirements. We would recommend that the effective date of the Interpretation be delayed until the first fiscal year beginning after December 15, 2006.

Thank you for your consideration of our opinions of the proposed Interpretation. Should you have any questions about our comments, please call me at 404-506-4302

Sincerely,

W. Dean Hudson Comptroller and Chief Accounting Officer