



TECO ENERGY, INC.
702 N. FRANKLIN ST.
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Ms. Suzanne Q. Bielstein
Director of Major Projects and Technical Activities
Financial Accounting Standards Board
401 Merritt 7
Norwalk, CT 06856-5116

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Dear Ms. Bielstein:

We appreciate the opportunity to provide formal comments to the Board and staff with respect to the Exposure Draft (ED) of the Proposed Interpretation, *Consolidation of Certain Special-Purpose Entities, an interpretation of ARB No. 51*. TECO Energy is committed to improving financial reporting disclosures to meet investors' needs and developing a robust accounting framework that better reflects the underlying values and drivers of entities' economic businesses.

Recently, a large number of stakeholders, including investors, analysts, and regulators, have expressed concern, and even outrage, over certain individuals' inappropriate use of special-purpose entities (SPEs) to distort financial performance. Furthermore, Section 402(c) of the Sarbanes-Oxley Act of 2002 requires the SEC to report to the President and Congressional committees on how SPEs are accounted for and presented in the financial statements of issuers. The ED provides timely guidance for this complex area of accounting where current rules were apparently subject to manipulation by "structuring" the legal form of a transaction, in an effort to overlook the economic substance and, risks and rewards of ownership.

We believe the ED provides for a more rigorous, principle-based framework which captures the risks and rewards of the underlying economic relationships of a structured transaction involving an SPE. However, we believe that certain aspects of the current ED should be modified in order to ensure reliable and transparent reporting of an entity's economic relationship with an SPE.

Definition of Terms

Substantive Operating Enterprise

We agree with the definition of a substantive operating enterprise in paragraph 7(a). However, we believe that additional clarification is appropriate. A substantive operating enterprise should refer to the consolidated entity, when such consolidation is in

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accordance with generally accepted accounting principles. For example, a joint-venture partnership that holds a 100% interest in an operating subsidiary may not have any employees or substantive operations as a stand-alone legal entity. We believe, in this situation, that the joint-venture should be considered a substantive operating enterprise for the purposes of paragraph 7(a).

Consolidation Based on Voting Interests

Holders of Variable Interests

Paragraph 9(b) establishes that if “assistance [to an SPE] from holders of variable interests” is necessary to enable an SPE to conduct its activities, then the equity investment must be considered a variable interest for the purposes of consolidation. We believe that “holders of variable interests” should preclude the nominal owner(s) who hold voting rights or similar rights as determined in paragraph 9(a).

Nominal owner(s) are inherently exposed to greater risk as a result of the investment in the SPE. They also may be economically motivated to engage in certain transactions or activities to increase the potential return on the equity investment. As a result, a nominal owner is more likely to enter into a variable interest, as defined in paragraph 7(b) and further enumerated in paragraphs 18-19, commensurate with the risk exposure of the equity investment.

For example, Owner A and Owner B jointly contribute capital in equal amounts to an SPE, TrustCo. Owner A makes an incremental investment in its own business to expand its transaction execution and settlement services. Owner B has pre-existing expertise in strategic marketing and market development. Owner A enters into a service agreement to provide management services related to transaction execution and settlements to TrustCo in return for a variable fee. At the same time, Owner B enters into a service agreement with TrustCo, for a market-based fee, to provide strategic advice and referrals.

Applying paragraph 9(b) as proposed, TrustCo is considered to not have sufficient equity to finance its own activities without relying on holders of variable interests. Paragraph 19 clarifies that the service contracts are considered to be variable interests because the holder has an investment at risk—the respective equity investments. In addition, Owner A is deemed to have an additional variable interest in the form of the incremental investment made to earn the fees provided by the service agreement. Furthermore, an analysis of the variable interests in accordance with paragraph 21 results in a conclusion that the risks associated with each variable interest is not significantly different.

Based on the analysis of the variable interests, the likely conclusion is that Owner A must consolidate TrustCo. Consolidation is required even though the economic interests of neither Owner A nor B is subject to any significant incremental risk exposure as a result of the service agreements. In our view, this conclusion does not reflect the economic

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nature of the equity interests. The equity interests govern the primary determination of the returns generated by TrustCo. We strongly believe that the underlying economic substance of a transaction involving an SPE should be reflected in the accounting treatment.

Frequency of Assessment

Paragraph 9(b) states that “the equity investment should be greater than or equal to the expected future losses of the SPE at all times during the SPE’s existence” (footnotes excluded). This statement implies that an entity must continually re-assess expected future losses at all times. Paragraph 11 further clarifies that this analysis must be made at each reporting date. We believe that it is not necessary to formally document and calculate an assessment of the sufficiency of the equity investment to finance activities of the SPE at each reporting date. A more appropriate analogy, in our view, is the guidance provided in SFAS No. 144, wherein a re-assessment is based on a change in events or circumstances that indicate that the initial assessment may have changed. We believe this approach will focus constituents on the economics of the relationship with an SPE.

Consolidation Based on Variable Interests

Frequency of Assessment

Similar to the same comment above, paragraph 13 requires an assessment by an entity at each reporting date. We believe that such frequency of formal documentation is not necessary nor relevant. We believe that using the events and circumstances model to trigger a re-assessment is a more appropriate balance of the cost vs. the benefit of providing relevant and reliable information to end-users of financial information.

Initial Measurement at Fair Value

We disagree with the requirement of paragraph 14 of the ED to measure the assets, liabilities, and noncontrolling interests of the SPE at fair value. The requirement to consolidate an SPE is based on an analysis of an entity’s exposure to risks and rewards, not on a change in ownership or decision-making authority, per se. Measuring an SPE at fair value may require a valuation approach similar to that used in business acquisitions, resulting in an artificial unrealized gain or loss.

Furthermore, we are deeply concerned, particularly with respect to structured transactions in the energy industry as a whole, about the flexibility offered to constituents by requiring that SPEs be consolidated at fair value. This aspect of the guidance would permit constituents to structure transactions to arbitrarily, selectively and subjectively, step-up the basis of assets and liabilities to fair value from historical cost. The provisions of SFAS 145 are sufficient to ensure that permanent decreases in value be appropriately reflected in the financial statements.



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As written, the ED would enable entities to effectively record significant portions of the balance sheet at fair value in a manner that could substantively distort the economic position of the entity. An adequate framework has yet to be established by the FASB with respect to a fair value accounting model for all asset, liability and equity items. Until adequate guidance is discussed and issued, we believe that consolidation at historical cost (i.e., carrying value) is the most reliable and relevant measure.

Interaction of SFAS No. 71

We believe that a scope exception should be created for entities subject to regulatory oversight due to the extensive and publicly available review process surrounding pre-existing transactions. We believe that the scope exception should be limited to pre-existing transactions based on the fact that regulated entities will likely modify the structures and methods used to appropriately diversify and share risk. Regulated entities generally utilize SPEs in various lease structures. The economic risks and rewards of these transactions are carefully considered in rate-making proceedings with public utility commissions. As a result of the open review process and the potential impact on regulated rates, established under previously issued rate cases, we believe that previously executed and existing SPEs, as of the date of adoption, should receive “grandfather status” by the Board. New transactions should be subject to the final guidance.

Effective Date

Issuance of final guidance in the fourth quarter will reduce the proposed transition period to three months. Entities will need to inventory all off-balance sheet relationships to determine if any single relationship is subject to the final guidance. Entities will be required to inventory all such relationships, analyze each in the context of the framework of the interpretation, and then identify and assess all of the variable interests in each SPE. Many entities will likely revise certain contractual arrangements in light of the new guidance—to reflect the intent of the original transaction in accordance with the modified accounting pronouncement. This process will greatly exceed the anticipated three-month implementation period. We believe that the effective date of the final interpretation should be for all existing and future SPEs as of the beginning of the first fiscal year or interim period beginning after December 15, 2003.

Conclusion

We strongly support the Board’s efforts to adopt an approach that is more principles oriented. At the same time, we are cautious of the potential for manipulation of the legal form of a transaction in order to achieve a short-term accounting result defiant of the economic substance. We believe that the issues above are fundamental to ensuring that investors and analysts receive accurate, clear and concise financial information.



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We will continue to support the FASB in the standard-setting process and we hope to identify areas of improvement in the future, that will provide clear, concise and accurate information to investors in a timely fashion.

Respectfully,

/s/ Shirley A. Myers

Vice President, Corporate Accounting and Tax
TECO Energy, Inc.