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**EDISON ELECTRIC
INSTITUTE**

DAVID K. OWENS
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August 28, 2002

Ms. Suzanne Q. Bielstein
Director of Major Projects and Technical Activities
Financial Accounting Standards Board
401 Merritt 7
Post Office Box 5116
Norwalk, CT 06856-5116

Subject: File Reference No. 1082-200

Dear Ms. Bielstein:

The Edison Electric Institute (EEI) appreciates the opportunity to respond to the Financial Accounting Standards Board's (FASB) Exposure Draft (ED) on the Proposed Interpretation, *Consolidation of Certain Special-Purpose Entities, an interpretation of ARB No. 51*.

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 agrees in principle with FASB's intention to issue an Interpretation of ARB No. 51 and wishes to commend the Board for its work on this project. The recent well-publicized accounting problems at some of the largest corporations in the United States have shown the need for transparent financial reporting and disclosure. FASB is to be applauded for taking a proactive role in the effort to improve the financial reporting and disclosure process. EEI does have a number of comments related to some of the provisions proposed in the Exposure Draft.

Consolidation Based on Variable Interests

Reconsideration at Each Reporting Date

The Exposure Draft requires an enterprise to make a formal determination at each financial statement reporting date as to whether it is the primary beneficiary of a SPE. However, footnote 5 of the Exposure Draft states that "(A)n entity is not required to conduct an exhaustive search for information about the actions of other unrelated parties that might cause the entity to become the primary beneficiary or to cease to be the primary beneficiary." EEI interprets this review to be similar to the requirement in paragraph 8 of SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, for a review to be made of long-lived assets "whenever events or changes in circumstances indicate that its carrying amount may not be recoverable."

Initial Measurement at Fair Value

Paragraph 14 of the Exposure Draft would require that the initial measurement of the assets, liabilities, and noncontrolling interests of the SPE be at fair value at the time the enterprise becomes the primary beneficiary. EEI disagrees with the proposed use of fair value as the measurement approach when an SPE is required to be consolidated. Absent a business acquisition or an arms length transaction which would necessitate the use of fair value, EEI believes a revaluation of an SPE to fair value could be misleading. Furthermore, a requirement to measure the SPE at fair value could have the unintended consequence of creating an artificial unrealized gain or loss.

ARB No. 51 states that the primary purpose of consolidation is for the result to reflect the group as if it were a single company. EEI believes the purpose of consolidation can best be accomplished by consolidating the SPE at its carrying value and that this methodology would be more consistent with Statement of Financial Accounting Concepts No. 2, *Qualitative Characteristics of Accounting Information*. An SPE's carrying value would already reflect any items that are required to be accounted for at fair value, along with asset values reduced for impairments, if any. Therefore, the consolidation of the SPE at its carrying value would reflect the entity as if it were one with the primary beneficiary and provides the most verifiable, reliable and relevant approach for a representationally faithful presentation.

Grandfathering Existing Transactions

EEl believes that the Board should consider grandfathering existing transactions that have been entered into prior to this proposed Interpretation. In certain instances in the past, the Board has adopted a practical approach to transition and imposed new requirements only on those transactions initiated (or transactions that were substantively revised) after the Board has adopted the change. Transactions that were entered into and finalized based on the then current generally accepted accounting principles would continue to be accounted for in a manner consistent with requirements that existed before the change. The Board's rationale in the past has been one of equity, and based on the underlying premise that transactions which have been previously entered into might have been structured differently if the new accounting provisions had been known at the time. Otherwise, companies that have complied with the existing accounting literature will incur additional costs to comply with the new interpretation, thus impacting the overall economics of the original transaction.

Entities Subject to the Requirements of SFAS No. 71

If the Board does not support a general grandfathering of existing transactions, EEl believes that the regulatory oversight that its members must go through provides a basis to scope out pre-existing transactions prior to the adoption of a new Interpretation. Many EEl members are still subject to cost-based regulation for most, if not all, of their business. EEl member companies for years have utilized SPEs for a variety of reasons (mainly leases) in which the related costs have been reflected and approved in rates charged to customers. Entities that are subject to rate regulation and the requirements of SFAS No. 71 have intense regulatory oversight by their respective regulators. SPE transactions involving regulated entities usually have undergone rigorous review by all parties involved in the ratemaking process. EEl believes that existing transactions that have undergone such a review should be given separate consideration and provided "grandfather status" by the Board. To do otherwise would produce unintended negative consequences to the companies and their customers. At a minimum, retroactive application of the proposed Interpretation may require additional regulatory review and costs to reflect the impact of complying with the new interpretation, thereby changing the economics in the rates charged to customers. This seems like an unnecessary cost for entities that are subjected to a cost based rate regulated environment.

For these reasons, EEI believes that existing transactions that have been previously reviewed through a regulatory oversight and intervention process should receive separate consideration and not be subjected to this proposed Interpretation. New transactions would have to comply with the final Interpretation.

Effective Date and Transition

The Exposure Draft contains some internal inconsistency as to whether the fiscal period for implementation refers to an annual or an interim period. The summary states, in part: "the provisions of this proposed Interpretation would be applied to those SPEs still existing as of the beginning of the first fiscal year or interim period beginning after March 15, 2003." However, paragraph 26 of the proposed Interpretation provides that it would apply "as of the first fiscal period beginning after March 15, 2003 to SPEs created before the issuance date of this Interpretation." Based on the language in the summary, EEI concludes that this would be April 1, 2003 for calendar year-end companies. If that is the Board's intent, paragraph 26 should be clarified.

However, given the FASB's goal of issuing a final Interpretation by December 2002, companies adopting this Interpretation would likely have only a three-month transition period. During this transition period, a company will have to evaluate the provisions of the final Interpretation, determine how each existing SPE relationship fits into the framework of the Interpretation, and identify and evaluate all of the variable interests in each existing SPE. Once these relevant facts are understood, a company will then have to evaluate what alternatives may be available for complying with the Interpretation. This process may involve, among other things, raising capital from new or existing investors, renegotiating existing contractual arrangements, obtaining new appraisals on long-lived assets, reviewing bond documents and indenture requirements, and making necessary internal accounting changes for SPEs that require consolidation. These steps will take time and companies will need the assistance of third party advisors in accomplishing them.

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Finally, three months is not adequate to complete the above noted items, particularly when, for calendar year-end companies like most EEI members, these three months fall during the year-end reporting period. EEI urges the FASB to consider a longer transition and suggests that the provisions of the Interpretation be applied to existing SPEs as of the beginning of the first fiscal year beginning after December 15, 2003.

EEI appreciates the opportunity to respond to the proposed ED and to provide input into the standards setting process. We hope that our comments will be helpful and look forward to working with the Board in the future.

Sincerely,

A handwritten signature in black ink that reads "David K. Owens". The signature is written in a cursive, flowing style.

David K. Owens

DKO/kk