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Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
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LETTER OF COMMENT NO. 187

Re: File Reference No. 1600-100

Dear Mr. Golden:

FirstEnergy Corp. appreciates the opportunity to respond to the Proposed Statement of Financial Accounting Standards, *"Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R)."*

FirstEnergy is a diversified energy services company with \$32 billion of assets and over \$12 billion in annual revenues. Our electric utility operating companies comprise the nation's fifth largest investor-owned electric system, serving 4.5 million electric customers within 36,100 square miles of Ohio, Pennsylvania and New Jersey. Its generation subsidiaries control more than 14,000 megawatts of capacity.

We support the Financial Accounting Standards Board (FASB) in its objective to develop accounting principles that enhance the transparency and relevance of financial statements. However, we have concerns about additional disclosures proposed in the Exposure Draft and offer the following comments for your consideration.

In general, we believe that the existing disclosure requirements of Statement of Financial Accounting Standards No. 5, *"Accounting for Contingencies,"* (SFAS No. 5) provide adequate information regarding potential loss contingencies to investors and other users of financial statements. The proposed Statement requires significantly more disclosure related to loss contingencies, many of which we believe do not provide meaningful information to investors and could ultimately harm the entities making the disclosures. In particular, we object to the proposed disclosures for remote loss contingencies that are expected to be settled within the near term and that could have a severe impact on the entity. The additional disclosure requirements of the proposed Statement are expected to require significant additional costs to comply and the potential benefits have yet to be proven. We believe extensive field testing will be required before the costs and benefits can be properly assessed.

We recommend that the FASB withdraw the proposed amendment for the reasons stated below. We are otherwise very concerned with the 2008 implementation date and request that implementation be delayed at least one year. The Exposure Draft was issued just two months ago and the FASB still needs to conduct field tests and public roundtable meetings. Companies need more time to put into place the processes that would be required in order to comply with the new disclosure requirements.

We offer the following responses to some of the specific questions posed in the Exposure Draft.

Question 1 – Will the proposed Statement meet the project's objective of providing enhanced disclosures about loss contingencies so that the benefits of those disclosures justify the incremental costs? Why or why not? What costs do you expect to incur if the Board were to issue the proposed Statement in its current form as a final Statement? How could the Board further reduce the costs of applying these requirements without significantly reducing the benefits?

The increased disclosure requirements would result in increased legal and audit fees. Some of the proposed disclosure requirements require forward looking information (e.g. disclosure of maximum possible loss, timing of the resolution, etc.). Obtaining this type of information would require more work by outside attorneys and result in increased legal fees. Auditing this type of information is also more difficult, requiring additional audit tests, and would undoubtedly result in higher audit fees. Depending on the nature of the contingencies, these increased fees could be significant. Disclosing this type of forward looking information also exposes companies to litigation when the actual results of the contingencies turn out to be different than what was disclosed in the financial statements.

Disclosure of prejudicial information (discussed further below) also could potentially increase the legal costs of companies on a long-term basis. This information could put companies at a disadvantage in their legal proceedings, which could result in larger ultimate settlements.

Question 2 – Do you agree with the Board's decision to include within the scope of this proposed Statement obligations that may result from withdrawal from a multiemployer plan for a portion of its unfunded benefit obligations, which are currently subject to the provisions of Statement 5? Why or why not?

No. We believe that the requirements of SFAS No. 5 adequately provide for accrual and disclosure of liabilities related to withdrawal from a multiemployer plan. Calculation of the unfunded benefit obligation is dependent on a variety of factors and must be obtained from the plan's administrators. This information may not be available on a timely basis in order to meet the enhanced disclosure requirements of the proposed Statement.

Question 3 – Should an entity be required to provide disclosures about loss contingencies, regardless of the likelihood of loss, if the resolution of the contingencies is expected to occur within one year of the date of the financial statements and the loss contingencies could have a severe impact upon the operations of the entity? Why or why not?

No. In instances where the likelihood of loss is remote, disclosure of those contingencies is misleading regardless of the potential timing of resolution and the potential severity of the impact on the entity's financial results. Litigation can be a long process and it is not always possible to estimate whether or not resolution will occur within one year. More work will also be required from counsel to estimate whether or not a contingency will have a severe impact on the entity's operations. The auditors will then have to perform additional tests to satisfy themselves that management's disclosures are proper under the circumstances. The additional work and expense is not justified for contingencies where the likelihood of loss is remote.

Question 4 – Paragraph 10 of Statement 5 requires entities to “give an estimate of the possible loss or range of loss or state that such an estimate cannot be made.” One of financial statement users’ most significant concerns about disclosures under Statement 5’s requirements is that the disclosures rarely include quantitative information. Rather, entities often state that the possible loss cannot be estimated. The Board decided to require entities to disclose the amount of the claim or assessment against the entity, or, if there is no claim or assessment amount, the entity’s best estimate of the maximum possible exposure to loss. Additionally, entities would be permitted, but not required, to disclose the possible loss or range of loss if they believe the amount of the claim or assessment is not representative of the entity’s actual exposure.

- a. Do you believe that this change would result in an improvement in the reporting of quantitative information about loss contingencies? Why or why not?**
- b. Do you believe that disclosing the possible loss or range of loss should be required, rather than optional, if an entity believes the amount of the claim or assessment or its best estimate of the maximum possible exposure to loss is not representative of the entity’s actual exposure? Why or why not?**
- c. If you disagree with the proposed requirements, what quantitative disclosures do you believe would best fulfill users’ needs for quantitative information and at the same time not reveal significant information that may be prejudicial to an entity’s position in a dispute?**

We do not believe the proposed changes would improve the reporting of quantitative information about loss contingencies. In fact, these disclosures would be misleading to investors and other readers of the financial statements. If an entity’s management is unable to estimate the possible loss or range of loss, arbitrarily requiring disclosure of the claim provides information having little to no value. At that point, the claim amount is not representative of the entity’s ultimate actual exposure to loss. Disclosing the possible loss or range of loss should not be a requirement but should continue to be disclosed under the criteria set forth in SFAS No. 5 (i.e. reasonably estimable).

Question 5 – If a loss contingency does not have a specific claim amount, will an entity be able to provide a reliable estimate of the maximum exposure to loss (as required by paragraph 7(a)) that is meaningful to users? Why or why not?

Regardless of whether or not a loss contingency has a specific claim amount, providing a reliable estimate of the maximum exposure to loss will be very difficult to do and will potentially be very misleading. Oftentimes, the ultimate settlement amount bears no resemblance to the specific claim amount. The maximum exposure to loss may not be known until well into the litigation process. In addition, disclosing the maximum exposure to loss could put a defendant at a disadvantage in legal proceedings. Current requirements under SFAS No. 5 provide appropriate guidance for disclosing the amount of contingent losses.

Question 6 – Financial statement users suggested that the Board require disclosure of settlement offers made between counterparties in a dispute. The Board decided not to require that disclosure because often those offers expire quickly and may not reflect the status of negotiations only a short time later. Should disclosure of the amount of settlement offers made by either party be required? Why or why not?

Disclosure of settlement offers should not be required. We agree that the status of offers can change quickly and disclosing these amounts could be very misleading to investors. In addition, disclosure of a settlement offer by defendants could put them at a disadvantage for the remainder of the legal proceedings related to the specific claim. If, at some point, it is probable the settlement offer will be accepted, the range of loss will be estimable and that amount or range will be disclosed under the provisions of SFAS No. 5.

Question 7 – Will the tabular reconciliation of recognized loss contingencies, provided on an aggregated basis, provide useful information about loss contingencies for assessing future cash flows and understanding changes in the amounts recognized in the financial statements? Why or why not?

As proposed, the tabular disclosure could provide information that would be harmful to companies relative to their legal proceedings. For example, the table would include increases and decreases resulting from changes in estimates of the amounts of loss contingencies. Even on an aggregated basis, this could send signals to legal adversaries regarding how management believes the cases will ultimately be resolved, thus potentially weakening their position and/or opening the company up to future litigation.

Question 8 – This proposed Statement includes a limited exemption from disclosing prejudicial information. Do you agree that such an exemption should be provided? Why or why not?

Yes. An exemption from disclosing prejudicial information should be included, but the proposed exemption does not go far enough. Aggregation of prejudicial information can still send the wrong signal, potentially posturing the entity at a disadvantage in the legal proceedings. If management deems information to be prejudicial, disclosures should not be required.

Question 9 – If you agree with providing a prejudicial exemption, do you agree with the two-step approach in paragraph 11? Why or why not? If not, what approach would you recommend and why?

No. See our response to Question 8.

Question 10 - The International Accounting Standards Board (IASB) continues to deliberate changes to IAS 37, *Provisions, Contingent Liabilities and Contingent Assets*, but has not yet reconsidered the disclosure requirements. The existing disclosure requirements of IAS 37 include a prejudicial exemption with language indicating that the circumstances under which that exemption may be exercised are expected to be *extremely rare*. This proposed Statement includes language indicating that the circumstances under which the prejudicial exemption may be exercised are expected to be *rare* (instead of *extremely rare*). Do you agree with the Board's decision and, if so, why? If not, what do you recommend as an alternative and why?

We do not agree that the prejudicial exemption would be either *rare* or *extremely rare*. We believe that companies will find that instances where prejudicial information could potentially have a harmful impact on the ultimate resolution of the contingency are more likely to be more frequent in nature than rare. As stated above, there should be no disclosures related to prejudicial information.

Question 11 – Do you agree with the description of *prejudicial information* as information whose “disclosure...could affect, to the entity's detriment, the outcome of the contingency itself”? If not, how would you describe or define *prejudicial information* and why?

Yes.

Question 12 – Do you believe it is operational for entities to disclose all of the proposed requirements for interim and annual reporting periods? Should the tabular reconciliation be required only annually? Why or why not?

Adoption of the proposed amendment, including any form of a tabular reconciliation, should be required only for annual reporting periods, with material changes from the annual disclosures included in the interim filings.

Question 13 – Do you believe other information about loss contingencies should be disclosed that would not be required by this proposed Statement? If so, what other information would you require?

No.

Question 14 – Do you believe it is operational for entities to implement the proposed Statement in fiscal years ending after December 15, 2008? Why or why not?

We do not believe the proposed effective date is reasonable given the significant increase in disclosures that will be required and the fact that a final Statement has not yet been issued. If the final Statement is issued in its current form, companies are going to experience significant administrative burden in order to gather the initial data required for the expanded disclosures. Implementation should be required no sooner than for fiscal years ending after December 15, 2009.

FirstEnergy sincerely appreciates the opportunity to comment on these proposed changes. We are very hopeful that our concerns are given serious consideration as the FASB concludes its deliberations.

Sincerely,

