



FPL Group, Inc., P.O. Box 14000, Juno Beach, Florida 33408-0420

VIA Email

August 7, 2008

Mr. Russell G. Golden
Technical Director
Financial Accounting Standards Board
401 Merritt 7, PO Box 5116
Norwalk, CT 06856-5116



LETTER OF COMMENT NO. 65

RE: Proposed FASB Statement- Disclosure of Certain Loss Contingencies, an amendment to FASB Statement 5 and 141(R)

File Reference: 1600-100

Dear Mr. Golden:

FPL Group, Inc. (“we” or “the Company”) appreciates the opportunity to comment on the Financial Accounting Standards Board’s (“FASB” or the “Board”) Exposure Draft, *Proposed Statement of Financial Accounting Standards- Disclosure of Certain Loss Contingencies, and amendment of FASB Statements No. 5 and 141(R)* (“the Proposed Standard”). FPL Group is a nationally known energy company, with over \$15 billion in revenues in 2007. Its rate-regulated subsidiary, Florida Power & Light Company, serves 4.5 million customer accounts in Florida. Additionally, FPL Energy, LLC, an FPL Group competitive energy subsidiary, is a leader in producing electricity from clean and renewable fuels in 27 states.

We recognize and commend the FASB for its attempt to address user concerns regarding the adequacy of loss contingency disclosures. Additionally, we acknowledge that loss contingency disclosures made by certain companies may appear, at times, to be “boilerplate,” vague, or do not provide timely warning of impending losses. However, we believe that the current disclosure requirements under FAS 5 are sufficient and should not be amended. FAS 5 represents a prime example of principles-based accounting literature, which is well understood by all relevant parties and provides the framework for reasonable and prudent disclosure requirements for loss contingencies.

As you know, certain loss contingencies, such as litigation and environmental exposures, are extremely sensitive disclosure items for most companies. Requiring significantly expanded disclosure of these items could have a detrimental impact on companies and their shareholders, while providing little or no value to current and potential investors. While we understand the need for consistent application of required disclosures for loss contingencies, this should not be achieved at the risk of jeopardizing a company’s

strategic position in resolving contingency issues. Therefore, we respectfully recommend that the Board withdraw the Proposed Standard and allow the current disclosure requirements of FAS 5 and FAS 141(R) to remain unchanged. The basis for our recommendation is discussed below.

Disclosure of Maximum Possible Exposure to Loss:

The Proposed Standard's requirement to disclose the maximum possible exposure to loss will most likely harm companies and their investors by providing highly speculative "worst-case" scenarios. More specifically:

1. *Estimates of maximum possible loss exposure are highly speculative:*
Due to the nature of litigation and significant uncertainties involved in certain types of loss contingencies, we do not believe that companies will be able to accurately estimate a maximum exposure to loss, nor should they be required to do so. In a legal action, a plaintiff may or may not specify a total damage amount. The actual damages of a case, if any, depend on numerous, non-consistent, subjective elements such as the jurisdiction in which the case is pending, the judge assigned to the case, the jury pool, the attorneys involved, the experts, whether the matter is settled out of court or goes to trial, appeals, etc. All of these factors can impact the ultimate outcome of the case. In many cases, even the plaintiff cannot provide a damage estimate until discovery is closed, all relevant facts are learned and damage experts have been consulted. In some cases, a plaintiff may never issue a demand, or such demand may change multiple times over the course of the case. Likewise, it is extremely rare for a case to ultimately resolve for a "maximum exposure" amount. Requiring a company to predict the outcome and loss exposure of certain types of loss contingencies, particularly litigation, is unrealistic and highly speculative. This requirement would provide no benefit to the users of the financial statement, and we believe that any prediction regarding the maximum exposure would be completely based on conjecture of the ultimate outcome of the lawsuit, rendering the information meaningless and unreliable.
2. *Disclosure of maximum possible loss exposure will confuse investors:*
Financial statement users would likely perceive estimates of maximum possible exposure to loss as being fact-based rather than what they truly are, a "crystal ball" estimate of a highly speculative nature. We believe this information about the potential maximum liability could be misconstrued by users to be more realistic than it actually is.
3. *Disclosing estimates of maximum possible exposure is detrimental to the resolution of a dispute:*
While the estimate of maximum exposure to loss will not benefit the financial statement users, it will almost always be highly detrimental to the issuer in resolving legal disputes. We emphatically believe that disclosing the estimate of maximum loss exposure will compromise the company's ability to seek reasonable resolutions of third party disputes, especially in disputes where no demand has been made. Essentially, this will provide improper access to the company's internal analysis and evaluation of the claim, inevitably driving up the value and hindering reasonable resolution. We question how this reconciles to management's fiduciary responsibility to its shareholders and accomplishes the Board's objectives to *protect* investors.

Additionally, plaintiff's demands can often be completely outrageous. It would be ridiculous to require companies to disclose these amounts, which could very well have no legal merit. These disclosures would provide no benefit to the users of the financial statement. In fact, the only parties that would benefit from these disclosures would be the plaintiffs and their lawyers, who would undoubtedly argue to juries that the disclosures were admissions by the company of the value of the claims.

Recommendation:

The Board should retain the current disclosure requirements of FAS 5 and FAS 141(R). Disclosure of the maximum exposure should be an option- not a requirement. This will allow management the appropriate discretion in disclosing the relevant and meaningful information regarding the loss contingency, without jeopardizing the company's position in resolving it.

Disclosure of Remote Contingencies:

Requiring the disclosure of loss contingencies, regardless of the likelihood of loss, would not be a benefit to the users of the financial statement, even if the resolution is expected to occur within one year and the contingency loss could have a severe impact on the company's operations. By disclosing contingencies which management deems to be remote, users of the financial statements, not management, are put in the position of assessing the likely outcome of the contingency. We believe management is in the best position to make this determination. Additionally, we believe most financial statements users would not be able to properly assess the disclosed "remote" situation. This could cause them to be confused and make poor investing decisions, simply because they do not fully understand the situation's technical disclosure. Instead of having too little information on loss contingencies, the user could be faced with having too much information in situations considered by management to be remote. We question whether excessive information would help or hinder the user's ability to make informed investing decisions.

Recommendation:

The current guidance in FAS 5 and FAS 141(R) should not be amended to require disclosure of loss contingencies where management considers the likelihood of loss to be "remote."

Prejudicial Exemption:

Paragraph 7 of the Proposed Standard allows for the aggregation of the disclosures when such disclosures would be prejudicial. Additionally, in "rare" instances when the aggregation of disclosure would be prejudicial, the entity may forego disclosing only the prejudicial information. However, it must disclose certain information about the contingency, such as the amount of the claim or assessment or the maximum exposure to loss, the description, its legal or contractual basis, current status, the anticipated timing of resolution, factors that are likely to impact the ultimate outcome, and the potential impact of the outcome.

While we recognize the Board's attempt to provide relief from disclosing prejudicial information, we believe that the proposed prejudicial exemption guidance in paragraph 11 of the Proposed Standard falls short of providing this relief. More specifically:

1. *Companies will be forced to disclose potentially harmful information:*
Even if the prejudicial exemption applies, companies will still be forced to disclose sensitive and fundamentally harmful information about their loss contingencies, including pending or threatened litigation, which would have a detrimental impact on resolving the claims or disputes. Therefore, we do not believe that the prejudicial exemption provides relief from disclosing harmful information.
2. *The prejudicial exemption will be applied by companies more often than expected by the Board:*
Although the Board expects that instances in which companies will apply the prejudicial exemption to be rare, we believe that those instances could, in fact, be very common. Due to the potentially harmful required disclosures in the Proposed Standard, companies will likely apply the prejudicial exemption to a large portion of its loss contingencies, especially litigation. Management is in the best position to determine whether the prejudicial exemption should apply. Therefore, we believe it is unreasonable for the Board to assign a “probability” to the likelihood that an entity will apply such exception.
3. *The required disclosures will interfere with attorney/client privilege:*
The Board is interfering with an entity’s ability to exercise proper attorney-client privilege by requiring the magnitude and type of disclosures in the Proposed Standard, even with the prejudicial exemption. Although we believe this is not the Board’s intention to interfere with this essential ability, it is a probable and unfortunate outcome of implementing the Proposed Standard’s disclosure guidance. The analysis of “...the factors that are likely to affect the ultimate outcome of the contingency along with their potential effect on the outcome” (paragraph 12 of the Proposed Standard) in the litigation context are always performed under the protections of an attorney-client relationship and under the work product privilege. Disclosing this analysis will result in the waiver of these most important privileges. These privileges are meant to encourage frank and candid discussions without the chilling affect of fear of disclosure. Under the new disclosure requirements, we question whether an entity’s legal counsel will become more cautious and guarded in providing advice and legal analysis to its client; for fear that this information will end up in the entity’s loss disclosure footnote.
4. *Communication with a company’s auditors could be negatively impacted:*
The required disclosures must be audited. In order to obtain sufficient evidence in performing audit procedures, an auditor may require access to privileged information, thereby posing waiver risks of attorney/client privilege. We question whether the requirements of the Proposed Standard would cause companies to be more deliberate about sharing sensitive legal information with the auditors, essentially reducing the amount and type of information given to the auditors. Although this is not a desirable outcome, companies may consider it necessary in order to avoid disclosing highly sensitive and detrimental information regarding its legal claims and disputes.
5. *Management will not be able to comply with its fiduciary responsibilities:*
The expanded disclosure requirements of the Proposed Statement make it very difficult for management to comply with its fiduciary responsibilities to its

shareholders, even when the prejudicial exemption applies. Management has the responsibility of protecting the assets of the company, which is often done by keeping certain information confidential. Additionally, it is common practice for companies to strictly prohibit its employees from sharing confidential information, which could be harmful to the company, with third parties. In fact, in many companies today, an employee would likely be fired if he/she disclosed the type of information required to be disclosed in the Proposed Standard to a third party. Basically, the expanded required disclosures are in direct conflict with companies' fiduciary responsibility to protect its assets.

Recommendation:

The Board should retain the current disclosure requirements of FAS 5 and FAS 141(R). Management should continue to provide meaningful information regarding loss contingencies to its investors in accordance with current guidance, while using the appropriate discretion to protect their legal rights.

Tabular Reconciliation:

Although a tabular reconciliation will provide the users of the financial statement with "quantitative" information regarding a company's loss contingencies, we do not believe it will provide meaningful information that will help the user to assess future cash flows. Each activity in the reconciliation would require a detailed and potentially complex qualitative description. We question (1) whether the users of the financial statements would have the ability to understand and comprehend the information presented and (2) whether the information would be useful to the users in making informed investing decisions. The process of gathering and reporting the information contained in the tabular reconciliation is very time consuming. We do not believe the cost of performing this process each reporting period is warranted if it adds no useful information to the users of the financial statement.

Recommendation:

The Board should retain the current disclosure requirements of FAS 5 and FAS 141(R). However, the tabular reconciliation should be an option, not a requirement, if the Board issues the Proposed Standard. Additionally, if such a tabular reconciliation is required, it should only be presented annually.

Effective Date:

The effective date of the Proposed Standard is December 31, 2008 for issuers that report on calendar year basis. This extremely short implementation time frame does not provide sufficient time for issuers to fully discuss, deliberate, and implement the Proposed Standard, which will dramatically affect the disclosures required for certain contingencies. We believe that FASB is likely to receive numerous comment letters against the proposed disclosure requirements, which may indicate to the Board that further deliberations are warranted. Additionally, companies will need ample time to implement and work with their legal counsel to assess its impact on the companies' financial statements, as well as the impact on legal positions. Therefore, it is unreasonable to expect calendar year companies to implement such a controversial standard by December 31, 2008.

We also believe that convergence with International Accounting Standard Board's ("IASB") proposal IAS 37, *Provisions, Contingent Liabilities and Contingent Assets Financial*, should be a factor in determining the appropriate effective date. See further discussion below regarding convergence with IAS 37.

Recommendation:

If the Board proceeds with this project, we believe that the effective date should be no earlier than January 1, 2010 (for calendar year end companies), or until convergence with IAS 37.

IASB's proposal IAS 37, Provisions, Contingent Liabilities and Contingent Assets:

In light of the fact that US GAAP is converging with International Financial Reports Standards ("IFRS"), US issuers will most likely be required to implement and apply IFRS at some point in the foreseeable future. Therefore, we believe the Proposed Standard should not be issued until the FASB and the IASB collectively agree on the revised loss contingency disclosure requirements. Otherwise, issuers and users will experience the unnecessary burden and cost of implementing additional changes in the future, which would ultimately end up further confusing financial statement users.

Recommendation:

The Board should not issue the Proposed Standard until the FASB and the IASB are in agreement on the disclosure guidance.

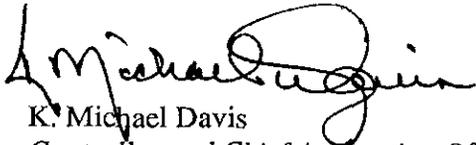
Summary:

We believe a vast majority of companies are appropriately applying the current guidance of FAS 5, and it remains a prime example of principles-based accounting. Its requirements and limitations are well understood by all relevant parties and working protocols have emerged over the years. We acknowledge that situations have occurred where companies recognized losses, but prior disclosures were inadequate in providing sufficient warning of the impending losses. However, we believe nondisclosure was likely not due to abuse of the disclosure requirements, but rather the inability of management to reasonably and accurately judge the ultimate outcome of a loss until its final resolution. This is especially true in legal disputes, where the outcome of the dispute can be significantly impacted by numerous factors right up until the dispute is resolved. In our opinion, management should continue to retain the ability to provide meaningful information regarding loss contingencies to its investors, while using the appropriate discretion to protect their legal rights. It is for this reason, and all of the other reasons stated above, that we respectfully urge the Board to withdraw the Proposed Standard and allow the disclosure requirements in FAS 5 and FAS 141(R) to remain unchanged.

Finally, we understand that the American Bar Association and its attorney-client privilege task force, the Association of Corporate Counsel, and the Edison Electric Institute are equally concerned about the requirements of the Proposed Standard and will submit comments. We share and support their concerns.

Thank you for the opportunity to comment on the Proposed Standard. Your consideration of our comments is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Michael Davis". The signature is fluid and cursive, with a large loop at the end.

K. Michael Davis
Controller and Chief Accounting Officer