



November 14, 2008

LETTER OF COMMENT NO. 57

Technical Director Financial Accounting Standards Board 401 Merrit 7 PO Box 5116 Norwalk, Connecticut 06856-5116

Re: Exposure Draft - Proposed Statement of Financial Accounting Standards - Amendments to

FASB Interpretation No. 46(R) File Reference No. 1620-100

Progress Energy, Inc. appreciates the opportunity to comment on the Financial Accounting Standards Board's ("the Board") above referenced exposure draft ("ED") to amend its Interpretation No. 46(R), Consolidation of Variable Interest Entities ("FIN 46(R)"). Progress Energy, headquartered in Raleigh, N.C., is a Fortune 250 energy company with more than 21,000 megawatts of generation capacity and \$9 billion in annual revenues. Our primary involvement with FIN 46(R) is through equity investments in or long-term power purchase contracts with entities that may be variable interest entities ("VIEs").

We support the most significant provisions of the ED. We agree with the Board's principles-based approach to consolidation and the requirement for the qualitative factor of control as a prerequisite to consolidation. The requirement for control provides a conceptual link to the well-established consolidation guidance of Accounting Research Bulletin No. 51, Consolidated Financial Statements ("ARB 51"), and will produce more meaningful financial reporting results because only VIEs that are controlled by the reporting entity will be reflected in its balance sheet and results of operations.

However, we do not agree with several important aspects of the ED. Most significantly, we believe the proposed requirements for ongoing assessment of an entity's status as a VIE and continuous reassessment of the primary beneficiary ("PB") are impractical and not operational. In addition, we believe that the proposed disclosures regarding VIEs should not be required unless the involvement with the VIE is significant to the reporting entity.

Finally, we believe early adoption of the ED should be permitted for reporting entities that are not affected by the Board's proposed standard on transfers of financial assets. Early adoption may be appropriate for companies that have consolidated VIEs or could be required to consolidate VIEs without regard to control primarily as a result of a quantitative analysis of the absorption of expected losses and residual returns.

We would be pleased to discuss any of our comments with the Board or its staff. Please direct your questions or comments to me at (919) 546-4686.

Sincerely,

W. Wayne Stallings

Manager, Accounting Policy & Research

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APPENDIX A

PROGRESS ENERGY, INC.'S DETAILED COMMENTS ON THE EXPOSURE DRAFT OF PROPOSED STATEMENT OF FINANCIAL ACCOUNTING STANDARDS – AMENDMENTS TO FASB INTERPRETATION NO. 46(R)

The following are our responses to the questions for which the Board requested comment.

1. Will the proposed Statement meet the project's objectives to improve financial reporting by enterprises involved with variable interest entities and to provide more relevant and reliable information to users of financial statements?

We believe that a consolidation model that includes consideration of control would be an improvement over the current requirements for consolidation of a VIE based solely on allocation of expected losses and expected residual returns. While a significant financial interest may in many cases be accompanied by control, this is not always the case. In particular, in the electric utilities industry, we may be required by legal or regulatory mandates to enter into contractual arrangements that are financially significant but that do not and cannot give us operational control over the entities that are counterparties to our contracts. We believe that consolidating such entities does not reflect the substance of the arrangements with them, and we believe that the ED effectively addresses this issue by citing control as a prerequisite to consolidation.

However, we believe the concerns identified in the remainder of this letter about the costs, benefits, clarity or operability of some of the proposed amendments need to be addressed. We agree with other respondents who question the appropriateness of retaining separate consolidation models for voting interest entities and VIEs. We believe the project's objectives would be better served by the issuance of a single consolidation model that incorporates the control concepts in ARB 51 as well as the "power to direct" concepts in the proposed paragraphs 14-14B.

Related to disclosures, as discussed in our response to Question 8, we believe a variable interest should be considered significant for disclosure only if the variable interest is significant to the reporting enterprise. Although there are other factors that need to be considered, including the significance of the interest to the VIE, disclosure should not be required if the variable interest is not significant to the reporting enterprise.

2. What costs do you expect to incur if the Board were to issue this 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 to users of financial statements?

If the ED is issued in its current form, Progress Energy expects to incur moderate incremental costs from preparing ongoing assessments of an entity's VIE and PB

status each reporting period, and from gathering the necessary information for the expanded disclosures in paragraphs 22-26. The costs would primarily be the time and effort of our personnel to communicate with VIE counterparties, prepare and document the ongoing assessments, and review conclusions with management and our external auditors. We believe that for some reporting entities with involvement with a significant number of VIEs, these incremental costs could be significant. If the Board incorporates the recommended changes in our responses to Questions 6 and 8 below, the costs of compliance with the ED would be significantly reduced as reporting entities would not be required to perform comprehensive assessments of an entity's VIE and PB status each reporting period, but rather whenever events or circumstances indicate that a change in the VIE or PB status may have occurred. In addition, disclosure information would only need to be obtained for variable interests that are significant to the reporting entity.

3. The Board decided to adopt a more principles-based approach to determine the primary beneficiary of a variable interest entity. Do you believe the principles in paragraphs 14-14B of Interpretation 46(R), as amended by this proposed Statement, are sufficiently clear and operational?

We agree with the Board's desire to move to a more principles-based approach for determining the PB of a VIE. In general, we support the two-step qualitative-based assessment proposed in paragraphs 14-14C. However, certain aspects of the principles in these paragraphs are not sufficiently clear and operational.

Paragraph 14A(a) requires that for an enterprise to have a controlling financial interest in a VIE, it must have the power to direct matters that most significantly impact the activities of the VIE. We believe that the Board should provide indicators of power to direct activities. These indicators should reflect various characteristics that suggest than an enterprise has the power to direct the matters that most significantly impact the activities of the VIE. Such indicators would be helpful to practitioners in evaluating the relative impacts of control in instances where more than one party has certain elements of control.

Paragraph 14B of the ED indicates that for an enterprise to have a controlling financial interest, it must have the right to receive benefits from the VIE or the obligation to absorb losses of the VIE, either of which could *potentially* be significant to the VIE. We believe that the probability of receiving benefits or absorbing losses from the VIE should be considered in a qualitative assessment. Excluding consideration of the likelihood of an event occurring could result in a conclusion that a minor variable interest could potentially be significant if the underlying assets in the VIE become worthless.

Finally, we believe that the concept of implicit financial responsibility to ensure a VIE operates as designed should be expanded to include indicators of such implicit

responsibility. In addition, we believe the probability of a reporting entity acting in a manner to assume implicit financial responsibly should be considered in the qualitative assessment of control.

4. The Board concluded that it would be helpful to provide examples of the application of the principles in this proposed Statement. Do you believe that the examples in Appendix A clearly indicate how the principles in paragraphs 14-14B of Interpretation 46(R), as amended by this proposed Statement, would be applied? If not, please articulate what additional information or guidance is necessary, considering the basis for the Board's conclusions.

We agree with and appreciate the Board's efforts to include numerous examples in appendix A to give practitioners a better understanding of the Board's intentions for application of the new principles in the ED. However, we note that the majority of the examples are directed toward VIEs whose activities primarily involve financial instruments. We note that examples 8 and 9 are scenarios of VIEs that involve operating businesses (a hotel and a retail distribution company). We believe that the Board should include additional examples of VIEs whose purposes and activities are other than primarily with financial instruments. We ask the Board to consider the suggested "example 10" provided by Northeast Utilities System in their comment letter on the ED dated October 29, 2008, as an illustration of the type of additional examples we suggest be included in a final statement.

We also believe the current examples are very simplistic and are written in a way that there is only one reasonable result of the qualitative assessments. We understand the Board is unable to provide examples that cover every possible fact pattern. However, we believe a more diverse set of examples would be more useful to practitioners. Specifically, examples illustrating (a) the determination of the PB, if any, when multiple interest holders each have the power to direct matters that impact different activities, and (b) a fact pattern that results in the conclusion that a quantitative analysis is necessary to determine the PB.

5. This proposed Statement retains the quantitative analysis for situations in which an enterprise cannot determine whether it is the primary beneficiary through the qualitative analysis in paragraph 14A of Interpretation 46(R), as amended by this proposed Statement. In Appendix A, each example either identifies a primary beneficiary or concludes that no primary beneficiary exists through a qualitative analysis. The Board may consider removing the quantitative analysis for determining whether an enterprise is the primary beneficiary of a variable interest entity. Do you believe the quantitative analysis is necessary based on the proposed amended guidance for determining the primary beneficiary? Do you believe that the quantitative analysis would be performed in many situations? Why or why not?

If the Board incorporates our suggestion to question 3 to include the probability of a reporting entity absorbing significant losses or receiving significant benefits from a VIE in the qualitative assessment (as opposed to potentially absorbing or receiving losses or benefits), we believe the quantitative analysis to determine the PB could be eliminated. If the concept of a reporting entity potentially receiving significant losses or benefits is retained in paragraph 14A(b), then we believe the quantitative analysis should be available in the event that the qualitative method fails to conclusively identify the primary beneficiary of a VIE.

6. For the reasons stated in paragraphs B6-B15 of this proposed Statement, the Board decided to require ongoing assessments to determine whether an entity is a variable interest entity and whether an enterprise is the beneficiary of a variable interest entity. Do you agree with the Board's decision to require ongoing assessments? If not, please provide reasons (conceptual or otherwise) as to why you disagree with these requirements considering all of the proposed amendments in this proposed Statement?

We disagree with the Board's conclusion that the benefits of these "ongoing assessments" will outweigh the significant costs and efforts required by the ED. We believe that in many circumstances the proposed reconsideration requirements would not be operational.

An approach that requires monitoring of ongoing operating performance to determine whether an entity is a VIE is inconsistent with the "by design" principle of FIN 46(R). The classification of an entity as a voting or variable interest entity is made at inception based upon the design of the entity and the contractual relationships between the variable interest holders. We believe that reassessments of that classification should be based upon the same considerations. Additionally, we do not believe that ongoing assessments of VIE status, particularly due to operating losses incurred after inception, is workable in practice. The continuous reassessment language in paragraph 2.a of the ED could require the holder of a variable interest to obtain updated financial, operational and fair value information regarding many entities in which it holds a variable interest on an ongoing basis to assess the sufficiency of the equity at risk. This information is likely not available in a timely manner or at a reasonable cost. The ability to obtain the necessary information is questionable when the variable interest initially was determined not to be significant, and the level of judgment required to determine when operating losses have changed the status of the entity or the relationships between the parties is so subjective as to be unworkable and will likely result in significant diversity in application.

We support continual monitoring of variable interests and potential variable interests to determine if any events or circumstances have changed that would trigger a full assessment of the VIE and PB status, and we believe that such continual monitoring is, in fact, a current requirement of FIN 46(R). Therefore, we request the Board to

clarify the requirement for ongoing assessments to indicate that such assessments are not intended to be performed automatically and comprehensively each reporting period, but rather only whenever events or circumstances indicate that a change in the VIE or the PB status may have occurred. Such events would include, but not be limited to, the current list of reconsideration events in paragraphs 7 and 15 of FIN 46(R).

Finally, we believe the Board's proposed requirement in paragraph 5 to subject a VIE to consolidation during a reporting period (not limited to the end of a reporting period) is impractical. We ask that the Board instead consider a practical expedient that the PB consolidate or deconsolidate a VIE at the end of a reporting period, when financial information for a VIE is most readily available.

7. Do you believe that any exceptions to this proposed Statement should be made for private or not-for-profit entities? If so, please articulate the conceptual basis and reasons for the exceptions.

We believe the proposed Statement should be applied by all entities; however, the board should consider comments expressed by private and not-for-profit entities in this regard.

8. Financial statement users indicated that the information disclosed in accordance with Interpretation 46(R) about an enterprise's involvement or involvements with variable interest entities and the associated risks are often insufficient and untimely. Do you believe the disclosure requirements in this proposed Statement address those concerns?

We disagree with the Board's assertion that the disclosure information currently required by FIN 46(R) is insufficient and untimely. Rather than providing better disclosures, we believe that several of the proposed disclosure requirements are impractical and are not justified conceptually or by the level of effort necessary to comply, and will unnecessarily increase the volume of disclosure without a corresponding increase in usefulness.

First, we strongly believe a variable interest should be considered significant for disclosure only if the interest is significant to the reporting enterprise. While we agree that the significance of a variable interest to an entity is critical to the determination of the entity's VIE and PB status, the variable interest may not be significant to the reporting entity for purposes of clear, concise and relevant financial statement disclosure. The costs of complying with the ED would be significantly reduced if disclosure is only required for variable interests that are significant to the reporting entity, regardless of whether or not the reporting entity is the PB. We believe that existing disclosure requirements for commitments, contingencies and guarantees are adequate to address exposure to losses or benefits from variable

interests that are not significant to the reporting entity.

We also strongly disagree with the proposed requirement in paragraph 22C(a) to disclose "whether a different assumption or judgment could have reasonably been made that would result in a different conclusion." Including information on judgments and assumptions that management did not ultimately use in its VIE and PB determinations is of no value to the user and adds unnecessary volume to the financial statement disclosures. In addition, the inclusion of such information presents practical dilemmas from an auditing perspective, and could lead to unnecessary "second-guessing" of well-reasoned conclusions made in good faith.

In addition, we disagree with the Board's proposal changes in paragraph 23 to require the disclosures for VIEs for which a reporting entity consolidates and holds a majority voting interest. We believe the existing disclosure requirements in paragraph 23 are adequate and have been applied consistently in practice. Disclosure of the proposed information for VIEs that would have been consolidated under ARB 51 is not useful to the user of the financial statements. Therefore, we believe the existing disclosure requirements of paragraph 23 should be retained. If the Board includes the proposed disclosure requirements of SFAS No. 141(R) in a final statement, it should clarify within paragraph 23 that those disclosures would only be required in the period in which consolidation of a VIE first occurs.

We also disagree with requiring the holder of a significant variable interest or sponsor of a VIE to disclose the carrying amount and classification in the enterprise's statement of financial position of the variable interest held. It is not clear why an interest in a VIE should be highlighted by separate disclosure while identical interests in voting interest entities are not.

9. Should the elements of a consolidated variable interest entity be required or permitted to be classified separately from other elements in an enterprise's financial statements?

We believe that there may be circumstances in which the elements of a consolidated VIE should be permitted to be classified separately from other elements in an enterprise's financial statements. For example, in order to clearly represent the enterprise's financial position, the restricted nature of a VIE's assets or the nonrecourse nature of its debt or other liabilities may be best portrayed through separate balance sheet line item presentation rather than in combination with the enterprise's other assets or debt.

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