



LETTER OF COMMENT NO. 237

August 8, 2008

Technical Director – File Reference No. 1600-1-100  
Financial Accounting Standards Board (FASB)  
401 Merritt 7  
PO Box 5116  
Norwalk, Connecticut 06856-5116

Submitted to: [director@fasb.org](mailto:director@fasb.org)

Re: Proposed Statement (Exposure Draft) of Financial Accounting Standards—  
Disclosure of Certain Loss Contingencies an amendment of FASB Statement 5 and  
141(R)

Dear FASB Board members and staff:

The American Gas Association (AGA), founded in 1918, represents 202 local energy companies that deliver natural gas throughout the United States. There are nearly 70 million residential, commercial and industrial natural gas customers in the U.S., of which 92 percent — more than 64 million customers — receive their gas from AGA members. Today, natural gas meets almost one-fourth of the United States' energy needs.

As publicly held companies subject to federal and state regulation, our members maintain accounting records and prepare financial statements and reports that conform to United States (US) Generally Accepted Accounting Principles (GAAP) as well as the requirements of various federal and state regulatory agencies. As a result, AGA and its member companies are directly impacted by the Exposure Draft currently out for comment. The Exposure Draft states that the amendments are intended to address concerns of investors and other users of financial information who believe the current Statement of Financial Accounting Standards No. 5, *Accounting for Loss Contingencies*, does not provide “adequate information to assist users of financial statements in assessing the likelihood, timing, and amount of future cash flows associated with loss contingencies.” The Exposure Draft expands the types of loss contingencies to be disclosed, requires disclosure of specific quantitative and qualitative information about loss contingencies, adds a tabular reconciliation of recognized loss contingencies and provides for an exemption from disclosing prejudicial information for certain contingencies in rare instances. The Exposure Draft raises concerns for the AGA and its member companies. We urge the FASB to withdraw the proposal in consideration of the accounting standards convergence of US GAAP with the International Financial Reporting Standards (IFRS) and the legal ramifications of the proposal discussed below.

FASB Statement 5 became effective in March 1975 and has served as a reasonable standard for over 30 years. The FASB Statement 5 disclosure requirements are adequate for investors. Currently, there is a high degree of importance placed on converging US GAAP with IFRS to create one set of global accounting standards. With the merging of the two sets of standards being actively pursued, and the current statement having been in existence for over 30 years, a question is raised as to why FASB Statement 5 needs to be amended now. We encourage the withdrawal of the Exposure Draft until US GAAP and IFRS are consolidated. Waiting for the convergence of US GAAP and IFRS will enhance consistency over the long-term without needlessly increasing the costs of compliance with this new standard that will be relatively short-lived.

We are concerned with the proposed increased disclosures concerning contingencies and the adverse effect the proposed statement will have on the relationship between the reporting companies and the legal community. First, we are specifically concerned about the required disclosure of information deemed protected by attorney-client privilege. The disclosures required by the Exposure Draft may violate this long-standing concept. An unintended outcome could cause attorneys to limit the information discussed with the client because of the risk associated with public disclosure. Second, we are concerned that confidential settlements are not addressed by the Exposure Draft. Confidential settlements are an integral part of the United States legal system and the Exposure Draft is unclear on their treatment. Disclosure of confidential settlements would likely lead to a contradiction between the legal system and the Exposure Draft's proposed requirements. We encourage the FASB to work with the American Bar Association and Association of Corporate Counsel to ensure that attorney-client privileged information is protected and to develop a workable solution as to the types of disclosures that would be required if the Exposure Draft is not withdrawn.

We have several concerns related to the proposed qualitative and quantitative disclosure requirements. First, the new requirements would likely supply plaintiffs with an understanding of a company's legal strategies and expected losses. Second, determining a maximum exposure amount during the early stages of litigation, especially if there is no specific amount claimed, is difficult, and inherently provides prejudicial information. In the early stages of a legal case, much of this information is speculative. Third, complying with the requirements will likely require an extensive amount of disclosure based on multiple, unpredictable variables such as case law, court of jurisdiction, motives of plaintiffs, etc. Because attorneys must abide by their ethical requirements, they may be unable to assist clients with quantitative estimates required by the proposed disclosures. This places undue burden on the company's management who typically do not have enough expertise to effectively establish these estimates. Fourth, the requirement to update and disclose these items on a quarterly basis will be burdensome and costly to companies and their shareholders. Attorneys will spend a considerable amount of time updating the quarterly disclosure requirements on each case instead of working on case matters.

The quantitative disclosures would present another difficulty. Not only could the estimated losses change over time, but also the final outcome could be significantly different than originally estimated. A plaintiff could easily determine the company's expected losses related to the lawsuit through a review of these disclosures. An investor or other financial statement user

would be at a disadvantage in attempting to review a large amount of information which would contain numerous variables as well as a high level of speculation. Also, the Exposure Draft does not specifically address whether a company is accorded safe harbor protection based on the estimates required in the proposed disclosures. Collaboration with the American Bar Association and the Association of Corporate Council would help to ensure that companies and their investors are not harmed financially in disclosing possible litigation due to over-disclosure of confidential information.

The Exposure Draft also requires a tabular reconciliation of recognized loss contingencies. The proposed tabular reconciliation calls for providing aggregate totals for loss contingencies at the beginning and end of the reporting period. The Exposure Draft also proposes that a qualitative description of the significant activity be disclosed as well as the line items in the Statement of Financial Position where the recognized loss contingencies are included. We believe this information would supply plaintiffs with the potential range of loss a company is willing to accept regardless of the merits of the case, thus resulting in an unintended consequence of increasing the company's exposure to loss. If a tabular reconciliation is required, we propose an annual presentation. This would enable the users to have a better understanding of the company's total contingencies and protect the confidential nature of certain litigation.

The AGA and its member companies respectfully request the FASB to withdraw the Exposure Draft for SFAS No. 5 from consideration. However, if the FASB determines to move ahead with this Exposure Draft in spite of the objections of industry groups such as the AGA, we hope the FASB will reconsider the following elements:

1. The FASB should work with the American Bar Association and the Association of Corporate Counsel to understand the legal ramifications of the required disclosures before the Exposure Draft is finalized. The FASB should ensure the disclosure requirements satisfy the needs of financial statement users without disclosing information protected by attorney-client privilege. Collaboration with those two associations should ensure companies are not harmed by providing contingency disclosures.
2. The FASB should reconsider the transition date of December 31, 2008. The time between finalizing the Exposure Draft and the effective transition date does not provide companies with enough time to properly prepare the necessary disclosures, which would likely be extensive. Preparing the required disclosures would require companies to work through the client-attorney issues in a short amount of time. We believe a transition date of December 31, 2009 is more reasonable.
3. The FASB should require the tabular presentation be prepared on an annual basis.

In conclusion, the AGA and its member companies strongly urge the FASB to reconsider implementing the Exposure Draft due to the pending convergence of US GAAP and IFRS to one set global accounting standards and the legal issues discussed above. Further, we also believe that the FASB should not consider short-lived projects of this nature at this time due to the expected convergence of US GAAP and IFRS, but rather work towards a global permanent solution for accounting standards.

Thank you for taking the time to consider our concerns. We appreciate the opportunity to speak on these matters.

Sincerely,

[s] Roy R. Centrella

Roy R. Centrella  
Chairman, American Gas Association, Accounting Advisory Council  
Vice President, Southwest Gas Corporation