

September 20, 2010

Russell G. Golden, Technical Director Financial Accounting Standards Board File Reference No. 1840-100 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

**Re:** Accounting Standards Update—Contingencies (Topic 450)

The American Gas Association (AGA) is pleased to submit its comments concerning the Financial Accounting Standards Board (FASB) Proposed Accounting Standards Update—*Contingencies* (*Topic 450*) (the ED). The American Gas Association, founded in 1918, represents 202 local energy companies that deliver clean natural gas throughout the United States. There are more than 70 million residential, commercial and industrial natural gas customers in the United States, of which almost 92 percent — more than 65 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies and industry associates. Today, natural gas provides almost one-fourth of the United States' energy needs.

AGA appreciates your consideration of our previous comments on this topic, which were provided in response to the June 5, 2008 Exposure Draft, *Disclosure of Certain Loss Contingencies*. We believe that the FASB has addressed some of our initial concerns and that the ED represents an improvement over the previous proposal. However, there are still areas in the revised ED for which we have concerns. In particular, we believe that the quarterly tabular reconciliation of recognized (accrued) loss contingencies is inconsistent with other GAAP and could lead to the disclosure of prejudicial information, the proposed effective date may not be workable and some of the proposed disclosures will be highly subjective and potentially misleading. Finally, we believe there should be additional clarification regarding the scope.

**Question 1:** Are the proposed disclosures operational? If not, please explain why.

We believe the proposed disclosures present several operational challenges. As more fully discussed below, we believe that the proposed tabular reconciliation of recognized (accrued) loss contingencies will require companies to present prejudicial information in the financial statements. Further, movements in specific case reserves may be highlighted. We believe this information will compromise a company's litigation position and settlement discussions, which could harm the interests of shareholders. However, if the FASB concludes that a tabular reconciliation of recognized (accrued) loss contingencies is required, we recommend that the FASB align the tabular disclosure requirements with those found in ASC 740, *Income Taxes*, related to uncertain tax positions, which require these quantitative disclosures on an annual basis.

We also believe the enhanced disclosures proposed for remote loss contingencies and contingencies that are at least reasonably possible would provide potentially misleading information for a financial statement user. During the early stages of asserted litigation or other loss contingencies, information is often limited, incomplete or potentially manipulated to achieve a desired outcome. Further, some of the proposed disclosures are significantly judgmental and will be difficult to implement. In particular, the proposed inclusion of disclosures surrounding unasserted claims based on the existence of studies in reputable scientific journals (or other credible sources that other entities in our industry review) requires significant judgment and could lead to inconsistent application absent further guidance. Additionally, the testimony of expert witnesses may be speculative and without merit, and the proposed disclosures related to this may not provide a fair representation of the amounts that will be claimed by plaintiffs. Especially if there are multiple expert witnesses, these disclosures may either be misinterpreted or not useful to users. Finally, in many circumstances, loss contingencies are resolved with no material impact to a company. For these reasons, we believe disclosure of this information could be misleading for the financial statement user. Additionally, these requirements will likely lead to more voluminous disclosures that are ultimately not meaningful for financial statement users.

Finally, we are concerned about the requirement to assess materiality of remote loss contingencies without considering the possibility of recoveries, particularly when companies have adequate insurance programs for which recovery is probable. We believe this requirement ignores the economic substance of these programs and would lead to the disclosure of information that could have no material impact to a company. It could also make it more difficult for a financial statement user to identify those remote loss contingencies and contingencies that are at least reasonably possible that could truly have a material impact to the company. These situations could also lead to the disclosure of misleading information to the financial statement user.

Question 3: The June 2008 FASB Exposure Draft, Disclosure of Certain Loss Contingencies, had proposed certain disclosures based on management's predictions about a contingency's resolution. The amendments in this proposed Update would eliminate those disclosure requirements such as estimating when a loss contingency would be resolved and the entity's maximum exposure to loss. Do you agree that an explicit exemption from disclosing information that is "prejudicial" to the reporting entity is not necessary because the amendments in this proposed Update would:

- a. Not require any new disclosures based on management's predictions about a contingency's resolution.
- b. Generally focus on information that is publicly available.
- c. Relate to amount already accrued in the financial statements.
- d. Permit information to be presented on an aggregated basis with other similar loss contingencies? If not, please explain why.

We believe that the tabular reconciliation, which is required to be disaggregated by class of contingency, could lead to disclosure of prejudicial information if there are no other or few contingencies in the same class. We appreciate the Board's efforts to alleviate the concerns regarding the disclosure of prejudicial information by shifting the focus of the disclosures from predictions about a contingency's resolution to disclosure of known facts and publicly available information. However, we still believe the proposed ASU will result in the disclosure of prejudicial information that could adversely affect the outcome of pending litigation. While the ability to aggregate contingencies being disclosed may mitigate this risk for large companies with multiple cases pending, it will not provide significant relief to many of our constituents who have significant lower volume of legal activity on an ongoing basis. For companies that do not have a significant amount of open claims against them and where the changes from one period to the next are minimal, plaintiffs will be able to easily determine which disclosures relate to their cases. Many companies may only have one such claim pending and therefore it will be readily identifiable. The ability of plaintiffs to gain insight into management's position on their case will significantly hinder a company's ability to satisfactorily resolve this pending litigation, which will harm the interest of shareholders. Accordingly, we believe the exemption from disclosing prejudicial information is still needed and should be included in the final ASU. Disclosure of the amount of an accrual could result in a waiver of the attorney client privilege or work product protection. The amount is typically predicated on advice from counsel. Further, disclosure gives tactical advantage to claimants in negotiation. Disclosing the amount of an accrual will effectively create a "floor" for settlements of claims that may have otherwise been resolved more favorable for the company.

## **Question 4:** Is the proposed effective date operational? If not, please explain why.

Given that final guidance will not be available until the end of the third quarter, we do not believe the proposed effective date is feasible. The proposed ASU will require companies to perform significant analysis to determine the appropriate levels of aggregation, what should be considered individually material, and whether unasserted claims that meet the new disclosure criteria exist. This analysis will require significant interaction with legal counsel, both internal and external, which will further lengthen the time it will take to complete. Additionally, it will be difficult to determine how companies will be able to get auditors comfortable with the new disclosures without breaching attorney-client privilege, and significant revisions to the content of legal letters will be necessary as the current level of information currently provided by legal counsel to the external auditors will likely not provide adequate comfort over the additional disclosures. Accordingly, more time will be required to adequately transition to this new ASU.

**Question 5:** Do you believe that the proposed disclosures will enhance and improve the information provided to financial statement users about the nature, potential magnitude, and potential timing (if known) of loss contingencies?

We are not convinced that the disclosure modifications contemplated in the Exposure Draft will provide users with more relevant information than is currently provided under existing standards. As noted above, we have a substantial fear that the ASU will require the disclosure of information that is confidential or otherwise subject to attorney-client privilege, which will then be used by plaintiffs in legal proceedings to determine a company's view of its cases and case strategies. We also believe that the subjective nature of these disclosures and the potential for companies to interpret the aggregation criteria differently will hinder comparability in the absence of additional guidance and could render the financial statements less meaningful.

Finally, it appears as though the scope of the ASU is broad and will incorporate areas that may not have been intended to be included. For example, we do not believe the allowance for doubtful accounts was intended to be included in the scope of this ASU, but it could be interpreted as though it is. Accordingly, we believe additional clarification regarding what contingencies will fall under the disclosure requirements of this ASU is needed.

## Conclusion

We appreciate your consideration of this topic and our related comments. We understand the need for transparent disclosures related to loss contingencies, but we believe some of the proposals included in the ASU will be detrimental to companies in our industry without providing additional useful information to users of our financial statements. We hope our questions and concerns will be addressed within the final ASU, and we can provide additional clarification regarding our comments as needed.

Very truly yours,

Jose Simon [s]

Jose Simon, Vice President and Controller, Piedmont Natural Gas Chairman of the American Gas Association Accounting Advisory Council