

Letter of Comment No: 33 File Reference: 1099-001

July 30, 2004

Mr. Lawrence Smith
Director – Technical Application & Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Subject: File Reference No. 1099-001

Dear Mr. Smith

Tampa Electric Company (the Company) thanks the Financial Accounting Standards Board (the Board) for this opportunity to present our comments on the Exposure Draft (ED) of a Proposed Interpretation, Accounting for Conditional Asset Retirement Obligations an interpretation of FASB Statement No. 143.

The Board invited individuals and organizations to send written comments on all matters in the proposed Interpretation and identified two issues.

Issue 1: The Board concluded that the uncertainty surrounding the timing and method of settlement should not affect whether the fair value of a liability for a conditional asset retirement obligation would be recognized but rather, should be factored into the measurement of the liability. Do you agree with the Board's conclusion? If not, please provide your alternative view and the basis for it.

The Company agrees with the general conclusion of the Board. Paragraph A17 of Statement 143 provides that uncertainty regarding the amount and timing of cash flows of a legal obligation does not exempt a company from recognizing a conditional ARO. However, the Company disagrees with the ED's interpretation (paragraphs B9, B10 and B11) of Concepts Statement 6 statement of the characteristics of a liability.

Concept Statement 6 states that a liability has three essential characteristics:

- 1. The first characteristic of a liability is that an entity has a present duty or responsibility to one or more other entities that entails settlement by probable future transfer or use of assets at a specified or determinable date, on occurrence of a specified event, or on demand.
- 2. The second characteristic of a liability is that the duty or responsibility obligates a particular entity, leaving it little or no discretion to avoid the future sacrifice.
- 3. The third characteristic of a liability is that the transaction or other event obligating the entity has already happened.

ED paragraph B9 asserts "If an entity is required by current laws, regulations, or contracts to settle an asset retirement obligation upon retirement of the asset, that requirement imposes a present duty." The Company agrees with this assertion. However, the ED's Illustrative Examples 1 and 2 apply this assertion to legal requirements that are not a present duty – the removal and disposal of assets. Since the removal and disposal of the example assets can be indefinitely deferred, there is no present duty and no probable future transfer or use of assets (fails liability characteristic 1.)

ED paragraph B10 asserts "The ability of an entity to indefinitely defer settlement of an asset retirement obligation does not provide the entity discretion to avoid the future sacrifice, nor does it relieve the entity of the obligation. Implicit in this conclusion is the belief that no tangible asset will last forever and, accordingly, the asset retirement activities will eventually be performed." The Company disagrees with this assertion. Entities have a great deal of discretion in the decision of removal and disposal of assets requiring special handling. There is no legal obligation to remove and dispose of these assets. Entities can indefinitely mothball, abandon in place, or store on site assets requiring special handling (fails liability characteristic 2.)

ED paragraph B11 asserts 'the obligating event occurs when there is a duty or responsibility and the existence of the condition relating to the duty or responsibility." It also asserts "Only present obligations are liabilities under the definition..." The Company agrees with these assertions. However, since there are no legal obligations to remove and dispose of assets requiring special handling, there are no present obligations. The obligations described in Examples 1 and 2 are future obligations. The obligating event is the removal and/or the disposal of these assets (fails liability characteristic 3.)

The company offers the following discussion on the ED illustrative examples.

## ED ILLUSTRATIVE EXAMPLES - RECOGNITION PROVISIONS

**Example 1** – An entity acquires a factory that contains asbestos.

In paragraph A2 this example recognizes that "regulations are in place that require the entity to handle and dispose of the asbestos in a special manner if the factory undergoes major renovation or is demolished. Otherwise, the entity is not required to remove the asbestos from the factory. The entity has several options to retire the factory in the future including demolishing, selling, or abandoning it." In paragraph A3 the ED asserts "Although performance of the asset retirement activity is conditional on the factory's undergoing major renovation or demolishment, existing regulations create a duty or responsibility for the entity to remove and dispose of asbestos in a special manner, and the obligating event occurs when the entity acquires the factory. Although the entity may decide to abandon the factory and thereby defer settlement of the obligation for the foreseeable future, the ability to abandon the factory and thereby defer settlement does not relieve the entity of the obligation. The asbestos will eventually need to be removed and disposed of in a special manner, since no building will last forever."

The Company disagrees that an asset retirement obligation should be recognized in this example. The Company knows of no legal requirement to remove and dispose of asbestos when a building is retired. While there are standards for asbestos removal/demolition currently in effect, there is no requirement to remove and dispose of asbestos currently in effect. The Company believes that the obligating event in the example is the actual removal and disposal of asbestos so the obligating event has not already happened.

Prior to that event there is no present duty or responsibility obligating the entity that entails settlement by probable future transfer or use of assets at a specified or determinable date, on occurrence of a specified event, or on demand. Entities have a great deal of discretion to avoid the obligating event indefinitely by mothballing or abandoning the building. Entities may also refurbish the building without disturbing the asbestos and thus not trigger the obligation. The ED seems to be expanding the definition of legal obligations and liabilities beyond the scope of Statement 143 and Concept Statement 6. The Company does not believe this is appropriate.

Example 2 – A telecommunications entity owns and operates a communication network that utilizes wood poles that are treated with certain chemicals.

In paragraph A4 this example recognizes that "There is no legal requirement to remove the poles from the ground...existing legislation requires special disposal procedures for the poles." In paragraph A3 the ED asserts "Although performance of the asset retirement activity is conditional on removing the poles from the ground, existing legislation creates a duty or responsibility for the entity to dispose of the poles in accordance with special procedures, and the obligating event occurs when the entity installs the poles in the ground. Although the entity may decide not to remove the poles from the ground and thereby defer settlement of the obligation for the foreseeable future, the ability to defer settlement does not relieve the entity of the obligation. The poles will eventually need to be removed and disposed of with special procedures, since the poles will not last forever. Therefore, an asset retirement obligation should be recognized when the entity installs the poles in the ground."

The Company knows of no legal requirement to remove and dispose of poles. While there are standards for disposal of treated poles currently in effect, there is no requirement to remove and dispose of treated poles currently in effect. The Company believes that the obligating event in the example is shipment of the pole to a designated landfill so the obligating event has not already happened. Prior to that event there is no present duty or responsibility obligating the entity that entails settlement by probable future transfer or use of assets at a specified or determinable date, on occurrence of a specified event, or on demand. Entities have a great deal of discretion to avoid the obligating event indefinitely by donation, sale or storage. The ED seems to be expanding the definition of legal obligations and liabilities beyond the scope of Statement 143 and Concept Statement 6. The Company does not believe this is appropriate.

Issue 2: Are there instances where law or regulation obligates an entity to perform retirement activities but allows the entity to permanently avoid settling the obligation? If so, please provide specific examples.

The Company is not aware of any such permanent avoidance. As discussed above, removal and disposal requirements described in the examples can be indefinitely deferred because there is no legal obligation to remove and dispose of these assets.

Respectfully submitted,

Richard A. Walker Director Plant Accounting Tampa Electric Company 813 228-4798 rawalker@tecoenergy.com