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Letter of Comment No: 50 File Reference: EITF03-1A



October 25, 2004

Director, Technical Application and Implementation Activities Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

RE: Proposed FSP EITF Issue 03-1-a, Implementation Guidance for the Application of Paragraph 16 of EITF Issue No. 03-1, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments"

The Edison Electric Institute (EEI) appreciates the opportunity to comment on *Proposed FSP EITF Issue 03-1-a*, which provides guidance for the application of paragraph 16 of EITF Issue 03-1 to debt securities.

EEI is the association of the United States investor owned electric utilities and industry affiliates and associates worldwide. Its U.S. members serve over 90 percent of all customers served by the investor-owned segment of the industry. They generate approximately three-quarters of all the electricity generated by electric utilities in the country and serve approximately 70 percent of all ultimate customers in the nation. EEI members own a majority of the transmission and generation facilities in the nation.

EEI requests that the FASB provide implementation guidance for the application of EITF 03-1 that allows for a principles-based evaluation of other-than-temporary impairment based on the facts and circumstances of each investment rather than the form of the investment relationship. In addition to comments on the specific issues below, we believe that all companies should be able to apply all of the evaluation criteria as set forth in EITF 03-1 to determine whether impairments that are more than minor should be recognized as other-than-temporary.

Issue 1: Do you believe that financial statement preparers and auditors will be able to apply the notion of "minor impairment" without any additional guidance from the FASB? If not, do you believe that the Board should specify a numerical rule or threshold and, if so, what would that rule or threshold be?

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EEI believes that minor impairments should be deemed temporary and that preparers and auditors will not be able to agree as to the level of impairment that would be considered minor without additional guidance from the FASB. EEI believes that 10% changes in value represent normal short-term fluctuations for which an analysis of other-than-temporary impairment of debt securities should not be necessary. Excluding investments with such minor impairments would reduce the occurrence of unnecessary impairment reviews for changes in an investment's value that merely reflect normal volatility and allow companies to focus on evaluating those securities for which a recovery is less likely.

Issue 2. Do you support the Board's conclusion to limit the notion of "minor impairments" to debt securities analyzed for impairment under paragraph 16 that are impaired because of interest rate and/or sector spread increases? If not, why?

EEI believes that the notion of "minor impairment" should be extended to all debt and equity securities for which there can be a range of normal volatility in the market price. In fact, historical returns for equity securities suggest that a numerical threshold of 10% conservatively represents a normal short-term fluctuation. The average yearly return on US large cap stocks from 1926 to 2003 is 12.6%, with a standard deviation of 22.1%. Based on this data, a typical large cap stock could be expected to increase in value by 12.6% in any given year and with annual returns falling within a range of between -9.5% and +34.7% in two out of any three years. Therefore, we believe that a 10% impairment of equity securities should be considered minor for purposes of evaluating other-than-temporary impairments.

In addition to the comments above, EEI again requests that the FASB provide additional guidance that would emphasize a principles-based approach for evaluating impairments and eliminate the strict interpretation of the "ability" and "intent" criteria that has been adopted by certain accounting firms. As we have discussed in previous EEI comment letters and in our meeting with your Staff on September 28, 2004, a strict interpretation of the language in EITF 03-1 has led to the conclusion that due to the third party management of assets held in trust, in our case nuclear decommissioning trusts, companies are unable to satisfy the "ability" criteria. This interpretation prohibits companies with these investments from further evaluating other-than-temporary impairments under the duration, severity and intent/ability criteria in EITF 03-1. Instead, it has the unintended consequence of resulting in the application of lower-of-cost-or-market (LOCOM) accounting in the income statement, which was rejected by the FASB in its deliberations on FAS No. 115 (see paragraph 27. b. of that standard).

EEI believes that it is the combination of all factors: ability, intent, duration of impairment, severity of impairment, and forecasted recovery, that should be considered when determining whether a decline in value of an investment is other than temporary. EEI requests that the guidance clarify that sufficient control does not necessitate day-to-day management over the investments in order to demonstrate ability. An example, such as the one proposed below, would assist companies in making this determination.

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Example: A Company is required to maintain a pool of investments to provide future funding for a particular obligation. Due to regulatory restrictions, these investments are held in an external trust. The Company has oversight responsibility of the manager's performance and may establish general investment guidelines but has no ability to direct the operations of the fund (i.e. daily purchase and sales of securities). Funds are not expected to be withdrawn from the trust in the near-term as expenditures associated with satisfying the obligation are not expected to occur for several years. The Company can obtain from the asset manager the necessary information to evaluate the severity and duration of the impairment and determine a forecasted recovery period. In applying the recognition criteria in paragraphs 10-16, the limitation on the Company's ability to purchase or sell individual securities would not prohibit the application of all of the recognition criteria as the Company does not expect to sell impaired securities during the forecasted recovery period for liquidity reasons and otherwise has all information needed to evaluate the securities for impairment. In this example the Company can demonstrate its ability to hold securities to recover a temporary investment.

EEI is also concerned with a departure from a principles-based approach relating to a strict interpretation of the following guidance in EITF 03-1: "Although not presumptive, a pattern of selling investments prior to the forecasted recovery of fair value may call into question the investor's intent." We understand that some accounting firms have concluded that an entire portfolio is tainted with the sale of a single security that was previously believed to be held until recovery of fair value. EEI does not believe that de minimus sales and or partial sales made in response to changing market conditions or for managing the taxes paid by the trust should determine the accounting for the remaining investments. The interpretation that any sale taints the portfolio precludes an appropriate analysis of other-than-temporary impairments and results in LOCOM accounting in the income statement for all investments. In addition, we do not believe that this strict interpretation is consistent with the requirement to evaluate impairments on a security-by-security basis.

As stated in our letter dated September 29, 2004, in addition to allowing the FASB more time to address these issues, EEI recommends an effective date no earlier than March 15, 2005 to provide adequate time for necessary system and procedural changes as well as to address any Sarbanes-Oxley Section 404 requirements.

We appreciate the opportunity to share our views regarding the guidance.

Sincerely,

/S/

David K. Owens Executive Vice President Business Operations

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