## Exelon.

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

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LETTER OF COMMENT NO. 134

Exelon Corporation appreciates the opportunity to comment on the Financial Accounting Standards Board's ("FASB" or the "Board") Exposure Draft of Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R) (the "Exposure Draft").

We support the Board's objective of providing users of financial statements sufficient information to assess the likelihood, timing and amounts of cash flows associated with loss contingencies. Exelon seeks to provide robust and transparent disclosures of relevant, reasonably estimable financial information in its financial statements and filings.

We are not convinced, though, that the disclosure modifications contemplated in the Exposure Draft will, in practice, provide users more relevant information than is currently provided under existing standards.

We are also concerned the new disclosures may inappropriately reveal claim resolution strategies and disadvantage companies in settlement negotiations or litigation.

Further, the requirement to provide estimates for exposures that in our judgment are not reasonably estimable may inadvertently reduce reliability of information used by investors, and may expose the company to increased risk of securities litigation.

Finally, we question the ability to effectively implement the new disclosure requirements for the year-end 2008 reporting period.

Given the wide array of types of loss contingencies faced by our Company (and presumably many other companies), as well as the large number of individual claims or assessments, it would be impracticable to provide the detailed disclosure requirements on a specific case-by case basis. Instead, the contemplated disclosures would be addressed by broad contingency category level (e.g., worker's compensation, third-party injuries and damages, environmental, regulatory, contractual disputes etc.), as provided in paragraph 7 of the Exposure Draft.

By necessity, then, the related disclosures will be of a more general nature than seemingly contemplated by the Exposure Draft, and it is unclear as to whether such information will be of any more relevance to users than is already being provided in disclosures under current quidance.

For instance, in addition to FAS 5, Statement of Position 94-6, *Disclosure of Certain Significant Risks and Uncertainties* (SOP 94-6), and Statement of Position 96-1, *Environmental Remediation Liabilities* (SOP 96-1) already require substantive disclosures associated with various contingencies facing our Company.

For public companies, SEC regulations also require significant disclosures regarding loss contingencies in the Risk Factors, Legal Proceedings, and Liquidity and Capital Resources sections in our Forms 10-K and 10-Q. These disclosures provide information on the company's significant risks, which may include legislative or regulatory matters, as well as information related to material pending legal and governmental proceedings (including the name of the court or agency, the date instituted, the principal parties, a description of the factual basis alleged to underlie the proceeding and the relief sought). Additionally, companies are required to disclose any known demands, commitments, events or uncertainties that are reasonably likely to materially change the registrant's liquidity.

As noted, we also expect the qualitative information disclosed, once aggregated, would be fairly broad and general in nature (e.g., overall discussion of the types of claims by category, the variety of legal defenses available to us in responding to those claims, and our assessment of the overall timing of resolution of the broad category of cases). In practice, then, the Exposure Draft's proposals will provide only limited incremental benefits to users.

More concerning, we believe the Exposure Draft's proposed disclosures would provide a significant amount of information, including information that may be confidential or otherwise subject to the attorney-client privilege, to plaintiffs in legal proceedings about a company's view of its cases and case strategies. On balance, we are concerned the information required by the Exposure Draft may be of more benefit to plaintiffs than to investors, and disclosure of such information could adversely impact the outcome of litigation for a company and its shareholders.

The proposed qualitative disclosures are at a very detailed level (i.e., description of the contingency, how it arose, its legal or contractual basis, its current status, the anticipated timing of its resolution, and a description of the factors likely to affect resolution), and we anticipate that this information would be prejudicial in the majority of litigation cases or regulatory proceedings, rather than "rare" as indicated in the Exposure Draft. We are concerned that the prejudicial exemption, which provides only for a greater level of aggregation of exposures, does not sufficiently address this concern.

Further, loss contingencies, especially those related to litigation matters, present significant challenges in determining reasonable estimates of potential loss.

Litigation contingencies, by their nature and as a result of the adversarial legal process in the US, are difficult to estimate, especially in the early stages of a proceeding. Claim amounts are generally expressed as an amount in excess of jurisdictional requirements. When plaintiffs submit quantitative claim amounts, they tend to be strategic in nature, and not representative of an expected outcome or the strength of the claim. Therefore, this

information would be of little use to an investor. Likewise, settlement demands (which are not currently proposed for disclosure in the Exposure Draft) often do not represent a best estimate of potential exposure. Moreover, to compromise the confidentiality of settlement negotiations would severely diminish the prospect for amicable resolution.

Determining an estimate of the maximum possible exposure of loss is highly subjective, likely requiring additional input from third party advisors (and additional costs to preparers), and in many cases would not be meaningful to users. An imprecise estimate of this nature also subjects issuers to the risk of potential additional liability if investors rely on estimates that prove, as a proceeding progresses, to be inaccurate. We do not believe that users of the financial statements would be provided meaningful information as a result of these additional disclosures; rather the estimates developed would be highly subjective and volatile from period to period. Again, these disclosures would likely be more meaningful to plaintiffs who, but for the required disclosures, would not have this information.

For reasons stated in the comment letter submitted by the Association of Corporate Counsel, on which Exelon is a signatory, Exelon also is concerned that the enhanced disclosures could compromise the attorney/client privilege.

We believe certain aspects of the Exposure Draft require additional clarification, including the methods by which a maximum potential exposure is to be determined, what level of aggregation is acceptable for the disclosures provided, and whether a materiality threshold could be applied to information included in the tabular reconciliation.

If the disclosures are ultimately required, we support aggregation by type of contingency (i.e. environmental, regulatory, etc.) as well as a materiality threshold for inclusion of items in the tabular reconciliation to minimize the burden of preparing the disclosures for items that are individually immaterial and do not appear to be the focus of users' concerns.

Finally, given the aforementioned concerns, we believe implementation of the Exposure Draft in its current form could not be completed effectively in time for the 2008 Form 10-K. Sufficient time to determine an implementation approach for this guidance, including development of procedures to compile the quantitative and qualitative data to be disclosed, and extensive vetting internally and with outside legal counsel and auditors, is necessary to appropriately develop these disclosures. The practicality of being able to provide appropriate support for the disclosures to our auditors and ensuring adequate time for completion of their audit and review procedures is also a concern.

We believe an effective date of fiscal years ending after December 15, 2009 would provide a more reasonable timeframe for resolving the many issues in determining these disclosures, especially considering the additional anticipated FASB actions (consideration of comments received, round table, field testing) before final guidance is issued.

In conclusion, we believe that the disclosure requirements currently mandated by FAS 5, SOP 94-6, SOP 96-1 and other applicable authoritative guidance provide a sufficient level of relevant and reliable information to financial statement users. Accordingly, we ask that the Board reconsider and withdraw the proposed amendment.

We appreciate your consideration of these comments. If you have any questions or would like to discuss this matter further, please contact me at 312-394-4736 (or duane.desparte@exeloncorp.com) or Joseph R. Trpik, Jr., Assistant Controller, at 312-394-2951 (or joseph.trpik@exeloncorp.com).

Respectfully submitted,

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Vice President and Corporate Controller

**Exelon Corporation**