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The Edison Electric Institute ("EEI") respectfully submits comments on the Financial Accounting Standards Board ("FASB") Exposure Draft *Fair Value Measurements and Disclosures* (the "ED"). EEI is the association of U.S. shareholder-owned electric companies. Our members provide service to 95 percent of the ultimate customers in the shareholder-owned segment of the industry, and represent approximately 70 percent of the U.S. electric power industry.

Summary

We appreciate the FASB's ongoing efforts to improve the transparency of fair value measurements, and we believe some of the proposals included in the ED will improve the consistency of disclosures across financial statements. In particular, we agree that the level of disaggregation used in these disclosures should be consistent with the requirements of other relevant generally accepted accounting principles. Additionally, the clarification of the requirement to provide a gross presentation for derivatives within the fair value hierarchy will increase consistency as this is an area in which we have observed divergence in practice. Additional clarification of how to apply this guidance would be useful in the final standard.

However, we also believe that certain of the proposed amendments will add complexity to the disclosure requirements and place an undue burden on the preparers of financial statements without providing a commensurate incremental benefit. In particular, we do not believe the proposed sensitivity
Financial Accounting Standards Board  
October 8, 2009  
Page 2

disclosures will achieve the ED’s stated objectives or will provide meaningful information. Rather, we believe the disclosures may serve only to reinforce perceived user discomfort with fair value and could be subject to misinterpretation. Additionally, we believe that certain aspects of the proposed requirements regarding transfers in/out of various Levels in the fair value hierarchy should be revised to be more reflective of a principles-based standard.

We have organized our comments into three sections:
   1. General comments on the proposal as a whole
   2. Sensitivity disclosures
      a. Conceptual issues regarding certain of the proposed disclosures
      b. Technical issues related to certain specific aspects of the ED
   3. Transfer disclosures

We discuss the basis for our views and our recommendations below.

**General Comments**

We understand that the intention of requiring additional disclosures related to fair value measurements is to increase transparency and address perceived user concerns about the reliability of fair value measurements. However, we believe the proposed disclosures may in fact lead to deterioration in the perceived reliability of fair value measurements. In particular, the proposal to present reasonably possible alternative values for Level 3 measurements may undermine the fair values reported by management in accordance with GAAP and subject to audit. The fair value measurement attribute has been deemed the only relevant measurement for financial instruments and the definition of fair value has been clarified and standardized across GAAP, yet presentation of sensitivity disclosures around such measures may imply that there is a flaw in the use or the application of this measurement attribute.

The stated concern about reliability of Level 3 measurements also may indicate a lack of understanding about the reliability inherent in such measures. Many commodities and financial instruments must be classified as Level 3 when more than a minor portion of the value is based upon unobservable inputs, even though a significant portion of the value and term of such instruments may in fact be observable. For example power, natural gas, and oil forward curves may be observable for several years, but if a multi-year commodity derivative includes more than 10%-20% of its value based on extrapolation of those
Financial Accounting Standards Board  
October 8, 2009  
Page 3

curves, it must be classified as Level 3, even though most of the value is based on Level 1 or 2 prices. Further, the portion that is subject to estimate often is rather tightly constrained by historical and economic relationships to observable data, controls around the marking of changes in those curves, and internal controls over those processes.

Similarly, presenting additional information about transfers between levels will not provide information that will allow users to better assess the quality of earnings or anticipate future cash flows. Fair value disclosures already present end of period amounts by Level within the fair value hierarchy. This reflects the most recent assessment of fair value of assets and liabilities at that date, which is the most relevant information as it relates to any fair value measurement. More information about transfers during a period would not provide more timely or relevant information about future cash flows than existing end of period disclosures.

We believe that additional assertions about the need for more fair value disclosures must be weighed carefully. Given that the FASB already has projects underway related to the disclosure framework and the overall accounting for financial instruments, we suggest including an evaluation of fair value measurement disclosures in the deliberation process for these other projects. If it is determined that additional disclosures are needed on a more immediate basis than would be allowed if they were included in these other projects, it may be more appropriate to consider including fair value measurements under the umbrella of Accounting Standards Codification ("ASC") Topic 275, which provides a framework for disclosure about risks and uncertainties, until the comprehensive projects are completed.

Sensitivity Disclosures - Conceptual Issues

The Basis for Conclusions states that many users have concerns about the reliability of fair value measurements using significant unobservable measurements. To alleviate these concerns, the ED is proposing sensitivity disclosures. However, we believe the more fundamental (although unstated) issue may be concern about the volatility resulting from recording Level 3 instruments at fair value, particularly if the unrealized change in fair value must be recorded through current period earnings. If such volatility is the actual underlying issue, increased disclosure will not alleviate this concern. By definition, fair value measures must reflect current market conditions and thus can be volatile by nature.
Financial Accounting Standards Board  
October 8, 2009  
Page 4

Although some believe that concerns about the reliability of estimates in fair value can be addressed through sensitivity disclosures, we believe that not all types of estimates are the same, and thus sensitivity disclosures are not always relevant or applicable. Fair value measurements that include estimates are, in our view, substantially different than other accounting estimates for which sensitivity disclosures are currently required. Sensitivity disclosures for non-fair value accounting estimates that are currently included in the financial statements primarily relate to projections of future rates or prices (e.g., health care trend rates). In contrast, fair value measurements are based upon the current price at which one could settle a contract. A market participant’s current expectations factor into prices at which they are willing to contract, and as such the fundamental basis of a fair value estimate is a probabilistic assessment of existing conditions.

We also believe that requiring a sensitivity analysis for fair value measurements is inconsistent with the lack of a similar requirement for numerous other estimates inherent in financial statements which could be more likely to be significantly impacted by the use of reasonable alternative inputs (e.g., depreciable lives, ARO cost estimates, reserve estimates, etc.). Given that one of the objectives of the ED is to provide information to assuage concerns about the reliability of estimates, we believe it would be more appropriate to focus on all estimates that are subject to significant change if alternative inputs were used. This is consistent with our earlier comment to consider this disclosure in light of other disclosures currently required (or not required) in a structured fashion.

We note that other estimates for which sensitivity disclosures are presently required are often subject to extreme complexity or lack of reliability, such as the multiple, long-term assumptions required to compute accrued postretirement benefit obligations. These estimates may rely upon actuarially determined inputs and include decades worth of inflation and interest rate assumptions. Such estimates are often determined only periodically and may not be subject to continuous marking of forward curves. By contrast, the majority of contracts (in our industry, primarily commodity derivatives) presently measured at fair value are based on more simple fundamental underlyings, are marked to market on a daily basis, and are subject to procedures to validate such marks. If the final proposal retains a requirement for sensitivity disclosures around fair value measurements, we believe that sensitivity analyses should only be required for a subset of Level 3 measurements that are likely to result in significant impacts. Such measurements might be characterized by highly structured provisions, lack of regular remeasurement at
fair value, and/or where a reasonably possible change in a discrete alternative input could produce significantly different outcomes.

Finally, a potential issue with the proposed sensitivity disclosures is the distinct possibility that they could lead to misinterpretation and unreasonable expectations. Despite the inclusion of provisions in the final Accounting Standards Update describing what reasonably possible alternative inputs are intended to cover and actual footnote disclosures stating they are only reasonably possible alternatives, it is likely that some financial statement users will view the sensitivity as all-encompassing. If actual fair value changes are outside of the range of reasonably possible assumptions, financial statement users could demand a reconciliation between the ranges disclosed and any subsequent changes to fair value. Given the likely disconnect between management estimates and user expectations, there is also the potential for increased litigation should fair value amounts fall outside of the range provided. Alternatively, there is also the possibility of misinterpretation on the pessimistic side, with the result that some may view a company’s fair value measurements as fraught with greater subjectivity than actually exists if sensitivity disclosures are understood to imply imprecision in those measures.

Sensitivity Disclosures- Technical Issues

We have identified several technical concerns related to the proposal for sensitivity disclosures that we believe should be addressed:

- The term “alternative inputs” is unclear and should be further defined to indicate whether it means alternatives for values or sources. That is, if the requirement is retained, the final Accounting Standards Update (“ASU”) should state whether it means “stressing” the value of the input used, or choosing an alternative input source or method. For example, it is unclear if the sensitivity analysis for a commodity marked as a spread to an observable forward curve would be prepared using alternative values for the spread or by marking as a spread to a different curve. We believe that the intention of the ED is the former, but a literal reading of the requirement for alternative “inputs” could be interpreted as the latter, and consequently we believe that the intention of this provision, if retained, should be clarified.
Financial Accounting Standards Board  
October 8, 2009  
Page 6

- The sensitivity analysis of only Level 3 fair value measurements is inconsistent with other analyses currently utilized by management. Risk management activities appropriately utilize sensitivity analyses at the portfolio level. Such an approach is designed to capture all related market risks and includes all derivatives (not just Level 3) as well as physical assets and accrual (nonderivative) contracts. The ED's proposal to develop a sensitivity that is performed at the contract level and will only include Level 3 estimates is inconsistent with information utilized by management for risk management and thus could be difficult to prepare and require substantive system and process changes.

- Power is one of the most volatile commodities and has thousands of delivery locations and forward curves that vary by year, region, season, day of the week and time of day. Thus, while the estimate of fair value for any particular location is not complex, the existence of so many different potential values subject to sensitivity and potential disclosure may result in it not being feasible for management to prepare and disclose sensitivity analyses that are either meaningful (because of averaging dissimilar measures) or not overly voluminous.

- The reasonably possible criterion is open-ended and thus prone to considerable judgment. While we support the ability to make such judgments, we believe that the emphasis on inputs that would have a significant impact on the fair value measurement should be defined as a high threshold. Additionally, we believe the ASU should explicitly state that it is not intended to require that entities seek out all possible alternative assumptions for purposes of applying the sensitivity disclosure requirements.

**Transfers between Levels**

The Basis for Conclusions indicates that the requirement to provide additional details related to the transfers between levels is intended to provide useful incremental information about the quality of earnings and expected future cash flows. However, we believe the disclosure of the ending fair value amount and level within the hierarchy in which that amount is classified provides the most relevant information. Transfers are historical in nature and are simply the result of the application of the standard based on increases or decreases in the observability of inputs used to determine fair value. They do not provide any
useful information related to the "quality" of earnings, and should not be used to form an expectation about future cash flows.

However, if it is determined that these additional disclosures regarding transfers should be included in the final ASU, there are a few aspects of the proposal that should be amended. The ED currently provides that entities must presume that transfers occur at the beginning of the period, but we believe it would be appropriate, within the context of a principles-based standard, to apply judgment regarding the determination of when transfers have occurred. Companies are currently required to report transfers into and out of Level 3, and they may have already adopted different conventions than what is proposed by the ED. Additionally, system limitations may prevent entities from capturing information in this manner. As most companies review their level determination at the end of each quarter, it would be difficult, and in some cases impossible, to gather this information three months after the fact. Furthermore, assuming transfers occurred at the beginning of the period is the least supportable position conceptually. Accordingly, we believe it would be more appropriate to allow companies to evaluate, choose, and document their own policy regarding the determination as to when transfers are deemed to take place, and this policy could be included in the disclosure.

Effective Date

Based upon the proposal's current requirements, we believe the effective date of the sensitivity analysis should be deferred to coincide with the effective date of the financial instruments project. This deferral is necessary to allow for efficient system modifications and to reduce the need to use manual processes to comply with the disclosure requirements. At a minimum, the effective date should be no earlier than for fair value measurements as of December 31, 2010. As noted earlier, these analyses do not correspond to anything presently used by management for accounting or risk management purposes. In order to comply with the proposed sensitivity analysis requirement, we will need to make system and process changes in order to capture reasonable alternative inputs. Similarly, the project on accounting for financial instruments will also require potentially extensive system changes to capture fair value for a greater range of financial instruments.

We also believe that the effective date for the other provisions should be deferred, at a minimum, until the first quarter of 2010 assuming a final
Financial Accounting Standards Board  
October 8, 2009  
Page 8

statement is issued no later than by the end of the fourth quarter of 2009. While we support the use of net reporting for derivatives for purposes of the disclosures in paragraphs 820-10-50-2c and d, we note that the Exposure Draft would require separate, disaggregated reporting of purchases, sales, issuances, and settlements in the Level 3 rollforward. We have previously disclosed this information on a more aggregated basis, and thus system modifications will be necessary to appropriately tag the data to allow for separate, disaggregated reporting. Since this data tagging was not performed for the first three quarters of 2009, a manual process would need to be used to reconstruct the data for the entire year ended 12/31/2009. A similar challenge will exist for disaggregating and separately reporting transfers into and out of Level 3. Furthermore, because a finalized standard is not likely to be issued until late in the fourth quarter of 2009, we do not believe that it would be feasible to apply its provisions to a period when a portion of that period occurred before the final standard was issued. By deferring the effective date until January 1, 2010, we believe entities could make the necessary system modifications to prospectively disclose the Level 3 rollforward on a gross basis.

**Summary and Conclusion**

For the reasons noted above, we believe the proposed changes to required fair value disclosures may not achieve the ED’s stated objectives or address the more fundamental underlying issue that investors have concerns about the validity of fair value measurements. Thus, we believe the disclosures contemplated in the project should be modified in accordance with our recommendations herein and also deferred and considered as part of the larger Accounting for Financial Instruments and Disclosure Framework projects. If such disclosures are retained as a separate project, we believe that a delay in both proposed implementation dates is necessary.

Thank you for your consideration of our comments. We appreciate the opportunity to express our views on the Exposure Draft.

Sincerely,

[Signature]

David K. Owens