September 1, 2010

Technical Director – File Reference No. 1840-100
Financial Accounting Standards Board of the
    Financial Accounting Foundation (FASB)
401 Merritt 7
PO Box 5116
Norwalk, Connecticut 06856-5116

Submitted to: director@fasb.org

Re: Exposure Draft – Proposed Accounting Standards Update – Contingencies (Topic 450) – Disclosure of Certain Loss Contingencies

Dear FASB board members and staff:

Progress Energy, Inc. is pleased to comment on the Financial Accounting Standards Board’s proposed Accounting Standards Update – Contingencies (Topic 450) – Disclosure of Certain Loss Contingencies (“the ED”). Progress Energy, headquartered in Raleigh, N.C., is a Fortune 500 energy company with more than 22,000 megawatts of generation capacity and approximately $10 billion in annual revenues. Progress Energy includes two major electric utilities that serve approximately 3.1 million customers in the Carolinas and Florida. As a large public corporation with multiple business units, we appreciate the FASB’s mission to establish and improve standards of financial accounting and reporting. Such standards are essential because financial statement users demand and rely on credible, transparent, and comparable financial information. The FASB’s mission is made more difficult by the challenges of our dynamic economy and the complexity of financial reporting and transactions observed in the marketplace.

We appreciate the time and consideration the FASB has taken in its redeliberations on the June 2008 FASB Exposure Draft, Disclosure of Certain Loss Contingencies. The current ED has attempted to address the comments expressed by the respondents in 2008. However, it provides no additional justification as to why the FASB believes that a change from the current standard is warranted. The current guidance in Accounting Standards Codification Topic 450 (formerly Statement 5), which has been in place for over 30 years, is an excellent example of a principles-based standard and has served investors well. By removing management’s ability to exercise judgment and moving to a more rules-based standard, there is a mistaken belief that management will be better able to accurately assess and quantify future outcomes. Contingencies are inherently uncertain and no amount of disclosure will eliminate that uncertainty.

If the Board is determined to go forward with this project, we have a number of concerns as discussed in our detail comments below.
1. Are the proposed disclosures operational? If not, please explain why.

There are two parts to the ED that are either not operational or cost beneficial: the disclosure of severe impacts for remote contingencies and the interim disclosure requirements.

The remote contingencies disclosures required by paragraph 450-20-50-1D are not operational as currently written, for the reasons discussed below.

- The language of the paragraph is written so broadly that absurd claims and frivolous lawsuits are subject to consideration for disclosure. Given the nature of litigation and its inherent lack of predictability, it is often difficult to separate the remote from the frivolous.

- The requirements provide an opportunity for special interest groups to garner publicity and to increase the harm from the filing of a lawsuit, irrespective of how frivolous that lawsuit may be. Therefore, we believe the disclosure requirements would only encourage more such lawsuits. This would not be beneficial to the financial statement users since it would likely cause less significance to be placed on genuine risks, rendering the disclosures meaningless.

- The vague nature of the language employed means that widely divergent interpretations are likely. Without more specific guidance as to the FASB’s intent and justification for changes from the existing standard, companies face the real probability that well-reasoned judgments will be questioned based on the fine line between remote and frivolous. While the language does allow an entity to “exercise judgment,” the language is vague regarding over which areas management is permitted to exercise judgment.

The following example is useful for discussing these concerns: groups of companies have been sued with the plaintiffs alleging that the companies’ emission of greenhouse gases exacerbated the harmful effects of a specific hurricane, and that those companies are liable for the damage caused by the hurricane. Assume that management of the defendants has concluded that it is remote that a loss has been incurred. An argument could be made that these cases and their potential for almost limitless amounts of damages are within the scope of paragraph 450-20-50-1D and must be disclosed. Management believes the cases are clearly frivolous, but they can remain open in court for years. It is unclear from the requirements of paragraph 450-20-50-1D whether a case like this is required to be disclosed.

Based on the facts and circumstances in the example, we do not believe disclosure is required because the probability that a loss has been incurred is remote and the disclosure of such a frivolous case does not serve the interests of the investing public, despite the nearly unlimited loss exposure. If it is the FASB’s intent that such a contingency should not be disclosed, the ED needs to be revised to clarify that intent. We believe that in practice disclosure of such contingencies should be rare. If it is the FASB’s intent that such a contingency should be disclosed, the ED should be revised to include additional background information as to why the disclosure of this type of remote contingency is beneficial to financial statement users. Additional implementation guidance and examples may also be warranted.
We also do not believe that the ED’s proposed disclosures for interim periods is cost beneficial. We believe that providing the proposed narrative and tabular disclosures on an annual basis is sufficient to inform users of the potential impacts of contingencies on companies’ financial positions, results of operations and cash flows. Private companies typically do not issue quarterly financial statements for external purposes. Public companies are already required to disclose and discuss in their Form 10-Q material changes and updates from their year-end financial statements. Therefore, including the narrative and tabular disclosures in interim financial statements would not provide users with information to which they otherwise would not have access. However, the interim narrative and tabular disclosures would significantly increase the cost of compliance for public companies as a result of consultations with internal and external counsel to develop the disclosures. Furthermore, there are a wide variety of factors that change during the life cycle of a contingency. Most contingencies are resolved over a long period of time. Litigation matters especially are subject to significant amounts of variability especially in the early stages from quarter to quarter. Providing the proposed disclosures could present an incomplete, confusing and potentially misleading assessment of the matter. Annual disclosures with the current quarterly disclosure of any significant changes would provide financial statement users with the most relevant and useful information. In addition, with the accelerated interim filing dates and the new XBRL tagging requirements, the interim disclosures would add a significant burden for XBRL tagging. We request that paragraph 450-20-50-1F(g) be modified to require the narrative and tabular disclosures for annual periods only.

2. Are the proposed disclosures auditable? If not, please explain why.

The proposed disclosures are unlikely to be auditable until there is agreement between the American Institute of Certified Public Accountants and the American Bar Association on any required revisions to the their treaty “Statement of Policy Regarding Lawyers’ Responses to Auditors’ Requests for Information.” Until such agreement is reached, auditors will likely find it difficult to obtain and corroborate information provided by management with regard to loss contingencies. For remote contingencies with potentially severe impacts, external counsel will likely only represent that such a suit has been filed and that a negative outcome is remote. The only likely evidence that auditors will accept regarding the non-disclosure of such contingencies is a written representation of management’s intent and judgment.

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 amounts 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.

The revisions to the ED are an improvement over the June 2008 ED. However, despite the ability to aggregate similar contingencies, the ED’s requirement for quarterly roll forwards of accrued contingencies could still disclose prejudicial information, especially in periods that have little activity or when only a few contingencies exist. In the case of adjustments to the accrued contingency liability, the roll forwards could arguably allow an adversary to determine the specific case for which the reserves were adjusted. In addition, the period over period assessments of the quantitative and qualitative disclosures could provide plaintiffs with insight into the entity’s litigation strategy. In regards to the aggregation, the guidance for how and when to aggregate is ambiguous and could lead to situations whereby entities have few claims (or even a single claim) in a particular category. For this reason, if the FASB proceeds with this project, we believe an explicit exemption from disclosing prejudicial information is warranted and the roll forwards should be eliminated. If the roll forwards are not eliminated, at a minimum, they should only be required on an annual basis and should be prepared in total without any disaggregation.

4. Is the proposed effective date operational? If not, please explain why.

We do not believe the proposed effective date is operational. The comment period for the ED ends on September 20, 2010. We believe it will take the FASB board and staff significant time to thoroughly read and evaluate the comments received and redeliberate their conclusions. Even if the final Accounting Standards Update is issued by October 30, 2010, one quarter is not enough time to implement the proposed changes. Entities need adequate time to develop new processes to collect and analyze the entire population of all contingencies affected by the proposed Update; identify and collect information to prepare the disclosures; determine how to aggregate the data; develop and document internal controls for any process changes and; tag any quantitative information for XBRL reporting. If the FASB proceeds with this project, we recommend that the effective date be deferred until at least fiscal years ending after December 15, 2011, and annual periods in subsequent years.

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?

The proposed disclosures will certainly increase the quantity of information provided to financial statement users, but not necessarily provide better information than is required under the current standard. As discussed above, we do not believe the disclosure requirements for remote loss contingencies as currently written will enhance or improve
the information provided to financial statement users. We also do not believe the required interim disclosures will enhance or improve the information to financial statement users. We are more concerned that the volume of additional disclosures will likely cause less significance to be placed on genuine risks, rendering the additional disclosures not meaningful.

6. Do you agree that nonpublic entities should be exempt from the tabular reconciliation disclosures required in the amendments in this proposed Update? If not, please explain why. Are there other aspects of the amendments that should be applied differently to nonpublic entities? If so, please identify and explain why.

We do not believe that nonpublic companies should have a different reporting standard. We believe that users of the financial statements of nonpublic entities would want the same information as users of public companies. If the FASB believes it is not necessary for private companies to include tabular reconciliations, then the same standard should be applied to public companies.

7. The amendments in this proposed Update would defer the effective date for nonpublic entities for one year. Do you agree with the proposed deferral? If not, please explain why.

As previously discussed, we do not believe the proposed effective date is operational for public companies. Therefore, we agree with the deferral for nonpublic entities and believe that public companies should be granted the same one year deferral.

8. Do you believe that the proposed and existing XBRL elements are sufficient to meet the Securities and Exchange Commission’s requirements to provide financial statement information in the XBRL interactive data format? If not, please explain why.

The proposed Update will result in a significant increase in detailed XBRL tagging. As the ED is currently written, we believe most information will require custom elements that eliminate any comparability among entities. We believe this will result in a significant amount of effort for information that is of little or no use to financial statement users. Therefore, we request the Securities and Exchange Commission reconsider the requirement to provide detail tagging of the footnotes in the XBRL interactive data format.

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Thank you for the opportunity to express our views on this critical disclosure issue. We appreciate the FASB’s consideration of these comments. We would be happy to discuss any of our responses with the FASB at your convenience.

Sincerely,

Jeffrey M. Stone