November 21, 2005

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

VIA ELECTRONIC MAIL

RE: Proposed FSP No. FAS 133-a
Accounting for Unrealized Gains (losses) Relating to Derivative Instruments Measured at Fair Value under Statement 133

Constellation Energy appreciates the opportunity to comment on Proposed FSP FAS No. 133-a, which provides guidance for the accounting for unrealized gains/losses relating to derivative instruments measured at fair value under FASB Statement No. 133, Accounting for Derivative Instruments and Hedging Activities.

Constellation Energy participated in drafting the comment letter submitted by the Edison Electric Institute, and we share the concerns expressed in that letter. We will not repeat the text of that letter here. However, we believe that the matters addressed in that letter are very important and, accordingly, we want to emphasize certain aspects of them.

Transaction Price Presumption

Paragraph 3a of the proposed FSP provides that the transaction price presumption is not rebutted at initial recognition of a derivative if the market in which the transaction occurs is the reference market for the derivative. The primary implication of this provision is that, when that presumption is not rebutted, the reporting entity is prohibited from calculating or recording (either in income or on the balance sheet) a gain or loss at the inception of a derivative instrument.

The concept of a reference market is new, and we believe that it needs to be clarified as it relates to whether the transaction price presumption has been overcome. We are concerned that the examples given in paragraphs 3a and 3b of the FSP may be interpreted to preclude recognition of inception gains/losses by dealers on derivative transactions with wholesale customers because those transactions may be deemed to occur in the dealer’s reference market.
We believe that the primary objective in determining whether the transaction price presumption has been overcome is evaluating the reliability of the fair value measurement used to make that assessment. Accordingly, we believe that if a dealer enters into a derivative instrument for which evidence of fair value can be determined based upon measures that fall within levels 1-4 of the fair value hierarchy, that evidence should be sufficient to overcome the transaction price presumption and permit recognition of an inception gain or loss. We further believe that, for evidence that falls within level 5 of the fair value hierarchy, the inception gain/loss should be treated in accordance with paragraph 4b of the proposed FSP (subject to the clarification we recommend below).

**Subsequent Recognition of Unrealized Inception Gains/Losses**

Paragraph 4b of the FSP provides that unrealized inception gains/losses that do not meet the minimum reliability threshold should be deferred on the balance sheet until either

(a) the minimum reliability threshold has been met, or
(b) the contract expires due to maturity or exercise.

In the energy industry, long-term contracts with multiple individual deliveries are common. These contracts often span several reporting periods. For multiple-delivery contracts, we believe that an appropriate interpretation of the provision described in (b) above would be to recognize the portion of the unrealized inception gain/loss that relates to each individual delivery as those deliveries occur over the term of the contract. This information is readily available and in fact is an integral part of the determination of the total inception gain/loss calculation for multiple-delivery contracts. Recognizing the unrealized inception gain/loss in this manner reflects the underlying economics of the transaction as uncertainty about the valuation of unrealized amounts declines over time due to delivery and realization.

However, we are concerned that the portion of paragraph 4b limiting recognition of the unrealized inception gain/loss to periods when the contract “expires due to maturity or exercise” could wrongly be interpreted to require that the full unrealized inception gain/loss must remain deferred on the balance sheet until the final delivery under a multiple-delivery, long-term contract. We believe that this interpretation would misstate both the balance sheet and the income statement in each delivery period. Accordingly, we request the staff to modify the final FSP to clarify that the unrealized inception gain/loss should be apportioned to each delivery period for multiple-delivery contracts and that the amounts so apportioned should be recognized in income as deliveries occur (absent meeting the minimum reliability threshold for the remainder of the contract, at which time the entire unrealized inception gain/loss would be recognized in income).

We note that the FSP prohibits amortization of deferred unrealized inception gains/losses. We believe that the approach described above is not tantamount to amortization, which would involve recognition of a portion of unrealized gains/losses simply due to the passage of time and in no relation to actual deliveries under the
contract. We believe that the approach recommended above is based upon realization and not amortization and therefore is consistent with the other provisions of the FSP.

Transition – Retrospective Application

Paragraph 10 of the draft FSP provides for retrospective application of the FSP’s provisions as of the beginning of the fiscal year in which the FSP is initially applied. For reasons described in detail in the EEI comment letter, we believe that a full retrospective application would be extremely difficult, if not impossible, and we believe that a modified retrospective application as recommended in that letter provides a practical approach that balances the need for uniform implementation with valid practical considerations. Accordingly, we request the staff to modify the retrospective application requirement for the FSP as recommended by EEI. As noted by EEI, such a practical approach has been utilized in other recent standards, and we believe that it is warranted in this case.

Classification of Unrealized Inception Gains/Losses

The draft FSP provides that unrealized inception gains/losses should be reported as a liability or asset separate from the derivatives which gave rise to them. We believe that these unrealized amounts do not represent distinguishable assets or liabilities in their own right, but rather represent valuation allowances that are part of the determination of fair value of the related derivatives. Accordingly, we believe that unrealized inception gains/losses should be presented as part of the fair value of the derivatives to which they relate.

Sincerely,

/S/

Reese Feuerman
Vice President & Controller
Constellation Energy