

Letter of Comment No. 3|
File Reference: 1215-061
Date Received: 9|10|05

September 12, 2005

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

RE: File Reference No. 1215-661, "Accounting for Uncertain Tax Positions, an interpretation of FASB Statement No. 169"

We are writing to provide the Board with our comments on several issues associated with the above-noted proposed statement of financial accounting standards ("Exposure Draft"). As a member of the Edison Electric Institute ("EEF") our company participated in the drafting of the EEF's comment letter on this Exposure Draft, which is being submitted to the FASB, and concur with the views expressed therein. This letter is being submitted to provide the FASB with our company's view of some of the more difficult implementation issues associated with the Exposure Draft. We appreciate the FASB's consideration of our letter and the opportunity to provide comments on the Exposure Draft.

Entergy is an integrated energy company engaged primarily in electric power production and retail electric distribution operations. Entergy owns and operates power plants with approximately 30,000 MW of electric generating capacity, and is the second-largest nuclear power generator in the United States. Untergy delivers electricity to 2.7 million customers in Arkansas, Louisiana, Mississippi and Texas. Entergy generated annual revenues of over \$10 billion in 2004 and had approximately 14,400 employees as of December 31, 2004. Entergy owns six utility operating subsidiaries, all of which are registrants under Securities and Exchange Commission regulations.

The issues that are discussed in more detail in the paragraphs that follow are that:

- the application of the Exposure Draft provisions may lead to less consistency in accounting for income taxes across companies' financial statements;
- the application of the Exposure Draft provisions may lead to inappropriate results in the financial statements, specifically related to the over-accrual of a company's tax liability and issues in the timing of recognition of both income tax expense/benefits and interest expense;
- Entergy has concerns regarding the timing of the issuance of a final standard and expected implementation date.

Application of the Exposure Draft provisions may lead to less consistency in accounting for income taxes across companies' financial statements

Entergy understands the PASB's goal to promote more consistency in the accounting for income taxes in preparers' financial statements. However, we believe that the specific examples/criteria as outlined in paragraph 9 of how a company might be able to support that a tax position is probable will not achieve this goal. Rather we believe that these specific criteria will create confusion in how to define whether a tax position is probable. This is primarily due to the complexity in determining the merits of various tax positions and the differing results which might be achieved for similar positions because many tax positions are litigated and litigation is inherently uncertain and unpredictable. We believe that allowing companies to determine what probable means in accordance with SPAS No. 5 rather than outlining specific criteria of how to determine probable is more appropriate for companies to determine when and how to measure and record tax positions.

Paragraph 9 outlines the following four criteria which "may, in the absence of opposing evidence, demonstrate a probable level of confidence:"

- a. Unambiguous tax law supporting the tax position.
- b. An unqualified should prevail tax opinion from a qualified expert for which all conditions are objectively verifiable.
- c. Similar positions in prior year's tax returns that have been obviously presented in the tax returns and have been either accepted or not disallowed or challenged by taxing authorities during an examination.
- d. Legal precedent from similar positions taken by other taxpayers, where analogy is appropriate, that have been favorably resolved through litigation with taxing authorities.

We believe that the application of one of the criteria above could result in a probability assessment that would be different from the probability assessment reached by applying another one of the criteria.

For example, a company may believe that there is unambiguous law supporting a tax position which would support the position as being probable under criteria a. However, the company's specific facts are not clear enough within the confines of this tax law to obtain a "should prevail" opinion and support the position as being probable under criteria b. This could result in a different probability assessment by applying criteria a versus criteria b in paragraph 9 of the Exposure Draft. This issue is complicated because of the fact that a number of tax issues are litigated which sometimes tesult in different outcomes for similar positions based upon a company's specific facts.

- An additional example of this lack of consistency of results from applying paragraph 9 would be present in the situation where one company takes a position in a return, believes that the tax law is clear and that it has "impeccable" facts, and is able to obtain a "should prevail" opinion. However, once this position is litigated in Tax Court, the company's case is not well presented and the position is disallowed. If another company had a similar situation, it may also have "impeccable" facts and a "should prevail" opinion, but the adverse outcome in the first company's case then puts the second company in the position of not being able to support its probability assessment of the deduction even though the company ultimately wins its well presented case.
- This lack of consistency is compounded by the dual recognition/derecognition threshold. Assume a company obtains a "should prevail" opinion with regard to a position taken on its tax return and its confidence in its tax position subsequently deteriorates due to emerging case law or IRS rulings. Further assume that the company's likelihood of success remains above 50%. Under the Exposure Draft, this company would continue to reflect a tax asset on its books for the position taken on its iax return, because the derecognition standard is more likely than not. However, if another company took the same position as the first company on its tax return, but did so only after the new cases were decided and the new IRS rulings were issued, it would not reflect a tax asset for the tax benefit, because in the face of the new adverse authority it could only satisfy the more likely than not standard and not the more difficult "should prevail" standard. In this situation, these two companies would not have comparable treatment for the very same tax position. It is a common occurrence that companies in the same industry do not simultaneously adopt the same tax treatment for similar items, so the Exposure Drasts will foster the lack of comparability across an industry.
- Lastly, we believe that it would not be difficult to establish that there was legal precedent from a similar case (criteria d) and therefore assert that a position was probable of being sustained; however, because of a company's specific facts and circumstances, it may be less likely that this company would be successful in defending the position with the IRS.

Because of these possible inconsistencies, a company could reach a different probability assessment using one of the criteria outlined in paragraph 9 than it would by applying another. When that logic is then extended to all companies, we believe that it is highly likely that the probability assessment using the specific paragraph 9 criteria of similar positions will be different from one company to the next. Many large tax issues that are litigated are industry-wide issues. Therefore we believe that the application of paragraph 9 criteria will result in the lack of comparability across financial statements even though similar tax positions and facts exist at different companies. The Exposure Draft does acknowledge that the criteria in paragraph 9 is not all inclusive; however we believe that

the list of criteria in paragraph 9 will be used as a checklist by the external audit firms or other reviewers of the financial statements to determine whether the position is able to be supported as probable and will be extremely difficult to apply. We believe that this will result in financial statements which a company does not believe fairly represents its tax liability. We request that FASB consider removing the specific criteria outlined in paragraph 9 and allow companies' to apply a more principles based approach to determining whether or not a tax position meets the probable definition as outlined in SFAS 5.

The application of the Exposure Draft provisions may lead to inappropriate results in the financial statements, specifically related to the over-accrual of a company's tax liability and issues in the timing of recognition of both income tax expense/benefits and interest expense.

Timing of Recognition

Accounting standards have continued to address the need for a triggering event to occur as the basis to record a liability or loss, or to record an asset or impairment of an asset. As it relates to the accounting for income taxes, financial statement preparers currently look to an event, the filing of a tax return, to record what it believes is the company's probable tax liability. However, we believe that the Exposure Draft potentially divorces the recognition of a tax benefit from the actual filing of the tax return. Under the Exposure Draft provisions a company will still be required to evaluate the probability of sustaining its tax positions; however, the ability to demonstrate that this tax position is probable may occur in a period that is different from the period in which the position was taken on the return. This is because, as mentioned above, the determination of whether a position is "probable" under the paragraph 9 criteria may result in a tax liability which a company believes is overstated but nonetheless required to be recorded under the Exposure Draft provisions. If facts or law change, the benefit associated with a position will be taken in a period likely much later than the period in which the tax return was filed. Because tax law is constantly changing and facts are developing, the application of the Exposure Draft will result in more volatility in the timing of when tax benefits/liabilities are recorded in companies' financial statements.

Recognition of Interest Expense

Entergy's concern regarding the recording of interest expense on tax liabilities is somewhat similar to the concern regarding the increase in volatility in the amounts of income tax expense/benefits recorded from one period to the next. Under paragraph 17 of the Exposure Draft "an entity shall recognize a charge to income for interest in the financial statements in the period the interest is deemed to have been incurred based on the difference between the tax position recognized in the financial statements and the amount previously claimed or expected to be claimed in the tax return." We believe that companies now generally record the amount of a tax benefit that management of those companies believes is probable, based on their assessment of the position being sustained using the SFAS 5 criteria, and records interest on the difference between the amount filed in the return and the amount that is considered probable of being sustained. Many if not

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most uncertain tax positions relate to timing differences, and so exposure on the position typically relates to interest expense. When the case settles, there is little to no net income impact because the company has recorded its estimate of the correct amount of interest exposure/expense. If companies were to implement the current provisions of the Exposure Draft, it is likely, because of the reasons mentioned above, that the difference between the tax position recognized in the income statement and the amount claimed on the return will be substantially larger than is currently the case, because under the Exposure Draft the interest accrual will be significantly greater due to the higher standard for income recognition. This will increase the amount of interest recorded each period under the Exposure Draft. If the provisions of the Exposure Draft were to be applied, and the case settles subsequent to adoption of the Exposure Draft for an amount which is very close to what is currently reserved for interest expense, there will be a credit to interest expense because the company has over-reserved its estimate of exposure on interest expense. The fundamental issue and what drives this result is that we believe that the application of the current Exposure Drast provisions will overstate companies' tax liabilities with increasing volatility to the income statement both in income tax expense and interest expense.

Entergy has concerns regarding the timing of the issuance of a final standard and expected implementation date.

Paragraph B41 of the Exposure Draft states that "The Board considered various effective dates for this Interpretation. Because of the number of tax positions taken in prior periods that are anticipated to be reexamined by preparers when this Interpretation is adopted, the Board concluded that sufficient time should be provided to evaluate those prior positions. Accordingly, the Board believes that the end of the first fiscal year ending after December 15, 2005, is the most appropriate effective date." We reviewed the schedule of technical projects that is posted to the FASB's website which indicates that a Final Standard is expected to be issued during the fourth quarter of 2005. We believe that the issuance of the final standard would likely occur close to year-end (December 31) because of the limited time between the comment due date of September 12, 2005 and year-end. We do not believe that an effective date of December 31, 2005 (for calendar year-end companies like Entergy) will provide the time necessary to evaluate the implications of the standard as well as time to evaluate the number of tax positions which will be required to be re-evaluated as acknowledged by FASB in paragraph B41. We also do not believe that the currently proposed effective date would allow our company to appropriately adopt the final standard within our standard closing window of four business days. Due to the tightening of SEC deadlines for filing the Form 10-K as well as increased scrutiny of issues which extend the closing period or result in top-side adjustments to the general ledger after the standard closing period, we believe that issuance of final guidance in the fourth quarter with an end of fourth quarter effective date is not an appropriate date for FASB to recommend for adoption of a final standard. We respectfully request that FASB change the effective date of the final standard to a later date to allow financial statement preparers adequate time to effectively evaluate the impacts of the final standard to the financial statements.

In addition to Entergy's general observations and concerns regarding the effective date of the proposed interpretation, Entergy is headquartered in New Orleans, Louisiana which has been significantly affected by Hurricane Katrina. Our company is in the process of temporarily relocating its corporate headquarters and resuming corporate functions. A December 31, 2005 effective date is difficult due to the reasons mentioned above as well as our specific circumstances as a result of this imprecedented storm. An extension by FASB of the currently proposed effective date would be sincerely appreciated by our company.

We appreciate the opportunity to comment on this Exposure Draft, and would welcome the opportunity to discuss these issues with you further.

Sincerely,

/s/ Nathan E. Langston

Nathan E. Langston Senior Vice President and Chief Accounting Officer Entergy Corporation