



**K Jon Taylor**  
Vice President, Controller  
and Chief Accounting Officer

330-384-5296  
Fax: 330-384-5299

September 13, 2013

Susan M. Cospers  
Technical Director  
File Reference No. 2013-270  
Financial Accounting Standards Board  
401 Merritt 7  
PO Box 5116  
Norwalk, CT 06856-5116

Re: Proposed Accounting Standards Update (Revised) — *Leases (Topic 842)*  
File Reference No. 2013-270

Dear Ms. Cospers:

FirstEnergy Corp. appreciates the opportunity to respond to the Proposed Accounting Standards Update (Revised), *Leases (Topic 842)*.

FirstEnergy is a diversified energy company in the United States with approximately \$50 billion of assets, \$15 billion in annual revenues, and \$16 billion in market capitalization. Our subsidiaries and affiliates are involved in the generation, transmission and distribution of electricity, as well as energy management and other energy-related services. Our 10 electric utility operating companies comprise one of the nation's largest investor-owned electric systems, serving 6 million customers within 65,000 square miles of Ohio, Pennsylvania, West Virginia, Maryland, New York and New Jersey. Our generation subsidiaries control approximately 20,000 megawatts of capacity.

We support the Financial Accounting Standards Board (FASB) and International Accounting Standards Board (IASB) in their objective to develop accounting principles that enhance the transparency and relevance of financial statements. We also support the effort to make improvements to the recognition, presentation and disclosure of leases. However, we have some concerns as discussed in our responses below. We believe that costs associated with implementation and compliance of certain aspects of the proposal will outweigh the benefits.

#### **Question 1: Identifying a Lease**

**This revised Exposure Draft defines a lease as —a contract that conveys the right to use an asset (the underlying asset) for a period of time in exchange for consideration. An entity would determine whether a contract contains a lease by assessing whether:**

- 1. Fulfillment of the contract depends on the use of an identified asset.**
- 2. The contract conveys the right to control the use of the identified asset for a period of time in exchange for consideration.**

**A contract conveys the right to control the use of an asset if the customer has the ability to direct the use and receive the benefits from use of the identified asset.**

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**Do you agree with the definition of a lease and the proposed requirements in paragraphs 842-10-15-2 through 15-16 for how an entity would determine whether a contract contains a lease? Why or why not? If not, how would you define a lease? Please supply specific fact patterns, if any, to which you think the proposed definition of a lease is difficult to apply or leads to a conclusion that does not reflect the economics of the transaction.**

We agree that the definition of a lease is appropriate, however, we feel further clarification is needed from the Board. One of the criteria to determine whether the customer has the ability to direct the use of an asset is whether the lessee has the ability to make decisions about the use of the asset that most significantly affect the economic benefits to be derived from the use of the asset throughout the term of the contract. In regards to the customer receiving benefits under the contract, the proposal refers to the customer's right to obtain substantially all of the potential economic benefits from use of the asset throughout the term of the contract. We believe the lack of clarification as to the threshold for evaluating significant and substantial could result in inconsistent application of the standard.

### **Question 2: Lessee Accounting**

**Do you agree that the recognition, measurement, and presentation of expenses and cash flows arising from a lease should differ for different leases, depending on whether the lessee is expected to consume more than an insignificant portion of the economic benefits embedded in the underlying asset? Why or why not? If not, what alternative approach would you propose and why?**

We agree that the recognition, measurement and presentation of expenses and cash flows arising from a lease should differ for different leases, consistent with the current accounting framework which differentiates leases as operating versus capital. However, we believe the standard should allow for flexibility in categorizing interest and amortization expense within the income statement. Utility companies often enter into purchase power agreements for the purchase of electricity, capacity and renewable energy credits. Currently, the costs under these agreements are reported as purchase power expense and reflected within the operating activity section of the statement of cash flow. Although these contracts may be defined as leases under the proposed standard, we would recommend these expenses continue to be reported as purchased power expense, instead of interest and amortization expense as required by the proposed standard, since these expenses are typically related to a utility company's normal operating activities. Therefore, we believe the standard should allow for flexibility in classifying expenses associated with certain agreements that qualify as a lease.

### **Question 3: Lessor Accounting**

**Do you agree that a lessor should apply a different accounting approach to different leases, depending on whether the lessee is expected to consume more than an insignificant portion of the economic benefits embedded in the underlying asset? Why or why not? If not, what alternative approach would you propose and why?**

We agree with a different accounting approach to different leases based upon whether the lessee is expected to consume more than an insignificant portion of the economic benefits. As stated previously, we recommend the Board provide further clarity on determining an insignificant portion in order to avoid inconsistent application of the guidance.

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#### **Question 4: Classification of leases**

**Do you agree that the principle on the lessee's expected consumption of the economic benefits embedded in the underlying asset should be applied using the requirements set out in paragraphs 842-10-25-5 through 25-8, which differ depending on whether the underlying asset is property? Why or why not? If not, what alternative approach would you propose and why?**

We support the separate lease types in the current proposal, but categorizing Type A and Type B leases depending on the type of asset should be revised. The guidance suggests Type A leases include equipment, vehicles, etc., while Type B leases include property. The guidance also suggests that for Type A leases, the lease term is for a significant part of the total economic life of the underlying asset, while for Type B leases, the lease term is for an insignificant part of the remaining economic life of the asset. When assessing the actual economic life for each asset, leases for property could actually fall under Type A leases while equipment could fall under Type B leases. This may encourage companies to classify leases based on the type of asset without evaluating the economic life or conducting any other analysis. We would suggest to remove the wording "If the underlying asset is not property" at 842-10-25-6 and remove the wording "If the underlying asset is property" at 842-10-25-7. Instead, leases should solely be classified based on the two criteria mentioned in the Exposure Draft which are:

1. Is the lease term for an insignificant or major part of the remaining economic life of the underlying asset?
2. Is the present value of the lease payments insignificant relative to the fair value of the underlying asset at the commencement date or are the present value of the payments substantially all of the fair value of the underlying asset?

#### **Question 5: Lease Term**

**Do you agree with the proposals on lease term, including the reassessment of the lease term if there is a change in relevant factors? Why or why not? If not, how do you propose that a lessee and a lessor should determine the lease term and why?**

We believe the lease term should only include periods covered by an option to extend the lease if, consistent with current guidance, the extensions are reasonably assured or reasonably certain. We have concern with the inconsistency that could be created if the determination of whether an option should be included in the lease term is based upon whether the lessee has a significant economic incentive to exercise either option. Entities may measure and define significant economic incentive differently, and judgment on the part of management will be required in order to make the determination.

We do not agree that leases should be reassessed when changes in facts and circumstances indicate there is a significant change in relevant factors. We believe that the right-to-use asset and lease liability should be measured at lease inception, over the non-cancellable lease term in addition to any options included in the original assessment. We believe that the initial measurement should be reassessed only when the lease term is modified. The requirement to reassess lease terms when there is a change in relevant factors would entail significant effort compared to that required of current practice. The costs associated with estimating lease terms and with maintaining appropriate accounting records sufficient to properly estimate lease terms outside of traditional accounting systems are significant and would outweigh any potential benefits to be derived from such disclosures.

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#### **Question 6: Variable Lease Payments**

**Do you agree with the proposals on the measurement of variable lease payments, including reassessment if there is a change in an index or a rate used to determine lease payments? Why or why not? If not, how do you propose that a lessee and a lessor should account for variable lease payments and why?**

As stated previously, we believe that the right-to-use asset and lease liability should be measured at lease inception, over the non-cancellable lease term in addition to any options included in the original assessment. We believe that the impact of variable lease payments should only be reassessed when the lease is modified or there is a significant change in the index or rate that is considered permanent. Otherwise, the costs associated with reassessing the lease liability/receivable each reporting period to reflect changes in a component of the variable lease payment that result from every day fluctuations in the market or economy would outweigh any potential benefits. We would also recommend that the Board provide clarity as to the threshold for evaluating significant changes to prevent inconsistent application of the standard.

#### **Question 7: Transition**

**Subparagraphs 842-10-65-1(b) through (h) and (k) through (y) state that a lessee and a lessor would recognize and measure leases at the beginning of the earliest period presented using either a modified retrospective approach or a full retrospective approach. Do you agree with those proposals? Why or why not? If not, what transition requirements do you propose and why?**

**Are there any additional transition issues the Boards should consider? If yes, what are they and why?**

We generally agree with this approach, however, we strongly recommend the Board reconsider ASC 980-840, which has been superseded by this proposal. The elimination of this guidance would have a significant impact on regulated entities. Currently, regulated entities record lease expense equal to the amount permitted for rate-making purposes, with the difference between actual and allowable expenses subject to regulatory accounting. We believe that the expense recognition for leases should conform to rate-making treatment so that the expense aligns with the revenues allowed by the regulator. The elimination of ASC 980-840, which results in front-loaded amortization and interest expense, is not indicative of the economic effects of the rate-making process. We expect the Board does not intend to impact regulatory accounting through this proposal, and therefore, we recommend the Board retain ASC 980-840.

#### **Question 8: Disclosure**

**Paragraphs 842-10-50-1, 842-20-50-1 through 50-10, and 842-30-50-1 through 50-13 set out the disclosure requirements for a lessee and a lessor. Those proposals include maturity analyses of undiscounted lease payments, reconciliations of amounts recognized in the statement of financial position, and narrative disclosures about leases (including information about variable lease payments and options). Do you agree with those proposals? Why or why not? If not, what changes do you propose and why?**

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We generally agree with the disclosures mentioned in the paragraphs above, however, since the right-to-use assets and lease liabilities will be recorded on the balance sheet, we think the value added from further disclosures will outweigh the costs to comply. Specifically, we believe the proposed requirement to reconcile the lease liability and receivable may be additional information that is not relevant, provides little use to users of the financial statements, and is not required for other types of assets and liabilities. As previously stated, we believe the lease liability should only be adjusted when the lease is modified.

#### **Question 9: Nonpublic Entities (FASB Only)**

**To strive for a reasonable balance between the costs and benefits of information, the FASB decided to provide the following specified reliefs for nonpublic entities:**

- 1. To permit a nonpublic entity to make an accounting policy election to use a risk-free discount rate to measure the lease liability. If an entity elects to use a risk-free discount rate, that fact should be disclosed.**
- 2. To exempt a nonpublic entity from the requirement to provide a reconciliation of the opening and closing balance of the lease liability.**

**Will these specified reliefs for nonpublic entities help reduce the cost of implementing the new lease accounting requirements without unduly sacrificing information necessary for users of their financial statements? If not, what changes do you propose and why?**

This question is not applicable to FirstEnergy Corp.

#### **Question 10: (FASB Only)**

**Do you agree that it is not necessary to provide different recognition and measurement requirements for related party leases (for example, to require the lease to be accounted for based on the economic substance of the lease rather than the legally enforceable terms and conditions)? If not, what different recognition and measurement requirements do you propose and why?**

We agree it is not necessary to provide different recognition and measurement requirements for related party leases. The codification states that in addition to unrelated party leases, the recognition and measurement requirements for all leases should be applied by lessees and lessors that are related parties on the basis of legally enforceable terms and conditions of the arrangement. Currently, U.S. GAAP requires entities to account for leases with related parties based on economic substance. We feel it would be more costly and time consuming to evaluate related party leases using a different recognition mechanism than what is used for unrelated party leases.

#### **Question 11: (FASB Only)**

**Do you agree that it is not necessary to provide additional disclosures (beyond those required by Topic 850) for related party leases? If not, what additional disclosure requirements would you propose and why?**

We are in agreement. While related party leases should be separately disclosed, the information already required by the disclosure as mentioned in Topic 842 is sufficient.

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**Question 12: Consequential Amendments to IAS 40 (IASB Only)**

The IASB is proposing amendments to other IFRSs as a result of the proposals in this revised Exposure Draft, including amendments to IAS 40, *Investment Property*. The amendments to IAS 40 propose that a right-of-use asset arising from a lease of property would be within the scope of IAS 40 if the leased property meets the definition of investment property. This would represent a change from the current scope of IAS 40, which permits, but does not require, property held under an operating lease to be accounted for as investment property using the fair value model in IAS 40 if it meets the definition of investment property.

**Do you agree that a right-of-use asset should be within the scope of IAS 40 if the leased property meets the definition of investment property? If not, what alternative would you propose and why?**

This question is not applicable to FirstEnergy Corp.

**Conclusion**

FirstEnergy appreciates the opportunity to comment on the FASB's Proposed Accounting Standards Update (Revised), *Leases (Topic 842)*. We agree with several of the tentative conclusions outlined in the proposal, but caution the FASB to consider the concerns we expressed above.

FirstEnergy Corp. looks forward to continued participation in this important project and appreciates the opportunity to present our views.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Jan". The signature is fluid and cursive, with a large initial "K" and a stylized "Jan".