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LETTER OF COMMENT NO. 3

EDISON ELECTRIC INSTITUTE

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December 20, 2006

Mr. Robert H. Herz
Chairman
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Dear Mr. Herz:

The Edison Electric Institute (EEI) urges the Financial Accounting Standards Board to delay the effective date of FASB Interpretation No. 48 (FIN 48), *Accounting for Uncertainty in Income Taxes.*

EEI is the association of the nation's shareholder-owned electric companies, international affiliates, and industry associates worldwide. Our U.S. members serve 97 percent of the ultimate customers in the shareholder-owned segment of the industry and 71 percent of all electric utility ultimate customers in the nation. They generate almost 60 percent of the electricity produced by U.S. electric generators.

FIN 48 is meant to clarify the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FASB Statement No. 109 (SFAS 109), *Accounting for Income Taxes.* Evaluating a tax position in accordance with FIN 48 involves a two-step process.

1) The enterprise determines whether it is more likely than not that a tax position will be sustained upon examination, including resolution of any related appeals or litigation, based on the technical merits of the position. It is to be assumed that the tax position under consideration will be examined by the appropriate taxing authority and that the taxing authority has full knowledge of all relevant information.

2) A tax position that meets the more likely than not recognition test is measured at the largest amount of benefit that is greater than 50 percent likely of being realized upon ultimate settlement.

FIN 48 will become effective for fiscal years beginning after December 15, 2006 - January 1, 2007 for calendar year corporations. To adopt FIN 48, an enterprise must identify its material tax positions for all open years as of the beginning of the fiscal year of adoption. The FIN 48 two step process must then be applied to all material tax positions. The calculation of the transition amount at the effective date will be based on those uncertain tax positions that do not satisfy the more-likely-than-not recognition threshold and those tax positions that are recognized but are not measured at 100 percent. The application of this process is an extremely onerous effort, especially for large multi-entity issuers that file in multiple jurisdictions, as is the case for many EEI member companies.

Since the issuance of FIN 48 in July 2006, some very fundamental implementation issues have been identified, continue to be discussed, and remain unresolved. These issues could provide significant risk for proper compliance with FIN 48 and consistency in treatment. Since the scope of FIN 48 includes "all income tax positions accounted for in accordance with Statement 109," preparers of financial statements must now consider the two step process for all material tax positions for all open tax years. Although FIN 48 does not specify formal documentation requirements (e.g., those included in Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities*), documentation that addresses the Interpretation's requirements is now needed for tax positions, some of which may have been taken years earlier when the requisite documentation was obviously different. In addition, it is unclear to what extent and under what circumstances "highly certain tax positions" must be documented. EEI member companies have been discussing these issues with their external auditors; however, the determination of what constitutes adequate documentation for applying FIN 48 is still evolving.

Without the benefit of a field study being conducted by the FASB staff, EEI recognizes that the Board may not have anticipated the implementation issues currently being encountered. However, the abbreviated period between the issuance of the Interpretation and its effective date (for calendar year companies) has not provided adequate time for a complete identification, evaluation and resolution of implementation issues. Significant unanswered questions present a risk that the implementation of FIN 48, as currently

mandated, may result in more diversity in the application of SFAS 109 than the Board had perceived to be the case before FIN 48. There is also a significant chance that there will be inadvertent errors in applying FIN 48 in the limited time frame remaining.

EEI strongly recommends that the effective date of FIN 48 be deferred for one year (to fiscal years beginning after December 15, 2007). This will allow time for the development of consistent guidelines and interpretations for the documentation of the recognition and measurement of tax positions and for the presentation of FIN 48 related disclosures. Additional time would accommodate the issuance of further guidance and allow for a more systematic and carefully controlled implementation of FIN 48.

We appreciate your consideration of our views on the effective date of FIN 48.

Sincerely,

David K. Owens

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