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Constellation Energy

August 8, 2008

LETTER OF COMMENT NO. 166

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

VIA ELECTRONIC MAIL

File Reference No. 1600-100

RE: Proposed Statement of Financial Accounting Standards
Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R)

Constellation Energy appreciates the opportunity to comment on the Proposed Statement of Financial Accounting Standards, *Disclosure of Certain Loss Contingencies, an amendment of FASB Statements No. 5 and 141(R)*. We understand that the proposed requirements are intended to enhance the information disclosed for loss contingencies that are recognized as liabilities and for unrecognized loss contingencies that would be recognized as liabilities if the criteria for recognition in SFAS No. 5 were met. We support the overall objective of providing meaningful and understandable disclosures for loss contingencies. However, based upon our review of the Exposure Draft, we believe that the expanded disclosure of certain loss contingencies, specifically those pertaining to pending or threatened legal proceedings, may not achieve the FASB's stated objective of "assisting users of financial statements in assessing the likelihood, timing, and amount of future cash flows associated with loss contingencies..."

We believe that requiring the proposed disclosures pertaining to legal proceedings could be potentially misleading to financial statement users unless these matters are disclosed in such detail as to prejudice the ultimate outcome of the legal proceeding or unasserted claim. We also believe that the prejudicial exemption, as proposed, does not go far enough to protect companies, shareholders, creditors, and other capital providers in this regard. Finally, we believe that issuance of final guidance in the fourth quarter of 2008 with an end of fourth quarter effective date does not provide companies with sufficient time to evaluate the implications of the final standard as well as to perform the necessary calculations of amounts required to be disclosed, and that a delay in the effective date is essential.

Our specific comments below address in more detail our overall concerns with the nature and extent of the Exposure Draft's provisions. Due to the nature of this proposed amendment, we have consulted our internal legal counsel in connection with preparing our comments. Most of our comments pertain to specific questions posed as part of the Exposure Draft, and we raise one additional, though critical in our view, issue that we wish to bring to the Board's attention.

Comments on Specific Questions in the Exposure Draft

Question 1: Will the proposed Statement meet the project's objective of providing enhanced disclosures about loss contingencies so that the benefits of those disclosures justify the incremental costs? Why or why not? What costs do you expect to incur if the Board were to issue this proposed Statement in its current form as a final Statement? How could the Board further reduce the costs of applying these requirements without significantly reducing the benefits?

We do not believe that the administrative or procedural costs associated with accumulating and reporting the information that would be required under the proposed Statement's provisions would be significant for most loss contingencies.

However, we believe that the potential costs associated with detailed disclosure of sensitive, potentially attorney-client privileged and speculative information about pending or threatened legal proceedings would not justify any perceived benefits to investors from those disclosures. Such information, which otherwise would not be publicly available, could be used by other parties to the legal proceeding to the detriment of the reporting entity and its investors. Further, the requirement to disclose this sensitive information could result in an increase in scope exceptions by audit firms if they are unable to obtain the audit evidence necessary to corroborate the information that is protected by attorney-client privilege. We recognize that the Board has proposed an exemption in circumstances in which disclosure of certain information would be prejudicial to the outcome of the proceeding; however, we believe the prejudicial exemption, as proposed, does not go far enough to mitigate the potential costs to reporting entities and investors from such disclosure. See response to Question 9 below.

We believe that the best way to mitigate the cost of disclosing this type of information would be to exempt legal proceedings, whether pending or threatened, from the proposed expanded disclosures. By their very nature, such proceedings are not susceptible of precise estimation, and it is unlikely that even extensive disclosure of detailed information would enable financial statement users to make a better estimate of the ultimate outcome than management's assertions under the present disclosure framework. In our view, requiring this type of disclosure for legal proceedings will only increase costs – both direct costs for financial statement preparers (in the form of higher staff costs, audit fees, and legal fees) and for investors (in the form of potentially higher losses due to increased prejudicial information available to plaintiffs). We believe that there is little or no incremental benefit from including legal proceedings within the scope of this standard, and we recommend that they be removed from its scope.

Question 3: Should an entity be required to provide disclosures about loss contingencies, regardless of the likelihood of loss, if the resolution of the contingencies is expected to occur within one year of the date of the financial statements and the loss contingencies could have a severe impact upon the operations of the entity? Why or why not?

We believe that disclosures regarding loss contingencies that are considered remote should not be required under the proposed Statement. SFAS No. 5 defines remote loss contingencies as those whose future chance of occurring is slight. We believe that inclusion of disclosures pertaining to specific loss contingencies with only a slight chance of occurrence would be of minimal benefit to users of financial statements and may result in investors believing that the very disclosure of such information indicates that the likelihood of loss is greater than the actual chance of loss. We also believe that information pertaining to remote loss contingencies that could have a severe impact upon the operations of the entity is, in many instances, already being disclosed by companies subject to SEC reporting requirements in the Risk Factors and/or MD&A sections of their periodic reports filed with the SEC.

Question 4a: Do you believe that this change would result in an improvement in the reporting of quantitative information about loss contingencies?
While we do believe the proposed disclosures of loss contingencies, exclusive of those related to pending or threatened legal proceedings, would enhance the understanding of such loss contingencies by financial statement users, we believe that the Board should provide a scope exception for loss contingencies related to pending or threatened legal proceedings. See response to Question 9 below.

Question 4c: If you disagree with the proposed requirements, what quantitative disclosures do you believe would best fulfill users' needs for quantitative information and at the same time not reveal significant information that may be prejudicial to an entity's position in a dispute?
In the case of pending or threatened legal proceedings, we believe it is likely that any quantitative disclosures pertaining to a specific loss contingency would be prejudicial to the outcome of the proceeding. Accordingly, we believe that it is essential either to strengthen and expand the prejudicial exemption as described in our response to Question 9 below, or to remove pending and threatened legal proceedings from the scope of the final Statement pertaining to Disclosure of Certain Loss Contingencies.

Question 5: If a loss contingency does not have a specific claim amount, will an entity be able to provide a reliable estimate of the maximum exposure to loss that is meaningful to users? Why or why not?
While a company may be able to provide a reliable estimate of the maximum exposure to loss, we don't believe that this information, in and of itself, would be meaningful to financial statement users. Maximum exposures may be misleading to less sophisticated users as they may perceive the maximum exposure to represent the expected loss (even if an expected loss is also provided).

Question 6: Financial statement users suggested that the Board require disclosure of settlement offers made between counterparties in a dispute. The Board decided not to require that disclosure because often those offers expire quickly and may not reflect the status of negotiations only a short time later. Should disclosure of the amount of settlement offers made by either party be required? Why or why not?
We agree with the Board's decision not to require disclosure of settlement offers made between counterparties in a dispute as such disclosure could potentially stifle negotiations that would be in the best interests of the reporting entity and investors for fear that settlement offers would have to be disclosed. In addition, such information can inappropriately inform and impact other pending settlements in similar disputes.

Question 8: This proposed Statement includes a limited exemption from disclosing prejudicial information. Do you agree that such an exemption should be provided? Why or why not?
We agree that an exemption from disclosing prejudicial information is essential to protect companies engaged in pending or threatened legal proceedings. However, we believe the exemption, as proposed, does not go far enough in providing this protection. For instance, under the proposed exemption, companies would still be required to disclose the amount of the claim, or best estimate in absence of a claim, a description of the loss contingency, how it arose, its legal basis, its current status, anticipated timing of the resolution, and a description of the factors that are likely to affect the ultimate outcome of the contingency. In the case of pending legal proceedings,

all of this sensitive and potentially attorney-client privileged information, especially the description of the factors that are likely to affect the ultimate outcome of the contingency, could be used by other parties to the proceedings to devise a more informed legal strategy leading to increased risk of an unfavorable outcome to the proceeding that could have an adverse effect on the reporting entity and investors.

Question 9: If you agree with providing a prejudicial exemption, do you agree with the two-step approach in paragraph 11? Why or why not? If not, what approach would you recommend and why?

No, we do not believe that the two-step approach outlined in paragraph 11 truly allows an entity to keep private all of the information which could potentially affect the outcome of pending or threatened legal proceedings. It is foreseeable that reporting entities who have only a few, material legal proceedings that would require disclosure may not lend themselves to the aggregation provisions allowed under the two-step approach. As such, it would be fairly simple for plaintiffs to glean sensitive and critical information from these proposed disclosures that could be used to the company's disadvantage in the legal proceeding. Accordingly, as described more fully in our response to Question 1 above, we request the Board to consider providing a scope exception to this Statement for loss contingencies related to pending or threatened legal proceedings. In the absence of a scope exception, we request the Board to consider modifying the disclosures required under the prejudicial exemption to include only the following items, which comport with existing disclosure requirements under Item 103 of the SEC's Regulation S-K:

1) if a pending proceeding, the name of the court or agency;
2) the date the proceeding was instituted or threatened;
3) the principal parties to the proceeding;
4) a description of the factual basis alleged to underlie the proceeding; and
5) the relief sought, if known.

Question 14: Do you believe it is operational for entities to implement the proposed Statement in fiscal years ending after December 15, 2008? Why or why not?

We do not believe it would be operationally feasible to implement the proposed Statement in fiscal years ending after December 15, 2008, regardless of whether the scope exemption we have requested is provided. Under the proposal, entities will be affirmatively required to quantify and disclose exposures within the standard's scope, even those for which they had determined making an estimate was not possible. Given these changes and the inherent uncertainties involved, combined with the fact that a final standard is not likely to be issued prior to the fourth quarter of 2008, we believe that the proposed effective date is not feasible. Accordingly, we believe that an effective date for interim and annual periods ending after December 15, 2009 is the first realistic period in which we could implement the requirements of the Statement.

Convergence with IFRS

We noted the disclosures proposed under this Statement are broader than those currently required under IAS 37, *Provisions, Contingent Liabilities, and Contingent Assets*. Further, we also note that the IASB is currently deliberating changes to IAS 37 which will include an evaluation of disclosure requirements. Given the increasing interest in adoption of IFRS among U.S. companies and the significant efforts by both Boards to develop converged standards, we suggest the FASB postpone the issuance of the final standard on Disclosure of Loss Contingencies until the IASB has completed their deliberation of loss contingency disclosures or until such time as a converged standard can be developed. This would eliminate the potential confusion to financial statement users and inefficiencies for U.S. preparers that could result from adopting one set of disclosure requirements now and then transitioning to another set of disclosure requirements with the adoption of IFRS.

We appreciate the opportunity to comment on this Exposure Draft.

Sincerely,

/s/ Reese K. Feuerman
Vice President, Controller & CAO

/s/ Randall Hartman
Assistant Controller – Accounting Policy & Research