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Letter of Comment No: 83  
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Director of Research and Technical Activities  
File Reference No. 194-B  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

Re: Exposure Draft (Revised) Consolidated Financial Statements: Purpose and Policy.

Dear Sir:

Duke Energy Corporation (Duke Energy) appreciates the opportunity to respond to the Exposure Draft (ED), "Consolidated Financial Statements: Purpose and Policy." Duke Energy, a NYSE publicly traded company, is an integrated energy and energy services provider with the ability to offer physical delivery and management of both electricity and natural gas throughout the United States and abroad. For calendar year 1998, Duke Energy reported operating revenues of \$17.6 billion and net income of \$1.3 billion. Stockholder's equity at December 31, 1998 was approximately \$8 billion.

Duke Energy is opposed to the adoption of this Exposure Draft. The introduction of a new framework of consolidation is unnecessary. The practical effect of the ED will be to replace the simple and objective model that we have today with a subjective and complex approach that will lead to inconsistent reporting by companies with similar circumstances. Furthermore, the proposed standard will add significant instability to reported results with regard to which entities will be included or excluded from consolidation during a certain period. An entity's consolidation status could change entirely due actions taken by third parties that are totally unrelated to the parent or subsidiary.

We urge the board to carefully measure the benefit of adopting this exposure draft. The parent company approach to consolidation has produced satisfactory results in the past for users of financial statements. There is simply not a "business case" to adopt a new framework, much less a framework that introduces a new set of complexities and issues like the control based approach does.

The following are Duke Energy's responses to the issues included in the ED:

### **Definition of Control and Its Implementation Guidance**

*Issue 1. Does the revised definition, together with the discussion of the characteristics of control and descriptive guidance, help clarify when one entity controls another entity? Will the revised definition and guidance lead to common understandings and application of the Statement's definition of control?*

Despite the Board's attempt to eliminate or limit the ambiguity of decisions to consolidate, the proposed Standard's definition of control remains vague. In theory, the Standard's definition of control seems clear. But in practice, determining control will still require judgment and may reduce the comparability of financial statements. For example, it could be hard to determine if a partner's or shareholder's veto rights

are actually protective rights that do not limit a parent's control or if they are really shared decision-making abilities. Thus, the new Standard will not eliminate the need for judgment in evaluating consolidation of an investee.

The new Standard will encourage attorneys and drafters of plans and contracts to develop new and innovative ways to structure deals and transactions to avoid consolidation. Perhaps, the elusion will come in the use of the "temporary control" provisions.

The proposed Standard states that once a subsidiary is consolidated, then it should be consolidated until the parent no longer has control. Entities will need to periodically review relationships to establish whether "control" as defined, still exists. Control may be clear in one period, but changes in the subsidiary or investee may extinguish that control in a subsequent period. Situations such as this would require expansion or clarification of the temporary control definition or further consideration by the Board.

*Issue 2. Will guidance in the form of rebuttable presumptions of control be necessary? Do the circumstances described in each of the situations identified in paragraphs 18 and 21 provide a reasonable basis for presuming that one entity controls another entity in the absence of evidence that demonstrates or proves otherwise? Are they sufficiently clear and operational? Are additional presumptions of control necessary for specific circumstances?*

The situations listed in paragraphs 18 and 21, other than 18(a), do not provide "a reasonable basis for presuming that one entity controls another entity in the absence of evidence that demonstrates or proves otherwise". Development of an all-inclusive list of rebuttable situations can not reasonably encompass all of the possible situations that may occur.

The idea in 18(b) that presumes control when an entity has a large minority voting interest and no other party has a significant voting interest is based solely on past voting history. Because situations and issues voted on constantly change, it is questionable whether the past is really a good indicator of the future.

Paragraph 18(c) presumes control when an entity has the ability to obtain majority voting interest in another entity through the present ownership of convertible securities that it can exercise at any time. This presumption of control is based solely on whether an entity is able to control rather than on if it has acting control at that time. It is unclear whether the ability to control actually justifies consolidation. This does not consider situations of passive investment or plans to dispose of the investment (beyond the temporary control limit(s)). In addition, the idea of a parent including the assets of a subsidiary in its financial statements simply because the parent controls it but has no legal title to those assets seems misleading. This raises a question about whether the parent companies' shareholders actually own those assets and have a right to those assets.

For situations where evidence of control is not easily ascertainable, the Board should consider requiring an expansion of the disclosures for related party transactions, rather than consolidation. Full disclosure of the endeavors and practices of an organization is clearly the intent of this Statement, and a clearer picture may be obtained than from consolidation. FAS 57, paragraph 4, requires disclosure of the nature of control relationships if the operating results or financial position of the reporting enterprise could result in a significant difference and if the enterprises are reported as autonomous rather than under common control. The intent of this requirement is to provide relevant and reliable information about relationships within an organization. The requirements of FAS 57 should be sufficient in achieving the presentation and disclosure levels sought by the proposed Statement.

## **Transition and Implications for Interim Reporting**

*Issue 3. Are the benefits of complete and comparative financial statements for all interim periods in the initial year of application sufficient to justify requiring, rather than permitting, that the provisions of this*

*Statement be applied for the first and each subsequent interim period in the year of adoption? Are there specific circumstances surrounding the application of this proposed Statement that would justify delaying its application to interim periods in the year of adoption?*

With the uncertainty surrounding the year 2000 problems, the application of the new Standard to interim periods in the year of adoption should be elective. The Board should consider delaying mandatory adoption until the latter part of 2000. Perhaps an effective date of fiscal years ending after September 15, 2000 would be appropriate.

Duke Energy appreciates the opportunity to contribute to the standard-setting process, and we hope that our comments will be useful in your deliberations.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Boyer', with a long horizontal flourish extending to the right.

Jeffrey L. Boyer  
Vice President & Corporate Controller