



76 South Main St.  
Akron, Ohio 44308

**Harvey L. Wagner**  
Vice President, Controller  
and Chief Accounting Officer

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

August 16, 2010

Mr. Russell G. Golden, Technical Director  
Financial Accounting Standards Board  
401 Merritt 7  
PO Box 5116  
Norwalk, CT 06856-5116

Email: [director@fasb.org](mailto:director@fasb.org)

Re: Proposed Accounting Standards Update — *Disclosure of Certain Loss Contingencies*  
File Reference No. 1840-100

Dear Mr. Golden:

FirstEnergy Corp. genuinely appreciates the opportunity to respond to the Proposed Accounting Standards Update, *Disclosure of Certain Loss Contingencies*.

FirstEnergy is a diversified energy company in the United States with approximately \$34 billion of assets, \$13 billion in annual revenues, and \$11 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 seven electric utility operating companies comprise the nation's fifth largest investor-owned electric system, serving 4.5 million customers within 36,100 square miles of Ohio, Pennsylvania, and New Jersey. Our generation subsidiaries control more than 14,000 megawatts of capacity.

Overall, we support the Financial Accounting Standards Board (FASB) in its objective to develop accounting principles that enhance the transparency and relevance of financial statement disclosure. We do have significant concerns about the proposed disclosures related to loss contingencies and believe that the perceived benefits to financial statement users will be substantially outweighed by costs and other adverse consequential effects. While we recognize and appreciate the changes made to resolve many of the concerns identified within the previous proposal, this Update still raises major concerns. For example, we believe that the proposed disclosures concerning litigation strategies and assessments of potential exposures and likely outcomes will require enterprises to provide sensitive and confidential information that could be severely prejudicial, thus adversely impacting the ability to satisfactorily resolve those loss contingencies. Moreover, the proposed disclosure seeks more information than legal counsel is required to provide, departing from the longstanding American Bar Association's "Statement of Policy Regarding Lawyers' Responses to Auditors' Request for Information" (ABA Statement of Policy) that satisfies the accountant's need for information and the lawyer's duty to protect the client's privilege.

In addition, obtaining and assessing the majority of the information required for the proposed disclosures would impose a significant burden on legal counselors and independent auditors as it is subjective in nature and difficult to validate. For these reasons we are unable to support certain provisions contained in the Proposed Accounting Standards Update, *Disclosure of Certain Loss Contingencies* and urge the Board to withdraw this proposal.

Furthermore, the proposed disclosure requirements will create additional inconsistencies between international financial reporting standards (IFRS) and accounting principles generally accepted in the United States (U.S. GAAP). We support the FASB's effort to achieve consistency through the convergence of U.S. GAAP with IFRS and urge the FASB to align this proposed guidance with IFRS through a joint convergence project with the International Accounting Standards Board (IASB). Withdrawing this Update will allow adequate time for the convergence process to unfold.

We are providing responses to six of the eight questions raised by the FASB. We are not commenting on the questions regarding exemptions for nonpublic entities, since they are not applicable to our operations.

**Question 1: Are the proposed disclosures operational? If not, please explain why.**

The proposed disclosures would appear to be operational on the surface. However, the preparation of the proposed disclosures will require significant assumptions and legal judgments that cannot be easily assessed by management or verified by auditors. Further, the proposed Update does not address how, in practice, legal counsel can assist in making these types of judgments nor provide sufficient audit evidence to independent auditors. We also believe that the proposed Update significantly underestimates the costs of providing the information necessary to generate the proposed disclosures—both directly through increased legal and audit fees and indirectly through unintended consequences, such as the disclosure of prejudicial information adversely impacting the resolution of a loss contingency.

**Question 2: Are the proposed disclosures auditable? If not, please explain why.**

Independent auditors will have difficulty verifying the proposed disclosures concerning litigation strategies and assessments of potential exposures and likely outcomes. Auditors primarily rely on information and judgments obtained from legal counsel as directed by the ABA Statement of Policy, which are subject to the attorney-client privilege and based on existing U.S. GAAP accounting and disclosure requirements. For instance, the ABA Statement of Policy does not contemplate that the audit letter from legal counsel would describe whether "remote" losses may be resolved in the near-term, or whether such losses could have a "severe impact" on the company. In fact, legal counsel is not required to provide any opinion on the outcome of a loss contingency or the range of loss to auditors unless the possibility that the lawyer's opinion is incorrect is "slight." The proposed disclosure suggests that legal counsel provide the precise opinion that the American Bar Association has already advised would be beyond the role of counsel. As such, we believe that attorneys will be unable to provide independent auditors with sufficient and appropriate audit evidence to corroborate the proposed disclosures.

**Question 3: The June 2008 FAS Exposure Draft, *Disclosures of Certain Loss Contingencies*, had proposed certain disclosures based on management's predictions about a contingency's resolution. The amendments in this proposed Update would eliminate those disclosure requirements such as estimating when a loss contingency would be resolved and the entity's maximum exposure to loss. Do you agree that an explicit exemption from disclosing information that is "prejudicial" to the reporting entity is not necessary because the amendments in this proposed Update would:**

- a. Not require any new disclosures based on management's predictions about a contingency's resolution
- b. Generally focus on information that is publicly available
- c. Relate to amounts already accrued in the financial statements
- d. Permit information to be presented on an aggregated basis with other similar loss contingencies? If not, please explain why.

If the Board intends to pursue this Update, we believe that an explicit exemption from disclosing prejudicial information is necessary. The amendments in the proposed Update compel management to disclose prejudicial information. For example, the proposed disclosures concerning litigation strategies and assessments of potential exposures and likely outcomes will require management to make predictions about a contingency's resolution based on information that is confidential in nature and not publicly available. The proposed disclosures, especially assessments of potential exposures, do not always relate to amounts already accrued in the financial statements—such as in the case of reasonably possible claims. Further, we believe that aggregation of prejudicial information does not provide adequate concealment of prejudicial information for individually material loss contingencies. These proposed disclosures could place enterprises at a disadvantage in legal proceedings by extending leverage to opposing parties, thereby adversely affecting the resolution of loss contingencies.

**Question 4: Is the proposed effective date operational? If not, please explain why.**

If the Board intends to pursue this Update, we believe that deferral of the proposed effective date is necessary given the significant increase in the amount of required disclosures and the considerable administrative burden required by reporting entities, legal counsel and auditors to comprehend and implement the guidance. We recommend that any resulting Update be effective for fiscal years ending after December 15, 2011, in order to provide a reasonable time to review and implement the guidance subsequent to issuance in its final form.

**Question 5: Do you believe that the proposed disclosures will enhance and improve the information provided to financial statement users about the nature, potential magnitude, and potential timing (if known) of loss contingencies?**

We do not believe that the proposed disclosures will meaningfully assist financial statement users in assessing loss contingencies. In general, we believe that the existing disclosure requirements in current authoritative guidance provide adequate information regarding potential loss contingencies to investors and other users of financial statements. We currently disclose the nature, magnitude and other relevant qualitative information related to loss contingencies that are at least reasonably possible, and do not believe that additional qualitative and quantitative disclosures will provide incremental benefits to the users of the financial statements. For example, the proposed disclosures concerning assessments of potential exposures could materially differ from the amounts accrued in the financial statements. This could confuse or alarm financial statement users who rely on current U.S. GAAP accounting and reporting guidance. We also do not believe that the disclosure of material contingencies would be accelerated as a result of the proposed guidance.

The proposed guidance does not appear to be aligned with what is required by the Securities and Exchange Commission. Specifically, Item 103 of Regulation S-K does not require disclosure of information related to proceedings that primarily involve damage claims if the amount involved, exclusive of interest and other costs, does not exceed ten percent of the current assets of the registrant company and its subsidiaries on a consolidated basis. The proposed guidance does not contain this important limitation.

**Question 8: Do you believe that the proposed and existing XBRL elements are sufficient to meet the Securities and Exchange Commission's requirements to provide financial statement information in the XBRL interactive data format? If not, please explain why.**

If the Board intends to pursue this Update, we believe that the proposed and existing XBRL elements are sufficient to provide financial statement information related to loss contingencies in the XBRL interactive data format.

Mr. Russell G. Golden

- 4 -

FirstEnergy appreciates the opportunity to comment on the FASB's Proposed Accounting Standards Update, *Disclosure of Certain Loss Contingencies*. In light of the concerns expressed above, we believe that the disclosure requirements provided by current authoritative guidance, which have governed the disclosure of loss contingencies for over thirty years, provide a sufficient level of relevant and reliable information to financial statement users and are well understood by reporting companies, investors, auditors and attorneys. We urge the Board to withdraw the proposed Update.

Sincerely,

A handwritten signature in black ink, appearing to read "Harry L. Wagner". The signature is written in a cursive style and is positioned below the word "Sincerely,".