

**United States
Securities and Exchange Commission**

Strengthening the Commission's Requirements Regarding Auditor Independence)))))	File No. S7-49-02
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Comments of the Edison Electric Institute

I. Introduction

The Edison Electric Institute (EEI) is the association of the United States investor-owned electric companies, international affiliates, and industry associates worldwide. Our U.S. members serve nearly 90 percent of all customers served by the investor-owned segment of the industry. They generate almost 70 percent of all the electricity generated by electric companies in the country and service about 70 percent of all ultimate customers in the nation.

EEI is submitting these comments in response to the proposed rulemaking by the Securities and Exchange Commission (SEC or the Commission) entitled "Strengthening the Commission's Requirements Regarding Auditor Independence," published in the *Federal Register* on December 13, 2002 at 67 Fed. Reg. 76780. That notice seeks comment on the Commission's proposal to amend its existing regulations regarding auditor independence to enhance the independence of accountants that audit and review financial statements and prepare attestation reports filed with the Commission.

Section 208(a) of the Sarbanes-Oxley Act of 2002, Pub. L. 107-204, requires the Commission to adopt regulations necessary to implement specified

sections of the Act, including provisions of sections 201 and 202 of the Act. Section 201(a) generally makes it unlawful for a registered public accounting firm that performs an audit of an issuer's financial statements – and any person associated with such a firm, to the extent determined appropriate by the Commission – to provide to that issuer, contemporaneously with the audit, any non-audit service, including nine services specified in the Act. However, sections 201(a) and 202 allow an audit firm to perform a non-audit service that is not among the nine specifically prohibited services if the service has been pre-approved by the issuer's audit committee, subject to a de minimis exception to the pre-approval requirement and subject to a disclosure requirement for non-audit services the audit committee does approve.

In response, the Commission is proposing to revise its regulations related to the non-audit services that, if provided to an audit client, the Commission would view as impairing an accounting firm's independence under section 201(a). Overall, the Commission has properly focused the proposed rulemaking on categories of issues raised by section 201(a). In these brief comments, EEI will focus on the need for clarification in one part of the Commission's proposal dealing with "expert services."

II. Expert Services

Among the nine services specifically prohibited by section 201(a) are "legal services and expert services unrelated to the audit." (That proscription is set out as new subsection 10A(g)(8) of the Securities and Exchange Act of 1934.) In the preamble to its proposed new regulations, the Commission

elaborates on this restriction, stating that among other limitations an accounting firm would not be allowed to appear as an expert witness in a utility rate setting proceeding in support of an audit client's request for an increase in fees or to provide consultation and other services to an audit client's legal counsel in connection with litigation, administrative, or regulatory proceedings. Preamble section II.B.10. On the other hand, the Commission says that an auditor would be able to testify as a factual witness about its audit work for a particular audit client, and the auditor would be permitted to assist an issuer's audit committee in fulfilling its responsibilities in connection with the financial reporting process. *Id.*

Unfortunately, the proposed new regulatory text contained in the Commission's notice of proposed rulemaking does not reflect this preamble discussion of activities that would be permitted. Instead, proposed new 17 C.F.R. section 210.2-01(c)(4)(x) simply states that "[p]roviding expert opinions for an audit client in connection with legal, administrative, or regulatory proceedings or acting as an advocate for an audit client in such proceedings" would be viewed as providing non-audit services that would disqualify an audit firm from being viewed as independent.

EEl agrees with the Commission's preamble discussion that audit firms should be permitted to provide testimony as factual witnesses about the audit work they have done, even in connection with legal, administrative, and regulatory proceedings. The firms also should be able to testify about their understanding of accounting principles and standards that apply to company financial statements that are subject to an audit if those principles and standards

have been finalized even if they have not yet been applied, again as factual witnesses. We also support allowing the audit firm to assist the audit committee and counsel working with the committee in performance of the committee's functions. These types of activities are merely an extension of an audit firm's auditing services, the purpose of which is to ensure that companies are recording transactions under generally accepted accounting principles. The Commission should ensure that its final regulatory text reflects these and similar types of activities as being permissible.

III. Conclusion

EEl appreciates the opportunity to submit these comments. If you have any questions about them, please contact either David Stringfellow at 202/ 508-5494 or Henri Bartholomot at 202/ 508-5622.

Respectfully submitted,

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