



October 27, 2025

Mr. Jackson Day, Technical Director
Financial Accounting Standards Board
801 Main Avenue
P.O. Box 5116
Norwalk, CT 06856-5116

Via Email to director@fasb.org

Re: Agenda Request – Modernize the Derivative Accounting Guidance for Retail Power Purchase or Sale Agreements

Dear Mr. Day:

Amazon (Amazon.com, Inc., Nasdaq: AMZN) appreciates the opportunity to submit an agenda request to the Emerging Issues Task Force (EITF) to improve U.S. generally accepted accounting principles (U.S. GAAP) by modernizing the guidance in Accounting Standards Codification (ASC) Topic 815, *Derivatives and Hedging*, specifically related to power contracts between sellers and consumers for capacity and/or electricity (“retail power purchase or sale agreements”) in order to provide more decision-useful information to financial statement users.

This agenda request builds on the views we shared in the response included in our letter dated August 27, 2025, to the Financial Accounting Standard Board’s (FASB) *Invitation to Comment – Agenda Consultation*, Question 19 regarding derivative accounting improvements¹. This is an immediate and pervasive issue for any party that enters into retail power purchase or sale agreements, both sellers and buyers/consumers. Today’s demands for power include not only the substantial power needs of data centers and artificial intelligence (AI) operations, but also emerging requirements from industrial electrification, electric vehicle (EV) manufacturing, semiconductor facilities, and other energy-intensive operations. These transformative changes in electricity consumption patterns and contract structures across numerous sectors suggest a need to reassess and modernize the derivative accounting guidance specifically for retail power purchase and sale agreements that are becoming commonplace and much more pervasive in the current business environment.

We are encouraged the FASB acknowledges that accounting for certain arrangements as derivative instruments at fair value is not always an optimal outcome for financial reporting. In September 2025, the FASB issued Accounting Standards Update (ASU) Issue No. 2025-07 relating to derivative scope refinement². The ASU observes that because of the broad interpretation of the definition of a derivative, issues have been raised by stakeholders that many types of contracts are being evaluated and potentially accounted for as derivatives. In addition, there is significant cost and complexity to evaluate whether these contracts are derivatives, and if so, derivative accounting may not be the best reflection of the economics of those contracts. The ASU is intended to provide financial statement

¹ The letter is publicly available on the FASB’s website here:

<https://fasb.org/page/ShowPdf?path=AGENDACONSULT24.ITC.106.AMAZON.COM%20INC.%20SHELLEY%20REYNOLDS.pdf>

² ASU 2025-07, *Derivatives and Hedging (Topic 815) and Revenue from Contracts with Customers (Topic 606): Derivatives Scope Refinements and Scope Clarification for a Share-Based Payment from a Customer in a Revenue Contract*

users with more decision-useful information and reduce accounting complexity and related reporting costs for preparers and auditors.

While similar, the issues we outline in this agenda request with retail power purchase or sale agreements are not addressed in the ASU 2025-07. We believe this is a topic where amendments to U.S. GAAP would achieve the same objectives as those outlined in the ASU. We believe this issue is narrow in scope such that the EITF can efficiently identify a feasible alternative(s) and make a recommendation to the FASB. Retail power purchase or sale transactions are pervasive given the importance of power in today's economy. We believe the application of the current normal purchase, normal sale (NPNS) scope exception guidance in ASC 815 to these transactions has resulted or may result in diversity in financial reporting, or worse, could result in financial results that could be misinterpreted by investors as we further describe below. We do not believe that the resolution of the potential agenda issue is dependent upon resolving any other derivative related questions the Board may consider as a part of its Invitation to Comment or research project since the issue presented has an identifiable scope and narrow solutions are readily available, as further described in this letter. We believe the solutions suggested are both technically feasible and the benefits justify the expected costs of change.

Background

Retail Power Purchase or Sale Agreements

A retail power purchase or sale agreement is a legal contract between commercial entities for the supply of electricity (power); these contracts are not traded on exchanges. The seller of electricity, which may be a utility company or other energy generator, commits to delivering a specified quantity of electricity. The consumer/buyer of electricity enters into the agreement to secure reliable power supply for its operations. These agreements may also include renewable energy components as the consumers/buyers pursue sustainability goals alongside their power needs, though the fundamental business purpose remains securing reliable power supply for operations.

A retail power purchase or sale agreement outlines the terms and conditions for the purchase and sale of electricity and/or capacity, including volume commitments, pricing mechanisms, and capacity requirements. It encompasses several types of capacity and/or power contracts that consumers enter, including power purchase agreements (PPAs) executed directly with power generators or energy supply agreements (ESAs) with a utility or other energy supplier that manages the delivery infrastructure in addition to developing or procuring generation capacity. The duration of these contracts varies from short-term to long-term commitments, reflecting different market and operational needs. Capacity provisions are integral to these agreements, representing the guaranteed maximum amount of electricity (measured in megawatts (MW)) that the suppliers can reliably produce to meet peak demand. Many regions in the U.S. have separate capacity markets where energy suppliers sell their existing capacity to grid operators, who then ensure the overall system's capacity is sufficient. However, large retail buyers are subject to capacity charges even in markets where capacity is not regularly traded (e.g., where there are no capacity auctions) because sellers must recover related infrastructure investments required to maintain reliable power delivery, particularly during peak demand periods.

Utilities and other energy suppliers throughout the U.S. must invest billions of dollars in building capacity to serve growing electricity demand from both traditional industrial users and emerging

technology sectors. While hyperscalers³ represent a significant source of new demand, particularly due to AI applications, they are part of a broader transformation in power consumption patterns. The substantial electricity requirements across many industry sectors have made access to sufficient and dependable power a critical business priority for many consumers of power.

Increasingly, power contracts between utilities and/or energy suppliers and their major retail customers require firm commitments and pricing structures that substantively fund the construction of new power infrastructure. This results in contracts that are complex due to the size and duration of the pricing structure to recover the significant cost of the newly built power infrastructure. Given that new capacity can take several years to build, utilities and other energy suppliers are asking for unprecedented long-term agreements from buyers, some extending up to 20 years, to help cover the costs of infrastructure upgrades. The volume and length of these agreements reflect the current significant mismatch between power demand and available supply. To ensure recoverability of the costs incurred by building new infrastructure and their required rate of return, utilities and power suppliers often prefer fixed prices in these power contracts, as opposed to market or spot prices for capacity and/or electricity. Further, these agreements frequently include various contingencies such as regulatory approvals or construction dependencies, which may take years to resolve.

Because electricity cannot be readily stored in significant quantities and retail customers must ensure sufficient electricity supply to meet their ongoing and fluctuating operational electricity needs, a retail power purchase or sale agreement typically allows for contractual net settlements of unused electricity. This feature is particularly important as electricity, unlike other commodities, requires real-time balancing of supply and demand.

Retail power purchase or sale agreements do not typically allow for the effective net settlement of the remaining contract quantities in the event of termination. The penalty provisions are typically asymmetrical with only the defaulting party being liable for payment. The termination penalties for the retail buyer are typically linked to the related unrecovered infrastructure investments of the seller. The termination penalties for the seller are typically linked to losses by the retail buyer in securing alternative electricity supply. There may also be limits on the parties' losses under the contract based on actual costs incurred. Effectively, the termination provisions do not result in these agreements being terminated at their estimated fair value.

Accounting Guidance Applicable to Power Purchase or Sale Agreements

Under current U.S. GAAP, retail power purchase or sale agreements are subject to the accounting standards for leases, derivatives, revenue recognition, and consolidation. The seller entity is assessed for consolidation under the variable interest or voting interest models. In our experience, consolidation does not apply to retail power purchase or sale agreements because the seller is typically not a variable interest entity (VIE) or if the seller is a VIE, the retail buyer is typically not the primary beneficiary. The reporting entity also assesses the unit(s) of account, which may include electricity, capacity, environmental attributes (such as environmental credits), and ancillary and other services, and determines whether the contract contains a lease. In our experience, these agreements are typically not in the scope of the leasing guidance because there is no specified

³ Cloud computing hyperscalers build and operate interconnected data centers that use distributed computing to offer elastic, on-demand resources to their customers. Hyperscalers have revolutionized how companies operate by providing a flexible and scalable, energy efficient, and cost-effective way to access infrastructure/software-as-a-service, enabling companies to focus on their core business activities (avoiding the significant costs and complexities of managing their own data centers) and innovate more rapidly.

generation plant (no identified asset), or the retail buyer does not have the ability to control the operation of the specified generation plant.

Next, the reporting entity determines whether the contract is a derivative in its entirety. We have observed certain challenges in applying ASC 815 in practice to make this determination. Contracts that include a minimum commitment for electricity are typically derivatives because electricity is generally considered to be readily convertible to cash (thus meeting one of the net settlement criteria under the guidance). However, ASC 815 does not explicitly address how to assess a contract with multiple units of account. For example, a contract that contains capacity and electricity may have a notional for capacity and a net settlement feature for electricity. Furthermore, ASC 815 also does not explicitly address whether contingencies present at the time of contract execution such as regulatory approvals or construction dependencies, which may take years to resolve, impact the existence of a notional amount or the fair value of the contract. We have observed that there may be divergence in practice, and counterparties to the same contract may reach different conclusions regarding whether a derivative exists prior to the resolution of the contingencies. This divergence primarily centers on different interpretations of notional amounts. Some market participants conclude that contractually specified quantities establish a notional amount despite existing contingencies, while others maintain that substantive contingencies such as pending regulatory approvals or incomplete facility construction prevent the determination of a notional amount until these uncertainties are resolved. If a derivative does not exist, the contract may be considered executory. Alternatively, if a derivative exists and the criteria for NPNS is not met, the contract is subject to fair value throughout a contingency period which results in a significantly different financial statement outcome than that for an executory contract. Lastly, if a contract is not a derivative in its entirety, the reporting entity determines whether there are any embedded derivatives.

ASC 815-10-15-83 describes three criteria that must be met for a contract (including a commodity contract) to qualify as a derivative instrument: 1) there is an underlying, and one or more notional amounts and/or payment provisions; 2) there is little or no initial net investment; and 3) net settlement is permitted or required. ASC 815-10-15-35 to 815-10-15-36A provides guidance for an exception to the application of fair value accounting for derivative contracts where physical settlement is probable and the other requirements of the NPNS scope exception are met. ASC 815-10-15-25 and 15-26 summarize the key elements a buyer of electricity must meet to qualify for the NPNS scope exception. They include: 1) the contract involves quantities expected to be used by the reporting entity in the normal course of business; 2) contract pricing is clearly and closely related to the asset being purchased or sold; 3) it is probable that the contract will physically settle throughout the term of the contract (**no net cash settlement**); and 4) contemporaneous documentation requirements for designating a contract as qualifying for the exception.

Derivative Guidance for the Electric Power Industry Does Not Address Today's Retail Agreements

Over 20 years ago, the FASB acknowledged unique characteristics in the electric power industry, particularly the fact that power cannot be readily stored in significant quantities, and developed the current guidance included in ASC 815-10-15-45 through 15-51 as well as ASC 815-10-55-31 that provides a specific NPNS scope exception, primarily dealing with optionality, for certain qualifying power contracts ("the power contract exception"). This guidance was developed specifically for companies within the electric industry that enter contracts permitting one party to purchase electricity from another. It was issued in 2001 and amended in 2003 as part of Derivatives Implementation Group (DIG) Issue No. C15. For example, the magnitude of electricity needs to support demand by customers for AI and other cloud computing services, which require hundreds of billions of dollars of investment by utilities and other energy suppliers throughout the U.S., could

not have been foreseen when the derivative guidance was developed. These conditions have led to long-term contracts, some up to 20 years, that include minimum commitments and net settlement provisions.

Furthermore, the power contract exception guidance does not apply to or address the issues related to retail power purchase or sale agreements. Instead, retail power purchase or sale agreements are subject to the guidance included in ASC 815-10-15-25 and 15-26 that summarize the key elements that must be met for a contract to qualify for the NPNS scope exception. Subjecting retail power purchase or sale agreements to the current guidance for the NPNS scope exception in ASC 815-10-15-22 to ASC 815-10-15-51 is often impracticable (as discussed further below), and failure to meet these requirements results in the agreements accounted for as derivative instruments in circumstances where the parties are not speculating / trading on the future prices of power, but rather intend to acquire or sell energy as a normal part of their business, consistent with the intent of the NPNS scope exception. The resulting disparity between reported earnings and cash flows, created by measuring these contracts at fair value, does not reflect the underlying economic reality or operational performance of the contracting parties. Furthermore, since these long-term contracts may extend up to 20 years, interim fluctuations in electricity prices do not represent actual realized cash flows for either buyers or sellers. This creates volatility in financial statements that could be misinterpreted by investors and lead financial statement users to make suboptimal investment decisions based on accounting outcomes that do not align with the operational and economic substance of these agreements. We also believe the accounting results could lead to an increase in the use of non-GAAP measures if management does not believe the estimated fair value adjustments resulting from derivative accounting reflect business performance.

Practice Issues Encountered with the NPNS Scope Exception

We observe that in practice today, there are significant issues encountered when attempting to apply the NPNS scope exception guidance, which has strayed from the FASB's original intent. Regarding NPNS, the Basis of Conclusions (BC) to the original Statement of Financial Accounting Standards (SFAS) No. 133, paragraph 271 indicates (see bolded emphasis): "The Board believes contracts for the acquisition of assets in quantities that the entity expects to use or sell over a reasonable period in the normal course of business **are not unlike binding purchase orders or other similar contracts to which this Statement does not apply.**" The NPNS exception was supposed to ensure that routine buying or selling transactions that support entities' normal operations are not recorded at fair value, which is an accounting outcome that does not reflect economic reality and creates unnecessary burden.

In practice, the guidance is difficult to apply. ASC 815-10-15-22 and 15-23 indicate that the assessment of whether a contract qualifies for the NPNS exception is performed only at inception of the contract and that it relates to contracts for the purchase or sale of something "that will be delivered in quantities expected to be used or sold by the reporting entity over a reasonable period in the normal course of business." ASC 815-10-15-35 indicates that "it must be probable at inception and throughout the term of the individual contract that the contract will not settle net and will result in physical delivery" while 15-36 indicates that the NPNS exception "only relates to a contract that results in gross delivery of the commodity under the contract." There is an inherent inconsistency in the guidance because it includes a "probable" threshold for electing NPNS, which is generally interpreted as 70%-80% likelihood, but does not explicitly allow for any net settlements throughout the contract term.

This issue with net settlements is exacerbated for contracts that include multiple deliveries of the commodity over the contract term because the guidance does not address partial net settlements

where an entity takes physical delivery at each interval but not always for the full quantity. The guidance is not clear on how partial net settlements impact the rest of the contract – whether any individual net settlement “taints” the entire contract or just the specific delivery. The guidance is also not explicit whether a tainting event impacts existing or future contracts but in practice the notion of tainting is generally applied to existing and future contracts. This view is based on the guidance in ASC 815-10-15-35, which implies that the assertion of no net settlement for an existing contract is no longer probable. NPNS is technically an irrevocable election; however, a company could “unelect” NPNS by net settling a portion of a contract, presumably when in a favorable position.

Furthermore, electricity contracts present a unique challenge in applying the NPNS scope exception guidance because they generally include the uninterrupted delivery of electricity over long periods of time, and electricity cannot be stored in meaningful quantities. The retail power purchase or sale agreements we describe typically include the constant provision of electricity in every second of every hour over numerous years.

While the FASB may want to consider a broader project on the application of ASC 815 in totality, including NPNS eligibility, units of account, and other practice considerations such as contingencies present at the execution of a contract for example, we believe we have highlighted an emerging issue specifically relating to power contracts that needs urgent resolution and is well-suited to be addressed by the EITF.

Practice Issues with Applying Derivative Accounting to Retail Power Purchase or Sale Agreements

If the current requirements to qualify for the NPNS scope exception in ASC 815-10-15-22 to ASC 815-10-15-51 are not met, long-term retail power purchase or sale agreements are subject to derivative accounting. We believe recording retail power purchase or sale agreements at fair value diverges from the overall objective to provide decision-useful information to financial statement users. Retail power purchase or sale agreements are inherently part of the buyer and seller’s ordinary business operations and are not executed to speculate or trade on fluctuations in electricity prices. Treating power purchase or sale agreements similarly to financial options obfuscates the operating results of the parties to the contracts and is not a faithful representation of how entities manage or assess their business activities.

The fair value of retail power purchase or sale agreements is highly judgmental and based on complex valuation models. These valuations aim to indicate the price at which the contract would be transferred in an orderly transaction between market participants, but the reality is that while electricity is a widely traded commodity, the retail power purchase or sale agreements themselves are rarely, if ever, transferred between market participants. As noted above, retail buyers are now required to enter into long-term retail power purchase or sale agreements as a gating mechanism to have access to sufficient electricity supply while energy suppliers require these long-term commitments to recover substantial infrastructure investments needed to meet growing power demands. The business and strategic value of these contracts to retail buyers is almost exclusively anchored to having a firm supply of electricity, which is fundamentally disconnected from the valuation methodology that, at a minimum, focuses on the expected differences between contractual and market prices.

There is also significant uncertainty and judgment in estimating long-term electricity prices. Electricity futures are typically transacted for approximately five years, and capacity markets, where they exist, offer even shorter trading horizons with limited liquidity. As such, significant portions of these contracts require Level 3 inputs, which may include the development of fundamental curves based on methodologies such as cost of new entry (“CONE”). The CONE methodology estimates

long-term electricity and capacity prices by incorporating multiple components of power infrastructure development, including capital investment costs for new generation facilities and required capital returns as well as future operating costs (fuel, labor, maintenance, compliance, and other costs). The valuation assumptions often require significant management judgment because relevant public data typically encompasses broad geographical areas while many retail power purchase or sale agreements are subject to local and geographical factors. The bespoke nature of many retail power purchase or sale agreements also introduces challenges for retail buyers in reconciling assumptions among their electricity supply portfolios.

Proposed Project Scope and Solutions

Based on this background, we pose the following suggestions/recommendations to the EITF on how the current derivative accounting guidance could be modernized specifically for retail power purchase or sale agreements, resulting in more decision-useful information for financial statement users.

Scope

The scope of this project should be narrow to only focus on retail power purchase or sale agreements (as defined below).

FASB has acknowledged that electricity contracts often require flexibility in timing and quantity due to fluctuating demand and statutory obligations. This flexibility is less common in other commodity markets, where storage and transportation can be reserved or owned.

This scoping approach is conceptually consistent with previous standard setting, most recently as part of the ASU 2015-13⁴. Under that guidance, the EITF and FASB clarified how transactions in nodal markets in power distribution did not preclude applying the NPNS scope exception. As we referenced previously, another example of industry specific consideration related to electricity markets is part of DIG Issue No. C15 (codified under ASC 815-10-15-45 through 15-51).

Given the evolving market for power, we believe this is the right time to consider this narrow issue as previously done through the DIG issue and subsequent EITF and Board decisions.

Solution A - Scope Exception to ASC 815

We propose excluding retail power purchase or sale agreements from the scope of ASC 815, effectively accounting for these agreements as executory contracts and applying other existing applicable U.S. GAAP, such as recognizing the effects of net settlements or the termination of an agreement at the time those events are considered both probable and estimable. Several types of contracts are already scoped out of derivative accounting by ASC 815-10-15-13 if certain criteria are met. In addition to those qualifying for NPNS, other contracts excluded from derivative accounting include (this is not exhaustive): certain contracts involving an entity's own equity (ASC 815-10-15-74 to ASC 815-10-15-78, ASC 815-40); leases (ASC 815-10-15-79); and certain contracts that are not traded on an exchange (ASC 815-10-15-59 to ASC 815-10-15-62). This solution would add another set of contracts to be scoped out of derivative accounting.

This view would support the fact that, fundamentally, retail power purchase or sale agreements meeting certain conditions described below should not be accounted for as derivative instruments. This would significantly reduce accounting complexity for both sellers and consumers/buyers in a

⁴ ASU No. 2015-13 (Topic 815), Application of the Normal Purchases and Normal Sales Scope Exception to Certain Electricity Contracts within Nodal Energy Markets, effective August 2015.

significant number of retail power purchase or sale agreements while better reflecting the economic substance of these arrangements. In addition, a scope exception would create accounting treatment parity with common practice for many renewable energy arrangements, particularly those involving solar and wind power. Under current guidance, these contracts are not accounted for as derivative instruments if the contracts are deemed to not include a notional (e.g., when buyers simply pay for whatever power is generated based on available renewable resources). Creating a consistent accounting framework would better reflect their similar operational nature, regardless of the generation source.

For this solution, a retail power purchase or sale agreement could be defined as follows.

A retail power purchase or sale agreement is a contract between commercial entities for the supply of electricity where:

- a. The seller is an entity engaged in selling electricity to retail customers.
- b. The buyer is a retail customer that enters the contract to secure power supply for its business operations.
- c. The contract is not exchange-traded.
- d. Termination provisions do not result in effective net settlement of remaining contractual quantities.

A retail power purchase or sale agreement includes both behind-the-meter (BTM) arrangements directly into the designated facilities and front-of-the-meter (FTM) arrangements into the designated grid connection points. FTM arrangements may include a separate contract between the retail customer and the seller of electricity or a third-party utility or grid operator to transport the electricity from a grid delivery point to the retail customer's facilities.

Retail power purchase or sale agreements require physical delivery of electricity but may allow for contractual net settlement to the extent committed quantities exceed the retail customer's actual electricity needs in a measuring period (e.g., hour, day, month).

Periodic net settlements that may occur under retail power purchase or sale agreements that we describe are not the result of the two parties to these arrangements speculating on the price of electricity and attempting to profit from price changes. On the contrary, net settlements in a retail power purchase or sale agreement are necessarily a byproduct of other overarching business and operational decisions or factors that are outside of the control of the seller and consumer/buyer. For example, electricity usage within a data center operated by a hyperscaler is driven by the behavior of the end users of the hyperscaler's services (in this example, "customers"). A customer may move workloads to different data center regions. Customers may experience unexpected fluctuations in the demand for their services. The hyperscaler may gain or lose important customers. The hyperscaler may experience a data center outage because of internal or external issues, which requires the rerouting of demand to other regions. The hyperscaler may experience construction delays for new data centers or supply chain constraints for data center equipment. Technological changes may impact both data center operations and end customers' demand. Data center management is highly complex and dynamic, requiring ongoing decisions about the region's overall capacity and the type of equipment (e.g., servers) that are deployed.

The termination provisions, if any, in a retail power purchase or sale agreement do not result in the effective net settlement of the remaining contractual quantities. Retail power purchase or sale agreements are typically not assignable without the consent of both seller and buyer.

As a result of these factors, we prefer this solution because these contracts should not be subject to fair value accounting and could be fully scoped out of ASC 815. We believe, paraphrasing SFAS No. 133, BC 272 that the retail power purchase or sale agreements that we describe “are not unlike binding purchase orders or other similar contracts to which ASC 815 *should not* apply.” Furthermore, we think it is impractical to require retail buyers to nearly perfectly forecast and match their electricity supply and demand when executing retail power purchase or sale agreements to support business operations that often span decades, just to attempt to qualify for the NPNS scope election in ASC 815-10-15-22 to ASC 815-10-15-51. Additionally, companies must consistently reassess this election throughout the life of contracts and the NPNS scope election guidance is very punitive as currently written. Effectively, a one-time factor outside of a company’s control causing contractual net settlements could disqualify a contract for the NPNS scope election and require a permanent change to fair value accounting. We believe an optimal solution is one that focuses on management’s intentions and operating practices, including data already being used in making business decisions, and not one that requires burdensome incremental tracking that management does not use apart from complying with ASC 815. This is consistent with the inherent notion of a normal purchase and normal sale. As noted, an optimal solution is to apply existing U.S. GAAP guidance for executory contracts to retail power purchase or sale agreements.

Potential Abuse Considerations

We recognize that Solution A may raise concerns about potential abuse of the guidance to exclude speculative agreements entered into by buyers/consumers from derivative accounting. We believe our proposed definition of retail power purchase or sale agreements would sufficiently mitigate this risk because contracts meeting the scope and definition are inherently meant to energize a buyer/customer’s operations. Contracts that do not meet the definition may indicate intent to profit from energy price fluctuations and other existing guidance in ASC 815 would be applied. We believe companies and auditors will be able to apply Solution A consistently without undue efforts or overly subjective judgment while also eliminating current inconsistencies in practice.

Solution B - NPNS Exception for Retail Power Purchase or Sale Agreements

As an alternative to Solution A, although less preferred, we would propose expanding the existing NPNS scope exception in ASC 815-10-15-22 to ASC 815-10-15-51 to provide specific guidance for retail power purchase or sale agreements. The definition of a retail power purchase or sale agreement that we introduced in Solution A is also applied to Solution B. This enhancement would provide clearer and more practicable operational guidance for financial statement preparers and better reflect the intent and purpose of the NPNS exception.

At contract inception, it is probable that the committed contractual quantities will be “predominantly”⁵ consumed in the retail buyer’s operations throughout the contract term. For purposes of this proposed solution, we would consider predominantly as being closer to an approximately 70% consumption threshold, as opposed to, for example, a more than 50% threshold.

⁵ While not explicitly defined in the Master Glossary of the GAAP Codification, we note the existing concept of predominance is already codified into GAAP in several places including, for example, in ASC 842 in allowing lessors to elect to aggregate non-lease components that otherwise would have been accounted for under the revenue recognition standard with the associated lease component (ASC 842-10-15-42A and 42B), and in ASC 480 in determining whether a financial instrument meets the definition of a liability (ASC 480-10-25-14). Because GAAP does not offer a single definition, other financial and legal sources have offered varying interpretations depending on the specific situation. Interpretations can range from “more than 50%” to “75% or more,” or even “80% or more,” depending on the context and industry.

The consumption threshold should be assessed over the entire contract term rather than shorter intervals such as hourly, daily, monthly, or annually. There are several reasons we do not believe a higher threshold such as “substantially all,” which practice generally interprets to be at least 90 percent⁶, would sufficiently alleviate the issues we have outlined with applying NPNS for these long-term contracts. There is significant uncertainty in forecasting electricity supply and demand beyond a short time window for existing operations. Furthermore, companies need to incorporate reasonable demand buffers into these contracts, which could in many cases very reasonably exceed 10 percent, because shortage of electricity is a business interrupting event. A 90 percent threshold for a 20-year contract would require companies to forecast nearly perfectly or take undue risks about future electricity supply. Our proposed approach reflects how companies operate by allowing for reasonable forecasting and normal fluctuations in consumption patterns while maintaining focus on the overall business purpose.

Delivery and Consumption of Electricity Under a Retail Power Purchase or Sale Agreement

If the EITF pursues Solution B in lieu of Solution A, we would also recommend enhancing its operability by allowing retail buyers to consider their aggregate relevant electricity consumption in assessing physical delivery. This concept would maintain the definition of a retail power purchase or sale agreement in Solutions A and B while better reflecting how consumers manage and energize their operations. The Board previously considered related concepts with the amendments to ASC 815 in ASU 2015-13. However, we believe a more principle-based approach is appropriate and necessary for retail power purchase or sale agreements. Based on current practice interpretation of ASU 2015-13, a company that purchases electricity at a grid node needs to demonstrate through contractual arrangements that the electricity is transported to its facilities for the purchase to constitute physical delivery. This requirement emphasizes form over substance and results in administrative and operational costs for retail sellers and consumers/buyers.

For example, a retail buyer could be allowed to assess its purchases of electricity under retail power purchase and sale agreements against its total electricity consumption within defined grid boundaries when evaluating the NPNS requirement and apply a “predominant,” “substantially all,” or a “net purchaser”⁷ threshold. This approach builds on the concepts in ASU 2015-13 but more accurately reflects the economic reality of how companies manage and energize their operations.

A grid could be defined as a wide area synchronous grid or interconnection. In North America, there are two major (Eastern and Western) and three minor (Texas, Quebec, and Alaska) interconnections. Alternatively, a grid could be defined as a regional transmission organization or an independent system operator in North America and similar entities globally, or more generally as a part of an electric grid that is subjected to generally consistent electricity price levels.

⁶ While not explicitly defined in the Master Glossary of the GAAP Codification, we note the existing concept of substantially all is already codified into GAAP in several places including, for example, in ASC 606 when assessing whether a customer has obtained control of an asset (ASC 606-10-25-25), in ASC 805 to differentiate between asset acquisitions and business combinations (ASC 805-10-55-5A), and in ASC 842 related to the definition of a lease (ASC 842-10-15-4).

⁷ The term “net purchaser” in International Financial Reporting Standards (IFRS) refers to a specific accounting determination that applies to contracts for nature-dependent electricity, such as those from renewable energy sources. This concept determines whether a contract qualifies for the “own-use” exemption under IFRS 9 Financial Instruments. We are not suggesting the same definition of net purchaser as is used in IFRS but instead point to this concept as something that could be contemplated for U.S. GAAP to further increase operability for retail power purchase or sale agreements.

A retail buyer of electricity is a “net purchaser” within a grid if it consumes more electricity than it sells over a reasonable period (e.g., a year). When determining whether it is a “net purchaser,” a retail buyer should consider historical usage patterns, current operational requirements, and foreseeable future needs without undue cost or effort.

A seller in a power purchase or sale agreement should consider available information as part of the contract negotiation in making its assessment whether the retail buyer will be a “net purchaser” of electricity. The seller is not required to investigate whether the retail buyer is a “net purchaser,” if it is otherwise unaware of that fact.

This option confirms the counterparties’ intent of the contracts to physically deliver power while also reflecting how retail buyers manage operations. Retail buyers optimize usage across their entire network of operations, not in isolation for each facility (such as an individual data center or facility). Providing this flexibility would ensure the accounting treatment is aligned with how companies manage and operate their activities.

The **Appendix** includes suggested changes to ASC 815 for our proposed Solutions A and B.

We would be pleased to discuss our suggestions with you.

Sincerely,

A handwritten signature in blue ink, reading "Shelley Reynolds", is positioned above a horizontal line.

Shelley Reynolds
Vice President, Worldwide Controller, and Principal Accounting Officer
Amazon.com, Inc.

Appendix

Solution A

Agenda Request – Amendments to ASC 815-10-15-13

Scope Exception for Retail Power Purchase or Sale Agreements

ASC 815-10-15 Scope and Scope Exceptions

[Add new section after 815-10-15-13]

> Retail Power Purchase or Sale Agreements

815-10-15-13A Retail power purchase or sale agreements that meet the criteria in paragraph 815-10-15-13B are not subject to the requirements of this Topic.

815-10-15-13B A retail power purchase or sale agreement is a contract between commercial entities for the supply of electricity where:

- a. The seller is an entity engaged in selling electricity to retail customers.
- b. The buyer is a retail customer that enters the contract to secure power supply for its business operations.
- c. The contract is not exchange-traded.
- d. Termination provisions do not result in effective net settlement of remaining contractual quantities.

Solution B

Agenda Request – Amendments to ASC 815-10-15-26

Amendments to the NPNS Scope Exception for Retail Power Purchase or Sale Agreements

> Normal Purchases and Normal Sales Exception for Retail Power Purchase or Sale Agreements

815-10-15-26A For retail power purchase or sale agreements as defined in paragraph 815-10-15-13B, an entity qualifies for the normal purchases and normal sales exception if:

- a. At contract inception, it is probable that committed contractual quantities will be predominantly (approximately 70%) consumed in operations.
- b. The assessment of [predominant/substantially all consumption or net purchaser] is performed considering the entire contract.

[Add Electricity Delivery and Consumption Within a Grid]

815-10-15-26C For purposes of assessing compliance with the normal purchase and normal sale criteria, a retail buyer assesses its purchases of electricity under retail power purchase and sale agreements against its total electricity consumption within a grid.

815-10-15-26D A grid is defined as any of the following:

- a. A wide area synchronous grid or interconnection.
- b. A regional transmission organization or independent system operator.
- c. A part of an electric grid subject to generally consistent electricity price levels.

815-10-15-26E A retail buyer is considered a net purchaser within a grid if it consumes more electricity than it sells over a reasonable period, considering:

- a. Historical usage patterns
- b. Current operational requirements
- c. Foreseeable future needs without undue cost or effort

815-10-15-26E A seller in a power purchase or sale agreement should consider available information as part of the contract negotiation in making its assessment whether the retail buyer will be a “net purchaser” of electricity. The seller is not required to investigate whether the retail buyer is a “net purchaser,” if it is otherwise unaware of that fact.