

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

**DOCKET NO. E-2, SUB 1262**

**DOCKET NO. E-7, SUB 1243**

In the Matter of

Joint Petition of Duke Energy )  
Carolinas, LLC and Duke Energy )  
Progress, LLC Issuance of Storm )  
Recovery Financing Orders )  
)  
)

DIRECT TESTIMONY OF  
JOSEPH S. FICHERA CHIEF  
EXECUTIVE OFFICER OF  
SABER PARTNERS, LLC

**BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**

**Docket No. E-2, Sub 1262**

**Docket No. E-7, Sub 1243**

**Direct Testimony of**

**Joseph S. Fichera**

**Senior Managing Director and Chief Executive Officer**

**Saber Partners, LLC**

**December 21, 2020**

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## INTRODUCTION

1   **Q.   PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2   A.    Joseph S. Fichera, Saber Partners, LLC, 260 Madison, Suite 8019  
3   New York, New York 10016.

4   **Q.   BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR**  
5   **POSITION?**

6   A.    I am a member of Saber Partners, LLC and serve as its Chief  
7   Executive Officer.

8   **Q.   PLEASE BRIEFLY DESCRIBE YOUR DUTIES AND**  
9   **RESPONSIBILITIES IN THAT POSITION.**

10   A.    I manage the organization and execute assignments for clients by  
11   providing confidential, independent, senior-level analysis, advice, and  
12   execution for chief executive officers, regulators, elected officials, chief  
13   financial officers, treasurers and others. Since 2001, our firm has focused  
14   on achieving lowest cost for ratepayers in Ratepayer-Back Bond  
15   transactions.

16   **Q.   WHAT IS YOUR EDUCATIONAL BACKGROUND AND**  
17   **PROFESSIONAL EXPERIENCE?**

18   A.    I have a Bachelor's degree in Public Affairs from Princeton  
19   University's Woodrow Wilson School of Public and International Affairs. I  
20   also have a Master's degree in Business Administration from Yale

1 University's School of Management. In 1995-1996, I was an executive  
2 fellow in residence at the Woodrow Wilson School of Public and  
3 International Affairs at Princeton. In 2018 the National Regulatory Research  
4 Institute (NRRI) part of the National Association of Regulatory Utility  
5 Commissions (NARUC) selected me to be one their first ever "National  
6 Fellows" for 2018-2019. In connection with that, I wrote an article for the  
7 NRRI on securitization transactions for investor-owned electric utilities/  
8 Ratepayer-Backed Bonds that was published in January 2019. The  
9 economic burden of repaying these bonds falls squarely on the ratepayers  
10 in the service territory; hence they are aptly referred to as "Ratepayer-  
11 Backed" bonds (Ratepayer-Backed Bonds).

12 Since 1982, I have worked in the fields of finance and investment banking.  
13 I began as an Associate in the Public Finance Department of Dean Witter  
14 Reynolds (now a part of Morgan Stanley) from 1982-1984. I then served as  
15 Vice President in Corporate Finance at Smith Barney Harris Upham (now a  
16 part of Citigroup) from 1984-1989. I became a Managing Director, Principal  
17 in Corporate Finance and Capital Markets at Bear Stearns and Co, Inc. from  
18 1989-1995. Following my fellowship at Princeton in 1996, I served as  
19 Managing Director and Group Head of Prudential Securities Business  
20 Origination and Product Development Unit from 1997-2000. With several  
21 colleagues from the utility, law, and banking industries, I formed Saber  
22 Partners, LLC in 2000. I have held a general securities principal license

1 (Series 24) from the U.S. Securities and Exchange Commission (SEC) as  
2 well as a general securities representative license (Series 7 and 63).  
3 Since forming Saber Partners, I have engaged in many complex  
4 assignments in the energy and finance field. I served as a chief financial  
5 advisor, along with the Blackstone Group, to the governor of the State of  
6 California during 2001. We assisted in developing the Governor's response  
7 to the energy crisis beginning in March 2001. I also have served as the  
8 chief financial advisor to six state utility commissions or their agents  
9 (Florida, Texas, Wisconsin, West Virginia, Wisconsin, Vermont, and New  
10 Jersey) and the Office of the People's Counsel for the District of Columbia  
11 on the use of Ratepayer-Backed Bonds and specifically the structuring,  
12 marketing, and pricing of approximately \$9.25 billion in Ratepayer-Backed  
13 Bonds. I have also been engaged as an advisor to the SEC and ExxonMobil  
14 Corporation, among others. I currently serve on the Board of Advisors of  
15 Princeton's Center for Economic Policy Studies. I also served as Chairman  
16 of the Princeton Economics Department Advisor Council. In that capacity,  
17 I served as an advisor to Federal Reserve Chairman Ben Bernanke when  
18 he was the Chairman of the Economics Department of Princeton University  
19 in the 1990s. My vitae is attached to this testimony as Fichera Exhibit 1.

1   **Q.     DURING YOUR CAREER ON WALL STREET, DID YOU**  
2   **PARTICIPATE IN ANY UNDERWRITINGS – THE SALE OF SECURITIES**  
3   **TO INVESTORS IN PUBLIC OFFERINGS?**

4   A.     Yes. The primary focus of my positions from Associate to Managing  
5   Director was first to advise on, structure, and execute on underwritings and  
6   private placements of debt and equity issuances. My role evolved to  
7   providing strategic advice to corporate treasurers, chief financial officers,  
8   and chief executive officers.

9   My responsibilities included advising all these officers and their legal  
10  counsel on the structuring, marketing, and pricing of publicly-offered  
11  securities. I also led or participated in corporate reorganizations and  
12  restructurings. My underwriting experience included direct negotiations  
13  with corporations, utilities, and investors over the structuring, marketing and  
14  pricing of publicly-offered debt and equity securities. My primary role was  
15  as the Bookrunning Underwriter, sole manager or senior manager. I also  
16  have experience as a co-managing Underwriter of publicly-offered debt and  
17  equity securities.<sup>1</sup>

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<sup>1</sup> As an Underwriter, I received three “Deal of the Year” awards from industry publications. These are awards for transactions that independent observers who closely follow the profession consider significant and merit the attention of one’s peers. In 1990, for a preferred stock transaction, I received the award from “Institutional Investor” magazine. In 1991, I received this award again for an investor-owned utility debt reorganization in the municipal bond market. In 2003, I was recognized with a similar “Deal of the Year” award from “Asset Securitization Report” for a Ratepayer-Backed Bonds offering. “Deal of the Year” awards generally identify transactions that have unique features, overcame specific market obstacles or set precedents in the financial markets.

1    **Q.     HAVE YOU PARTICIPATED IN TRANSACTIONS INVOLVING**  
2    **RATEPAYER-BACKED BONDS SIMILAR TO THE STORM RECOVERY**  
3    **BONDS PROPOSED BY THE JOINT PETITION?**

4    A.     Yes. To-date, I have participated in 13 Ratepayer-Backed Bond  
5    transactions for over \$9.25 billion, involving eight different investor-owned  
6    electric utilities.

7    **Q.     HAVE YOU HAD DIRECT INTERACTIONS WITH INVESTORS,**  
8    **UNDERWRITERS AND REGULATORS CONCERNING THE TYPE**  
9    **OF SECURITIES THAT ARE THE SUBJECT OF THE JOINT PETITION?**

10   A.     Yes.

11   **Q     WAS YOUR INTERACTION WITH BOTH UNDERWRITERS AND**  
12   **INVESTORS?**

13   A.     Yes, with many investors, underwriters, counsel and others in my  
14   capacity as the financial advisor on an ongoing basis over the past 20 years.

15   **Q.     HOW DID YOU INTERACT WITH INVESTORS? ISN'T THAT**  
16   **SOLELY THE JOB OF THE UTILITY AND THE UNDERWRITERS?**

17   A.     Ratepayer-Backed-Bond issues are unique because they are a  
18   direct borrowing on the credit of all the utility's ratepayers supported by a  
19   unique guarantee of the regulator. The special characteristics of the  
20   authorizing legislation and the financing order (Financing Order) often raise  
21   many questions about the financing order. As the regulator's financial

1 advisor and from the perspective of the regulator and ratepayers, I have  
2 explained the commission's important role in writing the terms of the  
3 Financing Order. The Financing Order is the basis for the bond financing  
4 and implementing the adjustment mechanism known as the true-up  
5 mechanism. I have assisted staff and others in discussing the Financing  
6 Order, the authorizing legislation, and the support for the financing. This  
7 included discussing the benefits of the transaction for the ratepayer and  
8 regulator as well as the relative value of this credit mechanism to other  
9 mechanisms in the marketplace.

10 **Q. WERE THESE INDIVIDUAL MEETINGS OR GROUP**  
11 **PRESENTATIONS?**

12 A. Both. I have spoken directly with individual investors and  
13 Underwriters as well as participated in what are known as investor  
14 roadshows, both electronically and in person, on each offering of  
15 Ratepayer-Backed Bond offerings.

16 I have also conducted various "teach-ins" with Underwriters and their  
17 salesforces. There often is a great deal of incorrect information,  
18 misinformation and just plain myths about Ratepayer-Backed Bonds.  
19 Providing accurate information about the particular Ratepayer-Backed  
20 Bonds being offered, as well as the particular Financing Order, to market  
21 participants is an important function at Saber Partners.



1    **Q.    HAVE YOU SPOKEN AT MEETINGS OF THE NATIONAL**  
2    **ASSOCIATION OF REGULATORY COMMISSIONERS (NARUC) OR OF**  
3    **OTHER UTILITY ASSOCIATIONS AND CONSUMER GROUPS, AND**  
4    **INVESTOR FINANCIAL CONFERENCES ON MATTERS RELATED TO**  
5    **THE ISSUES IN THE JOINT PETITION?**

6    A.    Yes. A core part of my job at Saber Partners has been as a resource  
7    to regulatory commissioners and their staffs, consumer groups, investors  
8    and others interested this type of financing. In 2006, 2009 and 2018,  
9    NARUC asked me in to present at their meeting on utility securitization  
10   issues. In addition, the NARUC Subcommittee on Electricity asked me to  
11   present to the Subcommittee alongside Jon McKinney, former Chairman of  
12   the West Virginia Public Service Commission (WVPSC), at the May 2019  
13   monthly meeting.

14   The Society of Utility Regulatory and Research Financial Analysts (SURFA)  
15   asked me to address Ratepayer-Backed Bonds at their annual meeting in  
16   April 2019. In addition, they requested that I help organize and participate  
17   in a July 2020 webinar on utility securitization/Ratepayer-Backed Bonds as  
18   a possible tool to address costs arising from the COVID-19 pandemic.

19   The National Association of State Utility Consumer Advocates (NASUCA)  
20   asked me to address their Accounting Committee in July 2020 and to  
21   organize a panel and speak at their national annual meeting on November  
22   9, 2020 concerning the Ratepayer-Backed Bond financing tool and the

1 issues concerning protecting consumers. NASUCA had previously asked to  
2 address their national annual meeting in 2009.

3 The Investor Management Network (IMN) asked me to lead panel  
4 discussions on issues related to Ratepayer-Backed Bonds in 2003 and  
5 2005 at their conference of 3,000 or more participants known as “ABS East.”  
6 I also was asked to lead a panel discussion on pricing transparency – the  
7 ability for investors and regulators to see actual trades for prices of  
8 securities transactions – in 2007 and 2008. The 2007 panel led to major  
9 reforms of the entire securitization market in 2011.

10 **TESTIMONY FROM OTHER SABER PARTNER WITNESSES**

11 **Q. WHO ELSE FROM SABER PARTNERS WILL BE PROVIDING**  
12 **TESTIMONY?**

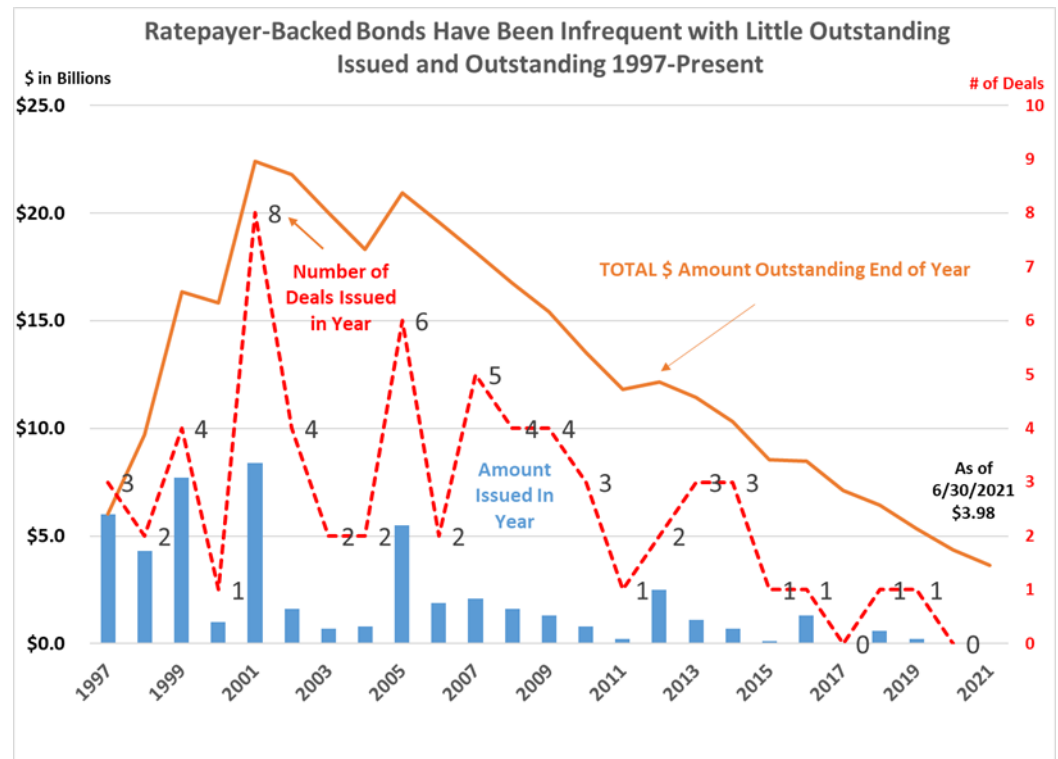
13 A. Testimony concerning the Joint Petition will be submitted by:  
14 **Rebecca Klein**, former Chair of the Public Utility Commission of Texas  
15 (PUCT) and a member of the Saber Partners Advisory Board since 2006;  
16 **Hyman Schoenblum**, former Treasurer and a top Financial Officer during  
17 a 30-year career at Consolidated Edison Company of New York and a  
18 Senior Advisor to Saber Partners;  
19 **Barry Abramson**, former utility equity analyst and investment advisor and  
20 a Senior Advisor to Saber Partners;

1    **Brian A. Maher**, former Assistant Treasurer and 30-year veteran of Exxon  
2    Mobil Corporation for external finance and a Senior Advisor to Saber  
3    Partners;  
4    **Paul Sutherland**, former Assistant Treasurer of Florida Power and Light  
5    Company and a Senior Advisor to Saber Partners;  
6    **Steven Heller**, President of Analytical Aid who has been an independent  
7    modeler of Ratepayer-Backed Bonds and is a consultant to Saber Partners  
8    for the purpose of evaluating certain aspects of the Joint Petition; and  
9    **William B. Moore**, whose career began as a financial assistant in the  
10   treasury department of Kansas Gas & Electric and rose to Chief Financial  
11   Officer and then Chief Executive Officer of Westar Energy. He was one of  
12   the founding partners of Saber Partners in 2000 before returning to Westar  
13   to become President and then CEO with the financial function reporting to  
14   him.  
15   Because of the technical nature of the issues that are generally not  
16   discussed in regulatory proceedings, I am attaching a Glossary of terms as  
17   Fichera Exhibit 6, for reference in my testimony and the testimony of other  
18   Public Staff witnesses. Except as otherwise defined in my testimony,  
19   capitalized terms have the meanings assigned to them in the Glossary.

HISTORICAL ISSUANCES OF RATEPAYER-BACKED BONDS  
CREATE CHALLENGES

Q. BECAUSE THIS IS THE FIRST TIME THE COMMISSION IS  
ADDRESSING THESE ISSUES, WHAT SHOULD THEY KNOW ABOUT  
THE MARKET FOR RATEPAYER-BACKED BONDS

Fichera Figure 1



There are critical marketing issues to consider when establishing North Carolina's Storm Recovery Bond program. It is true that Ratepayer-Backed Bonds have been around for about 20 years, and as the Companies' witness Atkins has noted, approximately \$50 billion have been issued in 65 different transactions for investor-owned utilities. However, these bond issuances have been infrequent, and there are very few bonds remaining

1 outstanding in investor hands when the Companies expect to come to  
2 market. The chart above shows the amount issued and outstanding over  
3 this 20 year timeframe. This is small when compared with the amount of  
4 corporate, utility, and structured finance debt in the market. As a result, a  
5 very large part of the market is not familiar with the financing mechanism.  
6 The good news is that while Ratepayer-Backed Bonds are relatively small  
7 and infrequent, they are the only asset sector that has never experienced a  
8 downgrade nor even been on a watchlist for a downgrade by any rating  
9 agency.

10 **THREE PHASES OF THE CURRENT RATEPAYER-BACKED BOND**  
11 **PROCESS**

12 **Q. ARE THERE ANY DISTINCT PHASES OF ISSUING RATEPAYER-**  
13 **BACKED BONDS OF WHICH THE COMMISSION SHOULD BE AWARE?**

14 Following the enactment of enabling legislation, there are three distinct  
15 phases for a Ratepayer-Backed Bond sale that the Commission should  
16 consider and in which it should be actively engaged.

17

*Fichera Figure 2*



**Petition for  
Financing  
Order; Write  
Detailed  
Financing  
Order**



**Implementation  
of the Financing  
Order**



**Price Bonds  
Through Sale to  
Investors**

18

1    **Phase One: The Petition for a Financing Order and Writing of the**  
2    **Detailed Financing Order.**

3    The Financing Order should be carefully written because it is the basis for  
4    the credit associated with the bonds. As the Companies' witnesses Heath  
5    and Atkins correctly point out, the precise bond structure, interest rates and  
6    other costs cannot be known with certainty at the time the Financing Order  
7    is issued. For this reason, the Companies have requested "flexibility"  
8    following the issuance of the Financing Order to determine the final  
9    structure including the interest rate during the subsequent two phases of  
10   the process.

11   **Phase Two: Implementation of the Financing Order.**

12   This is the time between the issuance of the Financing Order and the  
13   issuance of the bonds at which time the Financing Order becomes final and  
14   irrevocable. This phase involves multiple other parties, including nationally  
15   recognized bond rating agencies, to consider the structure of the bonds,  
16   their maturity and ability to pay principal and interest. It also involves  
17   regulatory, tax, bankruptcy, state and federal law counsel. This phase also  
18   includes material decisions regarding the method of sale.

**Phase 2 Activities Affecting Ratepayers Include:**

- Rating agency discussions, financial modeling stress testing, negotiations
- Documentation of transaction components and legal opinions
- Offering materials including prospectus
- Securities and Exchange Commission filings and discussions
- Selection of offering method – competitive bid or negotiated transaction
- Selection of underwriters
- Requesting, analyzing and oversight of marketing plan and plan of distribution
- Teach-ins for underwriters; investor presentations

1  
2 During this second phase, there is extensive modeling of cashflows that will  
3 support the bond based on the examination of the utility's historical  
4 forecasts and collections as well as its projections over the next 20 years.  
5 This is done to achieve a top credit rating on the bonds from nationally  
6 recognized rating agencies like S&P and Moody's for the possibility of  
7 achieving the lowest interest rates from investors.  
8 Offering documents are developed and submitted to the Securities and  
9 Exchange Commission.  
10 The method of sale is decided (competitive bid or negotiated transaction)  
11 and a marketing plan is developed.  
12 **Phase Three: Pricing the Bonds and Sale to Investors.**  
13 Depending on the method of sale chosen, this is the process that concludes  
14 the marketing process and establishes the final interest rate in relation to  
15 the interest rates on benchmark securities used for comparison for a chosen

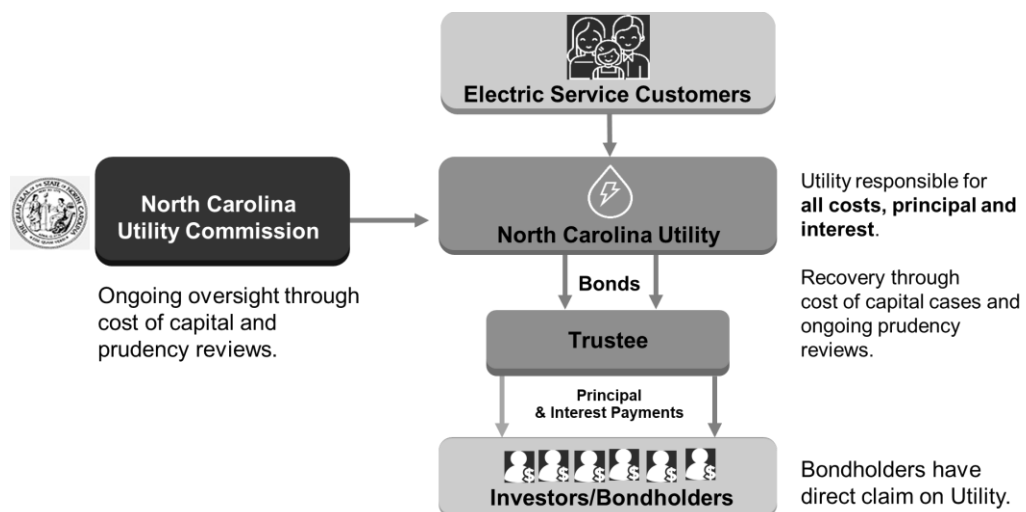
1 maturity and principal repayment schedule. Witness Sutherland describes  
2 this process in detail in his testimony. This is a dynamic process.

3 **COMPARISON BETWEEN TRADITIONAL UTILITY BONDS AND**  
4 **RATEPAYER-BACKED BONDS**

5 **Q. HOW ARE TRADITIONAL UTILITY BONDS STRUCTURED?**

6 Traditional utility bonds are simple and straightforward. The structure,  
7 marketing, and pricing are streamlined because the utility is a frequent  
8 issuer, i.e., often in the market with a great deal of information readily  
9 available to investors. Offering documents often have been prepared in  
10 advance and are on file with the Securities and Exchange Commission.  
11 As can be seen by the chart below, the structure of a traditional utility bond  
12 is direct debt of the utility with the commission retaining all regulatory  
13 authority over the utility and all customer rates.

14 *Fichera Figure 4*



15  
16 Traditional bonds are direct debt/obligations of the utility. Bondholders only  
17 have a claim on the utility and its assets such as its plant and equipment.

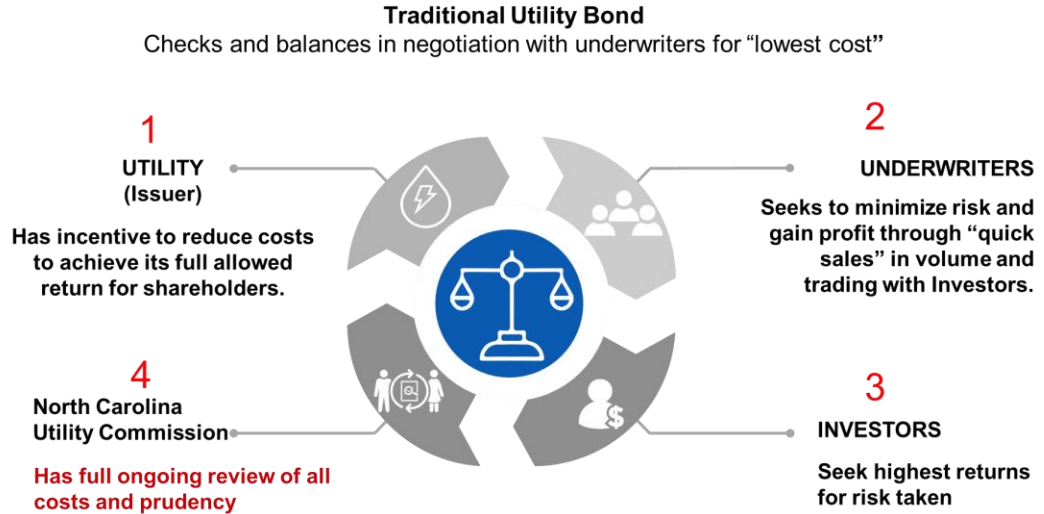


1 In fact, the utility has different levels of security for its debt, like first  
2 mortgage bonds that are secured, and other bond issues that are not  
3 secured by any claim on property. There is no direct claim on the ratepayers  
4 or any specific component of customer rates.

5 From the perspective of the bondholder, the revenue requirements from  
6 customer rates to pay principal and interest on traditional utility bonds are  
7 not certain. The utility only gets revenues from customer rates approved by  
8 the commission through cost of capital proceedings. Those revenues go to  
9 all utility costs, including costs of operations, maintenance, taxes, and  
10 returns for shareholders, not just principal and interest on bonds.

11 **Q. ARE THERE CHECKS AND BALANCES IN THE STRUCTURING,**  
12 **MARKETING AND PRICING OF TRADITIONAL UTILITY BONDS?**

13 A. Yes. As more fully explained by Public Staff witness Schoenblum, there  
14 are built-in “checks and balances” because the Commission retains full  
15 regulatory review of the utility’s costs and the Utility can achieve its allowed  
16 returns for shareholders to whom they have a fiduciary duty.



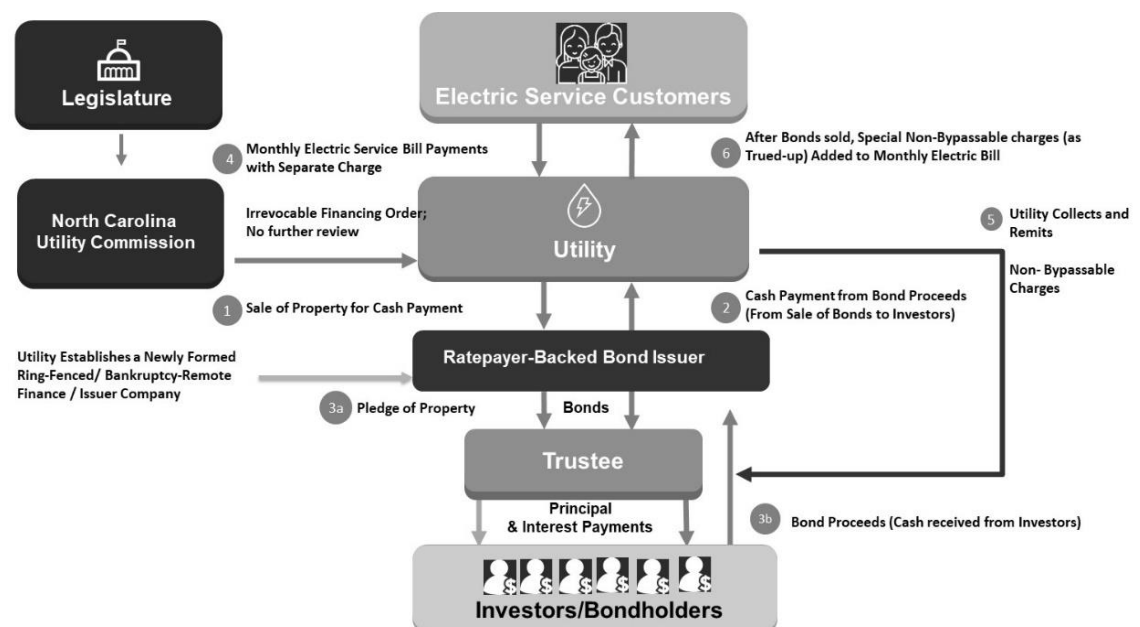
2 When a utility decides to issue a traditional bond, the utility has a strong  
3 incentive to negotiate hard with underwriters for the lowest possible interest  
4 rates as well as the lowest possible underwriting fees. Utilities also have a  
5 strong incentive to minimize other issuance costs. These same incentives  
6 do not come into play in connection with Ratepayer-Backed Bonds.

7 In each case, underwriters act as middlemen between the utility issuing the  
8 bonds and the investors. Investors seeking bonds look for the highest  
9 return, and they weigh the lending rate against the risk. Through – and after  
10 – the process, the Commission retains its regulatory review authority over  
11 the utility’s cost of capital and may disallow any costs that it considers not  
12 prudent, just or reasonable.

1     **Q.     HOW IS A RATEPAYER-BACKED-BOND DIFFERENT?**

2     A.     As illustrated by the chart below, the structure of the bond is  
3     materially different, more complex than a traditional utility bond. The  
4     bondholder is a creditor of a special issuer but with a dedicated and specific  
5     charge on all ratepayers. None of the utility's creditors have a claim on  
6     those revenues even in a bankruptcy. The utility, after receiving the  
7     proceeds of the bond sale, in this case is merely acting as the "servicer" of  
8     the Ratepayer-Backed Bonds. This means they simply calculate, charge,  
9     bill and collect the revenue from ratepayers to repay the bonds on time.

10    *Fichera Figure 6*

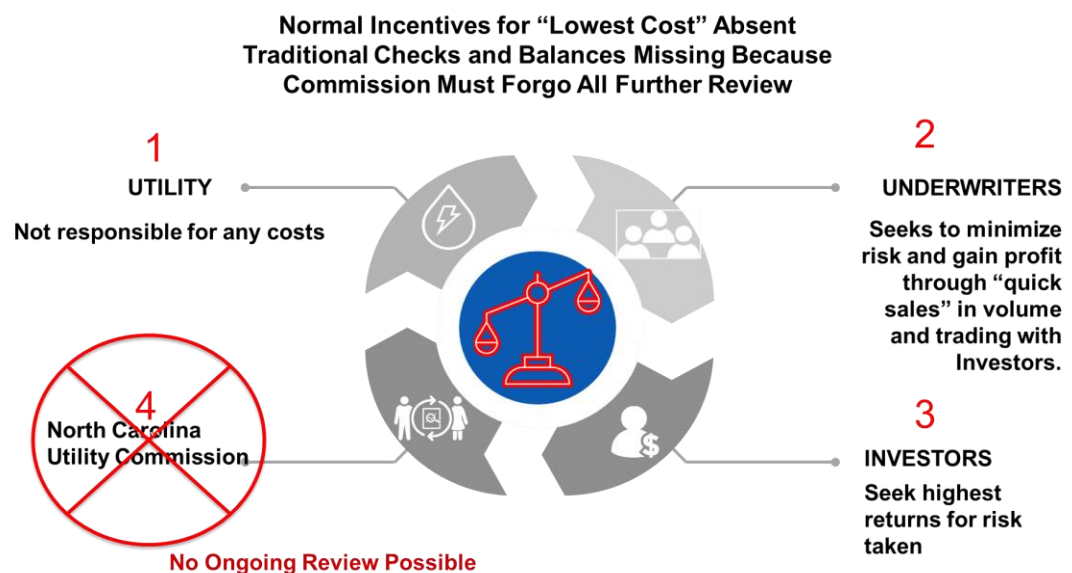


11

1 Q. ARE THERE THE SAME FINANCIAL INCENTIVES FOR THE  
2 UTILITY PRESENT IN A RATEPAYER-BACKED BOND THAT ARE  
3 PRESENT IN A TRADITIONAL BOND?

4 A. No. The issuer of Ratepayer-Backed Bonds is a new entity  
5 established for the sole purpose of selling the Ratepayer-Backed Bonds,  
6 not the utility. The only collateral this new issuer has to pledge to investors  
7 is the storm recovery property created by the statute and the Financing  
8 Order that contains the True-Up Mechanism and the state pledge of non-  
9 interference in the rights of the bondholders to be repaid on time.

10 *Fichera Figure 7*



11  
12 The testimonies of Public Staff witnesses Hyman, Schoenblum, and Klein  
13 explain in more detail why the interests of ratepayers and the sponsoring  
14 utility might not be aligned in the underwriting of Ratepayer-Backed Bonds.  
15 While the utility has a general business interest in keeping overall customer  
16 rates low, it will have no direct or indirect obligation to repay the Ratepayer-

1 Backed Bonds and will have no direct or indirect responsibility to pay any of  
2 the financing costs. The ratepayers alone will bear all costs. Therefore, the  
3 sponsoring utility may have no economic incentive to achieve the lowest  
4 possible cost and the lowest possible storm recovery charges, although it  
5 may have other incentives, such as a corporate policy, to achieve the  
6 “lowest costs.”

7 That said, the sponsoring utility’s highest priority will likely be to get the  
8 issuance done quickly, and cost may take a lower priority.

9 **Q. WOULD GRANTING THE COMPANIES “FLEXIBILITY” IN THE**  
10 **FINANCING ORDER SOLVE THE PROBLEM?**

11 A. It solves one problem and creates another. With flexibility, the  
12 outcome that the Commission expects at the time it issues the Financing  
13 Order could change dramatically and materially for reasons both within and  
14 beyond the control of the Companies. The Companies recognize this and  
15 have proposed an Issuance Advice Letter process in Phases Two and  
16 Three where only one Designated Commissioner would be involved - at a  
17 very high level - during the Phase Two process following the issuance of  
18 the Financing Order as the bonds are structured, marketed and priced. This  
19 is when many material decisions are made and the storm recovery charges  
20 and the Commission are locked in. The Companies would file an “Issuance  
21 Advice Letter” at the end of Phase Three and propose that the full  
22 Commission would be given the opportunity to disapprove the bond offering.

1     However, this would be after the Companies made all the decisions as to  
2     the structure, marketing and pricing of the bonds. They would provide  
3     “timely information” to the Commissioner and staff upon request.

4     **Q.     ISN'T THAT SUFFICIENT?**

5     A.     No. We agree that the Commission should make the final “go, no  
6     go” decision. And we agree that there should be an Issuance Advice Letter  
7     filed. But the process leading up to that final decision needs to produce an  
8     informed and meaningful evidentiary record for the Commission to review  
9     and consider. The Companies’ proposal excludes the representative of the  
10    ratepayers, the Public Staff, from this important phase of the ratemaking  
11    process. Moreover, it does not provide the Commission with independent  
12    information and the analysis of technical information upon which to make  
13    an informed decision. As explained by other Public Staff witnesses  
14    Schoenblum, Klein, Sutherland, Maher and Abramson, the complexity of  
15    the Ratepayer-Backed Bond structure, marketing and pricing process  
16    requires the consideration and evaluation of specific and highly technical  
17    information. It requires a robust process of due diligence so that the  
18    Commission has a fully vetted evidentiary basis on which to make that final  
19    “go, no go” decision. Anything less is insufficient.  
20    For the Commission to make an independent “go, no go” decision, it needs  
21    expert analysis of the information it receives. Simply being “informed” of  
22    the decisions being made by the Companies, who have a direct financial

1 interest in the outcome that is different from the ratepayers, has been found  
2 by many other state utility commissions to be an insufficient basis for  
3 fulfilling their responsibilities to ratepayers.

4 It should be noted that capital market participants often have differing views  
5 on the same information. That's what a market is by definition.

6 One caveat, however, is important. Parties who have a direct financial or  
7 economic interest in the outcome may view certain information differently  
8 from those who do not. If there were not differing and competing views  
9 about the same information, there would not have been the significant  
10 difference in investor orders for Ratepayer-Backed Bonds at proposed  
11 yields that we have seen. So, the phrase "Trust but verify" applies.

## 12 **PRECEDENTS FROM OTHER STATES TO CONSIDER**

### 13 **Q. WHAT HAVE OTHER STATES DONE THAT THE COMMISSION** 14 **SHOULD CONSIDER?**

15 A. Over the past 20 years, certain "best practices" have emerged and  
16 are discussed in more detail by Public Staff witnesses Klein, Schoenblum,  
17 Sutherland and Heller. The first "best practice" is for the commission to  
18 create a post Financing Order and pre-bond issuance review process. In  
19 this process, the many technical and market-related issues raised in the  
20 Joint Petition and by Public Staff in this testimony can be thoughtfully  
21 considered and discussed by all parties affected by the transaction.  
22 Following these proven "best practices" means amending the Companies'

1 proposal for “flexibility” to ensure that ratepayers are at the negotiating  
2 table. Many years of experience have shown that it is essential that  
3 ratepayers be on equal footing with the Companies, the underwriters and  
4 the investors as post-Financing Order decisions are made about the final  
5 structuring, marketing and pricing of the bonds. Every dollar in this  
6 transaction is a ratepayer dollar. Being outside the negotiation room and  
7 then being told “that’s the best we could do” is vastly different than being in  
8 the room, at the table.

9 **Q. DOES N.C. GEN. STAT. § 62-172 AUTHORIZE THE NCUC TO**  
10 **INCLUDE PROVISIONS IN A FINANCING ORDER THAT ARE**  
11 **DESIGNED TO ENSURE THE LOWEST COST OF FUNDS AND OTHER**  
12 **RATEPAYER PROTECTIONS?**

13 A. Yes. N.C.G.S. § 62-172(b)(3)b.12. directs the Commission to  
14 include “any other conditions that the commission considers appropriate  
15 and that are not otherwise inconsistent with this section.” This not only  
16 authorizes, but directs the NCUC to impose conditions that are designed to  
17 ensure the lowest possible storm-recovery charges and the greatest  
18 possible ratepayer protections.



1    **Q.     ARE ALL THE ELEMENTS FOR A SUCCESSFUL RATEPAYER-**  
2    **BACKED BOND TRANSACTION PRESENT IN THE JOINT PETITION?**

3    A.     No. There are both substantive and procedural deficiencies in the  
4    Companies' Joint Petition that do not follow best practices. These  
5    deficiencies are addressed in the testimony of Public Staff witnesses Klein  
6    and Schoenblum and also later in my testimony. These deficiencies should  
7    be addressed early so that the Commission, Public Staff and the  
8    Companies can work in a cooperative manner to complete the transaction  
9    expeditiously.

10    **COMMISSION AND PUBLIC STAFF INVOLVEMENT IN PHASES 2 & 3**  
11    **OF THE PROCESS**

12   **Q.     SHOULD THE COMMISSION ESTABLISH A PROCESS IN THE**  
13   **FINANCING ORDER TO BE ACTIVELY INVOLVED IN THE SECOND**  
14   **AND THIRD PHASES OF THIS TYPE OF BOND TRANSACTION THAN**  
15   **IT IS IN TRADITIONAL UTILITY DEBT OFFERINGS?**

16   A.     Yes. For example, without Commission oversight – with the use of  
17   Public Staff and its own independent experts and advisors reviewing these  
18   contracts and negotiations – there would be no advocate for the ratepayers  
19   in the process. There would be no one with a fiduciary duty to work in the  
20   best interests of ratepayers, as more fully explained by Public Staff witness  
21   Maher. Traditional utility debt has the shareholders at risk and is subject to  
22   ongoing review. The Companies have a fiduciary duty to their shareholders

1 while they are concerned about overall customer rates. In this transaction,  
2 the Commission issues an irrevocable financing order. Once the storm  
3 recovery bonds are issued, the ratepayer bears all the costs directly, and  
4 those costs are not subject to Commission review. It bears repeating -  
5 every dollar in this transaction is a ratepayer dollar directly.

6 **Q. HAVE OTHER STATE COMMISSIONS ENSURED THAT THE**  
7 **FINANCING COSTS ASSOCIATED WITH RATEPAYER-BACKED**  
8 **BONDS, INCLUDING THE INTEREST RATES AND ALL OTHER**  
9 **FINANCING COSTS, RESULTED IN THE LOWEST OVERALL COST TO**  
10 **RATEPAYERS AS A CONDITION OF THE FINANCING ORDER?**

11 A. Yes, but not all. As described in greater detail below in this  
12 testimony, some other state commissions have made the decision to remain  
13 active in the Second and Third Phases of the process with a lowest cost  
14 objective. They generally have used active independent financial advisors  
15 and counsel. These commissions have instructed those financial advisors  
16 as well as commission staff, along with representatives of the sponsoring  
17 utility, to take part actively and in advance in all aspects of the structuring,  
18 marketing, and pricing of Ratepayer-Backed Bonds.

1    **Q.    HOW HAVE OTHER STATE COMMISSIONS ENSURED THAT**  
2    **THE LOWEST COST TO THE RATEPAYERS HAS BEEN ACHIEVED?**

3    A.    Other state commissions with active financial advisors have  
4    instructed those financial advisors as well as commission staff to participate  
5    actively and in advance in all aspects of the structuring, marketing and  
6    pricing of Ratepayer-Backed Bonds. This has included reviewing the  
7    earliest drafts of transactions documents and initial contacts with rating  
8    agencies as well as investor presentations and the actual negotiations with  
9    underwriters at the moment of pricing of the Ratepayer-Backed Bonds.  
10   Fundamentally, the Companies' Joint Petition asks for approval of costs  
11   based on estimates with no procedure for independent confirmation that the  
12   most important costs, the interest costs, are in fact the lowest possible for  
13   the benefit of ratepayers.

14   **Q.    OTHER PUBLIC STAFF WITNESSES RECOMMEND THAT THE**  
15   **FINANCING ORDER ESTABLISH A "BOND TEAM" THAT INCLUDES**  
16   **THE COMMISSION, PUBLIC STAFF AND THE COMPANIES TO**  
17   **PARTICIPATE IN THE STRUCTURING, MARKETING, AND PRICING OF**  
18   **STORM RECOVERY BONDS. DO YOU AGREE?**

19   A.    Yes, I agree. Public Staff witnesses attest to this point in their  
20   testimonies, as shaped by their own extensive experience.

1                   THE FLORIDA PRECEDENT WITH DUKE ENERGY

2   **Q.    IN CONNECTION WITH THE ISSUANCE OF THE FIRST**  
3   **SECURITIZED STORM RECOVERY BONDS FOR FLORIDA POWER**  
4   **AND LIGHT IN 2007, DID THE FLORIDA PUBLIC SERVICE**  
5   **COMMISSION (FPSC) FINANCING ORDER ESTABLISH A BOND TEAM**  
6   **TO PARTICIPATE IN THE STRUCTURING, MARKETING AND PRICING**  
7   **OF THOSE STORM RECOVERY BONDS?**

8   A.    Yes. The commission established a post Financing Order / pre-bond  
9   issuance review process that included a Bond Team.” The commission’s  
10   financing order came after a fully contested case and consideration of a  
11   detailed record discussing the core issues of concern about ratepayers and  
12   the utility’s response.

13   **Q.    WHEN DUKE ENERGY FLORIDA, LLC (DEF) APPLIED TO THE**  
14   **FPSC FOR A FINANCING ORDER 10 YEARS LATER AUTHORIZING**  
15   **THE ISSUANCE OF SECURITIZED RATEPAYER-BACKED BONDS, DID**  
16   **DEF RECOMMEND THAT THE FPSC’S FINANCING ORDER**  
17   **ESTABLISH A SIMILAR BOND TEAM TO PARTICIPATE IN THE**  
18   **STRUCTURING, MARKETING AND PRICING OF THOSE RATEPAYER-**  
19   **BACKED BONDS?**

20   A.    No, they did not.

1 Q. AS THE FPSC'S FINANCIAL ADVISOR IN THAT 2015 DEF  
2 PROCEEDING, DID SABER PARTNERS RECOMMEND THAT THE  
3 FPSC'S FINANCING ORDER DIRECT THAT A BOND TEAM BE  
4 FORMED TO PARTICIPATE IN THE STRUCTURING, MARKETING AND  
5 PRICING OF THOSE STORM RECOVERY BONDS?

6 A. Yes.

7 Q. HOW DID THE FPSC RESOLVE THIS DIFFERENCE IN  
8 RECOMMENDATIONS OF DEF AND THE FPSC'S FINANCIAL  
9 ADVISOR CONCERNING FORMATION OF A BOND TEAM?

10 A. There was a joint stipulation of all parties. Following a contested  
11 public hearing, DEF entered into the Proposed Stipulations on Financing  
12 Order Issues, dated October 13, 2015, including Issue 39:

13 "DEF's customers will be effectively  
14 represented throughout the proposed  
15 transaction. DEF, its structuring advisor,  
16 and designated Commission staff and its  
17 financial advisor will serve on the Bond  
18 Team. One designated representative of  
19 DEF and one designated representative of  
20 the Commission shall be joint decision  
21 makers for all matters concerning the  
22 structuring, marketing, and pricing of the  
23 bonds except for those recommendations  
24 that in the sole view of DEF would expose  
25 DEF or the SPE to securities law and other  
26 potential liability (i.e., such as, but not  
27 limited to, the making of any untrue  
28 statement of a material fact or omission to  
29 state a material fact required to be stated  
30 therein or necessary in order to make the  
31 statements made not misleading) or  
32 contractual law liability (e.g., including but

1 not limited to terms and conditions of the  
2 underwriter agreement(s)). The final  
3 structure of the transaction, including  
4 pricing, will be subject to review by the  
5 Commission for the limited purpose of  
6 ensuring that all requirements of law and  
7 the Financing Order have been met.”  
8

9 Fichera Exhibit 3 to this testimony is a copy of these “Proposed Stipulations  
10 on Financing Order Issues.” These stipulations are reflected in the FPSC’s  
11 Financing Order for the 2016 DEF securitized storm recovery bond  
12 transaction.

13 **Q. FOR THE TRANSACTION PROPOSED BY THE JOINT PETITION,**  
14 **WITNESSES KLEIN, SCHOENBLUM, SUTHERLAND, ABRAMSON,**  
15 **AND MAHER RECOMMEND THAT THE COMMISSION’S FINANCING**  
16 **ORDER ESTABLISH A BOND TEAM WHICH INCLUDES PUBLIC STAFF**  
17 **BUT DOES NOT INCLUDE UNDERWRITERS. DO YOU AGREE?**

18 A. Yes, I agree. Underwriters are on the other side of the negotiating  
19 table. They should not be part of internal discussions among the  
20 Companies, the Public Staff and the Commission concerning how the Bond  
21 Team will negotiate with the underwriters about interest costs.

1    **Q.     THESE WITNESSES FURTHER RECOMMEND THAT THE BOND**  
2    **TEAM BE A JOINT DECISION-MAKER WITH THE COMPANIES ON**  
3    **MATTERS CONCERNING THE STRUCTURING, MARKETING AND**  
4    **PRICING OF THE STORM RECOVERY BONDS. DO YOU AGREE?**

5    A.     Yes, I agree. It is just common sense as well as a proven “best  
6    practice.” The party that pays the bills and the party that must approve the  
7    transactions should be part of the decision-making process.

8    **Q.     WAS A DESIGNATED COMMISSIONER INVOLVED IN THE**  
9    **FLORIDA BOND TEAM?**

10   A.     Yes. Because there could be competing views in which a consensus  
11   might not be reached (as in all committees), the DEF / FPSC Bond Team  
12   provided for a designated Commissioner to be a member of the Bond Team,  
13   with authority to cast the deciding vote if other members of the Bond Team  
14   did not agree on any aspect of the structuring, marketing or pricing of the  
15   Ratepayer-Backed Bonds. However, this aspect of the Florida Bond team  
16   was never invoked because a consensus was reached on all aspects of the  
17   structure, marketing and pricing of the bonds.

1     **Q.     DO YOU RECOMMEND THAT THE FINANCING ORDER IN THIS**  
2     **PROCEEDING INCLUDE A SIMILAR DECISION-MAKING PROCESS**  
3     **WITHIN THE BOND TEAM?**

4     A.     Yes. I recommend that the Commission's Financing Order in this  
5     proceeding provide for a designated Commissioner to be a member of the  
6     Bond Team, with authority to cast the deciding vote if other members of the  
7     Bond Team do not agree on any aspect of the structuring, marketing or  
8     pricing of the storm recovery bonds.

9             **THE COMPANIES BELIEVE THAT THE FLORIDA PRECEDENT**  
10            **SHOULD NOT BE FOLLOWED**

11    **Q.     IN HIS RESPONSE TO A PUBLIC STAFF DATA REQUEST, THE**  
12    **COMPANIES' WITNESS ATKINS STATES: "PURSUANT TO**  
13    **SECURITIES LAWS, DEP AND DEC WILL BE THE ISSUERS OF STORM**  
14    **RECOVERY BONDS AND ANY SRB SECURITIES WITH LIABILITY**  
15    **UNDER FEDERAL AND STATE SECURITIES LAWS. THEREFORE,**  
16    **THERE IS NO 'SYMMETRY' AND IT IS NOT CORRECT TO COMPARE**  
17    **THE ROLE OF DEP AND DEC AS PART OF ANY BOND TEAM, TO THE**  
18    **EXTENT THERE IS A BOND TEAM, AND PUBLIC STAFF." DO YOU**  
19    **AGREE?**

20    A.     No. This is a distinction without a difference. As summarized above,  
21    DEF made essentially this same argument to the Florida Commission in  
22    connection with Ratepayer-Backed Bonds issued for DEF in 2016. But DEF



1 ultimately stipulated in that proceeding that other participants in the Bond  
2 Team may be joint decision makers with DEF on all matters related to the  
3 structuring, marketing and pricing of those Ratepayer-Backed Bonds. The  
4 only exclusion was “except for those recommendations that in the sole view  
5 of DEF would expose DEF or the SPE to securities law and other potential  
6 liability (i.e., such as, but not limited to, the making of any untrue statement  
7 of a material fact or omission to state a material fact required to be stated  
8 therein or necessary in order to make the statements made not misleading)  
9 or contractual law liability (e.g., including but not limited to terms and  
10 conditions of the underwriter agreement(s)).” Saber Partners recommends  
11 that similar provisions be included in the Commission’s financing order in  
12 this proceeding assuming the Companies will be following the established  
13 precedents from the DEF transaction.

14                   **UNDERSTANDING UNDERWRITER INTERESTS IN THE**  
15                   **TRANSACTION**

16   **Q. IS THERE ANYTHING ABOUT THE STRUCTURE OF**  
17   **INVESTMENT BANKING FIRMS THAT SERVE AS UNDERWRITERS**  
18   **THAT THE COMMISSION SHOULD KNOW AND CONSIDER IN**  
19   **EVALUATING THE JOINT PETITION?**

20   A. Yes. It is important to understand that underwriting firms are not  
21   monoliths – single units all working together. They are organized into  
22   different divisions, each managed and evaluated as a separate profit and  
23   loss center. The compensation of investment bankers results from the

1 separate results of these different divisions. The divisions have different  
2 customers. The banking division is distinct from the sales and trading  
3 division. Within the sales and trading division, there is usually a distinction  
4 between institutional and retail sales. Institutions are large money  
5 managers.

6 Because income and profit come from transactions, there is tremendous  
7 pressure to write “tickets,” to conduct transactions – and to do so quickly.  
8 No bond sales and trading division that I know or have ever heard of is on  
9 retainer, i.e., is paid a fee not associated with a transaction. Consequently,  
10 the incentive is the more transactions a division completes, the quicker the  
11 sales, the more income and profit there is to share among employees of  
12 that division.

13 Divisions within an investment bank are further organized on the basis of  
14 securities “products” they underwrite or trade. One of the biggest challenges  
15 we have encountered with Ratepayer-Backed Bonds is getting the attention  
16 and focus of the appropriate divisions across the banks to assist in  
17 distributing the bonds at the lowest cost to ratepayers.

18 Public Staff witness Heller, who also worked in large underwriting firms  
19 discusses this in more detail.

20 **Q. HOW IS THIS RELEVANT TO THE JOINT PETITION?**

21 A. The Joint Petition proposes a process that relies heavily on the  
22 “professional judgement” of underwriters to achieve the lowest storm  
23 recovery charges to ratepayers. It is very light on discussion of how to gain

1 the greatest value from the Financing Order from investors. However, the  
2 salespeople and the traders who buy the bonds from the issuer to re-sell  
3 the storm recovery bonds to their investor clients do not have a duty to act  
4 in the best interests of the ratepayer. That's not their job despite the  
5 Companies assertion. Their job is described in their underwriting  
6 agreement as witness Maher discusses in more detail and explains what  
7 that means for ratepayers in this transaction.

8 It has been my experience both as an employee of major investment banks  
9 for 17 years as well as in conversations, discussions with individuals  
10 currently employed at major investment banks, that they are compensated  
11 by re-selling securities and re-selling them quickly. Their primary clients are  
12 investors who are in the market frequently buying and selling securities.  
13 This "flow" of transactions is critical to the financial interests of the firm and  
14 the individuals. Underwriters depend on these investors on a daily basis  
15 versus the infrequent issuer of Ratepayer-Backed Bonds. Remember, in  
16 the past 5 years only 3 of these transactions came to market. It just does  
17 not get the focus of the firm in a way that benefits ratepayers when a new  
18 transaction comes to market.

19 The Companies conceded in a response to a Public Staff data request that  
20 underwriters, as do all participants in financing transactions, work in their  
21 own best interests consistent with the contractual and legal obligations  
22 under which they operate. As Public Staff witness Maher points out, their

1 contractual and legal obligations are clearly explained and do not include  
2 the best interests of the ratepayers.

3 **Q. WHAT IS THE DIFFERENCE BETWEEN SALESPEOPLE AND**  
4 **TRADERS?**

5 A. Salespeople interact with investors directly, like an individual's  
6 personal broker. Traders decide how to use the investment bank's capital  
7 to buy and sell securities for the investment bank's own account. Traders  
8 decide on the actual prices and yields at which they are willing to purchase  
9 or sell fixed-income debt securities.

10 There is a plethora of products, and both traders and investors have limited  
11 time. The compensation system for both salespeople and traders  
12 encourages efficiency – make the maximum amount of profit for the division  
13 of the investment bank in the year and be paid “on performance.”  
14 Performance (profit) is the bottom-line.

15 **Q. WHAT IS THE BIGGEST CHALLENGE IN DEALING WITH**  
16 **UNDERWRITERS?**

17 A. The biggest challenge is getting underwriters to spend the time and  
18 energy to create maximum value for the ratepayer. I know it can be done  
19 because I have seen it from both sides - both as an underwriter and as  
20 financial advisor to issuers and to regulators. It just is not easy. The

1 pressure is to do the deal, to take the offer that is already on the table.  
2 Volume and spread are the key drivers.

3 **BEST PRACTICES: RECOMMENDED PROCEDURES**

4 **Q. WHAT ARE THE MOST IMPORTANT BEST PRACTICES FOR**  
5 **NORTH CAROLINA'S FIRST RATEPAYER-BACKED BOND**  
6 **TRANSACTION AND IN ESTABLISHING A PROGRAM?**

7 A. Following proven best practices would benefit North Carolina  
8 ratepayers in establishing the proposed storm recovery bond program and  
9 in the initial public offering of Ratepayer-Backed bonds as witnesses  
10 Abramson, Klein, Schoenblum, Maher and Sutherland have explained. The  
11 ones I would highlight are:

12 1. The Commission should use its authority to include terms and conditions  
13 in the Financing Order to protect the ratepayer in structuring, marketing  
14 and pricing the storm recovery bonds.

15 2. The Commission and ratepayer advocates need to collaborate with the  
16 Companies and additional members of a Bond Team to ensure they  
17 achieve a "lowest storm recovery charge" standard, relying on the  
18 expertise of independent financial advisors like Saber Partners to  
19 discern just how that can be achieved. Independent means no financial  
20 interest in the bond proceeds or the bonds themselves and with a duty  
21 to loyalty– a fiduciary responsibility to the ratepayer – the Commission  
22 and the Public Staff.

1 3. After pricing but before closing, the Companies, the Underwriters and  
2 the Public Staff's financial advisor each should certify that the lowest  
3 storm recovery charge standard has been achieved, so the Commission  
4 has time to stop the transaction if it determines that standard is not  
5 achieved.

6 **COMMENT ON THE COMPANIES' RESPONSES TO CERTAIN DATA**  
7 **REQUESTS**

8 **Q. IN THE JOINT PETITION AND IN RESPONSES TO PUBLIC**  
9 **STAFF'S DATA REQUESTS, DID ANYTHING SURPRISE YOU?**

10 A. Yes. The Companies failed to recommend that the Commission  
11 follow many of the best practices that DEF agreed to be included in the 2015  
12 securitization Financing Order issued by the FPSC.  
13 For example, that 2015 FPSC Financing Order required that the "marketing"  
14 (as well as the "structuring" and "pricing") of the Ratepayer-Banked Bonds  
15 result in the lowest securitization charge consistent with market conditions  
16 at the time of pricing. Here, the Companies propose that the "lowest storm  
17 recovery charge" standard be based only on "structuring and pricing"  
18 without regard to "marketing" efforts in connection with the proposed storm  
19 recovery bonds. This does not make sense. Consider the analogy of a  
20 family selling its home. Does the family list with only one broker or many?  
21 How are potential buyers should be contacted? How does the family  
22 present the home? The best price the family will get will be determined by  
23 how well the house is marketed. If the family just wants to sell quickly and

1 does not care about getting the best price, then the family will likely sell the  
2 home quickly. Here, we have a duty to get the ratepayer the lowest cost on  
3 a bond structure that has been infrequently sold and is not well understood,  
4 so marketing will be essential. For the Companies to leave “marketing” out  
5 of their proposal – even though it was included in the successful FPSC  
6 Financing Order issued to DEF – is a major deficiency and should be  
7 corrected.

8 As a second example, as financial advisor to the FPSC and to other  
9 regulators in connection with other prior Ratepayer-Backed Bond  
10 transactions, Saber Partners pioneered the practice of requiring  
11 certifications or opinions in writing, without material qualifications,<sup>2</sup> from  
12 underwriters. These written certifications say the structuring, marketing and  
13 pricing of Ratepayer-Backed Bonds in fact resulted in the lowest  
14 securitization charges consistent with market conditions at the time of  
15 pricing and the terms of the Financing Order. The Companies do not  
16 propose that underwriters be required to deliver such certifications or  
17 opinions. For additional information about these compliance certifications,  
18 see the testimony of Public Staff witnesses Schoenblum and Moore.

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<sup>2</sup> Despite an explicit lowest cost standard in the New Jersey statute, from 2001 - 2004, the utilities, Underwriters, and the New Jersey Commission's financial advisors were allowed to place significant qualifications in their “lowest cost” certifications. In contrast, for the 2005 transaction for the benefit of Public Service Electric & Gas (PSE&G), the New Jersey Commission and its financial advisor eliminated these significant qualifications by adopting the Texas Commission financing order certification model. As shown on Sutherland Exhibit 4, the Spread for the 2005 PSE&G transaction was considerably tighter (i.e., less expensive to ratepayers) than any previous Ratepayer-Backed Bond transaction completed in New Jersey. See Staff Issues Decision Memoranda Document # 04068 May 9, 2006 in Docket No. 060038-EI- Petition for issuance of a storm recovery financing order by Florida Power & Light Company.

1 One key aspect of a written certification is not to have any “material  
2 qualifications.” This means statements, conditions or assumptions that  
3 dilute the meaning and intent of the certification or opinion. In its 2006 FP&L  
4 storm securitization Financing Order, the FPSC examined certifications that  
5 New Jersey Board of Public Utilities required of its financial advisor on  
6 Ratepayer-Backed Bond offerings versus certifications the PUCT required  
7 of its financial advisor. It found that the New Jersey form of certification was  
8 weakened by the qualifications the advisor put in the certification. When  
9 the Ratepayer-Backed Bond pricings of New Jersey and Texas were  
10 compared – though each had certification letters – the Texas transactions  
11 got consistently lower credit spreads to benchmark issues. This meant  
12 Texas ratepayers paid less and indeed got the lowest costs and lowest  
13 securitization charge at the time of pricing. A study of Texas versus New  
14 Jersey Ratepayer-Backed Bond pricings by Barclays Bank in 2005  
15 confirmed this outcome. A copy of that study was provided to Saber  
16 Partners.



1    **Q.    WAS IT EASY TO PERSUADE UNDERWRITERS TO DELIVER**  
2    **THOSE CERTIFICATIONS FOR THE 2016 DEF TRANSACTION OR**  
3    **OTHER PRIOR RATEPAYER-BACKED BOND TRANSACTIONS**  
4    **WHERE SABER SERVED AS FINANCIAL ADVISOR TO THE**  
5    **REGULATOR?**

6    A.    No. Underwriters were concerned about their liability from making  
7    the certification.

8    **Q.    WAS THAT A VALID CONCERN?**

9    A.    Yes, in part. It was the driving motivation for Saber Partners to seek  
10   the confirming certification or opinion. It is relatively easy for bond issuers  
11   to get underwriters to say something orally about market conditions and the  
12   results of the underwriters' efforts in structuring, marketing and pricing  
13   publicly-offered securities. It is another thing to get the underwriters to "put  
14   that that in writing."

1    **Q.    AFTER THE PRICING OF THE STORM RECOVERY BONDS, THE**  
2    **COMPANIES ARE CALLED UPON TO CERTIFY THAT THE**  
3    **STRUCTURING AND PRICING OF THE BONDS RESULTED IN THE**  
4    **LOWEST STORM RECOVERY CHARGES CONSISTENT WITH**  
5    **MARKET CONDITIONS AT THE TIME (SEE PROPOSED FINANCING**  
6    **ORDER, APPENDIX C). WHY IS IT IMPORTANT THAT THE**  
7    **COMPANIES DELIVER THESE CONFIRMING CERTIFICATIONS?**

8    A.    Representatives of the Companies will be involved in the decisions  
9    related to the structuring, marketing and pricing of storm recovery bonds. It  
10   is only prudent to expect that the Companies, as Joint Petitioners, will also  
11   deliver certificates confirming that the “lowest storm recovery charge”  
12   requirement set forth in the Financing Order has, in fact, been met.

13   **Q.    IS THE FINANCING ORDER PROPOSED BY THE JOINT**  
14   **PETITION AMBIGUOUS CONCERNING WHETHER THE COMPANIES**  
15   **WILL BE REQUIRED TO DELIVER THESE CONFIRMING**  
16   **CERTIFICATIONS?**

17   A.    Yes. Public Staff witness Schoenblum’s testimony reinforces this.

1 Q. DO YOU ALSO AGREE THAT THAT IT IS APPROPRIATE FOR  
2 THESE CERTIFICATIONS TO CONFIRM THAT “MARKETING” OF THE  
3 STORM RECOVERY BONDS RESULTED IN THE “LOWEST STORM  
4 RECOVERY CHARGE”?

5 A. Yes. Public Staff witnesses Schoenblum and Klein concur.

6 Q. IN RESPONDING TO A PUBLIC STAFF DATA REQUEST,  
7 COMPANIES WITNESS ATKINS STATED THAT THE DRAFT  
8 FINANCING ORDER FOR THE PROPOSED DEC AND DEP  
9 TRANSACTION WERE DESIGNED TO COMPLY WITH THE NORTH  
10 CAROLINA STATUTORY REQUIREMENTS, WHICH DID NOT INCLUDE  
11 A ROLE FOR A DESIGNATED REPRESENTATIVE IN THE POST-  
12 FINANCING ORDER DECISIONS CONCERNING THE ‘MARKETING’ OF  
13 THE SECURITIES BEING OFFERED IN THE TRANSACTION. HE WENT  
14 ON FURTHER TO STATE THAT COMPARISONS TO THE 2016 DEF  
15 TRANSACTION ARE NOT APPROPRIATE AS THAT TRANSACTION  
16 CONCERNED A DIFFERENT UTILITY REGULATED BY A DIFFERENT  
17 COMMISSION UNDER A DIFFERENT STATUTE. DO YOU AGREE WITH  
18 WITNESS ATKINS?

19 A. No. Relevant provisions of the Florida statute and the North Carolina  
20 statute are essentially the same.

21 F.S. § 366.95(2)(c)2. states:

22 In a financing order issued to an electric  
23 utility, the commission shall:

24 \* \* \*

1 b. Determine if the proposed structuring,  
2 expected pricing, and financing costs of the  
3 nuclear asset-recovery bonds have a  
4 significant likelihood of resulting in lower  
5 overall costs or would avoid or significantly  
6 mitigate rate impacts to customers as  
7 compared with the traditional method of  
8 financing and recovering nuclear asset-  
9 recovery costs. . . .;  
10 \* \* \*  
11 i. **Include any other conditions that the**  
12 **commission considers appropriate and**  
13 **that are authorized by this section.”**  
14  
15 N.C.G.S. § 62-172(b)(3)b. states:  
16 **“A financing order issued by the**  
17 **Commission to a public utility shall**  
18 **include all of the following elements:**  
19 \* \* \*  
20 3. A finding that the structuring and pricing  
21 of the storm recovery bonds are reasonably  
22 expected to result in the lowest storm  
23 recovery charges consistent with market  
24 conditions at the time the storm recovery  
25 bonds are priced and the terms set forth in  
26 such financing order.  
27 \* \* \*  
28 **12. Any other conditions not otherwise**  
29 **inconsistent with this section that the**  
30 **Commission determines are**  
31 **appropriate.”**  
32

1    **Q.    PUBLIC STAFF WITNESSES SCHOENBLUM AND KLEIN**  
2    **TESTIFY THAT, IN THEIR VIEW, THE COMMISSION SHOULD REQUIRE**  
3    **THESE CONFIRMING “LOWEST STORM RECOVERY CHARGE”**  
4    **CERTIFICATIONS NOT ONLY FROM THE COMPANIES, BUT ALSO**  
5    **FROM THE BOOKRUNNING UNDERWRITER(S) AND FROM THE**  
6    **COMMISSION’S OR PUBLIC STAFF’S INDEPENDENT FINANCIAL**  
7    **ADVISOR. IF THE COMPANIES DELIVER THESE CERTIFICATIONS,**  
8    **WHY ARE “LOWEST STORM RECOVERY CHARGE” CERTIFICATIONS**  
9    **ALSO NEEDED FROM THE BOOKRUNNING UNDERWRITER(S) AND**  
10    **AN INDEPENDENT FINANCIAL ADVISOR?**

11    A.    An independent certification from someone with a duty to the  
12    ratepayers – the party that is paying the costs - is prudent and consistent  
13    with how many other financial transactions are done. By law, after the  
14    storm recovery bonds are issued and the Companies receive the net  
15    proceeds, there is no further review of the transaction possible by the  
16    Commission. The Companies have a financial incentive to receive the  
17    proceeds as quickly and effortlessly as possible, with no liability for the  
18    resulting storm recovery charges and arguably no liability in giving these  
19    certifications. And the Companies might truly believe they got the best deal.  
20    However, despite their best efforts, the Companies might not have access  
21    to all information that is material to determining whether the “lowest storm  
22    recovery charges” in fact were achieved. This is particularly true of  
23    information about communications between the underwriters’ salespersons

1 and potential investors, both on the day of pricing and also during the weeks  
2 leading up to pricing. For that reason, in my view, it also is important that  
3 the bookrunning underwriter(s) also deliver a “lowest storm recovery  
4 charge” certification after the storm recovery bonds are priced and before  
5 they are issued.

6 **Q. IN RESPONSE TO A PUBLIC STAFF DATA REQUEST, WITNESS**  
7 **HEATH STATED THAT THE SRB SECURITIES WILL NOT BE ISSUED**  
8 **BY CUSTOMERS, SO IT IS INAPPROPRIATE TO SUGGEST THAT**  
9 **CUSTOMERS WOULD NEGOTIATE WITH UNDERWRITERS. HE WENT**  
10 **ON TO STATE THAT THE COMPANIES ARE NOT AWARE OF ANY**  
11 **SECURITIES OFFERINGS WHERE RATEPAYERS NEGOTIATED**  
12 **DIRECTLY WITH UNDERWRITERS. DO YOU AGREE?**

13 A. No. That is a distinction that is without a difference. Newly-formed  
14 limited purpose subsidiaries will be the issuers of storm recovery bonds,  
15 and a grantor trust wholly-owned by Duke Energy Corporation would be the  
16 issuer of any SRB Securities. The issuers will be responsible to pay all debt  
17 service and other financing costs with respect to the storm recovery bonds  
18 – but only from specifically identified resources that will consist principally  
19 of storm recovery charge collections from customers. The transaction will  
20 be set up so that debt service and other financing costs will be a complete  
21 passthrough to the ratepayer. Investors cannot look to DEC, DEP or Duke  
22 Energy Corporation to get a penny. Investors may look only to the issuers,

1 and the issuers will be obligated to make payments only to the extent of  
2 amounts held by a bond trustee in a "Collection Account" which will consist  
3 principally of collections of storm recovery charge revenues from  
4 customers. In addition, the issuers will own storm recovery property, which  
5 includes the right to bill, charge and collect storm recovery charges and to  
6 require the Commission to adjust the storm recovery charge to whatever  
7 level is necessary to repay the investors on time.

8 This is fundamentally different from when the Companies themselves issue  
9 debt securities. There the bondholders can go after the assets of the entire  
10 operating utility company if it's a first mortgage bond. Unsecured creditors  
11 might have to wait in line, but they can sue the operating utility for payment.  
12 Bankruptcy is a real risk for operating utilities. Neither DEC nor DEP can  
13 force the Commission to raise customer rates immediately and to whatever  
14 level might be necessary to pay their creditors. It is just not the same.

15 **Q. DO YOU HAVE ANY CONCERNS WITH THE PROPOSED**  
16 **GRANTOR TRUST STRUCTURE THAT COMPANIES WITNESS**  
17 **ATKINS PROPOSES TO BE USED THAT COMBINES THE STORM**  
18 **RECOVERY BOND ISSUANCES OF BOTH DUKE ENERGY**  
19 **CAROLINAS AND DUKE ENERGY PROGRESS INTO A SINGLE**  
20 **SECURITY?**

21 A. I believe all options should be explored that may produce the lowest  
22 cost to the ratepayer. However, the structure has only been used once in

1 the last 15 years, and that was for FirstEnergy of Ohio. Other utilities in  
2 Louisiana and West Virginia that have two affiliated companies with the  
3 option of using that structure did not choose it. I believe it adds a layer of  
4 complexity to the sale of the Ratepayer-Backed Bonds that may cost  
5 ratepayers more. While the Companies believe that it is not complex, the  
6 lead bookrunning manager and structuring advisor of the FirstEnergy of  
7 Ohio transaction (Goldman Sachs) informed the Companies (in their  
8 response to the Companies request for proposals for a structuring advisor)  
9 that they did not recommend the structure for the Companies and called the  
10 grantor trust bond structure “complex.”

11 Moreover, according to a report by FirstSouthwest (attached to this  
12 testimony as Fichera Exhibit 4), the independent financial advisor to the  
13 Public Utility Commission of Ohio on the transaction at the time, there were  
14 only eight investors in each of the tranches of the \$444 million Ratepayer-  
15 Backed Bond issuance. Notably, that transaction did not have a lowest cost  
16 to the ratepayer standard in the authorizing legislation nor the Financing  
17 Order authorizing the Ratepayer-Backed Bond sale. These facts raise  
18 serious questions as to whether this structure would be in the best interest  
19 of the Companies’ ratepayers.

20 Finally, the main reason cited by witness Atkins for using the combined  
21 grantor trust structure – to make the bonds eligible in size for inclusion in  
22 the Bloomberg Barclays Aggregate Bond Index” - is dubious at best. There  
23 is no supporting evidence that this index, as opposed to other indices



1 followed by utility and corporate bond investors, would have any effect on  
2 lowering the interest rate on the bonds. A review of witness Atkins' previous  
3 testimony on behalf of other utilities in Ratepayer-Backed Bond transactions  
4 found no mention of the "Aggregate Bond Index" as a material factor in  
5 structuring, marketing or pricing the bonds. The Companies did admit that  
6 the Corporate Utilities Bond Index was an important factor that could lower  
7 ratepayer costs. However, to be eligible for the Aggregate Bond Index the  
8 Companies would have to promote the storm recovery bonds as "asset  
9 backed securities" even though the Companies say the storm recovery  
10 bonds would be structured like the DEF bonds as "not asset-backed  
11 securities as defined by SEC Regulation AB." So, besides complexity, the  
12 approach seems to add confusion. Neither of these will likely lower  
13 ratepayer costs in negotiations with investors.

14 If the Commission's Financing Order allows the possibility for using a  
15 grantor trust structure, however, this structure should be studied by the  
16 proposed Bond Team with further analysis by Public Staff and its  
17 independent advisor, given the lack of any evidence supporting the value of  
18 such an option.

1     **Q.     WHY IS MARKETING SO IMPORTANT? DO NOT MOST MAJOR**  
2     **UNDERWRITERS AND INVESTORS UNDERSTAND WHAT**  
3     **RATEPAYER-BACKED BONDS ARE SO THAT VERY LITTLE TIME**  
4     **NEEDS TO BE SPENT ON INVESTOR EDUCATION?**

5     A.     Because Ratepayer-Backed Bond issuances have been infrequent  
6     and often mischaracterized by Underwriters and others, I do not believe  
7     there is a thorough understanding of the nature of the credit so that they are  
8     properly valued. The best example of the confusion associated with  
9     Ratepayer-Backed Bonds is a research report that was done by Wells Fargo  
10    in 2013 (attached as Fichera Exhibit 5). Wells Fargo was a co-managing  
11    Underwriter on an Ohio Power Ratepayer-Backed Bond offering and was  
12    the sole Underwriter of the Florida Power & Light storm securitization bonds  
13    in 2007. However, the research report described the transaction as a “utility  
14    receivables” transaction. Receivables are a core part of the “asset-backed  
15    securities” market and involve many complexities and risks. However,  
16    receivables are not part of any Ratepayer-Backed Bond structure. There  
17    are no receivables pledged to the bondholders or part of the collateral for  
18    the bonds.

19    Directly on point, for example, the prospectus for the Florida Power & Light  
20    storm recovery bond transaction stated that “[s]torm-recovery property is  
21    not a receivable, and the principal credit supporting the related series of

1 bonds is not a pool of receivables.”<sup>3</sup> The same will be true with North  
2 Carolina storm recovery property. Witness Heller discusses this investor  
3 and underwriter confusion in his testimony. This is one of the reasons he  
4 says they should not be called “asset-backed securities.”  
5 But, the fact that a major investment banking firm in a 10-page report  
6 described it as a “utility receivables” transaction is a concern and a  
7 challenge. While the report got many things right, it got this core issue  
8 wrong. This is symptomatic of a larger marketing problem that we have  
9 confronted over and over again in the 20 years that Saber Partners has  
10 been involved in the Ratepayer-Backed Bond market. Underwriters are not  
11 familiar with the structure and attempt to use shorthand or comparisons to  
12 things they are familiar with but are not part of the unique and extraordinary  
13 security that a Ratepayer-Backed Bond has. While the rating agencies dryly  
14 describe accurately the structure and credit, salespeople often get it wrong.  
15 That is another reason why a representative of the ratepayer needs to be  
16 at the negotiating table and why the Bond Team proposal is a best practice.

17 **COMPARISON TO OTHER SECURITIES RELEVANT TO**  
18 **CONSIDERING THE JOINT PETITION**

19 **Q. IS A COMPARISON TO OTHER SECURITIES IMPORTANT TO**  
20 **RATEPAYERS?**

21 A. Yes. As discussed in greater detail by Public Staff witnesses  
22 Schoenblum, Sutherland, Heller, Abramson and Maher, it is important to

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<sup>3</sup> [https://www.sec.gov/Archives/edgar/data/37634/000090514807003876/efc7-1376\\_424b5.txt](https://www.sec.gov/Archives/edgar/data/37634/000090514807003876/efc7-1376_424b5.txt) at page 6.

1 compare storm-recovery bonds to other comparable securities in the market  
2 to determine whether ratepayers have received all the benefits from  
3 securitized storm recovery bonds, the legislation and the Financing Order,  
4 and to have a benchmark for success. All securities price in relation to other  
5 securities. Only by knowing and examining these and other factors can one  
6 determine whether a Ratepayer-Backed Bond transaction has been  
7 successful or not.

8 **Q. PUBLIC STAFF WITNESSES HELLER AND SUTHERLAND**  
9 **RECOMMEND THAT THE STORM RECOVERY BONDS BE**  
10 **STRUCTURED AND MARKETING AS “CORPORATE DEBT**  
11 **SECURITIES” AND NOT AS “ASSET-BACKED SECURITIES.” DO YOU**  
12 **AGREE?**

13 A. Yes, I agree.

14 **Q. HOW WILL MARKETING AND INVESTOR EDUCATION AFFECT**  
15 **THE COST OF STORM-RECOVERY BONDS?**

16 A. As discussed in the testimony of Public Staff witness Schoenblum,  
17 in issuing bonds, there are specific rules and regulations to follow,  
18 disclosure and marketing documents to be filed with regulators, and the  
19 bonds will compete with multiple alternative investment opportunities. But  
20 investors' fundamental valuation comes from an understanding of the credit,  
21 its liquidity, “relative value” and the functioning of the capital markets.

1 Accurate market education does not happen by itself. It usually occurs only  
2 if undertaken and pursued vigorously by those who have a stake in the  
3 outcome. For example, the Companies, as well as almost all other  
4 corporations, spend a great deal of shareholder resources in promoting and  
5 educating the market for their stock and their debt securities. The  
6 management invests this time and energy because it believes that from true  
7 market education and a better understanding of its company, the valuation  
8 of the company's stock and debt securities will increase for the benefit of  
9 shareholders. The management also targets efforts at lenders to lower the  
10 company's borrowing costs because it expects to need debt capital on an  
11 ongoing basis.

12 With storm-recovery bonds, because the Companies are not responsible for  
13 any costs of borrowing, as it otherwise would be in a traditional debt offering,  
14 the Companies have no immediate stake in the outcome other than to  
15 receive the cash and improve their balance sheets as quickly as possible.  
16 Moreover, the transaction is likely viewed from the Companies' perspective  
17 as a one-time offering, or, at the very least, an infrequent offering, so their  
18 need to make a concerted effort to educate the market regarding the  
19 benefits of storm-recovery bonds is diminished.

20 While well intentioned, the Companies' management also is distracted by  
21 independent concerns stemming from the fact that its current debt is a direct  
22 burden on revenues that are available to its shareholders, and storm-  
23 recovery bonds are not. Therefore, there is little incentive for the

1 Companies to invest time and effort in educating the market, expanding the  
2 market, or creating as broad a competition as possible for this or other  
3 storm-recovery bond issuances.

4 As the beneficiary of the storm-recovery bond issue, the Companies can  
5 and should work collaboratively with the Commission, Public Staff and  
6 advisors to achieve a successful lowest storm recovery charge and lowest  
7 cost financing. The Bond Team process, with the Commission having  
8 access to independent advisors with a duty of loyalty and care to the  
9 ratepayer (in this case provided by Public Staff) , can and should take a co-  
10 leadership role with the Companies in marketing and in investor education  
11 efforts. A joint and collaborative effort can best serve the interests of  
12 ratepayers while fully addressing the financing needs of the utility.

13 **IMPORTANCE OF PHASES 2 & 3 STRUCTURING, MARKETING AND**  
14 **PRICING**

15 **Q. HAVE COMMISSIONS IN OTHER STATES BEEN ACTIVELY**  
16 **INVOLVED IN THE STRUCTURING, MARKETING, AND PRICING OF**  
17 **THESE TRANSACTIONS AFTER THE ISSUANCE OF THE FINANCING**  
18 **ORDERS?**

19 A. Yes. Commissions in Texas, Florida, West Virginia, New Jersey, and  
20 California--and prospectively Wisconsin--have been actively involved in the  
21 structuring, marketing and pricing of Ratepayer-Backed Bonds.  
22 Significantly, the California Public Utilities Commission, which was one of  
23 the first states to sponsor Ratepayer-Backed Bonds, initially did not

1 participate actively after issuing its Financing Orders in 1997 and 1998.  
2 However, when a second round of Ratepayer-Backed Bonds was  
3 authorized in 2004, the California Commission created an active role for a  
4 Commission financing team to approve post-Financing Order matters.  
5 They confirmed this role again in November 2019 in a Financing Order for  
6 Southern California Edison Company,<sup>4</sup> the California Commission's first  
7 Financing Order in 16 years. The PUCT has had the most active post-  
8 Financing Order participation.

9 Two transactions illustrate the results that can be achieved by an active and  
10 involved commission in the structuring, marketing and pricing of Ratepayer-  
11 Backed Bonds. In September 2005, Public Service Electric and Gas  
12 Company of New Jersey sponsored the issuance of \$102 million of  
13 Ratepayer-Backed Bonds. Saber served as financial advisor to the New  
14 Jersey Commission, and Credit Suisse (CS) was the lead underwriter.  
15 Normally a transaction of this size might have been difficult to sell because  
16 of its small size relative to other competing investments.  
17 However, according to a report written by CS to the New Jersey  
18 Commission,

19 "The extensive marketing of these bonds  
20 conducted by CS, Barclays and M.R. Beal,  
21 with active participation by Saber, led to the  
22 unprecedented (low) pricing spreads,  
23 despite the disadvantage of relatively small  
24 tranche sizes."

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<sup>4</sup> See *California Current* CPUC Judge Adds Ratepayer Protections to \$337M SCE Bond  
<http://cacurrent.com/subscriber/archives/41788>.

1  
2 In December 2005, CenterPoint Energy of Texas initially offered \$1.2 billion  
3 of Ratepayer-Backed Bonds to the market. Saber was the financial advisor  
4 with joint decision-making responsibility with the issuer. The PUCT acted  
5 by and through the financial advisor. CS was one of the bookrunning  
6 underwriters. In this case, the large size of the transaction, coupled with  
7 the timing of the issuance at the end of the year (which traditionally is not a  
8 good time to sell securities) posed special challenges. Nevertheless, the  
9 Ratepayer-Backed Bonds received worldwide investor demand at record-  
10 low credit spreads. The transaction was increased to \$1.85 billion with over  
11 one-third of the bonds being sold to foreign investors for the first time ever.  
12 This transaction was also notable because of the large amount of bonds  
13 sold with very long maturities which are the type of bonds most costly to  
14 ratepayers. Yet, the credit spread levels achieved by the PUCT for  
15 ratepayers through these Texas Ratepayer-Backed Bonds on the longest  
16 maturities were significantly below all other previously offered Ratepayer-  
17 Backed Bonds in any state.

18 **Q. IN TEXAS, DID SABER PARTNERS SERVE AS FINANCIAL**  
19 **ADVISOR TO THE PUCT IN CONNECTION WITH \$1,739,700,000**  
20 **PRINCIPAL AMOUNT OF RATEPAYER-BACKED BONDS ISSUED IN**  
21 **2006 FOR AEP TEXAS CENTRAL COMPANY?**

22 A. Yes. That issuance of Ratepayer-Backed Bonds consisted of five  
23 separate sequential-pay tranches. Each tranche was separately priced.



1 Attached as Fichera Exhibit 2 is a copy of page 49 of the "Pricing Book" for  
2 that Ratepayer-Backed Bond transaction. This Pricing Book is dated  
3 October 4, 2006, and was prepared by CS, the bookrunning underwriter, as  
4 a report to the sponsoring utility and to the PUCT about the success in  
5 pricing each of the five tranches.

6 **Q. WHEN THESE RATEPAYER-BACKED BONDS WERE PRICED,**  
7 **AND THE UNDERWRITERS ENTERED INTO AN UNDERWRITING**  
8 **AGREEMENT COMMITTING TO PURCHASE ALL \$1,739,700,000**  
9 **PRINCIPAL AMOUNT OF RATEPAYER-BACKED BONDS, DID THE**  
10 **UNDERWRITERS HAVE ORDERS FROM INVESTORS FOR ALL THESE**  
11 **BONDS?**

12 A. No. At final pricing, page 49 of the "Pricing Book" Saber Partners  
13 requested that the underwriters prepare to memorialize the transaction  
14 process, reports that the underwriters had orders for more than 100% of  
15 tranches 1, 2, 3 and 5, but for only 96% of tranche 4. Tranche 4 had a  
16 weighted average life of 10.0 years and a principal amount of \$437,000,000.

1 Q. IF THE UNDERWRITERS WERE NOT ABLE TO FIND  
2 INVESTORS BETWEEN PRICING AND THE OCTOBER 11, 2006  
3 CLOSING DATE, WHO WOULD BE OBLIGATED TO PURCHASE THE  
4 \$17,480,000 OF BONDS THAT HAD NOT BEEN PRE-SOLD TO  
5 INVESTORS?

6 A. The underwriters would be required to use their own capital to  
7 purchase this \$17,480,000 of bonds at the initial public offering price (less  
8 the agreed upon underwriter's discount set forth in the Underwriting  
9 Agreement).

10 Q. DID THE TEXAS SECURITIZATION STATUTE RESEMBLE N.C.  
11 G.S. § 62-172 IN REQUIRING THAT THOSE RATEPAYER-BACKED  
12 BONDS BE PRICED SO AS TO PRODUCE THE LOWEST  
13 SECURITIZATION CHARGES CONSISTENT WITH MARKET  
14 CONDITIONS AT THE TIME OF PRICING?

15 A. Yes. Section 39.301 of the Texas Public Utility Regulatory Act  
16 states: "The commission shall ensure that the structuring and pricing of the  
17 transition bonds result in the lowest transition bond charges consistent with  
18 market conditions and the terms of the Financing Order."

1    **Q.    DID OUTSIDE LEGAL COUNSEL TO AEP TEXAS CENTRAL**  
2    **DELIVER ITS OPINION THAT THOSE RATEPAYER-BACKED BONDS**  
3    **WERE VALIDLY ISSUED?**

4    A.    Yes. A copy of that legal opinion delivered by Sidley Austin LLP was  
5    filed        with        the        SEC        and        can        be        found        at  
6    [https://www.sec.gov/Archives/edgar/data/18734/000119312506185414/de](https://www.sec.gov/Archives/edgar/data/18734/000119312506185414/dex51.htm)  
7    [x51.htm](https://www.sec.gov/Archives/edgar/data/18734/000119312506185414/dex51.htm).

8    **Q.    IN RESPONDING TO A PUBLIC STAFF DATA REQUEST,**  
9    **COMPANIES WITNESS ATKINS STATED THAT A MARKET-CLEARING**  
10   **PRICING WOULD RESULT IN INTEREST RATES FOR THE SRB**  
11   **SECURITIES THAT ARE CONSISTENT WITH MARKET CONDITIONS**  
12   **AT THE TIME OF PRICING. HE WENT ON TO STATE THAT INTEREST**  
13   **RATES THAT ARE SUBSIDIZED BY PRIVATE COMPANIES, WHETHER**  
14   **UNDERWRITER FIRMS OR THE COMPANIES, THROUGH THE**  
15   **PURCHASE OR RETENTION OF UNSOLD UTILITY SECURITIZATION**  
16   **BONDS, ARE NOT CONSISTENT WITH MARKET CONDITIONS AT THE**  
17   **TIME OF PRICING, AND THEREFORE INCONSISTENT WITH N.C. GEN.**  
18   **STAT. § 62-172. DO YOU AGREE WITH WITNESS ATKINS?**

19   A.    No. I believe the Pricing Book for the 2006 AEP Texas Central  
20   Ratepayer-Backed Bond transaction, together with the approving legal  
21   opinion delivered by Sidley Austin LLP, illustrates that an underwriter's  
22   purchase or retention of any unsold storm recovery bonds would be

1 consistent with market conditions at the time of pricing, and therefore  
2 consistent with N.C.G.S. § 62-172.

3 **Q. DOES A “LOWEST COST” AND “LOWEST SECURITIZATION**  
4 **CHARGE” STANDARD CREATE MORE COSTS FOR RATEPAYERS**  
5 **THAN A LESSER STANDARD?**

6 A. No. As explained in the testimony of Public Staff witness  
7 Schoenblum, pursuing a lowest cost and lowest securitization charge  
8 standard might require transaction participants to work harder, but not at a  
9 higher net economic cost. Hard work is an investment that always pays off.  
10 Consider that the Companies propose almost \$12 million in issuance  
11 expenses. It is appropriate to expect the best possible outcome for such  
12 costs, especially from the underwriters. Otherwise, waste and inefficiency  
13 might arise from the process. Indeed, not pursuing the lowest cost almost  
14 guarantees higher costs to the ratepayer because there is no incentive or  
15 accountability to get anything better.  
16 Among the transaction costs, the greatest economic cost to ratepayers is  
17 the interest rate on the bonds which ratepayers will be paying for the entire  
18 term to maturity. This dwarfs any single up-front transaction cost. One  
19 eighth of one per cent of \$1 billion outstanding for about 7.5 years will cost  
20 ratepayers \$9.4 million in nominal dollars. For a longer maturities such as  
21 up to 20 years, this amount would be even more. For the reasons outlined  
22 in the testimony of Public Staff witness Schoenblum, “reasonable” is not an

1 appropriate standard to apply, especially when the potential cost is so  
2 substantial. Moreover, without meaningful involvement in real time, there  
3 will be no way for the Commission to know that the transaction was priced  
4 at the lowest interest rate possible.

5 This is one reason why care needs to be taken, in cooperation with the  
6 Companies, in selecting experienced transaction participants and others. It  
7 is essential to put together a team which shares a similar objective and  
8 commitment to excellence, which can provide economies of scale and  
9 which is responsive to competitive pressures and economic incentives. If  
10 the economic incentives are properly aligned with proper oversight, then  
11 underwriters, counsel, advisors and others will work in the most cost-  
12 effective, collaborative manner with the Commission and the Companies to  
13 achieve the lowest storm recovery charge and lowest cost objective. If there  
14 are inadequate incentives or accountabilities in the process, waste and  
15 inefficiencies are likely to occur. The standard of “lowest cost” and “lowest  
16 storm recovery charges” with accountability compels the transaction parties  
17 to achieve the best transaction possible and to avoid a poorly executed,  
18 badly priced transaction.

19 Some may argue that an active Commission increases utility legal costs and  
20 that this is a reason not to have active Commission and Public Staff  
21 involvement in protecting ratepayer interests after a Financing Order has  
22 been issued. A review of past legal costs associated with all publicly-offered

1 Ratepayer-Backed Bonds with or without an active commission, Public  
2 Staff, or an advisor shows no discernible pattern.

3 **Q. IS THE LENGTH OF TIME IT TAKES TO COMPLETE A**  
4 **TRANSACTION A FAIR MEASURE OF SUCCESS IN RATEPAYER-**  
5 **BACKED BOND TRANSACTIONS?**

6 A. No. As Public Staff witness Schoenblum testifies, the length of a  
7 transaction depends on many factors, such as the speed of the rating  
8 agencies' evaluations, efficiency of the underwriters in developing the  
9 marketing plan, whether new markets or marketing strategies are being  
10 developed, and whether the utility and underwriters work collaboratively  
11 with the commission, the ratepayer advocate, and financial advisors in  
12 assisting the commission in its oversight function. In some cases,  
13 Ratepayer-Backed Bond transactions have been delayed significantly by  
14 appeals of the Financing Orders. In other cases, the rating agencies and  
15 securities registration processes have been the most time-consuming  
16 aspects of a transaction. However, many items can be done concurrently.  
17 The best measure of the effectiveness of a transaction is not how fast it is  
18 completed, but what the ultimate value for ratepayers.

## SUMMARY OF TESTIMONY AND RECOMMENDATIONS TO COMMISSION

**Q. PLEASE SUMMARIZE YOUR VIEWS ON THE JOINT PETITION'S APPROACH.**

A. My testimony has focused on the unique situation this Joint Petition creates for the Commission to consider. Close to \$1 billion is proposed to be raised, and the natural question for the people who will be responsible for paying it back is — “at what cost”? If one group of people is asked to pay the mortgage of another, wouldn’t the first group naturally want to have final say over the interest rate and terms?

The Commission is being asked to use its powerful regulatory authority in ways that have not been previously done in North Carolina and to create a bond of unusual strength, a completely separate credit from the Companies. Moreover, it is establishing a template for future issuances of storm recovery bonds, as more damaging hurricanes are expected to occur. The reason for this is, in doing so the Commission should expect to get the lowest cost of funds available in the capital markets at the time any storm recovery bonds are priced. If cost did not matter, then the North Carolina General Assembly could have allowed the Companies to sell bonds at whatever rate Underwriters and investors wanted. But the Legislature did not. And cost does matter.

The capital markets are often thought of as a “black box” of buyers and sellers rapidly exchanging millions of dollars. They are thought to produce

1 efficient results because each participant pursues its own economic  
2 interest, with full knowledge and understanding of the transaction, so that  
3 prices are determined through “perfect competition’ based on the free flow  
4 of information.

5 However, to create the conditions for “perfect competition,” there needs to  
6 be a balance of competing interests in any negotiation. In this transaction  
7 as currently proposed by the Companies, the balance is not achieved.  
8 Under the procedures proposed by the Joint Petition, the people  
9 responsible for repaying the bonds, the ratepayers, are not represented at  
10 the negotiating table. They are not protected. Unless the Commission acts  
11 to create a process involving Public Staff and the Commission, the results  
12 are likely to be skewed against ratepayers’ interests because that’s how the  
13 capital markets work. And all top-rated securities, even AAA-rated  
14 securities, do NOT price the same; there are differing views. Nothing is  
15 automatic except that self-interest rules.

16 As with any publicly-offered securities, the Underwriters will represent their  
17 own interests, and the Companies will represent their interests. As  
18 discussed in detail in the testimonies of Public Staff witnesses Klein, Moore,  
19 Schoenblum, Abramson, Maher and Sutherland, the interests of the  
20 Underwriters and the Companies do not necessarily align with the interests  
21 of ratepayers, so this lack of representation of ratepayer interests can affect  
22 the pricing, the transaction documents and every aspect of the deal.



1 Nothing will occur without the hard work and collaborative efforts of all the  
2 parties involved. The Companies, the Public Staff and the Commission can  
3 work together, and they can create the balance necessary to manage  
4 competition among Underwriters and investors.

5 Public Staff witness Schoenblum describes these best practices in more  
6 detail.

7 Effective representation of the interests of ratepayers through Public Staff  
8 supporting the Commission at every step through issuance of the bonds is  
9 the first element. Decisions affecting ratepayers should be made in  
10 consultation with an independent advisor with experience in this unique  
11 segment of the capital markets and with a specific and direct fiduciary duty  
12 to ratepayers.

13 The second element is the decision-making standard. This is critical. The  
14 standard should be the best possible deal for ratepayers at the time of  
15 pricing, the lowest possible cost of funds. Anything less, allows for less than  
16 optimal results. Why? Very simply, without a lowest cost, best price  
17 standard, "why bother?" There is little incentive for any additional effort and  
18 hard work. The bonds can be priced quickly and move on.

19 But, the simple facts are that unless you negotiate hard on your behalf with  
20 Wall Street, across the table from those sophisticated and large investors  
21 with differing views, you will leave substantial amounts of money on the  
22 table. Each side is looking out for its own economic interests. The  
23 underwriters and investors want the best deal for themselves. One must

1 negotiate equally hard and be equally diligent to arrive at a fair transaction  
2 that achieves the lowest cost to ratepayers and is fair value to the investor.  
3 So, without a clear standard and a negotiating position that includes the  
4 potential for the issuer and ratepayer representatives saying “no” when  
5 evaluating offers, Underwriters and investors will have the negotiating  
6 leverage to dictate a final cost to ratepayers. Remember, the best way to  
7 lose control of the sale price of your house is to tell prospective buyers that  
8 you must sell your house today because you really need the money now.  
9 Pricing leverage will quickly shift.

10 The final element is for key transaction participants — the Companies,  
11 Underwriters, and an independent financial advisor — to deliver to the  
12 Commission written certifications, without material qualifications, confirming  
13 that what they have done has led to the lowest cost of funds and the lowest  
14 storm recovery charges consistent with market conditions at the time of  
15 pricing. It is a basic business principle — “put it in writing.”

16 Any prudent person would want it in writing. For example, investors want  
17 documentation before they give up their money. They do not rely solely on  
18 oral representations before investing. With Sarbanes Oxley and a  
19 heightened need to maintain public confidence in business, certifications  
20 have become a part of normal business “best practices.”

21 This certification process has been employed successfully in Texas,  
22 Florida, West Virginia and New Jersey. Many major Underwriters have

1 delivered these certificates on our transactions, along with all eight utilities.  
2 North Carolina ratepayers deserve no less.

3 **Q. PLEASE LIST YOUR RECOMMENDATIONS TO THE**  
4 **COMMISSION.**

5 A. I recommend that the Commission:  
6 (1) incorporate into its Financing Order the “best practices” as  
7 outlined in this testimony;  
8 (2) require certifications from the Companies, the bookrunning  
9 underwriter(s) and the Public Staff’s financial advisor that the  
10 structuring, marketing and pricing of storm recovery bonds in fact  
11 achieved the lowest storm recovery charges consistent with market  
12 conditions at the time of pricing and the terms of the Financing Order;  
13 and  
14 (3) approve oversight by the Commission, the Public Staff and its  
15 financial advisor through their participation in real-time through a  
16 Bond Team on all matters related to the structuring, marketing, and  
17 pricing of the storm-recovery bonds.

18 **Q. HOW DO YOU EXPECT THE TRANSACTION TO PROCEED?**

19 A. The Companies, their advisors, as well as the Commission, Public  
20 Staff, and their advisors can work collaboratively and expeditiously to  
21 complete this important transaction and establish this new financing  
22 technique for the benefit of ratepayers and of the Companies.

- 1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?
- 2 A. Yes, it does.



## **Joseph S. Fichera**

### **Co-Founder and Chief Executive Officer**

Saber Partners, LLC  
2000-Present

### **Fellow**

National Regulatory Research Institute  
2018-2019

### **Senior Advisor**

The Williams Capital Group, L.P.  
2010-2016, 2018-2019

### **Adjunct Professor of Public and International Affairs**

Princeton University, Woodrow Wilson School Public & International Affairs  
Fall 2011, Spring 2008

### **Manager**

Saber Capital Partners, LLC (FINRA)  
2003-2009

### **Managing Director and Group Head**

Investment Banking, Business Origination & Product Development  
Prudential Securities  
1997-2000

### **Executive Fellow**

Woodrow Wilson School of Public and International Affairs  
Princeton University  
1995-1996

### **Member, Board of Directors (Audit Committee)**

Czech & Slovak American Enterprise Fund by designation of President Clinton  
1994-96

### **Managing Director-Principal**

Bear, Stearns & Co., Inc.  
1989-1995

### **Vice President**

Smith Barney, Harris Upham & Co.  
1984-1989

### **Special Assistant to the Assistant Secretary**

U.S. Department of Housing & Urban Development as political appointee in President Carter's administration,  
1977-1980

### **Member, Leadership Council**

RFK Center for Human Rights  
2010-Present

### **Member, Advisory Council to the Chairman (Ben Bernanke, Harvey Rosen)**

Princeton University, Economics Department  
1996-2004 (Chairman, 2003)

### **Member, Board of Advisors**

Center for Economic Policy Studies (CEPS), Princeton University  
1999-Present

# Joseph S. Fichera

**Member, Economic Club of New York**  
2007-Present

**Life Member, Council on Foreign Relations**

## Previous Professional Licenses

FINRA/SEC Series 24: Securities Principal and Series 7: Registered Representative

**Author** of articles concerning the interaction between corporate finance and public policy. Published in: *The New York Times*, *Barron's*, *The Wall Street Journal*, *Dow Jones Library of Investment Banking*, *Q2 Yale Management Magazine*. Contributor on *Bloomberg View*, *Fox Business*.

**BA, Princeton, 1976;**  
**MBA, Yale, 1982**

JOSEPH S. FICHERA PUBLISHED WORKS AND AWARDS (as of December 2020)		
Title	Publisher	Date
"Utility Securitization: An Update"	<i>National Regulatory Research Institute</i>	January 2019
<i>Special Achievement in Finance</i>	<i>National Italian American Foundation</i>	April 10, 2018
"The S.E.C. Should Copy the D.M.V."	<i>The New York Times</i>	November 7, 2014
"Were Detroit Swaps Unfair"	<i>Bloomberg View</i>	January 27, 2014
"Price Transparency and the ABS Market"	<i>Asset Securitization Report</i>	September, 2013
"Market Rejuvenation = National Municipal Bond Exchange"	<i>MuniIC newsletter</i>	September, 2011
"Auction Rate Securities Need Reform, Not Just Redemption"	<i>Saber Partners, LLC</i>	June, 2011
"Grid Modernization Monetization: Long-Term Ratepayer Obligation Charge Bonds May Provide Answers" (with Michael E. Ebert)	<i>Intelligent Utility Magazine</i>	March/April 2011
"Securing the Grid: Intelligent Financing Creates New Options for Grid Modernization" (with Michael E. Ebert)	<i>Intelligent Utility Magazine</i>	December 6, 2010
Comment on Municipal Service Rulemaking Board ("MSRB") Auction Rate Securities ("ARS") Transparency Proposal Submitted to SEC	<i>Saber Partners, LLC</i>	April, 2010
Comment on ARS Transparency Proposal Submitted to MSRB	<i>Saber Partners, LLC</i>	July, 2008
"Treasury Should Use New Powers to Invest in Muni ARS"	<i>The Bond Buyer</i>	October 6, 2008

## Joseph S. Fichera

JOSEPH S. FICHERA PUBLISHED WORKS AND AWARDS (as of December 2020)		
Title	Publisher	Date
“Can Environmental Control Bonds Emerge in Europe”	Chapter 6: <i>Thomson Reuters IFR, New Frontiers in European Securitisation: Opportunities in Troubled Times</i>	2008
‘How Can Directors Become Truly Independent”	<i>Directors Monthly</i>	June 2008
“How Can Directors Become Truly Independent”	<i>Q2 Yale Management Magazine</i>	Fall 2007
“Lowering Environmental and Capital Costs with Ratepayer-Backed Bonds”	<i>Natural Gas &amp; Electricity</i>	February 2007
“A Rising Tide: Do Utility Securitizations Have a Future?”	<i>Asset Securitization Report</i>	February 9, 2005
“Deal of the Year”	<i>Asset Securitization Report</i>	December 1, 2003
“The State of Utility Securitization: Stranded Costs and Other Tariff-Based Financings: Opportunities, Risks and Rewards”	<i>Prudential Securities: A Fixed-Income Research Publication</i>	March 1998
“Why Is Wall Street Waiting?”	<i>Electrical World Business Edition</i>	November 1997
“Uncle Sam, Venture Capitalist”	<i>The Wall Street Journal</i>	May 2, 1996
“Street Smart: A Road Map for the Investment Banking Analyst”	<i>Princeton University’s Business Today</i>	May 1996
“You Call That Debt?”	<i>Barron’s</i>	February 26, 1996
“Deal of the Year”	<i>Institutional Investor</i>	1992
“Refinancing High-Coupon Tax-Exempt Debt: Understanding the Benefits and Risks of Alternative Strategies”	<i>Financial Analytics and Structured Transactions, Bear, Stearns &amp; Co., Inc</i>	1991
“Making Matters Worse: The Danger of Dutch Auction Securities”	<i>Bear Stearns &amp; Co, Inc.</i>	1991
“Deal of the Year”	<i>Institutional Investor</i>	1991
“Preferred Stock IV: Advantages of Remarketed Preferred Stock”	Chapter 16, <i>Dow–Jones Irwin, Library of Investment Banking</i>	1989
“Corporate Tax-Exempt Financing”	Chapter 39: <i>Dow–Jones Irwin, Library of Investment Banking</i>	1989
“Of Money and Merit: The Upside Down Effects of Wall Street’s Bonus System”	<i>Smith Barney Harris Upham, Inc.</i>	1988





# Order Book Status

A-1: \$217MM		Whisper Talk			Price Guidance		Final Pricing		
<u>At Announcement</u>	% Subscribed	<u>Swaps -10/-8</u>	<u>At Price Guidance</u>	% Subscribed	<u>Swaps -7/-6</u>	<u>At Pricing - 10/5</u>	<u>Swaps -7</u>	<u>Final Allocation</u>	% Subscribed
IOI/Orders \$85.0	39%		\$128.3	59%		\$261.8		\$217.0	121%
A-2: \$341MM		Whisper Talk			Whisper Talk		Final Pricing		
<u>At Announcement</u>	% Subscribed	<u>Swaps -6/-3</u>	<u>At Price Guidance</u>	% Subscribed	<u>Swaps -3/-2</u>	<u>At Pricing - 10/5</u>	<u>Swaps -2</u>	<u>Final Allocation</u>	% Subscribed
IOI/Orders \$106.0	31%		\$127.7	37%		\$402.6		\$341.0	118%
A-3: \$250MM		Whisper Talk			Whisper Talk		Final Pricing		
<u>At Announcement</u>	% Subscribed	<u>Swaps + 0/3</u>	<u>At Price Guidance</u>	% Subscribed	<u>Swaps +2A</u>	<u>At Pricing - 10/5</u>	<u>Swaps +3</u>	<u>Final Allocation</u>	% Subscribed
IOI/Orders \$97.0	39%		\$180.0	72%		\$280.5		\$250.0	112%
A-4: \$437MM		Whisper Talk			Whisper Talk		Final Pricing		
<u>At Announcement</u>	% Subscribed	<u>Swaps + 3/6</u>	<u>At Price Guidance</u>	% Subscribed	<u>Swaps + 5/6</u>	<u>At Pricing - 10/5</u>	<u>Swaps +6</u>	<u>Final Allocation</u>	% Subscribed
IOI/Orders \$68.0	16%		\$163.0	37%		\$420.0		\$437.0	96%
A-5: \$494.7MM		Whisper Talk			Whisper Talk		Final Pricing		
<u>At Announcement</u>	% Subscribed	<u>Swaps + 9/13</u>	<u>At Price Guidance</u>	% Subscribed	<u>Swaps + 11/12</u>	<u>At Pricing - 10/5</u>	<u>Swaps +14.1</u>	<u>Final Allocation</u>	% Subscribed
IOI/Orders \$25.0	5%		\$167.0	34%		\$648.0		\$494.7	131%



State of Florida



Fichera Exhibit 3

Docket Nos. E-2, Sub 1262 and E-7, Sub 1243

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** October 13, 2015

**TO:** Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk

**FROM:** Rosanne Gervasi, Senior Attorney, Office of the General Counsel

**RE:** Docket No. 150171-EI - Petition for issuance of nuclear asset-recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy.

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Please place the attached Proposed Stipulations on Financing Order Issues in the above-referenced docket file.

**PROPOSED STIPULATIONS ON FINANCING ORDER ISSUES\***

**LEGAL ISSUE A:** What is the definition of “incremental bond issuance costs” as that term is used in Section 366.95(2)(c)5., Florida Statutes?

**LEGAL ISSUE B:** In determining whether some or all actual bond issuance costs should be disallowed pursuant to Section 366.95(2)(c)5., Florida Statutes, what should the Commission take into account?

If the parties reach stipulations on all the issues as proposed below, these legal issues do not need to be decided by the Commission.

**ISSUE 14:** Do the cost amounts contained in DEF’s CR3 Regulatory Asset meet the definition of “nuclear asset-recovery costs” pursuant to Section 366.95(1)(k), Florida Statutes?

The cost amounts contained in DEF’s CR3 Regulatory Asset meet the definition of “nuclear asset-recovery costs” pursuant to Section 366.95(1)(k), Florida Statutes.

**ISSUE 15:** Do the ongoing financing costs identified in DEF’s Petition qualify as “financing costs” pursuant to Section 366.95(1)(e), Florida Statutes?

The types of ongoing financing costs identified in DEF’s Petition qualify as “financing costs” pursuant to Section 366.95(1)(e), Florida Statutes.

**ISSUE 16:** Has DEF demonstrated that securitization has a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts compared to the traditional method of cost recovery pursuant to Section 366.95(2)(a)6., Florida Statutes?

DEF has demonstrated that securitization has a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts compared to the traditional method of cost recovery pursuant to Section 366.95(2)(a)6., Florida Statutes.

**ISSUE 17:** What amount, if any, should the Commission authorize DEF to recover through securitization?

The amounts that should be authorized for DEF to recover through securitization must meet the criteria set forth in Section 366.95, Florida Statutes. By the nature of this proceeding, that amount will not be known with precision until the bonds are issued. The principal amount of the nuclear asset-recovery bonds should be \$1,283,012,000, representing the projected December 31, 2015 balance of the CR3 Regulatory Asset, subject to true-up to the actual December 31, 2015

balance, plus carrying charges beyond 2015 until the date of the bond issuance, plus upfront financing costs.

**ISSUE 18: What is the appropriate treatment of the deferred tax liability consistent with paragraph 5(j) of the RRSSA?**

No adjustment is necessary for the deferred tax liability. However, consistent with paragraph 5(j) of the RRSSA, the deferred tax liability will be excluded for earnings surveillance purposes.

**ISSUE 19: Should DEF indemnify customers to the extent customers incur losses associated with higher servicing fees payable to a substitute servicer, or with higher administration fees payable to a substitute administrator, as a result of DEF's termination for cause?**

DEF should be required to indemnify customers to the extent customers incur losses associated with higher servicing fees payable to a substitute servicer, or with higher administration fees payable to a substitute administrator, as a result of DEF's termination for cause attributable to its own actions.

**ISSUE 20: What should be the up-front and ongoing fee for the role of servicer throughout the term of the nuclear asset-recovery bonds?**

The up-front fee for the role of servicer is currently estimated to be \$915,000. The actual amount may change based on DEF's final cost. So long as DEF or an affiliate of DEF is servicer, the annual fee for the role of servicer throughout the term of the nuclear asset-recovery bonds is 0.05% of the original principal balance of the nuclear asset-recovery bonds (currently estimated to be approximately \$650,000).

**ISSUE 21: What amount, if any, of DEF's periodic servicing fee in this transaction should DEF be required to credit back to customers through an adjustment to other rates and charges?**

DEF will credit back to customers through the Capacity Cost Recovery Clause all periodic servicing fees in excess of DEF's or an affiliate of DEF's incremental cost of performing the servicer function until the next rate case when costs and revenues associated with the servicing fees will be included in the cost of service.

**ISSUE 22: What should be the ongoing fee for the role of the administrator throughout the term of the nuclear asset-recovery bonds?**

The ongoing fee for the role of the administrator throughout the term of the nuclear asset-recovery bonds will be \$50,000.

**ISSUE 23: What amount, if any, of DEF's periodic administration fee in this transaction should DEF be required to credit back to customers through an adjustment to other rates and charges?**

DEF will credit back to customers through the Capacity Cost Recovery Clause all periodic administration fees in excess of DEF's or any affiliate of DEF's incremental cost of performing the administration function until the next rate case when costs and revenues associated with the administration fee will be included in the cost of service.

**ISSUE 24: How frequently should DEF in its role as servicer be required to remit funds collected from customers to the SPE?**

DEF will remit funds collected from customers to the SPE either on a daily basis based on estimated daily collections or on a monthly basis if certain conditions can be satisfied. These conditions have yet to be determined and will be driven both by rating agency requirements to achieve and maintain the targeted "AAA" rating on the bonds and by investor concerns in the marketing and pricing of the bonds.

**ISSUE 25: If remittances are not daily, should DEF be required periodically to remit actual earnings on collections pending remittance?**

If remittances are not daily, DEF will be required monthly to remit estimated earnings on collections pending remittance. The calculation of earnings will be consistent with the methodology for calculating interest on over- and under-collections associated with DEF's cost recovery clauses.

**ISSUE 26: Is DEF's proposed process for determining whether the upfront bond issuance costs satisfy the statutory standard of Section 366.95(2)(c)5., Florida Statutes, reasonable and should it be approved?**

In accordance with Section 366.95(2)(c)5., Florida Statutes, within 120 days after the issuance of the nuclear asset-recovery bonds, DEF will file supporting information on the actual upfront bond issuance costs, for the categories of costs as reflected on page 1 of Exhibit No. \_\_ (BB-1). The Commission shall review such costs to determine compliance with Section 366.95(2)(c)5., Florida Statutes. As part of this review, the Commission shall only consider actual upfront bond issuance costs, but not ongoing financing costs, interest rate, or pricing of the bonds.

After the issuance of a Financing Order, if DEF decides not to cause nuclear asset-recovery bonds to be issued, then as provided in Section 366.95(2)(c)6., Florida Statutes, DEF may not recover financing costs, as defined in Section 366.95(1)(e), Florida Statutes, from customers.

**ISSUE 27: Issue dropped.**

**ISSUE 28: What additional conditions, if any, should be made in the Financing Order that are authorized by Section 366.95(2)(c)2.i.?**

The Financing Order will include ordering paragraphs, findings of fact, and conclusions of law that will give appropriate comfort to investors about the high quality of the nuclear asset-recovery bonds as a potential investment. Examples include:

1. A finding of fact that the Commission anticipates stress case analyses will show that the broad-based nature of the true-up mechanism under Section 366.95(2)(c)2.d, Florida Statutes, and the State pledge under Section 366.95(11), Florida Statutes, will serve to effectively eliminate for all practical purposes and circumstances any credit risk to the payment of the nuclear asset-recovery bonds (*i.e.*, that sufficient funds will be available and paid to discharge the principal and interest obligations when due);
2. A finding of fact and ordering paragraph directing that the automatic true-up mechanism is to be applied at least every six months;
3. A finding of fact and ordering paragraph that the automatic true-up mechanism will be implemented no later than 60 days after a filing by the servicer;
4. A finding of fact that the credit quality of the nuclear asset-recovery bonds are enhanced by Section 366.95, Florida Statutes, due to the requirements that (1) the nuclear asset-recovery charge in amounts authorized by the Commission are to be imposed on all customer bills and collected in full in the form of a nonbypassable charge separate from the electric utility's base rates, (2) the charge shall be paid by all existing and future customers receiving transmission or distribution services from the electric utility, and (3) following any fundamental change in regulation of public utilities in the State, a customer electing to purchase electricity from an alternate electricity supplier must still pay the charge. Furthermore, through the true-up mechanism, any delinquencies or under-collections in one customer rate class will be taken into account in the application of the True Up Mechanism to adjust the nuclear asset-recovery charge for all customers of DEF, not just the class of customers from which the delinquency or under-collection arose;
5. A finding of fact that the Commission interprets the legislative intent of the true-up mechanism provided for in Section 366.95 for allocating costs among customers rises to the level of joint and several liability among the customers of DEF.
6. A finding of fact and conclusion of law that the broad nature of the State pledge under Section 366.95(11), Florida Statutes, constitutes a contract with the bondholders, the owners of the nuclear asset-recovery property,



and other financing parties that the state will not: (1) Alter the provisions of this section which make the nuclear asset-recovery charges imposed by a Financing Order irrevocable, binding, and nonbypassable charges; (2) Take or permit any action that impairs or would impair the value of nuclear asset-recovery property or revises the nuclear asset-recovery costs for which recovery is authorized; or (3) Except as authorized under Section 366.95, reduce, alter, or impair nuclear asset-recovery charges that are to be imposed, collected, and remitted for the benefit of the bondholders and other financing parties until any and all principal, interest, premium, financing costs and other fees, expenses, or charges incurred, and any contracts to be performed, in connection with the related nuclear asset-recovery bonds have been paid and performed in full;

7. A finding of fact that this Commission guarantees that it will act pursuant to this Financing Order as expressly authorized by Section 366.95, Florida Statutes, to ensure that nuclear asset-recovery charge revenues are sufficient to pay principal and interest on the nuclear asset-recovery bonds issued pursuant to this Financing Order and other costs, including fees and expenses, in connection with the nuclear asset-recovery bonds;
8. A finding of fact that the broad based nature of the State pledge under Section 366.95(11), Florida Statutes, and the irrevocable character of this Financing Order, in conjunction with the true-up adjustment provisions required by Section 366.95(2)(c)2.d, Florida Statutes, and included in this Order, constitutes a guarantee of regulatory action for the benefit of investors in nuclear asset-recovery bonds;
9. A conclusion of law that nuclear asset-recovery property is not a receivable or a pool of receivables;
10. A conclusion of law that the nuclear asset-recovery property is not a financial asset in that it only represents a legally-enforceable regulatory property right under Section 366.95 to bill and collect nuclear asset-recovery charges on persons who receive electric transmission and distribution services from the electric utility or its successors or assignees;
11. A finding of fact that the issuer of the bonds is a special purpose finance subsidiary of DEF and a corporate issuer;
12. A conclusion of law that the Commission's obligation under the Financing Order relating to nuclear asset-recovery bonds, including the specific actions the Commission guarantees to take, are direct, explicit, irrevocable, and unconditional upon the issuance of nuclear asset-recovery bonds, and are legally enforceable against the Commission, a United States public sector entity; and

13. A conclusion of law and ordering paragraph that the Financing Order is irrevocable under Section 366.95(2)(c)6, Florida Statutes.

In addition, the Financing Order will call for the Commission's financial advisor to deliver to the Commission a certification as to whether the structuring, marketing, and pricing of the nuclear asset-recovery bonds resulted in the lowest nuclear asset-recovery charges consistent with prevailing market conditions and the terms of the Financing Order and other applicable law. That certification shall include a report of any action or inaction which the Commission's financial advisor believes might have caused the transaction not to achieve the lowest nuclear asset-recovery charges, regardless of whether DEF's reason for action or inaction was the result of DEF's sole view that it would expose DEF or the SPE to securities law liability. The Financing Order will provide that the Commission will take that certification from its financial advisor, along with any other facts and circumstances, except for a change in market conditions after the moment of pricing, into account in determining whether the remaining requirements of Section 366.95, Florida Statutes, and the Financing Order have been met and whether to issue a stop order no later than 5:00 pm Eastern time on the third business day following pricing, as provided in Ordering Paragraph 54 of the Financing Order.

The parties agree that the Financing Order shall be silent on the issue of whether any judgment or other finding of liability against the SPE(s) constitutes "financing costs" as those costs are defined in Section 366.95. Furthermore, the parties each agree that no party will assert that the Financing Order supports a finding in favor of or against the proposition that any judgment or finding of liability against the SPE(s) constitutes "financing costs" as defined in Section 366.95.

**ISSUE 29: Should all legal opinions be subject to review by the Bond Team?**

All legal opinions should be reviewed by the Bond Team. All legal opinions associated with the Nuclear Asset-Recovery Bonds should be submitted to the Commission automatically without requiring the Commission to specifically request the documents.

**ISSUE 30: Should all transaction documents and subsequent amendments be filed with the Commission before becoming operative?**

All transaction documents and subsequent amendments should be reviewed and approved by the Bond Team before becoming operative.

**ISSUE 31: Is DEF's proposed pre-issuance review process reasonable and should it be approved?**

DEF, its structuring advisor, and designated Commission staff and its financial advisor will serve on the Bond Team. One designated representative of DEF and one designated representative of the Commission shall be joint decision makers in

all aspects of the structuring, marketing and pricing of the nuclear asset-recovery bonds except for those recommendations that in the sole view of DEF would expose DEF or the SPE to securities law and other potential liability (*i.e.*, such as, but not limited to, the making of any untrue statement of a material fact or omissions to state a material fact required to be stated therein or necessary in order to make the statements made not misleading) or contractual law liability (*e.g.*, including but not limited to terms and conditions of the underwriter agreement(s)). The Commission's designated staff and financial advisor will be visibly involved, in advance, in all aspects of the structuring, marketing, and pricing of the nuclear asset-recovery bonds. All Bond Team members will actively participate in the design of the marketing materials for the transactions as well as in the development and implementation of the marketing and sales plan for the bonds. DEF believes DEF and the Commission staff and its financial advisor as Bond Team members, excluding DEF's structuring advisor, should also have equal rights on the hiring decisions for the underwriters and counsel to the underwriters. However, DEF will have sole right to select and engage all counsel for DEF and the SPE. In addition, together with the Bond Team's involvement in the structuring, marketing and pricing of the nuclear asset-recovery bonds, and the Issuance Advice Letter process, the Commission will be able to fully review the pricing of the bonds as the Commission determines whether to issue a stop order no later than 5:00 pm Eastern time on the third business day following pricing, as provided in Ordering Paragraph 54 of the Financing Order.

**ISSUE 32: Should the Financing Documents be approved in substantially the form proposed by DEF, subject to modifications as addressed in the draft form of the Financing Order?**

No. The specific terms, conditions, covenants, warranties, representations, and specific language contained in the Financing Documents may be impacted by the Commission's decisions on other issues and must be reviewed in consideration of the Financing Order approved by the Commission.

**ISSUE 33: Is DEF's proposed Issuance Advice Letter process reasonable and consistent with the statutory financing cost objective contained in Section 366.95(2)(c)2.b., Florida Statutes?**

Yes. DEF, its structuring advisor, and designated Commission staff and its financial advisor will serve on the Bond Team. One designated representative of DEF and one designated representative of the Commission shall be joint decision makers in all aspects of the structuring, marketing and pricing of the nuclear asset-recovery bonds, except for those recommendations that in the sole view of DEF would expose DEF or the SPE to securities law and other potential liability (*i.e.*, such as, but not limited to, the making of any untrue statement of a material fact or omissions to state a material fact required to be stated therein or necessary in order to make the statements made not misleading) or contractual law liability (*e.g.*, including but not limited to terms and conditions of the underwriter agreement(s)), so the Commission will be provided with information in real time

about the transaction. Furthermore, the Commission will have an opportunity to review a draft of the proposed Issuance Advice Letter in advance of pricing the transaction.

**ISSUE 34: Should the Standard True-up Letter be approved in substantially the form proposed by DEF?**

The Standard True-up Letter should be approved in substantially the form proposed by DEF.

**ISSUE 35: Is DEF's proposed process for determining whether the structure, plan of marketing, expected pricing and financing costs of the nuclear asset-recovery bonds have a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs reasonable and should it be approved?**

Yes. DEF's proposed process for determining whether the structure, plan of marketing, expected pricing and financing costs of the nuclear asset-recovery bonds has a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs.

**ISSUE 36: Is the degree of flexibility afforded to DEF in establishing the terms and conditions of the nuclear asset-recovery bonds as described in the proposed form of Financing Order, reasonable and consistent with Section 366.95(2)(c)2.f., Florida Statutes?**

Yes, as modified by this Stipulation. DEF, its structuring advisor, and designated Commission staff and its financial advisor will serve on the Bond Team. One designated representative of DEF and one designated representative of the Commission shall be joint decision makers in a collaborative process, except for those recommendations that in the sole view of DEF would expose DEF or the SPE to securities law or other potential liability (*i.e.*, such as, but not limited to, the making of any untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary in order to make the statements made not misleading) or contractual law liability (*e.g.*, including but not limited to terms and conditions of the underwriter agreement(s)). This affords the flexibility that is reasonable and consistent with Section 366.95(2)(c)2f.

**ISSUE 37: What persons or entities should be represented on the Bond Team?**

DEF, its structuring advisor, and designated Commission staff and its financial advisor should be represented on the Bond Team.

**ISSUE 38: Based on resolution of the preceding issues, should a Financing Order in substantially the form proposed by DEF be approved, including the findings of fact and conclusions of law as proposed?**

The Financing Order, including findings of fact and conclusions of law, proposed by DEF should be revised, following consultation with and input from the active parties, to reflect the Commission's resolution of all issues in this proceeding.

**ISSUE 39: If the Commission votes to issue a Financing Order, what post-Financing Order regulatory oversight is appropriate and how should that oversight be implemented?**

DEF's customers will be effectively represented throughout the proposed transaction. DEF, its structuring advisor, and designated Commission staff and its financial advisor will serve on the Bond Team. One designated representative of DEF and one designated representative of the Commission shall be joint decision makers for all matters concerning the structuring, marketing, and pricing of the bonds except for those recommendations that in the sole view of DEF would expose DEF or the SPE to securities law and other potential liability (*i.e.*, such as, but not limited to, the making of any untrue statement of a material fact or omission to state a material fact required to be stated therein or necessary in order to make the statements made not misleading) or contractual law liability (*e.g.*, including but not limited to terms and conditions of the underwriter agreement(s)). The final structure of the transaction, including pricing, will be subject to review by the Commission for the limited purpose of ensuring that all requirements of law and the Financing Order have been met.

**ISSUE 40: Are the energy sales forecasts used to develop the bond amortization schedules and the recovery mechanism appropriate?**

The energy sales forecasts used to develop the bond amortization schedules and the recovery mechanism are appropriate.

**ISSUE 41: If the Commission approves recovery of any nuclear asset-recovery related costs through securitization, how should the recovery of these costs be allocated to the rate classes consistent with Section 366.95(2)(c)2.g., Florida Statutes?**

In accordance with Section 366.95(2)(c)2.g., Florida Statutes, DEF should allocate the nuclear asset-recovery costs recoverable under the nuclear asset-recovery charge consistent with the allocation methodology adopted in the RRSSA approved on November 12, 2013 in Order No. PSC-13-0598-FOF-EI. That approved allocation methodology for DEF is the 12CP and 1/13 AD. Spelled out, that means twelve-thirteenths of the revenue requirement is allocated based on 12 monthly coincident peaks (or demand) and one-thirteenth is allocated based on average demand (or energy).

**ISSUE 42:** If the Commission approves recovery of any nuclear asset-recovery related costs through securitization, what is the appropriate recovery period for the Nuclear Asset-Recovery Charge?

If the Commission approves recovery of any nuclear asset-recovery related costs through securitization, the appropriate recovery period for the Nuclear Asset-Recovery Charge is 240 months or until the nuclear asset-recovery bonds and associated charges and approved adjustments have been paid in full but not to exceed 276 months.

**ISSUE 43:** Issue dropped.

**ISSUE 44:** What should be the scheduled final maturity and the legal final maturity of the nuclear asset-recovery bonds?

The scheduled final maturity and the legal final maturity of the nuclear asset-recovery bonds are to be determined after the issuance of the Financing Order.

**ISSUE 45:** Is DEF's proposed Nuclear Asset-Recovery Charge True-Up Mechanism appropriate and consistent with Section 366.95, Florida Statutes, and should it be approved?

DEF's proposed Nuclear Asset-Recovery Charge True-Up Mechanism is appropriate and consistent with Section 366.95, Florida Statutes, and it should be approved.

**ISSUE 46:** How frequently should the Nuclear Asset-Recovery Charge True-up Mechanism be conducted?

The Nuclear Asset-Recovery Charge True-up Mechanism should be conducted not less than every six months.

**ISSUE 47:** If the Commission approves an amount to be securitized, on what date should the Nuclear Asset-Recovery Charge become effective?

The Nuclear Asset-Recovery Charges should become effective upon the first day of the billing cycle for the month following the issuance of the nuclear asset-recovery bonds.

**ISSUE 48:** Issue dropped.

**ISSUE 49:** If the Commission denies DEF's request for a Financing Order, or if the nuclear asset-recovery bonds are not issued for any reason after the Commission issues a Financing Order, should the Commission approve DEF's alternative request for a base rate increase pursuant to the RRSSA, to be implemented beginning six months after the final order rejecting DEF's request (in the event the Financing Order is not issued) or the date upon which DEF notifies the Commission that the bonds will not be issued (in the event the Financing Order is issued), with carrying costs on the nuclear asset-recovery costs collected from January 1, 2016, through the Capacity Cost Recovery Clause, until such time as the base rate increase goes into effect?

If the Commission denies DEF's request for a Financing Order, or if the nuclear asset-recovery bonds are not issued for any reason after the Commission issues a Financing Order, the Commission should approve DEF's alternative request for a base rate increase pursuant to the RRSSA, to be implemented beginning six months after the final order rejecting DEF's request (in the event the Financing Order is not issued) or the date upon which DEF notifies the Commission that the bonds will not be issued (in the event the Financing Order is issued), with carrying costs on the nuclear asset-recovery costs collected from January 1, 2016, through the Capacity Cost Recovery Clause, until such time as the base rate increase goes into effect.

**ISSUE 50:** Should the form of tariff sheets to be filed under DEF's tariff, as provided in Exhibit \_\_ (MO-6A) of Witness Olivier's testimony, be approved?

The form of tariff sheets to be filed under DEF's tariff, as provided in Exhibit \_\_ (MO-6A) of Witness Olivier's testimony, should be approved.

**ISSUE 51:** In accordance with Section 366.95(2)(c)2.h., Florida Statutes, if the Commission does not issue a stop order by 5:00 p.m. on the third business day after pricing, should the nuclear asset-recovery charges become final and effective without further action from the Commission?

In accordance with Section 366.95(2)(c)2.h., Florida Statutes, if the Commission does not issue a stop order by 5:00 p.m. on the third business day after pricing, the nuclear asset-recovery charges should become final and effective without further action from the Commission.

**ISSUE 52:** Should this docket be closed?

This docket should remain open pursuant to Section 366.95(2)(c)4., Florida Statutes.

\*FIPUG takes no position on these proposed stipulations.





PUBLIC UTILITY COMMISSION OF OHIO

The following three tables describe the final order book and investor allocations that were made to reflect oversubscription of the trade.

**CLASS A-1 (\$111.971MM) FINAL PRICING LEVELS AND ALLOCATIONS**

<u>Investor</u>	<u>Order</u>	<u>Investor</u>	<u>Order</u>
Invesco	\$ 42	Invesco	\$ 42
Wells	30	Wells	30
ING	25	ING	10
Blackrock	12	Blackrock	12
3M	15	3M	10
Thrivent	7	Thrivent	5
Asset Allocation Advisors	5	Asset Allocation Advisors	2
Morley Capital	2	Morley Capital	1
<b>Total Book</b>	<b>\$ 137</b>		<b>\$ 112</b>
<b># of Investors</b>	<b>8</b>		<b>8</b>
<b>Subscription Level</b>	<b>123%</b>		<b>100%</b>

**CLASS A-2 (\$70.468MM) FINAL PRICING LEVELS AND ALLOCATIONS**

Indication		Allocation	
<u>Investor</u>	<u>Order</u>	<u>Investor</u>	<u>Order</u>
USAA	\$ 71	USAA	\$ 26
Principal	35	Principal	15
Capital One	25	Capital One	11
Seix Investment Advisors	15	Seix Investment Advisors	6
ADP	10	ADP	4
Ambassador Capital	10	Ambassador Capital	4
Invesco	12	Invesco	4
Avantas	0	Avantas	0
<b>Total Book</b>	<b>\$ 178</b>		<b>\$ 70</b>
<b># of Investors</b>	<b>8</b>		<b>8</b>
<b>Subscription Level</b>	<b>253%</b>		<b>100%</b>

**CLASS A-3 (\$262.483MM) FINAL PRICING LEVELS AND ALLOCATIONS**

Indication		Allocation	
<u>Investor</u>	<u>Order</u>	<u>Investor</u>	<u>Order</u>
TIAA-CREF	\$ 150	TIAA-CREF	\$ 100
John Hancock	150	John Hancock	100
USAA	35	USAA	25
Avantus	20	Avantus	11
American United Life	20	American United Life	11
Asset Allocation Advisors	9	Asset Allocation Advisors	6
Kansas City Life Insurance	8	Kansas City Life Insurance	5
Mountain Asset Management	10	Mountain Asset Management	5
<b>Total Book</b>	<b>\$ 402</b>		<b>\$ 263</b>
<b># of Investors</b>	<b>8</b>		<b>8</b>
<b>Subscription Level</b>	<b>153%</b>		<b>100%</b>



July 17, 2013

**WELLS  
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## ***Structured Products Research***

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# **ABSolute Value: Rate Reduction Bond ABS Primer**

## **An Overview of Utility Receivables Securitization**

### **Executive Summary**

- Securitizations of utility receivables have been known by several names: stranded-asset, rate-reduction and storm-recovery bonds. The market convention is to refer to all bonds in this sector as rate-reduction bonds or RRBs. We follow that convention in this report, which surveys the structural features of and conditions in the market for RRBs.
- RRBs are securitizations backed by the future collections of special charges applied to electric utility bills. The amount of the collection is based on power usage, which can vary from year to year based on weather or economic conditions.
- The bonds issued in this sector are structured with robust legal and regulatory protections to mitigate the potential political risks that may stem from the introduction of the utility tariff on ratepayer bills.
- Internal credit enhancement tends to be relatively low compared to benchmark consumer ABS due to these legal safeguards as well as the presence of the “true-up mechanism.” This procedure allows the utility tariff to be adjusted, either up or down, in the event that tariff collections are significantly different than what would be needed to meet the scheduled amortization of the bonds. It has been used successfully in several cases.
- RRB issuance has been relatively light in recent years, although outstanding bonds stood at \$11.3 billion as of Q2 2013 due to the relatively long average lives of the bonds. RRBs repay principal based on a scheduled amortization, which limits the prepayment risk and may make payments quarterly or semiannually, similar to corporate bonds.
- RRBs have similarities to secured utility bonds, such as first-mortgage bonds, and have found an audience from corporate crossover buyers, in our opinion. However, RRBs have significant legal and regulatory protections not normally found in corporate bonds.
- In our opinion, RRBs offer some of the best relative value in the consumer ABS market for the credit risk taken. Spreads of rate-reduction bond ABS have remained relatively wide throughout the post-crisis period. RRB spreads that trade at +4 bps or more to benchmark credit card ABS represent better relative value opportunities, in our opinion.

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**Please see the disclosure appendix of this publication for certification and disclosure information.**  
**All estimates/forecasts are as of 07/17/13 unless otherwise stated.**

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**Together we'll go far**

## **Utility Receivables – What’s in a Name?**

Rate-reduction bond ABS are securitizations backed by the future collections of special charges applied to electric utility bills. The amount of the collection is based on power usage. These utility receivables deals have been identified by different names since first coming on the ABS scene in 1997. The earliest deals were called “stranded assets” because the charges applied to ratepayer bills were meant to defray the costs of nuclear power plants that would no longer be economic in a deregulated power-generation market. The investments were economically “stranded” under the previous regulatory regime and could not be recovered under ordinary market conditions.

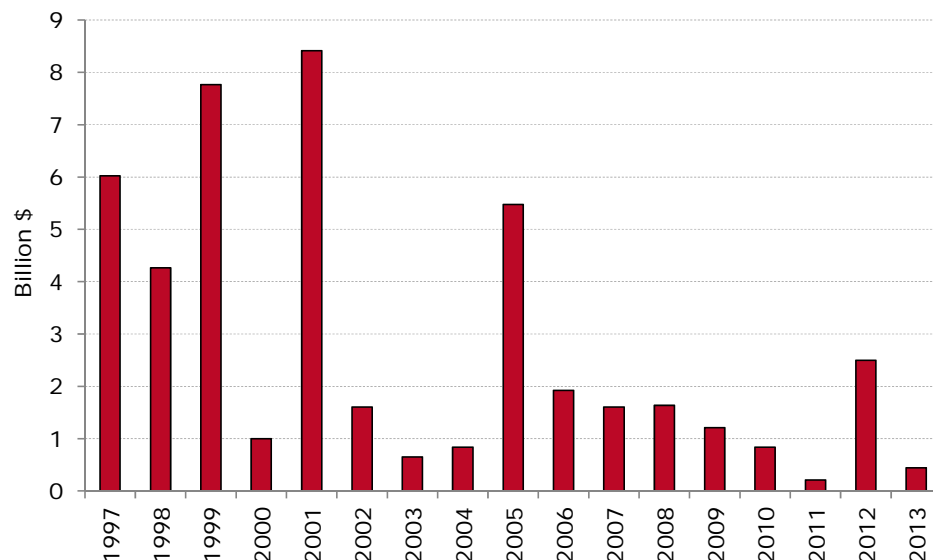
Later deals were termed “rate-reduction” bonds because electric utilities were allowed to recover the costs of certain infrastructure investments and, in turn, pass along lower utility rates to customers. Again, a deregulated power-generation market was intended to bring lower costs to end users. More recent deals have been christened “storm-recovery” bonds because utilities in various states have been allowed to apply a surcharge to bills to help pay for reconstruction and repairs to power networks damaged by hurricanes or other storms.

Despite the different names and reasons for implementation of the utility tariffs, the structural features and credit protections are generally the same. The market convention is to refer to all bonds in this sector *rate-reduction bonds*, or RRBs. We follow that convention in this report, which surveys the structural features of and conditions in the market for RRBs.

## **Issuance and Outstanding**

The amount of RRB issuance in the early years was substantial, and many market participants expected considerable upside from the sector. Indeed, \$27.5 billion of RRBs were issued in the five years from 1997–2001. However, in the following 12 years, including YTD 2013, the market has averaged just \$1.6 billion per year, and only 2005 exceeded \$5 billion (Exhibit 1). RRBs have become a smaller niche sector than many would have anticipated, but we believe RRBs offer certain characteristics that may not be found in other ABS sectors.

**Exhibit 1: Rate Reduction Bond ABS Issuance**

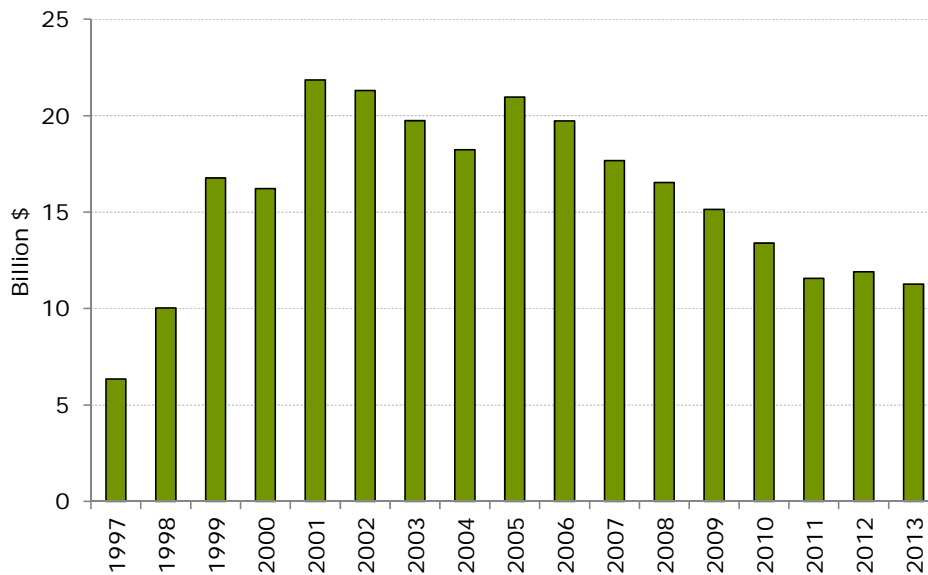


Source: Asset-Backed Alert, Bloomberg, Wells Fargo Securities, LLC.

RRBs repay principal based on a scheduled amortization, which limits the prepayment risk found in many other ABS backed by consumer receivables. Furthermore, the bonds may pay interest and principal quarterly or semiannually, similar to corporate bonds. This feature is one reason that RRBs have found an audience from corporate crossover buyers, in our opinion. RRBs have similarities to secured utility bonds such as first-mortgage bonds.

However, RRBs have significant legal and regulatory protections not normally found in a secured corporate bond. In addition, RRBs, in most cases, offer longer average lives than the typical auto or credit card ABS, with many bonds reaching seven years or more. Bonds with average lives of 10 years or more are not unusual. The longer average lives, combined with fixed-rate coupons offer ABS investors access to longer duration bonds.

**Exhibit 2: RRB ABS Outstanding**



Source: SIFMA.

Those longer principal windows and average lives are the reasons that the amount of RRBs outstanding is much higher than might have been expected given the dearth of new-issue volume over the past few years. Total RRBs outstanding fell to the \$11 billion–\$12 billion range from 2011–2013 from the most recent peak of \$21 billion in 2005 (Exhibit 2). The RRB sector accounted for about 2% of total consumer ABS outstanding as of Q2 2013. A modest amount of issuance should keep the amount of ABS backed by utility receivables stable.

However, it can be difficult to forecast new-issue volume of RRBs because of the long legislative and regulatory lead times required to complete these deals. The utilities may also find it more advantageous to issue corporate debt instead of ABS. The history of RRB deals and their utility sponsors are listed in Exhibit 3. Deal sizes averaged approximately \$1.1 billion from 1997–2005, but declined to \$575 million after 2005. This average amount was boosted by two deals that weighed in at \$1.7 billion each. Excluding those two deals, the average deal size since 2005 has been \$433 million.

**Exhibit 3: Rate Reduction Bond ABS Deals and Utility Sponsors**

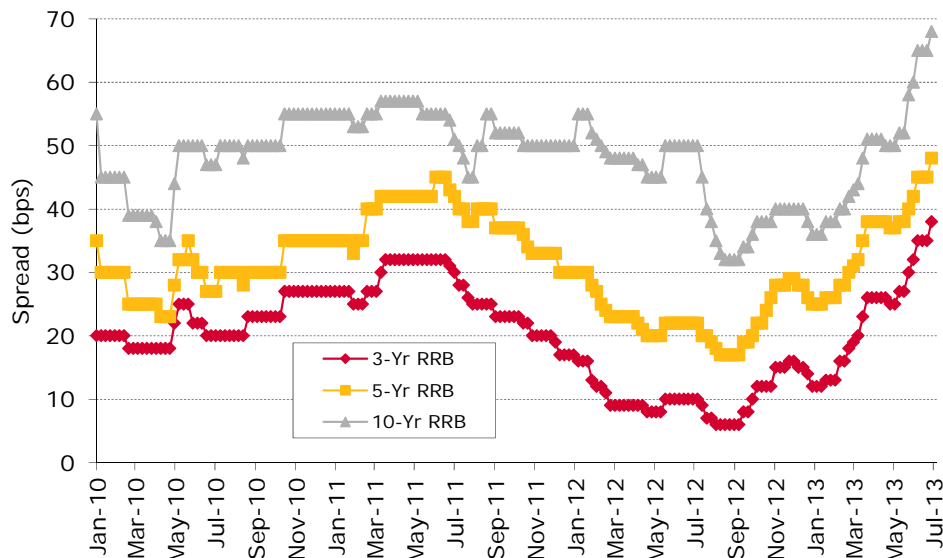
Deal Name	Pricing Date	Original Balance (MM\$)	Trust Name	Utility Sponsor
CIPGE 1997-1	11/25/97	2,901	California Infrastructure PG&E	Pacific Gas and Electric Company
CISDG 1997-1	12/4/97	658	California Infrastructure SDG&E	San Diego Gas and Electric Company
CISCE 1997-1	12/4/97	2,463	California Infrastructure SCE	Southern California Edison Company
COMED 1998-1	12/7/98	3,400	COMED Transitional Funding Trust	Commonwealth Edison Company
IPSP 1998-1	12/10/98	864	Illinois Power Special Purpose Trust	Illinois Power Company
PECO 1999-A	3/18/99	4,000	Peco Energy Transition Trust	Peco Energy Company
SPPC 1999-1	3/30/99	24	Sierra Pacific Power Company	Sierra Pacific Power Company
BECO 1999-1	7/14/99	725	Massachusetts RRB Special Purpose Trust	Boston Edison Company
PPL 1999-1	7/29/99	2,420	PP&L Transition Bond Company LLC	PPL Electric Utilities Corp.
WPP 1999-A	11/3/99	600	West Penn Funding LLC Transition Bonds	West Penn Power
PECO 2000-A	4/27/00	1,000	Peco Energy Transition Trust	Peco Energy Company
PEGTF 2001-1	1/25/01	2,525	PSE&G Transition Funding LLC	Public Service Electric & Gas Co.
PECO 2001-A	2/15/01	805	Peco Energy Transition Trust	Peco Energy Co
DESF 2001-1	3/2/01	1,750	Detroit Edison Securitization Funding LLC	Detroit Edison Company
CTRRB 2001-1	3/27/01	1,438	Connecticut RRB Special Purpose Trust	Connecticut Light & Power
PSNH 2001-1	4/20/01	525	Public Service New Hampshire Funding LLC	Public Service Company of New Hampshire
WMCO 2001-1	5/14/01	155	Massachusetts RRB Special Purpose Trust	Western Massachusetts Electric Company
CNP 2001-1	10/17/01	749	CenterPoint Energy Transition Bond Company IV	CenterPoint Energy Houston Electric LLC
CONFD 2001-1	10/31/01	469	Consumers Funding LLC	Consumers Energy Co
PSNH 2002-1	1/16/02	50	Public Service New Hampshire Funding LLC	Public Service Company of New Hampshire
AEPTC 2002-1	1/31/02	797	AEP Texas Central Transition Funding	Central Power and Light Company
JCPL 2002-A	6/4/02	320	JCP&L Transition Funding LLC	Jersey Central Power & Light
ACETF 2002-1	12/11/02	440	Atlantic City Electric Transition Funding LLC	Atlantic City Electric Company
ONCOR 2003-1	8/14/03	500	Oncor Electric Delivery Transition Bond LLC	Oncor Electric Delivery Co.
ACETF 2003-1	12/18/03	152	Atlantic City Electric Transition Funding LLC	Atlantic City Electric Company
ONCOR 2004-1	5/28/04	790	Oncor Electric Delivery Transition Bond LLC	Oncor Electric Delivery Co.
RCTF 2004-1A	7/28/04	46	Rockland Electric Co Transition Funding LLC	Orange and Rockland Utilities, Inc.
PERF 2005-1	2/3/05	1,888	PG&E Energy Recovery Funding LLC	Pacific Gas & Electric Co.
BECO 2005-1	2/15/05	675	Massachusetts RRB Special Purpose Trust	Boston Edison Co.; Commonwealth Electric Co.
PEGTF 2005-1	9/9/05	103	PSE&G Transition Funding LLC	Public Service Electric and Gas Co.
WPP 2005-A	9/22/05	115	West Penn Funding LLC Transition Bonds	West Penn Power
PERF 2005-2	11/9/05	844	PG&E Energy Recovery Funding L	Pacific Gas & Electric Co
CNP 2005-A	12/9/05	1,851	CenterPoint Energy Transition Bond Company IV	CenterPoint Energy
JCPL 2006-A	8/4/06	182	JCP&L Transition Funding LLC	Jersey Central Power & Light
AEPTC 2006-A	9/26/06	1,740	AEP Texas Central Transition Funding	AEP Texas Central Co.
FPL 2007-A	5/17/07	652	FPL Recovery Funding LLC	Florida Power & Light Co
EGSI 2007-A	6/22/07	330	Entergy Gulf States Reconstruction Funding LLC	Entergy Texas Inc
RSBBC 2007-A	6/29/07	623	RSB Bondco LLC	Baltimore Gas & Electric Co
CNP 2008-A	1/29/08	488	CenterPoint Energy Transition Bond Company IV	CenterPoint Energy
CLECO 2008-A	2/28/08	181	Cleco Katrina/Rita Hurricane Recovery Funding LLC	Cleco Power LLC
LPFA 2008-ELL	7/22/08	688	Louisiana Utilities Restoration Corp./ELL	Entergy Louisiana LLC
LPFA 2008-EGSL	8/20/08	278	Louisiana Utilities Restoration Corp./EGSL	Entergy Gulf States Louisiana
ETI 2009-A	10/29/09	546	Entergy Texas Restoration Funding LLC	Entergy Texas Inc
CNP 2009-1	11/18/09	665	CenterPoint Energy Transition Bond Company IV	CenterPoint Energy
LCDA 2010-EGSL	7/16/10	244	Louisiana Local Gov't Environmental Facilities and Community Development Authority	Entergy Gulf States Louisiana
LCDA 2010-ELL	7/16/10	469	Louisiana Local Gov't Environmental Facilities and Community Development Authority	Entergy Louisiana LLC
EAI 2010-A	8/11/10	124	Entergy Arkansas Restoration F	Entergy Arkansas Inc
ELL 2011-A	9/15/11	207	Entergy Louisiana Investment R	Entergy Louisiana LLC
CNP 2012-1	1/11/12	1,695	CenterPoint Energy Transition Bond Company IV	CenterPoint Energy
AEPTC 2012-1	3/7/12	800	AEP Texas Central Transition Funding	AEP Texas Central Co.
FEOH 2013-1	6/12/13	445	FirstEnergy Ohio PIRB Special Purpose Trust	FirstEnergy Corp.

Source: Asset-Backed Alert, Bloomberg, Wells Fargo Securities, LLC.

## Relative Value Analysis to Benchmark Cards

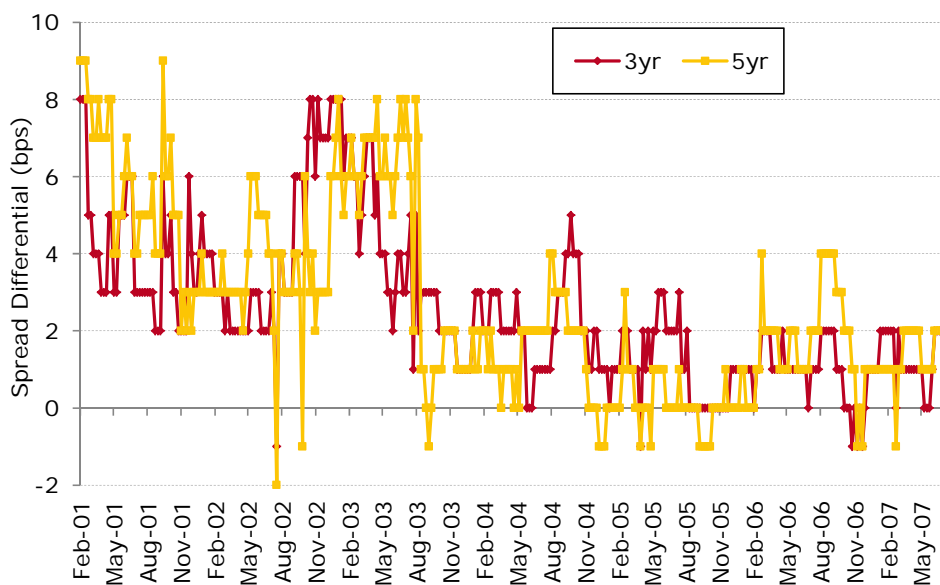
Spreads of rate-reduction bond ABS have remained relatively wide throughout the post-crisis period and have exhibited some wide swings over the past few years. Since hitting their post-crisis lows in September 2012, spreads have widened by about 30 bps through July 12, 2013 (Exhibit 4). We believe that this trend has been influenced by a general widening of spreads in the ABS market during 2012, and increased volatility brought on by the market's reaction to Federal Reserve policy communications. In our opinion, RRBs offer some of the best relative value in the consumer ABS market for the credit risk taken.

### Exhibit 4: RRB Spreads



Source: Wells Fargo Securities, LLC.

### Exhibit 5: RRB / Credit Card ABS Spread Differential – 2001-2007

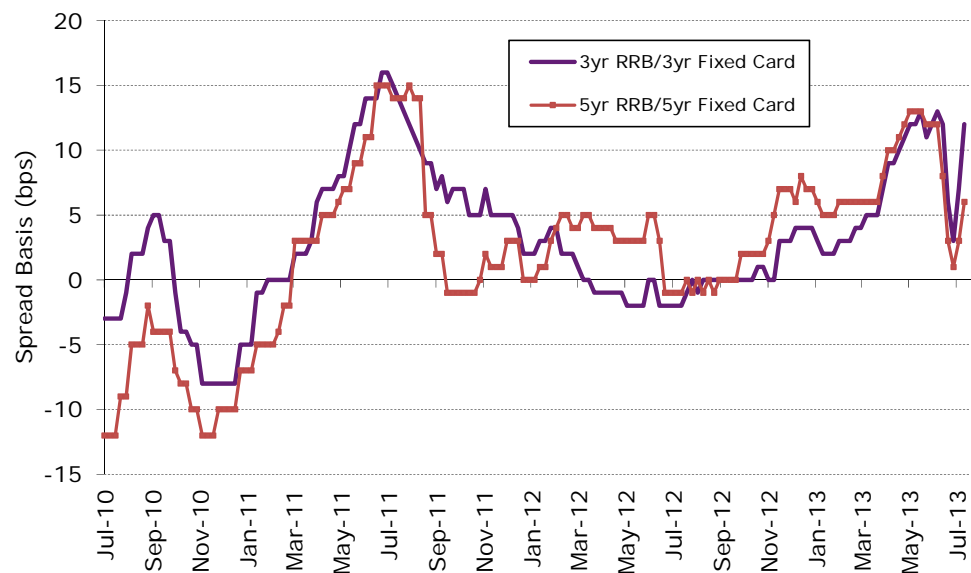


Source: Wells Fargo Securities, LLC.

Wells Fargo Securities has collected generic spreads on the RRB sector back to 2001. In our opinion, assessing relative value in rate-reduction bond ABS can be best accomplished by reviewing the spread differential between RRBs and benchmark credit card ABS. This relationship from 2001 to just before the market dislocation in July 2007 is charted in Exhibit 5. The average weekly difference was +4 bps to +6 bps, depending on the tenor of the bonds from 2001 to June 2003. However, the range of the spread differential was a wider +2 bps to +9 bps for three-year and five-year average life bonds.

After June 2003, the spread differential narrowed to an average weekly level of just about +1 bp, and this difference was stable across the benchmark tenors in RRBs (three-year, five-year and 10-year average lives). We believe that an increase in the amount of bonds outstanding and the number of issuers, as well as increasing investor acceptance, helped push the spread differential tighter. The week-to-week variability was relatively low, and this pattern was consistent with the benchmark auto and credit card ABS sectors. It indicated a meaningful increase in transparency and liquidity, in our view.

**Exhibit 6: RRB / Credit Card ABS Spread Differential – 2010-2013**



Source: Wells Fargo Securities, LLC.

RRBs traded well inside credit card ABS during the depths of the financial crisis in late 2008 and early 2009 (spreads 200 bps–300 bps inside) because investors placed a higher risk premium on large commercial banks and their credit card portfolios during this period. However, it took almost another two years for the spread relationship to normalize by early 2011.

The average weekly spread differential has returned to pre-crisis levels of +2 bps to +3 bps from July 2010 to July 2013. The average is closer to +4 bps, though, if all of 2010 is excluded. Nevertheless, secondary trading levels for RRBs have experienced large excursions away from this long-run average level, and these excursions have had a tendency to persist for a number of weeks.

We view RRB spreads trading at +4 bps or more to benchmark credit card ABS as representing better relative value. In general, RRBs involve less credit risk than credit card ABS, although the smaller size of the RRB sector, wider principal payment windows and somewhat less transparency due to the regulatory nature of the collateral require some spread concession, in our view.



## **Structural Considerations**

Unlike most asset-backed securities, rate-reduction bond ABS are characterized primarily by their legal and regulatory framework. To a large extent, the credit analysis of the underlying obligors, which are the ratepayers in the utility's service area, is a secondary consideration, in our view. The securitization structure of most RRBs is relatively straightforward. The utility would transfer its ownership of the utility charges to a bankruptcy-remote special purpose vehicle (SPV) that would issue the ABS to investors.

The ABS may be issued as a single pass-through security, or there may be several tranches of bonds issued that pay in sequential order. Principal is repaid according to a scheduled amortization that would be consistent with the forecast for power usage and cash flows. Interest payments may be made quarterly or semiannually. The cash flows are stressed in the rating process to determine how much forecast error the deal can withstand and still make payments to investors in a timely manner.

Credit enhancement is provided, in most cases, by a small amount (generally 0.5%–1%) of overcollateralization, reserve fund, or some form of capital account to provide liquidity in the event of short-run cash flow shortfalls. However, the primary form of credit enhancement is a regulatory-mandated "true-up mechanism" that can adjust the amount of the utility tariff charged to the customer. The robust legal and regulatory nature of the true-up mechanism, along with the fundamental character of power usage, allows for the relatively low level of internal credit enhancement in RRBs.

### **A Regulatory Future Flow Receivable**

One of the key considerations in the RRB sector is that the asset securitized is a future flow rather than an existing loan or receivable. The utility tariff is established by a law passed by a state legislature and further put into practice by a financing order from the state's utility regulators. The charge added to the utility bill is established as a property right of the utility that can be transferred or sold and pledged as a security interest similar to other kinds of receivables securitized in the ABS market.

In the event that a utility is subject to a merger or files for bankruptcy, the order to collect the utility tariff remains in place with the successor utility. This provision helps avoid any disruption in billing and collections of the tariff and, therefore, for bondholders. Although the utility has a target amount to be raised from the utility tariff, the periodic amount of the cash flows can only be estimated at origination based on the expectations for usage. Actual utility usage and cash flows may deviate from the forecast amount.

### **Irrevocability and State Pledge**

One of the key legal features of an RRB is that the utility tariff is *irrevocable*. As noted above, the receivables have been created by legal and regulatory actions and are collected over time based on electricity usage. The receivable does not already exist, unlike an auto loan or lease. There is a risk that a future legislature or regulator could act to alter or rescind the utility tariff. In order to mitigate this risk, there is irrevocability language inserted in the legislation to prevent the impairment of the value of the utility tariff without adequate compensation.

The RRBs are not obligations of the state, nor do they carry the full faith and credit of any government or agency. However, the legislation creating the utility tariffs will generally contain a *state pledge* not to limit, alter, or impair the property rights created. There may be challenges from other constituencies over time that oppose the creation of the utility tariff, either through new legislation or ballot initiatives. The state pledges not to make any changes to the law or regulatory environment until the bonds are paid in full to mitigate the potential political risks to an asset created through the political process.

### **Non-bypassability**

The utility receivables generated would be collected based on a customer's usage and the fact that the customer is connected to the utility's deliver system. This delivery, or network, charge should not be avoided, or bypassed, just because a customer contracts with another generator of the power. The utility can collect the charges from existing customers as well as future customers from its service area.

In some states or markets, third-party energy providers may be allowed by regulators to bill customers directly. In these cases, the tariff is collected by the third-party provider and the charges are passed along to the utility. Customers can reduce their exposure to the charge by using less power, or by disconnecting from the service grid entirely. However, they should not be able to avoid paying the utility tariff as long as they are connected to the utility's network.

### **Bankruptcy Remoteness**

Like other types of securitized assets, the utility tariff is established as a property right that can be sold or transferred to another party. The right to the future receivables is sold by the utility to a bankruptcy-remote special purpose vehicle (SPV), which is the issuer of the ABS. This "true sale" of the receivables to the SPV should isolate the payments from being consolidated with the utility in the event that it files for bankruptcy.

The transfer of the utility tariff is a sale, not a pledge or a secured financing. Legal counsel would normally provide a nonconsolidation opinion that a bankruptcy court would not consolidate the SPV with the bankruptcy estate of the utility. This bankruptcy-remote nature of ABS is the standard in the market to provide a separation between the ABS and any potential bankruptcy of the seller/servicer.

### **True-Up Mechanism**

The key credit enhancement feature of RRB deals is the true-up mechanism. This procedure allows the utility tariff to be adjusted, either up or down, in the event that tariff collections are significantly different than what would be needed to meet the scheduled amortization of the bonds, including any fees and replacement of credit-enhancement reserves. The true-up can occur at least annually, as needed, but some deals allow for more frequent changes in the charges, such as semiannually. Regulators cannot alter the true-up, nor do they need to approve its use.

The strength of the legal and structural safeguards, along with the robust nature of the protection provided by the true-up mechanism, affords substantial credit enhancement for ABS investors. Indeed, Fitch Ratings indicated in its "Outlook and Performance Review for U.S. Utility Tariff ABS" (Feb. 1, 2013) that several RRB transactions have successfully used their true-up mechanisms to offset revenue shortfalls.

Weather-related variations in collections have occurred due to system outages from hurricane damage and warmer-than-normal winter temperatures. In addition, six transactions suffered shortfalls from 2008–2010 due to the recession's effects on customers reducing their power usage. Some were residential customers trying to save on monthly expenses, whereas others were commercial and industrial customers cutting production or going out of business, according to the Fitch Ratings report.

### **Credit Analysis**

When rating a new RRB deal and determining the potential variability in cash flows, the rating agencies typically perform a credit analysis of the utility and the service area that is subject to the utility tariff. The major areas of inquiry include the energy usage level and trends of the customer base and its composition, the size of the tariff in relation to the entire utility bill, customer

delinquency and loss trends, national and local economic factors affecting energy usage, and seasonality due to weather conditions.

The rating agencies incorporate various stresses in their cash-flow models to take account of forecast errors or variations in usage based on changing credit conditions. Although the credit analysis of the utility, its customer base and service area are important, they tend to take a position of secondary importance, in our opinion, to the legal and regulatory structure of the utility tariffs and the ability to true-up the charges when collections vary from the forecast.

### **Customer Base**

A utility's customer base typically can be divided into four segments: Residential, Commercial, Industrial, and Government. The most important segments tend to be Residential and Commercial/Industrial. Most service areas have a low concentration of government obligor exposure, although some areas may include state or federal government offices or military bases.

Residential customers offer the most diversification because each household is just a small portion of the overall pool of residential customers. They should also represent the most stable cash flows because households (and smaller commercial customers) tend to be less sensitive to economic cycles in their power usage. It could be assumed that new residents would replace those who move away, providing additional long-run stability. However, reduced demand for housing during recessions may present a potential risk to power usage and the generation of cash flows backing the RRBs.

Commercial and industrial customers are likely to be more concentrated as a group, and the size of individual firms could mean an increase in risk to cash flows in the event of reduced usage from less production, self-generation of power, or the possibility of ceasing business in that service area. For that reason, the rating agencies analyze the power-usage patterns of areas with cyclical industries and emphasize periods of recession in their analysis. This process provides an estimate of the potential variability of cash flows from the amortization schedule of the bonds.

### **Usage Patterns and Seasonality**

Residential and smaller commercial customers normally show greater changes in power usage due to changes in weather patterns. An unusually hot summer or colder-than-normal winter would likely drive power demand higher, and these seasonal patterns tend to be more important for short-run variations in power usage. In the long run, conservation measures, increased use of energy-efficient appliances and technological advances are more likely to play a role in energy-usage patterns. Larger commercial and industrial customers would also be affected by these weather-related and technological advances, although in the near term, they tend to be affected more by fluctuations in economic activity.

### **Size of Utility Tariff**

The rating agencies also consider the size of the utility tariff relative to the overall customer bill. This relationship becomes more important if the true-up mechanism must be used to increase the charge due to variability in the receivables generated. An increase in the overall price of power could be large enough to reduce demand for power if the tariff is a relatively large portion of the bill. This incentive may become particularly intense for larger industrial customers who have more energy alternatives.

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\*This Glossary serves as the final exhibit to the testimony of both Public Staff witness Joseph Fichera and Public Staff witness Paul Sutherland, and is the same Glossary as referenced in the testimony of Public Staff witnesses.

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## Glossary

**Asset-Backed Security (ABS)** - A debt security issued by an SPE, the payment of which is backed by a physical asset (e.g., rail cars or airplanes) or a financial asset (e.g., a mortgage or the value of a portfolio of credit card receivables). At least for some purposes, Ratepayer-Backed Bonds are not technically Asset-Backed Securities but often have been treated as such to the detriment of ratepayers.

**Bankruptcy Remote** - An entity designed in such a way that (i) the likelihood of it going into bankruptcy is extremely small, and (ii) it would experience as little economic impact as possible in the event of a bankruptcy of other related legal entities.

**Basis Point (bp)** - One one-hundredth of a percentage point. Often referred to in writing as “bp” (or “bps” in the plural).

**Benchmark** – When pricing a bond, the Benchmark is a security with high price transparency that is agreed upon by all parties so that the Yield on the new issue can be set relative to the Yield on the Benchmark. In that way, if Yields in the market move after agreeing on the spread to Benchmark but before final pricing, the parties do not have to renegotiate the final price/Yield. A Benchmark can also be a similar security used to determine Relative Value when talking to investors.

**Callable/Non-Callable Bonds/Pre-Payment Risk** - In many cases bonds are offered for sale with a “call provision.” For example, a company may want the right to retire a given bond in five years even though it carries a 25-year Maturity date. That bond would be said to carry a five-year call option. Investors who worry their bonds might be called away from them in a relatively short period of time will not pay a high price for those bonds because they can’t rely on earning the bonds’ stated interest rate through Maturity. Also known as Pre-Payment Risk. Non-callable bonds cannot be called away from the investor before the final Maturity date. Ratepayer-Backed Bonds typically are non-callable and have no Pre-Payment Risk.

**Final Legal Maturity Date** – The date by which, if the principal is not fully paid, the bonds will be considered to be in default. Usually, the Final Legal Maturity Date is one to two years after the Final Scheduled Maturity Date.

**Final Scheduled Maturity Date**– The date by which it is expected that the final principal payment on a bond or on a group of substantially identical bonds will be made.

**Financing Order** - An order issued by state regulators authorizing the issuance of Ratepayer-Backed Bonds, which order cannot be changed or revoked at a later date as long as the Ratepayer-Backed Bonds are outstanding, and which (i) segregates a specific component of the retail rate charge throughout the service territory, (ii) causes the right to receive this component to be treated as a present interest in property that can be bought, sold or pledged, (iii) authorizes the utility to sell such property to an SPE, (iv) authorizes the SPE to issue Ratepayer-Backed Bonds secured by such property, and (v) requires the utility which sold the property to use the proceeds of the sale for one or more specific purposes.



**Maturity** - The length of time until the issuer of a bond has to repay specified amounts to the lender / investor.

**Net Present Value (NPV)** - The amount of cash today that is equivalent in value to a payment, or to a stream of payments, to be received in the future. To determine the Net Present Value, each future cash flow is multiplied by a present value factor. For example, if the opportunity cost of funds is 10%, the Net Present Value of \$100 to be received in one year is  $\$100 \times [1/(1 + 0.10)] = \$91$ . Opportunity cost means what a dollar today could earn over a specific period of time.

**Nominal Dollars** or **Nominal Savings** - This type of measure reflects the current situation, not adjusted for the opportunity cost of funds over time. Nominal dollars treat all dollars the same whether received today or 10 years from today. See “Net Present Value” for the way to look at dollars over time.

**Ratepayer-Backed Bond** – Bonds issued by an SPE for the benefit of one or more sponsoring utilities in a Securitization transaction.

**Regression Line** - Regression takes a group of data points and tries to find a mathematical relationship between them. This relationship is typically in the form of a straight line (linear regression) that best approximates all the individual data points. It is the most common type of “trendline” used in Excel.

**Relative Value** - The relationship between two securities. In pricing a new Ratepayer-Backed Bond issue, for example, it is useful to compare the Spread over Swaps of the proposed bond Yield to the Spread over Swaps or over a AAA-rated U.S. agency bond. If the two securities were judged equal in risk with identical terms (not callable, same WAL etc.) but one had a higher Spread, it would be said to have greater Relative Value.

**Road Show** - A formal presentation to potential purchasers of a security, typically organized by Underwriters with the involvement of the issuer and the financial advisor. A team sometimes travels around the U.S. to discuss the features of the security, resulting in the term “Road Show.” Sometimes the team travels to foreign financial centers to make these presentations. In recent years, most Road Shows have been conducted using electronic media over the Internet, reducing or eliminating the need for travel.

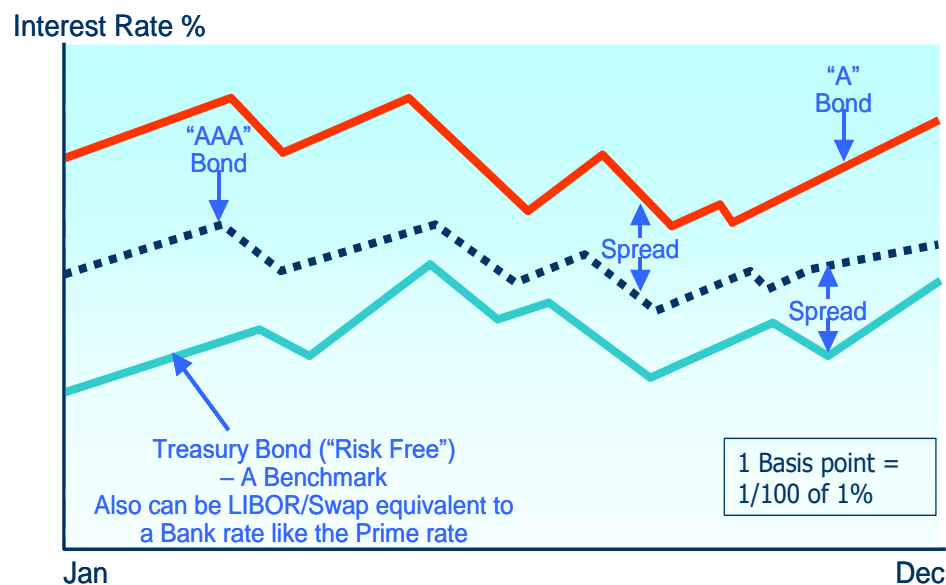
**Secondary Market** – The market in which stocks or bonds are traded after their initial issuance. When a publicly offered bond trades at a substantially higher price (lower Yield) in the Secondary Market immediately following its issuance, this is an indication that the bond was mispriced (priced too low) by the Underwriters in the original public offering.

**Securitization** - The process by which a pool of assets, such as loan receivables, is used as a basis for issuing highly rated (often AAA) bonds. The pool of assets is created and transferred to a trust or, in a utility Securitization, to a Bankruptcy Remote SPE. The entire right, title and interest in the assets are transferred at fair market value to the SPE. The SPE pledges the assets to secure the bonds and the cash flows from those assets are used to pay principal and interest on the bonds. Thus, the risk to the bondholder is just the risk associated with the cash flows from the assets in the SPE. The assets can be physical (such as plant and equipment) or intangible (such as a loan receivable or the right to some other revenue stream).

**Special Purpose Entity (SPE)** – A Bankruptcy Remote legal entity set up for the express purpose of owning the right, title and interest in the assets used to secure the bonds and provide the cash flows to pay interest and principal on the bonds.

**Spread** – The difference between the market Yields of different fixed-income securities of similar maturities, expressed in Basis Points. If a Treasury bond maturing in seven years is trading to Yield 3.87%, and a AAA-rated corporate bond is trading to Yield 4.25%, the corporate bond is said to trade at a 38 Basis Point Spread to the Treasury bond ( $4.25 - 3.87 = .38$ ).

Spread is the easiest way to compare the cost of funds represented by different debt securities. Participants will refer to the spread “relative to Treasuries” or “relative to Swaps” as the most meaningful measure used to compare a given debt security to the most liquid, most secure, and most easily available benchmark for a given Maturity. Spreads are often referred to as either “Tight” or “Wide” to the Benchmark. (See **Tight Spread/Wide Spread** definition below.)



**Swaps, or Interest Rate Swap Agreements** - An interest rate Swap exchanges a floating rate for a fixed rate on bonds. Under certain market conditions, a combination of floating rate bonds and fixed rate Swaps could produce a lower overall “synthetic” fixed interest rate for ratepayers. Certain investors prefer a floating rate, while other investors prefer a fixed rate. For example, many European investors prefer a floating rate. There may be an opportunity to lower overall ratepayer costs and achieve the “lowest storm recovery charges” by issuing floating rate Ratepayer-Backed Bonds and swapping them to a synthetic fixed interest rate.

**Tranche** – A Tranche is a piece of a larger bond offering with its own cash flows, i.e., principal amount, Maturity and interest rate, but governed by the same documents as the larger bond offering, i.e. prospectus, trust agreement, servicing agreement, etc. While Tranche is common nomenclature for ABS type debt, corporate debt usually uses the term “series” for the same purpose.

**Tight Spread/Wide Spread** - If a Spread is considered “Tight,” it is low and closer to the Benchmark rate. If it is “Wide,” it is much higher than the Benchmark rate. Interest rates are composed of the Benchmark plus the Spread. Thus, a Tight Spread means a lower interest rate.

**True-up Mechanism - PSC-Guaranteed True-up Mechanism**” or “**True-up Mechanism**” means the mechanism irrevocably mandated by state law and the Financing Order whereby ratepayer charges to pay debt service and ongoing expenses on Ratepayer-Backed Bonds are reviewed and adjusted at least annually or semi-annually (true-up period), depending on the jurisdiction. The rates at which the charges are imposed on ratepayers, to be paid on a joint and several basis, will be adjusted to correct any over collections or under collections from prior periods and to guarantee payment of all principal and interest on a timely basis.

**Underwrite** – This refers to the actions of an investment bank when it initially purchases newly issued bonds with the intention of re-offering or re-selling them to the ultimate investors, thus assuming the market risk for a short period of time.

**Underwriters** - The investment banks that initially purchase the bonds and re-offer the bonds to ultimate investors. A lead Underwriter (sometimes called the “bookrunning” manager and most often called a lead manager) is responsible for assembling and leading a syndicate which generally includes additional investment banks in an effort to reach the widest audience of buyers. A co-lead Underwriter (or “co-manager”) is another firm which also assumes responsibility to purchase bonds from the issuer. Nowadays, in practice, the Underwriters of a bond issue often have orders for 100% of a new issue before it is formally re-sold to anyone, and consequently the Underwriters do not hold the bonds or take any appreciable market risk.

**Weighted Average Life (WAL)** – The amount of time (in years), on average, that the principal amount will remain outstanding. It is calculated by weighting the time each component of the principal is outstanding by the principal amount. Thus, for a bond that pays back all its principal at final Maturity, the WAL is the same as the final Maturity. However, Ratepayer-Backed Bonds amortize principal over a number of years, so the WAL is always less than the Final Scheduled Maturity of each Ratepayer-Backed Bond.

**Yield, Current** - The annual coupon amount of interest on a bond, divided by the selling price (expressed as a percentage). A \$1,000 principal amount bond that sells for \$1,000 with a \$50 annual interest coupon has a 5% Yield. The lower the price, the higher the Yield; the higher the price, the lower the Yield.

**Yield to Maturity** - Yield to Maturity is the discount rate at which the sum of all future cash flows from the bond (interest and principal) is equal to the price of the bond. This measure of Yield takes into account the difference between the current price and the principal value at redemption. This is the Yield referred to when pricing a bond and comparing to the Yield on benchmark securities. It is more reflective of true value because it accounts for the time value of money.