BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150148-EI

PETITION FOR APPROVAL TO INCLUDE IN BASE RATES THE REVENUE REQUIREMENT FOR THE CR3 REGULATORY ASSET, BY DUKE ENERGY FLORIDA, INC.
_____/

DOCKET NO. 150171-EI

PETITION FOR ISSUANCE OF NUCLEAR ASSET-RECOVERY FINANCING ORDER, BY DUKE ENERGY FLORIDA, INC. D/B/A DUKE ENERGY.
_____/

VOLUME 2
(Pages 231 through 409)

PROCEEDINGS:	HEARING
COMMISSIONERS PARTICIPATING:	CHAIRMAN ART GRAHAM COMMISSIONER LISA POLAK EDGAR COMMISSIONER RONALD A. BRISÉ COMMISSIONER JULIE I. BROWN COMMISSIONER JIMMY PATRONIS
DATE:	Wednesday, October 14, 2015
TIME:	Commenced at 9:30 a.m. Concluded at 10:22 a.m.
PLACE:	Betty Easley Conference Center Room 148 4075 Esplanade Way Tallahassee, Florida
REPORTED BY:	LINDA BOLES, CRR, RPR Official FPSC Reporter (850) 413-6734
APPEARANCES:	(As heretofore noted.)

I N D E X

EXHIBITS

NUMBER:	ID.	ADMTD.

No exhibits marked or entered in this volume

IN RE: PETITION FOR ISSUANCE OF NUCLEAR ASSET-RECOVERY FINANCING ORDER

BY DUKE ENERGY FLORIDA, INC.

FPSC DOCKET NO. _____

DIRECT TESTIMONY OF PATRICK COLLINS

I. INTRODUCTION

Q. Please state your name, business address, and current employment position.

A. My name is Patrick Collins. My business address is 1585 Broadway, New York, New York 10036. I am an Executive Director in Global Capital Markets at Morgan Stanley & Co. LLC.

Q. Please summarize your educational background and professional experience.

A. I graduated from Yale University in 2004 with a B.A. in History. My relevant professional experience includes approximately 11 years in the structured finance industry, the last five years of which have been at Morgan Stanley, where I focus on structured finance and securitization across a number of asset classes, one of which is utility securitization. I have been heavily involved in utility securitizations at Morgan Stanley, having personally worked on $5.5 billion in transactions since 2011. Below is a selection of that experience.

In December of 2013, I played the lead securitization banking role for Morgan Stanley as joint senior manager and lead bookrunner in the $2 billion securitization for the Long Island Power Company, known as LIPA. The transaction, which was comprised of both

taxable and tax-exempt bonds, allowed LIPA to retire certain of its outstanding indebtedness as part of a larger restructuring of the utility. The transaction represented the first municipal electric utility seller/sponsor to tap the utility securitization market.

Also in 2013, I played the leading securitization banking role for American Electric Power ("AEP") for the $380 million transaction from Appalachian Power Company, its operating company in West Virginia, which facilitated the recovery of its expanded net energy costs. Additionally for AEP, I played the main day-to-day execution role for another operating company, Texas Central Company, in 2012 for its $800 million transition bonds. That securitization was the last utility securitization deal for the costs associated with Texas' transition to a competitive electric market.

In 2011, I was the main day-to-day execution role for Entergy Louisiana's $207 million investment recovery securitization for its costs related to the cancellation of its 538-MW Little Gypsy steam generating station. In 2010, I also played the main day-to-day execution role for Entergy Arkansas' $124 million storm recovery transaction for costs associated with power outages and damage to infrastructure caused by a major ice storm in 2009. I also worked with Entergy as the structuring and financial advisor to Entergy Gulf States Louisiana ("EGSL") and Entergy Louisiana ("ELL") for their 2014 transactions issued under Act 55 of the Louisiana Regular Session of 2007, known as the Louisiana Utilities Restoration Corporation Act. Morgan Stanley served as the structuring advisor providing services for EGSL and ELL with respect to the preliminary structuring and regulatory approval phases of the transaction. We also served the same role for Entergy New Orleans, Inc. in early 2015 for its costs relating to Hurricane Isaac.

I am also working with two other companies on current transactions.

Q. Do you possess any professional licenses related to the securities industry?

A. Yes. I have Series 7 (General Securities Representative Qualification), Series 63 (Uniform Securities Agent State Law Examination, administered by the Financial Industry Regulatory Authority ("FINRA")), Series 55 (Equity Trader Qualification Examination, developed and maintained by FINRA), and Series 3 (National Commodity Futures Examination) licenses. These qualifications generally allow an individual to function as a representative dealing in a full range of products within the finance industry.

Q. On whose behalf are you testifying?

A. I am testifying on behalf of Duke Energy Florida, Inc. ("DEF" or the "Company").

Q. Are you sponsoring any exhibits in this case?

A. Yes. I am sponsoring:

- Exhibit No. __ (PC-1), a preliminary bond structure and associated cashflows; and
- Exhibit No. __ (PC-2), a list of completed utility securitizations since 1997.

Each of these exhibits was prepared under my direction and control and to the best of my knowledge all factual matters contained therein each are true and accurate.

I am also co-sponsoring with Bryan Buckler the following exhibits:

- Exhibit No. __ (BB-2a), Form of Nuclear Asset-Recovery Property Purchase and Sale Agreement;
- Exhibit No. __ (BB-2b), Form of Nuclear Asset-Recovery Property Servicing Agreement;
- Exhibit No. __ (BB-2c), Form of Indenture;

- Exhibit No. __ (BB-2d), Form of Administration Agreement; and
- Exhibit No. __ (BB-2e), Form of Amended and Restated LLC Agreement.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to: (i) provide an overview of the utility securitization market; (ii) describe DEF's proposed transaction; (iii) explain the collection and remittance process; (iv) discuss key elements of the financing order; (v) describe the rating agency process; (vi) describe the marketing process; (vii) discuss certain securities law liabilities applicable to utility securitization as well as developments in securities law that might affect the nuclear asset-recovery bonds; and (viii) explain the issuance advice letter process.

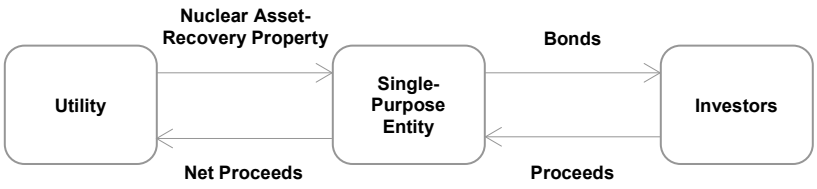
II. UTILITY SECURITIZATION BACKGROUND

Q. Please provide a basic description of utility securitization.

A. Securitization, generally, is the process in which an owner sells a cashflow-generating asset or assets for a lump-sum, upfront payment, done in a manner that legally isolates (or de-links) the cashflow-generating asset(s) from the credit quality of the seller. The sale process is intended to protect investors from any changes in credit circumstances, or even the bankruptcy, of the entity that sold the asset(s). Therefore, the "credit" of a securitization is the ability of that asset(s) to produce a set of payments (or cashflows) for investors, who purchased a securitized interest in that asset(s).

In the context of utility securitization, a utility is the owner of the cashflow-generating asset, which is the property right that is created pursuant to a statute and financing order. This property right is also referred to as the collateral. The utility then sells that property right to a newly-established, single-purpose entity ("SPE") which, as its name implies,

functionally does nothing else but purchase the collateral and issue bonds to investors in order to fund that purchase. This sale between the two entities is done to achieve a bankruptcy-remote sale, also referred to as a legal "true sale" for bankruptcy purposes, which legally isolates the collateral from the seller of the collateral. In order to have the necessary funds needed to purchase the collateral, the SPE issues notes to investors, collateralized by the property right. In exchange for the notes, investors pay an upfront purchase price, which is passed through the SPE back to the utility as consideration for the nuclear asset-recovery property. Below is an indicative schematic of the process around the upfront closing mechanics described above:



Q. What is the life-to-date volume of the utility securitization market?

A. There has been over $50 billion issued life-to-date in the utility securitization space from over 60 transactions since 1997. A full list of transactions is included in Exhibit No. __ (PC-2).

III. DESCRIPTION OF THE PROPOSED TRANSACTION

Q. Please describe the preliminary structure of the proposed DEF nuclear asset-recovery bonds.

A. DEF's preliminary structure for the nuclear asset-recovery bonds is presented here:

Class	Balance ($)	Weighted Average Life	Assumed Ratings	Coupon	Principal Window (Months)	Schedule Final	Legal Final
A-1	165.940,000	2.0	AAA	1.250%	31	4/1/2019	4/1/2020

A-2	209,370,000	5.0	AAA	2.270%	43	10/1/2022	10/1/2023
A-3	488.570,000	9.9	AAA	3.190%	79	4/1/2029	4/1/2030
A-4	447,920.000	15.6	AAA	3.680%	55	10/1/2033	10/1/2035
Total	**1,311,800,000**	**10.1**		**3.288%**			

Notes:

1. Closing rates as of June 30, 2015
2. Structure is preliminary and subject to change based on market conditions and rating agency requirements
3. Structure is based in part upon information supplied by Duke which is believed to be reliable but has not been verified. Estimates of future performance are based on assumptions that may not be realized. Actual events may differ from those assumed and changes to any assumptions may have a material impact on any projections or estimates. Other events not taken into account may occur and may significantly affect the projections or estimates. Certain assumptions may have been made for modeling purposes only to simplify the presentation and/or calculation of any projections or estimates, and Morgan Stanley does not represent that any such assumptions will reflect actual future events
4. Assumes the forecast for power consumption and collection curve provided by DEF
5. Assumes no collections for the first month of the transaction

Please note that these terms are preliminary and estimated based on interest rates and market conditions as of June 30, 2015. The final terms and conditions of the nuclear asset-recovery bonds will not be known until after they have been priced in the marketplace. Investor demand and market conditions (including the interest rate environment) at the time of pricing will determine market clearing interest rates and the final structure offered to investors. Therefore, the preliminary structure and pricing information is preliminary and subject to change, and the actual structure and pricing will differ, and may differ materially, from the preliminary structure as shown above.

Q. Please provide further details around the preliminary structure.

A. Further details of the preliminary structure are included in Exhibit No. __ (PC-1), which outlines some of the structuring assumptions and displays the preliminary annual and semi-annual debt service schedules and revenue requirements, assuming estimated market conditions (as of June 30, 2015) and forecasted billings from DEF, among other factors.

Q. Are the classes subject to change as well?

A. Yes, they are. As you will note, the preliminary structure above contains four classes, or tranches. The final structure could have a different number of classes from the preliminary structure above, or it could have the same number of classes but with different weighted-average lives (the measure of the average amount of time to repay the principal balance of the tranche in full; "WAL"). The scheduled and legal final maturity dates, which I describe further below, also could be different which would affect the structure and tranching as well. The classes will be structured to investor demand such that it is as marketable to as many investors as possible with the objective of achieving a coupon rate for each tranche below that which might otherwise be accomplished. The above structure is preliminary and estimated based on the market conditions and investor demand as of June 30, 2015, and the market is subject to change at any time.

Q. What are the considerations taken into account when developing the structure for the transaction?

A. These factors include both quantitative and qualitative assessments, including: the general market conditions at the time of pricing, the interest rate environment, the shape of the underlying benchmark yield curve (*i.e.*, the difference between the 2-year and 5-year points of the curve), perceived investor liquidity of the bonds, general investor risk appetite, investor maturity preferences, competing supply in the new issue market, secondary trading levels for comparable securities, relative value versus comparable securities, and the calendar in general. The underlying goal is to create customer savings, which is done by creating a structure that is as marketable to a large number of investors as reasonably possible, such that the transaction generates strong investor demand and therefore drives down the interest expense of the bonds (and thus produces customer

savings). Another important consideration is the period of time in which the nuclear asset-recovery charges will be collected, or the scheduled final maturity date. To the extent that date is different than the approximate 18-year period above, the structure, including the number and WALs of the tranches would be different. I discuss some further considerations around the target scheduled maturity date below.

Q. How do the tranches work in relation to each other? Are they time-tranched?

A. Yes, they are time-tranched. The principal balance will pay down according to a pre-determined amortization schedule with the A-1 tranche or class getting paid to zero first according to that schedule; then the A-2 class will start to pay down until it is paid in full, then the A-3, and so on. It's important to note that each of these classes is a senior bond, so none of the classes in the deal provide any structural subordination or protection to another. It is also important to note that each of these classes continue to accrue and receive interest payments while there is a principal balance outstanding; so, even though the A-3 class is not scheduled to receive a principal payment in the first payment period, holders of that bond are still scheduled to receive an interest payment in that same period.

Q. Will the nuclear asset-recovery bonds pay fixed or floating interest rates?

A. We recommend that bonds be issued as fixed-rate instruments. Most utility securitizations have been fixed rate bonds to date, especially recently, and these classes are very marketable. Fixed interest rates are necessary to maintain predictable revenue requirements over time. Also, making the bonds bear interest at a floating rate could potentially create added risks for customers and therefore I do not recommend it. For example, a fixed-to-floating interest rate swap would require an additional counterparty with an ongoing financial obligation associated with the transaction, and with that comes

a risk of a ratings downgrade of or a default by the financial institution providing such swap, which could have negative implications on the transaction.

Q. Please describe the level nature of the annual revenue requirement included in Exhibit No. __ (PC-1) and why it is preferred.

A. As you will notice, after the initial nine-month first payment period, each subsequent annual revenue requirement amount is level. The transaction was structured to have substantially level annual debt service to achieve consistency in customer billings, and if load growth is experienced in the future, it will facilitate a decline in the nuclear asset-recovery charge over the life of the bonds. As shown on Exhibit No. __ (PC-1), the estimated nuclear asset-recovery charge declines using DEF's forecasted energy consumption, given the listed assumptions in the exhibit.

Q. What underlying interest rate benchmark is used for the preliminary transaction?

A. The market convention for utility securitizations is to use the swap curve as the underlying benchmark based on the WAL for each class. The vast majority of utility securitizations have been priced off of this benchmark to date in the sector, including each of the taxable transactions in the last five years; moreover, secondary spreads are quoted by broker-dealers as a spread versus the swap curve. The credit spread is the amount of yield, typically stated as a percentage or in basis points (*e.g.*, 0.01% is 1 basis point and 1% is 100 basis points), such that the benchmark plus the credit spread equals the yield.

There are some very important distinctions to make when discussing the topic of the benchmark interest rate curve, each of them dealing with the marketing implications on utility securitizations. The first deals with market convention. When marketing any

bond, it is wise to follow convention in any given market when speaking to an investor base. If the capital markets have purchased other new issue transactions using a spread against one specific interest rate curve, and those same investors see broker-dealers quoting secondary spreads for the asset class against that same curve, best practices would be to market a new transaction against that same curve. Said differently, it is important to speak the same language as investors in a given market. When dealing with securitized products investors, market convention for that investor base is to quote spreads against the swap interest rate curve. When dealing with corporate bond investors, market convention is to quote spreads against the U.S. Treasury interest rate curve.

The next distinction to make is that bond investors are ultimately focused on the actual yield of the fixed income instrument they are buying, especially when dealing with highly-rated bonds. As such, investors in different sectors of the bond market can easily and readily increase or decrease a credit spread based on what benchmark is being used. So, for example, when marketing bonds to securitized products investors, if the benchmark interest rate, the swap rate, is 2.15% and the spread against the swap curve is 0.50%, the yield in this indicative example is equal to 2.65%. For the same bond, if marketing to a corporate bond investor, if the benchmark U.S. Treasury rate for the equivalent point on the curve is 2.05%, then the credit spread against the U.S. Treasury curve would be bigger, or wider, at 0.60%, to get to the same yield of 2.65%. Credit spreads are based off a specific benchmark, so when moving investor bases, say from securitized products to corporate bonds, the basis for the calculation of a credit spread changes as well, up or down, based on the yield where a particular investor has interest.

No investor will accept a lower yield simply because a bond is quoted off a different index.

Q. Do you have a recommendation as to whether the nuclear asset-recovery bonds should be sold as a public, registered transaction versus private placement?

A. I recommend pursuing an offering registered with the U.S. Securities and Exchange Commission ("SEC"), generally referred to as public offerings. In general, public offerings are considered to be more liquid than a Rule 144A qualified institutional offering, and therefore more attractive to investors and more likely to obtain lower interest rate coupons. However, as there are new requirements set to go into effect in November for public offerings (which I discuss in more detail below in my testimony), it is important that DEF retains some flexibility to issue a Rule 144A qualified institutional offering if there are any material issues with the implementation of those new regulations for registered offerings.

Q. How was the 2007 Florida Power & Light transaction sold to the market?

A. It was an SEC-registered public offering. However, the bonds were sold pursuant to a "competitive issue" rather than through a more customary "negotiated issue" basis.

Q. Can you explain the difference between a competitive issue and negotiated issue?

A. Simply put, in a competitive issue or auction process, the bonds are offered for sale by the issuer to a group of broker-dealers and the highest bidder (on a dollar price basis, or lowest cost on an interest rate basis, depending on the form) in that group of broker-dealers would win. This competitive issue would take place at a specified date and time. In contrast, in a negotiated sale, the issuer pre-selects broker-dealers as underwriters for its bonds, and then those selected underwriters offer the bonds for sale to investors in the

broader capital markets through a marketing process. As part of this negotiated issue offering process, the underwriters solicit interest from investors, aggregate that interest, and then determine a market-clearing rate for the bonds resulting from a multi-step process. Once the clearing rates are determined, the underwriters buy the bonds from the issuer and sell them to investors on the same day. I describe this type of a process in further detail below in my testimony when describing the marketing process.

Q. Is this competitive issue process used in any markets?

A. Competitive issues are common in the municipal securities market.

Q. Are competitive issues common in the utility securitization market?

A. No. Florida Power & Light's transaction is the only one to have been sold as a competitive issue to date since the market began in 1997.

Q. Are competitive issues common in the securitized products market?

A. No. Securitized products new issue transactions are sold via a negotiated sale process the vast majority of the time.

Q. Do you recommend using a competitive issue process to sell the nuclear asset-recovery bonds?

A. No. Our recommendation is to sell the nuclear asset-recovery bonds in a negotiated sale process through a group of pre-selected underwriters, which is the way that virtually every other utility securitization to date has been sold. I believe that the flexibility afforded by a negotiated sale is likely to lead to a more efficient transaction and hence greater customer savings. This flexibility includes the ability to access the market as needed and to structure the transaction to meet bondholder demand resulting from marketing efforts directly with potential bondholders.

Q. What is the collateral for the transaction?

A. The collateral primarily consists of the nuclear asset-recovery property that is created pursuant to the financing order and sold to the SPE and is the right to bill and collect a certain consumption-based charge directly from DEF's electric customers in amounts necessary to pay principal and interest on the nuclear asset-recovery bonds, as well as other amounts (known as ongoing financing costs), timely and in full. Included in this property right is the ability to adjust the amount of the consumption-based charge owed by DEF's electric customers in order to ensure that the amounts actually collected are enough to pay all amounts owed with respect to the bonds, including the ongoing financing costs (which are more fully-described in Bryan Buckler's testimony). This process is referred to as the "true-up" mechanism.

The nuclear asset-recovery bonds will be structured to amortize with scheduled principal payments through a specific point in time ahead of the end of the legal final maturity date of the nuclear asset-recovery property; this specific point in time is referred to as the expected or scheduled life of the transaction. These amortizing, or sinking-fund, structures are distinct from a traditional utility corporate bond (and corporate bonds in general), which typically have only a single "bullet" principal payment at the bond maturity date. This time gap between the scheduled final maturity and the legal final maturity is a feature included in the structure to provide a cushion in the instance of any unforeseen circumstances which could cause the forecasted energy consumption, and the bond collections, to decrease materially.

It is important to note that the nuclear asset-recovery property is derived from the financing order, which must be carefully crafted to satisfy the specific provisions of the

statute. The combination of the statute with the financing order and the actions contemplated therein together create the current property right that is required for the nuclear asset-recovery bonds to achieve the highest possible ratings from rating agencies and the strongest amount of demand from potential bondholders. The financing order proposed by DEF has been drafted to meet these specific provisions of the statute, to satisfy the conditions of the rating agencies, and to conform to the expectations of the financial markets.

Q. In addition to the nuclear asset-recovery property described in your earlier discussion, are there any other components of the collateral for this transaction?

A. Yes, the collateral for the transaction includes other components beside the nuclear asset-recovery property right; however, that property right is the principal asset pledged as collateral. The other collateral includes a collection account, which is established by the SPE as a trust account to be held by the trustee. The collection account, in turn, is comprised of the three subaccounts: the general subaccount, the capital subaccount, and the excess funds subaccount; the Financing Order also provides for the opportunity to have additional subaccounts if required for ratings purposes. The collateral also consists of the SPE's rights under certain agreements it enters into as part of the transaction, including the sale agreement (which governs the sale between the utility and the SPE), the servicing agreement, and the administrative agreement.

Q. Please describe the subaccounts of the collection account referenced above?

A. The general subaccount is the subaccount in which the trustee deposits nuclear asset-recovery charge remittances it receives from the servicer. Monies in this subaccount will be applied by the trustee on a periodic basis to make payments according to a prescribed

order (or waterfall), which generally includes the payment of expenses of the SPE required to maintain the operations of the transaction, then interest on the bonds, and then principal on the bonds.

The capital subaccount represents the equity capital of the SPE and is funded by an amount contributed by DEF at issuance that is estimated to equal 0.50% of the initial principal balance of the bonds. If that subaccount is drawn upon, it is replenished from nuclear asset-recovery charge collections through the true-up and any available excess collections. The Company's proposed equity investment of 0.50% has been derived from guidance from the Internal Revenue Service through its Revenue Procedure 2005-62. This Revenue Procedure sets forth the manner in which a public utility company may treat, for federal income tax purposes, the issuance of a financing order by a state regulatory agency and the securitization of the rights created by the financing order. Having the equity investment in the SPE of at least 0.50% is within the safe harbor provided in the Revenue Procedure and helps to assure that the DEF will not recognize gross sale proceeds upon the receipt of cash in exchange for the nuclear asset-recovery bonds; rather, the bonds will be considered borrowings of DEF for federal income tax purposes. The SPE will be permitted to earn a rate of return on its invested capital equal to the rate of interest payable on the longest maturing tranche of nuclear asset-recovery bonds and this return on invested capital will be paid to DEF in accordance with waterfall.

The excess funds subaccount is where any monies on deposit in the general account that are not needed to meet the scheduled obligations of the bonds on a given payment date will be deposited. The initial balance is zero, and the target ongoing balance is also zero.

To the extent there are funds on deposit in this account, those amounts will be taken into account in the next available true-up process and reduce the amount of revenue needed to be raised for the next bond payment; after the bond payment date, the account value will again be targeted to be zero. Stated differently, if the nuclear asset-recovery charge collections are higher than expected in any given period, those amounts do not pay down the principal balance of the bonds beyond the scheduled principal payment for that period. Rather, the amounts on deposit in the general subaccount above and beyond the scheduled obligations will be moved to the excess funds subaccount. Those amounts will then reduce the amount of nuclear asset-recovery charge collections needed in the subsequent period.

Q. Please describe the treatment of any funds remaining in the various subaccounts at the final maturity of the transaction?

A. Funds remaining in the general subaccount and the excess funds subaccount will be returned to the SPE upon final payment of the nuclear asset-recovery bonds and all other financing costs in full, and equivalent amounts will be credited to customers in the form of a credit to rates. Funds remaining in the capital subaccount will be returned to DEF through the SPE without any equivalent credit to rates since the capital subaccount was funded at issuance with DEF's own funds.

Q. What is the difference between the scheduled final and legal final maturity dates in the preliminary transaction structure?

A. I briefly addressed this topic above in the context of the basic discussion of securitization and will address in full here. The scheduled final maturity of the nuclear asset-recovery bonds represents the date at which the final payment is expected to be made, but no legal

obligation exists to retire the class in full by that date. The legal final maturity is the date by which the bond principal must be paid or a default will be declared. The proposed preliminary structure for this transaction utilizes a legal maturity that is approximately 24 months longer than the scheduled maturity for the single bond class. The difference between the scheduled final maturity and legal final maturity provides additional credit protection by allowing shortfalls in principal payments to be recovered over this additional time period due to any unforeseen circumstance. As such, this gap between the two maturity dates, or "cushion," is a benefit to the structure and is a contributing factor to achieving a "AAA" rating, helping lower the cost of funds on the bonds and therefore benefitting customers. Moreover, investors in utility securitization are very familiar with this concept, which occurs in most securitization transactions. The ratings on the bonds are derived in part based on the assumption that the outstanding principal of the class will be paid in full by its legal final maturity date, and investors price the bonds using a corresponding WAL that assumes the bonds make the final scheduled principal payment in full at the scheduled final maturity date and not at the legal final maturity date.

This gap between the two maturity dates will be driven by rating agency concerns. To that effect, the period of time between the two dates could potentially be shortened to one year, but that will not be known until the ratings process is complete and it will depend on a number of factors, including the size of the service territory and the length of the latest scheduled maturity date, among other factors. Of the 15 transactions since 2010, 8 transactions have had gaps between the scheduled and legal final maturity dates of two years, five deals have been less than two years, and two have been three years. Because

transactions with scheduled final maturity dates of fifteen years or longer have had at least a two year gap, we are assuming that same two-year gap for the preliminary structure.

Q. Are the key structural elements of the preliminary structure generally in line with other utility securitizations?

A. Yes. The key elements of the preliminary structure as discussed above, and as included in Exhibit No. __ (PC-1), are generally consistent with the utility securitizations that have been issued to date. The underlying cost recovery types, sizes, and maturity dates are obviously different and subject to the facts and circumstances in each case, but the key structural elements are generally consistent. This is a very-well understood asset class by all interested parties, including sponsors, commissions, rating agencies, underwriters, and most importantly, investors. Keeping the transaction consistent from a structural perspective for investors is an important element during the marketing process.

IV. NUCLEAR ASSET-RECOVERY CHARGE COLLECTION AND REMITTANCE PROCESS

Q. Please describe the ongoing billing, collection, and remittance process of the transaction and the key transaction parties that are involved in it.

A. In addition to the upfront closing mechanics described and shown above, the securitization process also includes another key component: ongoing collections of the cash generated by the collateral. Here, a trustee and DEF play important roles. Upon the closing of the nuclear asset-recovery bonds, DEF will bill and collect the amounts owed by customers in connection with the nuclear asset-recovery charge. In the context of securitization and the nuclear asset-recovery bonds, this function is referred to as

"servicing" and the utility (DEF) is the servicer. DEF will also perform certain reporting duties with respect to the amount of nuclear asset-recovery charges collected. The servicer will perform all of these functions under a contractual arrangement for the SPE under the servicing agreement. Generally, DEF as servicer will make the collections generated from the nuclear asset-recovery charges and remit such collections to another entity, the trustee, who also plays an important role for the integrity of the ongoing collections. After making its collections, the servicer remits the monies collected or estimated to have been collected to the trustee as frequently as daily, or less often depending on the servicer's credit rating and other factors (including the setting aside of reserved amounts), which maintains those monies until it periodically remits them to investors according to a pre-determined schedule (typically semi-annually in utility securitizations). The trustee holds the collections and invests them in short-term, high quality investments that mature prior to the next payment date on the bonds. The trustee also serves as a representative on behalf of investors and ensures that their rights are protected in accordance with the terms of the transaction.

It is important to discuss briefly third parties collecting the nuclear asset-recovery charges. While Florida law does not provide for third party electricity providers, it is important that the commission ensure that those third parties, in the event there is any change in utility regulation, must bill and collect the nuclear asset-recovery charges in a manner that will not cause any of the then-current credit ratings of the bonds to be suspended, withdrawn, or downgraded. Language to this effect is included in the proposed financing order.

Q. Are there any other roles with respect to the servicing?

A. Yes, there needs to be a specified fee that could be paid to a substitute, third-party servicer in the unlikely event that DEF is no longer the servicer. Such a replacement servicing fee should be up to 0.60% of the original principal balance of the bonds, or such other higher amount as approved by the commission. This fee is generally higher than the initial servicing fee to DEF of 0.05% of the original principal balance of the bonds as it may be needed to induce a third-party servicer to perform the functions typically performed by the sponsoring utility. To my knowledge, no utility securitization has ever had to utilize the replacement servicing fee.

Q. What are the "other amounts" referenced above when describing the ongoing collections process?

A. There will be ongoing financing costs beyond standard principal and interest that will be payable on an ongoing basis over the life of the transaction. These costs will include, but are not limited to, servicing fees, trustee fees, rating agency surveillance fees, legal and accounting fees, administrative fees, other operating expenses, credit enhancement expenses (if any), and any other costs. Bryan Buckler addresses these ongoing financing costs in his testimony. Generally, these amounts are expenses that are required in order to keep the transaction working as it was structured to do.

V. KEY ELEMENTS OF THE FINANCING ORDER

Q. Are the terms of the Financing Order critical to achieving a successful transaction?

A. Yes, the Financing Order, when taken together with applicable provisions of the statute, establishes in strong and definitive terms the legal right of investors to receive, in the form of nuclear asset-recovery charges, those amounts necessary to pay the interest and principal on the bonds and the ongoing expenses in full and on a timely basis. The

Financing Order must be crafted to meet the specific provisions of the statute, which the Financing Order proposed by DEF achieves. The Financing Order specifies the mechanisms and structures for payments of bond interest, principal, and ongoing financing costs in a manner that minimizes the amount of additional credit enhancements required by the rating agencies to achieve the highest possible ratings. The highest possible ratings will allow the financing to achieve the desired results of producing significant customer savings. In addition, the Financing Order, when taken together with applicable provisions of the statute, will enable DEF to structure the financing in a manner reasonably consistent with investor preferences and rating agency considerations at the time of pricing, which is also necessary in order for the financing to achieve the desired results.

Q. Please discuss the key elements of the Financing Order that are essential to achieving the desired result for the transaction.

A. There are a number of key elements of the Financing Order. The first such element is the mitigation of any potential bankruptcy risk of DEF, which is accomplished via a legal "true sale" for bankruptcy purposes. The structure utilized with this transaction, along with other securitizations, relies on techniques that allow the rating agencies and investors to conclude that the issuer of the securitization, the SPE, is highly unlikely to become the subject of a bankruptcy proceeding in the unlikely event of a bankruptcy of DEF. Under the federal bankruptcy code, payments on the debt obligations of an issuer in a bankruptcy proceeding become subject to an automatic stay – *i.e.*, the payments are suspended until the courts decide which creditors of the issuer are to be paid, when they will be paid, and whether they are to be paid in whole or in part. Unless the risk of an

automatic stay in the unlikely event of a bankruptcy of DEF is essentially removed from the rating agencies' credit analysis, the financing cannot achieve the highest possible ratings since DEF's secured debt obligations are rated below "AAA" and would thus serve as a constraint to the contemplated securitization. In addition, the creation of the bankruptcy-remote SPE, which is legally distinct from DEF, is designed to limit the ability of the SPE to be included with DEF in the unlikely event of a DEF bankruptcy. Therefore, even if DEF were to declare bankruptcy, the SPE would not become the subject of DEF's bankruptcy proceeding, and the SPE's debt service payments to investors would not be subject to the DEF automatic stay. The transaction, as structured and reflected in the Financing Order, is intended to achieve this important element.

Q. What are the other key components of the Financing Order that are essential to establishing the legal foundation for the transaction?

A. There are a number of provisions in the Financing Order that ensure that the SPE will be deemed to be bankruptcy remote in addition to the elements mentioned above, including that the SPE will have at least one independent manager whose approval will be required for certain organizational changes or major actions of the SPE, such as voluntarily filing for bankruptcy petition on behalf of the SPE. Continuing on the same theme, the Financing Order, together with the statute, will enable the transfer of the nuclear-asset recovery property from the Company to the SPE to be a "true sale." A true sale is a sale that a bankruptcy court should not overturn in the case of any DEF bankruptcy. The Financing Order will allow the SPE to issue the nuclear asset-recovery bonds, pledging the nuclear asset-recovery property as security for payment on the bonds.

Q. Does the Financing Order provide for any credit enhancement for the transaction?

A. Yes, in a number of forms. The primary form of credit enhancement is the true-up mechanism. The Financing Order, together with the statute, is designed to ensure that the collection of nuclear asset-recovery charges arising from the nuclear asset-recovery property are expected to be sufficient to pay all amounts owed on the bonds on a timely basis and in full, even in the face of dramatic reductions in electricity usage by DEF customers or dramatic increases of delinquencies and losses on payments from DEF customers. The true-up mechanism represents the most fundamental component of credit enhancement to investors and is a cornerstone of utility securitizations. True-ups are to be incorporated so that nuclear asset-recovery charges may be adjusted on a periodic basis to correct for any over- or under-collection of nonbypassable nuclear asset-recovery charges for any reason and to ensure that the expected collection of future nuclear asset-recovery charges is in accordance with the payment terms of the bonds. True-up adjustments will be made on a periodic basis, at least semi-annually, throughout the life of the bonds in accordance with the objectives of achieving the highest credit ratings per rating agency requirements and investor expectations. As described in the Financing Order, true-up adjustments during the transaction life will be made on a semi-annual basis (the standard true-up); however, in the event that nuclear asset-recovery bonds remain outstanding after the scheduled final maturity date of the last bond tranche, mandatory true-up adjustments will be required on a quarterly basis such that the bonds can be paid off in full on the next payment date. Additionally, DEF as servicer will have the ability to perform an optional interim true-up at any time for any reason in order to ensure the recovery of revenues sufficient for the timely payment of all amounts owed with respect to the bonds. This is a general catch-all true-up that is designed to improve

the nature of the true-up mechanism as a whole. In the unlikely case of an extreme event, DEF should not have to wait for a prescribed date to implement a true-up if one is needed. And the final component of the true-up mechanism is the non-standard true-up, to be effective simultaneously with a base rate change that includes any change in the cost allocation among customers used to determine the nuclear asset-recovery charges. Such non-standard true-up will go into effect simultaneously with any changes to DEF's other base rates.

It is critical for rating agency and investor marketing purposes that, insofar as Commission action is required, true-up adjustments be automatic and implemented on an immediate basis and subject only to mathematical review. Any subjective approval requirement would undercut the essential nature of the true-up and ultimately the credit quality of the transaction.

The capital subaccount funded with an amount equal to 0.50% of the initial principal balance of the nuclear asset-recovery bonds will also serve as credit enhancement of the transaction. Also, it is important that the Financing Order provide for the flexibility to include other forms of credit enhancement or other mechanisms (*e.g.*, letters of credit, additional amounts of overcollateralization or reserve accounts, or surety bonds) to improve the marketability of the bonds. None are anticipated but it is important to have the built-in flexibility.

Q. Please expand on your use of the term "nonbypassability" in your previous answer.

A. The Financing Order provides that all current and future customers receiving transmission or distribution services from DEF or its successors or assignees under the Commission-approved rate schedules or under special contracts must pay the nuclear

asset-recovery charge regardless of the customers' electric generation supplier and whether or not the distribution system is operated by DEF or a successor, even if the customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation in public utilities in Florida. In basic terms, if one lives in DEF's service territory and receives transmission or distribution service, one must pay the nuclear asset-recovery charge. This is another very important element of the Financing Order, both for the rating agency process and for investor considerations.

Q. Does the Financing Order address how the charge would be affected in the case where DEF is no longer the utility in the service area?

A. The Financing Order also creates a binding obligation for DEF, its successor or assignee to collect the charges for a servicing fee and allows that obligation to be performed by a replacement servicer appointed by the trustee, if the servicer does not so perform. Thus the binding obligation to collect and account for nuclear asset-recovery charges will survive any adverse event to the servicer. So this obligation is binding upon any other entity that provides service in the service territory or any other entity responsible for billing and collecting the nuclear asset-recovery charges on DEF's behalf.

Q. Please describe the irrevocable nature of the Financing Order.

A. The Financing Order is irrevocable, and pursuant to Section 366.95(2)(C)6, Florida Statutes, the nuclear asset-recovery charges are not subject to reduction, impairment, postponement, or termination by any further action of the Commission, except for the true-up process. Thus, so long as the nuclear asset-recovery bonds are outstanding, all of the rights and benefits arising from the nuclear asset-recovery property created by virtue of the Financing Order may be definitively relied upon by investors and the rating

agencies. Equally important, Section 366.95(11), Florida Statutes affirms the pledge of the State not to take or permit any action that would impair the value of the nuclear asset-recovery property authorized by the Financing Order. Investors generally perceive that one of the greatest risks to them is that there is a change in law that affects the nuclear asset-recovery property, thereby adversely affecting their rights under the statute and the Financing Order. The Commission's affirmation in the Financing Order of the State pledge, and the irrevocable nature of the Financing Order, will enhance investor understanding that the risk of an adverse change in law or regulation is remote and will permit counsel to deliver important legal opinions that such adverse changes would not be legally valid.

Q. Please describe the sections in the Financing Order – the "Findings of Fact," "Conclusions of Law," and "Ordering Paragraphs."

A. The Findings of Fact, Conclusions of Law, and the Ordering Paragraphs constitute the means by which the Commission definitively affirms the conformity of the financing with the applicable provisions of the statute. With these findings and conclusions, counsel will have the basis that they need for the highly technical and specialized legal opinions they must issue in connection with the securitization financing, and upon which the rating agencies will rely in assigning the highest possible ratings for the bonds. I emphasize that the provisions of the Financing Order have been drafted with a view toward providing the basis that counsel will need for these essential opinions. With the structure authorized thereby, the stability of the cashflows securing the nuclear asset-recovery bonds will be maximized. The combination of maximized cashflow stability and highest possible ratings will allow the bonds to be structured and priced so as to meet

the statutory cost objectives (as defined in the proposed Financing Order submitted by DEF).

Q. Are there any other key elements of the Financing Order worth discussing?

A. Yes. In addition, in the Ordering Paragraphs, the Commission recognizes the need for, and affords DEF the flexibility to establish, the final terms and conditions of the nuclear asset-recovery bonds. This flexibility that will allow DEF to achieve the structure and pricing that will meet the statutory cost objective, reasonably consistent with market conditions on the day of pricing, rating agency considerations, and the terms of the Financing Order.

VI. RATING AGENCY PROCESS

Q. Please describe the rating agency process.

A. An important element of preparing for the marketing and pricing of the nuclear asset-recovery bonds is obtaining the highest possible ratings on the bonds from the rating agencies. The ratings process generally consists of five phases: (1) the initial rating agency presentation, (2) questions from each of the rating agencies based on the initial rating agency presentation, (3) a legal review of the transaction, (4) cashflow stress tests, and (5) an on-site servicing review.

For the initial rating agency presentation, the Company and its structuring advisor will prepare the written presentations and will meet with rating agency personnel to discuss the credit framework and credit strengths of the proposed nuclear asset-recovery bonds with each hired rating agency, in compliance with SEC Rule 17g-5. Each rating agency has its own method of reviewing a utility securitization based generally on published ratings criteria, so the presentation is intended to provide all the key elements that each

rating agency will need to facilitate such a review process. Information included in the presentation would be a situation overview, the proposed capital structure (*i.e.*, the projected principal tranches), customer class data, forecast and variance data, collection and write-off data, the political environment, the servicing capabilities of DEF, and other general information about the utility and transaction at-hand.

For the second phase of the process, the question-and-answer phase, the rating agencies will react to the introductory presentation and meeting and are likely to ask some clarification questions or request further data of DEF. The ratings process is largely a criteria-based approach based on achieving the key elements in the published ratings methodologies; however, part of the ratings process includes a qualitative assessment by the rating agencies based on the facts and circumstances of the particular transaction. As such, each agency is likely ask further questions as they see fit; examples could include explanations for any data outliers as seen by the agencies, information around self-generation and net-metering, further information about the service territory, or information around recovery periods from any major storms or hurricanes, if applicable.

For the third phase of the ratings process, the agencies will conduct a confirmatory review of the legal integrity of the transaction by looking at the legislation and financing order, the transaction and offering documents, as well as the legal opinions. Generally speaking, the rating agencies will not comment on nor edit language in any of these transaction documents; rather, they are looking for certain elements in each and will let the sponsor know of any material issues, to the extent any exist, with the transaction as a whole as proposed.

The fourth phase of the ratings process is the cashflow stress analysis. Each agency has its own cashflow stresses that it asks for as part of its review. These cashflow stresses are generally negative and extreme scenarios to assess whether or not the nuclear asset-recovery bonds would pay timely interest and ultimate principal (by the legal final maturity date). As the requested rating for each agency is the highest rating category of "AAA," some of the scenarios can and will be rather extreme. Examples include zeroing out all consumption in the utility's peak month, zeroing out all consumption related to all industrial customers, multiplying the max write-off and variance by a multiple of 5 from historical performance, and certain consumption oscillation stresses. Upon request from the agencies, DEF's structuring advisor, on behalf of DEF, will run each of the requested stresses and provide the outputs to the agencies, showing the results of the stress and the associated cashflows.

And finally, the fifth phase is a servicer review, which can be performed as an on-site review or via conference calls. Generally speaking, the agencies are likely to do an on-site visit if the utility is a first-time issuer or has not issued a transaction in the last three to five years (approximately). The topics addressed during this phase include: a general servicer history and overview, a detailed review of the life cycle of a bill as well as a review of the utility's experience with delinquency collections, its systems and data, and its forecasting methodology.

Q. In your previous answer, you mention SEC Rule 17g-5. Please explain what it is and how it will pertain to this execution process.

A. In December 2009, the SEC amended, as part of Dodd-Frank, its rules regulating rating agencies with respect to providing ratings on structured finance securities where the

issuer, sponsor, or underwriter pays for the ratings on the securities. In short, the rule is intended to provide access to ratings-related information to non-hired rating agencies so that they, if desired, could issue unsolicited ratings. In practice, however, actual unsolicited ratings are very rare.

The rule has been in effect since June 2010. Although the rule only directly applies to a hired rating agency, the rule requires that hired rating agency obtain commitments from the issuer to facilitate this process, effectively passing on the requirements to issuers. Those requirements generally include the maintenance of a password-protected website containing rating-related information used to providing a rating on the securities. The hired rating agency is then required to maintain its own password-protected website listing each structured finance security for which it is in the process of determining a rating. If a non-hired rating agency desires to gain access to the ratings-related information, which it learns of through the hired rating agency's listing, it can request it of the issuer. Please note, an issuer will be aware of such a request because it will be the one to grant access to the non-hired rating agency. There are certain elements and requirements of the non-hired agency once it requests access to such information, so there are guidelines in place that generally limit the ability of a non-hired agency to request access to the ratings information without issuing some kind of an unsolicited rating based on the number of requests.

Q. Does the rule apply to the proposed securitization?

A. Yes. Virtually all securitizations, including utility securitizations, are subject to the rule.

Q. Has the advent of Rule 17g-5 changed the manner by which issuers and underwriters interact with the rating agencies?

A. Yes. Because the intent of Rule 17g-5 is to assure that all rating agencies, hired or un-hired, have access to the same information in rating a security, all substantive communication with a hired rating agency which is intended to influence the rating on the securities must be made available on the password-protected website. This process is intended to assure that, regardless of which rating agency is requesting information, the information is available to all rating agencies, whether hired or not.

Since the implementation of the rule, issuers have managed their compliance with the rule by (i) requiring all communication with the rating agencies to be vetted and cleared by the issuer or its counsel, and (ii) requiring that all substantive communication with any rating agency be made in written form (via email or otherwise) and immediately posted to the website. If oral communication with any rating agency is necessary, then a recorded or transcribed phone communication (or a summary thereof) must be posted to the website.

Q. Are there any legal liabilities to DEF and the SPE which arise out of Rule 17g-5?

A. Yes, DEF and the SPE must enter into an agreement with the hired rating agencies agreeing to comply with the posting and related requirements of Rule 17g-5. Further, the underwriters, as a condition of the financing, will require DEF and the SPE to certify that the issuer has complied with Rule 17g-5; the underwriters will make a similar representation to DEF and the SPE. If, in connection with the nuclear asset-recovery bonds, any party communicates with the rating agencies in a manner that violates the rule, DEF could incur liability for that violation.

Q. Is DEF addressing this potential liability in the proposed form of the Financing Order?

A. DEF has proposed that any direct contact or communication with the rating agencies by any party in the financing must be conducted under the direct control of DEF and its counsel at DEF's sole discretion.

VII. MARKETING PROCESS

Q. Please describe the nuclear asset-recovery marketing process.

A. The marketing process entails a number of different phases, each uniquely tailored to the sponsor (first-time or repeat), the service territory, market conditions, and the specifics of the contemplated transaction. Below are the general steps in a marketing process for utility securitization, but the actual process could vary based on the then-current market environment at the time of marketing. In terms of Commission involvement, as per the proposed Financing Order, there is a bond team concept designed to involve the Commission and its advisors in the structuring, marketing, and pricing of the bonds, subject to the specific terms therein. Please see Bryan Buckler's testimony for a further discussion on the concept.

1. **Pre-marketing**. This process generally entails the marketing work that is done ahead of any official transaction announcement, which includes a roadshow (either electronic or physical) or more basic pre-marketing work. In this phase, the underwriter will work to bring the bond transaction to the attention of investors via a number of different forms to inform target investors of the deal, its structure and terms, and its strengths. The underwriter will also facilitate ways to answer directly any questions that investors may have. This phase generally includes a notice (or blast) to investors that the transaction is likely to be announced shortly, a roadshow (electronic or physical), and solicitations for one-

on-one conference calls with potential investors. It is important to re-state the goal of this phase and how it fits into the larger goal of the transaction: to stimulate broad investor demand. The more investors that are interested in the transaction, the more likely it is that the transaction generates investor demand and competition amongst investors, the more likely it is that the bonds price at a tighter (or lower) credit spread, and therefore have a lower interest cost. The roadshow phase is an important element of the marketing. Roadshows for utility securitizations recently have generally been done electronically, but whether it is done as an electronic or physical roadshow depends on a number of facts and circumstances of a given transaction. Some considerations include the general level of familiarity of investors of the asset class or sector, general market practice or expectations, the macro market environment, the new issue calendar, and the size of the transaction, in addition to the costs of a physical roadshow. Recent roadshows have been done electronically in the utility securitization sector mainly due to investors' general familiarity with the asset class and the market practice (and acceptance) of electronic roadshows, but the decision on the type and form of a roadshow for this proposed transaction will be made closer to marketing, based on the factors listed above.

The timing of this process and its particulars for utility securitization are also important factors. Typically, new transactions in the sector are announced to the market on a Monday morning. As one could expect, the new issue calendar can be busy at that time, so in order to get the attention of investors ahead of this, pre-marketing starts the week prior to the announcement (if there is a physical

roadshow, the start date is likely to be earlier given the required lead times for logistics). Pre-marketing is designed to gain the attention of investors when they are not busy reviewing active new issue pricings. Internal sales force presentations are also conducted during this phase.

2. **Announcement.** Following pre-marketing, the next step is for the transaction to be officially announced to the market, which is typically done toward the start of the week (the timing of the announcement is to ensure that a transaction prices during the same week in which it is officially announced; otherwise, issuers may be subject to unforeseen event risks over a weekend). During this phase of marketing, the bonds will be offered for sale to investors through the team of underwriters selected for the transaction (this has been the case in all but one utility securitization in the previous sixty-plus transactions, to my knowledge). This is when the pricing of the bonds with investors begins to get discussed. The underwriters, in conjunction with the issuer, will begin to disseminate where the bonds will be offered to investors, stated as a credit spread relative to the benchmark rates for each class. In response, investors will provide indications of interest, which is generally how much of the class for which they intend to submit an order at a given pricing level. The underwriters will be charged with keeping the master record (known as "the book") in which all indications of interest received by the underwriters from potential investors are recorded. The next phase of the transaction – price guidance – will be based on the aggregated amount of indications of interest from investors.

3. **Price Guidance.** At this stage, the underwriters will send out a notice to investors with price guidance, which is typically stated as a range of credit spreads stated against the given benchmark. Thereafter, investors will be invited to place orders through the underwriters for the amount and specific classes of nuclear asset-recovery bonds they are willing to purchase, at certain spreads and bond yield rates. At a certain point in time when the book has sufficient interest from investors, the underwriters will stop taking orders (generally referred to as going subject). The timing of this step will depend on the specifics of each transaction; however, it will obviously only occur when the book has at least an equal amount of orders on the bonds as the principal amount of bonds (generally referred to as being fully-subscribed). There is no specific threshold beyond that, and it will depend on market conditions, the speed at which orders came in from investors, and the composition of investor types in the book, to name a few. The underwriters will exercise professional judgment in making a recommendation to take the book subject, based on all relevant factors. Conversely, if the tranche is under-subscribed, the underwriters may need to increase the coupon to attract sufficient investor orders to sell the entire tranche.

4. **Price Testing.** Having exercised professional judgment and taken the transaction subject, the underwriters will then work to refine the pricing level. Based on the strength of the book, the underwriters may adjust the pricing level lower (or tighter). This process is generally referred to as testing the pricing levels. It is done to ensure maximum distribution of the bonds at the lowest bond yields reasonably consistent with a market conditions. If a tranche is oversubscribed, the

underwriters may continue to lower the pricing level (thus improving execution for the issuer and customers), provided that this adjustment does not decrease the aggregate investor interest below the size of the tranche. The underwriters will use professional judgment with respect to the recommendation for the amount of tightening and number of testing attempts.

5. **Launch.** Once the pricing levels have been determined for the transaction, it will be launched at that specific spread level. The intention of this stage is to declare to investors at which pricing level, or credit spread, the transaction will be issued. This will be the market clearing pricing level of the credit spread, subject only to movements in the underlying benchmark rates.

6. **Allocations.** At this stage, the market clearing pricing level has been determined by the marketing process, but the final book – how much each investor will purchase – has yet to be determined. Here, the underwriters will work to recommend a specific amount of bonds to be sold to each investor based on the size of each investor's orders. Each allocation depends on a number of factors; *e.g.*, when the investor placed its order, its experience in the sector, its flexibility for the pricing process, the investor type, etc. Ultimately, each investor will purchase its final allocations for the transaction at closing.

7. **Pricing.** Once the market clearing pricing level and the book has been finalized, the transaction can be priced. At this stage, the underwriters will price the transaction by spotting the underlying benchmark rates and adding the credit spread to determine the pricing bond yields and coupons.

8. **Closing.** At the conclusion of the pricing, the sponsor, with its underwriters and legal team, will work toward finalizing the transaction offering and transaction documents and close the transaction, typically approximately five days after pricing.

In summary, it is through this general marketing and pricing discovery process that I have described above that the actual investor market clearing interest rates for bonds are determined. It should be noted again that the above summary is general and each marketing efforts will be specifically crafted for the transaction, based on the facts and circumstances of each deal, as well as the actual investor orders on the actual day of pricing.

Q. Are there any potential securities law liabilities associated with the offering and sale of the bonds?

A. The nuclear asset-recovery bonds are anticipated to be sold in an SEC-registered transaction. Section 11(a) of the Securities Act of 1933 provides that any person acquiring securities covered by a registration statement may recover damages on a joint and several basis from the issuer (for the proposed transaction, both DEF and the SPE), its respective directors and its officers signing the registration statement, as well as from any underwriter if any part of the registration statement is untrue or incomplete in any material respect. Other provisions of the federal securities laws impose liability on DEF and the SPE for oral or written misstatements or omissions in connection with the offering and sale of the nuclear asset-recovery bonds.

As both DEF and the SPE will have potential strict liability for misstatements or omissions made in connection with the offering and sale of the nuclear asset-recovery

bonds, it is appropriate and necessary that DEF should, and must, control the flow of information concerning the sale of the bonds.

Q. Could statements made by a Bond Team member inadvertently create liability for the Company?

A. Yes. The SEC has indicated that statements "on behalf of" an issuer can be attributed to the issuer and create securities law liability for the issuer if those statements are untrue or omit material facts that cause those statements to be misleading. The determination as to whether or not a person is acting "on behalf of" the Company or the SPE (as co-SEC registrants) would be based on, among other things, that person's role in the offering process, the access that person had been given to information regarding the related securities, and whether investors perceived that person to be acting on behalf of the SPE and the Company. While the Company does not anticipate that any Bond Team member would intentionally make a misstatement or omission concerning the bonds, the potential for liability underscores the need for the Company to be able to control all communication with investors.

Q. Is DEF proposing to address this securities law liability in the proposed form of the Financing Order?

A. Yes, DEF is proposing that the Financing Order include a finding to the following effect: "As this Commission recognizes that DEF will have primary securities law liability with respect to the nuclear asset-recovery bonds, (i) all contact by any party to the financing (including, without limitation, the Commission, its staff, and its advisors) with the rating agencies, the SEC, the press, and potential nuclear asset-recovery bond investors and (ii)

the content of all offering documents, shall be under the direct control of DEF and its counsel at DEF's sole discretion."

Q. Are there any other developments in the securities laws that might affect the marketing of the bonds?

A. Yes, on August 27, 2014, the SEC adopted revisions to Regulation AB, commonly referred to as Regulation AB II, which must be complied with for securities issued after November 23, 2015. Regulation AB, originally adopted in 2004, represents the SEC's comprehensive set of regulations related to registration, disclosure, and reporting for publicly-offered, asset-backed securities. Among other requirements under Regulation AB II, SEC-registered, asset-backed securities will be required to be filed on new SEC registration forms.

Q. Do you have any thoughts about how to address compliance with Regulation AB II, assuming an SEC-registered financing is pursued?

A. Yes. Regulation AB II contemplates that new asset-backed securities may be issued under a new forms SF-1 or SF-3. Generally, Form SF-1 is intended for use for a transaction involving a single sale of asset-backed securities; Form SF-3 is intended for use for the sale, from time to time, of asset-backed securities in multiple offerings which are secured by the same type of assets. Assuming that the Company plans to issue all of the Nuclear Asset-Recovery Bonds at one time, which is the present plan of the Company, then Form SF-1 would appear to be appropriate.

Q. Are there any benefits from using Form SF-1 as compared to SF-3?

A. If Form SF-1 is used, the registrants (the Company and the SPE) will avoid certain potentially burdensome and costly requirements, including: (i) the appointment of an

asset representations reviewer, (ii) the inclusion of a dispute resolution mechanism to resolve any disputes related to breaches of representations and warranties regarding the underlying assets, (iii) the creation of an investor communication mechanism that would need to be administered by the transaction parties, and (iv) the requirement that the CEO of the registrants certify as to the accuracy of the disclosure. The requirement to include an asset representations reviewer, especially in the context of utility securitization, would be particularly burdensome since that party would need to be compensated and provisions related to the duties of the asset representations reviewer would need to be created. Since the asset in a utility securitization transaction consists primarily of the rights under a financing order, the concept of a third party (for clarity, one that would be unassociated with the issuer, DEF, or any member of the Bond Team) that would determine if there was a breach of a representation with respect to the financing order appears to be of little value and unnecessary time and expense would be incurred in addressing the considerations of such a mechanism. Further, since the disclosure requirements for a registration statement on Form SF-1 or Form SF-3 are identical, the requirements imposed by Form SF-3 weigh heavily in favor of selecting Form SF-1 as the appropriate form of registration statement for the nuclear asset-recovery bonds.

Q. Is it possible that these new requirements will increase upfront issuance costs, and in particular, legal costs?

A. Yes, that is quite possible. Assuming that the nuclear asset-recovery bonds are sold as SEC-registered securities (as is recommended in my testimony), compliance with these new regulations is likely to increase costs. To date, no utility securitization has been filed under the new Regulation AB forms, nor have other requirements of the regulations been

addressed in the context of a utility securitization. If the nuclear asset-recovery bonds are the first utility securitization to be reviewed by the SEC, it is highly likely that the SEC will subject the issuance to a full review and comment. This review and comment process could take 60 days or more, as novel issues may have to be addressed.

VIII. ISSUANCE ADVICE LETTER PROCESS

Q. Does the Financing Order as proposed by DEF include a process or mechanism whereby the terms of the nuclear asset-recovery bonds can be finalized and approved by the Commission?

A. Yes, there is a process in place to facilitate the Commission's final approval for a transaction where the actual structure, pricing, and final amounts of upfront bond issuance costs and ongoing financing costs will not be known at the time that the Financing Order is issued. DEF has proposed a process by which the terms of the nuclear asset-recovery bonds can be reviewed by the Commission designee and the Commission's advisors as the terms are developed and finalized, such that the final transaction terms and costs can be approved by the designee in a timely manner and in accordance with bond pricing and closing conventions.

Q. What is the purpose of the Issuance Advice Letter?

A. The purpose of the Issuance Advice Letter is to create a process or mechanism that facilitates final approval of the bonds, balancing standard market settlement procedures with the fact that the final terms and conditions of the nuclear asset-recovery bonds will not be determined until after the bonds have priced. Said differently, the Commission's final approval would come after the bonds are priced, after which point the terms and conditions of the bonds cannot change without significant market ramifications. So, in

order to facilitate a smooth approval process, the issuance advice letter process is put in place. Some of the elements that will not be known until pricing relate to the general terms and conditions of the bonds and include the schedule of principal amortization, the interest rates on the bonds, and the final structure. Additionally, there are financing costs (both upfront and ongoing) that will not be known until final pricing of the bonds, which can be directly or indirectly tied to the final size of the nuclear asset-recovery bonds; additionally, some of those costs will not be known until at or very close to pricing. All parties recognize that it is in no one's best interests if the entity that is to provide final approval does not see draft or indicative terms ahead of providing such final approval. As such, the proposed Financing Order provides for an issuance advice letter process that includes drafts, such that the Commission can see what the transaction is likely to resemble – both in terms of basic structure as well as the costs associated with the deal – so there are no surprises for any party after the pricing of the bonds.

At least two weeks prior to the expected start of the marketing process, DEF will file with the Commission a draft issuance advice letter and form of true-up adjustment letter that will state estimates of the bond structure, coupons, upfront bond issuance costs, ongoing financing costs, and other items set forth in the Financing Order. Subsequently, not later than one business day after the pricing of the nuclear asset-recovery bonds, the Company will update the final terms of the nuclear asset-recovery bonds and the estimated amount of upfront and ongoing financing costs in the final issuance advice letter and form of true-up adjustment letter and accompanying schedules submitted to the Commission Designee and the Commission's advisors. The issuance advice letter will report the final structure and terms of the bonds, identify the total costs securitized with the bonds, and

identify the initial nuclear asset-recovery charges to be implemented following the issuance of the bonds.

Q. When will the Commission approve the draft and final issuance advice letters?

A. For the initial draft issuance advice letter and form of true-up adjustment letter, the Company proposes that within one week after receipt of the letter, the Commission Designee and the Commission's advisors will provide to the Company any comments regarding the adequacy of the information provided, in comparison to the required elements of the issuance advice letter. The Company will also complete and file with the Commission Designee the final issuance advice letter and form of true-up adjustment letter within one business day of pricing. On the third business day after pricing, the Commission Designee will present to the Commission the results its review. If the Commission determines that the issuance advice letter and form of true-up adjustment letter and all required certifications have been delivered and the transaction complies with applicable law and this Financing Order, the transaction proceeds without any further action of the Commission, with the anticipation that it will not issue an order to stop the transaction unless the Commission determines that (a) the transaction does not comply with applicable law and this Financing Order and (b) DEF has not delivered the required certifications in a form acceptable to the Commission.

Q. Is it important for the Commission to provide prompt input into the content of the issuance advice letter and supporting documents?

A. It is very important to provide prompt input to the Company on its issuance advice letter filings, so that any potential objections or issues regarding the information provided, including but not limited to the structuring and pricing of the bonds, can be addressed as

soon as practicable. In particular, the rejection by the Commission of any pricing of the bonds after an underwriting agreement is executed could have adverse consequences to the Company and the Commission in future financing activities.

IX. CONCLUSION

Q. Please summarize your testimony.

A. For the reasons stated above, I believe the Financing Order as proposed by DEF should be adopted by the Commission.

Q. Does this conclude your testimony?

A. Yes it does, thank you.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DIRECT TESTIMONY OF BRIAN A. MAHER

DOCKET NO. 150171-EI

September 4, 2015

Q. Please state your name and address.

A. My name is Brian A. Maher. I live at 8787 Bay Colony Drive, Naples, Florida.

Q. What is your position with Saber Partners LLC?

A. I am currently a Senior Advisor to Saber Partners, LLC (Saber Partners or Saber).

Q. Would you briefly provide an overview of your education and professional experience?

A. I graduated from Dartmouth College in 1970 Magna Cum Laude with a degree in Romance Languages. In 1973 I received a Master's degree in International Relations with a concentration in International Business and Finance from The Fletcher School of Law and Diplomacy. That year I joined Exxon Corporation (now Exxon Mobil Corporation) where I worked for over 33 years, principally in the financial area, until my retirement from the company in 2006. Through multiple assignments in the United States and overseas, I progressed to the senior management level, holding positions of Treasurer for all international operations and Assistant Treasurer of the corporation. For over ten years, part of my responsibilities included supervision of all of ExxonMobil's capital markets activities. During that period I managed billions of dollars of financings and presented annual corporate financing plans and periodic financing performance assessments to the ExxonMobil Management Committee, and at various times to the Board Finance Committee. In addition, during my career I served as president of the corporation's worldwide insurance operations and oversaw worldwide pension and benefits funds, including serving on the New York Stock Exchange Corporate Pension Advisory Committee.

Q. Please state your relationship with Saber Partners.

A. Since 2006 I have been a senior advisor to Saber Partners where I have participated in several of Saber's financial advisory transactions.

Q. Are you sponsoring any exhibits in this case?

A. Yes, I am sponsoring the following exhibits:

Exhibit No. ____ (BAM-1), Speech by SEC Staff: Fiduciary Duty: Return to First Principles;

Exhibit No. ____ (BAM-2), SIFMA Definition of Fiduciary Relationship;

Exhibit No. ____ (BAM-3), Form of Underwriting Agreement

Exhibit No. ____ (BAM-4), Saber Partners Survey

Exhibit No. ____ (BAM-5), Excerpts from Registration Statements

Exhibit No. ____ (BAM-6), Credit risk disclosure transmittal from Hunton & Williams and Thelen Reid and Priest, counsel to Oncor, to Saber Partners, LLC

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to give my perspective on the proposed Duke Energy Florida, LLC (DEF) securitization financing. My main focus will be the appropriate relationship between (i) the Florida Public Service Commission (Commission) and its independent experts and advisors, who I believe are best placed to be the main representatives of the ratepayers' economic interests, and (ii) the other key parties in the transaction, essentially DEF, DEF's advisors and the investment banks that will likely underwrite the bond issue.

Q. From your experience, what relationship do you expect between bond issuers and the banks that serve as underwriters in typical corporate bond issuance transactions?

A. As an employee or officer of ExxonMobil, I always expected to develop a cooperative and collegial relationship with the banks that underwrote the bonds to achieve the lowest overall costs possible for the financings. This required a lot of work on both sides.

In traditional corporate bond transactions, the issuer bears the full economic burden of repaying the bonds. Banks that underwrite the bonds bear none of the economic burdens of repaying the bonds. Consequently, issuers of bonds and the banks that underwrite the bonds share some, but not all, of the same key objectives for the transaction.

On the positive side, the banks very much want to be perceived as being able to execute an efficient, competitive transaction to earn repeat business as well as new business from other issuers that monitor the market. But issuers and banks are often on opposite sides of the table from each other when it comes to (i) profits to be earned by the banks, (ii) the amount of effort and time the banks need to spend to achieve the best possible transaction, and (iii) the desire of the banks' investor clients to earn attractive returns. For these reasons, issuers should always play an active role in the transaction to make sure their own interests are maximized as opposed to remaining passive and depending too heavily on their banks for market information, investor outreach, or other aspects of the financing. It is essential to keep in mind at all times that the underwriting banks are sophisticated and operate in furtherance of their own financial interests. Issuers must do the same.

Q. What relationship do you expect between issuers of traditional corporate bonds and banks that serve as financial advisors to those bond issuers?

A. I would expect their interest to be perfectly aligned. ExxonMobil employs an experienced staff of professionals with deep experience in issuing traditional corporate bonds. Consequently, ExxonMobil generally did not hire outside financial advisors in connection with its traditional bond issuance transactions. But when a financial transaction involved unusual features, ExxonMobil would sometimes hire an investment bank to serve as financial

advisor for that transaction. In those transactions, I expected the interests of ExxonMobil's financial advisor to be perfectly aligned with the interests of ExxonMobil.

Q. Do you believe there is a particular concept on which the Commission should focus when assessing the relationship with banks that act as either underwriters or financial advisors?

A. Yes. It is often, but not exclusively, referred to as a "fiduciary relationship." In broad terms a service provider that has a fiduciary responsibility to its client commits to act in the client's best interests to the exclusion of any contrary interests. Where a fiduciary relationship exists, the client should be comfortable that the service provider is looking out for the client's interests. As I will describe, that alone does not ensure the best result for a given financial transaction. Even where there is a fiduciary relationship, sophisticated clients should work actively with their service providers to ensure alignment is complete in all important aspects of the transaction. Where a fiduciary relationship does not exist, it is extremely important for the client to stay actively involved because the service provider could be subject to motivations in some way contrary to the best interests of the client.

There is much debate about when a "fiduciary relationship" arises between parties to commercial contracts. A 2006 speech by Lori A. Richards, Director, Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission (SEC), titled "**Fiduciary Duty: Return to First Principles"** described it this way:

> …Many different types of professions owe a fiduciary duty to someone — for example, lawyers to their clients, trustees to beneficiaries, and corporate officers to shareholders. Fiduciary duty is the *first principle* of the investment adviser — because the duty comes not from the SEC or another regulator, but from common law. Some people think ''fiduciary'' is a vague word that's hard to define, but it's really not difficult to define or to understand. Fiduciary

> comes from the Latin word for ‘‘trust.’’ A fiduciary must act for the benefit of the person to whom he owes fiduciary duties, to the exclusion of any contrary interest.

Her full speech is available on the SEC's website, and is attached to my testimony as Exhibit No. ____ (BAM-1).

The Securities Industry Markets Association (SIFMA), which is the broker-dealer's chief lobbying firm, describes "fiduciary relationship" and "fiduciary duty" on its website this way: "A fiduciary relationship is generally viewed as the highest standard of customer care available under law. Fiduciary duty includes both a duty of care and a duty of loyalty. Collectively, and generally speaking, these duties require a fiduciary to act in the best interest of the customer, and to provide full and fair disclosure of material facts and conflicts of interest." This definition is available on SIFMA's website, and is attached to my testimony as Exhibit No. ____ (BAM-2).

Q. Are you giving an opinion as to whether there is a legal requirement of any party in this transaction to have a fiduciary relationship?

A. No. I am discussing the important issues related to whether a fiduciary relationship exists and what the Commission should consider in deciding how to evaluate information it receives from different parties to the proposed transaction.

Q. Do underwriters have a fiduciary relationship with an issuer of securities?

A. Underwriters claim they have no fiduciary relationship to issuers. Underwriting agreements prepared by counsel for the underwriters often include a specific declaration that the underwriters have no fiduciary relationship with the issuer. Issuers frequently are asked to acknowledge this affirmatively in the underwriting agreement. For example, Morgan Stanley served as the lead underwriter in a 2013 investor-owned utility securitization for Appalachian

Power Company (ApCo) in West Virginia. The form of underwriting agreement filed with the SEC states:

> "14. Absence of Fiduciary Relationship. Each of the Issuer and APCo acknowledges and agrees that the Underwriters are acting solely in the capacity of an arm's length contractual counterparty to the Issuer and APCo with respect to the offering of the Bonds contemplated hereby (including in connection with determining the terms of the offering) and not as a financial advisor or a fiduciary to, or an agent of, the Issuer or APCo. Additionally, none of the Underwriters is advising the Issuer or APCo as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The Issuer and APCo shall consult with their own advisors concerning such matters and shall be responsible for making their own independent investigation and appraisal of the transactions contemplated hereby, and the Underwriters shall have no responsibility or liability to the Issuer or APCo with respect thereto. Any review by the Underwriters of the Issuer or APCo, the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Underwriters and shall not be on behalf of the Issuer or APCo."

That underwriting agreement is available on the SEC's website, and is attached to my testimony as Exhibit No. ____ (BAM-3).

Q. Why is this important?

A. On page 36, lines 1-17 of his direct testimony, witness Collins discusses the offering process whereby the underwriters use their "professional judgment" in establishing price guidance, and change that price guidance "solely in their professional judgment." However, as clearly stated in the above excerpt from an underwriting agreement involving Morgan

Stanley (witness Collins' employer): "Any review by the Underwriters of the Issuer or [the sponsoring utility], the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Underwriters and shall not be on behalf of the Issuer or [the sponsoring utility]." Pricing is arguably the most important component of offering securities in the market. I believe this is a compelling reason why bond issuers need to be very active in the offering process: to protect their own interests.

Q. Is this language found only in the investor-owned utility securitization transaction you cited?

A. No. Saber Partners has prepared a survey of all investor-owned utility securitization filings from 2007 to present. Each form of underwriting agreement had the exact same or similar language. The survey is attached to my testimony as Exhibit No. ____ (BAM-4).

Q. Is this, or similar language contained in DEF's underwriting agreement in this securitization?

A. I do not know because a draft underwriting agreement has not been filed by DEF. I would expect that, given DEF's current plans to include only underwriters of past utility securitizations and based on my Exhibit No. ____ (BAM-4), the Saber Partners' survey of recent transactions that I am sponsoring, that same kind of language will be proposed by those underwriters.

Q. Do financial advisors to issuers have a fiduciary relationship with the issuer?

A. Not necessarily. One has to review the specific contract with the advisor and what the duties of the financial advisor are under state and federal laws. Many times, as a condition of hiring them, financial advisors require the issuer to waive any assertion of a fiduciary relationship. Moreover, financial advisors often require full and complete indemnification from anything arising out of their advice. These indemnifications are often long legal

documents. The basic rule in negotiating financial advisor contracts should be Caveat Emptor or "buyer beware."

Q. Is there any difference if the financial advisor is an advisor to a state or local government or not-for-profit institution instead of an investor-owned utility or one of its subsidiaries?

A. Yes. As a result of the financial crisis of 2008, Congress enacted comprehensive financial reform commonly known as the Dodd-Frank Act. One of the requirements of the Dodd-Frank Act was to impose a federal fiduciary duty on all advisors to state and local governments and on not-for-profit institutions that issue bonds in the municipal bond market.

Q. Does this requirement apply to the corporate bond market?

A. No, it is not a federal mandate in the corporate bond market. However, the fact that the subject of fiduciary responsibility has become a public policy issue highlights its importance for corporate issuers as well.

Q. Who would issue the nuclear asset-recovery bonds proposed by DEF?

A. DEF proposes to form a wholly-owned, special purpose entity (SPE) to issue the nuclear asset-recovery bonds.

Q. Will either DEF or the SPE have the same financial incentives to achieve the lowest overall cost of funds as do more traditional issuers of corporate debt securities?

A. No. The securitization transaction is different from normal corporate debt issues in which the issuer has a direct interest in minimizing the cost of the transaction in order to maximize economics for its shareholders. For traditional utility debt issues, as well, incentives exist to minimize the costs of the transaction, as described in Hyman Schoenblum's testimony. Here DEF proposes that the nuclear asset-recovery bonds will be issued by the SPE. This is simply a mechanism to facilitate the transfer of funds from the ratepayers to DEF, while the ratepayers alone will ultimately bear all transaction costs and all costs of repaying the bonds.

DEF will receive net proceeds of the bonds to recover previously incurred costs. While I do not doubt that DEF would desire that its ratepayers incur low costs, DEF's main motivation is to receive the debt proceeds in a timely, efficient manner so DEF does not share the same incentives to achieve the lowest overall cost of funds. This is really just a matter of common sense and human nature. If I were going to borrow money and someone else agreed to repay it for me, then I would not be as concerned about the interest rate and other terms of the loan as I would be if I were on the hook to repay the loan myself. Therefore, it is left to the Commission to ensure that the ratepayers achieve the lowest overall cost of funds for the nuclear asset-recovery bonds. Under the current DEF proposal, in my opinion, ratepayer interests would not be maximized at the negotiating table. In other jurisdictions, the independent financial advisor to the Commission has the responsibility, along with the Commission, to help make that happen. This is what I propose should happen here.

Q. Can you expand on your opinion that ratepayer interests would not be maximized under DEF's proposal?

A. I believe that DEF's proposal would rely too heavily on DEF, its advisors and the underwriters, none of which has a fiduciary responsibility to the Commission or the ratepayers in the proposed nuclear recovery asset bond transaction. As I said above, I do not doubt that DEF has an interest in achieving low costs for the ratepayer but DEF does not share the same incentives to achieve the lowest cost of funds for this transaction.

Q. In a broad sense, how can the Commission and its independent financial advisor successfully achieve the objective of ensuring that ratepayer interests are effectively maximized with respect to this transaction?

A. The Commission and its independent financial advisor need to be fully involved in working in a cooperative way with DEF and DEF's advisor to achieve that objective. That will require optimal structuring of the bond issue, which includes:

(a) ensuring that disclosure documents and marketing materials accurately reflect the credit and risks of the nuclear asset-recovery bonds;

(b) selecting the bank(s) to be used and defining the role the banks will play and fees the banks will earn;

(c) actively monitoring the market to choose the most advantageous timing of the transaction;

(d) developing independent pricing expectations;

(e) participating in execution of the transaction to ensure the size of the investor population is maximized and thoroughly educated about the extremely high credit quality of the nuclear asset-recovery bonds; and

(f) at the time of pricing of the nuclear asset-recovery bonds, ensuring that the Commission and its financial advisor monitor and provide input to the pricing process so that the lowest overall cost of funds is captured.

As part of the process, banks should commit, in writing, to achieving the lowest overall cost financing for the ratepayers, and the banks should certify after pricing that they have done so. There are many examples in the financial world where written certifications have become the standard. When a person is required to pledge something in writing, rather than just orally, and has to account for results later, that person is more likely to take that pledge seriously.

In his testimony, Paul Sutherland provides a more granular description of the "Best Practices" that I believe should be employed to achieve a lowest overall cost financing. His testimony, along with that of Hyman Schoenblum, documents the savings that have been achieved in previous utility securitization transactions when an active and independent financial advisor has been involved and when that active and independent financial advisor has employed the above approach.

Q. How is it really possible to know in absolute terms that the lowest overall cost transaction has been achieved?

A. Achieving a "lowest overall cost" financing is not an absolute standard but rather a conceptual target to which issuers should always aspire. When issuers ask underwriters for such a commitment, issuers are really asking underwriters to state that, in the underwriters' opinion, all actions the underwriters believe would minimize the overall cost of the financing have been taken. In practice, that opinion should be supported by corroborating data, such as how the actual pricing compared to the expectations developed by the underwriters, as well as expectations developed independently by the issuer, how actual pricing compared to secondary market pricing of other similar issues at the time of pricing, and how successful the iterative price talk process was in lowering the interest rate to the optimal point of balancing investor demand with the supply of bonds being offered.

Q. Should the lowest overall cost standard apply to all costs associated with the transaction?

A. Yes. However, in considering how the lowest overall cost standard should be applied, there is a difference between buying services and agreeing to pay interest. Services should not be determined solely on the basis of a dollar cost, but also the quality of the services, with the goal of obtaining the best overall value. In contrast, when an issuer borrows money there is no reason to agree to pay more interest (in present value terms) than is absolutely necessary. It is only logical that this should be the decision-making standard for pricing a borrowing. Without such a standard, a bond issuer might save a lot of time and effort by just accepting whatever interest rate the underwriters and investors want.

Q. If the nuclear asset-recovery bonds are rated "AAA," does that not ensure that the lowest overall costs will be achieved?

A. Unfortunately not. In my many years overseeing ExxonMobil's capital markets activities, I learned that bond issues could almost always be done at lower rates than the best market indications given by the banks. This was true despite the fact that ExxonMobil was a well-

known and coveted "AAA" - rated debt issuer. Active involvement by ExxonMobil to create competition among the banks and to demand the best execution consistently added value.

It is also true that all "AAA" debt is not viewed alike by investors in the debt capital markets. For example, "AAA" - rated ExxonMobil or Federal Agency credits would command better pricing than most "AAA" rated structured debt securities which were backed solely by a pool of intangible contract rights such as mortgages or credit card receivables.

Q. Are the nuclear asset-recovery bonds proposed to be issued in this case likely to perform strongly in the "AAA" market?

A. Yes. In my view, the proposed nuclear asset-recovery bonds are likely to achieve a very strong "AAA" performance because they will be backed by a state regulatory guarantee to irrevocably provide for the timely payment of principal and interest from essential service (i.e., electricity) revenues. However, even though there is a fairly long history of this type of utility securitization transaction, the features of these proposed nuclear asset-recovery bonds are sufficiently complex that I believe an intensive investor education effort and an aggressive offering process are warranted to ensure that the nuclear asset-recovery bonds achieve the tight pricing they deserve.

Q. On page 4 of Mr. Buckler's testimony, Mr. Buckler states that the proposed nuclear asset-recovery bond issue will be "based on utility securitization bond transaction norms." Is this the best way to achieve the lowest overall cost for the ratepayers?

A. Not necessarily, although I agree with Mr. Buckler's testimony in part. We do not want this transaction to be perceived as unusually complex and/or different from a so-called "normal" utility securitization in key respects so that investors are confused and do not bid aggressively for the bonds. I believe the proposed nuclear asset-recovery bonds are well structured and should not give rise to investor confusion. Nevertheless, one of the issues to investigate and address is whether there are any misunderstandings or misperceptions about

the nuclear asset-recovery bonds due to the way other issuers and underwriters may have presented their credit and the investment analysis. It may be necessary to address these issues with better disclosure that more accurately reflects the credit quality of the bonds compared to other "AAA"-rated debt securities.

Moreover, structuring a normal utility securitization transaction that investors understand is only the starting point to ensure the lowest overall cost. Sophisticated "AAA"-"-rated issuers are rigorous in following the market and developing their own view of the value of the particular credit from multiple sources. For example, ExxonMobil does this by constantly monitoring bond issuances and trading of "AAA"-rated debt securities issued by ExxonMobil's peers. Sophisticated issuers also are active in educating investors on uniquely favorable aspects of their own "AAA"-rated debt securities. They understand how comparable issues are trading both in the new-issue market and in the secondary market. Being well informed with that information, they aggressively manage the relationship with the banks selected to work with them on the transaction in order to maximize competition among the banks, ensure that target investors are properly educated and choose the optimal structure and timing of the bond issue. This is a fluid process that should not be set in stone too far in advance or turned over to a bank to execute and price without close oversight. Otherwise, in my experience, crucial judgment calls in connection with pricing might be left to bankers who do not share all of the issuer's pricing motivations or experience with the issuer's specific credit.

Q. Are there any examples of ways an issuer could assist in capturing the full value of the securities to be offered here?

A. Yes. The SEC registration statements pursuant to which a number of prior utility securitization bonds have been offered have provided detail about the unusual and superior credit quality of the securities. The SEC materials are the primary way of informing investors

of the benefits and risks of the securities in a fair and balanced manner. For example, SEC registration statements for investor-owned utility securitized bonds issued in 2007 and 2009 for the benefit of Monongahela Power Company and for the Potomac Edison Company include the following language:

> Credit Risk: PSC-Guaranteed True-Up Mechanism and State Pledge Will Limit Credit Risk. In the Financing Act, the State of West Virginia pledges to and agrees with the bondholders, any assignee and any financing parties that the state will not take or permit any action that impairs the value of environmental control property or, except as part of the true-up process, reduce, alter or impair environmental control charges that are imposed, collected and remitted for the benefit of the bondholders, any assignee, and any financing parties, until any principal, interest and redemption premium in respect of environmental control bonds, all financing costs and all amounts to be paid to an assignee or financing party under an ancillary agreement are paid or performed in full.

Exhibit No. ____ (BAM-5) attached to my testimony contains exerpts from these registration statements showing this language.

The broad-based nature of the true-up mechanism and the State Pledge serve to effectively eliminate, for all practical purposes and circumstances, any credit risk to the payment of the bonds (i.e., that sufficient funds will be available and paid to discharge the principal and interest of each issue of bonds when due).

The kind of language used in the above example is stronger than that which has been used in some other securitizations and can be helpful to achieve the financial benefits of the superior credit characteristics of the nuclear asset-recovery bonds.

Q. Was this disclosure language concerning the "credit risk" of utility securitization developed through a collaborative and collegial process with the utility?

A. Yes. Saber's records have been shared with me concerning this disclosure language. I have reviewed those records and have found they indicate that this "credit risk" language was developed for an earlier utility securitization in Texas for Oncor/TXU where Saber served as the independent financial advisor to the Commission in a similar capacity that we propose here. As shown on my Exhibit No. ____ (BAM-6), Sabers' records show that this disclosure language was proposed by Hunton & Williams, legal counsel to the investor-owned utility in collaboration and discussion with the independent advisor so as to best inform investors of the unique credit qualities of that utility securitization. Hunton & Williams also represents DEF in this case.

Q. Would the proposed Bond Team play the role you are advocating so that ratepayers are assured the lowest overall cost?

A. That should be the case. However, it all depends on who is on the Bond Team and how the role of the Bond Team is defined and executed. I believe that the Bond Team should consist of DEF, DEF's advisor (provided such advisor is not one of the banks acting as underwriter for the transaction), the Commission, either directly or through a designated staff member(s), and the independent advisor and counsel. I believe it is important that the Bond Team operate independently and entirely in the interest of the ratepayers and not include any of the underwriting banks due to their inherent conflict of interest discussed above. All members of the Bond Team should have a fiduciary relationship with either DEF or the Commission. Decisions of the Bond Team should be a shared responsibility of its members, with the Commission's representatives in a position to make the final decision on a timely basis, often in real time, in the event of any disagreements among team members. The Bond Team should rigorously follow the market and provide strong input to the banks with regard to bond structure, timing of the issue, the education of target investors and the pricing process. After the bonds are sold, the Bond Team should follow the trading of the bonds in the

secondary market and thoroughly evaluate the execution of the transaction to be comfortable that the best results were obtained for ratepayers, and to learn any lessons for future nuclear asset-recovery bond issues.

Q. Is it clear at this point in the process how the nuclear asset-recovery bond issue should be structured?

A. Not at this point. We know that approximately $1.3 billion of nuclear asset-recovery bonds will be sold sometime in 2016. However, many important details will be determined as the sale date approaches and the market continues to develop. For example, the exact timing of the bond issue should be flexible and responsive to market conditions. This can be demonstrated by recent events. On August 24, 2015, the equity markets incurred a rapid and significant downturn in a matter of hours. That kind of turmoil typically would not be a good time to offer new equity or debt securities to the market. There also should be flexibility in deciding whether to offer and sell all the authorized nuclear asset-recovery bonds at the same time, as a single series, or to offer and sell the authorized nuclear asset-recovery bonds at different times, as more than one series. Another example is the possible desire for flexibility in breaking a series of nuclear asset-recovery bonds into different segments, often referred to as tranches, designed to appeal to different investor bases at the time of sale; e.g., 10-15 year and 2-5 year weighted average life tranches.

Q. Do you have an opinion as to whether the nuclear recovery bond issue should be executed on a competitive or negotiated basis?

A. Yes, although I think a final decision should be made closer to the time that the bonds could be offered for sale to investors as was the case with the 2007 FPL transaction. Regarding the role the banks will play, as of now this transaction probably is not ideal for a rigid competitive approach where the issue date is set in advance and the qualifying banks bid on pricing close to that date. This is because, in addition to wanting to remain flexible on

timing of the issue, a longer marketing period is warranted to effectively sell the credit to investors. A negotiated approach appears preferable, where a highly competitive process is used to select one or more highly qualified banks to lead the transaction. In a negotiated sale, there are a variety of techniques that can be used to induce the selected banks to compete on final pricing. In the end, if the marketing of the bonds is effective, I believe there should be a lot of strong orders from a broad cross section of institutional and retail investors, both from the U.S. domestic and international markets, seeking safety and security to purchase nuclear asset-recovery bonds from the selected underwriters. Then it is crucial that the market price talk (the indications made to investors about what the possible interest rate will be before actual pricing) be conducted in a manner so that demand and supply are matched at the lowest interest rate possible. As I have said previously, these are areas where a well-informed, aggressive Bond Team can add significant value.

Q. Does this conclude your testimony?

A. Yes.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DIRECT TESTIMONY OF REBECCA KLEIN

DOCKET NO. 150171-EI

September 4, 2015

Q. Please state your name and business address.

A. Rebecca Klein, Klein Energy LLC, 611 S. Congress Avenue, Suite 125, Austin, Texas 78704.

Q. By whom are you employed and what is your position?

A. I am Principal of Klein Energy LLC, which specializes in regulatory representation and strategic entry and/or growth in domestic and international power markets.

Q. Briefly provide an overview of your education and professional experience.

A. I am a graduate of Stanford University with a Bachelor of Arts degree in Human Biology. I received my Master's degree in National Security Studies at Georgetown University, and earned a Juris Doctorate at St. Mary's University in San Antonio, Texas. I am admitted to practice law in Texas. I am also a retired Lieutenant Colonel in the U.S. Air Force Reserve. I was awarded the National Defense and Southwest Asia Service Ribbons for service in Saudi Arabia during Desert Shield/Desert Storm.

I served as a Commissioner and also as Chairman of the Public Utility Commission of Texas (PUCT) from 2001-2004, during which time I helped oversee the competitive restructuring of the State's $36 billion power market. Prior to my appointment to the PUCT in 2001, I served as a Policy Director for then-Governor George W. Bush, engaging in a variety of statewide issues and projects in the areas of telecommunications; energy, housing, technology, and banking. I was also Chairman and Vice Chairman of the Board of the Lower Colorado River Authority, a public power entity that owns generation and transmission assets and manages hydro and other water assets in Texas. From 1988 to 1993 I worked in Washington, DC. I

served as a Legislative Liaison Action Officer for the Secretary of the Air Force; as Associate Director, Office of Presidential Personnel in the White House of President George H.W. Bush; and as an Associate Director of the U.S. Trade and Development Agency, during which time I oversaw agency accounts in various multi-lateral banks. Presently, I sit as a member of the Board of Directors for a publicly traded utility, Avista Corporation, as well as a private corporation responsible for commercialization of renewable energy technologies.

Q. Please describe the nature of your relationship with Saber Partners.

A. I am a member of the Advisory Board of Saber Partners, LLC (Saber Partners or Saber). Members of the Advisory Board make themselves available to Saber's senior management from time to time to give their perspective on issues in which Saber is involved. Members of the Advisory Board have no management or operational responsibility for Saber Partners. I often share my knowledge with Saber management on regulation and energy issues from a public policy point of view and from both the state and federal level perspective based on my extensive experience in those areas. From time-to-time I also share with Saber my experience as Chair of the PUCT.

Q. Are you sponsoring any exhibits in this case?

A. Yes, I am sponsoring Exhibit No. ___, (RK-1), Issuance Advice Letter.

Q. What is the purpose of your testimony?

A. My testimony will explain the importance and the benefits of adhering to a **lowest overall cost** standard throughout all stages of structuring, marketing and pricing the proposed nuclear asset-recovery bonds. My testimony is based on my direct experience with three utility securitization transactions while Chairman of the PUCT. I will also discuss why the PUCT chose to retain a financial advisory team that was proactive and that would act as a co-lead with the utility throughout the transaction lifecycle. I will explain the benefits of having a

Commission-directed financial advisor act as an equal decision maker in collaboration with the utility involved in the securitization transactions.

Q. During your term with the PUCT, were any utility securitization transactions completed?

A. Yes. Three transactions were completed with active commission oversight during my tenure at the PUCT. Two transactions were done pursuant to financing orders issued by my predecessors and one pursuant to a financing order that I approved as a member of the PUCT. These transactions involved the issuance of securitized utility bonds referred to as "transition bonds." Approximately $747 million in transition bonds were issued for Reliant Energy in 2001, $797 million in transition bonds were issued for Central Power and Light in 2002, and $1.3 billion in transition bonds were issued for Texas Utilities in 2003 and 2004.

Q. Were those Texas "transition bonds" similar to the nuclear asset-recovery bonds proposed by Duke Energy Florida, Inc. in this proceeding?

A. Yes. One overarching similarity between the nuclear asset-recovery bonds proposed by Duke Energy Florida, Inc. (DEF) and the Texas "transition bonds" is that ratepayers bear the full economic burden of repaying the bonds. This particular similarity is important because, as my testimony will explain herein, ratepayer interests in securitization bond transactions would not be represented but for the standards and actions incorporated into the transaction process by the regulator.

Q. Prior to those three "transition bond" transactions, did the PUCT specifically approve any other types of financings for utilities under its jurisdiction?

A. No. Financings and financing costs were under each utility's general cost of capital proceeding and were subject to a retrospective prudence review process by the PUCT in general rate cases. The utilities and their shareholders were directly accountable for all their debt costs and their capital structure under the general review process. If either item (debt

level or cost of debt) was found to be imprudent, an adjustment would be made to the cost of capital.

Q Did the PUCT treat "transition bond" transactions differently than it treated traditional ratemaking methods?

A. Yes.

Q. Why were the Texas "transition bonds" treated differently?

A. The normal incentives to minimize waste and inefficiencies that are inherent in traditional rate cases are absent with ratepayer-backed "transition bonds." Therefore, the PUCT's authority to correct any problems it discovered was limited. The PUCT was required by state law to issue an irrevocable financing order in which the utility is insulated from any and all costs associated with the financing. The PUCT was also required to approve an irrevocable process called a "true-up mechanism" that committed the PUCT periodically to raise or lower the charge that supports the bonds to whatever level is necessary to pay the bonds' principal and interest on time. In addition, the State of Texas and the PUCT were required to pledge to the bondholders never to take or permit any action to be taken that would interfere with bondholders' right to payment. This regulatory guarantee is an extraordinary use of the powers of state regulation. The irrevocable financing order; the true-up mechanism; and the pledge to bondholders are all similar to legal obligations that the Florida statute requires for nuclear asset-recovery bonds. These key commitments were adhered to in Texas and are essential in securing a AAA bond rating, which in turn mitigates debt costs and helps realize a lowest overall cost structure for ratepayers, as explained in further detail below.

Q. Why was an irrevocable financing order required with a true-up mechanism?

A. The Texas legislature required it because the Texas utilities that sponsored the Texas securitization legislation advised that a true-up mechanism was necessary to allow the "transition bonds" to be rated by the credit rating agencies at the highest category, "AAA",

and make the "transition bonds" more attractive to investors. The PUCT's independent financial advisor advised the PUCT that this was a correct analysis - that a true-up mechanism was necessary to allow the "transition bonds" to be rated by the credit rating agencies at the highest category, "AAA".

Q Why did the Texas legislature and the PUCT believe that a "AAA" rating was necessary?

A. The Texas utilities advised the Texas legislature and the PUCT that a "AAA" bond rating would result in the lowest possible interest rate on the "transition bonds." The PUCT's financial advisor supported this analysis. A "AAA" rating demonstrates to potential investors that the "transition bonds" are not very risky. The lower the risk, the lower the interest rate commanded by underwriters and investors. Consequently, the credit rating is an important factor that allowed "transition bonds" to be sold to investors at the lowest possible interest rate at a given point in time and in turn at the lowest cost to Texas ratepayers.

Q. Did the PUCT impose other conditions or provisions in its financing orders to improve the marketability of Texas "transition bonds" and lower the overall cost to ratepayers?

A. Yes. The PUCT directed its financial advisor in each transaction in which I was involved to be actively engaged throughout the transaction process in order to adhere to a lowest cost standard. Examples of the proactive initiatives the PUCT financial advisor undertook include: 1) insisting that any servicing fees in excess of actual incremental costs be rebated or credited to ratepayers; 2) identifying any potential conflicts that may arise between the utility, the underwriter and the utility's advisor; 3) participating fully and in advance in all aspects of structuring, marketing and pricing the "transition bonds"; and 4) challenging any decision it believes might not result in lowest costs to ratepayers. Hyman Schoenblum and Paul Sutherland have outlined more fully in their testimony these conditions and provisions

that were adopted and implemented in connection with the Texas "transition bonds" to lower the costs to ratepayers in Texas.

Q. In what ways do you believe your experience with Texas "transition bonds" should inform the Florida Commission as it prepares a financing order for the proposed nuclear asset-recovery bonds?

A. Absent a pro-active approach by the Florida Commission and its independent financial advisor, Florida ratepayers will not be represented meaningfully in the process of structuring, marketing and pricing the bonds. Without adherence to a lowest overall cost standard by the Florida Commission and its independent financial advisor, it will be difficult to hold utilities and underwriters of nuclear asset recovery bonds accountable for any failure to achieve the best possible outcome for ratepayers.

Q. In your opinion, should these other conditions or provisions be imposed to improve the marketability of Florida nuclear asset-recovery bonds and lower the cost to Florida ratepayers?

A. Yes. In my experience with three securitized utility bond transactions in Texas, the PUCT was able to realize an average ratepayer savings for the three transactions of $23 million, as compared to the pricing of other utility securitizations during the same time frame. See Exhibit No. ____ (HS-1), attached to witness Schoenblum's testimony. I believe that these substantial ratepayer savings resulted directly from the PUCT's steadfast adherence to a lowest cost standard that was fully aligned with ratepayer interests. Further, these ratepayer savings are directly attributable to the fact that the PUCT and its financial advisor were actively involved in developing and implementing the terms, conditions and provisions of each facet of the transaction process. The testimony of Paul Sutherland explains in more detail how these transactions priced relative to other investor-owned utility securitizations.

Q. Did the Texas statute which authorized utility securitizations direct the PUCT to apply a standard to ensure that benefits from the legislation and the financing order to Texas ratepayers would be maximized?

A. Yes. The Texas statute required the PUCT to ensure that the structuring and pricing of the securitized "transition bonds" resulted in the lowest securitized charges consistent with market conditions and the terms of the financing order.

Q. How does a lowest securitized charge standard compare to a "lowest overall cost" standard?

A. "Lowest overall cost" is more comprehensive because it also takes into account the refunding or crediting of other rates and charges to prevent unintended windfall profits to the utility. For example, as discussed later in my testimony, in applying a "lowest overall cost" standard, a regulatory commission might direct the utility to provide a refund or a credit against other rates and charges to prevent unintended windfall profits to the sponsoring utility without breaching the statutory pledge not to reduce the securitized charge. Otherwise, these standards are the same.

It might be necessary to pay higher up-front bond issuance costs to achieve lower interest costs on securitized bonds. If so, then the benefit of lower interest rates must be weighed against the increased principal amount needed to pay the extra issuance costs. That trade-off would be reflected in the amount of securitized charges needed to pay total debt service on the securitized bonds. This is an important aspect of the "lowest overall cost" standard. This standard, as applied to every element of the transaction process, enhances the probability of significantly mitigating costs to the ratepayers.

Q. Why is a "lowest cost" or "lowest overall cost" standard important?

A. A lowest overall cost standard sets the appropriate benchmark on behalf of the ratepayer. I fully acknowledge that there are no absolutes in this world. Nevertheless, the

lowest overall cost standard is a prudent and reasonable objective that should be treated as the "guiding star" in every phase of the transaction cycle not only for the Florida Commission, but also for the utility.

Q In the absence of a specific statutory mandate, what would you have done as a PUCT Commissioner?

A. The same thing. Even if this statutory mandate had not been included in the Texas legislation, I would have pursued the lowest cost to ratepayers for the very simple reason that this was the PUCT's fundamental responsibility to ratepayers under our general statutes. I would have felt particularly strongly about this in a situation where ratepayer interests are not clearly aligned with interests of the sponsoring utility and where ratepayer interests are otherwise unrepresented.

Q. Are ratepayer interests clearly aligned with DEF's interests in this case?

A. No. In utility securitization transactions generally, the utility has an interest in closing the transaction as expeditiously as possible, even if that requires the utility to settle for less than the lowest overall cost to ratepayers. In each of the securitization bond transactions in which I was involved, the utility was to receive hundreds of millions of dollars but without any direct or indirect obligation to pay it back. The utility's interests were already protected by the nature of the transaction. While the utility had a general interest in keeping overall customer rates low, the utility had another, more immediate and compelling interest in getting the proceeds as quickly as possible. I have no reason to believe that DEF's interest in this transaction would be any different.

Q. Does the Florida statute authorizing securitization of nuclear asset-recovery costs have an expressly stated requirement that DEF strive to achieve the "lowest overall cost"?

A. At least for some purposes, yes. I have reviewed the Florida statute authorizing nuclear asset recovery costs. After nuclear asset-recovery bonds have been issued, the Florida statute directs the Commission to determine if costs incurred by the sponsoring utility in fact resulted in the "**lowest overall costs"** that were reasonably consistent with market conditions at the time of the issuance and the terms of the financing order. The Florida statute authorizes the commission to disallow all incremental issuance costs in excess of the "lowest overall costs" by requiring the sponsoring utility to make a credit to the capacity cost recovery clause. The Florida statute also specifically authorizes the Commission to engage outside consultants and counsel to assist the Commission in making this "lowest overall cost" determination.

In my view, and based on my oversight of three securitized utility bond issues as Chair of the PUCT, it will be difficult or perhaps even impossible for the Commission to make this after-the-fact determination of "lowest overall costs" with confidence unless 1) the Commission directs DEF to strive to achieve a "lowest cost standard" throughout the bond issuance process in this case, and 2) the Commission's staff and financial advisor are involved as joint decision makers in all aspects of the structuring, marketing and pricing of the bonds.

Q. How did the PUCT protect the public interest and assure itself that it met its legislative duty?

A. For the three Texas "transition bond" transactions I oversaw as Chair of the PUCT, we established a process of active and involved oversight throughout the transaction lifecycle. The PUCT was a joint decision maker with the sponsoring utility in all matters relating to the structuring, marketing, and pricing of the "transition bonds." We expected the utility to work on a collaborative basis with PUCT staff and the PUCT's financial advisor to ensure a successful transaction at the lowest overall cost to ratepayers.

PUCT staff and the PUCT's independent financial advisor also participated actively and were joint decision makers with the utility in the process of structuring, marketing and pricing the

"transition bonds." In addition, the PUCT required a detailed issuance advice letter process and certification of what was done during the transaction, the choices made and the efforts expended, explaining how these efforts led to the lowest cost to ratepayers.

Q. Do you believe the utility securitization transactions which you oversaw as Chairman of the PUCT were successful in maximizing benefits to Texas ratepayers?

A. Yes.

Q. What is the basis for your belief?

A. The Texas financing orders required the utility to file a detailed set of analyses and representations called an "issuance advice letter" about the pricing of the bonds, documenting the benefits of the transaction to ratepayers. The PUCT also established a detailed procedure of active due diligence on the part of its staff and expert advisors. These staff and expert advisors were assigned to present to the PUCT their review of the issuance advice letter once filed, as well as their assessment of whether the structuring, marketing, and pricing of the "transition bonds" in fact achieved the lowest costs to ratepayers consistent with market conditions and the terms of the applicable financing order. For each transaction, the PUCT noticed a hearing within two business days after pricing for the purpose of issuing a stop order if the PUCT was not convinced that the lowest cost objective in fact had been achieved. Throughout the period leading up to pricing, and continuing for two business days after pricing, the PUCT reviewed this pricing information with staff and decided whether to issue a stop order. The due diligence review was both in real time and after-the-fact, so that the PUCT's hands would not be tied as a practical matter. The PUCT also reviewed specific lowest cost certifications as to the structure, marketing, and pricing of the bonds from the utility, as well as from the underwriters and from independent experts without any potential conflicts of interest. The factors considered by the PUCT included (a) pricing relative to benchmark securities; (b) pricing relative to other similar securities at the time of pricing, and

(c) the amount of orders received and from whom. Attached to my testimony as Exhibit ___ (RK-1) is an issuance advice letter used in one of the Texas "transition bond" transactions I oversaw as Chair of the PUCT.

Q. Did the PUCT use outside advisors in connection with those utility securitization transactions?

A. Yes. The PUCT realized it did not have the expertise on staff for this assignment, so we brought in an expert independent financial advisor without any potential for conflicts of interest. As part of this engagement, though its financial advisor, the PUCT also had the benefit of outside legal counsel of Orrick, Herrington & Sutcliffe LLP. The PUCT acted by and through these advisors to ensure that the ratepayers' interests were protected.

Q. Did the Texas securitization legislation specifically authorize the PUCT to retain a financial advisor to assist the PUCT in ensuring that the interests of ratepayers would be protected?

A. No. But following a public hearing on this issue, the PUCT determined that it had general authority sufficient to authorize retaining a financial advisor to assist the PUCT in discharging its responsibility to protect the interests of ratepayers.

Q. Did the PUCT and the PUCT's financial advisor play an active role in structuring, marketing, and pricing the securitized utility bonds?

A. Yes. The PUCT's financial advisor was diligent in identifying areas in which ratepayer costs could be reasonably mitigated within the context of prevailing market conditions. The PUCT's financial advisor was also meticulous in providing the PUCT with cost comparisons between the then-current transaction and the same costs in past securitization transactions so that the PUCT could have a framework in which to make decisions on terms, conditions, marketing and timing. This type of active participation on the

part of the financial advisor helped the PUCT meet its goal of ensuring the lowest cost standard was met.

Q. Did the PUCT require a lowest cost certification from its financial advisor?

A. Yes. In the open meeting on February 25, 2000, the PUCT discussed the need for an independent financial advisor to provide a fully accountable opinion as to the lowest cost of funds as one item the Commission would examine in deciding whether to approve the transaction immediately after pricing. The PUCT understood that the work required to give that certification was substantial and could add to the cost of the transaction. However, the PUCT believed the benefits would exceed the costs and that the certification, like an insurance policy, would provide protection that our legislative mandate would be met.

Q. Do you think it is appropriate for the Florida Commission to require certifications that the lowest overall cost of funds has, in fact, been achieved?

A. Yes. The PUCT lowest cost certifications were required from the sponsoring utility, the lead underwriter and the PUCT's independent financial advisor in each of the three "transition bond" issues I oversaw as Chair of the PUCT. I believe the requirement that these lowest cost certifications be delivered was an important element in achieving superior results in each of those three transactions for the benefit of Texas ratepayers.

Q. In your experience, did the division of responsibilities proposed by Saber Partners and the resulting incentive structure lead to a collaborative and collegial process?

A. Yes. It should be the same in this case as well, but only if the sponsoring utility and the underwriters are dedicated to, and do not resist or undermine, a collaborative and collegial process. But my answer would be "No" if the sponsoring utility and/or the underwriters are determined to resist or undermine a collaborative and collegial process.

Q. Can you provide an example of how that collaborative and collegial process worked to the benefit of ratepayers in the Texas "transition bond" transactions?

A. Yes. As explained in greater detail in the testimony of Paul Sutherland and the testimony of Brian Maher, securitized utility bonds represent a joint and several liability of all ratepayers. In addition, such bonds are structured with a true-up mechanism contained in the financing order. This mechanism allows the nuclear asset-recovery charge to be adjusted periodically pursuant to a pre-approved formula at least annually to insure the principal and interest is paid according to schedule. Thus, if there were an unexpected decline in energy sales for some period, the charge per KWH could be increased subsequently to make up for the lower collections. The SEC registration statements pursuant to which a number of prior securitized utility bonds have been offered have provided detail about the unusual and superior credit quality of the securities. For example, the SEC registration statement for securitized "transition bonds" issued in 2004 for the benefit of Texas Utilities included the following language:

> The broad-based nature of the true-up mechanism and the State Pledge will serve to effectively eliminate, for all practical purposes and circumstances, any credit risk to the payment of the transition bonds (i.e., that sufficient funds will be available and paid to discharge the principal and interest obligations when due).

Saber's records indicate that this "credit risk" language was proposed by Hunton & Williams, legal counsel to Texas Utilities. See Exhibit No. ___ (BAM-6), attached to Brian Maher's testimony.

Q. What would maximize the chance of the process being collaborative and collegial in the proposed nuclear asset-recovery bond transaction?

A. The Commission should clarify that ultimate decision making authority for all aspects of structuring, marketing and pricing the proposed nuclear asset-recovery bonds rests with the Commission, acting through its staff and its financial advisor.

Q. Did the process for structuring, marketing and pricing the three issuances of securitized "transition bonds" which you oversaw as Chair of the PUCT, and which applied many of the "best practices" described by Paul Sutherland, involve additional legal and financial advisory fees?

A. Yes. The PUCT retained an active financial advisor in each of those three transactions, knowing full well that this likely would involve increased legal and financial advisory fees.

Q. With the benefit of hindsight, do you believe the decision to retain an active financial advisor in each of those three Texas "transition bond" transactions benefited Texas ratepayers, notwithstanding that those ratepayers were required to absorb most or all of the costs of those increased legal and financial advisory fees?

A. Yes. Post-issuance reports submitted to the PUCT by its financial advisor, the underwriters and independent market observers all concluded that all three of those Texas "transition bond" transactions provided substantial overall NET savings to Texas ratepayers. Detailed information about those overall net savings to Texas ratepayers is included in the testimony of Mr. Sutherland.

Q. Do you have a conclusion as to whether the incremental costs of the active financial advisor approach in Texas were justified by savings in overall costs?

A. Yes. I believe the incremental costs of the active financial advisor approach in the three Texas "transition bond" transactions I helped oversee as Chair of the PUCT were easily justified by savings in other issuance costs and savings in interest costs.

Q. Given your experiences in Texas, would you recommend to the Florida Commission the "lowest overall cost" standard for guiding the Commission's staff, the Commission's financial advisor and DEF to minimize the burden on ratepayers resulting from this transaction?

A. Yes.

Q. Given your experiences in Texas, would you recommend that the Florida Commission require its financial advisor to play an active role in connection with the structuring, marketing, and pricing of nuclear asset-recovery bonds?

A. Yes.

Q. In your opinion, what other items should the Florida Commission consider in deciding whether to approve this irrevocable financing order?

A. The Florida Commission should also consider how the structuring, marketing and pricing process will be pursued to maintain the public's trust in the integrity of the process itself. For example, potential conflicts between the utility and the underwriters should be addressed by the Commission on behalf of ratepayers. The terms and conditions of how nuclear asset-recovery bonds are sold through underwriters is also important. Millions of dollars are at stake in the structuring, marketing and pricing of the bonds, so there should be transparency and accountability throughout the process. Utilizing both an active independent financial advisor and a lowest overall cost standard will assist substantially in realizing a bond securitization process that successfully achieves the mandates of the Florida statutes and the best possible result for ratepayers.

Q. Does that conclude your testimony?

A. Yes.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 150171-EI

ERRATA SHEET

WITNESS: **HYMAN SCHOENBLUM – STAFF**

PAGE NO.	**LINE NO.**	**CHANGE**
18	22	Change "the testimony of witness Rebecca Klein" to "pages 43-44 of witness Paul Southerland's testimony, his Exhibit No. ____ (PS-19a), and the testimony of witness Rebecca Klein"
Exhibit		Delete first Exhibit attached to the testimony, the Wisconsin Study of Saber (HS-2), as this is a duplicate exhibit.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DIRECT TESTIMONY OF HYMAN SCHOENBLUM

DOCKET NO. 150171-EI

September 4, 2015

Q. Please state your name and address.

A. Hyman Schoenblum, 44 Wall Street, New York, NY

Q. What is your position with Saber Partners LLC?

A. I am a Senior Advisor to Saber Partners, LLC (Saber Partners or Saber).

Q. Please describe your educational background and professional experience.

A. I have an undergraduate BBA degree in Accounting from Baruch College in New York City and a Master's Degree in Finance from the same school.

I worked for 35 years at the Consolidated Edison Company of New York, Inc. (Con Ed), in various capacities. Con Ed is the largest electric utility in the State of New York.

At various times, I served as Con Ed's Vice President and Treasurer; Vice President and Controller; Vice President of Strategic Planning; and Chief Financial Officer of Con Ed's wholly-owned subsidiary, Orange and Rockland Utilities. I also led a task force to prepare Con Ed for the financial impacts of competition in New York State. While in those positions, I also served as a key spokesperson in Con Ed's investor relations effort.

For many years, I was a senior financial officer at Con Ed, with expertise in financial matters as well as ratemaking policies and practices of regulated utilities. I participated in the review of a variety of financial transactions; the analyses of ratemaking policies and proposals; the evaluation of the timing and method of financing decisions; the litigation of rate cases; and the assessment of capital investment determinations.

Decision making at Con Ed in these matters rested with the parent company's Chief Financial Officer (CFO) and Chief Executive Officer (CEO).

After retiring from Con Ed, I joined the Maimonides Medical Center of Brooklyn, New York, as their Vice President of Internal Audit, where I am still currently employed.

Q. Please describe your responsibilities in greater detail.

A. As Vice President of Strategic Planning at Con Ed, I was the senior financial person on the Strategic Planning Team responsible for identifying and investigating the potential value to shareholders and ratepayers of mergers and acquisitions for Con Ed. I worked with numerous investment bankers attempting to identify merger candidates for the company.

I played a key financial role in Con Ed's completed merger with Orange and Rockland Utilities. I was also instrumental in Con Ed's announced, but never completed, merger with Northeast Utilities, as well as other potential Con Ed mergers which were identified and evaluated, but not pursued. I also testified before the New York State (NYS) Public Service Commission and before the New Hampshire Public Service Commission regarding the ratepayer impacts in the uncompleted merger with Northeast Utilities.

Furthermore, I participated in the process of identifying and evaluating other investment opportunities for Con Ed to expand into unregulated and competitive businesses, such as power generation and telecommunications. In this capacity, I worked closely with a variety of participants in the financial community including investment bankers, financial advisors, and institutional investors.

As Con Ed's Vice President and Controller, I played a central role in the coordination of Con Ed's electric, gas and steam rate cases; testifying numerous times before the NYS Public Service Commission on a variety of financial and operating matters. I testified regarding cost of capital issues as well as on a wide range of operating revenues and expenses.

As Vice President and Controller, I was also responsible for the preparation of the periodic financial results of Con Ed and its subsidiaries, the filing of Securities & Exchange Commission annual and quarterly reports, and reporting to the Board of Directors on a

monthly basis on financial results. I was also in charge of the company's operating and capital budgets.

As Con Ed's Vice President and Treasurer, I participated with the Finance team in coordinating Con Ed's capital financings and cash management needs. I also worked with Con Ed's selected bankers and the rating agencies to structure and secure appropriate and cost efficient financings.

In this role, I also assisted in the review of a potential utility securitization for Con Ed. Ultimately, Con Ed did not avail itself of this tool because New York State did not have enabling legislation that was necessary for a AAA rating.

As Treasurer, I was also one of the named fiduciaries of Con Ed's Pension Plan, in part, responsible for administration of the plan and hiring of fund managers.

Lastly, I helped supervise Con Ed's vast real estate portfolio and began the process of divesting significant unneeded parcels of property in midtown Manhattan. This later resulted in significant gains to Con Ed, its ratepayers and its shareholders.

Q. What role did you play regarding investor relations with institutional and other investors for Con Ed?

A. While serving in the above mentioned positions, I played an important role in Con Ed's relationship with the Wall Street community. Along with others, I met very frequently with institutional investors, fund managers, stock and bond research analysts and the media to present Con Ed's financial position to the investment community. When adverse financial events took place, or when rate cases were being litigated and decided, I was often on the phone with investors for many hours describing the financial implications.

In addition, during my employment at Con Ed, I served on many committees and task forces of the Edison Electric Institute (EEI), the electric industry's primary trade organization. I served as chairman of EEI's Accounting Principles Committee in the early 1980s.

I also attended many industry-wide financial conferences and discussed financial practices and policies with my peers throughout the industry.

Q. In what other financial related activities were you involved?

A. From 2000 to 2006, I served as a member of the Board of Trustees of Maimonides Medical Center in Brooklyn and was on their Audit, Finance, Pensions, Investments and Medical Matters Committees.

In 2006, I retired from Con Ed and became the Vice President of Internal Audit at Maimonides Medical Center. In that role, I am responsible for financial and operating audits and for investigating fraud. I report quarterly to the Audit Committee of the Board and attend Board and committee meetings.

Q. Are you sponsoring any exhibits in this case?

A. Yes. I am sponsoring Exhibit No. ____ (HS-1), Citigroup Study 2003, and Exhibit No. ____ (HS-2), Wisconsin Study of Saber.

Q. What is the purpose of your testimony?

A. The primary purpose of my testimony is to highlight a number of areas in the direct testimony of Duke Energy Florida, Inc. (DEF) witnesses relating to the issuance and repayment of nuclear asset-recovery bonds that I believe need to be modified before approved by the Florida Public Service Commission. The primary testimony I will be referring to is that of DEF witnesses Bryan Buckler and Patrick Collins.

I will also distinguish between the regulatory oversight applied to utility securitization and the oversight applicable to traditional utility debt offerings. I will explain why there is a need for a "lowest overall cost" decision making standard as well as active Commission involvement through its experts and independent advisors in the structuring, marketing and pricing of the proposed bond offering.

Q. What issues do you wish to discuss with respect to the direct testimony of DEF witness Buckler?

A. I have a number of issues I would like to discuss, including the number of years DEF proposes for recovery of nuclear asset-recovery costs, DEF's proposed negotiated sales process and request for proposal (RFP) process, DEF's Bond Team proposal, and Mr. Buckler's testimony regarding servicer set-up fees.

Q. What is your opinion regarding the number of years DEF proposes for recovery of nuclear asset-recovery costs?

A. The number of years that DEF proposes for the recovery of nuclear asset recovery costs is on pages 5-7 of Mr. Buckler's testimony. DEF proposes that the SPE issue the bonds "with a scheduled final payment date of approximately 18 years and a legal maturity date not to exceed 20 years." Witness Buckler refers to the testimony of Morgan Stanley witness Patrick Collins that the two-year differential provides additional credit protection by allowing shortfalls to be recovered over this additional period. In fact, Exhibit No. ___ PC-1 to Mr. Collins' testimony assumes the nuclear asset-recovery bonds will have a scheduled final payment date of only 17 years and 10 months from the issue date.

Given the very broad and robust, irrevocable "true-up" of the nuclear-asset recovery charge proposed by DEF witness Covington, it appears to me that a 2-year "cushion" is excessive and could be replaced with a one-year or shorter cushion based on discussions with the rating agencies.

Furthermore, amortizing the nuclear asset costs over "approximately 18 years," as proposed by DEF, results in a higher revenue requirement to consumers from the very first year, as opposed to a 19-20 year amortization. Paragraph 5h on page 13 of the Revised and Restated Stipulation and Settlement Agreement (RRSSA), approved by the Commission on November 12, 2013, states: "The Parties intend that retail base rate recovery for the CR3

Regulatory Asset shall continue for 240 months from its inception." An 18-year amortization might also be more costly to customers on a net present value basis than a longer amortization. Further discussion of this issue is contained in Paul Sutherland's testimony.

Q. What is your opinion regarding DEF's proposed negotiated sales and request for proposal (RFP) processes?

A. On page 15, line 14 of his direct testimony, witness Buckler proposes a "negotiated sales process" and beginning on page 18, line 21, he proposes to select underwriters for this securitization transaction through a RFP process which will be submitted to only those underwriters with execution experience in the asset-backed securities (ABS) market.

It is true that the ABS market is robust, and there may be benefits from the distribution and marketing expertise of various underwriters in that market.

In my view, however, securitization of nuclear plant unrecovered costs through nuclear asset-recovery bonds, as described in the enabling legislation, is fundamentally different from traditional receivable ABS securitizations. The proposed nuclear asset-recovery bonds will be more akin to traditional corporate and utility bonds and would benefit from being marketed, at least in significant part, to investors in traditional corporate bonds. See the testimony of Paul Sutherland for further discussion of this matter.

In this respect, I agree with Morgan Stanley's witness Collins, (page 11, line 5 of his direct testimony), that "it is important to speak the same language as investors in a given market." But unlike Mr. Collins and Mr. Buckler, I believe the nuclear asset-recovery bonds are also likely to be an attractive investment to persons and institutions who invest in traditional corporate and utility debt securities. The high credit quality and long duration of these securitized bonds will be unusual but desired in the corporate and utility bond market. Very few U.S. corporations and absolutely no investor-owned utilities have such a high rating. Therefore, institutional investors with long-term liabilities (such as insurance companies) will

be very interested in these bonds because of their long duration. Moreover, given that they will be dollar denominated, I would also expect strong demand from European and Asian investors, particularly in light of the recent disruptions in those markets. There appears to be a "flight to safety," and that will always benefit strong credits including the nuclear asset-recovery bonds if they are properly presented to such investors.

As a result of all these factors, it is my professional judgment that the team of underwriters chosen to negotiate for this issuance should include firms with deep experience in placing traditional corporate and utility bonds, both domestically and internationally.

Q. What is your opinion regarding DEF's Bond Team proposal?

A. Beginning on page 18, line 10, of his direct testimony, witness Buckler discusses a proposed RFP for underwriters as well as a "Bond Team." Although he postulates that the Bond Team, which includes the Commission and its designated advisors, will be "actively involved in the structuring, marketing and pricing of the bonds" and will "work cooperatively" when it comes to choosing underwriters for the transaction, Mr. Buckler concludes that the "selection of the underwriters will be conducted by the company [solely] in consultation with the other members of the [proposed] Bond Team."

I believe the Commission, its staff and its independent advisors need to be an integral and equal partner in the process of preparing any RFP for underwriters and in selecting underwriters, as well as in all other aspects of the process. All of these parties need to play an active and visible role in presenting the proposed nuclear asset-recovery bonds to the capital markets. In my view, the process needs to be viewed by investors and all participants as a joint, collaborative process, so that investors and ratepayers are assured that they are well protected.

Any utility financing should have meaningful regulatory oversight, and the ratemaking process generally provides that oversight. In the case of this utility securitization financing,

however, the constraints imposed by the enabling statute appear to prohibit "after-the-fact" reviews for prudence in evaluating most aspects of the marketing and pricing of nuclear asset-recovery bonds. Therein, the State pledged not to take any action that puts the recovery of the nuclear asset-recovery bonds at risk.

Furthermore, if the Commission determines that the structuring, marketing and pricing of the nuclear asset-recovery bonds failed to achieve the "lowest overall costs" for ratepayers, Section 366.95(2)(c)5 limits the Commission's authority to make rate adjustments for the benefit of ratepayers to the aggregate amount of bond issuance costs. A failure to effectively structure, market and price the proposed bonds might cause ratepayers to pay nuclear asset-recovery charges significantly greater than the aggregate amount of bond issuance costs.

In light of these after-the-fact constraints, Commission oversight at the outset needs to be expanded to include Commission involvement critical to the maintenance of the credit value. There needs to be an understanding by investors that the regulator fully supports all aspects of the offering and that there is likely little, if any, "political" risk to the bond. For example, if the record clearly shows the Commission fully supported and approved all aspects of the offering, it becomes less likely that future elected officials or appointees will challenge the bond structure.

In light of the responsibilities of the Commission relating to utility securitization, the Commission needs to be more involved in the structuring, marketing and pricing process so as to be thoroughly informed, able to assimilate the impact of structuring changes and to appreciate the decisive elements included in determining the pricing guidance. In this financing, the Commission, to be effective in meeting its mandate, needs greater information and involvement, not less information and involvement.

See Paul Sutherland's discussion of Best Practices. See also the testimony of Rebecca Klein on the issue of Commission involvement and her experiences in Texas.

It is my opinion that the financing order should include provisions which ensure that the Commission, and the Commission's financial advisor, be directly and visibly involved throughout the structuring, marketing and pricing process.

Q. Does utility securitization fundamentally differ from standard utility ratemaking, and if so, how?

A. Yes it does. Standard utility ratemaking generally provides appropriate incentives for utility debt issuers to achieve both the lowest overall cost to customers and favorable returns for shareholders. The Commission has the authority to review all actions by utilities, including its bond issuances, and to disallow imprudent expenditures when setting appropriate rates at any time.

Further, issuers of standard utility securities are incentivized to reduce interest rates on their debt offerings and other on-going financing costs below the target level embedded in rates through the standard ratemaking process. By doing so, the utility can either increase its rate of return or offset other unavoidable cost increases not yet included in rates. In the context of the issuance of traditional utility debt securities, these provisions are powerful tools in the Commission's hands to achieve a lowest overall cost result and discharge the Commission's responsibilities to ratepayers.

This very strong incentive is not present with regard to nuclear-asset recovery bonds. The Commission's hands are severely constrained. Unlimited post-issuance reviews are prohibited because such reviews would threaten the viability of the AAA rating.

Q. Is this a reason for the Commission to be involved in all steps of the securitization process before the bonds are issued?

A. Yes. The only prudent and reasonable alternative, with ample precedent in other utility securitizations, is to direct Commission involvement in all the steps of the process. That will provide the Commission with the essential information to approve this securitization issuance

as unequivocally protecting ratepayers' interests, and help achieve the lowest overall cost, while raising the necessary funds for DEF.

As part of the Bond Team, the Commission should be actively engaged in receiving market pricing information, and in creating an investor marketing strategy and outreach to assure the Commission's thorough understanding and effective decision making in a timely fashion.

Q. What is your opinion with respect to witness Buckler's description of "servicer set-up fees"?

A. Beginning on page 20, line 14, of his direct testimony, DEF witness Buckler describes "servicer set-up fees." These are defined as "information technology systems modifications to bill, monitor, collect and remit securitization charges." The estimate provided by DEF is in the range of $1.9 million to $2.9 million. In my experience, it is difficult to envision that the incremental technology costs could possibly be that high. The technology changes required are not that different from modifications that are made following any rate proceeding when new procedures, processes, reconciliations and true-ups are required by the regulators. The billing and collection systems are already in place and would not appear to require major modifications simply to segregate the securitization funds.

Also see Paul Sutherland's discussion of this issue and his Exhibit ___ PS-12 which delineates the servicer set up costs of previous securitization transactions.

Q. What are your issues concerning the testimony of Patrick Collins?

A. My primary issue with witness Collins' testimony relates to similar comments I made vis-à-vis witness Buckler. Beginning on page 27, line 11 of his direct testimony, Mr. Collins refers to various sections of the proposed Financing Order. He specifies that the Commission needs to affirm the conformity of this financing with the applicable provisions of the statute. He then goes on to testify on page 28 that an Ordering Paragraph needs to state that the

Commission recognizes the need to give DEF broad flexibility to establish the final terms and conditions of the nuclear asset-recovery bonds.

Q. Should the Commission give DEF broad flexibility to establish the final terms and conditions of the bonds?

A. No. Were these normal utility bonds subject to standard review and approval in the ratemaking process, the Commission could easily grant that broad flexibility because the Commission would have the authority for an unlimited after-the-fact review. In this case, however, the Commission does not have that opportunity, as described earlier. As such, the Ordering Paragraphs need to recognize that the final terms and conditions will be determined in a joint, collaborative process with the Commission and/or its independent advisors participating actively, visibly and in real-time.

Q. Should Bond Team participants have a fiduciary relationship with either DEF or the Commission, and if so, why?

A. Yes. It is important that DEF and the Commission receive conflict-free advice from experts when making their decisions. In this regard, such experts should have a fiduciary relationship with either DEF or the Commission. Witness Brian Maher discusses this issue at length in his testimony. Thus, the underwriters of this transaction should not be conflicted by, for example, providing consulting advice to DEF at the same time as they are bidding for the nuclear asset recovery bonds.

Q. Do you know if DEF plans to use underwriters who will also provide consulting advice to DEF at the same time as they are bidding for the nuclear asset-recovery bonds in this case, and if so, why would this pose a conflict?

A. I do not know definitively. But witness Collins, who is testifying on behalf of DEF, is an Executive Director at Morgan Stanley. And witness Collins has proposed, on page 13, lines 17-19 of his direct testimony, that it is his recommendation to sell these securitized bonds in a

negotiated sale through a group of pre-selected underwriters. Morgan Stanley is one of the largest underwriters in the country and has been utilized by DEF as both an Underwriter and a Book-Running Manager in 2014 bond issuances. As such, there is a strong possibility that Morgan Stanley could be one of the pre-selected underwriters envisioned by witness Collins. In my view, this represents a conflict of interest and should be avoided if possible.

In a typical corporate bond issuance, the issuer often states in the Prospectus, under the heading "Underwriters (Conflict of Interest)", that some of the underwriters of the issuance also provide financial advisory services for which they receive payment. DEF has made similar disclosures in its prospectuses. Rather than simply disclosing a conflict of interest, I suggest we avoid it altogether.

Q. Regarding securitized utility bonds issued in other states, have commissions been actively involved in the structuring, marketing, and pricing of these transactions?

A. Yes. Commissions in Texas, New Jersey, West Virginia, and Ohio, as well as the Florida Commission, have been actively involved in the structuring, marketing and pricing of securitized utility bonds.

The Texas Commission has had one of the most active post-financing order participation regimes, particularly in the first six utility securitization bond offerings that it approved. Witness Rebecca Klein, former Chair of the Public Utility Commission of Texas (PUCT), testifies at length about her positive experiences regarding the involvement of the PUCT and its financial advisor in the securitization process.

Q. Can you describe the results that were achieved by the active involvement of commissions in the structuring, marketing and pricing of securitized utility bonds?

A. Yes. Two securitization transactions illustrate the results that can be achieved by an active and involved commission in these activities.

In September 2005, Public Service Electric and Gas Company of New Jersey sponsored the issuance of $102 million of securitized utility bonds. Saber served as financial advisor to the New Jersey Board of Public Utilities (BPU), and Credit Suisse (CS) was the lead underwriter. Normally this transaction might have been difficult to sell because of its small size relative to other competing investments. However, the extensive marketing of those bonds conducted by CS, Barclays and M.R. Beal, with Saber's active participation, led to unprecedented low pricing spreads, despite the disadvantage of relatively small tranche sizes.

In December 2005, CenterPoint Energy of Texas initially offered $1.2 billion of securitized bonds to the market. Saber was the independent financial advisor to the PUCT and was, by order of the Commission, as reflected in the financing order, granted joint decision-making responsibility with the sponsoring utility. CS was one of the book-running underwriters. In that case, the large size of the transaction, coupled with the timing of the issuance at the end of the year (which traditionally is not a good time to sell securities), posed special challenges. Nevertheless, the securitized bonds received worldwide investor demand at record-low credit spreads under market conditions at the time of the offering. The transaction was increased to $1.85 billion, with over one-third of the bonds being sold to foreign investors. This was the first time a significant portion of an issue of securitized utility bonds ever had been marketed to foreign investors.

Q. You referred earlier to the Commission's mandate for lowest overall cost ratemaking. Is "lowest overall cost" the appropriate standard for this securitization?

A. Yes. The proceeds of a bond issuance are cash dollars. Issuers want to raise the maximum amount of dollars at the lowest possible overall cost. Underwriters have a vested interest in urging the use of a standard of "reasonable cost" because "reasonable" covers a range of outcomes. For any long-term financing, that range might represent millions or tens of millions of dollars in extra costs. One might choose to use a reasonable cost standard to reimburse a

doctor, where there are differences in both the type and quality of care. However, there is no reason to pay any more for a bond issue than is necessary. With a lowest overall cost standard, the emphasis is on eliminating waste and inefficiency which otherwise might occur under a "reasonable cost" or a "lower overall cost" standard.

Q. Are underwriters and investors cooperative in achieving the lowest overall cost?

A. It varies. Some are more cooperative than others. Fundamentally, underwriters have an inherent conflict of interest in determining the price of the bonds for issuers. Underwriters are the initial purchasers of the bonds, generally purchasing the bonds from the issuer at an agreed discount and then reselling the bonds to investors at face value. The higher the interest rate, the easier it is to resell the bonds at face value. Therefore, it is in the underwriters' economic interest to get a higher interest rate to make it easier to induce their customers, the investors, to buy the bonds. Investors also want as high an interest rate as possible.

Q. Do you have an opinion as to whether the pricing process should be negotiated or competitive?

A. Yes, I do. Parties who represent the interests of the real obligors in this case, the ratepayers, should be involved in a pricing process that pits them against the interests of the underwriters and the investors. It is therefore the responsibility of the ratepayers' representatives to create a competitive process among underwriters and investors so as to achieve the lowest possible cost.

Q. Does attempting to achieve a lowest overall cost sometimes create more costs for ratepayers in certain respects?

A. Pursuing a lowest overall cost standard might require transaction participants to work harder, but not necessarily at a higher economic cost. Among the on-going transaction costs, the greatest economic cost to ratepayers is the interest rate on the bonds which ratepayers will be paying for perhaps up to 20 years. This dwarfs any of the other costs, including the up-

front issuance expense (estimated by DEF at about $14 million). The standard utilized by the Commission in this type of transaction with its very significant costs, needs to be a much stronger standard than "reasonable cost." Because the incentives between the utility and ratepayer are not clearly aligned, and full after-the-fact prudence reviews are generally not feasible, the Commission's standard should be "lowest overall cost."

Without involvement in real time, there will be no way for the Commission to have confidence that the transaction was priced at the lowest interest rate possible under then-current market conditions. Every dollar of costs in this utility securitization transaction is a ratepayer dollar. There is no material risk to DEF shareholders given the robust true-up mechanism combined with the state pledge of non-interference.

This is one reason why care needs to be taken, in cooperation with DEF, in selecting experienced and responsive transaction participants. It is essential to put together a team which shares similar objectives and a commitment to excellence, which can provide economies of scale, and which is responsive to competitive pressures and economic incentives. This will build investor confidence in the bond offering and customer confidence in the decision made by the Commission to approve the bond offering in its financing order.

Q. How will active involvement of the Commission and the Commission's financial advisor in the structuring, marketing, and pricing of nuclear asset-recovery bonds after issuance of the financing order ensure a lowest overall cost transaction under market conditions at the time of offering?

A. Because the financing order will be irrevocable, the interests of ratepayers need to be fully represented with proper economic incentives at every step of the process. DEF and its agents have specific interests in the outcome of this transaction: to raise the full authorized amount for DEF in the shortest time possible and with the least possible effort. Those interests might diverge in some material respects from the interests of ratepayers who will bear the full

economic burden of the transaction for up to 20 years. Nevertheless, a cooperative and collaborative effort can achieve common goals.

In this case, many decisions affecting ratepayer costs and risks cannot be known until after a financing order has been issued. DEF has proposed a process that would provide important information to the Commission only by DEF's issuance advice letter, delivered after the marketing and pricing process is complete. This is inadequate for the Commission to make an informed decision. Without having been at the "negotiating table" in the first instance, it is impossible to have adequate information to make an informed decision to either stop or let the transaction proceed with full confidence that all appropriate efforts have been undertaken.

Underwriters who will provide much of the market information concerning the upcoming sale of the nuclear asset-recovery bonds will have no fiduciary obligation to DEF, the Commission or ratepayers. This is evident in the standard underwriting agreement used in these and other transactions that explicitly states that there is no fiduciary relationship and often states that any review by the underwriters of the issuer or utility will be performed solely for the benefit of the underwriters and shall not be on behalf of the Issuer or utility. (See also the testimony of Brian Maher on the issue of fiduciary obligation.)

Only by having the Commission and its financial advisor involved at every step after issuance of the financing order, and by working together with DEF during all critical stages, can we ensure that the lowest overall cost to ratepayers is achieved.

Q. Can you expand on why it is necessary for the Commission to ensure the continuing active involvement of its financial advisor after issuance of the financing order?

A. Yes. The Commission and its staff have many years of experience in reviewing and approving the issuance of traditional utility debt and equity securities. Generally, regulatory Commissions do not have experience in reviewing and approving securitized bonds where the utility may have little or no incentive to minimize the rate of interest or the costs of issuance,

or to offer reasonable representations, warrantees and covenants for the benefit of ratepayers. However, in this case, the Florida Public Service Commission does have experience in utility securitization with the 2007 Florida Power & Light Company (FPL) storm recovery bond transaction. The Commission has decided to supplement its experience, as it did with the FPL transaction, with that of an experienced and independent financial advisor. The Commission's advisor was selected through a competitive RFP process from a nation-wide solicitation of experienced independent advisors on investor-owned utility securitizations.

DEF, however, has no similar experience in issuing securitized utility bonds. This heightens the need for a continuing and collaborative process with the Commission and its financial advisor after the financing order is issued. Moreover, if DEF's financial advisors have no fiduciary relationship with DEF, it is more difficult to evaluate the advice and information given to DEF about a subject with which DEF is not familiar and used in the process with the Commission.

With the help of experts intimately familiar with the legal and financial specifics and nuances of securitized utility bonds, the Commission can ensure that ratepayers' interests are protected and that DEF receives the proceeds of a successful offering. An actively involved, independent financial advisor to the Commission, who has an implicit fiduciary relationship with the Commission, will add tremendously to the Commission's ability to reach this goal.

For example, corporations and financial advisory firms interface regularly with public capital markets, whereas utility commissions do not. The Commission's financial advisor for nuclear asset-recovery bonds, Saber Partners, is intimately familiar with the structuring, marketing, and pricing of securitized utility bonds, as well as with the participants in the corporate, ABS and international securities markets. Therefore, Saber Partners will be able to provide critical information and perspective to the Commission to discharge its duties and to assist DEF.

Q. Is there any evidence that active commission oversight of the process in pursuing the lowest overall cost has saved ratepayers dollars in other transactions?

A. Yes. As noted above, Saber Partners served as an independent financial advisor to the PUCT on multiple Texas Transition Bond transactions, and those transactions have consistently out-performed other similar transactions. A study presented to Saber by Citigroup in 2003 estimated that the first three Texas transactions saved ratepayers $23 million in revenue requirement compared to similar transactions. That study is included as Exhibit No. ___ (HS-1) to my testimony. An economist for the Wisconsin Public Service Commission did an independent study and confirmed this as well. That study is included as Exhibit No. ___ (HS-2) to my testimony.

Q. Have commissions in other states issued financing orders for securitized utility bonds with a "lowest overall cost" mandate, even if a "lowest overall cost" standard was not specified in the enabling legislation?

A. Yes. For example, the enabling legislation for securitized utility bonds in Ohio does not specify a "lowest overall cost" standard. Nevertheless, the Ohio Commission utilized a bond structuring and pricing review test that was intended to ensure that the structuring and pricing of the bonds resulted in the lowest charges consistent with market conditions and the terms of its Financing Order. Moreover, the Ohio Commission concluded that the proposed securitization financing in that case appeared to have been designed and structured to ensure that the securitized bonds received the highest bond rating possible, consistent with the objective of obtaining the lowest overall cost of financing.

See also the testimony of witness Rebecca Klein regarding the "lowest cost" certification in Texas.

Q. Does that conclude your testimony?

A. Yes.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 150171-EI

ERRATA SHEET

WITNESS: **PAUL SUTHERLAND – STAFF**

PAGE NO.	LINE NO.	CHANGE
3	23	Change "RRBs not ABS for Financial Reporting" to "Securitized Utility Property Not A Financial Asset;"
3	24	Change "Exhibit No. ____ (PS-1c), FASB ASC;" to "Exhibit No. ____ (PS-1b), Accountants Handbook;"
3	25	Change "Exhibit No. ____ (PS-1b), Accountants Handbook;" to "Exhibit No. ____ (PS-1c), FASB ASC;"
4	9	Delete line.
4	10	Delete line.
4	13	Change "Credit Spreads for Auto Loan ABS vs. Credit Card ABS;" to "Saber Partners Report – Analysis of Ohio Power Pricing;"
4	23	Change "2010 to Present; and" to "Spreads – Citigroup vs. J.P. Morgan;"
4	24	Change "Exhibit No. ____ (PS-20), Utility Securitization Transactions since 1997." To "Exhibit No. ____ (PS-19a), AEP Sidley MS Email; and"
4	25	Add ""Exhibit No. ____ (PS-20), Utility Securitization transactions since 1997."
8	11	Change "that securitized" to "that the property collateralizing the securitized"
8	11-12	Change "as" to "as 'financial assets,' and those bonds therefore should not be treated"

PAGE NO.	**LINE NO.**	**CHANGE**
8	12-13	Change "See Exhibit No. ____ (PS-1a), attached to my testimony.)" to "See Exhibit Nos. ____ (PS-1a), ____ (PS-1b), and ____ (PS-1c), attached to my testimony."
12	8	Change "formula, either" to "formula, usually either"
14	13	Delete "____ (PS-2)."
15	6	Delete "Please."
15	17	Delete "have been"
25	15	Change "period)" to "period, excluding the 2012 CenterPoint transaction)"
32	10	Change "(PS-12)." to "(PS-15)."
35	14	Delete "See my"
44	7	Change "(PS-19)," to "(PS-19a),"
Exh (PS-1)		Replace Exhibit with color version of same Exhibit
Exh. (PS-1a)	Title	Change to "Securitized Utility Property Not a Financial Asset"
Exh. (PS-1b)		Replace Exhibit with color version of same Exhibit
Exh. (PS-3)		Replace Exhibit with color version of same Exhibit
Exh. (PS-4)		Replace Exhibit with color version of same Exhibit
Exh. (PS-5)		Replace Exhibit with color version of same Exhibit
Exh. (PS-6)		Replace Exhibit with color version of same Exhibit
Exh. (PS-6a)		Replace Exhibit with color version of same Exhibit
Exh. (PS-7)		Replace Exhibit with color version of same Exhibit
Exh. (PS-7a)		Delete (Exhibit was inadvertently included)
Exh. (PS-8)		Delete (This is a duplicate of Shoenblum's Exhibit No. ___(HS-1))

PAGE NO.	**LINE NO.**	**CHANGE**
Exh. (PS-9)		Replace Exhibit with color version of same Exhibit
Exh. (PS-10)		Replace Exhibit with color version of same Exhibit
Exh. (PS-11)	Title	Change to "Saber Partners Report – Analysis of Ohio Power Pricing" and
Exh (PS-11)		Replace Exhibit with color version of same Exhibit.
Exh. (PS-12)		Replace Exhibit with color version of same Exhibit
Exh. (PS-13)		Replace Exhibit with color version of same Exhibit
Exh. (PS-14)		Replace Exhibit with color version of same Exhibit
Exh. (PS-17)		Replace Exhibit with color version of same Exhibit
Exh. (PS-17a)		Replace Exhibit with color version of same Exhibit
Exh. (PS-18)		Replace Exhibit with color version of same Exhibit
Exh. (PS-19)	Title	Change to "10-Year AAA Stranded Assets Spreads – Citigroup vs. J.P. Morgan" and
Exh. (PS-19)		Replace Exhibit with color version of same Exhibit
Exh. (PS-19a)		Add new Exhibit ____ (PS-19a)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DIRECT TESTIMONY OF PAUL SUTHERLAND

DOCKET NO. 150171-EI

September 4, 2015

Q. Please state your name and business address.

A. Paul R. Sutherland, Saber Partners, LLC (Saber or Saber Partners), 44 Wall Street, New York, New York 10005.

Q. By whom are you employed and what is your position?

A. I am a member of Saber Partners, LLC, and serve as a Senior Advisor.

Q. Please describe your duties and responsibilities in that position.

A. My responsibilities with Saber include work in the area of data management, financial modeling, financial analysis, issuance cost auditing, deal structuring, pricing analysis with respect to relative value and review of issuance advice letters, all on behalf of public utility commission clients. I have performed these functions while advising the following regulatory bodies regarding utility securitizations: Public Utility Commission of Texas, West Virginia Public Service Commission, New Jersey Board of Public Utilities, Florida Public Service Commission (Commission), and the Wisconsin Public Service Commission.

Q. Please describe your educational background and professional experience.

A. I have a bachelor's degree in electrical engineering from Cornell University. I also have a master's degree in business administration from the University of Chicago.

I began working with Florida Power & Light Company (FPL) in 1976 doing economic analysis of new energy technologies in the Research and Development (R&D) Department. After several years, I moved to the Finance Department as a Financial Analyst. Over the next 20 years I held various positions, including Coordinator of Financial Systems, Manager of Corporate Finance, Manager of Financial Analysis and Forecasting, and Assistant Treasurer of

both the utility and FPL Group Capital. Before leaving FPL in 1998, I was Director of Finance, Accounting & Systems for the FPL Energy Marketing and Trading Division. During my time with FPL I have testified as an expert witness on cost of capital and financial integrity. I have also taught classes on economic decision making and on quality improvement. It was during this time (1989) that FPL became the first non-Japanese company to win the Deming Prize for Total Quality Management.

In 2000, after a year as adjunct professor of mathematics at Palm Beach Atlantic College, I joined Saber Partners, LLC as a Senior Managing Director. I have been associated with Saber Partners since that time in various roles, including my current position as Senior Advisor. I have been involved in 12 investor-owned utility securitization transactions since 2000.

Q. Can you provide some of your background and experience with utility financings while you were at FPL?

A. Yes. While at FPL, as Manager of Corporate Finance and Assistant Treasurer, I helped FPL complete over $2 billion of debt and equity financings in the public capital markets. FPL executed both competitive and negotiated securities offering transactions. FPL was also among the first to issue long-term variable rate tax-exempt debt that could be (and was) later converted to a fixed rate. Part of my job was to prepare and, along with the Treasurer and Chief Financial Officer (CFO), deliver rating agency presentations to support the credit ratings from the three major rating agencies.

Q. Are you sponsoring any exhibits in this case?

A. Yes, I am sponsoring:

Exhibit No. _____ (PS-1), Glossary;

Exhibit No. _____ (PS-1a), RRBs not ABS for Financial Reporting;

Exhibit No. _____ (PS-1c), FASB ASC

Exhibit No. ____ (PS-1b), Accountants Handbook

Exhibit No. _____ (PS-2), Organization Chart;

Exhibit No. _____ (PS-3), New Issue Pricing Spreads, 4-6 Year Average Life;

Exhibit No. _____ (PS-4), New Issue Pricing Spreads, 9-10 Year Average Life;

Exhibit No. _____ (PS-5), Excerpt from Independent Advisor Report;

Exhibit No. _____ (PS-5a), Merrill Lynch E-Mail;

Exhibit No. _____ (PS-6), AAA Utility Securitization Spreads to AAA Credit Cards;

Exhibit No. _____ (PS-6a), Wells Fargo Research Report;

Exhibit No. _____ (PS-7), Centerpoint 1/11/2012 Securitization;

Exhibit No. _____ (PS-7a), 2003 Citigroup Study;

Exhibit No. _____ (PS-8), Citigroup Clarification;

Exhibit No. _____ (PS-9), CEHE Securitization;

Exhibit No. _____ (PS-10), AAA Rated Comparable Pricing;

Exhibit No. _____ (PS-11), Credit Spreads for Auto Loan ABS vs. Credit Card ABS;

Exhibit No. _____ (PS-12), Servicer Set-Up Fees;

Exhibit No. _____ (PS-13), Underwriting Spreads, 2001-2014;

Exhibit No. _____ (PS-14), Investment Dealers Digest Article;

Exhibit No. _____ (PS-15), Orders Crediting Costs Above Incremental to Ratepayers;

Exhibit No. _____ (PS-15a), Article Re: LA Public Facilities Authority;

Exhibit No. _____ (PS-16), Ordering Paragraphs;

Exhibit No. _____ (PS-17), Investor Participation Profile;

Exhibit No. _____ (PS-18), Principal Amount of Utility Securitization Financing Issued by Year;

Exhibit No. _____ (PS-19), 10-Year AAA Stranded Assets 2010 to Present; and

Exhibit No. _____ (PS-20), Utility Securitization Transactions since 1997.

Q. What is the purpose of your testimony?

A. First, I will provide an overview of utility securitization financing to explain what it is, how it differs from other types of debt offerings and why it is advantageous to the ratepayers to use it in applications such as with the nuclear-asset recovery bonds. Then I will provide some historical context by describing how utility securitization bonds were used previously in Florida when, in 2006, FPL worked with the Commission to use this type of financing to recover storm-related costs. The main purpose of my testimony is to analyze the utility securitization market and describe certain securitization "Best Practices" that have developed over the past 15 years and from the 12 investor-owned utility securitization transactions that I have participated in. I will provide an overview of the most significant costs of utility securitization transactions and describe some specific areas where using Best Practices can result in substantial ratepayer savings. In addition, I will discuss the procedure for pricing these transactions when selling them to underwriters and investors to show the differences that can occur due to the manner in which the transactions are structured and executed, again with reference to Best Practices.

Q. What is securitization?

A. I have included a glossary of terms as Exhibit No. ____ (PS-1) to help in understanding some technical financial terms in the language of the financial markets. In general, securitization is a process by which a pool of financial assets, such as loan, credit card or other receivables, is used as collateral for a bond offering. The financial asset generates a flow of cash that is used to pay principal and interest on the bonds. To give buyers of the bonds comfort that only they have a claim on the assets and will be repaid, the pool of assets is created and transferred to a special legal entity known as a trust, or in the case of utility securitization, to an entity owned by the utility but which is protected from any credit problems of the utility. This is known as a "bankruptcy remote" entity and is often called a

special purpose entity (SPE). This means it has only one purpose i.e., to own the assets and pay the principal and interest on the bonds. When establishing this "special purpose entity" the entire right, title and interest in the assets are transferred at a "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 financial (such as a loan receivable or the right to some other revenue stream).

Q. Does a securitization have a specific maturity or time when bonds are paid?

A. Securitization bonds usually have multiple maturities such as 3, 5, 10 or 15 years. These maturities are also known as "tranches" or a series, part of a larger issue. Rather than pay bonds all at once at the maturity, the bonds pay off over time like a home mortgage. They pay principal and interest over a number of years. The schedule of principal payments is known as the amortization schedule. Each tranche will have its own amortization schedule. When one averages those payments over the time it takes to receive all payments for a specific tranche or series, one gets the weighted average life of the tranche. It is known by the acronym WAL.

Q. How do investors judge the ability of the SPE to repay the bonds in order to decide what the risks are and the rate of interest they should receive?

A. The securities sold by the SPE are generally evaluated by nationally recognized independent credit rating agencies such as Moody's and Standard & Poor's who evaluate the financial and legal characteristics of the SPE and the bonds and give an opinion as to the likelihood of receiving principal and interest on the bonds on time. They evaluate or rate this likelihood on a scale from highly likely to be repaid on time to unlikely to be paid on time. As a short cut for investors to judge the credit of one bond to another, the rating agencies assign

letters to their opinions. This scale is known as a "ratings scale" and usually is denoted by letters such as AAA – the best and strongest credit - to CCC – for very weak credit. This likelihood of repayment is also known as "default risk," or the likelihood that an issuer will not pay on time and defaults on its obligation.

Q. What is the common name for these types of securities in a securitization?

A. When the assets are intangible property rights or financial assets, they are commonly referred to as asset-backed securities (ABS). Common types of asset-backed securities include those backed by corporate loans, credit card receivables or auto loan receivables.

Q. What rating do most ABS securities receive?

A. That always depends on the quality and amount of the assets, the legal structure, and a host of other factors. Generally, the higher the rating, the lower the interest rate on the bonds. So issuers borrowing against the assets try to structure the transaction to receive a high rating, such as AAA, to make the most efficient use of the assets as collateral for the bonds. However, there are also lower rated ABS securities, and even within a single SPE there might be two or more classes of securities with different rights to the collateral in the pool, and thus different ratings. The market for asset-backed securities is very complex, and there are a wide variety of credit issues and concerns with asset-backed securities and while many ratings may be AAA, they are treated differently by investors even with the same high rating.

Q. Are utility securitization bonds just another type of ABS?

A. No. While they do have some things in common, there are several important differences that make utility securitization debt more secure than even the best AAA-rated ABS bonds. The common feature of a utility securitization with ABS securities is that they use an SPE to issue bonds based on a cash flow from the assets in the SPE. Some terminology describing the SPE is also the same. However, on critical features relating to the credit-

worthiness of the bonds, utility securitizations are decidedly not like what is commonly referred to as "asset-backed securities."

For example, in each state where utility securitization bonds have been issued, these bonds were done so under specific enabling legislation passed by the state legislature. The legislation created a new type of intangible property which consists of the right to charge, bill and collect amounts from virtually all electric customers in a given service territory. Thus, securitized utility bonds are backed by an enforceable **regulatory** right, not by an enforceable **contract** right. As I discuss later in my testimony, important differences in investors' rights and remedies arise by reason of this difference in the nature of the rights that back securitized utility bonds. For this reason, the Office of Chief Accountant of the United States Securities and Exchange Commission (SEC) has directed that securitized utility bonds not be treated as "asset-backed securities" for financial reporting purposes. See Exhibit No. ____ (PS-1a), attached to my testimony.).

Q. What are the key provisions of such legislation?

A. Utility securitization legislation allows the utility regulatory commission in the respective state to issue irrevocable financing orders that (i) segregate a specific component of the retail rate throughout the service territory, (ii) cause the right to receive this component to be treated as an interest in property that can be bought, sold or pledged, (iii) authorize the utility to sell such property to an SPE, (iv) authorize the SPE to issue debt secured by such property, and (v) require the utility which sold the property to use the proceeds of the sale for a specific purpose.

The fact that the order is irrevocable is unique to securitized utility bonds. It means the regulatory commission is giving up its traditional ongoing oversight and ability to revoke, revise or issue new orders. It binds future commissions irrevocably.

The state also pledges not to do certain things that might be detrimental to the bondholder. For example, Section 366.95(11)(b) states:

> "The state pledges to and agrees with 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 non-bypassable 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 this section, 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."

Q. What other characteristics of utility securitization debt tend to make it more creditworthy and less risky than ABS debt?

A. First of all, and most importantly, because the obligation to pay the securitized charge arises from state regulation, and not by contract, the obligation of the ratepayers is joint and several. This means that all the retail ratepayers are jointly responsible. If one ratepayer fails to pay his bill, the shortfall will be allocated among the remaining ratepayers. The regulatory commission guarantees that rates will be adjusted to make up for the shortfall so that there will be enough money to pay principal and interest on time. If any one ratepayer does not pay for any reason, then others ratepayers must pay. This is to be distinguished from a credit card or

mortgage ABS where if one customer does not pay his or her credit card bill or mortgage for whatever reason, the remaining customers in the pool of credit card receivables or mortgages do not become responsible for the shortfall. As a consequence, this means that investors in conventional ABS debt might not receive all their principal and interest on time. This is a material difference.

Second, the securitized charge is non-bypassable, meaning that as long as the ratepayer takes delivery of electricity by means of wires owned by the utility or its successor, there is no way the ratepayer can avoid the charge. In addition, as I said earlier, the financing order issued by the regulator is irrevocable and therefore cannot be revisited at any time during the life of the bonds. This makes it very important for the Commission to have a complete understanding of the transaction up front, which is a key reason for the Commission, when making irrevocable decisions, to have available experts and independent and experienced financial advisors to assist them in discharging their duties.

Q. What do investors look at when evaluating a bond besides the interest rate and the likelihood of repayment?

A. Two investor concerns are related to uncertainty regarding the timing of principal repayment.. Investors ask, first, will I get my investment back sooner than expected? and second, will I get my investment back later than expected? These two types of uncertainty are known as "prepayment risk" and "extension risk," respectively.

Usually a bond has a specific schedule of principal and interest payments. Investors are lending money (by buying the bonds), and they want to earn a return over a specific time period. However, bonds could be sold with the issuer's option (referred to as a "call option") to pay back the investor sooner than scheduled. The existence of a call option results in prepayment risk. The bond issuers might want to pay back sooner for a variety of legal or managerial reasons, but usually it is because interest rates are lower so issuers can sell a new

bond at a lower rate to pay off the older bond at a higher rate. Investors who get their money back sooner might consider it a good thing but not if they can't reinvest at the same or better rate they are presently getting. The capital markets usually extract a premium for this "prepayment risk."

Q. Do AAA-rated ABS bonds typically have prepayment risk?

A. Yes. Many AAA-rated ABS flow through substantially all payments received in respect of the specific collateralized pool of financial assets, such as receivables and mortgages, even though this might force investors to accept repayment of their principal investment earlier than scheduled and expected when they initially bought the security.

Q. Do utility securitization bonds typically have prepayment risk??

Most utility securitization bonds do not have prepayment risk, and Duke Energy Florida, LLC (DEF) has proposed that its nuclear asset-recovery bonds be structured so as to eliminate all prepayment risk. I agree with this aspect of the transaction structure proposed by DEF based on current market conditions. With proper education of investors, I expect this to be a significant marketing advantage for the proposed nuclear asset-recovery bonds when compared to AAA-rated traditional ABS. I also expect this aspect of the transaction to make DEF's nuclear asset-recovery bonds more attractive to traditional corporate bond investors.

Q. Can you provide additional examples of features of the proposed AAA-rated nuclear asset-recovery bonds that might distinguish them from traditional "AAA" ABS?

A. Yes. Utility securitization bonds also have an advantage compared to many AAA-rated ABS with respect to extension risk. Rating agencies' stress-case studies of ABS often show there is significant risk that AAA-rated ABS will return investors' principal later than scheduled due to a number of different factors. Investors usually require additional yield to compensate for any risks like extension risk. I believe that the proposed nuclear asset-recovery bonds will be structured such that any "extension risk" will be insignificant. Indeed,

we have in many stress-case scenarios seen that this risk is statistically insignificant. That usually cannot be said of most ABS bonds because of how they are structured.

Q. What makes utility securitization bonds have inherently less extension risk?

A. As I have described, securitized utility bonds represent a joint and several liability of all ratepayers. In addition, such bonds are structured with a true-up mechanism contained in the financing order that adjusts the charge on consumers to whatever level is necessary to meet the schedule of principal and interest payments. This mechanism requires the nuclear asset-recovery charge to be adjusted periodically pursuant to a pre-approved formula, either semi-annually or more frequently if desired to ensure the principal and interest is paid according to schedule. Thus, if there were an unexpected decline in energy sales for some period, the charge per KWH could be increased subsequently to make up for the lower collections. The true up mechanism is very responsive to changes in collections. In other words, it is a robust adjustment mechanism to collect from electricity ratepayers whatever is needed to meet the bond's obligations.

Q. How can the value of such favorable credit characteristics be captured for the bond issuer, or in this case, the utility ratepayer?

A. The most important way to capture the value from investors is to describe accurately and present the characteristics of the utility securitization in the disclosure documents accompanying the sale of the bonds to investors. The SEC registration statements pursuant to which a number of prior securitized utility bonds have been offered have provided detail about the unusual and superior credit quality of the securities. For example, SEC registration statements for investor-owned utility securitized bonds issued in 2007 for the benefit of Monongahela Power Company and for the Potomac Edison Company include the following language:

Credit Risk: PSC-Guaranteed True-Up Mechanism and State Pledge Will

Limit Credit Risk. In the Financing Act, the State of West Virginia pledges to and agrees with the bondholders, any assignee and any financing parties that the state will not take or permit any action that impairs the value of environmental control property or, except as part of the true-up process, reduce, alter or impair environmental control charges that are imposed, collected and remitted for the benefit of the bondholders, any assignee, and any financing parties, until any principal, interest and redemption premium in respect of environmental control bonds, all financing costs and all amounts to be paid to an assignee or financing party under an ancillary agreement are paid or performed in full.

The broad-based nature of the true-up mechanism and the State Pledge serve to effectively eliminate, for all practical purposes and circumstances, any credit risk to the payment of the bonds (i.e., that sufficient funds will be available and paid to discharge the principal and interest of each issue of bonds when due).

If the full benefit of these features is to be captured for ratepayers, it is my professional judgment that marketing efforts beyond investor-owned utility securitization "bond transaction norms" (referred to on page 4 of witness Buckler's testimony) will be required. Precise, accurate and complete disclosure is required so that investors can be informed of and evaluate the special characteristics of the nuclear-asset recovery bonds. To do less, or to do only what was done in other selected transactions, without focusing on the unique characteristics of these bonds is likely to leave money on the table.

Q. Please explain in more detail the proposed role of the SPE in this nuclear asset-recovery bond financing.

A. The SPE is structured so as to separate the nuclear asset-recovery bond credit from the credit of the sponsoring utility, in this case DEF. It is this financial and legal separation that

allows the bonds to carry a AAA credit rating while the utility's corporate credit rating is single A minus. The activities of the SPE should be restricted by the financing documents so that it cannot engage in any activities unrelated to this financing without receiving a rating confirmation from the rating agencies.

The SPE will be owned by DEF and will be capitalized by DEF such that its equity capital is 0.5 percent of the SPE's total assets. DEF has proposed that it be allowed to earn a return on this equity capital equal to the yield on the longest tranche of the nuclear asset-recovery bonds. Alternatively, DEF's return could be limited to the actual earnings on the capital. This is something that can be addressed in the financing order.

Q. Can you summarize the roles of the various participants in a typical utility securitization transaction?

A. The easiest way to understand the various roles it to look at the organization chart in Exhibit No. _____ (PS-2), attached to my testimony. __ (PS-2). The electric utility sponsors the transaction, sells the intangible asset to the SPE and, at least initially, services the bonds by billing the customer, collecting the charge and remitting the funds to the trustee. The trustee pays the stated interest and principal to the bondholder. The Commission issues the financing order and checks proposed true-up adjustments to the nuclear asset-recovery charge for mathematical correctness. The electric retail customer pays the charge and bears all of the financial burden associated with the debt, once the bonds are sold.

This is different from normal utility debt, where the utility company relies on its balance sheet or credit to issue debt. In the case of the nuclear asset-recovery bonds, once the bonds are sold, the utility has no more "skin in the game," so to speak. This makes it all the more important for the Commission to take a strong role upfront in protecting the interests of ratepayers, with whom the financial obligation remains.

Q. What have utility securitization bonds been used for up until now?

A. Investor owned utilities, together with state legislatures and public utilities, have used such bonds to fund, among other things, stranded costs from utility deregulation, environmental control costs and, in the case of Florida, in 2006, and most recently, New Orleans in 2015, storm recovery costs.

Q. Earlier you referred to a "Best Practices" approach to utility securitization. Please. Can you please describe how these Best Practices were identified and what they are.

A. Yes. Based on experience gained from past transactions and my professional experience and judgment, I have examined the pricings of previous investor-owned utility securitizations. This included the relevant regulatory commission financing order, offering documents, and any post-pricing filings with the regulatory commission about the financing and relevant market information associated with each financing.

From this analysis my colleagues and I identified this set of specific steps that, in my professional judgment, a commission can take to ensure that the interests of ratepayers are protected through a cost-effective and efficient issuance of utility securitization bonds. These steps represent a set of what I consider to be "Best Practices." Most represent "Best Practices" previously have been put in place by certain state commissions and other top quality issuers including the Florida Public Service Commission. The West Virginia Public Service Commission in financing orders issued in 2007 and 2009 identified many of these in their financing order.

These steps are designed to be practical ways to use the expertise of professionals, as well as to apply market principles such as transparency and competition, to achieve a least cost transaction in a timely and efficient manner. These steps are summarized below. The primary themes of the "Best Practices" are 1) Active Representation in the process by the Commission and those with a fiduciary relationship i.e., acting in the best interests of the ratepayers; 2) a

clear decision making standard regarding all items in the transaction to achieve the lowest overall cost of funds and the best value for any services; and 3) written representations as to the actions taken by participants in the transaction.

The Commission, directly or through its advisors, in conjunction with the proposed Bond Team as adapted through submitted testimony, should:

1) Have an independent expert financial advisor to assist staff and the Commission in all aspects of the structuring, marketing and pricing of the nuclear asset-recovery bond transaction. The Commission should utilize experienced experts and independent financial advisors free of conflicts of interests with either DEF, DEF's underwriters and bankers who have a financial interest in pursuing other business with DEF, or DEF's parent or investors;

2) Have access to independent legal counsel either directly or through the independent financial advisor;

3) With this independent financial advisor and legal counsel as well as others, participate, up front, in the selection of all other transaction participants to be paid from bond proceeds or ratepayer funds, including underwriters, counsel, and other transaction participants. The financing order should define the responsibilities of each participant to the extent that each is to be paid from proceeds of nuclear asset-recovery bonds or from nuclear asset-recovery charges. The Commission, through its staff and independent financial advisor, should play a key role and be an equal partner with DEF in structuring, marketing and pricing the nuclear asset-recovery bonds. The selection of the transaction's bond counsel as well as counsel for the underwriters should be done in a joint and collaborative manner since DEF proposes that such counsel will be paid from the bond proceeds;

4) Carefully review and participate in negotiating all transaction documents and contracts that could affect current and future ratepayer costs to ensure accuracy and compliance with all laws, rules, and regulations, as well as to maximize ratepayer savings;

5) Ensure that all statutory and financing order provisions that benefit ratepayers are strictly enforced in implementing the transaction and negotiating other transaction documents, including the Indenture, the Servicing Agreement, the Sale Agreement, the Administration Agreement For example, this would include providing that the Commission is to have the authority to enforce the provisions of the financing order and those transaction documents for the benefit of ratepayers;

6) Review and approve procedures to ensure that the financing order and transaction documents provide self-executing mechanisms for the transfer or crediting to ratepayers of amounts needed to avoid windfall gains to the utility;

7) Ensure that the nuclear asset-recovery bonds are offered to the broadest market reasonably possible domestically and internationally to gain the lowest interest rates for the benefit of ratepayers through increased competition among and between underwriters and investors;

8) Ensure the transparency and accountability in distribution of the nuclear asset-recovery bonds, both in the initial pricing and in the secondary market, to support the integrity of the process and ensure competition;

Decision Making Standard:

9) Direct the Commission staff and its independent outside experts, such as its financial advisor, to participate fully, in advance, in all aspects of structuring, marketing and pricing the nuclear asset-recovery bonds and instruct them to

challenge any decision they believe might not result in the lowest overall cost of funds to ratepayers. This should include:

a) Establishing and clearly communicating goals and objectives in cooperation with DEF and potential underwriters throughout the process;

b) Reviewing, analyzing, and proposing revisions to all documentation to better protect ratepayers, including specific certifications, representations, indemnities, and warranties to ensure that they are accurate, appropriate and comply with applicable laws, rules and regulations;

c) Evaluating and approving offering methods such as competitive bid, negotiated sale or combinations thereof, to determine the most effective offering method with the least risk;

d) Evaluating the performance of underwriters of prior utility securitization bond offerings; including in any offering or bidding syndicate at least one underwriter without a prior relationship with DEF; and tying compensation in any negotiated underwriting to performance;

e) If a negotiated underwriting process is selected, requiring underwriters to develop a written marketing plan and implement robust marketing efforts, emphasizing the need to broaden distribution and to attract both traditional and non-traditional investors in utility securitizations;

f) Establishing a regularly scheduled (such as weekly) conference call between senior representatives of DEF, other transaction participants, Commission staff, and the Commission's independent financial advisor to update the Commission on relevant information;

g) Requiring DEF and potential underwriters or advisors to carefully monitor market conditions to minimize foreseeable pricing risks, such as year-end

pressures, economic announcements, or other outside events, and to document their marketing efforts and pricing recommendations;

Written Certifications:

10) Require accountable, written certifications from the underwriter, DEF, and the Commission's financial advisor as to actions taken to achieve the lowest overall cost of funds at the time of pricing under then-current market conditions, including their opinion that the lowest overall cost of funds under then-current market conditions was in fact achieved.

Q. Can you demonstrate how the use of these "Best Practices" in other transactions has benefited utility ratepayers in the past?

A. Yes. Utility securitizations generally are priced by reference to an independent interest rate benchmark of either U.S. Treasuries or U.S. interest rate swaps (swap). For convenience, our analyses use pricings where there are relative comparable swaps, as most utility securitization bonds are priced off of this interest rate benchmark. The swap rate is the fixed rate that an investor would be willing to exchange contractually for a variable rate of interest with the same given maturity. Exhibit Nos. _____ (PS-3) and _____ (PS-4), attached to my testimony, show how in the early years of utility securitizations, deals were priced substantially over the benchmark swap rate, not a good thing for ratepayers. This spread between the benchmark swap rate and the bond yield is called the "credit spread." The credit spread is the amount of interest or yield above a benchmark that compensates investors for all the risk factors those investors consider relevant to their investment in the bonds. This is the amount that is negotiated with underwriters and investors.

Exhibit Nos. _____ (PS-3) and _____ (PS-4) quantify credit spread in basis points (a basis point is one one-hundredth of one percent). At that time, since this was a relatively new type of security offering and credit, Exhibits Nos. _____ (PS-3) and _____ (PS-4) show that the

market was not particularly "efficient." "Market Efficiency" in the capital markets is the degree to which security prices reflect accurately all publicly available information about the security. If two securities with the same inherent value and the same disclosure requirements (or lack thereof) trade at significantly different prices or yields, that means the market is not efficient. This could be due to lack of price transparency (i.e. one investor cannot easily find out what other investors are paying for the same, or similar securities), or it could be due to poor trade execution (e.g., the broker just wanted to get the deal done and didn't care how much his client had to pay; and the client just trusted the broker without having independent knowledge of the market). Other factors could be involved as well.

Q. Have two utility securitization bonds issued at approximately the same time been priced substantially differently, despite both having the same AAA rating and similar investor protections?

A. Yes. In 2001 two different AAA-rated utility securitizations came to market within two weeks of each other: (i) Reliant Energy, with an independent financial advisor to the Public Utility Commission of Texas (PUCT), and with Merrill Lynch serving as lead underwriter; and (ii) Consumers Power, without an active, independent financial advisor to the Michigan Public Service Commission and no apparent commission post-financing order involvement, and with Morgan Stanley as lead underwriter. Both securitizations had long tranches (an independent series of bond offerings within a total issuance amount) of approximately 10 years weighted average life (WAL). The 10-year tranche of the Reliant Energy transaction priced at +37 basis points (bps) over the benchmark, while the 10-year tranche of the Consumers Energy transaction priced at +55 bps over the same benchmark. The former deal was priced much better for the benefit of ratepayers than was the latter deal. See Exhibit No. _____ (PS-5), attached to my testimony, an) excerpt from the independent advisor's report to the PUCT. Three months after the Consumers Power transaction priced at

+55, CPL Transition Funding priced its 10-year tranche at just +24 bps over swaps. This persistent up and down pricing is an indication that all deals were not being marketed and priced equally effectively.

Merrill Lynch delivered a "lowest cost" certification in connection with securitized utility bonds issued by Reliant Energy to the Commission's independent financial advisor at the time. My records do not show Morgan Stanley or any other participant in the Consumers Power transaction having delivered a "lowest cost" certification.

Q. Does your review of transaction documents, regulatory filings, correspondence and other credible information collected by Saber with respect to that Consumers Power securitized utility bond transaction in Michigan indicate whether Merrill Lynch had a view on the pricing of that Consumers Power transaction?

A. Yes. Attached as Exhibit _____ (PS-5a) is an email dated November 1, 2001 from Scott Soltas of Merrill Lynch who was the lead underwriter and head of the pricing syndicate on the Reliant utility securitization to the Commission's independent financial advisor, Saber Partners LLC Chief Executive Officer Joseph Fichera, the Chief Executive Officer. That email states in part:

> I thought you might appreciate the final print on Consumers Energy. Judging by the timeline of initial price guidance, restructuring, and final pricing I'd have to assume that either (1) Consumers was downgraded during the marketing process, (2) the RRB market widened out by 15 bps, or (3) MSDW [Morgan Stanley Dean Witter] does not have the marketing and distribution of the ML/GS/BS [Merrill Lynch / Goldman Sachs / Bear Stearns] team, nor do they have Saber Partners riding roughshod over the process. I'm pretty sure that the correct answer is (3)....

I feel even more comfortable signing that letter that says the ratepayers got the best deal available in the market at that point in time now!

Q. Please describe the development of the market for securitized utility bonds.

A. As the identified transactions employing "Best Practices" came to market, Exhibit Nos. _____ (PS-3) and _____ (PS-4) show credit spreads to the benchmark swap rates began to decline dramatically. This is called tightening and is a good thing for ratepayers. The results of these transactions, in turn, caused other subsequent investor-owned utility securitizations to be priced more aggressively, resulting in a much more efficient market i.e., closer to the inherent value of the security in relation to other high quality credits. This occurred as other regulatory commissions and their independent financial advisors began to adopt some, but generally not all, of the "Best Practices" described herein. It was not until the financial crisis began in 2008 that investor-owned, utility securitization credit spreads to benchmark swap rates widened dramatically. This is <u>not</u> a good thing for ratepayers. From available public information, most underwriters and issuers of securitized utility bonds appeared to stop making concerted efforts to reduce this effect.

Q. Can you tell us the approximate value of 1 basis point in pricing the proposed nuclear asset-recovery bonds?

A. Yes. Assuming a principal amount of $1,312 million that is assumed in DEF's petition, then a single basis point (one one hundredth of a percent) of additional interest equates to $131,200 of additional interest in revenue requirements each year.

Mr. Collins' testimony assumes DEF's nuclear asset-recovery bonds will have a scheduled final maturity of 17 years and 10 months, and a scheduled weighted average life of 10.1 years. $131,200 of additional interest cost each year would amount to $1,325,120 over a 10.1 year weighted average life of the bonds. However, as the example above indicated as well as examples to be discussed below will show, the differences between pricings of AAA-rated

utility securitizations can vary dramatically in the tens of basis points and many millions of dollars over long periods of time. For tranches with longer amortization schedules, this additional cost becomes even more significant. So while a single basis point of interest sounds insignificant, it actually is very important in getting the bonds' pricing accomplished well.

Q. Do you have evidence to show that subsequent to the 2008 financial crisis, issuers either have or have not generally adopted these "Best Practices" as regards to structuring, marketing and pricing securitized utility bonds relative to other high quality securities?

A. Yes. Exhibit No. ____ (PS-6) attached to my testimony shows there is still a wide variation in pricing spreads across the entire range of maturities. In this exhibit, I have compared the pricing of utility securitizations issued between 2009 and 2014 to the pricing for AAA-rated credit card securitizations. Because credit card receivables-backed ABS are usually issued in tranches with only 2-, 3-, 5-, 7- and 10-year WALs, the comparison is made to interpolated or extrapolated spreads to credit card receivables-backed ABS to compare comparable maturities. This is a standard industry practice. AAA rated credit card securitizations generally are considered the top quality credit in the ABS market into which DEF proposes to offer the nuclear asset-recovery bonds. Among other things, this chart shows that on average (as shown by the regression line) transactions in the 2012-2014 period priced approximately 13 basis points above credit card ABS securities. However, many priced with spreads substantially above 13 bps.

Q. Why did you choose credit card receivable ABS transactions to compare with investor-owned utility securitizations?

A. While I believe utility securitizations are not ABS and should appeal to a broader corporate securities fixed-income security investor base, I looked at the market into which

DEF proposes to sell the bonds. I believe there are also better comparables, like highly rated corporate bonds as well as U.S. Agency securities, as described below. However, AAA-rated credit card ABS debt and utility securitization debt should price fairly close together according to independent research produced by Citigroup and Wells Fargo and discussed further below. The relationship between two securities is generally referred in the industry as the "relative value." If two bonds of equal risk and structure (e.g. maturity, prepayment risk and extension risk) are priced differently in the market, the bond with the higher yield is said to have greater relative value.

As an example of the variation in relative value, the Louisiana Utilities/EGSL deal, 10.40 year WAL tranche, which was issued on July 15, 2010, priced 49 basis points *above* credit card receivables-backed ABS, while the Entergy Texas utility securitization deal, 10.86 year WAL tranche, which was issued on October 29, 2009, priced 19 basis points *below* credit card receivables-backed ABS.

Even accounting for the difference in time between offerings, such a wide variation in spreads can be due to a number a factors, including how broadly the bonds are marketed, how much pricing authority is shared with the Commission and its independent financial advisor, how well the bonds are marketed by emphasizing their relative value, as well as how the deal is structured to take advantage of specific market demand. It is difficult to know the exact cause in the above comparison, but it is not difficult to see the result. The Entergy Texas deal seemed to be the superior of the two deals from the viewpoint of ratepayers.

Q. Why did you not examine the 2015 New Orleans transaction?

A. The 2015 New Orleans transaction received a split credit rating of Aa1 by Moody's and AAA by Standard & Poor's (S&P). Therefore, the 2015 New Orleans transaction would be expected to have a higher credit spread than the other transactions as a result of a lower credit rating, indicating more inherent risk. Only AAA/Aaa-rated investor-owned-utility

securitization transactions were analyzed. (S&P uses all capital letters, while Moody's uses a combination.)

Q. Is there any other independent corroborating evidence to support an analysis that utility securitization bonds should trade close to AAA-rated credit card ABS debt?

A. Wells Fargo Securities issued a research report on July 17, 2013 discussing the relative value of Rate Reduction Bonds (RRB), which is another industry name for utility securitization bonds. A copy of this research report is attached as Exhibit No. ____ (PS-6a). In this research report, Wells Fargo Securities said, "RRB spreads that trade at +4 bps or more to [above] benchmark credit card ABS (asset backed securities) represent better relative value opportunities, in our opinion." If that is true, it is hard to understand how those responsible for pricing the CenterPoint utility securitization of January, 2012 could have priced the 10.82 year WAL tranche (A-3) some 42 bps above AAA-rated credit cards ABS (see Exhibit No. ____ (PS-7), unless it was due to poor execution. As can be seen from Exhibit No. ____ (PS-7), the average spread to credit cards ABS (as judged by the regression line for all transactions in the 2012-2014 period) for a bond of the same WAL was about 11 bps above credit cards ABS. So CenterPoint priced some 31 bps (42 minus 11) above the average. On the A-3 tranche principal amount of $681,262,000, that is an additional interest expense of $2,111,912 per year of WAL in revenue requirements. That times a WAL of 10.82 years amounts to over $22 million of excess cost for the ratepayer.

Q. Have other underwriters made a similar comparison to credit card ABS using similar data?

A. Yes. Citigroup has done it at least twice. The first time was in an analysis presented to the Texas Public Utility Commission's independent financial advisor in 2003 concerning the pricing of three Texas investor-owned utility securitizations. A copy of that Citigroup study is attached to Mr. Schoenblum's testimony as Exhibit No. ____ (HS-1). The Citigroup

2003 study estimated that the three Texas transactions completed by the time of the study saved ratepayers $7.6 million in net present value interest savings based on spreads to credit card ABS, (excluding utility securitization tranches over 10 years where there were no comparable credit card transactions) that Citigroup independently chose to review. When compared with other investor-owned utility securitizations based on spreads to the swaps benchmark, including all tranches, the amount of savings Citigroup estimated in its study in regard to the three Texas securitizations was much higher than for the non-Texas offerings, or approximately $18 million in net present value ($23 million undiscounted) revenue requirements over the life of the transactions.

The second time was in connection with an offering for CenterPoint Energy Houston Electric (CEHE) in 2008. Using the same methodology, Citigroup's 2008 report (see Exhibit No. ____ (PS-9) entitled, "CenterPoint Energy Houston Electric (CEHE) Securitization," said:

> On Jan. 29, 2008, CEHE priced one of the most successful asset-backed securities (ABS) offering in many months, attracting both traditional asset-backed buyers and corporate "crossover" investors [investors who normally buy only corporate bonds but can also by ABS].... We estimate that each tranche of the CEHE III offering priced approximately 15-25 bps inside of [i.e., less than] like-maturity credit card securities.

That report even cited as corroborating evidence a Citigroup January 24, 2008 fixed-income research report, circling the spreads for comparable securities, as shown in Exhibit No. ____ (PS-9), page 3 of 7.

Indeed, the 2008 offering sold with a 5-year tranche at +64 bps over swaps and the 10.5-year tranche at +94 bps over swaps (see Exhibit No. ____ (PS-4). The 5-year spread (+64 bps) was considerably narrower on a "relative value" basis than both the 78 bps credit card ABS spread and the 83 bps "stranded asset" spread indicated by Citigroup Fixed Income Research.

("Stranded asset" is Citigroup's terminology for utility securitization debt.) Likewise, the 10-year spread (+94 bps) was significantly narrower than both the 110 bps credit card spread and the 115 bps stranded asset spread quoted by Citigroup. I used a similar credit card ABS indicative credit spread methodology as Citigroup did in preparing the analyses shown in Exhibit Nos. ____ (PS-6) and ____ (PS-7).

Q. Do you look at other comparable securities besides credit cards when pricing utility securitization bonds?

A. Yes. We generally look at AAA-rated U.S. agency bonds such as the Tennessee Valley Authority, Fannie Mae (the Federal National Mortgage Association) and Freddie Mac (the Federal Home Loan Mortgage Association), and also AAA-rated corporate bonds of similar maturity and structure (e.g. non-callable prior to their maturity). Exhibit No. ____ (PS-10) shows United States Agency and AAA-rated corporate comparable securities that I identified to judge the relative value of ONCOR/TXU securitization 10.43 year WAL tranche that priced May 28, 2004. Comparables could also include AAA-rated corporate bonds such as for ExxonMobil, Microsoft and, to a lesser extent, investor-owned utility first mortgage or unsecured long-term debt. The reason the latter is useful but less valuable is the fact that, while utilities are the sponsors of utility securitization debt, there are no AAA-rated investor-owned utility bonds. The highest rated investor-owned utilities (i.e. not government sponsored like Tennessee Valley Authority, Bonneville Power Authority or municipal utilities), including DEF, are A-rated by Standard and Poor's. The reason it is useful is that, if we see AAA-rated utility securitization bonds that have credit spreads closer to much lower rated investor-owned utility bonds, it could be evidence of a severe mispricing and bad marketing.

Q. Has such a case ever happened?

A. Yes. In 2012, the CenterPoint Energy securitization bonds longest tranche (10.82-year with a 3.0282 percent coupon) was priced similar to a Baa-rated utility bond with a 2022, 10-

year maturity that came to market around the same time (Virginia Electric Power Company; coupon rate 2.95 percent; maturity January 15, 2022).

Q. Is there a risk of using the wrong benchmark in pricing or looking at relative value?

A. Yes. Some types of AAA-rated ABS securities are viewed by the market as more complex and higher risk than other AAA-rated securities despite their rating and consequently it would be disadvantageous to use in marketing or pricing utility securitization bonds. For example, securitized auto loans, auto floor lease loans ABS or collateralized mortgage-backed securities (CMBS) carry a materially higher yield and spread to the swap benchmark compared to credit cards ABS. See Exhibit No. ____ (PS-11) for a report by Saber Partners that analyzed the impact this may have had on the Ohio Phase-In Recovery issue of July 23, 2013. The table shows that in a matter of 12 days prior to the Ohio pricing on July 23, 2013, the credit spread to 3-year auto loan ABS increased by 18 bps while the credit spread to 3-year credit card ABS increased by just 12 bps. Thus, if the issuer was benchmarking off of the auto loan ABS rather than the credit card ABS, that erroneous benchmark alone cost 6 bps.

Q. Can you demonstrate how "Best Practices" influence cost to the ratepayer in terms of upfront issuance costs and ongoing financing costs?

A. Yes. As is the case with pricing, there is a large disparity among issuers with respect to issuance costs in utility securitizations. In light of the direct testimony of witness Bryan Buckler, the most glaring example would be servicer set-up fees. In his Exhibit No. ___ (BB-1), Mr. Buckler gives a range of set-up fees from $1,900,000 to $2,900,000. DEF does not have a financial incentive for charging the lowest possible fee for set-up as long as DEF is doing the set-up, and consequently some outside oversight is called for. In my Exhibit No. ____ (PS-12), I show the servicer set-up fees for over two dozen utility securitization transactions for which estimated costs were available at the time of issuance in the

transaction's Issuance Advice Letter (IAL) or for which actual costs were disclosed in a subsequent regulatory filing. In no case have the costs been close to those estimated by DEF. For example, in the 2007 FPL storm recovery bond securitization, actual incremental set-up costs were reported to the Commission as only $401,382. Even in the case of the 2013 First Energy securitization, where three separate operating companies were imposing and collecting charges independently, the combined set-up costs were estimated in the IAL to be just $300,000.

Q. Are there other upfront financing costs that are of particular importance?

A. Yes. Underwriting expense is one of the largest upfront financing costs. Witness Buckler gives a range of 40 to 50 basis points as typical of recent deals (page 20 of Buckler testimony). In his Exhibit No. ____ (BB-1), Mr. Buckler gives a dollar range of $4.8 to $6.6 million for upfront financing costs.

My Exhibit No. ____ (PS-13) shows underwriting spreads for utility securitizations between 2001 and 2014. For example, in deals where I have been directly involved, I have observed performance-based fees that were designed to provide incentives to each of the underwriters to market bonds aggressively to their customers and to reach out to a broad base of potential investors, including investors who have not previously purchased this type of security (see Exhibit No. ____ (PS-14), article from *Investment Dealers Digest*). To my knowledge, most other transactions have largely employed a "fixed economics" approach where each underwriter is paid a specific amount regardless of its efforts or the outcome of the pricing of the transaction for the benefit of ratepayers as reflected in the benchmark spreads for each tranche. These "fixed economics" transactions may have a small 5-10 percent incentive component, but not enough, in my opinion, to significantly affect the behavior of the underwriters for better pricing. Based on the data I have described above, predominantly performance-based underwriter compensation tends to provide better execution, while at the

same time keeping fees, on average, below what other deals have incurred. This experience strongly suggests that the ratepayer would benefit in this transaction if the Commission, acting through its designated experts and advisors, had at least an equal say with DEF regarding (i) the solicitation and selection of underwriters in a negotiated transaction, even if selected by means of an RFP, as DEF has suggested; and (ii) how selected underwriters will be compensated. This is consistent with Best Practice #3, and is an established precedent in other deals.

Q. To the extent compensation for services of transaction participants will be paid from bond proceeds or ratepayer funds, your Best Practice #3 also calls for the Commission's staff and the Commission's financial advisor to participate in the selection of those transaction participants, including legal counsel for the sponsoring utility and legal counsel for the underwriters. Is there market precedent for this approach?

A. Yes, it is part of the collaborative and cooperative approach with the utility and the Commission to get the best value for ratepayers. For example, Ordering Paragraph 19 of the West Virginia Public Service Commission's Financing Order dated April 7, 2006, states:

> The Financial Advisor shall be provided timely information that is necessary to fulfill its obligation to the Commission, and shall have equal rights with the Applicants to approve or disapprove the proposed pricing, marketing and structuring of the Certificates and Environmental Control Bonds, including (without limitation) the selection of underwriter(s), counsel, trustee(s) and other parties necessary to the transaction, and to review and approve the terms of all transaction documents.

Q. Are there similar risks to the ratepayers associated with ongoing financing costs?

A. Yes, there are. Servicing fees (the amount paid to the utility to bill, charge, collect and remit the nuclear asset recovery charge) provide a good example. DEF has proposed annual

servicing fees of .05 percent of the initial principal amount of the bonds (or approximately $650,000/year) for as long as any bonds remain outstanding and as long as DEF remains the servicer or up to 20 years. That is the industry standard, based primarily on needs to satisfy bankruptcy counsel, although there are a few deals where the annual servicing fee is less and a number of deals where it is more. However, in deals in which I have been involved as advisor, any servicer fees in excess of actual incremental costs have explicitly been rebated or credited to ratepayers. This is significant. Since DEF is already billing the ratepayers, the incremental cost to add the nuclear asset-recovery charge to the bill should be next to nothing. For example, Finding of Fact 114(b) in the Commission's Financing Order issued to FPL in connection with its storm recovery bonds states:

> We find that the activities associated with the annual fee for ongoing services – billing and collecting storm-recovery charges, remitting funds to the SPE, and developing storm-recovery charges – are tightly bound with operations already performed by FPL in the normal course of business. FPL has not justified that the annual fee is necessary to cover any incremental costs to be incurred by FPL in performing ongoing services as servicer. Thus, we find that FPL shall apply to the Reserve [essentially credit back to ratepayers] all amounts it will receive under the Servicing Agreement for ongoing services.

Similarly, in addressing annual fees FPL would receive for providing administration services to its SPE subsidiary issuer, Finding of Fact 116 of the FPL Financing Order states:

> FPL's proposed form of Administration Agreement provides for a $125,000 annual fee for performing the services required by the Administration Agreement. We find that FPL has not demonstrated that this annual fee is necessary to cover any incremental costs to be incurred by FPL in performing services as administrator. Thus, we find that FPL shall apply to the Reserve

[essentially credit back to ratepayers] all amounts it will receive under the Administration Agreement for its services.

In my opinion, any costs in excess of incremental costs to DEF, whether as servicer, for administration, to provide system set-up services or in any other role should be credited back to ratepayers. Besides being the appropriate policy, there is ample precedent for this from the earliest securitizations in 1997 to present and it is consistent with our Best Practice #6, to ensure that ratepayers get the full benefit of all realized savings and for the sponsoring utility, the principal beneficiary of the proceeds of the transaction, to demonstrate actual costs. A list of previous utility securitization transactions that have required fees in excess of incremental costs is attached as Exhibit ____ (PS-12).

Q. What is your opinion regarding how frequently collections by the servicer should be remitted to the bond trustee?

A. On page 11, lines 22-23 of his testimony, Mr. Covington states that, "Provisions within the servicing agreement may also permit DEF to remit Nuclear Asset-Recovery Charges monthly, instead of daily." I believe the servicer should be required to remit funds collected from the ratepayers on a daily basis. This has been required in the servicing agreements of other transactions. In this way, it is more likely that the ratepayers will benefit from any earnings on cash held prior to its use in servicing the bonds. If DEF is permitted to remit its collection of nuclear asset-recovery charges monthly, then DEF should also be required to remit to the trustee DEF's actual earnings on those collections pending monthly remittance. But daily remittances would virtually eliminate the need for DEF to calculate the monthly earnings and avoid this administrative task and expense.

Q. Based on the data you have presented and your experience with utility securitizations, do you believe a Florida nuclear asset-recovery bond issue needs robust oversight by the Commission?

A. Yes, I do. I believe there are too many potential conflicts of interest between DEF as servicer, as administrator, as owner of the SPE, as provider of system set-up services and as the owner of the CR3 assets. It is important to have participants in the transaction that have a fiduciary relationship with the Commission and ratepayers. By this I mean someone who is acting in the best interests the ratepayers. I also believe there are too many conflicts of interest between Morgan Stanley as advisor to DEF and potentially an underwriter in this bond issuance, especially given the potential for inefficiencies and lack of transparency in the market for utility securitization debt. There is precedent in prior investor-owned utility securitizations for avoiding such conflicts of interest. For example, in May, 2008, the Louisiana State Bond Commission selected an underwriting team for a planned $1 billion bond issue by the Louisiana Public Facilities Authority on behalf of Entergy Inc. The approval of the team, which included JP Morgan, carried the stipulation that JP Morgan, which had served as Entergy's financial advisor in the structuring the deal, must not serve as a financial advisor to Entergy for the next 10 years. An article reporting on this decision of the Louisiana Public Facilities Authority is attached as Exhibit No. ____ (PS-15a).

Similar concerns arise in connection with the offering of municipal securities, where individuals or firms might have interests that do not align completely with those who ultimately will be required to bear the economic burden of repaying the municipal securities. The Dodd-Frank Act, which was passed by Congress in 2010 ,added Section 15B(c)(1) to the Securities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(1)):

> A municipal advisor and any person associated with such municipal advisor shall be deemed to have a **fiduciary duty** to any municipal entity for whom

> such municipal advisor acts as a municipal advisor, and no municipal advisor may engage in any act, practice, or course of business which is not consistent with a municipal advisor's **fiduciary duty** or that is in contravention of any rule of the [Municipal Securities Rulemaking] Board.

A specific rule, Municipal Securities Rulemaking Board (MSRB) Rule G-23, applies in the offering of municipal securities. While nuclear asset-recovery bonds are not municipal securities, it is relevant to note the public policy issues and objectives articulated in explaining the need for the amended Rule G-23 regarding the sale of securities affecting taxpayers who are similar to ratepayers in this transaction.

Q. Please explain MSRB Rule G-23 as it relates to the types of potential conflicts of interest that may exist in this financing.

A. Rule G-23 specifically addresses the conflict of interest that can exist when a financial advisor also serves as an underwriter in a bond sale. While the rule has existed since 1977, it was materially strengthened as a result of the Dodd-Frank Act. The revised rule, which took effect in November 2011, prevents a broker-dealer that serves as a financial advisor to a municipal issuer from switching to an underwriting role for a specific transaction. Prior to the amendment's approval, in her remarks at the Investment Company Institute 2010 General Membership Meeting on May 7, 2010, Mary Schapiro, Chairman of the SEC summarized the need for the rule change as follows: "Financial advisers should be prohibited from resigning as financial advisor to an issuer, and then underwriting that issuer's bonds, as they are currently allowed to do under MSRB rule G-23. Right now, a financial professional advising a municipality can guide the municipality towards securities tailored to his firm's advantage, then resign and act as underwriter. This is a classic example of conflict of interest." (Remarks by Mary Schapiro, Chairman of the Securities and Exchange Commission at the Investment Company Institute 2010 General Membership Meeting, May 7, 2010.)

Q. Do you believe that the Bond Team concept, as described by Mr. Buckler in his testimony, provides for that robust oversight by the Commission through its advisor?

A. To a large extent, yes. However, in certain respects, I believe the Bond Team approach described by witness Buckler does not provide sufficient meaningful participation for the Commission in the structuring, marketing and pricing of the proposed nuclear asset-recovery bonds. In addition, certain aspects of DEF's proposal may prove too unwieldy. If the Commission, acting through its staff, experts and advisor, disagrees with DEF's proposed structuring, marketing or pricing, there might not be time to file an appeal with notice to the designated Commissioner and/or the whole Commission before the market opportunity slips away or causes confusion and uncertainty among investors. For example, during pricing, conflicting opinions generally would need to be resolved within minutes. In prior transactions in other states, the financing orders have made clear that the commission, acting through its financial advisor, had equal rights with the utility to approve or disapprove the proposed pricing, marketing and structuring of the bonds before the decision is made. See my (Examples of such provisions in prior financing orders are attached as Exhibit No. ___ (PS-16). This is different from DEF's proposed financing order. For example, proposed Finding of Fact 38 states: "...the bonds should be structured by DEF, in consultation with the other members of the bond team..." Given that Saber has advised state regulatory commissions on 12 utility securitizations over the past 15 years (of which the Commission has overseen one), and DEF has not been involved in any utility securitizations, it seems the Commission, acting through its staff, experts and advisors, should at least have equal say with DEF in all matters related to structuring, marketing and pricing the proposed nuclear asset-recovery bonds. This is consistent with #9 of the Best Practices that I have described earlier and has resulted in a collaborative and efficient process, as demonstrated by the pricing results also noted above.

Q. Do you agree with DEF witness Collins' description of the pricing process that will take place in order to sell the proposed nuclear asset-recovery bonds?

A. In general, yes, with one exception as discussed by witnesses Brian Maher and Hyman Schoenblum concerning the absence of a fiduciary relationship between the underwriter and the issuer. Mr. Collins states that "At a certain point in time when the book has sufficient interest from investors, the underwriters will stop taking orders....it will obviously only occur when the book has at least an equal amount of orders on the bonds as the principal amount of bonds (generally referred to as being fully-subscribed)." This assumes that the underwriters themselves will never actually "underwrite" any of the bonds. "Underwriting" means an investment bank puts its capital at risk and owns some portion of the bonds with a specific order until those bonds can be re-sold to investors. In fact, it is a customary and usual practice in the capital markets that at times underwriters will agree to underwrite one or more tranches that may be undersubscribed, thereby resulting in tighter (more favorable to the issuer) pricing than what witness Collins has described. In fact, 10 percent or more of a large transaction may be unsubscribed, meaning held by the underwriters, at the time a large deal is priced (see Exhibit No. ___ (PS-17). This is consistent with the idea that underwriters compensation is meant not only to compensate the investment bankers for the amount of work they do in selling the bonds, but also for any risk they assume if they have to hold some of the bonds in their trading inventory. If they are unwilling to assume any risk, then their compensation should reflect that.

Q. Do you believe there is still significant pricing inefficiency in the market for utility securitization bonds?

A. Yes, I do.

Q. In your opinion, what accounts for the continued pricing inefficiencies in the market for these types of bonds?

A. In recent years, the volume of securitized utility bond offerings has been significantly less than in earlier years. Exhibit No. ___ (PS-18) shows the principal amount issued by year. Furthermore, since most tranches of securitized utility bonds have WALs less than 10 years, most bonds issued in the early years (1997-2005) are no longer outstanding.

In addition, lack of market transparency is evident by the difficulty of finding secondary market trading data on Bloomberg or other commercial databases for these types of bonds. (Secondary trading occurs after the underwriters have sold the bonds to the public, and the public begins to trade the bonds.) Indeed, the Financial Industry Regulatory Association (FINRA), the corporate bond market's regulator, did not require secondary market price transparency for these types of bonds until 2011.

The lack of market efficiency can also be seen by the disparity that exists for extended periods between the stranded asset (utility securitization) yield spreads that are reported by major investment banks who are active in the market for such bonds (see my Exhibit No. ___ (PS-19). In January, 2012, Citigroup was reporting stranded asset spreads to swaps as high as +90 bps at the same time that JP Morgan was reporting lower spreads of +60 bps, a 30 bp difference. Later, beginning in August of 2012, and continuing for three months, this was reversed. Citigroup was reporting spreads of +40 bps, while JP Morgan quotes stayed at +60 bps, for a 20 bp difference. These examples all demonstrate a lack of efficiency.

Q. Do you keep track of all utility securitization transactions?

A. I do. Exhibit No. ___ (PS-20) shows a list of 64 distinct utility securitization transactions that have occurred since 1997. I maintain this list as part of Saber's database of documents and statistics from each of the 64 prior deals.

Q. Does your list agree with DEF witness Collins' Exhibit No. ___ (PC-2)?

A. No. In about a dozen cases, Mr. Collins has listed the "closing date" (when the bonds are issued to investors) in the column labeled "pricing date" (when the bond's interest rate is set). Generally those dates are about one to two weeks apart and therefore may be offered and sold in different market conditions. Also, our list does not include the tax-exempt portion of the Long Island Power Authority (LIPA) 2013 securitization transaction, since those bonds were priced and sold in the municipal market. Because the interest for bonds issued into that market is exempt from federal income taxes, the market for those LIPA bonds is different from the market for all other investor-owned utility transactions, as the tax advantage gives those LIPA bonds an advantage in pricing over bonds without federal tax-exempt interest. None of the nuclear asset-recovery bonds in this proceeding will be tax-exempt municipal securities that have such a different investor base.

Q. What is your opinion of the form of Issuance Advice Letter proposed by DEF?

A. While generally I think it is consistent with most such documents I have reviewed, I am not certain that the form of Attachment 7, "Estimated Savings," will assure adequate transparency for ratepayers to have confidence that the promised savings have in fact been realized. For example, it is not clear if the savings are to be shown as present value savings (the time value adjusted calculation of savings), or nominal savings, or both. If present value is used, it is not clear what discount rate (to adjust the cash flow for the difference in time when it is received) will be used.

Q. Do you have an opinion on whether savings should be shown as nominal or present value, and what discount rate to use, if a present value calculation is made according to general financial principles?

A. Yes. Present value is the only meaningful way to calculate ratepayer savings. According to general financial principles, present value calculations are (i) the accepted

method of financial analysis, (ii) the appropriate method to evaluate savings today, and (iii) the basis upon which financial decisions should be made. That was certainly the way it was done in all the years I worked in finance at FPL. The proper discount rate to use is somewhat more problematic. It should be a debt rate because this is a debt obligation. According to financial principles, it should be a proxy for the obligor's alternative cost of borrowing. In this case, that should be the ratepayers' alternative cost of debt, especially because this will be a direct obligation of ratepayers and not of the utility and its shareholders. Thus, while one could use DEF embedded cost of debt as a proxy, that is most likely much lower than the ratepayers' alternative cost of debt. At least it would be a better rate to use (that is to say, closer to the ratepayers' cost of debt) than the (probably lower) rate on the nuclear asset-recovery bonds.

Q. Can the choice of a present value discount rate affect anything other than the Issuance Advice Letter?

A. Yes. The higher the discount rate is above the bond rate, the more ratepayers are shown to benefit from extending the final maturity. If the discount rate is equal to the nuclear asset-recovery bond rate, there is no apparent present value benefit to a greater weighted average life. Consequently, the choice of discount rate might affect the decision regarding the best bond structure to use in order to maximize ratepayer benefits and make the correct structuring and pricing decisions according to generally accepted financial analysis principles.

Q. Do you agree with DEF's assumption that the maximum scheduled maturity would not likely be longer than 18 years?

A. No, I do not. DEF witness Collins stated that, "Because transactions with final maturities of fifteen years or longer have had at least a two year gap [between scheduled and final legal maturity], we are assuming that same two-year gap for the preliminary structure." However, I believe Mr. Collins was only looking at transactions from 2010 to present. While

it is not uncommon for the difference between the scheduled maturity and the final legal maturity to be two years, in the Monongahela Power and Potomac Edison transaction in 2009, the weighted average life of the deal was 19 years, and the final legal maturity was only one year beyond the scheduled maturity. That bond issue had no difficulty achieving AAA rating from the three major rating agencies. More recently, the AEP Texas Central transaction of March 7, 2012 has a final scheduled maturity of December 1, 2024, and a final legal maturity of March 1, 2026, for a gap of just 15 months.

In any event, the amount of time between scheduled and final maturity is subject to discussion with the rating agencies and is most affected by the frequency of the true-up of charges and the presence of the equity-funded Capital Subaccount, which are part of the structuring decisions I believe the Commission, acting through its experts and advisors, should be involved with after issuance of the financing order.

Q. **Can you explain what is meant by Best Practice #7, "Require that the nuclear asset-recovery bonds be offered to the broadest market reasonably possible to gain a lower interest rate..."?**

A. Yes. This is a basic business and economic principle. The larger the market for an enterprise's product (in this case, the bonds), the more product the enterprise will have an opportunity to sell at any given price. This often is referred to as "breadth of distribution."

For example, if only 80 percent of the proposed nuclear asset-recovery bonds could be sold in the U.S. domestic market at a certain yield, by expanding the pool of potential investors to include international investors in Europe or China who are large buyers of US dollar-denominated securities, it might be possible to sell 100 percent of the bonds without having to increase the yield on the bonds to attract additional domestic buyers. In large transactions (e.g. over $1 billion), such market expansion can be very beneficial. There have only been four investor-owned utility transactions greater than $1 billion since 2005, out of 36 in all

(excluding the municipal tax-exempt LIPA bonds). The DEF nuclear asset-recovery bonds will be the fifth. One of those four was the CenterPoint 2012 deal that appeared to price so poorly, a possible result of lack of a serious effort to expand the market for those securitized bonds.

Market expansion can occur in at least three ways. The first is by location. While the largest portion of the proposed nuclear asset-recovery bonds probably will be sold to United States investors, it is not uncommon to sell 25 percent or more of an issue of securitized utility bonds in Europe, and some amounts in Asia as well. The second is by investor type. Banks, pension funds, insurance companies and money managers can all be large purchasers of utility securitization bonds. The third is based upon the types of securities particular investors traditionally buy. For example, investors who typically purchase AAA-rated U.S. agency debt might be persuaded to buy AAA-rated utility securitization debt, even though they may not have done so in the past. The same is true of investors in AAA-rated traditional corporate debt. My Exhibit No. ___ (PS-17) shows the investor breakdown for a $1.8 billion utility securitization for which I was part of the regulator's advisor team.

Q. What can be done to ensure broad market distribution?

A. An active advisor can do several things to ensure broad market distribution. One is to insist that the underwriters communicate the deal to more than just one specialty area within their bond trading operation. If underwriters limit communications to just the ABS specialists and ignore the corporate bond buyers or the US agency traders, underwriters will be ignoring potential investors. The second thing that can be done is to work with the Bond Team to develop a roadshow presentation that addresses the questions and concerns of a broad market. The roadshow can be either electronic or physical or both. If it is physical, it must visit the cities where the biggest potential investors are concentrated, possibly including visits to major financial centers in Europe or elsewhere outside the U.S.

Q. On pages 40 and 41 of his testimony, Mr. Collins appears to say that DEF plans to treat the proposed nuclear asset-recovery bonds as "asset-backed securities." Do you believe that proposed approach is likely to result in the most effective marketing and pricing of the bonds?

A. No. Many large investors in debt securities are hesitant to purchase debt instruments which are categorized by the SEC or rating agencies as "asset-backed securities" (ABS). The charters of some large investors in debt securities specifically limit permitted investments in ABS. In the marketing of 12 prior utility securitization bond offerings, I have found it has been helpful to present the bonds as not ABS.

Q. Has it been possible to avoid treating prior securitized utility bonds as ABS for some or all of these purposes?

A. Yes. As described earlier in my testimony, securitized utility bonds are not treated as ABS for financial reporting purposes. See my Exhibit No. ____ (PS-1a). In addition, in 2007 and again in 2009, AAA-rated securitized utility bonds issued for the benefit of Monongahela Power Company and by Potomac Edison Company in West Virginia were offered to investors as non-ABS. The prospectuses from the 2009 West Virginia transactions include the following language: "The bonds are not asset-backed securities within the meaning of Regulation AB. However, we will file with the SEC required periodic reports related to the bonds consistent with the disclosure and reporting regime established in Regulation AB and will also post those periodic reports at our web address." I believe this was a material factor in achieving record low credit spreads over benchmark securities for those securitized utility bonds.

Q. Are there any other factors of importance in a well-executed utility securitization financing that are in the best interest of the ratepayer?

A. Yes. There is what I described in Best Practice #10, which is the requirement for accountable written certifications from the underwriter, DEF and the Commission's financial

advisor as to actions taken to achieve the lowest overall cost of funds at the time of pricing under then-current market conditions and certifying that, in their opinion, the lowest overall cost of funds under then-current market conditions was achieved. There are two important parts to this requirement. The first is the requirement to put into writing for all the world to see exactly what steps were taken to achieve the required results. This is a very strong incentive to not leave any important steps out or perform them only halfway. The second is to certify to having achieved the "lowest overall cost" objective. In my opinion, this is also a powerful incentive to resist doing just a "reasonable" job or anything other than the best. This certification was required of FPL in the 2006 Storm Recovery Financing Order and was provided in FPL's Issuance Advice Letter. In my estimation, that 2006 financing achieved a successful result for ratepayers, and I recommend requiring the same certifications in the financing order currently under consideration.

Q. Can you provide an example of a state regulatory commission adopting a "lowest cost" standard even though a "lowest cost" standard was not specifically mandated in the state securitization legislation?

A. Yes. The enabling legislation for securitized utility bonds in Ohio does not specify a "lowest cost" standard. (See 129th General Assembly, Amended Substitute House Bill Number 364.) Nevertheless, the Ohio Commission's financing order issued in PUC Ohio Case Nos. 12-1969-EL-ATS and 12-2999-EL-UNC states (at page 11): "The bond structuring and pricing review test is intended to ensure that the structuring and pricing of the PIR Bonds results in the lowest PIR Charges consistent with market conditions and the terms of the Financing Order." And, at page 18 it states: "Finally, Staff concludes that the proposed securitization financing appears to have been designed and structured to ensure that the PIR Bonds receive the highest bond rating possible, consistent with the objective of obtaining the lowest overall cost of financing through securitized PIR Bonds."

Q. Does your review of transaction documents, regulatory filings, correspondence and other credible information collected by Saber with respect to that Ohio securitized utility bond transaction indicate whether the sponsoring utility and its advisors agreed that the state regulatory commission had authority to impose a "lowest cost" standard, even though a "lowest cost" standard was not specifically mandated in the state securitization legislation?

A. Yes. From Saber Partners' files, I am attaching as Exhibit ___ (PS-19), a copy of an email string dated November 21 – 23, 2011. Saber Partners' CEO has advised me that this email string was forwarded to Saber Partners by one of the Ohio State Senators to whom the email was addressed. Several Ohio State legislators had followed up on a request from the Office of the Ohio Consumers Counsel that language be added to the Ohio securitization statute expressly adding a "Least Cost Standard." In this email string, the sponsoring utility argued that such language was not needed in the Ohio securitization statute. In support of that argument, the sponsoring utility's email forwarded an email dated November 22, 2011 from its outside legal counsel, Eric Tashman of Sidley Austin, with the following advice:

> I don't think it will be possible to argue (persuasively) that a lowest cost certification (in one form or another) in a financing order is either inappropriate or uncommon. I think the argument is merely about whether the lowest cost standard needs to be in the statute, or whether it is best to leave it to the discretion of the Commission to implement it in the financing order.

Q. Do you believe it is important that all required Commission approvals with respect to securitized utility bond approvals (save those relating to confirming arithmetic accuracy of calculations) be given before pricing?

A. No. So long as any post-pricing approvals are given within two or three business days after pricing, and so long as approvals are limited to confirming that requirements of the enabling

statute and financing order are met, I do not believe that post-pricing Commission approvals should adversely affect the price investors are willing to pay for the bonds.

Q. Do you believe there is a benefit to ratepayers from some Commission approvals being delayed until after pricing, giving the Commission and its financial advisor a reasonable opportunity to evaluate the actual marketing and pricing efforts and the results of those efforts?

A. Yes. I believe that the very existence of that post-pricing review and approval process is an important aspect of achieving the lowest overall costs for ratepayers.

Q. Do you believe it might be possible for the fees of a robust Commission advisor to outweigh the benefits?

A. Acknowledging that the Commissioner's financial advisor has a clear and uncompromised incentive to achieve the lowest possible cost of funds at the time of pricing in order to enhance its opportunity for future business, some utility sponsors and underwriters have argued that this goal is not constrained by any limits on time and expense, because these are at the cost of the utility or their ratepayers and do not show up in pricing spreads. If given any authority in the process, whether directly or indirectly, these sponsoring utilities and underwriters argue that the financial advisor can zealously pursue its goal without taking into account these other interests of the sponsoring utility. I believe such arguments are misplaced and not supported by any quantitative evidence and are simply arguments against oversight and against possible additional effort on the part of transaction participants necessary to maximize ratepayer savings. It is certainly true that an active financial advisor to the Commission is likely to cause the sponsoring utility and underwriters to spend more time and focused efforts on an effective structuring, marketing and pricing of securitized utility bonds than would a passive financial advisor. The proper question is whether those additional efforts reasonably can be expected to result in present value ratepayer savings in excess of the costs

of those incremental efforts. I believe my testimony shows that ratepayer savings from having robust regulatory oversight through an active financial advisor in prior securitized utility bond transactions have significantly exceeded the costs of the associated incremental efforts.

Q. Mr. Sutherland, can you very briefly summarize your testimony?

A. Yes. The market for securitized utility bonds continues to be inefficient, lacking in transparency with a great deal of variability in pricing as well as other terms and conditions that affect the amount of savings captured for the benefit of ratepayers. A robust and active independent financial advisor to the Commission acting on behalf of ratepayers is necessary in order to maximize ratepayer savings for any given transaction.

Q. Can you list your recommendations to the Commission?

A. Yes. In general, the Commission should modify the proposed financing order to allow for the "Best Practices" outlined in my testimony. Specifically, the financing order should provide that DEF and the Commission's independent financial advisor have equal authority with respect to major decisions involving structuring, marketing and pricing of the proposed nuclear asset-recovery bonds and selection of underwriters and other transaction participants. Further, the financing order should specify that DEF may not receive fees in excess of incremental costs incurred and not recovered by any other means. Finally, the financing order should require certifications of actions taken to achieve the lowest overall cost, similar to those required by the Commission in the 2006 FPL Storm Recovery financing.

Q. Does this conclude your testimony?

A. Yes it does.

IN RE: PETITION FOR ISSUANCE OF NUCLEAR ASSET-RECOVERY FINANCING ORDER

BY DUKE ENERGY FLORIDA, LLC

FPSC DOCKET NO. 150171-EI

REBUTTAL TESTIMONY OF BRYAN BUCKLER

I. INTRODUCTION AND QUALIFICATIONS.

Q. Please state your name and business address.

A. My name is Bryan Buckler. My current business address is 550 South Tryon Street, Charlotte, North Carolina 28202.

Q. Have you previously filed direct testimony in this proceeding?

A. Yes, on July 27, 2015, I filed direct testimony on behalf of Duke Energy Florida, LLC ("DEF" or "Duke Energy") in this docket.

Q. Have your job duties changed since you filed the July 27, 2015 testimony?

A. Yes. Effective August 15, 2015, I became the Director of Regulated Accounting for Duke Energy Corporation ("Duke Energy"). In this role I am responsible for accounting and financial reporting for all of Duke Energy's regulated subsidiaries, including Duke Energy Florida. However, I will still serve as DEF's Treasury witness in this proceeding,

and will continue to report to Stephen De May, Senior Vice President and Treasurer of Duke Energy and DEF, for purposes of the nuclear asset-recovery bond transaction.

II. SUMMARY OF REBUTTAL TESTIMONY

Q. Please summarize your rebuttal testimony

A. The purpose of my rebuttal testimony is to address what DEF believes to be potential misunderstandings by the Commission staff's witnesses in various matters addressed in their testimonies filed on September 4, 2015. I will finish my rebuttal testimony with a summary of DEF's conclusions.

Q. Are you sponsoring any exhibits with your rebuttal testimony?

A. Yes. I am sponsoring the following exhibits:

- Exhibit No. __(BB-3), Excerpt of Ohio Power Company Financing Order, Public Utilities Commission of Ohio, Case No. 12-1969-EL-ATS, 12-2999-EL-UNC (Mar. 20, 2013)
- Exhibit No. __(BB-4), Section 4928.232(D)(2) of the Ohio statute which set forth the statutory "lower cost" standard.
- Exhibit No. __(BB-5), Ohio Power Company Issuance Advice Letter Issuance Advice Letter, Public Utilities Commission of Ohio, Case No. 12-1969-EL-ATS, 12-2999-EL-UNC (Jul. 24, 2013)
- Exhibit No. __(BB-6), Sponsoring utility's securitization process withdrawal letter to the Public Service Commission of Wisconsin (Oct. 9, 2006)

- Exhibit No. __(BB-7), Composite exhibit of interrogatory responses referenced in this rebuttal testimony

III. REBUTTAL TESTIMONY

Overview of Areas of Where Additional Clarification is Needed with respect to the DEF's Views Compared to that Outlined in the Testimony of the Commission Staff's Witnesses

Q. Can you summarize the areas covered in the testimony of the Commission staff's witnesses in this proceeding for which you would like to provide clarification of DEF's views?

A. We would like to provide clarification of DEF's views in the following areas covered in the testimony of the Commission staff's witnesses:

- DEF's interests and motivations for pursuing the issuance of nuclear asset-recovery bonds
- The standard to be used to evaluate the success of the proposed nuclear asset-recovery bond issuance,
- The role of the Bond Team, and
- Other matters (including reasonableness of DEF's servicer setup expenses, a proposed credit risk disclosure, whether Morgan Stanley should be allowed to serve as an underwriter on the nuclear asset-recovery bond issuance, the importance of a monthly versus daily remittance process, and whether the bonds must be registered as asset-backed securities).

My rebuttal testimony will be focused on addressing all of these areas with the exception of the importance of a monthly versus daily remittance process and whether the bonds

must be registered as asset-backed securities, which will be addressed by DEF Witness Patrick Collins.

Primary Issues

Q. Is DEF in agreement with Klein and Maher arguments regarding DEF's interests and motivations for pursuing the issuance of nuclear asset-recovery bonds?

A. No. Witness Klein states (page 8, lines 18-21) "While the utility had a general interest in keeping overall customer rates low, the utility had another, more immediate and compelling interest in getting the proceeds as quickly as possible. I have no reason to believe that DEF's interest in this transaction would be any different."

Witness Maher states (page 9, lines 1-5) "While I do not doubt that DEF would desire that its ratepayers incur lower costs, DEF's main motivation is to receive the debt proceeds in a timely, efficient manner so DEF does not share the same incentives to achieve the lowest overall cost of funds."

DEF disputes the statement that its primary motivation is anything other than delivering significant customer savings compared to the traditional method of recovery. Under the Revised and Restated Stipulation and Settlement Agreement (RRSSA), DEF is permitted to recover the CR3 Regulatory Asset with a full debt return and 70% of the otherwise allowed return on equity. It is likely that DEF and Duke Energy will use the proceeds from the proposed nuclear asset-recovery bond issuance for debt reduction. The foregone returns available under the RRSSA as compared to the reduction in interest costs related to the use of the proceeds from the securitization is expected to result in lower net income

to Duke Energy and DEF. If securitization of the CR3 Regulatory Asset is successful, it will potentially save customers, not DEF, hundreds of millions of dollars. DEF's petition (including the Form of Financing Order and forms of operative documents) represent a very customer-centric transaction that is likely to deliver significant, meaningful customer savings compared to the traditional method of recovery under the RRSSA.

Nonetheless, DEF fully supports, and is in fact encouraged by the expected in-depth collaboration that can be achieved by the creation and operation of the Bond Team, including the involvement of the Commission staff and its financial advisor. We believe the Commission staff's financial advisor brings expertise and experience to the proposed nuclear asset-recovery bond transaction that should greatly enhance its success. Later in this rebuttal testimony we provide further description of our vision for operation of the Bond Team.

Q. Should the Commission adopt a "lowest overall cost" standard for structuring, marketing and pricing the transaction?

A. No. While DEF shares the Commission staff's goal of an efficient and highly effective transaction that is reasonable and prudent and provides substantial benefit for customers as compared with the traditional recovery method, it should not be subject to a "lowest overall cost" standard which DEF believes is tantamount to requiring that it complete a "perfect" transaction. The Florida Legislature was quite clear on the statutory standards required for the Commission to issue a financing order authorizing the use of nuclear asset-recovery bonds. Pursuant to Section 366.95(2)(c)1.b., Florida Statutes:

> [T]he commission shall issue a financing order authorizing the financing of reasonable and prudent nuclear asset-recovery costs and financing costs if the commission finds that the issuance of nuclear asset-recovery bonds and the imposition of nuclear asset-recovery charges authorized by the financing order 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. Any determination whether nuclear asset-recovery costs are reasonable and prudent shall be made with reference to the general public interest and in accordance with [the RRSSA].

The Florida Statute specifically addresses the standard required for the structuring, pricing and financing costs of the nuclear asset-recovery bonds. The Commission is required to determine that:

> the proposed structuring, expected pricing, and financing costs of the nuclear asset-recovery bonds should 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. (Section 366.95(2)(c)2.b., Florida Statutes).

The Florida Statute includes a final statutory standard that requires the Commission, within 120 days after the issuance of the nuclear asset-recovery bonds to:

> review, on a reasonably comparable basis, [the actual costs of the nuclear asset-recovery bond issuance] to determine if such costs incurred in the issuance of the bonds resulted in the lowest overall costs that were reasonably consistent with market conditions at the time of the issuance and the terms of the financing order. (Section 366.95(2)(c)5., Florida Statutes).

Thus, it is clear the statute does not require a "lowest overall cost" standard. The adoption of such a standard will expose DEF to a "perfection" standard for which performance against cannot be objectively measured, but for which instead subjective assessments would be made. DEF's concerns are further articulated later in this rebuttal testimony. It should be noted that the Bond Team concepts and related processes will provide the Commission with very significant and meaningful oversight of the nuclear asset-recovery bond issuance.

Q. Mr. Maher testified that a "lowest overall cost" standard is not an absolute standard but rather a conceptual target to which issuers should always aspire (p. 11). Mr. Maher further explained that "[w]hen issuers ask underwriters for such a commitment, issuers are really asking underwriters to state that, in the underwriters' opinion, all actions the underwriters believe would minimize the overall cost of the financing have been taken." (p. 11). Do you have a reaction to Mr. Maher's testimony?

A. First of all, DEF agrees with Mr. Maher that it should aspire to obtain the best pricing for the benefit of its customers. However, with regard to the requirement of a "lowest overall

cost" standard from issuers and underwriters, as opposed to a reasonable and prudent standard to obtain the best price, we respectfully disagree with Mr. Maher and strongly believe that such a standard does in fact impose an absolute standard to obtain a "perfect" transaction. We agree with the testimony of Mr. Schoenblum that the statute prohibits "after-the fact" reviews in evaluating most aspects of the marketing and pricing of the nuclear asset-recovery bonds, and therefore, do not believe DEF should be exposed to economic risk as a result of a subjective, unrealistic perfection standard not authorized by the Florida Statute.

DEF would be comfortable, however, offering a certification in line with words that Mr. Maher used in his testimony, such as "DEF has taken all prudent and reasonable actions that it believes are necessary to minimize the overall cost of the financing." Furthermore, DEF would commit to document, in writing, all steps taken to achieve the objectives.

Q. Did the Public Utility Commission of Ohio adopt a "lowest overall cost" standard?

A. Recognizing that the Florida Statute does not create a "lowest overall cost" standard, Mr. Sutherland, Ms. Klein and Mr. Schoenblum each assert that this Commission should impose a "lowest overall cost" standard regardless of the standards established by the Florida Legislature. Each reference a 2013 Ohio Power Company transaction as an example of a commission adopting a "lowest overall cost" standard where the enabling legislation did not require such a standard, but we believe each of them are interpreting the Ohio Power Company financing order incorrectly. The excerpt from the Ohio Power Company financing order cited in the testimonies of Mr. Sutherland, Ms. Klein and Mr.

Schoenblum was part of the summary of the comments submitted to the Ohio commission by staff and the various interveners. Although the Ohio commission staff did propose a "lowest cost" standard, the Ohio commission chose not to adopt it for the transaction.[1]

The actual standard adopted by the Ohio commission was:

> [t]he proposed securitization transaction, as discussed and amended by this Financing Order, results in, consistent with market conditions, both measurably enhancing cost savings to customers and mitigating rate impacts to customers as compared with previously approved recovery methods.[2]

The standard adopted by the Ohio commission did not deviate from the "lower cost" standard established under the Ohio securitization statute. I am attaching Exhibit No. __(BB-3) and Exhibit No. __(BB-4). Exhibit No. __(BB-3) is an excerpt from the Ohio Power Company financing order identifying the standard by which the bonds were issued and Exhibit No. __(BB-4) is section 4928.232(D)(2) of the Ohio statute which sets forth the statutory "lower cost" standard. Furthermore, I am also attaching Exhibit No. __(BB-5) the Issuance Advice Letter delivered by Ohio Power in connection with the 2013 transaction. On page 14 of the Issuance Advice Letter, the sponsoring utility certified that:

> the structuring and pricing of the PIR Bonds, as described in Issuance Advice Letter, will result in the Phase-In-Recovery Charges, as of the date of issuance,

[1] Ohio Power Company Financing Order, Public Utilities Commission of Ohio, Case No. 12-1969-EL-ATS, 12-2999-EL-UNC (Mar. 20, 2013) at 13.
[2] Ohio Power Company Financing Order at 64.

consistent with market conditions and the terms set out in the Financing Order that both measurably enhances cost savings to customers and mitigates rate impacts to customers as compared with the DARR cost recovery methods previously approved for the Applicant.[3]

DEF has proposed a similar certification, tracking the Florida statutory standards, in its form of Issuance Advice Letter attached as Appendix C of its proposed financing order filed with its petition.

Q. What are the proper standards for the Commission to adopt for this transaction?

A. DEF has proposed that the appropriate standards for this transaction are to use the standards approved by the Florida Legislature and found in the Florida Statute. Furthermore, DEF will demonstrate to this Commission that its efforts and the results of the transaction are reasonable and prudent and serve the general public interest, consistent with Section 366.95(2)(c)1.b., Florida Statutes.

Q. Are there any consequences if the Commission adopts a lowest overall cost standard?

A. A "lowest overall cost" standard could have the negative impact of prolonging the transaction in search for the "perfect" transaction. DEF agrees with Ms. Klein and Mr. Maher that the objective should not be to do the fastest transaction, nor does it propose this objective, but at the same time, it is in the customers' best interest for there not to be an undue delay. As part of the RRSSA, DEF is entitled to recover carrying charges at a

[3] Issuance Advice Letter, Case No. 12-1969-EL-ATS, 12-2999-EL-UNC (Jul. 24, 2013) at 14.

rate of 6% per annum. At this rate, any undue delay after January 1, 2016 will cost customers approximately $6 million per month. Using the FPL storm costs bond transaction as a guide, that transaction took fifteen months between FPL's initial application and the sale of the bonds. Using this docket's schedule, that would mean the nuclear asset-recovery bonds would not be issued until October 2016, resulting in approximately $64 million of carry costs from January 1, 2016. The West Virginia transactions referenced in the testimonies of Mr. Sutherland and Mr. Maher took nearly two years from the date of the application for a financing order to the sale of the bonds. In addition to carrying charges, any unnecessary delay subjects the transaction to interest rate risk, further exposing the customers to a possible reduction in the savings that can be achieved through the issuance of nuclear asset-recovery bonds as compared to the traditional method of recovery under the RRSSA. Any increases in interest rates will increase the costs associated with the nuclear asset-recovery bonds and lower anticipated customer savings.

These comments should not be mistaken to mean that DEF wishes to inappropriately speed along the transaction, as DEF is in agreement that necessary time should be taken to ensure the bonds are robustly marketed to a sufficiently large pool of prospective investors.

Q. Does the proposed protocols outlined in DEF's Petition and draft Financing Order provide the Commission with sufficiently significant and meaningful oversight powers?

A. Yes. DEF agrees with Mr. Schoenblum's conclusions that the Commission does not have "after-the-fact" reviews on the marketing and pricing of the bonds. As a result, DEF proposed a collaborative process with the Bond Team being actively involved in the structuring, marketing and pricing of nuclear asset-recovery bonds. The role of the Bond Team is designed to keep the Commission informed throughout the structuring, marketing and pricing process so that the Commission can make an informed decision when reviewing the Issuance Advice Letter. While DEF supports a very active role for all members of the Bond Team, this Commission must also recognize that liability for the transaction lies with DEF, the Special Purpose Entity (SPE), and its officers and directors. Throughout the testimonies submitted on behalf of Commission staff, there are references to giving the Commission, its staff and advisor co-equal or joint-decision making status, or making them an equal partner. DEF has proposed the collaborative process with the Bond Team to address these concerns, but for those matters in which DEF and the SPE will be exposed to liability, while DEF welcomes and will consider any suggestions from the Bond Team, DEF must have direct control over the delivery of information to investors, including the SEC filing documents. As noted in our response to Question 23 Staff's Second Set of Interrogatories (No. 8-39), which is included in Exhibit No. __ (BB-7), DEF takes federal securities law liability seriously, and in this transaction, as with other utility securitization bond transactions, the Commission staff and its advisors are not exposed to equal liability. For example, we are aware of an example where a sponsoring utility chose not to proceed with the issuance of utility securitization bonds as a result of this issue and the liabilities that the utility would have assumed. Attached is the sponsoring utility's letter to the Public Service Commission of

Wisconsin as Exhibit No. __(BB-6). DEF believes that a collaborative process with the Bond Team, except for these certain exceptions involving liability exposure for DEF in which final determinations are reserved for DEF, will result in the best deal possible for customers, while appropriately protecting DEF, the SPE and its officers.

Q. Mr. Sutherland describes a process whereby the Commission Staff and Commission's financial advisor should participate in the selection of transaction participants, including legal counsel for the sponsoring utility and legal counsel for the underwriters. Do you have a view point about this proposal?

A. DEF concurs with Mr. Sutherland insofar as the Bond Team should participate in the selection of certain transaction participants and DEF included such a process in Ordering Paragraph 48 of its draft financing order. DEF, however, does not believe it is appropriate for the Bond Team to be able to select DEF's or the SPE's counsel. DEF, as sponsor and depositor, and the SPE, as issuer, will be exposed to federal securities law liability. Furthermore, DEF and the SPE will execute an underwriting agreement as well as the other transaction documents, each of which includes indemnity provisions, among other provisions, that expose DEF, as sponsor and depositor, to additional obligations and liability. DEF, as was the case in the FPL storm costs bond transaction, therefore, must be entitled to appoint its own counsel.

Similarly, the underwriters will have exposure to securities law liability. In addition, most underwriters have a list of pre-approved counsel. Therefore, it is logical that the underwriters should be able to select their counsel. It benefits everyone, especially the

customers, that all parties involved in this transaction have the ability to select their own counsel with substantial experience with this asset class so that we are able to complete the offering in a highly effective and timely manner.

Q. Mr. Sutherland, Ms. Klein and Mr. Maher make reference to credit risk disclosure in a registration statement as a way to "capture value from investors". Both Mr. Sutherland and Mr. Maher refer to the registration statements filed for the benefit of Monongahela Power Company and for Potomac Edison Company a sentence that claims credit risk has been "effectively eliminated" as a result of the true-up mechanism and state pledge. Ms. Klein also referenced a similar sentence from a 2004 Texas transaction. What is your reaction to these sentences?

A. We have not yet drafted the registration statement, but if Mr. Sutherland, Ms. Klein and Mr. Maher are suggesting that we consider such language, DEF does have a couple of observations. First, DEF reads the statement as a conclusion and not as a statement of fact. While credit risk is certainly significantly mitigated by the true-up mechanism and state pledge, DEF does not feel comfortable to state a conclusion in an offering document that all credit risk is "effectively eliminated." As described in my testimony, DEF has filed its petition for a financing order as part of an effort to achieve savings for its customers as compared to the traditional method of recovery under the RRSSA. While DEF is willing to forgo a substantial return on equity for the benefit of customers, DEF is unwilling to incur unnecessary liability as part of this offering. Including a sentence as proposed, Mr. Sutherland, Ms. Klein or Mr. Maher would expose DEF to unnecessary liability.

In comment letters sent to MP Environmental Funding LLC and PE Environmental Funding LLC in connection with the registration statements filed on behalf of Monongahela Power Company and Potomac Edison Company, the SEC instructed the companies to delete the sentence proposed by Mr. Sutherland and Mr. Maher from their disclosure.[4] The language remained in the final prospectuses despite a follow up comment letter to MP Environmental Funding LLC.[5] To DEF's knowledge, there is no public record as to how the SEC's comments were resolved prior to the issuance of the bonds. In addition, with the exception of the two West Virginia transactions highlighted by Mr. Sutherland and Mr. Maher, since 2009, only four utility securitization transactions (all of which have been in Texas) included any language in their registration statement about credit risk, and in each case, the credit risk disclosure referenced that the true-up mechanism and state pledge will *serve to minimize, if not effectively eliminate,* for all practical purposes and circumstances, any credit risk associated with the securitization bonds (i.e., sufficient funds will be available and paid to discharge all principal when due at final maturity and interest obligations on the securitization bonds when due).[6] The more recent West Virginia transaction from 2013, like other recent transactions, did not include any disclosure about credit risk. Even in 2006, one Florida Commissioner was concerned about such conclusory language regarding the credit risk volunteered in the FPL storm cost bond financing order. In dissent, Commissioner Isilio Arriaga took the

[4] SEC Comment Letter to PE Environmental Funding LLC (Feb. 2, 2007) at 2; and SEC Comment Letter to MP Environmental Funding LLC (Feb. 2, 2007) at 2.

[5] SEC Comment Letter to MP Environmental Funding LLC (Mar. 2, 2007) at 2.

[6] See CenterPoint Energy Restoration Bond Company, LLC, Prospectus, at 33 (Nov. 18, 2009); Entergy Texas Restoration Funding, Prospectus, at 35 (Oct. 29, 2009); CenterPoint Energy Transaction Bond Co. IV, Prospectus, at 40 (Jan. 11, 2012); AEP Texas Central Transition Funding, Prospectus, at 32 (Mar. 7, 2012).

position that the Commission should have replaced the phrase "effectively eliminate" with "effectively minimize".[7]

If the Commission chooses to make a finding or conclusion regarding credit risk of the nuclear asset-recovery bonds in the financing order (as it did in the FPL storm cost bond financing order), DEF would consider including that statement in the registration statement provided it was clearly identified in each instance that it was a finding and conclusion of the Commission and not DEF.

Q. What is your response to Commission staff's testimony regarding the roles and responsibilities of the Bond Team?

A. As discussed above, DEF acknowledges that the Commission staff and their financial advisor should have a very prominent, and equal role in most, but not all aspects of the proposed nuclear asset-recovery bond issuance. We believe the Commission staff and their financial advisor should be heavily involved in all aspects of the structuring, marketing and pricing of the nuclear asset-recovery bonds but that DEF must retain the authority to make final decisions on matters that subject it to securities law and other litigation risk. DEF, the SPE, and their officers are the only Bond Team participants with U.S. securities law accountability and potential liability, and thus they must make the final decisions on all public disclosures and must also control all communications with investors. Thus, it also follows that DEF should also be allowed, in its sole discretion, to hire its transaction and U.S. securities law external counsel.

[7] Order on Motion for Reconsideration and Clarification of Financing Order, Florida Public Service Commission Order No. PSC-06-0626-FOF-EI, Docket No. 060038-EI (July 21, 2006) at 6.

This being said, DEF welcomes and encourages all Bond Team members to actively participate in the design of the marketing materials for the transaction, as well as in the development and implementation of the marketing and sales plan for the bonds (i.e., equal rights with DEF to approve or disapprove of the proposed marketing plan, structuring, and pricing of the bonds). We believe all Bond Team members (excluding Morgan Stanley) should have equal rights on the hiring decision for perhaps the most important service provider, the underwriters. As an example, DEF shares the Commission staff's advisor's view that the underwriters should be selected with the goal of ensuring the nuclear asset-recovery bonds are offered to the broadest market reasonably possible to gain the lowest interest rates for the bond tranche maturity profiles sold, through increased competition among and between investors, and as applicable, underwriters. Further, DEF is also comfortable with the recommendation that at least one of the underwriters engaged will not have a prior relationship with DEF.

We also believe the Commission staff's financial advisor has articulated many valuable ideas in its testimonies . For example, we concur that the bonds should be marketed to all investor types, including traditional corporate bond investors, ABS investors, and U.S. agency bond investors. We also believe the Commission staff's advisor will provide valuable insight to the proper structure of the bonds and initial and final pricing strategies. In short, we believe the Commission staff and its advisors should have equal decision making into most of the important aspects of the bond issuance, while DEF maintains final authority over the marketing messages delivered to investors and all public disclosures and filings.

Other Issues

Q. What is your response to Commission staff's testimony regarding the servicer setup expenses?

A. Witness Schoenblum (page 10, lines 11-16) states "In my experience, it is difficult to envision that the incremental technology costs could possibly be that high. The technology changes required are not that different from modifications that are made following any rate proceeding when new procedures, processes, reconciliations and true-ups are required by the regulators. The billing and collection systems are already in place and would not appear to require major modifications simply to segregate the securitization funds."

Witness Sutherland (page 31, lines 8-9) states "Since DEF is already billing the ratepayers, the incremental cost to add the nuclear asset-recovery charge to the bill should be next to nothing."

DEF disagrees that its billings systems do not require significant modifications. DEF provided details of its information systems project in its response to Questions 10 and 15 in Staff's Second Set of Interrogatories (No. 8-39) which is included in Exhibit No. __ (BB-7). The version of DEF's billing system, or Customer Service System (CSS), is a mainframe computer system that utilizes Cobol programming language. The system was the first installation of a Client/Server application at Florida Power Corp. (subsequently DEF). The original architecture was designed with a limited number of fields for billing rates and kWh usage. Therefore, all new billing rates and kWh usages require many table

structure and programming changes. The Information Technology project team has and will continue to look for cost savings through efficiencies as it works through the actual stages of the project calendar. The most recent projected estimate of total project cost is approximately $915,000 (down from the initial estimate of $1.9 million). DEF will continue to provide updated cost estimates through the completion of the project.

Q. Do you agree with intervener testimony that Morgan Stanley should not be allowed to serve as an underwriter (or even submit a proposal to be an underwriter) on the nuclear asset-recovery bond issuance?

A. No. DEF believes the Bond Team should select underwriters that have the highest likelihood of identifying investors that could participate in the bond issuance in a meaningful way. The Bond Team should make decisions to ensure the bonds are offered to the broadest market reasonably possible to gain the lowest interest rates (based on the required bond maturity profile, such as a final tranche maturity of 20 years) for the benefit of customers, and summarily dismissing one of the premier underwriters in this business would run contrary to that goal. DEF believes any potential conflict of interest that would arguably exist by having Morgan Stanley as both a structuring advisor and underwriter can be effectively eliminated by ensuring the use of multiple underwriters (early in the process) and by drawing on the collective experience and sophistication of the other members of the Bond Team, including the Commission staff's advisors. While DEF has not concluded that Morgan Stanley should be an underwriter, it believes Morgan Stanley should be requested to submit a proposal to be an underwriter and the merits of

their firm should be evaluated objectively upon receipt of such proposal, including in respect of any potential conflict of interest concerns.

Further, as noted in its response to Question 34 in Staff's Second Set of Interrogatories (No. 8-39), which is included in Exhibit No. __ (BB-7), DEF notes it is common for financial institutions to participate as both structuring advisor and underwriter in utility securitization transactions. The participation of a financial institution as both structuring advisor and underwriter may result in efficiencies in both costs and timing that will benefit customers. DEF proposes to engage multiple underwriters to ensure the best advice is obtained, and to diminish the influence of any one advisor. DEF would like to obtain advice from the most experienced financial institutions in the utility securitization arena to ensure sufficient investor demand is obtained and that a successful transaction results.

Q. Does the proposed securitization transaction involve a "municipal security" which would be subject to the rules of the Municipal Securities Review Board (MSRB)?

A. No. As Mr. Maher on p. 8 of his testimony and Mr. Sutherland on p. 34 of his testimony state, the proposed transaction is not subject to the rules pertaining to municipal securities, including Municipal Securities Rulemaking Board (MSRB) rules governing the conduct of municipal financial advisors.

Q. Does MSRB Rule G-23 have relevance to the proposed securitization?

A. No, I do not believe so. In addition to the fact that this is not a municipal transaction, Rule G-23 is intended to protect understaffed municipal issuers against self-dealing by financial institutions. Specifically, Rule G-23 prevents a financial institution which has

served as a "financial advisor" to a municipal issuer from simultaneously, or subsequently, serving as underwriter for the issuer on the same transaction. While not always the case, municipal issuers may not be fully or appropriately staffed to effectively evaluate financial advice provided by financial institutions. Rule G-23 was intended to address this imbalance and the potential abuse which may flow from it. As Mr. Sutherland quotes from Mary Shapiro on p. 34 of his testimony as to the underlying intent of the rule, it is described as preventing the financial institution from "[guiding] the municipality towards securities tailored to his firm's advantage, then resign and act as underwriter."

The facts and circumstances here are very different. First, Morgan Stanley did not guide DEF toward pursuing a utility securitization in its role as structuring advisor. Instead, DEF made its decision in order to provide substantial savings to its customers prior to its hiring of Morgan Stanley. Second, there is not an imbalance similar to the one described above between a municipal entity and financial institutions. Duke Energy manages billions of dollars of debt financings each year and is fully capable of assessing the value of any advice it receives from any financial institution and of protecting its interests and those of its customers. As previously stated, the transaction will be able to benefit from the collective experience of all Bond Team members, in addition to several highly qualified underwriters, which should alleviate any potential conflict of interest concerns.

Summary of Rebuttal Testimony

Q. Would you please summarize your rebuttal testimony?

A. I would like to summarize DEF's rebuttal testimony as follows:

- DEF's primary goal for the proposed nuclear asset-recovery bond issuance is to maximize customer savings compared to the traditional method of recovery under the RRSSA.
- DEF has proposed and strongly believes in the Bond Team concept, and in fact believes it is critical to the success of the proposed nuclear asset-recovery bond issuance for the Commission, the Commission staff, and their financial advisors to have equal decision making authority with DEF in the design and operation of all critical phases of this transaction, including, but not limited to:
  - Selection of substantially all service providers, including underwriters;
  - Design of the marketing and sales efforts and identification of prospective investors;
  - Decisions regarding the structuring of the bonds, including maturity profiles;
  - Decisions regarding the initial pricing thoughts for each bond tranche and the ultimate coupon to accept given investor demand;
- The Commission staff should be heavily involved in the Bond Team and related processes.
- DEF, the SPE, and their officers are the only Bond Team participants with U.S. securities law liability, and thus they collectively must make the final decisions on all public disclosures and must also control all communications with investors. DEF should also be allowed, in its sole discretion, to hire its and the SPE's transaction and U.S. securities law external counsel. This being said, DEF

welcomes and encourages all Bond Team members to actively participate in the design of the marketing materials for investors, as well as in the development and implementation of the marketing and sales plan for the bonds.

- DEF strongly believes it should not be subject to a "lowest overall cost" standard and certification with respect to the pricing of the nuclear asset-recovery bonds, as such standard and suggested certification is a "perfection" standard with no objective way of being verified. In other words, DEF and its shareholders should not be unfairly at risk of losses due to the subjective assessment of whether a "perfection" standard has been achieved. Instead, the Bond Team and the other oversight provisions afforded to the Commission by DEF's Form of Financing Order should give the Commission comfort that customers' interests are being protected to the full extent reasonably possible. Further, such protocols as outlined in DEF's Form of Financing Order fully cover the required statutory objectives and provide great certainty that the nuclear asset-recovery bond issuance would be executed in a prudent and highly effective manner.
- DEF agrees to document, in writing, all of the significant prudent and reasonable actions taken by the Bond Team, including DEF, to minimize the overall cost of the financing.

Q. Does this conclude your testimony?

A. Yes.

IN RE: PETITION FOR ISSUANCE OF NUCLEAR ASSET-RECOVERY FINANCING ORDER

BY DUKE ENERGY FLORIDA, LLC

FPSC DOCKET NO. 150171-EI

REBUTTAL TESTIMONY OF PATRICK COLLINS

I. INTRODUCTION AND QUALIFICATIONS

Q. Please state your name and business address.

A. My name is Patrick Collins. My current business address is 1585 Broadway, New York, New York 10036.

Q. Have you previously filed direct testimony in this proceeding?

A. Yes, on July 27, 2015, I filed direct testimony on behalf of Duke Energy Florida, LLC ("DEF" or "Duke Energy") in this docket.

Q. Has your employment position changed since you filed the July 27, 2015 testimony?

A. No, it has not.

II. SUMMARY OF REBUTTAL TESTIMONY

Q. Please summarize your rebuttal testimony.

A. The purpose of my rebuttal testimony is to address Commission staff witnesses' statements relating to the SEC's treatment of the nuclear asset-recovery bonds as asset-backed securities and to discuss the merits of the proposed monthly remittances of funds to the Special Purpose Entity (SPE) from DEF.

Q. Are you sponsoring any exhibits with your rebuttal testimony?

A. Yes. I am sponsoring the following exhibit:

- Exhibit No. __ (PC-3), Composite exhibit of interrogatory responses referenced in this rebuttal testimony

III. REBUTTAL TESTIMONY

Q. Do you have any comments in response to Mr. Sutherland's assertion that the bonds could not be viewed as "asset-backed securities" by the SEC?

A. Yes. There is little doubt that the SEC and other regulatory bodies consider utility securitizations to be "asset-backed securities" in a legal context under Item 1101(c) of Regulation AB. DEF has described its position in full in DEF's responses to Questions 20, 25, 28 and 29 in the Staff's Second Set of Interrogatories (Nos. 8-39), attached as composite Exhibit No. __ (PC-3). As such, DEF currently anticipates filing its registration statement on the new Form SF-1. DEF does not believe that the 2007 Financial Accounting Standards Board (FASB) Statement referenced on p. 8 of Mr. Sutherland's testimony in any way would alter this legal conclusion. That statement in no way purports to reflect the *legal treatment* for SEC registration purposes; instead, it reflects the bonds treatment for financial reporting purposes (which has little, if any,

relevance in this context). Furthermore, for the reasons set forth in DEF's response to Question 28 in Staff's Second Set of Interrogatories (Nos. 8-39), it would appear to be unproductive to adopt the approach used in the referenced West Virginia financings to obtain an SEC no-action letter (which was obtained for the original 2007 West Virginia financing). See Exhibit No. __ (PC-3).

Q. Do you have any comments in response to Mr. Sutherland's assertion regarding the marketing of the bonds in the context of the "asset-backed securities" discussion?

A. Yes. DEF recognizes that the property interest securing utility securitizations (here, the nuclear asset-recovery property) is unique and is unlike the collateral backing traditional, commoditized securitizations like loans or leases. Further, there are a few distinctions that are important to make in the context of marketing the bonds. First, with respect to marketing, in order to get the best execution possible for customers, it is necessary to get as many potential investors interested in the bonds. That should include a wide group of fixed income investors, including investors who would otherwise purchase high quality assets such as AAA-rated credit cards or other AAA-rated securitizations (one may refer to these types of securities as asset-backed securities, but it is essential not to confuse this informal, marketing reference with the actual legal definition described above under Item 1101(c) of Regulation AB with the SEC). Second, marketing to investors who would otherwise purchase those types of securities should not and will not preclude marketing the bonds to investors in the broader fixed income capital markets. Third, marketing to those same investors referenced above does not and will not mean that the nuclear asset-recovery bonds are marketed as a pool of receivables. Any assertion otherwise by Mr.

Sutherland is not indicative of how DEF plans to market the bonds. Mr. Sutherland's comments imply that the marketing should exclude any investor who invests in AAA-rated credit cards, for example. This should not be the case and doing so would have a negative pricing impact on the bonds.

Q. If monthly remittances are allowed by the rating agencies and approved by the Commission, what is your opinion regarding including earnings on collections pending monthly remittance?

A: Commission staff witness Sutherland (page 32, lines 18-20) states: "If DEF is permitted to remit its collection of nuclear asset-recovery charges monthly, then DEF should also be required to remit to the trustee DEF's actual earnings on those collections pending monthly remittance." As stated on page 12, line 9-10 of Michael Covington's testimony "DEF would include in any remittance investment earnings which are estimated to have been earned on such collections while in the hands of DEF."

DEF does not expect to segregate collections received from nuclear asset-recovery charges from its general funds prior to remitting such funds to the trustee. Therefore, DEF will manage these funds in accordance with its normal cash management practices. My understanding is that those practices include investing excess cash, if any, in the Duke Energy internal money pool arrangement (e.g., lending to Duke Energy's other regulated utility companies) or in overnight money market funds. Investments in the Duke Energy internal money pool arrangement earn interest at the Tier-1 commercial paper rate. Investments in money market fund earn interest at prevailing market rates. As DEF's cash position can change significantly on a daily basis, DEF does not believe it

would be possible to accurately attribute actual cash investment earnings of DEF to nuclear asset-recovery charge collections. Rather, DEF proposes to allocate investment earnings to such collections based on the average of the beginning and ending Tier-1 commercial paper rate (i.e., 30-day Federal Reserve "AA" Industrial Commercial Paper Composite Rate) for each month. This method is consistent with the process used by DEF when allocating interest to over and under-collections on DEF's cost recovery clauses. DEF also believes monthly remittances would be less costly than daily remittances as they would simply require one administrative transaction per month versus 20-23 individual transactions per month. This reduces transaction costs as well as labor required to run reports and to verify and prepare wire transfers on a daily basis and subsequently reconcile the daily remittances to the monthly remittance requirements.

Q. Does this conclude your testimony?

A. Yes. Thank you.

CHAIRMAN GRAHAM: Okay. Staff, let's move on to Item No. 7, additional procedures and concluding matters.

MS. GERVASI: Thank you, Mr. Chairman. The only concluding matter that I can think of would have to do with the critical dates that we would like to establish moving forward towards getting the Financing Order issued in the docket. And as we discussed earlier as part of the preliminary matter, staff anticipates circulating a marked up copy of the draft Financing Order for review by the parties on or before Friday, October the 30th. We contemplate that we will have meetings or conference calls between parties and staff during the week of November the 2nd to discuss the draft Financing Order.

The parties would then have an opportunity to file post-hearing briefs, including red-lined versions of the draft Financing Order by Friday, November the 6th. And then the Special Agenda that is already scheduled for November the 17th would be for the Commission to address and approve the Financing Order, and parties will be allowed to address the Commission regarding the Financing Order at that Special Agenda conference.

CHAIRMAN GRAHAM: All right. So now I want to

make sure that I'm sure about this. The financial -- the financial order will be out by October 30th.

MS. GERVASI: The draft will be circulated.

CHAIRMAN GRAHAM: The draft.

MS. GERVASI: Yes, sir.

CHAIRMAN GRAHAM: And dialogue is going to continue or start November 2nd, and you will get up with the parties as far as when that's going -- how that's going to happen.

MS. GERVASI: Correct. Yes, sir.

CHAIRMAN GRAHAM: And then the briefs need to be back here 5:00 p.m. the 6th of November; correct?

MS. GERVASI: Yes. Correct.

CHAIRMAN GRAHAM: Does everybody understand that?

Mr. Rehwinkel.

MR. REHWINKEL: Mr. Chairman, I like that proposal and schedule. I would like to ask that, while we're all here together, we worked well kind of setting up calls ad hoc as needed, but we're going to have five days that week to work this out, and so I would ask that now, not necessarily during this hearing, but that the staff schedule calls so that everybody knows what they've got, and we don't have to go through this process of can you make it at 1:30 or 10:00 or, you

know, what's your schedule like? It's important that we all do this, and so I would just ask that we schedule those upfront so there's no delay, and then we can work this out.

CHAIRMAN GRAHAM: When you're saying upfront, you mean like right now or get back to you within a week or so?

MR. REHWINKEL: Sometime today or this week, that they just set them so that we can -- everybody can rely on it and know. And maybe if anybody does have some problems, they can tell staff today or this week so that they can schedule them effectively.

CHAIRMAN GRAHAM: Just so everybody knows, that week of November 2nd is when we do the fuel clause.

MR. REHWINKEL: Right.

CHAIRMAN GRAHAM: And so there's going to be things going on with all of you as well as staff.

MR. REHWINKEL: Yeah. So that's why I think it's important that, you know, if we do them at, you know, at a certain time during the end of the day or whatever, we just -- it's so important that we -- that we have opportunity to talk, that we set that.

MS. GERVASI: We'll be happy to provide a schedule upfront for the parties to get together to discuss the draft Financing Order, and we'll get that

out as quickly as we can.

MR. MOYLE: I just wanted to -- this procedure has been a little, a little different, but assuming everything goes well with the Financing Order and there's no issues that anybody has, I assume the filing of briefs is optional in this case; right?

CHAIRMAN GRAHAM: Yes.

MR. MOYLE: Okay. Thanks.

CHAIRMAN GRAHAM: Okay. So if everybody is on board with the schedule, and the Commissioners are all smiling and looking happy -- staff, I do thank you very much for all that you've done for this. Duke and FIPUG, Retail Federation, OPC specifically, and Mr. Brew that's not here, I appreciate everything that you guys have done. I know this was not easy. Before today it wasn't easy. Today wasn't too bad.

With that all being said, I wish you all safe travels to wherever it is you have to go to from here, and we're adjourned.

(Proceeding adjourned at 10:22 a.m.)

STATE OF FLORIDA)
: CERTIFICATE OF REPORTER
COUNTY OF LEON)

I, LINDA BOLES, CRR, RPR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 15th day of October, 2015.

Linda Boles

LINDA BOLES, CRR, RPR
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