**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

| | | |
|---|---|---|
| **PETITION OF SOUTHERN INDIANA GAS AND ELECTRIC COMPANY D/B/A CENTERPOINT ENERGY INDIANA SOUTH PURSUANT TO INDIANA CODE CH. 8-1-40.5 FOR (1) AUTHORITY TO (A) ISSUE SECURITIZATION BONDS; (B) COLLECT SECURITIZATION CHARGES; AND (C) ENCUMBER SECURITIZATION PROPERTY WITH A LIEN AND SECURITY INTEREST; (2) A DETERMINATION OF TOTAL QUALIFIED COSTS AND AUTHORIZATION OF RELATED ACCOUNTING TREATMENT; (3) AUTHORIZATION OF ACCOUNTING TREATMENT RELATED TO ISSUANCE OF SECURITIZATION BONDS AND IMPLEMENTATION OF SECURITIZATION CHARGES; (4) APPROVAL OF PROPOSED TERMS AND STRUCTURE FOR THE SECURITIZATION FINANCING; (5) APPROVAL OF PROPOSED TARIFFS TO (A) IMPLEMENT THE SECURITIZATION CHARGES AUTHORIZED BY THE FINANCING ORDER IN THIS PROCEEDING, (B) REFLECT A CREDIT FOR ACCUMULATED DEFERRED INCOME TAXES, AND (C) REFLECT A REDUCTION IN PETITIONER'S BASE RATES AND CHARGES TO REMOVE ANY QUALIFIED COSTS FROM BASE RATES; AND (6) ESTABLISHMENT OF A TRUE-UP MECHANISM PURSUANT TO INDIANA CODE § 8-1-40.5-12(c).** | ) | **CAUSE NO. 45722** |

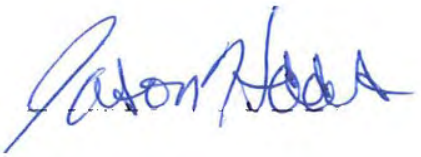
**INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR**

**PUBLIC'S EXHIBIT NO. 5**

**TESTIMONY OF WITNESS HYMAN SCHOENBLUM**

**AUGUST 3, 2022**

Respectfully submitted,



T. Jason Haas
Attorney No. 34983-29
Deputy Consumer Counselor

**TESTIMONY OF OUCC WITNESS HYMAN SCHOENBLUM**
**CAUSE NO. 45722**
**SOUTHERN INDIANA GAS AND ELECTRIC COMPANY D/B/A CENTERPOINT ENERGY INDIANA SOUTH**

## I. INTRODUCTION

**Q: Please state your name and address.**

A: Hyman Schoenblum, 260 Madison Avenue, Suite 8019, New York, NY 10016.

**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 and a master's degree in finance, both from Baruch College in New York City.

I worked for 35 years at the Consolidated Edison Company of New York, Inc. ("Con Ed"), the largest electric utility in the State of New York, in various financial management capacities. 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 its wholly owned subsidiary, Orange and Rockland Utilities, Inc. I also led a task force to prepare Con Ed for the financial impacts of retail competition in the State of New York. While in those positions, I also served as a key spokesperson in Con Ed's investor relations effort and met regularly with institutional investors, investment banking research professionals and others.

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 reviewing financial transactions (debt and equity offerings,

mergers, and acquisitions), 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.

At Con Ed, decision-making related to 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 its Vice President of Internal Audit. I retired from Maimonides in 2018.

**Q: What specific activities did you undertake in these roles?**

A: As Vice President of Strategic Planning at Con Ed, I was the senior financial executive 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 to identify merger candidates for the company. This required detailed and intensive review of operating and financial information of potential acquirees and reporting the results to senior management.

This merger activity required careful review of operating and financial risks and evaluation of the fairness opinions that the investment bankers offered in support of the proposed merger. The proposed acquisition of Northeast Utilities was rejected when we identified risks that put the fairness opinions in jeopardy.

I also 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.

A key element to this activity was the evaluation of the representations of the bankers and consultants seeking to convince the company of the efficacy of the investments. As Con Ed's Vice President and Treasurer, I participated with the Finance team in coordinating Con Ed's capital financings (approximately $1 billion over a number of traditional debt transactions) and cash management needs. This required intensive interaction with the company's bankers, senior management, and the Finance Committee of the Board of Trustees in various aspects of pricing and selling the debt issuances. I also interacted with the rating agencies, as appropriate.

**Q: Did you have any experience with utility securitization/Ratepayer-Backed Bonds while working at Con Ed?**

A: Yes. As Treasurer, I assisted in a corporate review of a potential Ratepayer-Backed Bond ("RBB") transaction for Con Ed. Our team analyzed this financing mechanism, the market, and their potential to benefit Con Ed and its ratepayers. New York did not have enabling legislation necessary for a AAA rating. Although there was a proposal to undertake it under the New York Public Service Commission's existing authority, it was never tested.

**Q: Did you have direct experience with institutional and other investors, either related to Con Ed in particular or with regard to the utility industry in general?**

A: While serving in the above-mentioned positions, I played a visible leadership 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 and the financial press for many hours describing the potential implications. These activities enabled me to develop a solid relationship with the investment community and they viewed me as a highly trustworthy individual, which inured to the benefit of the company.

In addition, during my employment at Con Ed, I served on many Edison Electric Institute ("EEI")[1] committees and task forces. 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. I was often invited to participate on panels, alongside utility CFOs and CEOs, to discuss financial issues affecting the utility industry, particularly related to deregulation impacts.

**Q: Do you have recent experience with RBBs?**

A: Yes. In 2015 I provided direct testimony to the Florida Public Service Commission ("FPSC") on Duke Energy Florida's ("DEF") $1.3 billion RBB transaction, which refinanced the unrecovered cost of a retired nuclear power plant. In 2020 I provided direct testimony to the North Carolina Utilities Commission concerning the Joint Petition of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC's Issuance of Securitization Financing Orders. I testified on several issues, including the need for ratepayer involvement in the bond's structuring, marketing, and pricing

[1] EEI is the electric industry's primary trade organization.

after the issuance of a Financing Order. I also testified regarding the benefits of a "Bond Team," which included an outside technical expert and financial advisor to the ratepayer representatives.

I also participated in many aspects of the negotiations between the parties in Florida's $1.3 billion offering. This included the FPSC staff and interactions between the Bond Team and the investment bankers, who were hired to manage the issuance of the proposed securitized nuclear asset-recovery bonds.

I also had a similar role in Florida Power and Light Company's ("FP&L") earlier issuance of RBBs in Florida for the recovery of storm costs.

**Q: Have you testified in other states on this subject matter?**

A: Yes. In 2018 I submitted testimony representing Saber Partners, the company the California Community Choice Association hired to evaluate the risks and benefits of RBBs to California utilities, the consumers and shareholders.

**Q: What is the purpose of your testimony in this proceeding?**

A: The primary purpose of my testimony is to explain why there is a need for active ratepayer involvement, through its experts and independent advisors, in the structuring, marketing, and pricing of the proposed securitization RBB offering. I also distinguish between the regulatory oversight applied to RBBs and the oversight applicable to traditional utility debt offerings and why intense oversight of RBB transactions is necessary. I show how the two types of bonds do not provide the same incentives to achieve the lowest costs for customers. I also briefly discuss why the "lowest cost" standard for ratepayers, based on information available through the date of pricing, is appropriate for securitization transactions. Lastly, I

address the importance of independent fiduciary opinions to ensure ratepayers are receiving the maximum benefits of Southern Indiana Gas and Electric Company d/b/a CenterPoint Energy Indiana South's ("CEI South") RBB transaction, without being subjected to potential conflicts of interest.

## II. CONDITIONS FOR A SUCCESSFUL INITIAL PUBLIC OFFERING OF RBBS

**Q: What makes an initial public offering of RBBs successful for ratepayers and the utility?**

A: First, as OUCC witness Rebecca Klein points out, the Indiana Utility Regulatory Commission ("Commission") is establishing the process for a RBB program for Indiana investor-owned utilities though this pilot program. It is important that the pilot program rely on best practices established in transactions in other states while firmly establishing the policies and principles future transactions in Indiana will follow.

A successful RBB offering produces the greatest economic value from the newly created property, which was authorized through legislation, by raising funds at the lowest possible cost, which also results in the least exposure to liability for ratepayers. If the measure of success were to simply sell the security created by securitization and raise cash, regardless of the cost of the security, a "successful" RBB transaction would need very little attention because there are many investors that want a high-quality, high-yielding investment product. But that would not be a successful transaction for ratepayers responsible for paying the charges. Nor would it benefit the Commission that gave up future regulatory review of the costs and is unequivocally committed to adjusting future securitization charges, as needed.

**Q: In 2015, DEF filed a petition and related testimony for the securitization of $1.3 billion to recover costs of a retired nuclear plant, which was approved by the FPSC. How was this transaction "successful"?**

A: In that proceeding, the parties, including DEF, reached a stipulation for the creation of a "Bond Team," including an independent financial advisor, to collaborate with ratepayer representatives and DEF for a successful bond issuance.[2] In Florida, the Bond Team's approach resulted in a highly praised bond offering for DEF, which yielded significant savings to ratepayers. In the DEF RBB transaction, I was able to observe first-hand the benefits of this collaborative process directly involving ratepayer representatives and its impact on the results of a successful offering. True, there were instances, as in any negotiation, where the parties did not fully agree on the process. However, by working collaboratively, the Bond Team was able to reach a necessary consensus.

**Q: Should this approach be applied in Indiana?**

A: Yes. For Indiana, that same collaborative process, adapted to the specifics of Indiana law and precedent, needs to be put in place. The OUCC, with its independent financial experts, and the utilities and its advisors, can work together to ensure ratepayers' interests are protected. These parties need to be integral and equal partners in all aspects of the process and play an active and visible role in presenting the proposed securitization bonds to the capital markets.

All participants need to view this process as a joint, collaborative process,

[2] This stipulation included several provisions wherein the Florida Public Service Commission agreed to a number of precedent setting best practices via the Financing Order. See Florida Public Service Commission, Docket No. 060038-EI, Order PSC-06-0464-FOF-EI (May 30, 2006) as amended by Order PSC-06-0626-FOF-EI (July 21, 2006).

so ratepayers are assured that they are well protected. The collaborative approach, whether as a Bond Team or another similar format, has become a standard practice for securitization issuances and has successfully resulted in proven benefits to ratepayers. The Commission's authority is not diminished by a collaborative process and the utility ultimately receives the same amount of money from the bond issuance.

**q: Are there special considerations for RBBs that need to be taken into account?**

A: Any traditional utility financing will have meaningful regulatory oversight, and the ratemaking process, in general, provides that oversight on an ongoing basis. In the case of RBB financing, however, the enabling statute's constraints limit Commission reviews to "after-the-fact" reviews for prudency in evaluating any aspect of the structuring, marketing, and pricing of these bonds. In addition, pursuant to Ind. Code § 8-1-40.5-16(b), the State also pledges not to take any action that would impair the value of the securitization property or impair the securitization charges to be imposed.

Considering these after-the-fact ongoing constraints, the Commission adding a degree of oversight at the outset is necessary. It needs to involve the OUCC as the ratepayer representative, which is critical to the maintenance of credit value.

**Q: Why should the OUCC be included on the bond team?**

A: Considering the OUCC's statutory responsibility as ratepayer advocate, as discussed in the testimony of OUCC Witness Leja Courter, the OUCC needs to be involved in the structuring, marketing, and pricing process to be thoroughly informed, able to assimilate the impact of structuring changes, and to understand

the decisive elements included in determining the pricing guidance in order to protect ratepayer interests. This will give the OUCC a better understanding of the impact on ratepayers.

This information can be presented to the Commission through the utility's proposed Issuance Advice Letter process, allowing the Commission to make the final determinization.

The Financing Order should provide for the creation of a collaborative process (such as a Bond Team) which will ensure that interested parties and their respective financial advisors will be directly and visibly involved throughout the structuring, marketing, and pricing process.

## III. MAXIMIZING RATEPAYER BENEFITS

**Q: How can the benefits to ratepayers be maximized?**

A: The best way to protect ratepayers is to provide for a clear standard to evaluate securitization proposals. The "best practice" standard seen in other states to maximize ratepayer savings is to attain the lowest securitization costs possible, and collaborative process will go a long way to achieve that goal.

**Q: Does ratemaking for RBBs fundamentally differ from standard utility ratemaking?**

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 ongoing financing costs below the target level set 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. This is particularly important if the utility is operating under a long-term rate settlement agreement. In the context of the issuance of traditional utility debt securities, these are powerful tools in the Commission's hands to reduce costs and discharge the Commission's responsibilities to ratepayers.

When I served as Treasurer at one of the largest utilizes in the country, and we were in the process of issuing debt, I was always cognizant that we might easily be second-guessed by the NYS Public Service Commission questioning the results of the transaction in a future rate proceeding. That provided an appropriate incentive to structure and price the transaction very carefully.

However, this very strong incentive is not present regarding RBBs. The Commission is somewhat constrained because unlimited post-issuance reviews are prohibited. Such reviews might put the viability of the AAA rating into question. Thus, appropriate safeguards need to be implemented at the outset of the process.

**Q: Is there another major reason why ratepayer representatives need to be involved in the process?**

A: Yes. Generally, the interests of underwriters are fundamentally averse to the interests of ratepayers. Underwriters will want to negotiate for relatively high rates of interest so that the bonds can be sold with the least effort, satisfying the desires of their investors for high interest rates relative to competing investments. Underwriters will also negotiate aggressively for the highest possible underwriting

fees. There is nothing inherently wrong about this process. It is part of a "market system" where each participant acts in his or her own economic interest. But because 100 percent of the economic burden will be borne by the ratepayers, it is wise to keep this in mind when negotiating underwriter fees, the marketing plan, and final prices with underwriters and investors and not completely deferring to the underwriters' "professional judgement," as some would suggest. Active involvement by ratepayer representatives is necessary to address the underwriter interests.

**Q: Is it important to have ratepayer protections in the Financing Order and the bond transaction documents as well?**

A: Yes. In a complex legal arrangement such as a RBB transaction, the terms, conditions, representations, and warrantees concerning all contracts need to be evaluated from an arm's length, dispassionate perspective. The risks, costs, and liabilities should be independently evaluated, and policies independently developed.

From the ratepayers' perspective, the securitization bonds will be issued under an irrevocable Financing Order that cannot be changed by the Commission after the bonds have been issued. The term of the bonds could be 15-19 years.

In addition, the utilities involved in securitization and their respective Special Purpose Entity ("SPE") issuers will enter into servicing agreements under which the sponsoring utility will bill, collect, and remit the securitization charge to a bond trustee for the account of the SPE issuer. Like any other contract for services, that servicing agreement will have provisions concerning performance, care, liabilities, and indemnities. All these could affect ratepayers at any time during the

life of the securitization bonds. Yet, the servicing agreements are essentially between affiliated parties with all the liabilities associated with the agreements falling to ratepayers under the securitization charge and the true-up mechanism.

Regulatory oversight should be preserved concerning the servicing agreements and other transaction documents for the life of the securitization bonds. With mergers taking place periodically in the electric industry, it is important to look beyond the next few years and put in place ratepayer protections that survive even in the case of a merger and new management. Ever-changing corporate structures need scrutiny since future owners may have a different attitude about this transaction 10-15 years or longer into the future.

**Q: Should the utilities have sole flexibility to establish the final terms and conditions of the bonds with the commission's ability only to say yes/no through the issuance advice letter?**

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 and in real-time.

**Q: Should some participants have a fiduciary relationship with the utilities, and if so, why?**

A: Yes. It is important that the utilities receive conflict-free advice from experts when making their decisions. In this regard, such experts should have a fiduciary relationship with the utilities. Thus, the underwriters of this securitization bond

transaction should not be conflicted by, for example, providing consulting advice to CEI South on the same transaction.

## IV. RBB OFFERING PRECEDENTS RELEVANT TO INDIANA

**Q: Regarding RBBs issued in other states, have commissions structured active ratepayer involvement in the structuring, marketing, and pricing of these transactions?**

A: Yes. Commissions in Florida, Texas, New Jersey, West Virginia, Ohio, and Louisiana have been actively involved in the structuring, marketing, and pricing of RBBs. The degree of involvement and success has varied, but involvement in a post-financing order/pre-bond issuance review process is consistent.

The Public Utility Commission of Texas ("PUCT") has had one of the most active post-financing order participation regimes, particularly in the first six RBB offerings it approved in the early 2000s. OUCC witness Rebecca Klein, former Chair of PUCT, testifies at length about her positive experiences regarding the PUCT's involvement, and its financial advisor in the Securitization process.

Florida and West Virginia have also been very successful in protecting ratepayers' interests through their financing orders which were based on "best practices" described in my testimony and that of other OUCC witnesses.

With regard to Indiana, since this will be the first RBB transaction under the securitization bond statute, it is certainly advisable, even critical, that in establishing the template for future securitization issuances, the ratepayer advocate (OUCC) have active involvement in all aspects of the transaction, as best practices seen in other states dictate, so as to maximize benefits to consumers.

**Q: Can you give us a clear example where positive results were achieved by the active involvement of an entity with statutory duty to the ratepayer in the structuring, marketing, and pricing of RBBs?**

A: Yes. As I noted above, I participated in the proceeding relating to DEF's 2015-2016 issuance of RBBs. This transaction illustrated the results that can be achieved by an active and involved ratepayer representative in a joint decision-making process.

DEF issued RBBs to recover the costs of its retired nuclear power plant. DEF proposed and negotiated a settlement with the Commission staff and intervenors allowing its investors to recover the costs of its retired plant and, at the same time, provide more than $680 million in net present value benefits to ratepayers. Clearly, this was a "win-win." The capital markets viewed this transaction in a positive manner, further protecting ratepayers from increased capital costs, and allowing DEF to raise debt capital at reasonable rates in the future. The markets were especially positive about the net benefits of the transaction's longest maturities, which generally carry the highest rates. The FPSC, DEF, and Saber worked collaboratively as joint decision-makers on a Bond Team to make this a success. The FPSC staff and the Florida Office of Public Counsel specifically acknowledged Saber's work on the Bond Team with regard to its development of "best practices" and the excellent pricing of the bonds, which yielded significant savings to Florida ratepayers.

As another example, CenterPoint Energy in Texas initially offered $1.85 billion of securitized RBBs to the market in December 2005. Saber was the independent financial advisor to the PUCT and was, as reflected in the PUCT's Financing Order, granted joint decision-making responsibility with the sponsoring utility. Credit

Suisse was one of the book-running underwriters. In that case, the transaction's large size, 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 RBBs received worldwide investor demand at record-low credit spreads, under market conditions at the time of the offering. The transaction increased to $1.85 billion, with over one-third of the bonds sold to foreign investors. This was the first time a significant portion of RBBs' issuance was marketed to foreign investors.

**Q: Does the Indiana securitization statute include a "lowest securitization charge" requirement?**

A: No. As Ms. Klein explains, the Indiana statute requires a "reasonable terms" provision for the issuance of securitization bonds.

**Q: In your view, what is the appropriate standard for RBB transactions?**

A: 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, especially if the ratepayers are "stuck with the bill." With a lowest securitization charge standard, the emphasis is on eliminating waste and inefficiency while maximizing ratepayer savings by including the impact of the "time value of money."

**Q: Should the lowest securitization charge standard be applied based on only expectations as of the date the Financing Order is issued, or should the lowest securitization charge standard also be applied based on actual facts through the date on which securitization bonds are priced?**

A: The lowest securitization charge standard should be applied based on facts through the date on which securitization bonds are priced.

## V. EVALUATION OF PROPOSED ISSUANCE ADVICE LETTER PROCESS

**Q: Should the financing orders CEI South proposes require it to include in its Issuance Advice Letters a lowest securitization charge confirming certification, based on information available through the date on which securitization bonds are priced?**

A: The proposed form of Financing Order should require Issuance Advice Letters to include a lowest securitization charge confirming certification, based on information available through the date on which securitization bonds are priced. This certification is another "best practice" used in other states and will help ensure that ratepayer benefits are maximized.

**Q: Are underwriters and investors cooperative in achieving the lowest securitized charges?**

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. By definition, underwriters will be 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 will be for the underwriters 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: Does attempting to achieve a lowest securitization charge standard sometimes create more costs for ratepayers?**

A: Pursuing a lowest securitization charge standard might require transaction participants to work harder, and possibly a bit longer, but working harder saves ratepayers money. Among the ongoing transaction costs, the greatest economic cost

to ratepayers is the interest rate on the bonds, which ratepayers will be paying for up to 20 years or more. This dwarfs most up-front issuance expenses.

Because the incentives between the utility and ratepayer are not clearly aligned, and full after-the-fact prudency reviews are not possible, the Commission's standard should be the lowest securitization charge. Without the OUCC's real-time involvement, and its advisor's expertise, there is no way the Commission can have confidence that the transaction was priced at the lowest interest rate possible, under then-current market conditions, based solely on the information provided in an Issuance Advice Letter. Every dollar of costs in this RBB transaction is a ratepayer dollar. There is no material risk to the utilities' shareholders given the robust true-up mechanism combined with the state pledge of non-interference.

## VI. BENEFITS OF THE OUCC AND AN INDEPENDENT FINANCIAL ADVISOR

**Q: How will active involvement of the OUCC with its financial advisor in the structuring, marketing, and pricing of these RBBs after issuance of the financing order ensure a lowest securitization charge transaction under market conditions at the time of pricing?**

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. CEI South and its agents have specific interests in the outcome of this transaction: to raise the full authorized amount 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 15-19 years or more. Nevertheless, a cooperative and collaborative effort can achieve common goals.

Underwriters who will provide much of the market information concerning the upcoming sale of the securitized bonds will have no fiduciary obligation to ratepayers. They do not have to work in the best interests of the ratepayers and are permitted to act in their own financial interest. It is evident in the standard underwriting agreement used in these types of transactions, which explicitly states that there is no fiduciary relationship and often states that any review by the underwriters of the transaction will be performed solely for the benefit of the underwriters and shall not be on behalf of the Issuer or utility.

Only by having the OUCC and its financial advisor, acting on behalf of ratepayers, involved at every step after issuance of the Financing Order, and by working together with the CEI South as joint decision makers during all critical stages, can we ensure that the lowest securitization charges to ratepayers is achieved.

## VII. NEED FOR INDEPENDENT ANALYSIS AND FINANCIAL OPINIONS

**Q: Based on your experience, why should the Commission not simply rely on the "Issuance Advice Letter," including only certification from CEI South (or any other utility) that the pricing of the securitization bonds resulted in the lowest securitization charge – why is that not sufficient as an indicator of a successful transaction?**

A: From my perspective, Issuance Advice Letters may not always be conflict free. As I described above, there is an inherent conflict of interest on the part of utilities and underwriters in pricing any bonds. Based upon my experience as the Treasurer of Con Ed, I realized very quickly that underwriters' debt issuances were not necessarily "on the same page" as the issuers. We shared many of the same goals concerning the execution of an efficient transaction, but the underwriters' desire to

maximize profits for themselves and investors were not always in line with our goals as issuer.

In fact, underwriting agreements clearly state underwriters do not have a fiduciary responsibility in these types of transaction. OUCC Witness Brian A: Maher of Saber discusses this issue extensively in his testimony.

From my work experience, an analogy comes to mind which strongly resembles the issue at hand. For decades, "Fairness Opinions" have played an integral part in merger and acquisition ("M&A") transactions. A Fairness Opinion is a letter summarizing an analysis prepared by an investment bank or an independent financial third party, which indicates whether certain financial elements in a transaction, such as price, are fair to a specific constituent. These opinions often are issued to assist the Board of Directors in assessing the appropriateness of an M&A transaction so they can fulfill their fiduciary duty to shareholders. The Fairness Opinion does not include a recommendation on whether the Board should approve the transaction. Rather, it helps the Board build a record that it has satisfied its fiduciary duty of care in reviewing the transaction.

However, these Fairness Opinions are not without controversy. A principal objection is that the Fairness Opinion is often provided by the same party advising the buyer (or target) for a fee that is contingent on the successful completion of the deal. This represents a clear conflict of interest and a potential lack of objectivity.

While at Con Edison of New York, I was intimately involved in a potential acquisition of a neighboring utility. Con Ed, as buyer, and the target utility obtained Fairness Opinions from our respective investment bankers and announced the

transaction. Con Ed then hired, albeit a little late, an independent financial advisor to evaluate certain risks relating to the competitive energy marketplace. The advisor identified some significant risks in the target company's energy portfolio, which had not been delineated in the Fairness Opinions and which Con Ed was not willing to accept. As a result, the transaction was cancelled and later resulted in years of litigation.

The independent financial advisor "saved the day," by recognizing risks that the conflicted investment bankers did not.

That is why it is important for ratepayers in this transaction to have an independent financial advisor whose opinions and analyses are based on experience and knowledge of the intricacies of the transaction and market.

**Q: Would appealing to the broadest base of investors affect the cost of securitization bonds and, therefore, ratepayer costs?**

A: Yes. Appealing to the broadest possible base of investors, rather than targeting a small group of large accounts, will create greater competition. Large investor accounts often believe they have "market power" and, therefore, can demand higher yields for quick execution with their capital. Although underwriters are sometimes willing to oblige them, competition with other underwriters and investors can drive the market to lower costs.

## VIII. SUMMARY OF A BEST PRACTICES APPROACH

**Q: Please summarize for the Commission the specific steps of the best practices approach for the securitization bond issuance process.**

A: The Commission should:

Establish a Finance/Bond Team (or other collaborative) comprised of CEI

South and its technical/financial advisors, who have a fiduciary duty to its shareholders, and the OUCC and its technical/financial advisors, who represents ratepayers. OUCC should serve as joint-decision maker with CEI South in all matters related to the structuring, marketing, and pricing of the proposed securitization bonds.

Reduce risks borne by ratepayers through careful review and negotiation of all transaction documents and contracts that could affect future ratepayer costs.

Require the securitization bonds be offered to the broadest market possible to expand the market to garner lower interest rates, through increased competition, for ratepayers' benefit.

To support the integrity of the process, require transparency in the distribution, initial pricing and secondary market for the securitization bonds.

Direct the OUCC and its technical/independent financial advisor to take part fully and in advance in all aspects of structuring, marketing, and pricing the securitization bonds.

This should include:

Reviewing, analyzing, and proposing revisions to all documentation to better protect ratepayers, including specific certifications, representations, indemnities, and warranties, therefore protecting against higher (and hidden) post-transaction ratepayer costs.

Evaluating the performance of underwriters of prior RBBs; include in any offering or bidding syndicate one or more underwriters without prior relationships with the CEI South or their affiliates (prior relationships can entail conflicts of

interest); tie any negotiated underwriter compensation to performance—actual securitization bond sales at lower cost to ratepayers—to create competition within the underwriting syndicate and promote lowest cost;

If a negotiated underwriting process is selected, underwriters need to develop a written marketing plan well in advance of entering the market. The written plan should implement robust marketing efforts tailored to the unique strengths of the securitization bonds, emphasizing the need to broaden distribution and to attract non-traditional investors, and rejecting underwriters' plans that focus solely on selling securitization bonds to previous RBB investors.

Continually analyze market developments and transactions to adopt successful techniques and utilize them in new issuance(s); and

"Trust but Verify": require underwriters to document and support their marketing efforts and pricing recommendations to ensure their full attention and focus on accuracy and due diligence, thereby fostering aggressive pricing.

In the Issuance Advice Letter process, require fully accountable certifications from the bookrunning underwriter(s), the applicant utility and the OUCC's technical/independent financial advisor, as to actions taken to achieve the lowest cost of funds and the lowest securitization charges under market conditions at the time of pricing. It is essential these certifications not be qualified in any material way. They should follow established principles of due diligence, investigation, and independent review of all material facts. Simplifying assumptions must be eliminated if the certifications are to be meaningful for the Commission to consider.

Once the underwriter, utility, and OUCC's financial advisor present this information to the Commission, the Commission can decide whether the transaction should proceed.

However, if there is not a collaborative and complete process as outlined above, the Commission will not have sufficient information to decide based on available evidence.

**Q: Does that conclude your testimony?**

A: Yes.

**AFFIRMATION**

I affirm, under the penalties for perjury, that the foregoing representations are true.

Hyman Schoenblum
Saber Partners, Consultants
Indiana Office of Utility Consumer Counselor

Cause No. 45722
CenterPoint Energy Indiana

August 3, 2022
Date

## CERTIFICATE OF SERVICE

This is to certify that a copy of the ***OUCC's Testimony*** has been served upon the following parties of record in the captioned proceeding by electronic service on August 3, 2022.

Jason Stephenson
Heather A. Watts
Jeffery A. Earl
Michelle D. Quinn
Matthew Rice
**CENTERPOINT ENERGY INDIANA SOUTH**
Jason.Stephenson@centerpointenergy.com
Heather.Watts@centerpointenergy.com
Jeffery.Earl@centerpointenergy.com
Matt.Rice@centerpointenergy.com
Michelle.Quinn@centerpointenergy.com

Nicholas K. Kile
Hillary J. Close
Lauren M. Box
**BARNES & THORNBURG LLP**
nicholas.kile@btlaw.com
hillary.close@btlaw.com
lauren.box@btlaw.com

Jennifer A. Washburn
Reagan Kurtz
**CITIZENS ACTION COALITION**
jwashburn@citact.org
rkurtz@citact.org

Tabitha Balzer
Todd Richardson
**LEWIS & KAPPES, P.C**
tbalzer@lewis-kappes.com
trichardson@lewis-kappes.com

**REI**
Nikki G. Shoultz
Kristina Kern Wheeler
**BOSE MCKINNEY & EVANS LLP**
nshoultz@boselaw.com
kwheeler@boselaw.com

T. Jason Haas
Attorney No. 34983-29
Deputy Consumer Counselor

**INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR**
**PNC Center**
115 West Washington Street, Suite 1500 South
Indianapolis, IN 46204
infomgt@oucc.in.gov
thaas@oucc.in.gov
317.232.2494 – Telephone
317.232.3315 – Direct
317.232.5923 – Facsimile