**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

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| **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. 4**

**TESTIMONY OF REBECCA KLEIN**

**AUGUST 3, 2022**

Respectfully submitted,

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

## I. INTRODUCTION

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

A: Rebecca Klein, 40 North IH 35, Suite 11A3, Austin, Texas 78701.

**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. In addition, I received a 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 also have an Executive MBA from Massachusetts Institute of Technology. In 1996, I was admitted to practice law in Texas. I am also a retired Lieutenant Colonel in the U.S. Air Force Reserve. During this period of national service, I was awarded the National Defense and Southwest Asia Service Ribbons for service in Saudi Arabia during Desert Shield/Desert Storm.

From 2001-2004, I served as a Commissioner and also as Chairman of the Public Utility Commission of Texas ("PUCT"), during which time I helped oversee the competitive restructuring of the State's $36 billion power market and the establishment of the PUCT's multibillion dollar ratepayer-backed bond ("RBB") program involving the first three RBB offerings for three different utilities and approximately $3 billion in bonds. 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 for various multi-lateral banks. Presently, I sit as a member of the Board of Directors for three publicly traded companies: Avista Corporation—a power and gas utility; SJW Group—a water utility; and Diamondback Energy—an upstream oil and gas production company. I also sit on the boards of two venture-backed technology companies in the water and energy sectors.

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

A: I have been a member of the Advisory Board of Saber Partners, LLC ("Saber Partners" or "Saber") since 2006. 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, nor are they compensated as Advisory Board members. 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 my experience as Chairman of the PUCT with Saber.

**Q: What is the purpose of your testimony?**

A: My testimony will discuss three key topics:

1) the importance and benefits of incorporating a lowest securitization charge standard when establishing a new RBB program, and why the "reasonableness" provisions set forth in IC 8-1-40.5-10(d)(3) should strive for the lowest possible cost standard;

2) an explanation of some of the actions taken at the PUCT in tandem with its independent financial advisor that, in fact, resulted in the lowest securitization charges consistent with market conditions and the terms of the financing orders; and

3) why having an entity with a statutory duty to the ratepayer — in this case, the Indiana Office of Utility Consumer Counselor ("OUCC") — is instrumental in reaching a "lowest cost" standard.

I will also itemize the proactive steps the PUCT took throughout the transaction lifecycle to ensure the best interests of the ratepayers.

My testimony is based on my direct experience with three utility securitization transactions while Chairman of the PUCT and my participation with Saber's Advisor Board in utility securitizations in Florida in 2006 and 2016 and in West Virginia during 2007 and 2009, as well as North Carolina in 2021. Each of these addressed what are "best practices" for regulatory finance orders like the one

under consideration here.[1] My Florida experience relates to the first use of RBBs in that state to finance storm damage costs, and to the second use of RBBs in that state to finance the remaining costs of a nuclear generating plant that retired early. My West Virginia experience relates to the first use of RBBs in that state to finance the costs of air pollution control facilities at a coal-fired generating plant, and in North Carolina the first use of storm securitization bonds similar to the bond use in Florida in 2006.

## II. LOWEST-COST STANDARD AS A GOAL FOR JUST AND REASONABLE TERMS IN SECURITIZATION BOND CHARGES

**Q: During your term with the PUCT, were any utility securitization/ RBB transactions completed?**

A: Yes. Three transactions were completed with active commission oversight during my PUCT tenure. Two transactions were done pursuant to financing orders issued by my predecessors and one pursuant to a financing order 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 (predecessor corporation of CenterPoint 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 (Oncor) in 2003 and 2004.

[1] See Exhibit RK-1, TXU Financing Order, Docket No. 25230, Public Utility Commission of Texas, Aug 2, 2005, and Exhibit RK-2, Duke Energy Florida Financing Order, Docket No. 150148-EI, November 19, 2015.

**Q: Were those Texas "transition bonds" similar to the recovery bonds Southern Indiana Gas and Electric Company, Inc. d/b/a CenterPoint Energy Indiana South ("CEI South" or "Petitioner") proposes in this proceeding?**

A: Yes. One overarching similarity between the recovery bonds CEI South proposes and the Texas "transition bonds" is that ratepayers bear the full economic burden of repaying the bonds. Therefore, these bonds are often referred to as "ratepayer-backed bonds." The utilities receive the proceeds, and the ratepayers are responsible for costs of issuance and principal interest on the bonds with no further review by the commission after the bonds are issued. This similarity is important because, as my testimony explains, ratepayer interests in RBB transactions would not be represented but for the standards and actions the regulator incorporates into the financing order and the subsequent transaction process.

**Q: What cost standard for RBB charges was statutorily required in Texas, and why?**

A: In 1999, the Texas Legislature passed comprehensive legislation to restructure the electric power industry in the state. One provision fundamental to the restructuring model was to allow utilities to recover the cost of generation assets that would be otherwise "stranded" in that they were no longer allowed a guaranteed rate of return. The securitization statute required that "The commission shall ensure that the structuring and pricing of the transition bonds result in the lowest securitization charges consistent with market conditions and the terms of the financing order." Texas Utilities Code, PURA Sec. 39.301. The statute also incorporated a maximum maturity of the bonds at 15 years. This "lowest cost" standard provided ratepayers a level of assurance that during the transition to a deregulated market the ratepayers' interests would be adequately addressed. This was important because, as explained

further below, the securitization process did not have an inherent way for the utility customers' interests to be represented in the structuring, marketing, or pricing phases of the bond transaction lifecycle. While Texas statutory provisions related to securitization were amended to allow for other types of cost recovery, the "lowest cost" standard has remained untouched.

**Q: Does the Indiana statute authorizing securitization of recovery bond costs have an expressly stated requirement that CEI South strive to achieve the "lowest securitization charges"?**

A: No. I reviewed the Indiana statute authorizing recovery costs. I.C. 8-1-40.5-10(d) directs that the Indiana Utility Regulatory Commission ("Commission") must make certain findings in its financing order, including a finding "that the expected structuring and the expected pricing of the securitization bonds will result in reasonable terms consistent with market conditions and the terms of the financing order."

However, the securitization statutes in Florida,[2] Louisiana,[3] Maryland,[4] and West Virginia[5] for example have no expressly stated "lowest recovery charge" standard either, yet each commission adopted this standard in establishing their initial securitization programs. It is considered a "best practice."

**Q: Why should, and how can, the Commission adhere to a lowest cost standard?**

A: An underlying principle of securitization is to lower costs for ratepayers and help address affordability for customers. A finding by the Commission that "the

[2] Florida Statutes §366.8260

[3] LA:R.S.A: §§45:1251, and subsequent amendments

[4] 2015 MD Code Div. 1, Title 7, Subtitle 5

[5] West Virginia Code Ch. 24, Art. 2, Section 4(e)

expected structuring and the expected pricing of the securitization bonds will result in reasonable terms consistent with market conditions" should strive for the lowest possible cost to afford customers the greatest present value savings. The quest to reach lowest securitization terms consistent with market conditions is not unreasonable, particularly since statutorily the Commission has no recourse later to review or change any elements of a final financing order. As previously mentioned, there have been four other states, of which I am aware, that have incorporated a "lowest cost" standard for securitization charges despite no statutory provision requiring it. The "lowest cost" standard provision was incorporated into either the Financing Order, the Issuance Advice Letter, and/or the Qualified Rate Order, depending on the state, with a process that usually involves an independent financial advisor, not just the utility, giving the Commission an opinion after the utility files the Issuance Advice Letter but prior to the bonds being issued, that the ratepayers have been protected and Commission orders have been followed.

**Q: Why is an unqualified "lowest securitization charge" standard important?**

A: Targeting the lowest securitization charge possible sets the appropriate benchmark on behalf of the ratepayer. I fully acknowledge there are no absolutes in this world. Nevertheless, the lowest securitization charge 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 Commission, but also for the utility and, in the context of negotiations, with underwriters and investors.

**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 public interest responsibility to ratepayers under its general statutes. I feel, and would have felt then, passionately about this in a situation where ratepayer interests are otherwise unrepresented in the securitization transaction lifecycle.

## III. ESTABLISHING A RECOVERY BOND PROGRAM BASED ON RBB "BEST PRACTICES"

**Q: Prior to the three "transition bond" transactions over which you presided, did the PUCT specifically approve any other types of financings for utilities under its jurisdiction?**

A: No. Traditional financings and financing costs were under each utility's general cost of capital proceeding and were subject to the PUCT's retrospective prudence review process 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 was made to the cost of capital.

**Q: Did the PUCT treat "transition bond" transactions differently than it treated traditional utility bonds of the investor-owned utilities you oversaw as the regulator in cost of capital proceedings and rate cases?**

A: Yes.

**Q: Why were the Texas "transition bonds" treated differently?**

A: The normal incentives to minimize waste and eliminate inefficiencies that are inherent in traditional rate cases are absent with RBBs. Therefore, the PUCT's authority to correct any problems it discovered was severely limited. Texas state law required the PUCT to issue an irrevocable financing order that shielded the utility 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 to periodically raising or lowering the charge supporting the bonds to whatever level 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 that would interfere with the bondholders' right to payment. This regulatory guarantee is an extraordinary use of the powers of state regulation. These items – the irrevocable financing order, the true-up mechanism, and the pledge to bondholders – are all similar to legal obligations the Indiana statute requires for recovery bonds. In Texas, we adhered to these key commitments. They are essential in securing a AAA bond rating which, in turn, mitigates debt costs and provides the opportunity, although not a guarantee, for the lowest 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 a true-up mechanism because the Texas utilities sponsoring 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. This feature would alleviate underwriter and investor concerns (articulated by the credit rating agencies) that a future commission would decide the financing was imprudent, much like a commission's ongoing retrospective review authority over traditional utility debt.

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

A: The Texas utilities advised the Texas legislature and the PUCT that a "AAA" bond rating could 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 the "transition bonds" are not very risky. The lower the risk, the lower the interest rate underwriters and investors command. 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 securitization charges 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 Texas statute required that the "structuring and pricing" of transition bonds result in the lowest securitization charges consistent with market conditions. In its financing orders, the PUCT also inserted a requirement that the "marketing" of transition bonds result in the lowest securitization charges consistent with market conditions. In addition, the PUCT's financing orders directed its financial advisor in each transaction in which I was involved to be actively engaged throughout the transaction process to adhere to a lowest securitization charge standard. Examples of the proactive initiatives the independent financial advisor undertook to help the PUCT reach its "lowest securitization charge" mandate include: 1) insisting 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 the lowest securitization charges to ratepayers. OUCC witnesses Hyman Schoenblum, Paul Sutherland, and Joseph S. Fichera outline more fully in their testimonies these conditions and provisions adopted and implemented in connection with the Texas "transition bonds" designed to lower the transition bond charges to ratepayers in Texas.

**Q: In what ways do you believe your experience with Texas "transition bonds" should inform the Commission as it prepares a financing order for the proposed RBBs?**

A: Absent a pro-active approach by an entity having specific statutory responsibilities to consumers, Indiana ratepayers will not be represented meaningfully in the process of structuring, marketing, and pricing the bonds. Without adherence to a clear, unqualified lowest securitization charge standard established by the Commission and adoption of practices, procedures, and advice from an independent financial advisor guiding the OUCC, it will be difficult to hold utilities and recovery bond underwriters accountable for any failure to achieve the best possible outcome for ratepayers. It is important to remember: the Commission gives up all further review of the charges imposed on ratepayers once the bonds are issued and non-bypassable charges are imposed on ratepayers. Payment of all principal, interest and other financing costs are paid directly by ratepayers. Every dollar is a ratepayer dollar. Moreover, with the true-up provision, the Commission must guarantee to adjust the charge to whatever level is necessary to repay the bonds on time. There is no chance to look back, as with traditional utility bonds and cost of capital.

**Q: In your opinion, should these other conditions or provisions be imposed to improve the RBBs' marketability and lower the securitized charges to Indiana 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 ($17 million net present value considering all costs), as compared to the pricing of other utility securitizations during the same timeframe. See Exhibit PS-5. These substantial ratepayer savings resulted directly from the PUCT's steadfast adherence to the lowest securitization charge standard that was fully aligned with ratepayer interests. Further, these ratepayer savings were directly attributable to the fact that the PUCT, supported by the specialized expertise of its financial advisor, was actively involved in developing and implementing the terms, conditions, and provisions of each facet of the transaction process. Mr. Sutherland explains in more detail how these transactions priced relative to other investor-owned utility securitizations. As Mr. Sutherland explains with specificity, the superior outcome of these initial Texas securitization bonds was confirmed by several other industry observers when compared to securitizations in other states not taking a similar approach. The success of the Texas approach establishing "best practices" was also noted by independent financial press reports at the time, particularly the 2003 Oncor RBB offering. One industry press report during my tenure as Chairman, and in preparing for the CenterPoint transaction, quoted Wall Street traders estimating how much lower in interest costs Texas securitization

bonds achieved compared to other states.[6] Additional articles from these third-party observers are attached in Exhibits RK-3 and RK-4. Furthermore, these conditions were imposed on and followed by CenterPoint in Texas in PUCT Docket No. 21665, approved on May 31, 2000. CEI South already has experience with these requirements; therefore, it should not be burdensome to follow these conditions in Indiana:

## IV. JOINT DECISION-MAKING AUTHORITY WITH SUPPORT FROM AN INDEPENDENT FINANCIAL ADVISOR

**Q: Are ratepayer interests clearly aligned with CEI South's interests in this case?**

A: No. In utility securitization transactions the utility generally has an interest in closing the transaction as expeditiously as possible, even if that requires the utility to settle for less than the lowest securitization charges 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. This eliminates the uncertainty over the recovery of funds and gives the utility the proceeds from the bonds to use in their business operations to help maximize returns for shareholders. Having said that, there is no

[6] "Already the leader among RRB issuing states, Texas originated RRBs have historically priced roughly 11 basis points through other states' bonds for three-year, 15 basis points for seven-year and 20 basis through for 10-year paper traders said." Asset Securitization Report, June 21, 2003 (A basis point is one one hundreth of a percent)

reason ratepayer interests and CEI South's interests cannot be aligned in light of the fact that any savings that could benefit ratepayers do not affect the amount the utilities will receive as part of the securitized amount. However, it is important that ratepayers are represented at the negotiating table with the utility when the utility enters the market and negotiates with underwriters and investors whose interests are clearly not aligned with either the utility or the ratepayers.

**Q: Did the Texas utilities support the PUCT experts' active involvement in the process, including negotiations with underwriters?**

A: Yes. Eventually, the Texas utilities supported the PUCT's active involvement, particularly when they realized the PUCT's steadfast resolve to adhere to a process that increased the probability of realizing the lowest cost standard. There was some pushback during the course of discussions to negotiate the best terms for Texas ratepayers — rather than just follow what other utilities and their bankers were doing in other states. We viewed this as a natural part of the robust negotiating process in capital markets. However, with the PUCT's firm commitment and support to the process, the transactions were completed, the utilities received their proceeds, and the ratepayers were optimally protected.

**Q: Based on your experience overseeing the initial three securitized utility bond issues as Chairman of the PUCT, should the Commission's financing orders include additional terms, conditions, and procedures designed to achieve the lowest securitization charges?**

A: Yes. The Commission's financing orders should require the structuring, marketing, and pricing of securitization bonds result in the lowest charges consistent with market conditions at the time bonds are priced, and the terms of the financing order. The Commission's financing orders should require compliance certificates be

delivered by CEI South, the OUCC or its financial advisor, and the bookrunning underwriter after pricing stating that the structuring, marketing, and pricing of securitization bonds in fact have resulted in the lowest charges consistent with market conditions at the time securitization bonds are priced. For example, Exhibits RK-5 and RK-6 refer to additional conditions adopted in the Florida Order (Docket No. 030068).

**Q: Are there any other terms, conditions, and procedures you would recommend in the financing order?**

A: Yes. It will be difficult or perhaps even impossible for the Commission to make an after-the-fact determination, with confidence, that the structuring, marketing, and pricing of CEI South's offerings achieved the "lowest securitization charge" unless the Utility, and the OUCC, through its independent financial advisor, are involved as joint decision makers with CEI South. These parties need to be involved in all aspects of the structuring, marketing and pricing of the recovery bonds through the time CEI South files its Issuance Advise Letter, and then the Commission has authority to disapprove the bond offering. Receiving information only from CEI South and underwriters at the end of the issuance process, as currently proposed by the petition, is not enough.

**Q: How did the PUCT protect ratepayer interests and ensure it met its legislative duty?**

A: For the three Texas "transition bond" transactions I oversaw as Chairman 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 the PUCT's staff and its independent financial advisor to ensure a successful transaction at the lowest securitization charge to ratepayers.

The PUCT's staff and its 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." They acted in concert as an informal "Bond Team," so to speak. In addition, the PUCT required a detailed Issuance Advice Letter process and certification to document what was done during the transaction, the choices made, the efforts expended, and to explain how these efforts led to the lowest securitization charges to ratepayers.

I envision a "Bond Team," in this instance, would include the OUCC, guided by any financial advisor it might hire, as active participants and a joint decision maker in the process.

## V. IMPLEMENTING A FIDUCIARY DUTY TO RATEPAYERS

**Q: Do the State of Texas statutes provide for a division of the PUCT or a separate state agency to represent the interests of all electric ratepayers?**

A: No. Whereas, Chapter 13 of the Texas Public Utility Regulatory Act establishes a separate Office of Public Utility Counsel to advocate specifically for residential and small commercial electric ratepayers, the Texas statutes do not provide for a particular division of the PUCT nor a separate state agency to represent the interests of all electric ratepayers.

**Q: I.C. 8-1-1.1 establishes an "office of utility consumer counselor" to "appear on behalf of ratepayers, consumers, and the public" in proceedings before the commission. The OUCC is an independent agency which is not subject to the supervision, direction, or control of the Commission. Do you believe it would be appropriate to allow the OUCC in any Financing Orders to be involved and work collaboratively with CEI South in the process of structuring, marketing, and pricing the RBBs?**

A: Yes. Petitioner is a party to this Commission proceeding and could be expected to participate with a view toward protecting its own interests. The OUCC's involvement would advocate and preserve ratepayer interests and viewpoints. OUCC witnesses Courter, Schoenblum, and Fichera discuss this as well. The OUCC, given its express legislative mandate to appear on behalf of ratepayers, should be involved.

**Q: Were the RBB transactions you oversaw as Chairman of the PUCT successful in maximizing benefits to Texas ratepayers?**

A: Yes.

**Q: What is the basis for your answer?**

A: The Texas financing orders required the utility to file a detailed set of analyses and representations called an "Issuance Advice Letter" detailing the pricing of the bonds and documenting the transaction's benefits 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 securitization charges 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 the lowest securitization charge objective, in fact, was 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, as a practical matter, the PUCT's hands would not be tied. The PUCT also reviewed specific lowest securitization charge certifications regarding the structuring, marketing, and pricing of the bonds from the utility, as well as from the underwriters and independent experts, without any potential conflicts of interest. The factors the PUCT considered included: (a) pricing relative to benchmark securities; (b) pricing relative to other similar securities at the time of pricing, and (c) the number of orders received and from whom.

Attached to my testimony is an Issuance Advice Letter used in one of the Texas RBB transactions that I oversaw in Texas for Oncor, (Exhibit RK-7 (ONCOR Issuance Advice Letter) as well as a CenterPoint Texas RBB transaction (Exhibit RK-8, CenterPoint Issuance Advice Letter) that is similar to the ones I oversaw as Chairman 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 it brought in an expert independent financial advisor without any potential for conflicts of interest. The PUCT acted by and through these advisors to ensure ratepayers' interests were protected. Personally, I felt it was my fiduciary duty to

protect the public interest by engaging an independent financial advisor to guide us through all stages of these initial RBB transactions. Being a lawyer, I had no knowledge or experience in this complex area of finance, nor did my fellow commissioners. The PUCT finance staff was experienced with traditional regulatory financial matters. However, securitized RBB transactions were new to us all. It was helpful having outside expertise assist the PUCT with establishing an understanding and culture of securitization best practices it PUCT could utilize on its own in future securitization transactions.

## VI. STRUCTURING, MARKETING, AND PRICING WITH CERTIFICATIONS FROM UTILITY, UNDERWRITERS AND AN INDEPENDENT ADVISOR

**Q: Did the PUCT and its 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 where ratepayer costs could be reasonably mitigated within the context of prevailing market conditions. The PUCT's financial advisor was also meticulous in providing it with cost comparisons between the then-current transaction and the same costs in past securitization transactions, so it could have a framework 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 securitization charge standard was met.

**Q: Did the PUCT require a lowest securitization charges certification from its financial advisor?**

A: Yes. In the open meeting on February 24, 2000, the PUCT discussed the need for an independent financial advisor to provide a fully accountable opinion or

certification as to the lowest cost of funds as one item it would examine in deciding whether to approve the transaction immediately after pricing. The PUCT understood 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, ensuring its mandate would be met.

**Q: Is it appropriate for the Commission to require certifications that the lowest securitization charge has, in fact, been achieved?**

A: Yes. The PUCT required the sponsoring utility, the lead underwriter and the PUCT's independent financial advisor provide lowest cost certifications in each of the three transition bond issues I oversaw as Chairman of the PUCT. The requirement that these lowest securitization charge certifications be delivered was an important element in achieving superior results in each of those three transactions for the benefit of Texas ratepayers. It was important to the PUCT that the independent financial advisor, who had a fiduciary duty to the PUCT and ratepayers, deliver the certification. The independent financial advisor had no financial interest in the outcome of the bond offering, unlike the utilities and the underwriters. Its opinion was the core component of the financing orders establishing the RBB program. Mr. Schoenblum also discusses the need for, and relevance of, independent advisor opinions in financial transactions when someone acting in a ratepayer fiduciary role must make a decision affecting the interests of the people it represents. In this case, it was the PUCT acting for the ratepayers. In the case before us, the Commission should require lowest cost certifications from the OUCC and its financial advisor, given its statutory charge to represent the

ratepayer.

**Q: What could the Commission do to maximize the chance of the process being collaborative and collegial in the proposed RBB transaction?**

A: The Commission should clarify in the Financing Order that CEI South's ratepayers will be effectively represented throughout the proposed transaction process,[7] and that day-to-day decision-making authority for all aspects of structuring, marketing, and pricing the proposed securitization bonds rests with a "Bond Team," which includes the OUCC (and its respective financial advisors), and the utility. In his testimony in this proceeding, Mr. Schoenblum discusses this "Bond Team" approach. This ensemble represents the voices of all interested parties and can collaboratively achieve the "lowest securitization charge" objective through robust and transparent negotiation.

**Q: Did the process for structuring, marketing, and pricing the three issuances of securitized "transition bonds" you oversaw as Chairman of the PUCT, and which applied many of the "best practices" Mr. Sutherland describes, 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 this likely would involve increased legal and financial advisory fees.

**Q: Looking back, did the decision to retain an active financial advisor in each of those three Texas "transition bond" transactions benefit Texas ratepayers, notwithstanding that those ratepayers were required to absorb most or all costs of those increased legal and financial advisory fees?**

A: Yes. These upfront costs represented an investment in sound legal and financial

[7] See Florida Public Service Commission, Docket No. 150171-EI, "Proposed Stipulations on Financing Order Issues." (October 13, 2015), found at: https://www.floridapsc.com/library/filings/2015/06485-2015/06485-2015.pdf.

advice to protect ratepayer interests in negotiations with parties who did not have a fiduciary duty to their interests. All those parties on the other side of the negotiating table were well represented by experts and legal counsel, and there needed to be appropriate checks and balances in the negotiating process. It was both an investment and an insurance policy. Post-issuance reports submitted to the PUCT by its financial advisor, the underwriters as well as independent market observers all concluded that all three of those initial Texas RBB offerings provided substantial increased overall net present value savings to Texas ratepayers. Detailed information about those overall net present value savings to Texas ratepayers is included in Mr. Sutherland's testimony.

**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. The incremental costs of the active independent financial advisor approach in each of the three Texas RBB transactions I helped oversee as Chairman of the PUCT were easily justified by savings in other issuance costs and savings in interest costs. The financial advisor also provided the PUCT with the assurance that nothing went wrong or was done that was not for the benefit of ratepayers. These are complex transactions, and for a commission to give up future regulatory review and implement the true-up mechanism on the charges, it is essential to have that assurance.

**Q: Given your experiences in Texas, would you recommend the Commission require an independent financial advisor be involved in connection with the structuring, marketing, and pricing of the RBBs?**

A: Yes. I believe an expert financial advisor that guides the OUCC in its participation in the different phases of the transaction process would provide a meaningful

impact in optimizing ratepayer savings. The PUCT hired the same expert financial advisor six distinct times (before, during, and after my tenure) due to its effective advocacy for protecting ratepayer interests. The PUCT contract with Saber in 2006 for a similar offering for AEP, which followed CenterPoint Energy Houston's transaction in 2005, acknowledged Saber's effective advocacy for ratepayer interests in the previous five transactions done for the Commission. Exhibit RK-9, PUCT-Saber Partners Contract, 2006.

## VII. OTHER CONDITIONS TO INCLUDE IN A FINANCING ORDER ESTABLISHING A RBB PROGRAM

**Q: What other items should the Commission consider in deciding whether to approve this irrevocable financing order?**

A: The 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 of interest between the utility and the underwriters should be addressed by the Commission. The terms and conditions of how recovery bonds are sold through underwriters is also important. Many 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. The Commission is establishing a program and not just overseeing a transaction. It is important that the initial transaction establish an appropriate template and protocols that can be followed in future petitions and transactions. This will make most efficient use of the Commissioners' and Commission Staff time, as well as help establish in-house expertise. Over time, the PUCT was able to rely less on outside expertise because of the investment we made in the beginning. Leveraging the

expertise of a "Bond Team" comprised of CEI South, and the OUCC and its independent financial advisors, will assist substantially in realizing a RBB process that successfully incorporates "best practices", achieves the lowest securitization charge objective, and the best possible result for ratepayers. It is a financial tool the Legislature may authorize for other uses in Indiana in the future. Establishing the program correctly, with clear standards, oversight, and involvement of experts with a fiduciary duty to ratepayers as done in Texas, is critical to the most efficient and effective use of the financial tool for all affected parties.

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

A: Yes.

**DOCKET NO. 25230**

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FILING *CLERK*

**JOINT APPLICATION FOR APPROVAL OF STIPULATION REGARDING TXU ELECTRIC COMPANY TRANSITION TO COMPETITION ISSUES**

**PUBLIC UTILITY COMMISSION**

**OF TEXAS**

# FINANCING ORDER

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results in tangible and quantifiable benefits to ratepayers—that must be met to issue a financing order. Furthermore, in issuing such an order, the Commission must be mindful of its responsibility to shepherd the restructuring of the electric industry in Texas in a manner that ensures that a competitive retail electric market develops in this state.

In view of these obligations, the Commission has established certain criteria in this Financing Order that must be met in order for the approvals and authorizations granted in this Financing Order to become effective. This Financing Order grants authority to issue transition bonds and to impose and collect transition charges only if the final structure of the securitization transactions complies in all material respects with these criteria. In addition, as discussed elsewhere in this Financing Order, the Commission will participate in the actual design of the' structure and pricing of the transition bonds. The combination of these limiting criteria and the Commission's participation will ensure that the structure and pricing of the transition bonds will result in the lowest transition-bond charges considering the market conditions and the terms of this Financing Order.

## C. SFAS 109

[Deleted]

## D. Financial Advisor

To obtain the most favorable issuance of transition bonds—and the greatest benefits to ratepayers—the Commission, acting through its financial advisor, will participate in the pricing, marketing, and structuring of the bonds. This participation will provide assurances that the minimum cost of securitization and the maximum benefits for customers are obtained.

In addition, before the transition bonds may be issued, the Company must submit to the Commission an issuance advice letter in which it demonstrates, based upon the actual market conditions at the time of pricing, that the proposed structure and pricing of the transition bonds will provide real economic benefits to customers and comply with this Financing Order. As part of this submission, the Company must also certify to the Commission that the structure and pricing of the transition bonds results in the lowest transition-bond charges consistent with market conditions at the time of pricing and the general parameters set out in this Financing

Order. The Commission, by order, may stop the issuance of transition bonds if the Company fails to make this demonstration or certification.

In addition, the Commission, acting through its designated representative or financial advisor, will participate in the pricing and structure of the transition bonds, and will make the decision, in conjunction with the Company, as to whether to issue the bonds. Finally, the authority and approval granted in this Financing Order is effective only upon the Company filing with the Commission an issuance advice letter demonstrating compliance with the provisions of this Financing Order unless the Commission issues an order that the proposed issuance does not comply with this Financing Order.

### E. Transition Charges

PURA requires that transition charges be collected from retail electric customers to pay the transition-bond charges—in this case the principal and interest on the bonds and the associated costs to issue and service those bonds.[13] Transition charges can be recovered over a period that does not exceed 15 years.[14] The Commission concludes that this prevents the collection of transition charges from retail customers in the normal course of business after the 15-year period. However, because of the protections afforded in PURA § 39.305, the Commission also concludes that the 15-year limitation does not apply to the recovery of amounts still owed after the end of the 15-year period through the use of judicial process.

Transition charges will be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in the financing order.[15] The right to impose, collect, and receive transition charges (including all other rights of an electric utility under the financing order) are only contract rights until they are first transferred to an assignee or pledged in connection with the issuance of transition bonds. Upon the transfer or pledge of those rights,

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[13] *See Id.* § 39.302(7)
[14] *Id.* § 39.303(b).
[15] *Id.*

**31.** The completion and filing of an issuance advice letter in the form of the Issuance Advice Letter attached as Appendix E, including the certification from Applicant as discussed in Finding of Fact No. 107, is necessary to ensure that any securitization actually undertaken by Applicant complies with the terms of this Financing Order.

***Tangible and Quantifiable Benefit***

**32.** The statutory requirement in PURA § 39.301 that directs the Commission to ensure that securitization provides tangible and quantifiable benefits to ratepayers greater than would be achieved absent the issuance of transition bonds can only be determined using an economic analysis. An economic analysis is one that accounts for the time value of money. An analysis ' that compares the present value of the traditional revenue requirement associated with an asset (reflective of conventional utility financing) with the present value of the revenue required under securitization is an appropriate economic analysis to demonstrate whether securitization provides an economic benefit to ratepayers. An analysis showing an economic benefit to ratepayers is necessary to show that the benefit is tangible and to quantify the amount of the benefit.

**33.** Securitization financing for the regulatory assets detailed in Appendix C is expected to *result* in approximately $52 million, at a minimum, of tangible and quantifiable economic benefits to ratepayers on a present-value basis if the transition bonds are issued at the maximum interest rates allowed by this Financing Order. The actual benefit to ratepayers will depend upon market conditions at the time the transition bonds are issued. This quantification is the sum of the economic benefit calculated all regulatory assets using the methodology described in ORA's testimony in Docket No. 21527 using a discount rate of 8.75% and a maximum expected life of 12 years as detailed in Appendix F, offset by the amount of up-front and ongoing costs approved in this Financing Order.

**34.** The methodology described in ORA's testimony in Docket No. 21527 to calculate the economic benefits to ratepayers as a result of this Financing Order is appropriate and properly calculates the economic benefits to ratepayers resulting from securitization of the qualified costs approved in this Financing Order and detailed in Appendix C.

60. Prior to the introduction of customer choice,[34] Applicant will collect transition charges out of the bundled rates and will remit the amount of the transition charges to the indenture trustee for the account of the SPE. Beginning on the date of introduction of customer choice (including any customer-choice pilot programs under PURA § 39.104), Applicant or the current servicer of the transition bonds, as required under PURA § 39.107(d), will bill a customer's REP for the transition charges attributable to that customer. PURA § 39.107(d) provides that the REP must pay these transition charges. This proposal for collection of transition charges prior to the start of customer choice is reasonable and should be approved.

***Transition Bonds***

61. The SPE will issue and sell transition bonds in one or more series, and each series may be issued in one or more classes or tranches. The legal final maturity date of any series of transition bonds will not exceed 15 years from the date of issuance of such series. The legal final maturity date of each series and class or tranche within a series and amounts in each series will be finally determined by Applicant and the Commission, acting through its designated personnel or financial advisor, consistent with market conditions and indications of the rating agencies, at the time the transition bonds are issued. Applicant will retain sole discretion regarding whether or when to assign, sell, or otherwise transfer any rights concerning transition property arising under this Financing Order, or to cause the issuance of any transition bonds authorized in this Financing Order, subject to the right of the Commission to participate in the pricing and structure of the transition bonds. It is proposed that the SPE issue the transition bonds on or after the third business day after Applicant has filed its issuance advice letter in accordance with this Financing Order unless, prior to such third business day, the Commission issues an order finding that the proposed issuance does not comply with the requirements established by this Financing Order.

62. The Company initially proposed to establish an amortization schedule for the transition bonds based on a front-end loaded amortization of the transition-bond principal. This front-end loaded schedule would result in transition charges that are higher in the first years of retail competition and that decline over the recovery period of the transition bonds.

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[34] *See* PURA § 39.101-102.

**63.** The Company's proposed structure of the transition bonds with respect to the maturities and classes or tranches of the transition bonds is reasonable and should be approved, provided that the weighted average interest rate for the bonds does not exceed 8.75% on an annual basis, the expected maximum bond life is 12 years, and a levelized recovery structure is used. These restrictions are necessary to ensure that the stated economic benefits to ratepayers materialize. To further ensure benefits to ratepayers, the Commission's financial advisor should be charged with the obligation to ensure that the structure and pricing of the transition bonds results in the lowest transition-bond charges consistent with market conditions and the protection of a competitive retail electric market. To protect the competitiveness of this market, the transition-bond amortization schedule must be based on a levelized recovery structure, except when required by a true-up of transition charges to collect an additional amount necessary to recoup undercollections from a prior period. The levelized recovery structure will result in transition charges that will likely decline over time due to increases in load growth and should benefit the competitiveness of the retail electric market. The Commission's financial advisor should also be charged with the obligation to protect the competitiveness of the retail electric market in a manner consistent with this Financing Order.

***Security for Transition Bonds***

**64.** The payment of the transition bonds authorized by this Financing Order is to be secured by the transition property created by this Financing Order and by certain other collateral as described in the Company's application. The transition bonds will be issued pursuant to an indenture administered by the indenture trustee. The indenture will include provisions for a collection account and included subaccounts for the collection and administration of the transition charges and payment or funding of the principal and interest on the transition bonds and other costs, including fees and expenses, in connection with the transition bonds, as described in the Company's application. Pursuant to the indenture, the SPE will establish a collection account as a trust account to be held by the indenture trustee as collateral to ensure the payment of the principal, interest, and other costs approved in this Financing Order related to the transition bonds in full and on a timely basis. The collection account will include the general

**(b)** calculate undercollections or overcollections, including without limitation any caused by REP defaults, from the preceding period in each class;

**(c)** sum the amounts allocated to each customer class in steps (a) and (b) to determine an adjusted Periodic Billing Requirement for each transition charge customer class; and

**(d)** divide the amount assigned to each customer class in step (c) above by the appropriate 'forecasted billing units to determine the transition charge rate by class for the upcoming period. For the General Service Secondary and General Service Primary classes, the two-step procedure described in Finding of Fact No. 89 will be used to calculate a transition charge factor in dollars per kilowatt-hour for non-demand-metered customers and a transition charge factor in dollars per kilowatt for demand-metered customers.

***Interim True-Up.***

94. In addition to these annual true-up adjustments, true-up adjustments may be made by the servicer more frequently at any time during the term of the transition bonds to correct any undercollection or overcollection, as provided for in this Financing Order, based on rating agency and bondholder considerations. In addition to the foregoing, either of the following two conditions may invoke an interim true-up adjustment in the month prior to an upcoming transition bond principal payment date:

**(a)** the servicer determines that collection of transition charges for the upcoming payment date would result in a difference that is greater than 5% in absolute value, between (i) the actual outstanding principal balances of the transition bonds plus amounts on deposit in the reserve subaccount and (ii) the outstanding principal balances anticipated in the expected amortization schedule; or

**(b)** to meet a rating agency requirement that any series of transition bonds be paid in full by the expected maturity date, for any series of transition bonds that matures after a date determined mutually by the Applicant and the Commission's designated personnel or financial advisor at the time of pricing.

95. In the event an interim true-up is necessary, the interim true-up adjustment should be filed by the servicer on the fifteenth day of the current month for implementation in the first

deficiency will be allocated to the remaining classes based on the ratio of the RAAFs approved in this Financing Order.

100. The true-up adjustment filing will set forth the servicer's calculation of the ***true-up*** adjustment to the transition charges. Except for the non-standard true-up procedure addressed in Findings of Fact Nos. 96 through 98, the Commission will have 15 days after the date of a true-up adjustment filing in which to confirm the mathematical accuracy of the servicer's adjustment. Except for the non-standard true-up procedure described above, any true-up adjustment filed with the Commission will be effective immediately upon filing. Any necessary corrections to the true-up adjustment, due to mathematical errors in the calculation of such adjustment or otherwise, will be made in future true-up adjustment filings.

101. The true-up procedures proposed by the Company are reasonable and will reduce risks related to the transition bonds resulting in lower transition-bond charges and greater benefits to ratepayers and should be approved.

***Financial Advisor***

102. In order to ensure, as required by PURA § 39.301, that the structuring and pricing of the transition bonds result in the lowest transition-bond charges consistent with market conditions and the terms of this Financing Order, the Commission finds that it is necessary for the Commission, acting through its designated personnel or financial advisor, to have a decision making role co-equal with Applicant with respect to the structuring and pricing of the transition bonds and that all matters relating to the structuring and pricing of the transition bonds shall be determined through a joint decision of Applicant and the Commission's designated personnel or financing advisor. The primary responsibilities of the Commission's financial advisor are to ensure that the structuring and pricing of the transition bonds result in the lowest transition-bond charges consistent with market conditions and the terms of this Financing Order and that it protects the competitiveness of the retail electric market in this state. To fulfill its obligations under this Financing Order, the Commission's financial advisor must give effect to the Commission's directive that the caps in this Order related to costs and maximum interest rates are ceilings, not floors.

103. To properly advise the Commission, the Commission's financial advisor must not participate in the underwriting of the transition bonds and its fee should not be based upon a percentage of the transition-bond issuance. Its role should be limited to advising the Commission or acting on behalf of the Commission regarding the structure and pricing of the transition bonds. The financial advisor must, however, have an integral role in the pricing, marketing and structuring of the transition bonds in order to provide competent advice to the Commission. This requires that the financial advisor participate fully and in advance in all plans and decisions related to the pricing, marketing, and structuring of the transition bonds and that it be provided timely information as necessary to fulfill its obligation to advise the Commission in a timely manner. In addition, the financial advisor's fee should be capped at an amount not to exceed $2,450,000 ($942,308 in connection with transition bonds issued before 2004), of which $718,667 ($276,410 in connection with transition bonds issued before 2004) will come from the underwriting spread with the remainder to be included in the aggregate cap on the up-front costs to be securitized of $52,586,374 ($20,225,528 in connection with transition bonds issued before 2004).

***Lowest Transition-Bond Charges***

104. The Company has proposed a transaction structure that includes (but is not limited to):

(a) the use of the SPE as issuer of transition bonds, limiting the risks to bond holders of any adverse impact resulting from a bankruptcy proceeding of its parent or any affiliate;

(b) the right to impose and collect transition charges that are nonbypassable and which must be trued-up at least annually, but may be trued-up more frequently under certain circumstances, in order to assure the timely payment of the debt service and other ongoing transaction costs;

(c) additional collateral in the form of a collection account which includes a capital subaccount of not less than 0.5% of the initial principal amount of the transition bonds and an overcollateralization subaccount which builds up over time to equal not less than an additional 0.5% of the initial principal amount of the transition bonds, and other subaccounts, resulting in greater certainty of payment of interest and principal to

investors and that are consistent with the requirements of the Internal Revenue Service that are needed to receive the desired federal income tax treatment for the transition-bond transaction;

(d) protection of bondholders against potential defaults by a servicer or REPs that are responsible for billing and collecting the transition charges from existing or future retail customers;

(e) benefits for federal income tax purposes including: (i) the transfer of the rights under this Financing Order to the SPE will not result in gross income to Applicant and the future revenues under the transition charges will be included in Applicant's gross income in the year in which the related electric service is provided to customers, (ii) the issuance of the transition bonds and the transfer of the proceeds of the transition bonds to Applicant will not result in gross income to Applicant and (iii) the transition bonds will constitute obligations of Applicant;

(f) the transition bonds will be marketed using proven underwriting and marketing processes, through which market conditions, rating agency considerations, and investors' preferences, with regard to the timing of the issuance, the terms and conditions, related maturities, type of interest (fixed or variable) and other aspects of the structuring and pricing will be determined, evaluated and factored into the structuring and pricing of the transition bonds;

(g) participation by the Commission, acting through its designated personnel or financial advisor, on an equal basis with Applicant in determining the pricing and structure of the transition bonds which will help to ensure that benefits to ratepayers as the result of securitization are realized; and

(h) hedging and swap agreements used to mitigate the risk of future rate increases if Applicant and the Commission's designated personnel or financial advisor jointly determine that it is prudent to enter into these types of agreements.

105. The Company's proposed transaction structure, as modified by this Financing Order, is necessary to enable the transition bonds to obtain the highest possible bond credit rating, to ensure that the structuring and pricing of the transition bonds will result in the lowest transition-bond charges consistent with market conditions and this Financing Order, to ensure the greatest

benefit to ratepayers consistent with market conditions, and to protect the competitiveness of the retail electric market.

**106.** To ensure that ratepayers receive the tangible and quantifiable economic benefits due from the proposed securitization and so that the proposed transition-bond transaction will be consistent with the standards set forth in PURA §§ 39.301 and 39.303, it is necessary that (i) the effective annual weighted average interest rate of the transition bonds, excluding up-front and ongoing costs, does not exceed 8.75%, (ii) the expected maximum life of the longest bonds does not exceed 12 years (although the legal maximum life of the bonds may extend to 15 years), (iii) the Periodic Billings Requirement as modified by this Financing Order is structured to be consistent with the amortization of the transition bonds based on a levelized recovery structure, (iv) up-front and ongoing costs to issue', service and support the transition bonds and costs to refund and retire the debt and equity not exceed the appropriate aggregate caps established in this Financing Order and (v) Applicant otherwise satisfies the requirements of this Financing Order. In the event there is more than one transaction, each such transaction must result in ratepayers receiving tangible and quantifiable economic benefits both separately and in the aggregate with all prior transactions.

**107.** To allow the Commission to fulfill its obligations under PURA related to the securitization approved in this Financing Order, it is necessary for Applicant, for each series of transition bonds issued, to certify to the Commission that the structure and pricing of that series results in the lowest transition-bond charges consistent with market conditions at the time that the transition bonds are priced and the general parameters (including the protection of the competitiveness of the retail electric market) set out in this Financing Order.

## D. Use of Proceeds

***Refinancing or Retirement of Utility Debt and Equity***

**108.** Upon the issuance of transition bonds, the SPE will use the net proceeds from the sale of the transition bonds (after payment of transaction costs) to pay to Applicant the purchase price of the transition property.

performed in full. The SPE, in issuing transition bonds, is authorized pursuant to PURA § 39.310 and this Financing Order to include this pledge in any documentation relating to the transition bonds.

36. As provided in PURA § 39.311, transactions involving the transfer and ownership of the transition property and the receipt of transition charges are exempt from state and local income, sales, franchise, gross receipts, and other taxes or similar charges.

37. This Financing Order will remain in full force and effect and unabated notwithstanding the bankruptcy of Applicant, its successors, or assignees.

38. Applicant retains sole discretion regarding whether or when to assign, sell or otherwise transfer the rights and interests created by this Financing Order or any interest therein or, subject to the approval of the Commission acting through its designated representative or financial advisor, to cause the issuance of any transition bonds authorized by this Financing Order.

39. This Financing Order is final, is not subject to rehearing by this Commission, and is not subject to review or appeal except as expressly provided in PURA § 39.303(f). The finality of this Financing Order is not impaired in any manner by the participation of the Commission through its designated personnel or financial advisor in any decisions related to issuance of the transition bonds or by the Commission's review of or issuance of an order related to the issuance advice letter required to be filed with the Commission by this Financing Order.

39A. This Financing Order, while issued in conjunction with and consistent with the Stipulation and Order in Docket No. 25230, is a separate final order, the appeal of which is to be conducted pursuant to PURA § 39.303(f). The finality of this Financing Order is not impacted by the actions or inactions taken by the Commission with respect to other portions of the Stipulation considered in this proceeding. Should any other order entered in this proceeding, if appealed to the courts, not be upheld in full on appeal, such judicial ruling will in no event impact or modify the finality or effectiveness of this Financing Order

3. Recovery of Transition Charges. Applicant shall impose on, and the servicer shall collect from, retail customers and REPs, as provided in this Financing Order, transition charges in an amount sufficient to provide for the timely recovery of its aggregate qualified costs detailed in Appendix C to this Financing Order (including payment of principal and interest on the transition bonds).

4. Issuance Advice Letter. Following determination of the final terms of the transition bonds and prior to issuance of the transition bonds, Applicant, in consultation with the Commission acting through its designated personnel or financial advisor, shall file with the Commission an issuance advice letter in substantially the form of the issuance advice letter attached as Appendix E to this Financing Order. As part of the issuance advice letter, Applicant shall make the certification addressed in Finding of Fact No. 107 through an officer of Applicant. The issuance advice letter shall be completed and evidence the actual dollar amount of the initial transition charges and other information specific to the transition bonds to be issued, and shall certify to the Commission that the structure and pricing of that series results in the lowest transition-bond charges consistent with market conditions at the time that the transition bonds are priced and the general parameters (including the protection of the competitiveness of the retail electric market) set out in this Financing Order. All amounts which require computation shall be computed using the mathematical formulas contained in the form of the issuance advice letter attached as Appendix E and the Transition Charge Rate Tariff approved in this Financing Order and attached as Appendix D. The Commission's review of the issuance advice letter shall be limited to the arithmetic accuracy of the calculations and to compliance with the specific requirements that are contained in the issuance advice letter. The initial transition charges and the final terms of the transition bonds set forth in the issuance advice letter shall become effective on the later of the third business day after submission to the Commission or the date of issuance of the transition bonds unless, prior to such third business day, the Commission issues an order finding that the proposed issuance does not comply with the requirements set forth above in this Ordering Paragraph.

5. Approval of Tariff. The form of the Transition Charge Rate Tariff attached as Appendix D to this Financing Order is approved. Prior to the issuance of any transition bonds

14. Refinancing. Applicant or any assignee may apply for one or more new financing orders pursuant to PURA § 39.303(g).

15. Collateral. All transition property and other collateral shall be held and administered by the indenture trustee pursuant to the indenture as described in the Company's application. The SPE shall establish a collection account with the indenture trustee as described in the application as modified in Findings of Fact Nos. 64 through 71. Upon the maturity of the transition bonds and the discharge of all obligations in respect thereof, all amounts, other than amounts in the capital subaccount, in the collection account, including investment earnings, shall be released to the SPE and shall be credited to ratepayers. Applicant shall within 30 days after the date that these funds are eligible to be released notify the Commission of the amount of such funds ' available for crediting to the benefit of ratepayers.

16. Funding of Capital Subaccount. The capital contribution by Applicant to the SPE to be deposited into the Capital Subaccount shall, with respect to each series of transition bonds, be funded by Applicant and not from the proceeds of the sale of transition bonds. Upon the maturity of the transition bonds and the discharge of all obligations in respect thereof, all amounts in the Capital Subaccount, including investment earnings, shall be released to the SPE for payment to Applicant. Investment earnings in this subaccount may be released earlier in accordance with the *indenture.*

17. Credit Enhancement. Applicant may provide for various forms of credit enhancement including letters of credit, reserve accounts, surety bonds, swap arrangements, hedging arrangements and other mechanisms designed to promote the credit quality and marketability of the transition bonds or to mitigate the risk of an increase in interest rates, provided that the costs of such credit enhancement shall not cause the aggregate amount of up-front costs securitized plus the expense of reacquiring debt and equity to exceed the amount of the cap specified in Appendix C, and that the decision to use such credit enhancement shall be made in conjunction with the Commission acting through its designated personnel or financial advisor. This Ordering Paragraph does not apply to the collection account or its subaccounts approved in this Financing Order.

18. Annual Weighted Average Interest Rate of Bonds. The effective annual weighted-average interest rate of the transition bonds, excluding up-front and ongoing costs, shall not exceed 8.75% on an annual basis.

19. Life of Bonds. The life of the transition bonds authorized by this Financing Order shall not exceed 15 years.

20. Amortization Schedule. The amortization of the transition bonds shall be based upon a levelized recovery structure consistent with Finding of Fact No. 63.

21. Commission Participation in Bond Issuance. The Commission, acting through its designated personnel or financial advisor, shall participate directly with Applicant in negotiations regarding the pricing and structuring of the transition bonds, and shall have equal rights with Applicant to approve or disapprove the proposed pricing, marketing, and structuring of the transition bonds. The Commission's financial advisor shall have the right to participate fully and in advance regarding all aspects of the pricing, marketing and structuring of the transition bonds (and all parties shall be notified of the financial advisor's role) and shall be provided timely information that is necessary to fulfill its obligation to the Commission. The Commission directs its financial advisor to veto any proposal that does not comply with all of the criteria established in this Financing Order. The Commission's financial advisor shall ensure that the structuring and pricing of the transition bonds result in the lowest transition-bond charges consistent with market conditions and the terms of this Financing Order and that it protects the competitiveness of the retail electric market in this state. The Commission's financial advisor shall give effect to the Commission's directive that the caps in this Order related to costs and maximum interest rates are ceilings, not floors, and shall inform the Commission of any items that, in the financial advisor's opinion, are not reasonable. The financial advisor shall notify the Applicant and the Commission no later than 12:00 noon CST on the second business day after the pricing date for each series of transition bonds whether the pricing and structuring of that series of transition bonds complies with the criteria established in this Financing Order.

45. Payment of Commission's Financial Advisor. The fee for the Commission's financial advisor shall be a fixed fee payable at closing by wire transfer, and shall not exceed $2,450,000 ($942,308 in connection with transition bonds issued before 2004) to be included in the aggregate cap on up-front costs to be securitized of $52,586,374.

46. Effect. This Financing Order constitutes a legal financing order for TXU Electric Company under Subchapter G of Chapter 39 of PURA. The Commission finds this Financing Order complies with the provisions of Subchapter G of Chapter 39 of PURA. A financing order gives rise to rights, interests, obligations and duties as expressed in Subchapter G of Chapter 39 of PURA. It is the Commission's express intent to give rise to those rights, interests, obligations and duties by issuing this Financing Order. /Applicant and the servicer of transition bonds are directed to take all actions as are required to effectuate the transactions approved in this Financing Order, subject to the compliance with the criteria established in this Financing Order.

46A. This Financing Order, while adopted pursuant to the approval and adoption of the Stipulation filed in this proceeding, is a separate final order, the appeal of which is to be conducted pursuant to PURA § 39.303(f). The finality of this Financing Order is not impacted by the actions or inactions taken by the Commission with respect to other portions of the Stipulation considered in this proceeding. Should any other order entered in this proceeding, if appealed to the courts, not be upheld in full on appeal, such judicial ruling will in no event impact or modify the finality or effectiveness of this Financing Order

47. All Other Motions Denied. All motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief not expressly granted herein, are denied for want of merit.

**SIGNED AT AUSTIN, TEXAS the 5th day of August 2002.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

**REBECCA KLEIN, KLEIN, CHAIRMAN**

**BRETT A. PE MAN, COMMISSIONER**

Klein Exhibit 2
DOCKET NO. E-2, Sub 1262
DOCKET NO. E-7, Sub 1243 Highlight by Witness

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | |
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| In re: Petition for approval to include in base rates the revenue requirement for the CR3 regulatory asset, by Duke Energy Florida, Inc. | DOCKET NO. 150148-EI |
| In re: Petition for issuance of nuclear asset-recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy. | DOCKET NO. 150171-EI<br>ORDER NO. PSC-15-0537-FOF-EI<br>ISSUED: November 19, 2015 |

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
LISA POLAK EDGAR
RONALD A. BRISÉ
JULIE I. BROWN
JIMMY PATRONIS

FINANCING ORDER

APPEARANCES:

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J.R. KELLY and CHARLES REHWINKEL, ESQUIRES, c/o The Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, FL 32399-1400
On behalf of Office of Public Counsel (OPC).

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On behalf of Florida Industrial Power Users Group (FIPUG).

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On behalf of White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate).

On October 14, 2015, this Commission held a hearing in Docket Nos. 150148-EI and 150171-EI. All testimony filed in both dockets was entered into the record as though read, along with the prefiled exhibits of all witnesses, and cross-examination was waived by all parties and staff. A total of 89 exhibits were entered into the record, including DEF's responses to certain of the Commission staff's discovery requests.

The hearing considered (a) whether this Commission should issue a financing order pursuant to DEF's Petition, and if so, (b) what standards, conditions and procedures should be included in that financing order. In connection with that hearing, the parties presented Proposed Stipulations on Financing Order Issues. We approved the Proposed Stipulations on Financing Order Issues upon finding them to be in the public interest, and admitted them as Exhibit 87.

During the hearing, the Commission, staff, and the parties discussed and acknowledged the Best Practices provided in testimony by Saber Partners, including the participation of the Commission's financial advisor in the structuring, marketing, and pricing of the bonds and the selection and compensation of the underwriters. In addition, all parties agreed that this Financing Order would direct that nuclear asset-recovery bonds shall be structured, marketed and priced so as to result in the lowest nuclear asset-recovery charges consistent with this Financing Order and market conditions at the time of pricing. Also at the hearing, the parties agreed that Commission staff would prepare a proposed form of Financing Order consistent with the Proposed Stipulations on Financing Order Issues for review by the other parties and for consideration by this Commission at its special agenda conference on November 17, 2015.

Summary of Decision

Consistent with the time requirements of Section 366.95(2)(c)1., F.S., we reached a decision on DEF's Petition. This Financing Order memorializes our decision.

In this Financing Order, we find that the issuance of nuclear asset-recovery bonds and the imposition of related nuclear asset-recovery charges to finance the recovery of DEF's reasonable and prudently incurred nuclear asset-recovery costs and related financing costs have a significant likelihood of resulting in lower overall costs or would significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs. Thus, by this Financing Order, we:

(1) approve the recovery through securitization of the Securitizable Balance, which consists of (a) nuclear asset-recovery costs, in the form of the Crystal River Unit 3 ("CR3") Regulatory Asset as determined pursuant to Docket No. 150148-EI (more specifically, the principal amount should be $1,283,012,000, representing the projected December 31, 2015 balance of the CR3 Regulatory Asset, subject to true-up to the actual December 31, 2015 balance), plus (b) estimated financing costs associated with the issuance of the nuclear asset-recovery bonds (sometimes referred to as "upfront bond issuance costs"), plus (c) carrying charges accruing at 6.0% per annum on the CR3 Regulatory Asset balance from December 31, 2015 through the date of issuance of the respective series of nuclear asset-recovery bonds.

(2) authorize the issuance of nuclear asset-recovery bonds, secured by the pledge of nuclear asset-recovery property, in one or more series, in an aggregate principal amount not to exceed the Securitizable Balance (as of the date the nuclear asset-recovery bonds are issued);

(3) approve the recovery of financing costs, including, upfront bond issuance costs incurred in connection with the issuance of the nuclear asset-recovery bonds and ongoing financing costs;

(4) approve the transaction structure of nuclear asset-recovery bonds as described in this Financing Order;

(5) approve the creation of the nuclear asset-recovery property, which includes the right to impose, bill, collect and receive nuclear asset-recovery charges in an amount authorized under this Financing Order and to obtain periodic adjustments to such charges as provided in this Financing Order and in accordance with Finding of Fact paragraph 29 and Conclusion of Law paragraph 11, to Guarantee the timely payment of the nuclear asset-recovery bonds and financing costs and other required amounts and charges payable in connection with the nuclear asset-recovery bonds; and

(6) approve the form of tariff schedule to be filed under DEF's tariff, as provided in this Financing Order, to implement the nuclear asset-recovery charges.

Pursuant to the Issuance Advice Letter procedures described in Finding of Fact paragraphs 98 through 103 of this Financing Order, DEF shall update its estimates of the upfront financing costs, ongoing financing costs and other relevant current information in accordance with the terms of this Financing Order.

Apart from storm-recovery bonds which this Commission approved for Florida Power & Light Company pursuant to Section 366.8260, F.S., and Order Nos. PSC-06-0464-FOF-EI and PSC-06-0626-FOF-EI, issued May 30, 2006 and July 21, 2006, respectively, in Docket No. 060038-EI, these nuclear asset-recovery bonds will be unlike any other corporate debt or equity securities previously approved by this Commission. In all other debt and equity offerings, the issuing utility is directly responsible to make payments to investors who purchase the securities. But neither the assets nor the revenues of DEF will be available to make promised payments of principal, interest, and other costs associated with the proposed nuclear asset-recovery bonds. Rather, by operation of Section 366.95, F.S., this Commission must irrevocably commit that all such amounts will be paid from nuclear asset-recovery charges, a special tariff rate imposed on all retail consumers of electricity in DEF's service territory. This represents an extraordinary relinquishment of future regulatory authority and a shifting of all economic burdens in connection with nuclear asset-recovery bonds from DEF to its customers.

While we recognize the need for some degree of flexibility with regard to the final details of the nuclear asset-recovery bond securitization transaction approved in this Financing Order, our primary focus is upon (a) meeting all statutory requirements including (i) pursuant to Section 366.95(2)(c)2.b., our determination that the proposed structuring, expected pricing, and financing costs of the nuclear asset-recovery bonds have a significant likelihood of resulting in lower

overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs (the "statutory financing cost objective"), (ii) our determination that this Financing Order addresses all matters required by Section 366.95(2)(c)2., and, (iii) pursuant to Section 366.95(2)(c)5., our determination, on a reasonably comparable basis, that the actual costs of the nuclear asset-recovery bond issuance results in the lowest overall costs that were reasonably consistent with market conditions at the time of the issuance and the terms of this Financing Order (the "lowest issuance cost objective", and collectively with the statutory financing cost objective, the "statutory cost objectives"); and (b) ensuring that nuclear asset-recovery bonds authorized by this Financing Order will be structured, marketed and priced so as to result in the lowest nuclear asset-recovery charges consistent with this Financing Order and market conditions at the time of pricing (the "lowest overall cost standard").

Because this Financing Order will be irrevocable, and because the true-up adjustment mechanism generally will result in the economic burden of all costs associated with nuclear asset-recovery bonds being borne by DEF's customers, we feel compelled to ensure from the outset that clear standards and effective procedures and conditions are in place to safeguard the interests of customers. Otherwise all the benefits potentially available to customers from this securitized nuclear asset-recovery bond financing might not be realized.

Section 366.95(2)(c)2.i., F.S., directs this Commission to include in a financing order any other conditions that this Commission considers appropriate and that are authorized by this section. In this Financing Order, we establish standards, procedures and conditions which we find will effectively safeguard the interests of customers. Among those is the lowest overall cost standard. We find that these standards, procedures and conditions, applied in a manner supportive of the provisions of the previously approved Amended RRSSA, are most likely to ensure satisfaction of the statutory cost objectives. These standards, procedures and conditions are designed to allow for meaningful and substantive cooperation between DEF and its designated advisors, this Commission and our designated advisors, legal counsel, and representatives through a "Bond Team" to ensure that the structuring, marketing, pricing and financing costs of the nuclear asset-recovery bonds will achieve the statutory cost objectives as well as the lowest overall cost standard. Each of the standards, procedures and conditions set forth in this Financing Order must be met. This Financing Order grants authority to issue nuclear asset-recovery bonds and to impose and collect nuclear asset-recovery charges only if the final structure of the transaction and the standards, procedures and conditions followed comply with or satisfy (as the case may be) in all respects the standards, procedures and conditions set forth herein.

DEF, its structuring advisor, and designated Commission staff and its financial advisor will serve on the Bond Team. One designated representative of DEF and one designated representative of this Commission shall be joint decision makers in all aspects of the structuring, marketing and pricing of the nuclear asset-recovery bonds except for those recommendations that in the sole view of DEF would expose DEF or the special purpose entity ("SPE") to securities law and other potential liability (*i.e.*, such as, but not limited to, the making of any untrue statement of a material fact or omissions to state a material fact required to be stated therein or

necessary in order to make the statements made not misleading) or contractual law liability (*e.g.*, including but not limited to terms and conditions of the underwriter agreement(s)). This Commission's designated staff and financial advisor will be visibly involved, in advance, in all aspects of the structuring, marketing, and pricing of the nuclear asset-recovery bonds. All Bond Team members will actively participate in the design of the marketing materials for the transactions as well as in the development and implementation of the marketing and sales plan for the bonds. DEF agrees DEF and this Commission's staff and its financial advisor as Bond Team members, excluding DEF's structuring advisor, should also have equal rights on the hiring decisions for the underwriters and counsel to the underwriters. However, DEF shall have sole right to select and engage all counsel for DEF and the SPE. In addition, together with the Bond Team's involvement in the structuring, marketing and pricing of the nuclear asset-recovery bonds, and the Issuance Advice Letter process, this Commission will be able to fully review the pricing of the bonds as this Commission determines whether to issue a stop order no later than 5:00 pm Eastern time on the third business day following pricing.

To ensure that the statutory cost objectives and the lowest overall cost standard are met and that these procedures are followed, this Commission – as represented at various stages either jointly or separately by designated Commission personnel, with support from this Commission's financial advisor and this Commission's outside legal counsel, as the designated Commission personnel deem appropriate – will participate visibly and in advance in the structuring, marketing, and pricing of the nuclear asset-recovery bonds in accordance with the standards, procedures and conditions established in this Financing Order.

The authority and approval to issue nuclear asset-recovery bonds pursuant to this Financing Order is effective only upon DEF filing with this Commission an Issuance Advice Letter in accordance with this Financing Order, and this Commission not issuing an order to stop the transaction and containing a basis for such stop order by 5:00 p.m. Eastern Time on the third business day following pricing of the nuclear asset-recovery bonds.

## II. TRANSACTION STRUCTURE AND DOCUMENTS

DEF has proposed a transaction structure that includes all of the following:

a. The use of one or more SPEs as issuer of nuclear asset-recovery bonds, limiting the risks to Bondholders (holders of nuclear asset-recovery bonds) of any adverse impact resulting from a bankruptcy proceeding of DEF or any affiliate.

b. The right to impose, bill, collect and receive nuclear asset-recovery charges that are nonbypassable and which must be trued-up at least every six months, but may be trued-up more frequently under specified circumstances, in order to ensure the timely payment of the debt service and on-going financing costs. Consistent with the Amended RRSSA, the recovery period proposed for the nuclear asset-recovery charges shall not exceed the close of the last billing cycle for the 276th month from the inception of the nuclear asset-recovery charge.

c. Include as collateral a collection account which includes, without limitation, a Capital Subaccount funded initially by a deposit from DEF equal to at least 0.5% of the initial principal amount of the nuclear asset-recovery bonds, resulting in greater certainty of payment of interest and principal to investors.

d. A servicer (initially DEF) responsible for billing and collecting the nuclear asset-recovery charge from existing and future customers.

e. The Federal income tax consequences of the transaction meet the provisions established in IRS Revenue Procedure 2005-62.

Portions of the transaction structure, described in this Financing Order, are necessary to enable the nuclear asset-recovery bonds to obtain the highest bond credit rating possible, with an objective of AAA/Aaa bond credit ratings, so as to further ensure that the proposed structuring, expected pricing and financing costs of the nuclear asset-recovery bonds and the imposition of the nuclear asset-recovery charges will avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs from customers.

In accordance with Section 366.95(2)(a)6., the transaction structure, described in this Financing Order, has a significant likelihood of resulting in lower overall costs or would significantly mitigate rate impacts compared to the traditional method of cost recovery.

DEF has submitted in connection with its Petition a draft of each of the Nuclear Asset-Recovery Property Purchase and Sale Agreement, the Administration Agreement, and the Nuclear Asset-Recovery Property Servicing Agreement (the "Financing Documents"), which set out in substantial detail certain terms and conditions relating to the transaction structure, including the proposed sale of the Nuclear Asset-Recovery Property to the SPE, the administration of the SPE, and the servicing of the nuclear asset-recovery charges and the nuclear asset-recovery bonds. DEF initially requested that we approve the substance of the form of each of the agreements between DEF and the SPE in connection with issuance of this Financing Order. We find that such approval is not necessary at this time. Drafts of these agreements were filed in order that this Commission may evaluate the principal rights and responsibilities of the parties thereto. The final versions of these agreements will be subject to change based on the input from Commission staff, rating agencies, investors and other parties involved in the structuring and marketing of the nuclear asset-recovery bonds. DEF has also submitted a draft of the Indenture between the SPE and the indenture trustee, which sets forth proposed security and terms for the nuclear asset-recovery bonds. DEF requested that we approve the substance of the Indenture, subject to such changes based on the input from Commission staff, rating agencies, investors and other parties involved in the structuring and marketing of the nuclear asset-recovery bonds. DEF has also submitted a form of the Limited Liability Company Agreement ("LLC Agreement") with DEF as the sole member, that DEF proposed would constitute the organizing document of the SPE. DEF initially requested that we approve the substance of the LLC Agreement, which would be executed substantially in the form submitted to this Commission, subject to such changes as DEF deems necessary or advisable to satisfy bankruptcy and rating agency considerations.

Highlight by Witness



The SPE

DEF proposed to create one or more SPEs, each as a bankruptcy remote, Delaware limited liability company with DEF as its sole member, as set forth in the LLC Agreement. In striving to achieve the lowest overall cost standard, it would be helpful if nuclear asset-recovery bonds can be presented to investors as corporate securities and not as asset-backed securities. Exhibit 75 discusses an SEC no-action letter dated September 19, 2007 which treated securitized utility bonds issued by an SPE as not asset-backed securities where that SPE was authorized to issue more than one series of securitized utility bonds. Unless separate SPEs are required by the rating agencies to achieve the highest possible credit ratings, all series of nuclear asset-recovery bonds authorized by this Financing Order shall be issued by the same SPE.

DEF proposed that the SPE may issue nuclear asset-recovery bonds in an aggregate amount not to exceed the Securitizable Balance approved by this Financing Order and will pledge to an indenture trustee, as collateral for payment of the nuclear asset-recovery bonds, the nuclear asset-recovery property, including the SPE's right to receive the nuclear asset-recovery charges as and when collected, and other collateral described in the Indenture. Pursuant to Section 366.95(5)(a)3., the SPE will be created for the limited purpose of acquiring, owning, or administering nuclear asset-recovery property or issuing nuclear asset-recovery bonds under this Financing Order or one or more future financing orders issued by this Commission. These restrictions on the activities of the SPE and restrictions on the ability of DEF to take action on the SPE's behalf are imposed to achieve the objective that the SPE will be bankruptcy-remote and not be affected by a bankruptcy of DEF or any affiliate or successor of DEF.

DEF proposed that the SPE will be managed by a board of managers with rights and duties set forth in its organizational documents. As long as the nuclear asset-recovery bonds remain outstanding, DEF proposed that the SPE will have at least one independent manager with no organizational affiliation with DEF other than possibly acting as independent manager(s) for another bankruptcy-remote subsidiary of DEF or its affiliates. The SPE will not be permitted to amend the provisions of the LLC Agreement or other organizational documents that relate to bankruptcy-remoteness of the SPE without the consent of the independent manager(s). Similarly, the SPE will not be permitted to institute bankruptcy or insolvency proceedings or to consent to the institution of bankruptcy or insolvency proceedings against it, or to dissolve, liquidate, consolidate, convert, or merge without the consent of the independent manager(s). Other restrictions to facilitate bankruptcy-remoteness may also be included in the organizational documents of the SPE as required by the rating agencies.

DEF proposed that the SPE will have no staff to perform administrative services (such as routine corporate maintenance, reporting and accounting functions). DEF proposed that these services initially will be provided by DEF pursuant to the terms of an administration agreement between the SPE and DEF (the "Administration Agreement").

The Servicer and the Servicing Agreement

DEF proposed to execute a servicing agreement with the SPE (the "Servicing Agreement") which may be amended, renewed, or replaced by another servicing agreement in

amount of the capital contribution will be at least 0.5 percent of the original principal amount of the nuclear asset-recovery bonds. The Capital Subaccount will serve as collateral to facilitate timely payment of principal of and interest on the nuclear asset-recovery bonds. To the extent that the Capital Subaccount must be drawn upon to pay these amounts due to a shortfall in the nuclear asset-recovery charge collections, it will be replenished to its original level through the true-up process described below. The funds in the Capital Subaccount will be invested in short-term high-quality investments and, if necessary, such funds (including investment earnings) will be used by the indenture trustee to fund the Periodic Payment Requirement. DEF will be permitted to earn a rate of return on its invested capital in the SPE equal to the rate of interest payable on the longest maturing tranche of nuclear asset-recovery bonds and this return on invested capital should be a component of the Periodic Payment Requirement (as defined above), and accordingly, recovered from nuclear asset-recovery charges.

DEF proposed that the Excess Funds Subaccount will hold any nuclear asset-recovery charge collections and investment earnings on the Collection Account in excess of the amounts needed to fund the Periodic Payment Requirement. Any balance in or amounts allocated to the Excess Funds Subaccount on a true-up adjustment date will be subtracted from amounts required for such period for purposes of the true-up adjustment. The funds in the Excess Funds Subaccount will be invested in short-term high-quality investments, and such funds (including investment earnings thereon) will be available to fund the Periodic Payment Requirement.

DEF proposed that the Collection Account and the subaccounts described above are intended to facilitate the full and timely payment of the Periodic Payment Requirement. If the amount of nuclear asset-recovery charge collections in the General Subaccount is insufficient to fund, on a timely basis, the Periodic Payment Requirement, the Excess Funds Subaccount and the Capital Subaccount will be drawn down, in that order, to make such payments. Any deficiency in the Capital Subaccount due to such withdrawals must be replenished on a periodic basis through the true-up process. In addition to the foregoing, there may be established such additional accounts and subaccounts as are necessary to segregate amounts received from various sources, or to be used for specified purposes consistent with this Financing Order and Section 366.95, F.S.

Upon the maturity of the nuclear asset-recovery bonds and upon the discharge of all obligations with respect to such bonds, amounts remaining in the Collection Account will be released to the SPE and will be available for distribution by the SPE to DEF. As noted in this Financing Order, equivalent amounts, less the amount of the Capital Subaccount, will be credited by DEF to current customers' bills in the same manner that the charges were collected, or through a credit to the capacity cost recovery clause if this Commission determines at the time of retirement that a direct credit to customers' bills is not cost-effective.

Guaranteed True-Ups of the Nuclear Asset-Recovery Charges

Pursuant to Section 366.95(2)(c)2.d. and (2)(c)4., F.S., the servicer of the nuclear asset-recovery property will file for standard true-up adjustments to the nuclear asset-recovery charges at least every six months to ensure the recovery of revenues sufficient to provide for the timely funding of the Periodic Payment Requirement. Pursuant to Section 366.95(2)(c)2.d., F.S., this

financing costs. An estimated calculation of the amount of nuclear asset-recovery costs to be financed is shown in Appendix A to this Financing Order.

IV. UPFRONT BOND ISSUANCE COSTS

10. Upfront bond issuance costs as described in the Petition are estimated "financing costs" eligible to be financed from the proceeds of the nuclear asset-recovery bonds. Upfront bond issuance costs include the fees and expenses, including legal expenses, associated with the efforts to obtain this Financing Order, as well as the fees and expenses associated with the structuring, marketing, and issuance of the nuclear asset-recovery bonds, including counsel fees, structuring advisory fees (including counsel), underwriting fees and original issue discount, rating agency and trustee fees (including trustee's counsel), auditing fees, servicer set-up costs (including information technology programming costs), printing and marketing expenses, stock exchange listing fees and compliance fees, filing fees, any applicable taxes (including any documentary transfer tax, if applicable), and the costs of the financial advisor and outside counsel retained by this Commission to assist this Commission in performing its responsibilities under Section 366.95(2)(c)2. and 5., F.S. Upfront bond issuance costs include reimbursement to DEF for amounts advanced for payment of such costs. Upfront bond issuance costs may also include other types of credit enhancement, not specifically described herein, including letters of credit, reserve accounts, surety bonds, interest rate swaps, interest rate locks, and other mechanisms designed to promote the credit quality and marketability of the nuclear asset-recovery bonds or designed to achieve the statutory financing cost objective and the lowest overall cost standard. The upfront bond issuance costs of any credit enhancements shall be included in the amount of costs to be securitized. Upfront bond issuance costs do not include debt service on the nuclear asset-recovery bonds or other ongoing financing costs, which are addressed later in this Financing Order.

11. DEF has provided estimates of upfront bond issuance costs ranging from approximately $10 million to $17 million in Exhibit 79. DEF shall further update the upfront bond issuance costs prior to the pricing of the nuclear asset-recovery bonds in accordance with the Issuance Advice Letter procedures described in Finding of Fact paragraphs 98 through 103 of this Financing Order.

12. Certain upfront bond issuance costs, such as fees for underwriters' services, underwriters' counsel, trustee services and printing services may be procured through a competitive solicitation process to achieve lower costs. The development of any competitive solicitation and selection of underwriters, underwriters' counsel, and other transaction participants other than issuer's counsel shall be overseen by the Bond Team subject to the procedures set forth in Finding of Fact paragraphs 42 through 50 to ensure that the process is truly competitive, will provide the greatest value to ratepayers, and will result in the selection of transaction participants that have experience and ability to achieve an efficient transaction that meets the lowest overall cost standard.

13. In accordance with Section 366.95(2)(c)5., F.S., within 120 days after issuance of the nuclear asset-recovery bonds, DEF is required to file with this Commission supporting information on the upfront bond issuance costs for the categories of costs reflected in Exhibit 18.

This Commission shall review such costs to determine compliance with Section 366.95(2)(c)5., F.S.. As part of that review, this Commission shall only consider actual upfront bond issuance costs, but not ongoing financing costs, interest rate, or pricing of the bonds.

14. To the extent the actual upfront bond issuance costs are (a) in excess of the amount appearing in the final Issuance Advice Letter filed within one business day after actual pricing of the nuclear asset-recovery bonds, and (b) in compliance with Section 366.95(2)(c)5., F.S., we find that DEF shall collect such excess amounts through the capacity cost recovery clause, if prudently incurred.

15. We acknowledge the actual upfront bond issuance costs to some degree are dependent on the timing of issuance, market conditions at the time of issuance, and other events outside the control of DEF, such as possible litigation, possible review by the United States Securities and Exchange Commission ("SEC"), and rating agency requirements. We also acknowledge that the costs of any financial advisor to this Commission and any outside legal counsel to this Commission to assist us in performing our responsibilities under Section 366.95(2)(c)2. and 5., F.S., including services provided in assisting us in our active role on the Bond Team responsible for the structuring, marketing, and pricing of the nuclear asset-recovery bonds, are costs which are at least in part within the control of this Commission and such costs are fully recoverable from nuclear asset-recovery bond proceeds to the extent such costs are eligible for compensation and approved for payment under the terms of such party's contractual arrangements with this Commission, as such arrangements may be modified by any amendment entered into at this Commission's sole discretion.

## V. NUCLEAR ASSET-RECOVERY CHARGE

16. To repay the nuclear asset-recovery bonds and associated financing costs, DEF is authorized to impose a nuclear asset-recovery charge to be collected on a per-kWh basis from all applicable customer rate classes. Nuclear asset-recovery charges should be effective upon the first day of the billing cycle for the month following the issuance of the nuclear asset-recovery bonds and should remain in effect for a recovery period not to exceed the close of the last billing cycle for the 276th month from the inception of the nuclear asset-recovery charge. The nuclear asset-recovery charge is nonbypassable, and must be paid by all existing or future customers receiving transmission or distribution services from DEF or its successors or assignees under Commission-approved rate schedules or under special contracts, even if the customer elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of public utilities in this state. Section 366.95(1)(j) and (2)(c)2.c., F.S. In the event that there is a fundamental change in the regulation of public utilities, the nuclear asset-recovery charge shall be collected in a manner that will not adversely affect the rating on the nuclear asset-recovery bonds.

17. The nuclear asset-recovery charge covers the cost associated with repayment of principal of and interest on nuclear asset-recovery bonds and other ongoing financing costs. Ongoing financing costs include, without limitation, rating agency surveillance fees, servicing fees, legal and auditing costs, trustee fees, administration fees, the return on invested capital, regulatory assessment fees and miscellaneous other fees associated with the servicing of the

consistent with the allocation methodology adopted in the RRSSA approved on November 12, 2013 in Order No. PSC-13-0598-FOF-EI. That approved allocation methodology for DEF is the 12CP and 1/13 AD. Spelled out, that means twelve-thirteenths of the revenue requirement is allocated based on 12 monthly coincident peaks (or demand) and one-thirteenth is allocated based on average demand (or energy).

23. The Commission finds that the True-Up Mechanism provided for in Section 366.95(2)(c)2.d., F.S., for allocating costs among customers creates joint and several liability among all the customers of DEF for payment of the nuclear asset-recovery charges payable in connection with the nuclear asset-recovery bonds. Although holders of nuclear asset-recovery bonds may not arbitrarily seek to impose the entire burden of repaying nuclear asset-recovery bonds on a single customer or a select group of customers outside the True-Up Mechanism, this means that any delinquencies or under-collections in one customer rate class will be taken into account in the application of the True-Up Mechanism to adjust the nuclear asset-recovery charge for all customers of DEF, not just the class of customers from which the delinquency or under-collection arose.

24. In Section 366.95(11)(b), F.S., the State pledges to and agrees with the Bondholders, the owners of nuclear asset-recovery property, and other financing parties that the State will not: (1) alter the provisions of this Section 366.95 which make the nuclear asset-recovery charges imposed by this Financing Order irrevocable, binding, and nonbypassable charges; (2) take or permit any action that impairs or would impair the value of nuclear asset-recovery property or revises the nuclear asset-recovery costs for which recovery is authorized; or (3) except as authorized under Section 366.95, reduce, alter, or impair nuclear asset-recovery charges that are to be imposed, collected, and remitted for the benefit of the owners of DEF's nuclear asset-recovery bonds 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. This Commission finds that this State Pledge will constitute a contract with the Bondholders, the owners of nuclear asset-recovery property, and other financing parties.

25. This Commission anticipates stress case analyses will show that the broad-based nature of the true-up mechanism under Section 366.95(2)(c)2.d., F.S., and the State pledge under Section 366.95(11), F.S., will serve to effectively eliminate for all practical purposes and circumstances any credit risk to the payment of the nuclear asset-recovery bonds (*i.e.*, that sufficient funds will be available and paid to discharge the principal and interest when due).

Treatment of Nuclear Asset-Recovery Charge in Tariff and on Customer Bills

26. The tariff applicable to customers shall indicate the nuclear asset-recovery charge and the ownership of the right to receive that charge. The proposed tariff sheet, submitted as Exhibit 32 reflects the needed language. In accordance with Section 366.95(4)(b), F.S., the nuclear asset-recovery charge will be recognized as a separate line item on customer bills entitled Asset Securitization Charge and include the rate and amount of the charge. In addition, all electric bills will state that, as approved in a financing order, all rights to the Asset Securitization

collections are sufficient to make all payments on those nuclear asset-recovery bonds and in respect of financing costs no later than the immediately following debt service payment date. Along with each True-Up Adjustment Letter, the servicer shall provide workpapers showing all inputs and calculations, including its calculation of the nuclear asset-recovery charge by customer rate class. Consistent with Section 366.95(2)(c)4., F.S., our staff, upon the filing of a True-Up Adjustment Letter made pursuant to this Order, will either administratively approve the requested true-up calculation in writing or inform the servicer of any mathematical errors in its calculation as expeditiously as possible but no later than 60 days following the servicer's true-up filing. Notification and correction of any mathematical errors shall be made so that the true-up is implemented within 60 days of the servicer's true-up filing. If no action is taken within 60 days of the true-up filing, the true-up calculation shall be deemed approved. Upon administrative approval or the passage of 60 days without notification of a mathematical error, no further action of this Commission will be required prior to implementation of the true-up. Section 366.95(2)(c)2.d., F.S., provides that the true-up adjustments will "ensure the timely payment of nuclear asset-recovery bonds." We find that this True-Up Mechanism, together with the State Pledge, will "Guarantee" the timely payment of the principal and interest of the bonds.

30. In addition to the semi-annual true-up adjustment, DEF, as servicer (or a successor servicer) will also be authorized to make optional interim true-up adjustments at any time for any reason to ensure timely payment of the Periodic Payment Requirement, which adjustment will be implemented based upon the same time frames as the semi-annual true-ups.

31. To Guarantee adequate nuclear asset-recovery charge collections and to avoid large over-collections and under-collections over time, we direct that the servicer shall reconcile nuclear asset-recovery charges using DEF's most recent forecast of electricity deliveries (*i.e.,* forecasted billing units) used for all corporate purposes and DEF's estimates of related expenses. Each periodic true-up adjustment should Guarantee recovery of revenues sufficient to meet the Periodic Payment Requirement. The calculation of the nuclear asset-recovery charges will also reflect both a projection of uncollectible nuclear asset-recovery charges and a projection of payment lags between the billing and collection of nuclear asset-recovery charges based upon DEF's most recent experience regarding collection of nuclear asset-recovery charges.

32. The servicer may also make a non-standard true-up adjustment to be effective simultaneously with a base rate change that includes any change in the rate allocation among customers used to determine the nuclear asset-recovery charges, such true-up to go into effect simultaneously with any changes to DEF's other base rates. Any non-standard true-up will be subject to approval within the 60-day approval period contemplated by Section 366.95(2)(c)4., F.S.

33. This Commission finds that the broad-based nature of the True-Up Mechanism and the pledge of the State of Florida set forth in Section 366.95(11), F.S., will constitute a guarantee of regulatory action for the benefit of investors in nuclear asset-recovery bonds, and we anticipate that stress case analyses will show that these features will serve to effectively eliminate for all practical purposes and circumstances any credit risk associated with the nuclear asset-recovery bonds (*i.e.,* that sufficient funds will be available and paid to discharge all principal of and interest on the nuclear asset-recovery bonds when due).

be $708 million lower, on an undiscounted basis, compared to the total estimated cumulative revenue requirement under the traditional recovery method.

39. Thus, we find that the issuance of the nuclear asset-recovery bonds and the imposition of the nuclear asset-recovery charges authorized by this Financing Order have a significant likelihood of resulting in lower overall costs or would significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs. Likewise, through implementation of the required standards, conditions and procedures established in this Financing Order, we find that the structuring, marketing and pricing of nuclear asset-recovery bonds are reasonably expected to mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs.

40. The broad based nature of the State pledge under Section 366.95(11), F.S., and the irrevocable character of this Financing Order, in conjunction with the true-up adjustment provisions required by Section 366.95(2)(c)2.d, F.S., and included in this Financing Order, constitutes a guarantee of regulatory action for the benefit of investors in nuclear asset-recovery bonds.

41. This Commission guarantees that it will act pursuant to this Financing Order as expressly authorized by Sections 366.95(2)(c)2.d. and 366.95(2)(c)4., F.S., to ensure that nuclear asset-recovery charge revenues are sufficient to pay principal of and interest on the nuclear asset-recovery bonds issued pursuant to this Financing Order and other costs, including fees and expenses, in connection with the nuclear asset-recovery bonds.

## VII. BOND TEAM

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

43. One designated representative of DEF and one designated representative of this Commission should be joint decision makers in all aspects of the structuring, marketing and pricing of the nuclear asset-recovery bonds except for those recommendations that in the sole view of DEF would expose DEF or the SPE to securities law and other potential liability (*i.e.,* such as, but not limited to, the making of any untrue statement of a material fact or omissions to state a material fact required to be stated therein or necessary in order to make the statements made not misleading) or contractual law liability (*e.g.,* including but not limited to terms and conditions of the underwriter agreement(s)).

44. This Commission's designated staff and financial advisor should be visibly involved, in advance, in all aspects of the structuring, marketing, and pricing of the nuclear asset-recovery bonds.

45. All Bond Team members should actively participate in the design of the marketing materials for the transactions as well as in the development and implementation of the marketing and sales plan for the bonds.

46. DEF and this Commission's staff and its financial advisor as Bond Team members, excluding DEF's structuring advisor, should also have equal rights on the hiring decisions for the underwriters and counsel to the underwriters. However, DEF should have sole right to select and engage all counsel for DEF and the SPE.

47. The final structure of the transaction, including pricing, will be subject to review by this Commission for the limited purpose of ensuring that all requirements of law and this Financing Order have been met.

48. Together with the Bond Team's involvement in the structuring, marketing and pricing of the nuclear asset-recovery bonds, and the Issuance Advice Letter process, this Commission should be able to fully review the pricing of the bonds as this Commission determines whether to issue a stop order no later than 5:00 pm Eastern time on the third business day following pricing.

49. The Bond Team structure and process affords the flexibility that is reasonable and consistent with Section 366.95(2)(c)2.f., F.S.

50. This Commission should designate one Commissioner to resolve any issue as to which the DEF and Commission staff joint decision makers are unable to reach agreement. Any such matter should be presented by the DEF and Commission staff joint decision makers by email or in other writing. The designated Commissioner should announce his or her decision on the matter presented to the DEF and Commission staff joint decision makers by email or other writing as soon as reasonably possible. The parties to this proceeding agree that the decision of the designated Commissioner should be final and not subject to review by this Commission.

## VIII. FLEXIBILITY

51. In this Financing Order, we approve the financing of nuclear asset-recovery costs and upfront bond issuance costs through nuclear asset-recovery bonds with terms to be established by DEF, at the time of pricing, subject to compliance with the Issuance Advice Letter Procedures outlined in this Financing Order. As discussed above, under Mitigation of Rate Impacts, DEF has provided testimony establishing that the issuance of the nuclear asset-recovery bonds will 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.f., F.S., requires this Commission to specify the degree of flexibility to be afforded to DEF in establishing the terms and conditions of the nuclear asset-recovery bonds, including, but not limited to, repayment schedules, expected interest rates, and other financing costs consistent with 366.95(2)(c)2.a.-e., F.S. Furthermore, Section 366.95(2)(c)2.i., F.S., directs this Commission to "[i]nclude any other conditions that this Commission considers appropriate and that are authorized by this section." While we recognize the need for some degree of flexibility with regard to the final details of the nuclear asset-recovery bond securitization transaction approved in this Financing Order, our primary focus is on ensuring that the structuring, marketing, and pricing of nuclear asset-recovery bonds achieves the lowest overall cost standard and the greatest possible customer protections. Therefore, we find and direct that the standard for this Financing

Order should be that the structuring, marketing, and pricing of nuclear asset-recovery bonds will achieve the lowest overall cost standard and the greatest possible customer protections.

52. The previously approved Amended RRSSA proposes that the SPE issue nuclear asset-recovery bonds with a scheduled final debt service payment date for the last maturing tranche as close as is reasonably possible to the close of the last billing cycle for the 240th month from inception of imposition of the nuclear asset-recovery charge. We find that the appropriate recovery period for the nuclear asset-recovery charge is 240 months from inception of imposition of the nuclear asset-recovery charge or until the nuclear asset-recovery bonds and associated charges and approved adjustments have been paid in full, but not to exceed 276 months from inception of imposition of the nuclear asset-recovery charge. The exact scheduled final maturity and legal final maturity of the nuclear asset-recovery bonds will be determined after issuance of this Financing Order. This Commission further finds that the period of 240 months from inception of imposition of the nuclear asset-recovery charge or until the nuclear asset-recovery bonds and associated charges and approved adjustments have been paid in full, but not to exceed 276 months from inception of imposition of the nuclear asset-recovery charge, for recovery of the nuclear asset-recovery charge is appropriate and that such recovery period is consistent with the Amended RRSSA.

53. We find that nuclear asset-recovery bonds should be issued in one or more series, each series of nuclear asset-recovery bonds should be issued in one or more tranches, and the nuclear asset-recovery bonds should be structured by DEF, in consultation with the other members of the Bond Team and subject to Finding of Fact paragraph 50 and Ordering Paragraph 67, to achieve the statutory financing cost objective and the lowest overall cost standard. Further, the nuclear asset-recovery bonds shall be structured such that the expected payment of the principal of and interest on the nuclear asset-recovery bonds is expected to be substantially level over those expected terms.

54. Subject to the Issuance Advice Letter procedures in Finding of Fact paragraphs 98 through 103, DEF, in consultation with the other members of the Bond Team subject to Finding of Fact paragraph 42 through 50, shall be afforded flexibility in determining the final terms of each series of the nuclear asset-recovery bonds, including payment and maturity dates, interest rates (or the method of determining interest rates), the terms of any interest rate swap agreement, interest rate lock or similar agreement, the creation and funding of any supplemental capital, reserve or other subaccount, and the issuance of nuclear asset-recovery bonds through either one SPE or multiple SPEs, except as otherwise provided in this Financing Order.

55. As noted above, certain costs, such as debt service on the nuclear asset-recovery bonds, as well as the ongoing fees of the trustee, rating agency surveillance fees, regulatory assessment fees and the ongoing financing costs of any other credit enhancement or interest rate swaps, will not be known until the pricing of a series of nuclear asset-recovery bonds. This Financing Order provides flexibility to recover such costs through the nuclear asset-recovery charge and the true-up of such charge. At the same time, we have established the Issuance Advice Letter procedures in Findings of Fact paragraphs 98 through 103 of this Financing Order which are intended to ensure that the structuring, marketing and pricing of nuclear asset-recovery bonds achieves the statutory cost objectives and lowest overall cost standard.

56. This Commission finds that a bond structure, providing for substantially levelized annual revenue requirements over the expected life of the nuclear asset-recovery bonds, is in the general public interest and should be used. This structure offers the benefit of not relying upon electric utility customer growth and will allow the resulting overall weighted average nuclear asset-recovery charges to remain level or decline over time, if billing determinants remain level or grow.

IX. TRANSACTION STRUCTURE

57. DEF's proposed transaction structure, as set forth and modified in the Amended RRSSA and in the body of this Financing Order, is hereby approved.

The SPE

58. DEF will create one or more SPEs as bankruptcy remote, Delaware limited liability companies, in each case, with DEF as its sole member. Each SPE will be formed for the limited purpose of acquiring nuclear asset-recovery property, issuing nuclear asset-recovery bonds in one or more series (each of which may be issued in one or more classes or tranches), and performing other activities relating thereto or otherwise authorized by this Financing Order.

59. The SPE will be a special purpose finance company, a subsidiary of DEF and a corporate issuer.

60. The SPE(s) may issue nuclear asset-recovery bonds approved in this Financing Order, or in future financing orders, so long as such future issuance does not adversely affect the ratings on outstanding nuclear asset-recovery bonds issued for the benefit of DEF. The SPE(s) may issue nuclear asset-recovery bonds approved in this Financing Order in an aggregate amount not to exceed the Securitizable Balance approved by this Financing Order and will pledge to an indenture trustee, as collateral for payment of the nuclear asset-recovery bonds, the nuclear asset-recovery property, including the SPE's right to receive the nuclear asset-recovery charges as and when collected, and other collateral described in the Indenture. The SPE will not be permitted to engage in any other activities and will have no assets other than nuclear asset-recovery property and related assets to support its obligations under the nuclear asset-recovery bonds and the ongoing financing costs. These restrictions on the activities of the SPE and restrictions on the ability of DEF to take action on the SPE's behalf are imposed to achieve the objective that the SPE will be bankruptcy-remote and not be affected by a bankruptcy of DEF or any affiliate.

61. Each SPE will be managed by a board of managers with rights and duties set forth in its organizational documents. As long as nuclear asset-recovery bonds remain outstanding, the SPE will have at least one independent manager with no organizational affiliation with DEF other than possibly acting as independent manager(s) for another bankruptcy-remote subsidiary of DEF or its affiliates. The SPE will not be permitted to amend the provisions of the LLC Agreement or other organizational documents that relate to bankruptcy-remoteness of the SPE without the consent of the independent manager(s). Similarly, the SPE will not be permitted to institute bankruptcy or insolvency proceedings or to consent to the institution of bankruptcy or insolvency proceedings against it, or to dissolve, liquidate, consolidate, convert, or merge

without the consent of the independent managers. To the extent provided in its organizational documents, the transaction documents and this Financing Order, the Commission will be deemed to have contractual privity with the SPE for purposes of enforcing those documents. Other restrictions to facilitate bankruptcy-remoteness may also be included in the organizational documents of the SPE as required by the rating agencies.

62. The SPEs will have no staff to provide administrative services (such as corporate maintenance, reporting and internal accounting functions). These services will be provided by DEF pursuant to the terms of the Administration Agreement.

63. Per rating agency and IRS requirements, DEF will transfer to the SPE an amount required to capitalize the SPE adequately (the "SPE Capitalization Level") for deposit into the Capital Subaccount. The SPE Capitalization Level is expected to be 0.50% of the initial principal amount of the nuclear asset-recovery bonds to be issued by the SPE or such greater amount as might be needed to meet IRS or rating agency requirements. The actual SPE Capitalization Level will depend on tax and rating agency requirements and will be subject to review and approval by the Bond Team pursuant to the procedures set forth in Finding of Fact paragraphs 42 through 50. We find that the lowest overall cost standard generally will be met by ensuring that the SPE Capitalization Level does not exceed the minimum amount needed to meet IRS and rating agency requirements.

Principal Amortization

64. The expected final debt service payment date for the last maturing tranche of the nuclear asset-recovery bonds should be as close as is reasonably possible to the close of the last billing cycle for the 240th month from inception of imposition of the nuclear asset-recovery charge. The legal final maturity date for the last maturing tranche of nuclear asset recovery bonds should be no later than the 276th month from inception of the imposition of the charge. The exact scheduled final maturity and legal final maturity of the nuclear asset-recovery bonds shall be determined by the Bond Team after issuance of this Financing Order.

65. Annual payments of principal of and interest on the nuclear asset-recovery bonds shall be substantially level over the expected term of the nuclear asset-recovery bonds.

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

67. The first payment of principal and interest for each series of nuclear asset-recovery bonds shall occur within 12 months of issuance. Payments of principal and interest thereafter shall be no less frequent than semi-annually.

Interest Rates

68. We find that each tranche of the nuclear asset-recovery bonds should have a fixed interest rate, based on current market conditions. If market conditions change, and it becomes necessary for the one or more tranches of bonds to be issued in floating-rate mode, DEF is

Offering and Sale of the Bonds

73. DEF has proposed that the nuclear asset-recovery bonds be offered pursuant to an SEC-registered offering, rather than a private placement or a Rule 144A qualified institutional offering. The Company has provided testimony to the effect that virtually all utility securitizations have been sold as SEC-registered public transactions. Further, the Company has provided testimony to the effect that an SEC-registered, public offering, is likely to result in a lower cost of funds relative to Rule 144A qualified institutional offering, all else being equal, due to the enhanced transparency and liquidity of publicly-registered securities. New SEC registration requirements will become effective prior to December 2015. Compliance with these new requirements may increase costs and result in delay of the offering. Accordingly, subject to the Issuance Advice Letter procedure, this Commission finds that an SEC-registered public offering is most likely to result in lower costs to consumers, and should be approved. However, this Commission further finds, in light of new SEC registration requirements, DEF, in consultation with the other members of the Bond Team, subject to the Issuance Advice Letter procedures and Finding of Fact paragraph 50 and Ordering Paragraph 67, may pursue a Rule 144A qualified institutional offering of the nuclear asset-recovery bonds.

74. DEF has proposed that the bonds be sold pursuant to a sale to one or more underwriters in a negotiated offering. DEF has testified that a negotiated underwriting is likely to provide greater flexibility and availability of investor funds than a competitively sold transaction. DEF and this Commission's staff, together with this Commission's financial advisor and other Bond Team members (other than DEF's structuring advisor) should have equal rights on the hiring decisions for the underwriters and counsel to the underwriters. This Commission finds, subject to the Issuance Advice Letter procedures, that the issuance of the nuclear asset-recovery bonds pursuant to a negotiated sale is likely to result in lower overall costs and satisfy the statutory financing cost objective, and should be approved. However, DEF, in consultation with the other members of the Bond Team, subject to the Issuance Advice Letter procedures and Finding of Fact paragraph 50 and Ordering Paragraph 67 is authorized to pursue other sale options, including a competitively sold transaction, in order to satisfy the statutory cost objectives and the lowest overall cost standard.

Security for the Nuclear Asset-Recovery Bonds

75. As proposed by DEF, the payment of the nuclear asset-recovery bonds and related financing costs authorized by this Financing Order is to be secured by the nuclear asset-recovery property created by this Financing Order and by certain other collateral as described in the Petition. The nuclear asset-recovery bonds will be issued pursuant to the Indenture under which the indenture trustee will administer the trust. The Indenture shall include provisions for a Collection Account for each series of nuclear asset-recovery bonds and subaccounts for the collection and administration for the nuclear asset-recovery charges and payment or funding of the principal of and interest on the nuclear asset-recovery bonds and other costs, including fees and expenses, in connection with the nuclear asset-recovery bonds, as described in this Financing Order. Pursuant to the Indenture, the SPE shall establish a Collection Account as a trust account to be held by the indenture trustee as collateral to ensure the timely payment of the principal of, interest on, and other costs related to the series of nuclear asset-recovery bonds. The Collection

Account shall include a General Subaccount, a Capital Subaccount and an Excess Funds Subaccount, and may include other subaccounts if required to obtain AAA/Aaa ratings on the series of nuclear asset-recovery bonds. Final terms of the Indenture shall be approved by the Bond Team.

76. The Excess Funds Subaccount will hold any nuclear asset-recovery charge collections and investment earnings on amounts in the Collection Account in excess of the amounts needed to pay current principal of and interest on the nuclear asset-recovery bonds and to pay other Periodic Payment Requirements (including, but not limited to, funding or replenishing the Capital Subaccount). Any balance in or allocated to the Excess Funds Subaccount on a true-up adjustment date will be subtracted from the Periodic Revenue Requirement for purposes of the true-up adjustment. The funds in this Excess Funds Subaccount will be invested by the indenture trustee in short-term high-quality investments, and such funds (including investment earnings thereon) will be used by the indenture trustee to reduce the nuclear asset-recovery revenue requirement for purposes of the true-up adjustment.

77. The Collection Account and the subaccounts described above are intended to facilitate the full and timely payment of scheduled principal of and interest on the series of nuclear asset-recovery bonds and all other components of the Periodic Payment Requirement. If for any reason the amount of nuclear asset-recovery charge collections in the General Subaccount is insufficient to make, on a timely basis, all scheduled payments of principal of and interest on the nuclear asset-recovery bonds and to make payment of all of the other components of the Periodic Payment Requirement, the Excess Funds Subaccount and the Capital Subaccount will be drawn down, in that order, to make those payments. Any deficiency in the Capital Subaccount due to such withdrawals must be replenished on a periodic basis through the true-up process. In addition to the foregoing, there may be such additional accounts and subaccounts as are necessary to segregate amounts received from various sources, or to be used for specified purposes. Such accounts and subaccounts will be administered and utilized as set forth in the Servicing Agreement and the Indenture. Upon the maturity of the series of nuclear asset-recovery bonds and upon discharge of all obligations in respect thereof, amounts remaining in the Collection Account will be released to the SPE and will be available for distribution by the SPE to DEF. Equivalent amounts, less the amount of the Capital Subaccount, will be credited by DEF to current customers' bills in the same manner that the charges were collected, or through a credit to the capacity cost recovery clause if this Commission determines at the time of retirement that a direct credit to customers' bills is not cost-effective. DEF shall similarly credit customers an aggregate amount equal to any nuclear asset-recovery charges subsequently received by the SPE or its successor in interest to the nuclear asset-recovery property.

DEF as Initial Servicer of the Nuclear Asset-Recovery Bonds

78. DEF will execute a Servicing Agreement, the final terms of which shall be determined by the Bond Team pursuant to the procedures set forth in Finding of Fact paragraphs 98 through 103. The Servicing Agreement may be amended, renewed, or replaced by another servicing agreement in accordance with its terms and as approved by this Commission.

a. Under the Servicing Agreement, the servicer shall be required, among other things, to impose, bill, collect and receive the nuclear asset-recovery charges for the benefit and account of the SPE, to make the periodic true-up adjustments of nuclear asset-recovery charges required or allowed by this Financing Order, and to account for and remit the nuclear asset-recovery charges to or for the account of the SPE in accordance with the remittance procedures contained in the Servicing Agreement without any charge, deduction, or surcharge of any kind, other than the servicing fee specified in the Servicing Agreement. The appropriate servicing fee shall be as set forth in this Financing Order.

b. The annual fee for ongoing services will be 0.05 percent of the initial principal amount of the nuclear asset-recovery bonds.

c. In addition to the annual ongoing servicing fee, DEF proposes to recover as an upfront bond issuance cost, DEF's actual costs to recover set-up costs of the servicer, including information technology programming costs to adapt DEF's existing systems to bill, collect, receive and process nuclear asset-recovery charges, and to set up necessary servicing functions. DEF estimates its actual set-up costs to be approximately $915,000. The reasonableness of these additional upfront bond issuance costs will be subject to review by this Commission pursuant to Section 366.95(2)(c)5. As part of this review, the Commission shall only consider actual upfront bond issuance costs, but not ongoing financing costs, interest rate, or pricing of the bonds.

d. DEF shall indemnify customers to the extent customers incur losses associated with higher servicing fees payable to a substitute servicer, or higher administration fees payable to a substitute administrator, as a result of (a) DEF's negligence, recklessness or willful misconduct, or (b) DEF's termination for cause attributable to its own actions. This indemnification provision shall be reflected in the transaction documents for these nuclear asset-recovery bonds.

e. DEF has proposed that it not be permitted voluntarily to resign from its duties as servicer if the resignation will harm the credit rating on nuclear asset-recovery bonds issued by the SPE. Even if DEF's resignation as servicer would not harm the credit rating on the nuclear asset-recovery bonds issued by the SPE, we find and direct that DEF shall not be permitted to voluntarily resign from its duties as servicer without consent of this Commission. If DEF defaults on its duties as servicer or is required for any reason to discontinue those functions, then DEF proposes that a successor servicer acceptable to the indenture trustee be named to replace DEF as servicer so long as such replacement would not cause any of the then current credit ratings of the nuclear asset-recovery bonds to be suspended, withdrawn or downgraded. We find that any successor servicer to DEF also should be acceptable to this Commission.

f. DEF has proposed that, and we find and direct that, the servicing fee payable to a substitute servicer should not exceed 0.60% per annum on the initial principal balance of the nuclear asset-recovery bonds, unless a higher fee is approved by this Commission.

g. We find and direct that the SPE and the indenture trustee shall not be permitted to waive any obligations of DEF as transferor or as servicer of nuclear asset-recovery property without express written consent of this Commission.

DEF as Administrator of the SPE

79. Under the Administration Agreement, DEF will establish the SPE and perform the administrative duties necessary to maintain the SPE. The appropriate administration fee shall be as set forth in this Financing Order.

80. The annual fee for performing the services required by the Administration Agreement will be $50,000. We find that this fee is reasonable.

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

Nuclear Asset-Recovery Bonds To Be Treated As "Debt" for Federal Income Tax Purposes

82. In light of the IRS safe harbor rules, we find that DEF shall be responsible to structure the nuclear asset-recovery bond transactions in a way that clearly meets all requirements for the IRS' safe harbor treatment.

X. UNDERWRITER REQUIREMENTS

83. DEF and this Commission's staff and this Commission's financial advisor as Bond Team members, excluding DEF's structuring advisor, should have equal rights on the hiring decisions for underwriters and counsel for the underwriters.

84. We find that requiring all book-running underwriters of a series of nuclear asset-recovery bonds to deliver periodic reports with indicative pricing levels derived independently by each book-running underwriter for the nuclear asset-recovery bonds before any public offering of that series of nuclear asset-recovery bonds is launched is likely to facilitate achievement of the statutory financing cost objective and the lowest overall cost standard. We also find that the Bond Team may request one or more of the bookrunning underwriters to deliver an opinion letter as to whether the structuring, marketing, and pricing of the nuclear asset-recovery bonds achieved the lowest overall cost standard.

85. We find that requiring the book-running underwriter(s) of nuclear asset-recovery bonds to provide the Bond Team documentary verification that any term sheet, prospectus, registration statement, offering memorandum or other marketing materials used by the underwriting syndicate in marketing the nuclear asset-recovery bonds (collectively, the "offering documents") receives a broad distribution to potential investors most likely to accept the lowest yield on the nuclear asset-recovery bonds will facilitate achievement of the statutory financing

cost objective and the lowest overall cost standard. This documentary verification may be provided on a confidential basis to members of the Bond Team to the extent confidential classification of the information included therein is permitted by law.

XI. COMMISSION PARTICIPATION IN THE TRANSACTION

86. We recognize that the nuclear asset-recovery bonds approved through this Financing Order are very different from the typical bonds issued by DEF. Pursuant to Section 366.95, F.S., we must forego future regulatory oversight in order to create a financing instrument of superior quality and a completely separate credit from the sponsoring utility. Section 366.95, F.S., requires us to issue an irrevocable financing order in which the sponsoring utility, DEF, is insulated from most costs associated with the financing. We are also required to approve a true-up mechanism, as we have done in this Financing Order, that commits this Commission to periodically adjust the nuclear asset-recovery charge that supports the nuclear asset-recovery bonds to whatever level is necessary to make timely payments of principal and interest on the bonds. In addition, the State and this Commission are required to pledge to Bondholders, among other things, never to take or permit any action to be taken that would interfere with their right to payment. The irrevocable nature of this Financing Order, the direct broad-based nuclear asset-recovery charge applied to all DEF ratepayers, the unconditional Commission guarantee to adjust the nuclear asset-recovery charge as necessary, and the explicit pledge of the State not to interfere with the Bondholders' rights to repayment result in an incredibly strong senior, secured credit independent of DEF.

87. We also recognize that the nuclear asset-recovery bonds approved through this Financing Order are different from the typical bonds issued by DEF in terms of the degree of Commission oversight after the issuance. In typical utility debt financings, this Commission retains the right to disallow any unreasonable or imprudent costs for ratemaking purposes, including adjustments for the interest rate. For the proposed issuance of nuclear asset-recovery bonds, while the issuance costs are subject to review under Section 366.95(2)(c)5., F.S. (and as part of that review the Commission shall only consider actual upfront bond issuance costs, but not ongoing financing costs, interest rate, or pricing of the bonds), we find that an after-the-fact review of the interest rate achieved will not allow us to determine whether the lowest overall cost standard has been achieved.

88. We recognize that another difference between typical utility bonds and the nuclear asset-recovery bonds approved through this Financing Order is how these bonds impact DEF's financial position. In more typical debt offerings, DEF has a strong incentive to negotiate hard with underwriters for the lowest possible interest rates as well as the lowest possible underwriting fees. DEF also has a strong incentive to minimize other issuance costs. Between rate cases, the benefit from a low net cost of funds is enjoyed at least in part by DEF's shareholders, and the detriment from a high net cost of funds is borne at least in part by these same shareholders. These same checks and balances do not exist for the issuance of nuclear asset-recovery bonds. While typical utility bonds directly impact DEF's financial ratios, nuclear asset-recovery bonds are not direct obligations of DEF and are non-recourse to DEF. For these reasons, the same incentives and consequences for pursuing a lowest overall cost of funds with

regard to DEF's typical utility bonds are not present with respect to the proposed nuclear asset-recovery bonds.

89. Further, we find that unless the superior credit quality of these bonds is accurately and completely reflected in the marketing materials, there is no assurance that the nuclear asset-recovery bonds approved through this Financing Order will achieve the lowest overall cost standard.

90. This Commission has engaged the services of a financial advisor and outside legal counsel for the purposes described herein in this Financing Order. This Commission will have the sole authority to retain its financial advisor and its outside legal counsel and, if needed, terminate and replace the financial advisor or outside legal counsel.

91. We find that this Commission, as represented by designated Commission staff, this Commission's financial advisor, and this Commission's outside legal counsel, shall be actively and integrally involved in the bond issuance on a day-to-day basis, subject to Finding of Fact paragraph 50 and Ordering Paragraph 67 as part of a Bond Team that also includes DEF, its structuring advisor or underwriter(s), and its outside counsel(s), in all aspects of the structuring, marketing, and pricing of each series of nuclear asset-recovery bonds. This will allow for meaningful and substantive cooperation among DEF and this Commission and its representatives to ensure that the structuring, pricing, and financing costs of the nuclear asset-recovery bonds will achieve the statutory cost objectives and the lowest overall cost standard. Cooperation among DEF and this Commission will promote transparency in the nuclear asset-recovery bond pricing process, thereby promoting the integrity of the issuance process. In this regard, this Commission's financial advisor needs to be an active and visible participant in the actual pricing process in real time if we are to obtain maximum benefits for ratepayers.

92. Subject to Finding of Fact paragraph 50 and Ordering Paragraph 67, the Bond Team shall oversee the development of the competitive solicitation and selection of some or all underwriters, underwriters' counsel, trustee services and other transaction arrangements as deemed appropriate by the Bond Team, other than DEF's counsel and issuer's counsel, to ensure that the processes are competitive, will provide the greatest value for customers, and will result in the selection of transaction participants that have experience and the ability to achieve the lowest overall cost standard.

93. Subject to Finding of Fact paragraph 50 and Ordering Paragraph 67, the Bond Team shall review the nuclear asset-recovery bond transaction documents to ensure that the lowest overall cost standard is achieved, to ensure that the transaction documents reflect the terms of this Financing Order and to ensure that the greatest possible customer protections are included. All legal opinions related to the nuclear asset-recovery bond transaction shall be provided to the Bond Team for review.

94. The Bond Team shall have the opportunity to review the presentations to the rating agencies and to make recommendations in furtherance of achieving the lowest overall cost standard; provided, however, that DEF shall be the sole decision maker in all aspects of the structuring, marketing and pricing of the nuclear asset-recovery bonds that, in the sole view of

DEF would expose DEF or the SPE to securities law or other potential liability (*i.e.,* such as, but not limited to, the making of any untrue statement of a material fact or omissions to state a material fact required to be stated therein or necessary in order to make the statements made not misleading) or contractual law liability (*e.g.,* including but not limited to terms and conditions of the underwriting agreement(s).

95. The Bond Team shall work on a cooperative basis (a) to educate and expand the market among underwriters and investors for the nuclear asset-recovery bonds and (b) to create the greatest possible participation and competition among underwriters and investors in order to ensure that the statutory cost objectives and the lowest overall cost standard are achieved.

96. DEF asserts that it will have primary securities law liability with respect to the transaction. DEF should be the sole decision maker in all aspects of the structuring, marketing and pricing of the nuclear asset-recovery bonds that, in the sole view of DEF would expose DEF or the SPE to securities law or other potential liability (*i.e.,* such as, but not limited to, the making of any untrue statement of a material fact or omissions to state a material fact required to be stated therein or necessary in order to make the statements made not misleading) or contractual law liability (*e.g.,* including but not limited to terms and conditions of the underwriting agreement(s)).

97. No later than 5:00 p.m. Eastern time on the second business day following pricing, this Commission's financial advisor shall deliver to this Commission an opinion letter consistent with the terms of its contract as to whether the structuring, marketing and pricing of the nuclear asset-recovery bonds achieved: (1) the statutory cost objectives; (2) the lowest nuclear asset-recovery charges consistent with prevailing market conditions at the time of pricing, terms and conditions and terms of this Financing Order, and other applicable law; and (3) the greatest possible customer protections. That opinion letter shall include a report of any action or inaction which this Commission's financial advisor believes might have caused the transaction not to achieve the statutory cost objectives, the lowest nuclear asset-recovery charges, and/or the greatest possible customer protections regardless of whether the reason for action or inaction by DEF was the result of DEF's sole view that the action or inaction would expose DEF or the SPE to securities law or other potential liability, The report of any such action or inaction which this Commission's financial advisor believes might have caused the transaction not to achieve the statutory cost objectives, the lowest nuclear asset-recovery charges, and/or the greatest possible customer protections, regardless of whether the reason for action or inaction by DEF was the result of DEF's sole view that the action or inaction would expose DEF or the SPE to securities law or other potential liability, shall be treated as a material qualification to the opinion letter of this Commission's financial advisor. Such opinion letter may be provided to this Commission on a confidential basis subject to the ability of parties to this proceeding to review it on a confidential basis.

XII. ISSUANCE ADVICE LETTER PROCEDURE

98. DEF shall file with this Commission a draft of an Issuance Advice Letter ("IAL") and Form of True-Up Adjustment Letter ("TUAL") (combined into one document) in the form of Appendix C hereto at least two weeks prior to the expected pricing of the nuclear asset-recovery

bonds based upon the best information available at that time. Other aspects of the certifications may be modified to describe the particulars of the nuclear asset-recovery bonds and the actions that were taken during the transaction. Such draft shall include drafts of any certifications of DEF to be provided in connection with the filing of the final IAL/TUAL. Such certifications may be provided to this Commission on a confidential basis. Within one week of receiving the proposed form of combined IAL/TUAL, the members of the Bond Team representing this Commission shall provide comments and recommendations to DEF regarding the adequacy of information proposed to be provided. This Commission, acting directly, or though this Commission's staff designee, may agree to waive the prescribed time period for submission and review of the draft IAL/TUAL and any failure to provide written comments to the draft IAL/TUAL within the prescribed time period will conclusively evidence a waiver of any objections. Prior to the submission of the first draft of the IAL/TUAL and through the period ending with the issuance of the nuclear asset-recovery bonds, DEF will provide the Bond Team with timely information so that this Commission's representatives on the Bond Team can participate fully and in advance regarding all aspects relating to the structuring, marketing and pricing of the nuclear asset-recovery bonds.

99. DEF shall file a combined IAL/TUAL in final form with this Commission no later than 5:00 pm Eastern time one business day after actual pricing at which time a meeting will be noticed for three business days after pricing to afford this Commission an opportunity to review the proposed transaction. As shown in the form of IAL/TUAL in Appendix C, the combined IAL/TUAL shall include the following information: the actual structure of the nuclear asset-recovery bond issuance; the expected and final maturities of the nuclear asset-recovery bonds; over-collateralization levels (if any); any other credit enhancements; revised estimates of the upfront bond issuance costs proposed to be financed from proceeds of the nuclear asset-recovery bonds and estimates of debt service and other ongoing financing costs for the first Remittance Period; a statement of the actions taken by the Bond Team and/or DEF in the marketing of the bonds; a comparison of the pricing relative to an independent benchmark versus other similar securities historically and at the time of pricing; the amount of orders received and investors that placed the orders (on a confidential basis); and other information deemed necessary by the members of the Bond Team representing this Commission after review of the draft combined IAL/ITUAL, provided that such other information is consistent with the terms of this Financing Order; and a statement setting forth DEF's observations as to efforts made to assist the Bond Team in achieving the lowest overall cost standard. Finally, the combined IAL/TUAL shall include certifications from DEF if required, that the structuring, pricing and financing costs of the nuclear asset-recovery bonds achieved the statutory cost objectives.

100. The opinion letter from this Commission's financial advisor required pursuant to Finding of Fact paragraph 97 should be provided no later than 5:00 p.m. on the second business day after pricing. The members of the Bond Team will review this information on the second business day after pricing. If the IAL/TUAL and all required certifications and statements have been delivered and the transaction complies with applicable law and this Financing Order, and if this Commission's financial advisor has delivered an opinion letter pursuant to Finding of Fact paragraph 97 concluding without material qualification that the structuring, marketing and pricing of the nuclear asset-recovery bonds achieved: (1) the statutory cost objectives; (2) the

lowest overall cost standard; and (3) the greatest possible customer protections, then the transaction shall be allowed to proceed without the need for further action of this Commission and without the need to hold the previously noticed Commission meeting. If, however, this Commission's financial advisor has delivered an opinion letter that contains material qualifications, or if the Commission's financial advisor has not delivered an opinion letter, then at the meeting previously noticed for the third business day after pricing, the members of the Bond Team will present to this Commission the results of their review. Despite there being material qualifications in the opinion letter from the Commission's financial advisor, this Commission retains discretion to allow the transaction to be completed if, after taking into account the opinion letter, if any, of the Commission's financial advisor, the views of other members of the Bond Team, and any other facts and circumstances, except for a change in market conditions after the moment of pricing, this Commission determines that the requirements of Section 366.95, F.S., and the Financing Order have been satisfied, and the transaction is otherwise in the best interests of customers. This Commission expects that any stop order will invite DEF to restructure, remarket and/or reprice the nuclear asset-recovery bonds so as to mitigate some or all of the concerns identified in the opinion letter of the Commission's financial advisor.

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

102. The Issuance Advice Letter process described above is reasonable and consistent with the statutory financing cost objective contained in Section 366.95(2)(c)2.b., F.S.

103. DEF will retain sole discretion regarding whether or when to assign, sell or otherwise transfer any rights concerning nuclear asset-recovery property arising under this Financing Order, or to cause the issuance of any nuclear asset-recovery bonds authorized in this Financing Order; *provided*, that any issuance must satisfy the statutory financing cost objective. Subject to the Issuance Advice Letter procedures described above, SPE will issue the nuclear asset-recovery bonds on or after the fifth business day after pricing of the nuclear asset-recovery bonds.

9. Upon the transfer by DEF of the nuclear asset-recovery property to an SPE, that SPE will have all of the rights, title and interest of DEF with respect to such nuclear asset-recovery property, including the right to impose, bill, collect, and receive the nuclear asset-recovery charge authorized by this Financing Order.

10. The nuclear asset-recovery bonds issued pursuant to this Financing Order will be "nuclear asset-recovery bonds" within the meaning of Section 366.95(1)(i), F.S., and the nuclear asset-recovery bonds and holders thereof will be entitled to all of the protections provided under Section 366.95, F.S.

11. Pursuant to Section 366.95(2)(c)2.d. and (2)(c)4., F.S., the servicer of the nuclear asset-recovery property will file for standard true-up adjustments to the nuclear asset-recovery charges at least every six months to ensure the recovery of revenues are sufficient to provide for the timely payment of the principal of and interest on the nuclear asset-recovery bonds and of all of the ongoing financing costs payable by the SPE in respect of nuclear asset-recovery bonds as approved under this Financing Order. We conclude that these true-up adjustments, together with the State Pledge, will Guarantee the timely payment of nuclear asset-recovery bonds.

12. The methodology approved in this Financing Order to true-up the nuclear asset-recovery charges satisfies the requirements of Section 366.95, F.S. In implementing the formula-based True-Up Mechanism for making expeditious periodic adjustments in the nuclear asset-recovery charges pursuant to Section 366.95(2)(c)1.d., F.S., the nuclear asset-recovery charge shall be adjusted as necessary to Guarantee the timely payment of (a) nuclear asset recovery costs, (b) financing costs, and (c) other required amounts and charges payable in connection with the nuclear asset-recovery bonds.

13. For so long as nuclear asset-recovery bonds are outstanding and the related nuclear asset-recovery costs and financing costs have not been paid in full, the nuclear asset-recovery charges authorized in this Financing Order to be imposed and collected are "nonbypassable" pursuant to Sections 366.95(11)(b)1. and 366.95(2)(c)2.c., F.S. — that is, the nuclear asset-recovery charges shall be paid by all existing and future customers receiving electric transmission or distribution service from DEF or its successors or assignees under Commission-approved rate schedules or under special contracts, even if the customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in the State of Florida.

14. If and when DEF transfers to an SPE the right to impose, bill, collect, and receive the nuclear asset-recovery charge and to issue nuclear asset-recovery bonds, the servicer will be entitled to recover the nuclear asset-recovery charge associated with such nuclear asset-recovery property only for the benefit of that SPE and the holders of the nuclear asset-recovery bonds in accordance with the Servicing Agreement.

15. The issuance of nuclear asset-recovery bonds does not directly, indirectly, or contingently obligate the state or any agency, political subdivision, or instrumentality of the state to levy any tax or make any appropriation for payment of the nuclear asset-recovery bonds, other than in their capacity as consumers of electricity.

IV. NUCLEAR ASSET-RECOVERY PROPERTY

16. Nuclear asset-recovery property is not a receivable or a pool of receivables. Rather, nuclear asset-recovery property consists of: (1) all rights and interests of DEF or any successor or assignee of DEF under this Financing Order, including the right to impose, bill, collect, and receive nuclear asset-recovery charges authorized in this Financing Order and to obtain periodic adjustments to such nuclear asset-recovery charges as provided in this Financing Order, and (2) all revenues, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in clause (1), regardless of whether such revenues, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, collections, rights to payment, payments, money, or proceeds.

17. Nuclear asset-recovery property is not a financial asset in that it only represents a legally-enforceable regulatory property right under Section 366.95 to bill and collect nuclear asset-recovery charges from persons who receive electric transmission and distribution services from the electric utility or its successors or assignees.

18. The creation of nuclear asset-recovery property pursuant to this Financing Order is conditioned upon, and shall be simultaneous with, the sale or other transfer of the nuclear asset-recovery property to the SPE and the pledge of the nuclear asset-recovery property to secure nuclear asset-recovery bonds.

19. The nuclear asset-recovery property shall constitute an existing, present property right or interest therein, notwithstanding that the imposition and collection of nuclear asset-recovery charges depends on DEF performing its servicing functions relating to the collection of nuclear asset-recovery charges and on future electricity consumption. Such property shall exist regardless of whether the revenues or proceeds arising from the property have been billed, have accrued, or have been collected and notwithstanding the fact that the value or amount of the property is dependent on the future provision of service to customers by DEF or its successors or assignees.

20. The nuclear asset-recovery property shall continue to exist until the nuclear asset-recovery bonds are paid in full and all financing costs and other costs of the nuclear asset-recovery bonds have been recovered in full.

21. The nuclear asset-recovery property constitutes a present property right for purposes of contracts concerning the sale or pledge of property. The interest of a transferee, purchaser, acquirer, assignee, or pledgee in the nuclear asset-recovery property, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by DEF or any other person or in connection with the reorganization, bankruptcy, or other insolvency of DEF or any other entity. Section 366.95(5)(a)(5), F.S.

22. The creation, attachment, granting, perfection, priority and enforcement of liens and security interests in nuclear asset-recovery property are governed by Section 366.95(5)(b), F.S.

a. Alter the provisions of Section 366.95, F.S., which make the nuclear asset-recovery charges imposed by this Financing Order irrevocable, binding, and nonbypassable charges;

b. 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

c. Except as allowed under Section 366.95, F.S., 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. This Commission finds that this State Pledge will constitute a contract with the Bondholders, the owners of nuclear asset-recovery property, and other financing parties.

27. Nothing in the State Pledge described in the preceding paragraph precludes limitation or alterations if full compensation is made by law for the full protection of the nuclear asset-recovery charges collected pursuant to this Financing Order and of the holders of nuclear asset-recovery bonds and any assignee or financing party entering into a contract with DEF. Section 366.95(11), F.S.

28. The broad nature of the State pledge under Section 366.95(11), F.S., constitutes a contract with the Bondholders, the owners of nuclear asset-recovery property, and other financing parties that the State will not: (1) alter the provisions of this Section 366.95 which make the nuclear asset-recovery charges imposed by this Financing Order irrevocable, binding, and nonbypassable charges; (2) take or permit any action that impairs or would impair the value of nuclear asset-recovery property or revises the nuclear asset-recovery costs for which recovery is authorized; or (3) except as authorized under Section 366.95, reduce, alter, or impair nuclear asset-recovery charges that are to be imposed, collected, and remitted for the benefit of the owners of DEF's nuclear asset-recovery bonds 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.

## VI. EFFECT OF THIS ORDER

29. Having issued this Financing Order, this Commission does not, in exercising its powers and carrying out its duties, consider the nuclear asset-recovery bonds to be the debt of DEF other than for federal income tax purposes, consider the nuclear asset-recovery charges paid under this Financing Order to be the revenue of DEF for any purpose, or consider the nuclear asset-recovery costs or financing costs specified in this Financing Order to be the costs of DEF, nor may this Commission determine any action taken by DEF which is consistent with this Financing Order to be unjust or unreasonable.

30. Upon the issuance of nuclear asset-recovery bonds authorized hereby, this Commission's obligations under this Financing Order relating to the nuclear asset-recovery

bonds, including the specific actions this Commission guarantees to take, are direct, explicit, irrevocable, and unconditional, and are legally enforceable against this Commission, a United States public sector entity.

31. Pursuant to Section 366.95(2)(c)6., subsequent to the earlier of the transfer of nuclear asset-recovery property to SPE or the issuance of nuclear asset-recovery bonds authorized hereby, this Financing Order is irrevocable and, except as provided in Section 366.95(2)(c)4. and (2)(d), F.S., this Commission may not amend, modify, or terminate this Financing Order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust nuclear asset-recovery charges approved herein.

32. As provided in Section 366.95(2)(c)6., F.S., DEF retains sole discretion regarding whether to assign, sell, or otherwise transfer nuclear asset-recovery property or to cause the nuclear asset-recovery bonds to be issued, including the right to defer or postpone such assignment, sale, transfer or issuance.

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

34. The electric bills of DEF must explicitly reflect that a portion of the charges on such bill represents nuclear asset-recovery charges approved in this Financing Order and must include a statement to the effect that the SPE is the owner of the rights to nuclear asset-recovery charges and that DEF is acting as a servicer for the SPE. The tariff applicable to customers must indicate the nuclear asset-recovery charge and the ownership of that charge. Any failure of DEF to comply with this paragraph shall not invalidate, impair, or affect this Financing Order, or any nuclear asset-recovery property, nuclear asset-recovery charge, or nuclear asset-recovery bonds, but shall subject DEF to penalties under Section 366.095, F.S.

35. This Financing Order and the nuclear asset-recovery charges authorized hereby shall remain in effect until the nuclear asset-recovery bonds have been paid in full and this Commission-approved financing costs have been recovered in full, provided that the charges may not be imposed after a date the close of the last billing cycle for the 276th month from the inception of the nuclear asset-recovery charge. This Financing Order shall remain in effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings of DEF or its successors or assignees. Any successor to DEF, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, or other business combination, or transfer by operation of law, as a result of electric utility restructuring or otherwise, shall perform and satisfy all obligations of, and have the same rights under this Financing Order as, DEF in the same manner and to the same extent as DEF, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the nuclear asset-recovery property.

36. All tasks performed by any consultant or counsel at the request of this Commission or Commission staff pursuant to this Financing Order shall be treated as performed for the purpose of assisting or enabling this Commission to perform the responsibilities of

Sections 366.95(2)(c)2. and 366.95(2)(c)5., F.S., and any expenses incurred in connection with those services, to the extent such expenses are eligible for compensation and approved for payment under the terms of such party's contractual arrangements with this Commission (which may be modified by any amendment entered into at this Commission's sole discretion), shall be treated as "financing costs" for purposes of determining nuclear asset-recovery charges.

37. This Commission, acting on its own behalf, has authority to enforce all provisions of this Financing Order and all provisions of the nuclear asset-recovery bond transaction documents for the benefit of customers, including without limitation the enforcement of any customer indemnification provisions in connection with specified items in the Servicing Agreement, the Indenture, and the Nuclear Asset-Recovery Property Purchase and Sale Agreement.

38. The authority granted by this Financing Order to issue nuclear asset-recovery bonds is severable from, and not impacted by, the actions or inactions of this Commission or other bodies with respect to this Commission's determination of the extent to which the nuclear asset-recovery charges shall be recoverable from any person or entity or from any particular group, class, or type of customer.

16. ORDERED that DEF shall be responsible to structure the nuclear asset-recovery bond transaction in a way that complies with the "safe harbor" provisions of IRS Revenue Procedure 2005-62. It is further

17. ORDERED that DEF is authorized to form an SPE to be structured as discussed in this Financing Order, or more than one SPE if separate SPEs are required by the rating agencies to achieve the highest possible credit ratings. DEF is authorized to execute one or more LLC Agreements, consistent with the terms and conditions of this Financing Order. Each SPE shall be funded with an amount of capital that is sufficient for the SPE to carry out its intended functions as contemplated in the Petition and this Financing Order. The capital contribution by DEF to the SPE shall be funded by DEF and not from the proceeds of the sale of nuclear asset-recovery bonds. DEF shall be permitted to earn a rate of return on its invested capital in the SPE equal to the rate of interest payable on the longest maturing tranche of nuclear asset-recovery bonds, and this return on invested capital shall be a component of the Periodic Payment Requirement. It is further

18. ORDERED that DEF is authorized to enter into one or more Nuclear Asset-Recovery Property Purchase and Sale Agreements, Administration Agreements, and Nuclear Asset-Recovery Property Servicing Agreements and other transaction documents contemplated by such agreements. It is further

19. ORDERED that nuclear asset-recovery bonds may be issued in one or more series, each series with one or more tranches. Each SPE is authorized to enter into one or more Indentures, consistent with the terms and conditions of this Financing Order, provided that DEF shall not create more than one SPE unless separate SPEs are required by the rating agencies to achieve the highest possible credit ratings. Subject to compliance with the requirements of this Financing Order, DEF and each SPE shall be afforded flexibility in establishing the terms and conditions of the nuclear asset-recovery bonds, repayment schedules, term, debt service payment dates, collateral, redemption provisions, credit enhancement, required debt service, reserves, interest rates, indices and other financing costs. DEF may utilize floating rate securities and interest rate swaps if, pursuant to the process set forth in Finding of Fact paragraphs 42 through 50 it is determined that their use will achieve the lowest overall cost standard. It is further

20. ORDERED that we approve the true-up adjustment process described in the body of this Financing Order and in the testimony of DEF's witnesses. It is further

21. ORDERED that DEF or its assignee is authorized to recover the Periodic Payment Requirement and shall file with this Commission at least every six months (and at least every three months after the last scheduled debt service payment date of the nuclear asset-recovery bonds) a True-Up Adjustment Letter as described in this Financing Order. It is further

22. ORDERED that we hereby authorize the use of the formula-based True-Up Mechanism approved in the body of this Financing Order to compute and adjust from time to time the nuclear asset-recovery charge. It is further

35. ORDERED that upon the occurrence of an event of default under the Servicing Agreement relating to the servicer's performance of its servicing functions with respect to the nuclear asset-recovery charges, the indenture trustee may, and upon the instruction of the requisite holders of the outstanding nuclear asset-recovery bonds shall, replace DEF as the servicer in accordance with the terms of the Servicing Agreement. If the servicing fee of the replacement servicer will exceed the applicable maximum servicing fee specified in the preceding Ordering Paragraphs, the replacement servicer shall not begin providing service until (i) the date this Commission approves the appointment of such replacement servicer or (ii) if this Commission does not act to either approve or disapprove the appointment, the date which is 45 days after notice of appointment of the replacement servicer is provided to this Commission. It is further

36. ORDERED that no entity shall replace DEF as the servicer in any of its servicing functions with respect to the nuclear asset-recovery charges and the nuclear asset-recovery property authorized by this Financing Order, if the replacement would cause any of the then current credit ratings of the nuclear asset-recovery bonds to be suspended, withdrawn, or downgraded. It is further

37. ORDERED that the parties to the Nuclear Asset-Recovery Property Servicing Agreement, Administration Agreement, Indenture, and Nuclear Asset-Recovery Property Purchase and Sale Agreement may amend the terms of such agreements solely in accordance with the terms of such agreements. It is further

38. ORDERED that DEF, its structuring advisor, and designated Commission staff and its financial advisor shall serve on the Bond Team. It is further

39. ORDERED that one designated representative of DEF and one designated representative of this Commission shall be joint decision makers in all aspects of the structuring, marketing and pricing of the nuclear asset-recovery bonds except for those recommendations that in the sole view of DEF would expose DEF or the SPE to securities law and other potential liability (*i.e.,* such as, but not limited to, the making of any untrue statement of a material fact or omissions to state a material fact required to be stated therein or necessary in order to make the statements made not misleading) or contractual law liability (*e.g.,* including but not limited to terms and conditions of the underwriter agreement(s)). It is further

40. ORDERED that this Commission's designated staff and financial advisor shall be visibly involved, in advance, in all aspects of the structuring, marketing, and pricing of the nuclear asset-recovery bonds. It is further

41. ORDERED that all Bond Team members shall actively participate in the design of the marketing materials for the transactions as well as in the development and implementation of the marketing and sales plan for the bonds. It is further

42. ORDERED that DEF and this Commission's staff and its financial advisor as Bond Team members, excluding DEF's structuring advisor, shall have equal rights on the hiring

decisions for the underwriters and counsel to the underwriters. However, DEF shall have sole right to select and engage all counsel for DEF and the SPE. It is further

43. ORDERED that the final structure of the transaction, including pricing, shall be subject to review by this Commission for the limited purpose of ensuring that all requirements of law and this Financing Order have been met. It is further

44. ORDERED that together with the Bond Team's involvement in the structuring, marketing and pricing of the nuclear asset-recovery bonds, and the Issuance Advice Letter process, this Commission shall be able to fully review the pricing of the bonds as this Commission determines whether to issue a stop order no later than 5:00 pm Eastern time on the third business day following pricing. It is further

45. ORDERED that the servicer shall remit collections of the nuclear asset-recovery charges to the SPE or the indenture trustee for SPE's account either on a daily basis based on estimated daily collections or on a monthly basis if conditions to be determined by the Bond Team can be satisfied. This Commission expects the Bond Team to determine these conditions after consultation with the rating agencies to achieve and maintain the targeted "AAA/Aaa" rating on the bonds and to address investor concerns in the marketing and pricing of the bonds. If remittances are not daily, each month the servicer shall remit estimated earnings on collections pending remittance. The calculation of earnings shall be consistent with the methodology for calculating interest on over- and under-collections associated with DEF's cost recovery clauses. It is further

46. ORDERED that this Commission authorizes DEF to enter into an Administration Agreement with each SPE and to perform the administration duties approved in this Financing Order. DEF shall be entitled to collect administration fees and expenses in accordance with the provisions of the Administration Agreement, provided that (i) the aggregate annual administration fee payable to DEF while it is serving as administrator (or to any other administrator affiliated with DEF) for SPEs shall be $50,000 per year, payable annually in arrears. It is further

47. ORDERED that partial payments shall be allocated to the nuclear asset-recovery charge in the same proportion that such charge bears to the total bill. It is further

48. ORDERED that to the extent that any interest in the nuclear asset-recovery property created by this Financing Order is assigned, sold, or transferred to an assignee, DEF shall enter into a contract with that assignee that requires DEF to continue to operate its transmission and distribution system in order to provide electric services to DEF's customers; but this provision shall not prohibit DEF from selling, assigning, or otherwise divesting its transmission and distribution systems or any part thereof so long as the entities acquiring such system agree to continue operating the facilities to provide electric service to DEF's customers. It is further

49. ORDERED that following repayment of the nuclear asset-recovery bonds and financing costs authorized in this Financing Order and release of the funds by the indenture

trustee, the SPE shall distribute the final balance of the Collection Account and DEF shall credit other electric rates and charges by a like amount, less the amount of the Capital Subaccount and any unpaid return on invested capital due to DEF as set forth in the body of this Financing Order. DEF shall similarly credit customers an aggregate amount equal to any nuclear asset-recovery charges subsequently received by the SPE or its successor in interest to the nuclear asset-recovery property. It is further

50. ORDERED that DEF or any assignee may apply for one or more new financing orders pursuant to Section 366.95, F.S. Each SPE may issue nuclear asset-recovery bonds approved in this Financing Order, or in future financing orders, so long as such future issuance does not cause any of the then current credit ratings of any outstanding nuclear asset-recovery bonds of the SPE to be suspended, withdrawn, or downgraded; provided, however, that DEF shall only create separate SPEs if they are required by the rating agencies to achieve the highest possible credit ratings. It is further

51. ORDERED that this Commission, as represented by designated Commission staff, this Commission's financial advisor, and this Commission's outside legal counsel, shall be actively involved in the bond issuance, subject to Ordering Paragraphs 66 and 67, as part of a Bond Team that also includes DEF, its structuring advisor or underwriter(s), and its outside counsel(s), in all aspects of the structuring, marketing, and pricing of each series of nuclear asset-recovery bonds to ensure that customers are represented in the transaction process and that the lowest overall cost standard is achieved. As a member of the Bond Team, this Commission's financial advisor will advise and represent this Commission on all matters relating to the structuring, marketing, and pricing of the nuclear asset-recovery bonds. Through its participation on the Bond Team, this Commission and its representatives will have an active and integral role in, and will participate fully and in advance in all plans and decisions relating to, the structuring, marketing, and pricing of the nuclear asset-recovery bonds as discussed in the body of this Order. Cooperation among DEF and this Commission will promote transparency in the nuclear asset-recovery bond pricing process, thereby promoting the integrity of the issuance process. It is further

52. ORDERED that this Commission will have the sole authority to select and retain its financial advisor and its outside legal counsel and, if needed, terminate and replace the financial advisor or outside legal counsel. It is further

53. ORDERED that costs associated with this Commission's financial advisor and outside legal counsel, to the extent such costs are eligible for compensation and approved for payment under the terms of such party's contractual arrangements with this Commission, as such arrangements may be modified by any amendment entered into at this Commission's sole discretion, shall qualify as financing costs and be paid from proceeds of nuclear asset-recovery bonds. Such costs shall be payable upon closing in immediately available funds. It is further

54. ORDERED that this Commission's financial advisor and its outside legal counsel will assist this Commission at this Commission's sole discretion. It is further

55. ORDERED that the members of the Bond Team shall work cooperatively to achieve the statutory cost objectives and the lowest overall cost standard. It is further

56. ORDERED that DEF and the underwriters shall cooperate with all members of the Bond Team and shall do all things reasonably necessary to enable all members of the Bond Team to meet the obligations stated in this Financing Order, including without limitation providing timely information to this Commission's financial advisor as needed to enable this Commission's financial advisor to fulfill its obligation to advise this Commission and to deliver its opinion letter as set forth in Ordering Paragraphs 74 and 75. It is further

57. ORDERED that DEF on a timely basis shall provide to each member of the Bond Team all information such member reasonably needs to fulfill its obligations under the Financing Order. It is further

58. ORDERED that the role of this Commission's financial advisor will include, among other things, advising this Commission and its staff whether or not DEF's proposed structuring, marketing, pricing and financing costs of nuclear asset-recovery bonds meet all statutory requirements, including the statutory cost objectives, as well as the lowest overall cost standard. At the direction of this Commission staff, such financial advisor may represent this Commission as an active participant in the actual pricing process in real time. The financial advisor shall promptly inform this Commission's staff of any items that, in the financial advisor's opinion, are not reasonable or are not consistent with applicable statutory requirements, the statutory cost objectives, or the lowest overall cost standard so that such concerns can be brought to the attention of DEF in real time. It is further

59. ORDERED that this Commission's financial advisor shall not have any financial interest in the nuclear asset-recovery bonds nor participate in the underwriting or secondary market trading of the nuclear asset-recovery bonds. Any ongoing financing costs (*i.e.,* costs associated with this Commission's review of the actual costs of the nuclear asset-recovery bond issuance under Section 366.95(2)(c)5., F.S.) associated with this Commission's financial advisor and with this Commission's consultants and any legal counsel that are eligible for compensation and approved for payment under the terms of such party's contract with this Commission, as such contract may be modified by any amendment entered into at this Commission's sole discretion, are deemed reasonable for purposes of recovery through the proceeds of nuclear asset-recovery bonds issued pursuant to this Financing Order. It is further

60. ORDERED that DEF, in consultation with the other members of the Bond Team, subject to Ordering Paragraph 67, shall determine whether issuing a series of nuclear asset-recovery bonds through a negotiated sale or a competitive sale or combination thereof will achieve the statutory cost objectives and the lowest overall cost standard. It is further

61. ORDERED that subject to the process set forth in Ordering Paragraph 67, the Bond Team shall oversee the development of the competitive solicitation and selection of some or all underwriters, underwriters' counsel, trustee services and other transaction arrangements as deemed appropriate by the Bond Team, other than DEF's counsel and issuer's counsel to ensure

that the processes are competitive, will provide the greatest value for customers, and will result in the selection of transaction participants that have experience and the ability to achieve the lowest overall cost standard. It is further

62. ORDERED that subject to Ordering Paragraph 67, the Bond Team shall review the nuclear asset-recovery bond transaction documents to ensure that the transaction documents reflect the terms of this Financing Order and otherwise to ensure that the greatest possible customer protections are included. It is further

63. ORDERED that all transaction documents and subsequent amendments associated with the nuclear asset-recovery bonds shall be reviewed by the Bond Team before becoming operative to ensure that the lowest overall cost standard is achieved, to ensure that the transaction documents reflect the terms of this Financing Order, and to ensure that the greatest possible customer protections are included. It is further

64. ORDERED that all legal opinions associated with the nuclear asset-recovery bonds shall be submitted to this Commission automatically without requiring this Commission to specifically request the documents. It is further

65. ORDERED that all legal opinions related to the nuclear asset-recovery bond transaction shall be provided to the Bond Team for review. It is further

66. ORDERED that DEF shall be the sole decision maker in all aspects of the structuring, marketing and pricing of the nuclear asset-recovery bonds that, in the sole view of DEF would expose DEF or the SPE to securities law or other potential liability (*i.e.,* such as, but not limited to, the making of any untrue statement of a material fact or omissions to state a material fact required to be stated therein or necessary in order to make the statements made not misleading) or contractual law liability (*e.g.,* including but not limited to terms and conditions of the underwriting agreement(s). It is further

67. ORDERED that a Commissioner will be designated to resolve any issue as to which the DEF and Commission staff joint decision makers are unable to reach agreement. Any such matter shall be presented by the DEF and Commission staff joint decision makers to the Commissioner by email or in other writing. The Commissioner shall announce his or her decision on each matter presented by email or other writing to the DEF and Commission staff joint decision makers as soon as reasonably possible. As agreed upon by the parties to this proceeding, the decision of the Commissioner on all such matters shall be final and not subject to review by this Commission. It is further

68. ORDERED that, subject to Ordering Paragraph 67 the Bond Team shall have the opportunity to review the presentations to the rating agencies and to make recommendations in furtherance of achieving the lowest overall cost standard; provided, however, that DEF shall be the sole decision maker in all aspects of the structuring, marketing and pricing of the nuclear asset-recovery bonds that, in the sole view of DEF would expose DEF or the SPE to securities law or other potential liability (*i.e.,* such as, but not limited to, the making of any untrue

statement of a material fact or omissions to state a material fact required to be stated therein or necessary in order to make the statements made not misleading) or contractual law liability (*e.g.*, including but not limited to terms and conditions of the underwriting agreement(s). It is further

69. ORDERED that, subject to Ordering Paragraphs 66 and 67, the Bond Team shall work on a cooperative basis (a) to educate and expand the market among underwriters and investors for nuclear asset-recovery bonds and (b) to create the greatest possible participation and competition among underwriters and investors in order to ensure that the statutory cost objectives and the lowest overall cost standard are achieved. It is further

70. ORDERED that, subject to Ordering Paragraph 67 and subject to a possible stop order of this Commission issued no later than 5:00 p.m. Eastern time on the third business day following pricing, DEF and the Bond Team shall be afforded flexibility in determining the final terms of each series of the nuclear asset-recovery bonds, including payment and maturity dates, interest rates (or the method of determining interest rates), the terms of any interest rate swap agreement or similar agreement, the creation and funding of any supplemental capital, reserve or other subaccount, and the issuance of nuclear asset-recovery bonds through either one SPE or multiple SPEs, except as otherwise provided in this Financing Order. It is further

71. ORDERED that the combined IAL/TUAL in substantially the form of Appendix C hereto is approved. It is further

72. ORDERED that DEF shall file for review and comment by the Bond Team a draft combined IAL/TUAL substantially in the form of Appendix C hereto at least two weeks prior to the expected pricing of the nuclear asset-recovery based upon the best information available at that time. Other aspects of the certifications may be modified to describe the particulars of the nuclear asset-recovery bonds and the actions that were taken during the transaction. Such draft shall include drafts of any certifications of DEF to be provided in connection with the filing of the final IAL/TUAL. Such certifications may be provided to this Commission on a confidential basis. Within one week of receiving the proposed form of combined IAL/TUAL, the members of the Bond Team representing this Commission shall provide comments and recommendations to DEF regarding the adequacy of information proposed to be provided. This Commission, acting directly, or though this Commission's staff designee, may agree to waive the prescribed time period for submission and review of the draft IAL/TUAL and any failure to provide written comments to the draft IAL/TUAL within the prescribed time period shall conclusively evidence a waiver of any objections. Prior to the submission of the first draft of the IAL/TUAL and through the period ending with the issuance of the nuclear asset-recovery bonds, DEF shall provide the Bond Team with timely information so that this Commission can participate fully and in advance regarding all aspects relating to the structuring, pricing and financing costs of the nuclear asset-recovery bonds. It is further

73. ORDERED that DEF shall file a combined IAL/TUAL in final form with this Commission no later than 5:00 pm Eastern time one business day after actual pricing at which time a meeting will be noticed for three business days after pricing to afford this Commission an opportunity to review the proposed transaction. As shown in the form of IAL/TUAL in

Appendix C, the combined IAL/TUAL shall include the following information: the actual structure of the nuclear asset-recovery bond issuance; the expected and final maturities of the nuclear asset-recovery bonds; over-collateralization levels (if any); any other credit enhancements; revised estimates of the upfront bond issuance costs proposed to be financed from proceeds of the nuclear asset-recovery bonds and estimates of debt service and other ongoing financing costs for the first Remittance Period; a statement of the actions taken by the Bond Team and/or DEF in the marketing of the bonds; a comparison of the pricing relative to an independent benchmark versus other similar securities historically and at the time of pricing; the amount of orders received and investors that placed the orders (on a confidential basis); and other information deemed necessary by the members of the Bond Team representing this Commission after review of the draft combined IAL/ITUAL, provided that such other information is consistent with the terms of this Financing Order; and a statement setting forth DEF's observations as to efforts made to assist the Bond Team in achieving the lowest overall cost standard. Finally, the combined IAL/TUAL shall include certifications from DEF if required, that the structuring, pricing and financing costs of the nuclear asset-recovery bonds achieved the statutory cost objectives. It is further

74. ORDERED that no later than 5:00 p.m. Eastern time on the second business day following pricing, this Commission's financial advisor shall deliver to this Commission an opinion letter consistent with the terms of its contract as to whether the structuring, marketing and pricing of the nuclear asset-recovery bonds achieved: (1) the statutory cost objectives; (2) the lowest nuclear asset-recovery charges consistent with prevailing market at the time of pricing, terms and conditions and terms of this Financing Order, and other applicable law; and (3) the greatest possible customer protections. That opinion letter shall include a report of any action or inaction which this Commission's financial advisor believes might have caused the transaction not to achieve the statutory cost objectives, the lowest nuclear asset-recovery charges, and/or the greatest possible customer protections, regardless of whether the reason for action or inaction by DEF was the result of DEF's sole view that the action or inaction would expose DEF or the SPE to securities law or other potential liability. The report of any such action or inaction which this Commission's financial advisor believes might have caused the transaction not to achieve the statutory cost objectives, the lowest nuclear asset-recovery charges, and/or the greatest possible customer protections, regardless of whether the reason for action or inaction by DEF was the result of DEF's sole view that the action or inaction would expose DEF or the SPE to securities law or other potential liability shall be treated as a material qualification to the opinion letter of this Commission's financial advisor. Such opinion letter may be provided to this Commission on a confidential basis subject to the ability of parties to this proceeding to review it on a confidential basis. It is further

75. ORDERED that members of the Bond Team shall review this information on the second business day after pricing. If all required certifications and statements have been delivered and the transaction complies with applicable law and this Financing Order, and if this Commission's financial advisor has delivered an opinion letter concluding without material qualification that the structuring, marketing and pricing of the nuclear asset-recovery bonds achieved: (1) the statutory cost objectives; (2) the lowest overall cost standard; and (3) the greatest possible customer protections, then the transaction shall proceed without the need for

further action of this Commission and without the need to hold the previously noticed Commission meeting. If, however, this Commission's financial advisor has delivered an opinion letter that contains material qualifications, or if the Commission's financial advisor has not delivered an opinion letter, then at the meeting previously noticed for the third business day after pricing, the members of the Bond Team will present to this Commission the results of their review. Despite there being material qualifications in the opinion letter from the Commission's financial advisor, this Commission retains discretion to allow the transaction to be completed if, after taking into account the opinion letter, if any, of the financial advisor, the views of other members of the Bond Team, and any other facts and circumstances, except for a change in market conditions after the moment of pricing, this Commission determines that the requirements of Section 366.95, F.S. and the Financing Order have been satisfied. It is further

76. ORDERED that, if this Commission does not, prior to 5:00 p.m. Eastern Time on the third business day after pricing, issue a stop order, this Commission, without the need for further action and pursuant to our authority under this Financing Order, will affirmatively and conclusively be deemed to have (i) authorized DEF and SPE to execute the issuance of the proposed series of nuclear asset-recovery bonds on the terms set forth in the Issuance Advice Letter, (ii) approved DEF's recovery of the upfront bond issuance costs proposed to be financed from the proceeds of the nuclear asset-recovery bonds subject to review pursuant to Section 366.95(2)(c)5., F.S., and (iii) determined that all standards, procedures, conditions, requirements, and objectives set forth in this Financing Order have been satisfied and that the requirements of Section 366.95, F.S. have been met. It is further

77. ORDERED that the degree of flexibility set forth in the "Flexibility" section of this Financing Order is hereby approved. It is further

78. ORDERED that the Bond Team may require some or all underwriters of the nuclear asset-recovery bonds to deliver periodic reports on a confidential basis to members of the Bond Team presenting independently derived indicative pricing levels for the nuclear asset-recovery bonds before any public offering of the nuclear asset-recovery bonds is launched. The Bond Team may also request one or more of the bookrunning underwriters to deliver an opinion letter as to whether the structuring, marketing, and pricing of the nuclear asset-recovery bonds achieved the lowest overall cost standard. It is further

79. ORDERED that, upon the request of any member of the Bond Team, the bookrunning underwriter(s) of the nuclear asset-recovery bonds shall provide to all members of the Bond Team a copy of any term sheet, prospectus, or other marketing materials used by the underwriting syndicate in marketing the nuclear asset-recovery bonds, together with documentary verification that these marketing materials received a broad distribution to potential investors most likely to accept the lowest yields on the nuclear asset-recovery bonds. It is further

80. ORDERED that DEF shall credit back to customers through the capacity cost recovery clause all periodic servicing fees in excess of DEF's or an affiliate of DEF's incremental cost of performing the servicer function until the next rate case when costs and revenues associated with the servicing fees will be included in the cost of service; and DEF shall

credit back to customers through the capacity cost recovery clause all periodic administration fees in excess of DEF's or an affiliate of DEF's incremental cost of performing the administration function until the next rate case when costs and revenues associated with the administration fees will be included in the cost of service. It is further

81. ORDERED that this Commission guarantees that it will act pursuant to this Financing Order as expressly authorized by Section 366.95(2)(c)2.d. and 4., F.S., to ensure that nuclear asset-recovery charge revenues are sufficient to timely pay principal of and interest on the nuclear asset-recovery bonds issued pursuant to this Financing Order and other costs, including fees and expenses, in connection with the nuclear asset-recovery bonds. It is further

82. ORDERED that, except as set forth in this Financing Order, all regulatory approvals within the jurisdiction of this Commission that are necessary for the securitization of the nuclear asset-recovery charges associated with the nuclear asset-recovery property and other financing costs that are the subject of the Petition are granted. This Financing Order constitutes a legal financing order for DEF under Section 366.95, F.S. This Financing Order complies with Section 366.95(2)(c)1., F.S. A financing order gives rise to rights, interests, obligations, and duties as expressed in Section 366.95, F.S. It is this Commission's express intent to give rise to those rights, interests, obligations, and duties by issuing this Financing Order. It is further

83. ORDERED that, if DEF proceeds pursuant to this Financing Order, DEF and any other servicer of nuclear asset-recovery bonds authorized hereby are permitted to take all actions as are required to effectuate the transactions approved in this Financing Order, subject to the compliance with Section 366.95, F.S., and with this Financing Order. It is further

84. ORDERED that this Financing Order is a final order, any appeal of which is to be conducted pursuant to Section 366.95(2)(e), F.S. The finality of this Financing Order is not impacted, in any manner, by the actions or inactions taken by this Commission with respect to any other matters considered in this proceeding. Should any other order entered in this proceeding, if appealed to the courts, not be upheld in full on appeal, such judicial ruling will in no event impact or modify the finality or effectiveness of this Financing Order. It is further

85. ORDERED that this docket shall remain open through completion of this Commission's review of the actual costs of the nuclear asset-recovery bond issuance conducted pursuant to Section 366.95(2)(c)5., F.S.

Highlight by Witness





Initial Charge shall remain in effect until changed in accordance with the provisions of finding of fact [ ] of the Financing Order.

The Company's certification required by the Financing Order is set forth on Attachment 8, which also includes the statement of the actions taken by the Bond Team as required by finding of fact [ ] of the Financing Order.

Respectfully submitted,

Duke Energy Florida, LLC

By: _____

Highlight by Witness



ATTACHMENT 8

Weighted Average Coupon Rate[5]: %

Annualized Weighted Average Yield[6]: %

Initial Balance of Capital Subaccount: $

Estimated/Actual Financing Ongoing Costs for first year of Nuclear Asset-Recovery Bonds: $[ ]

As required by the Financing Order, a Bond Team comprised of representatives of the Company, the Commission and their designated advisors and legal counsel was established to ensure that the structuring, pricing and financing costs of the nuclear asset-recovery bonds have a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of cost recovery.

Beginning in [ ] of 2015, the Bond Team began meeting to address the details of the nuclear asset-recovery bond issuance in accordance with the terms of the Commission's Financing Order. [**ADD DESCRIPTION OF BOND TEAM MEETINGS**]

In accordance with the standards, procedures and conditions set forth in the Financing Order, the following actions were taken by the Bond Team in connection with the structuring, pricing and financing costs of the nuclear asset-recovery bonds in order to satisfy the statutory cost objectives and the lowest overall cost standard:

- [include relevant actions]

Based upon information known or reasonably available to the Company, its officers, agents and employees: (i) the structuring, pricing and financing costs of the nuclear asset-recovery bonds and the imposition of the proposed nuclear asset-recovery charges have a significant likelihood of resulting in lower overall costs or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs and (ii) on a reasonably comparable basis, the costs incurred in the issuance of the nuclear asset-recovery 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.

This certification is being provided to the Commission by the Company in accordance with the terms of the Financing Order, and no one other than the Commission shall be entitled to rely on the certification provided herein for any purpose.

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[5] Weighted by modified duration and principal amount of each class.
[6] Weighted by modified duration and principal amount, calculated including selling commissions.

Asset Securitization report
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# RRB sector leader Texas aims to set best practices

## *CenterPoint plans largest-ever stranded cost ABS*

**CenterPoint Energy**, which hopes to bring the largest ever stranded cost offering next year, has taken steps,at the request of regulators to increase transparency in its deals, hopefully leading to a sector-wide trend. Interestingly, several past issuers have de-registered, or suspended filings, on their outstanding transactions. Using programmatic ABS issuers such as **Sallie Mae** as a benchmark, CenterPoint voluntarily committed to expand the data reported in quarterly filings and begin reporting additional performance and collections data on its Web site, sources said.

The move comes as CenterPoint is in the planning stages of a $4 billion to $6 billion offering via **Morgan Stanley** and the **Public Utility Commission of Texas** (PUCT). The commission aims to differentiate the state as the most investor-friendly in the stranded asset universe. The state also claims it will ensure the lowest electricity rates to electricity consumers.

Together, CenterPoint, the PUCT and its financial advisor **Saber Partners LLC** are pushing to set a best-practices standard for RRB issuers, even though, by nature, energy producers are not reliant on the ABS market for funding. The goal is an unusual one for these issuers — to assure the lowest cost to the consumer, according to PUCT Chairwoman **Rebecca Klein**.

Despite the unique strengths, such as a legislatively mandated periodic true-up mechanism and an inability of consumers to avoid payment — both of which are pointed out repeatedly by researchers — the sector pays a liquidity premium versus other fixed-rate asset classes. Outstanding Texas RRBs, however, are the tightest in the sector, frequently pricing in line with more liquid credit card ABS.

Due to the off-the-run status, these typically one-off deals have been forgotten by some issuers following pricing and are viewed by some as "orphaned children." In fact, of the 21 deals to price since 1997, eight have been either de-registered, pursuant to Rule 15-15D, or have seen filings stop altogether, for no apparent reason, according to filings with the Securities and Exchange Commission. Texas regulators, with the help of Saber, hope to change that.

Imagine the investor reaction if **Ford Motor Credit**, for example, de-registered and ceased reporting on its outstanding ABS. The trouble, notes Saber CEO **Joseph Fichera**, is that stranded cost issuers aim to price at levels comparable to others within the sector, rather than the benchmark issuers in other sectors of the ABS market. "RRBs are an asset class with a unique form of credit enhancement, the true-up. Imagine if a credit card issuer could ensure losses of less than 1%, as the true-up allows."

"At a time when the quality of information available to the market on some [issuer-specific] credit card-backed bonds and similar securities is getting worse, the CenterPoint/ PUCT effort to create a new best practice should enhance liquidity of CenterPoint's outstanding transition bonds," Fichera added. "Ratepayer costs on new CenterPoint issues, if any, could be lower as a result."

Currently, Texas is viewed in the top tier of states from which RRBs have been issued (see *ASR* 6/23/03). In addition to the current initiatives, as reported in *ASR* sister publication *Investment Dealers' Digest*, the PUCT has mandated that issuers hold competitive bidding for underwriters to win lead mandates. This is all in an effort to "ensure the lowest possible cost to Texas customers," added the PUCT's Klein.

Already the leader among RRB-issuing states, Texas originated RRBs have historically priced roughly 11 basis points through other states' bonds for three-year, 15 basis points through for seven-year and 20 basis points through for 10-year paper, traders said. Researchers have cited the favorable legal environment for energy concerns, as well as constituent support for utility holding companies — the leading employers — within the state.

"Of all the states involved in stranded cost securitization, Texas recognizes the timing issues and secondary liquidity importance to investors," Fichera summed up. "Most [RRB] issuers are not as concerned about the all-in cost of issuance, because it is easily and unequivocally passed on to the consumer. — *KD*

ASSET-BACKED ALERT
The Weekly Update on Worldwide Securitization
www.ABAlert.com

## SEPTEMBER 5, 2003



## THE GRAPEVINE

... From Page 1

Secondary-market spreads are tightening for utility-fee bonds, thanks to a $500 million securitization by Dallas-based **Oncor Electric Delivery** last month that brought in the tightest-ever pricing for an issue of its kind. Five-year utility-fee securities, for example, were changing hands at 9 bp over swaps this week, compared to 14 bp over swaps in early August. Oncor, a unit of **TXU Electric**, is planning an $800 million deal for January as well.

**Issue 61**: What additional terms, conditions or representations should be made in the financing order to enhance the marketability of the bonds and achieve the lowest possible cost?

**Recommendation**: The financing order should include ordering paragraphs, findings of fact, and conclusions of law that will give appropriate comfort to investors about the high quality of storm recovery bonds as a potential investment. Examples include:

1. A finding that the Commission anticipates stress case analyses will show that the broad nature of the State pledge under Section 366.8260(11), Florida Statutes, and the automatic true-up mechanism under Section 366.8260(2)(b)2.e. and 4., Florida Statutes, will serve to effectively eliminate for all practical purposes and circumstances all credit risk associated with the storm recovery bonds;

2. A finding and an ordering paragraph directing that the automatic true-up mechanism is to be applied at least semi-annually, as discussed in Issue 83;

3. A finding and an ordering paragraph that the automatic true-up mechanism will be implemented within 60-days after a filing by the servicer, as discussed in Issue 82;

4. A finding and conclusion of law that the broad nature of the State pledge under Section 366.8260(11), Florida Statutes, and the automatic true-up mechanism under Section 366.8260(2)(b)2.e. and 4., Florida Statutes, constitute a guarantee of regulatory action for the benefit of investors in storm recovery bonds;

5. A conclusion of law that any interest rate swap counterparty is to be treated as a "financing party" for purposes of Section 366.8260(1)(g), Florida Statutes;

6. A conclusion of law that storm recovery property is not a receivable under Section 366.8260(5)(a)1., Florida Statutes;

7. An ordering paragraph directing that partial payments shall be allocated first to storm recovery charges, including past due storm recovery payments;

8. A conclusion of law that the Commission's obligation under the financing order relating to storm recovery bonds, including the specific actions the Commission guarantees to take, are direct, explicit, irrevocable, and unconditional upon the issuance of storm recovery bonds, and are legally enforceable against the Commission, a United States public sector entity; and

9. A conclusion of law and an ordering paragraph that the financing order is irrevocable under Section 366.8260(2)(b)4. and (11), Florida Statutes.

In addition, the financing order should require fully accountable certifications from the lead underwriter(s), FPL, and the Commission's financial advisor that the actual structure, marketing, and pricing of the storm recovery bonds in fact resulted in the lowest storm recovery charges consistent with then-prevailing market conditions and the terms of the financing order and other applicable law. (Maurey)

**Position of the Parties**

**FPL:** No additional terms, conditions or representations are necessary. The utility asset-backed bond market is mature and highly liquid, and trading spreads are extremely tight. Issuing a financing order in substantially the form submitted by FPL will enable an efficient, low cost transaction. If the Commission wishes particular statements regarding the quality of the securities to be included in the offering documents, such statements should be included in the financing order as findings of fact or conclusions of law.

**OPC:** To enhance marketability of the bonds and to achieve the lowest overall cost to ratepayers, the "best practices" outlined in witness Fichera's testimony should be adopted. In addition, the bonds should be marketed broadly with active education regarding the nature of the bond issuance.

**FIPUG:** Staff witnesses have recommended criteria that will result in greater marketability and lower costs, these recommendations should be adopted, except the bonds cannot pledge the full faith and credit of the state or any local government.

**FRF:** The financing order should prescribe the ratepayer protections described in Staff witness Fichera's testimony, especially the provisions by which the Commission would be actively involved at all times and in all stages of the structuring, marketing, and pricing of the storm-recovery bonds.

**AARP:** No position at this time.

**FEA:** Agree with FIPUG.

**AG:** Adopts and agrees with the position set forth by OPC.

**Staff Analysis**: The Commission is being asked to use its regulatory authority in a way that has never been previously done in Florida. (Fichera TR 1198) To achieve the maximum benefits of the storm recovery financing under Section 366.8260, Florida Statutes, and to minimize the financial burden on ratepayers, FPL should include an accurate and complete description of the credit risk of this investment in the marketing materials and offering documents. (Noel TR 1126–1127)

The storm recovery bonds that will be issued for the recovery of reasonable and prudently incurred storm damage restoration costs and the replenishment of the storm damage reserve that are the subject of this proceeding are very different from the typical bonds issued by FPL. (TR 1120) The Commission is being asked to forego future regulatory oversight in order to create a financing instrument of superior quality and a completely separate credit from the sponsoring utility. (TR 1198) Section 366.8260, Florida Statutes, requires the Commission to issue an irrevocable financing order in which the sponsoring utility is insulated from any and all costs associated with the financing. (Klein TR 1229) The Commission is also required to approve a true-up mechanism that commits the Commission to periodically adjust the storm recovery charge that supports the storm recovery bonds to whatever level is necessary to pay the bonds'

principal and interest on time. (TR 1230) In addition, the State and the Commission are required to pledge to the bondholders never to take or permit any action to be taken that would interfere with their right to payment. The irrevocable nature of the financing order, the direct broad-based storm charge applied to all FPL ratepayers, the unconditional Commission guarantee to adjust the storm charge as necessary, and the explicit pledge of the State not to interfere with the bondholders' rights to repayment result in an incredibly strong credit independent of FPL. (TR 1159)

Another difference between typical FPL bonds and storm recovery bonds is the degree of Commission oversight after the issuance. In typical utility debt financings the Commission retains the right to disallow any costs for ratemaking purposes, including adjustments for the interest rate. For the proposed issuance of storm recovery bonds, while the issuance costs are subject to review under Section 366.8260(2)(b)5., Florida Statutes, FPL argues that the interest rate on the bonds is not an issuance cost and is not subject to Commission review. (EXH 4, p. 445) Without conceding to FPL's interpretation of Section 366.8260(2)(b)5., Florida Statutes, regarding whether Commission review extends to the interest rate, the statute does state "the Commission may not make adjustments to the storm recovery charges for any such excess issuance costs."

The final difference between typical utility bonds and storm recovery bonds is how these bonds impact the Company's financial position. In more typical debt offerings, FPL has a strong incentive to negotiate hard with underwriters for the lowest possible interest rates as well as the lowest possible underwriting fees. FPL also has a strong incentive to minimize other issuance costs. Between rate cases, the benefit from a low net cost of funds is enjoyed at least in part by FPL's shareholders and the detriment from a high net cost of funds is borne at least in part by these same shareholders. These same checks and balances do not exist for the issuance of storm recovery bonds. (TR 1120) While typical utility bonds directly impact FPL's financial ratios, storm recovery bonds are not direct obligations of FPL and are non-recourse to FPL. (TR 1147–1149) Storm recovery bonds will not be recognized in the determination of FPL's debt coverage or other financial ratios. For these reasons, the same incentives and consequences for pursuing a lowest cost of funds with regard to FPL's typical utility bonds are not present with respect to the proposed storm recovery bonds. (TR 1120) Unless the superior credit quality of these bonds is accurately reflected in the marketing materials, the storm recovery bonds will not achieve the lowest cost of funds. (TR 1126–1127)

While FPL concedes that attaining low total cost, including both upfront and on-going issuance costs, is the single most important objective in judging the success of a securitization issuance, the Company does not agree that a lowest cost standard under prevailing market conditions and consistent with the terms of the financing order is a necessary or permissible standard to apply to the proposed issuance of storm recovery bonds. (Dewhurst TR 1684–1686)

FPL argues that the Commission should not impose a lowest cost of funds standard in this docket because the Legislature considered and rejected such a standard. FPL states that an early House version of the securitization law included language that explicitly provided a lowest cost of funds standard,[14] but that this language was removed in a subsequent House version,[15]

[14] Committee Substitute 1 for House Bill 303, p. 11 of 32. (EXH 133)
[15] Committee Substitute 2 for House Bill 303, p. 10 of 31. (EXH 134)

was not present in the Senate's companion bill (SB 1366), and did not survive the legislative process. (FPL BR at 142-143) Citing Section 366.8260(2)(b)2.b., Florida Statutes, FPL asserts that the Legislature instead chose to impose a standard requiring the Commission to "[d]etermine that the proposed structuring, expected pricing, and financing costs of the storm-recovery bonds are reasonably expected to result in lower overall costs or would avoid or significantly mitigate rate impacts to customers . . .." FPL claims that a lowest cost of funds standard is inconsistent with this standard, thus it cannot be adopted by the Commission.

Section 366.8260(2)(b)2.a.-j., Florida Statutes, sets forth the matters that the Commission is required to address in a financing order issued to an electric utility. Subparagraph g. of this section provides that the Commission, in its financing order, shall "[s]pecify the degree of flexibility to be afforded to the electric utility in establishing the terms and conditions of the storm-recovery bonds, including, but not limited to, repayment schedules, *interest rates*, and other financing costs." (Emphasis added.) Further, subparagraph j. of this section provides that the Commission shall include in its financing order "any other conditions that the commission considers appropriate and that are not otherwise inconsistent with this section." These provisions clearly provide the Commission with the authority to establish and apply a lowest cost of funds standard with respect to the issuance of storm-recovery bonds.

Contrary to FPL's arguments, adopting a lowest cost of funds standard as a condition to the financing order is entirely consistent with the law. First, FPL has mistakenly identified the standard for reviewing the costs of this type of transaction. FPL suggests that the standard is whether the proposed structuring, expected pricing, and financing costs of the storm-recovery bonds are reasonably expected to result in lower overall costs or would avoid or significantly mitigate rate impacts to customers. This is not the standard for reviewing the costs of the transaction; rather, it is the standard by which the Commission must determine whether to issue a financing order at all.[16] Notably, in the early House Bill cited by FPL, the standard asserted by FPL appears just prior to the "lowest cost" language FPL claims was rejected by the Legislature. (EXH 133) Accepting FPL's assertion, the early House Bill would have been at odds with itself because it would have included two different standards, side-by-side, for reviewing the same thing – cost of funds.[17] Clearly, as demonstrated by the early House Bill, there can be a standard for judging cost of funds that is different from, but not inconsistent with, the standard for determining whether to issue a financing order at all.

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[16] See Section 366.8260(2)(b)1.b., Florida Statutes, which provides that "[t]he commission shall issue a financing order authorizing financing of reasonable and prudent storm-recovery costs, the storm-recovery reserve amount determined appropriate by the commission , and financing costs if the commission finds that the issuance of storm-recovery bonds and the imposition of storm-recovery charges authorized by the order *are reasonably expected to result in lower overall costs or would avoid or significantly mitigate rate impacts to customers* as compared with alternative methods of financing or recovering storm-recovery costs and storm-recovery reserve." (Emphasis added.)

[17] Further, staff believes that the standard cited by FPL cannot be applied to cost of funds. FPL would have the Commission judge the cost of funds on the basis of whether the cost achieved is reasonably expected to result in lower overall costs, which leaves the obvious question: Lower than what? Or under FPL's analysis, the Commission could judge the cost of funds on the basis of whether the cost achieved is reasonably expected to mitigate rate impacts to customers, which again leaves the question: Mitigated as compared to what? These criteria are clearly at issue in determining whether to approve a financing order versus a more traditional surcharge, but cannot be applied with any meaning in judging cost of funds.

Second, FPL fails to point out that the "lowest cost" standard in the early House Bill was not eliminated. The early House Bill provided that in a financing order issued to a utility, the Commission was required, among other things, to "[e]nsure that the marketing, structuring, pricing, and financing costs of the storm recovery bonds will result in the lowest cost of the funds and the lowest storm recovery charges that are consistent with market conditions and the terms of the financing order." (EXH 133) In the subsequent House version of the bill, this language was removed from subparagraph (2)(b)2. of the proposed law, but a "lowest cost" standard was added in subparagraph (2)(b)5. of the proposed law which provides for a post-issuance review of "the actual costs of the storm-recovery bond issuance."[18] The law as enacted retained the new language. The law provides for the Commission to determine if "the actual costs of the storm-recovery bond issuance . . . resulted in the *lowest overall costs* that were reasonably consistent with market conditions at the time of issuance and the terms of the financing order."[19] Staff believes this language provides evidence of the Legislature's intent that the Commission ensure the transaction be conducted at the lowest cost.

FPL asserts in a conclusory fashion that interest rates on the storm-recovery bonds are not issuance costs under the securitization law and thus are not subject to the "lowest overall costs" criteria specified in subparagraph (2)(b)5. of the law. (FPL BR at 135). Yet the securitization law does not define "issuance costs," and staff can find nothing in the law that supports the limited definition of issuance costs asserted by FPL.[20]

Also puzzling about FPL's resistance to the use of a lowest cost standard with regard to the issuance of its proposed storm recovery bonds is the fact that FPL's financial advisor in this proceeding has provided this exact form of certification on the behalf of Credit Suisse as the underwriter for other recent transactions involving the issuance of similar ratepayer-backed bonds. (EXH 167, pp. 64–67) In the most recent ratepayer-backed bond transactions in Texas and New Jersey, the sponsoring utilities, the lead-underwriter (in each case Credit Suisse), and the respective Commission financial advisors (in each case Saber Partners), each issued a certification to the effect that the respective transaction achieved the lowest ratepayer charges consistent with market conditions and the terms of the applicable financing order. (EXH 167, pp. 64–67) FPL will receive the same amount of money from the issuance of storm recovery bonds regardless of the level of the interest rates or other issuance costs, and regardless of the degree of Commission involvement in the issuance process. (TR 1214) To minimize the financial burden on FPL's ratepayers, staff recommends use of the same lowest cost standard and degree of

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[18] Committee Substitute 2 for House Bill 303, p. 13 of 31.
[19] Section 366.8260(2)(b)5., Florida Statutes.
[20] Section 366.8260(1)(e), Florida Statutes, defines "financing costs" to include, among other things, "interest . . . payable on storm-recovery bonds" (subparagraph (1)(e)1.) and "any other cost related to issuing, supporting, repaying, and servicing storm-recovery bonds, including, but not limited to, servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, administrative fees, placement and underwriting fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, and filing fees, including costs related to obtaining the financing order" (subparagraph (1)(e)3.). Although "issuance costs" are not defined in the statute, FPL appears to define issuance costs as those items set forth in subparagraph(1)(e)3. (FPL BR at 135-137). Staff believes that this limited definition is not consistent with the language of the statute. The use of the word "other" to modify those costs "related to issuing, supporting, repaying, and servicing storm-recovery bonds" in subparagraph (1)(e)3. necessarily implies that the costs listed in prior subparagraphs, including interest as specified in subparagraph (1)(e)1., are also costs related to issuing, supporting, repaying, and servicing storm-recovery bonds. Hence, FPL's definition of issuance costs fails to appreciate that the statute considers "interest payable on storm-recovery bonds" to be an issuance cost.

accountability for FPL's proposed transaction that has been successfully employed in ratepayer-backed bond transactions in these other recent ratepayer-backed bond transactions. (TR 1182, 1188, 1200–1202)

This said, having the principal transaction parties certify that they achieved the lowest cost under prevailing market conditions and consistent with the terms of the financing order with regard to the issuance of ratepayer-backed bonds by itself is not sufficient to ensure that ratepayers receive the greatest benefit of this special form of financing. (TR 1164) Unless the sponsoring utility is committed to pursuing a lowest cost transaction by accurately communicating the unique and high quality characteristics of the proposed ratepayer-backed bonds, the bonds will not trade at the spreads commensurate with the value and safety of these bonds. (TR 1126–1127; 1164) Despite an explicit lowest cost standard in the New Jersey statute, the results have not always been the lowest cost relative to the value of comparable securities. From 2001 – 2004, the utilities, underwriters, and the New Jersey Commission's financial advisors were allowed to place significant qualifications on the lowest cost standard in their certifications. Rather than being strictly held to a lowest cost standard in the certification process, the utilities and their underwriters were allowed to qualify certain aspects of their certifications with terms such as "reasonable" and other means to avoid accountability for their certifications. In contrast, for the 2005 transaction for the benefit of Public Service Electric & Gas (PSE&G), the New Jersey Commission and its financial advisor eliminated these provisions by adopting the Texas Commission financing order certification model. As shown on Exhibit 100, the spread for the 2005 PSE&G transaction was considerably tighter (i.e., less expensive to ratepayers) than any previous ratepayer-backed bond transaction completed in New Jersey. (TR 1126–1127; EXH 100)

To achieve the maximum benefits of the storm recovery financing under Section 366.8260, Florida Statutes, and to minimize the financial burden on ratepayers, FPL should include an accurate and complete description of the credit risk of the storm recovery bonds in the marketing materials and offering documents. (TR 1126–1127) To this end, the financing order should include ordering paragraphs, findings of fact, and conclusions of law that will give appropriate comfort to investors about the high quality of storm recovery bonds as a potential investment as described in the recommendation statement.

The securitization law provides many important protections for bondholders to enhance the marketability of the bonds and achieve a lowest cost transaction. Pursuant to Section 366.8260(11)(b), Florida Statutes, the state provides a pledge to bondholders to ensure its support of the bonds:

> The state pledges to and agrees with bondholders, the owners of storm-recovery property, and other financing parties that the state will not:
>
> 1. Alter the provisions of this section which make the storm-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 storm-recovery property; or

3. Except as allowed under this section, reduce, alter, or impair storm-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 fess, expenses, or charges incurred, and any contracts to be performed, in connection with the related storm-recovery bonds have been paid and performed in full.

The law further provides that any entity that issues storm-recovery bonds may include this pledge in the bonds and related documentation.[21]

After storm-recovery property has been transferred to an assignee or storm-recovery bonds have been issued (whichever comes first), the Commission's financing order becomes irrevocable and the Commission is not permitted to "amend, modify, or terminate the financing order" or "reduce, impair, postpone, terminate, or otherwise adjust storm-recovery charges in the financing order." Section 366.8260(2)(b)6., Florida Statutes.

There are only two conditions under which the financing order may be adjusted.[22] First, storm-recovery charges will be adjusted either up or down on a periodic basis pursuant to a formula-based true-up mechanism approved in the financing order.[23] These adjustments "shall ensure the recovery of revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, cost, and charges in respect of storm-recovery bonds approved under the financing order." Section 366.8260(2)(b)4. As noted in Issue 83, this true-up mechanism should be used at least every six months. Application of the true-up mechanism is subject to review only for mathematical accuracy.[24] Second, at the utility's request, the Commission may conduct a proceeding and issue a new financing order that provides for retiring and refunding storm-recovery bonds issued under the original financing order if the Commission determines that the new order satisfies the statutory criteria for issuance of a financing order.[25] In that event, the Commission may adjust the related storm-recovery charges as appropriate upon retirement of the refunded bonds and issuance of the new bonds.

In addition, the Commission is required in a financing order to provide that "storm-recovery charges authorized in the financing order shall be paid by all customers receiving transmission or distribution service from the electric utility or its successors or assignees under commission-approved rate schedules or under special contracts, even if the customer elects to purchase electricity from an alternative electric supplier following a fundamental change in regulation of public utilities in the state."[26] Hence, regardless of a change in corporate structure or even a change in regulatory scheme, the securitization law provides for repayment of the bonds through non-bypassable charges.

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[21] Section 366.8260(11)(c), Florida Statutes.
[22] Section 366.8260(2)(b)6., Florida Statutes.
[23] Section 366.8260(2)(b)4., Florida Statutes See Issue 82 for discussion of the true-up mechanism.
[24] Id.
[25] Section 366.8260(2)(c), Florida Statutes.
[26] Section 366.8260(2)(b)2.c., Florida Statutes.

To enhance the marketability of the storm-recovery bonds, the Commission should find that the investor protections established through the above provisions – the irrevocable nature of the financing order, the broad nature of the state pledge, the required ongoing application of the true-up mechanism, and the required imposition of non-bypassable charges – constitute a guarantee of regulatory action for the benefit of investors in storm recovery bonds. (Fichera TR 1153–1154)

It is clear under the securitization law that such a guarantee does not make the state or the Commission liable in any way for repayment of the bonds. As noted in Section 366.8260(9), Florida Statutes, all storm-recovery bonds must provide a statement on their face to the effect that "Neither the full faith and credit nor the taxing power of the State of Florida is pledged to the payment of principal of, or interest on, this bond."[27]

In addition, based on the statutory provisions discussed above, the Commission should find that its obligations under the financing order relating to the storm recovery bonds, including the specific actions the Commission guarantees to take (i.e., implementation of the true-up mechanism and adherence to the state pledge), are direct, explicit, irrevocable, and unconditional upon the issuance of storm recovery bonds, and are legally enforceable against the Commission, a United States public sector entity. This finding will enhance the marketability of the bonds and help achieve the lowest possible cost by qualifying the bonds for a 20% risk weighting. A 20% risk weighting can help expand the market for these bonds to an international level, in turn increasing competition and lowering cost. (Fichera TR 1172; EXH 94) In making this finding, the Commission would not be guaranteeing repayment; as noted above, the securitization law makes clear that neither the state nor the Commission shall be liable in any way, directly or indirectly, for repayment of the bonds other than in the state's capacity as a purchaser of electricity delivered by FPL. Rather, the Commission would find that its obligations under the securitization law are legally enforceable against it, but to no greater extent than those obligations would be legally enforceable absent a separate finding.

Finally, the financing order should require fully accountable certifications from the lead underwriter(s), FPL, and the Commission's financial advisor that the actual structure, marketing, and pricing of the storm recovery bonds in fact resulted in the lowest storm recovery charges consistent with then-prevailing market conditions and the terms of the financing order and other applicable law. If the Commission determines that all required certifications have been delivered and that the transaction complies with the financing order and other applicable law, the transaction would proceed without any further Commission action, as discussed in Issue 74B. Staff believes that if the transaction proceeds on these terms, any costs, including interest, addressed in the lowest cost certifications likely would not need further review in the post-issuance review under Section 366.8260(2)(b)5., Florida Statutes.

[27] Section 366.8260(9), Florida Statutes.

**Issue 67**: How should the Commission ensure that the structure, marketing, and pricing of the storm recovery bonds result in the lowest possible burden on FPL's ratepayers?

**Recommendation**: The ratepayers should be effectively represented throughout the life cycle of the proposed transaction. The Commission can ensure the structure, marketing, and pricing of the storm recovery bonds resulted in the lowest possible burden on FPL's ratepayers consistent with prevailing market conditions and the terms of the financing order by participating in the transaction as discussed in Issue 74B. (Maurey)

**Position of the Parties**

**FPL:** A financing order in the form submitted with the Petition, including the proposed findings of fact and conclusions of law, contains provisions consistent with the statute and necessary to facilitate triple-A credit ratings, providing the requisite investor confidence in the storm-recovery bond issuance, and resulting in an efficient and cost-effective financing. If the Commission wishes to take an active role in directing and overseeing the issuance process, it should employ the approach recommended by FPL in response to sub-issue 74(b).

**OPC:** The Commission should adopt the "best practices" standard which includes active participation by the Commission, its staff, and financial advisors in the bond issuance process.

**FIPUG:** Adopts the position of OPC.

**FRF:** If the Commission determines to approve securitization, then the Commission should adopt the "best practices" standard.

**AARP:** The same as the Office of Public Counsel.

**FEA:** Agree with OPC.

**AG:** Adopts and agrees with the position set forth by OPC.

**Staff Analysis**: The ratepayers should be effectively represented throughout the life cycle of the proposed transaction when information and options are being evaluated and decisions are being made that impact the ultimate cost to ratepayers. It is difficult, if not impossible, to evaluate such decisions after the fact. (Fichera TR 1198–1202; Klein TR 1232–1234) The Commission can ensure the structure, marketing, and pricing of the storm recovery bonds resulted in the lowest possible burden on FPL's ratepayers consistent with prevailing market conditions and the terms of the financing order by including findings of fact, conclusions of law, and ordering paragraphs in the financing order as discussed in Issues 61 and 74B; by participating in the transaction review process as discussed in Issue 74B; and by insisting on accountability of the principal transaction parties by requiring lowest cost certifications as discussed in Issue 65.

**Issue 74B**: If the Commission votes to issue a financing order, what post-financing order regulatory oversight is appropriate and how should that oversight be implemented?

**Recommendation**: The ratepayers should be effectively represented throughout the proposed transaction. The Commission, its staff, its outside counsel, and its financial advisor, along with FPL, FPL's financial advisor, and its counsel should work in a collaborative process to ensure the structuring, marketing, and pricing of the storm recovery bonds result in the lowest cost consistent with prevailing market conditions and the terms of the financing order. The Commission should be represented primarily by its staff, who should be advised by the Commission's financial advisor and outside counsel. Staff should periodically brief the Commissioners and the parties on the progress of the transaction. Issues that arise during the process that cannot be resolved collaboratively should be submitted in writing to a designated Commissioner for guidance. If any party objects to the designated Commissioner's proposed resolution, the matter should be submitted to the Commission for *de novo* consideration. The final structure of the transaction, including pricing, should be subject to review by the full Commission for the limited purpose of ensuring that all requirements of law and the financing order have been met. The Commission should specifically determine that the fees and expenses of its financial advisor and outside counsel in this post-financing order collaborative process are entitled to payment from the bond proceeds. (Maurey, Keating)

**Position of the Parties**

NOTE: Only OPC stated a separate position on this sub-issue. The positions stated for FPL and FEA represent staff's synopsis of their discussion of the sub-issue.

**FPL:** FPL and the Commission should designate the members of a "bond team." The Commission should be represented on the bond team by the Prehearing Officer, who may be advised by the Commission's staff and financial advisor. The bond team should expect to meet by conference call no less than weekly. Any disputes relative to the transaction documents or the issuance, structuring, marketing, and pricing process that the Commission has reserved the authority to resolve shall be heard by the Prehearing Officer. Any party represented on the bond team should have the opportunity to have the Prehearing Officer's decision reviewed *de novo* by the full Commission.

**OPC:** Commission should take an active role in the issuance process. Parties should receive periodic updates on the status of the transaction through designated Commission staff. The Commission should retain final decision making authority. Any disputes should be addressed by the Commission either at an Agenda Conference with shortened recommendation filing as necessary or through the use of a designated Commissioner as a hearing officer. Parties should be provided a point of entry if there are future disputes.

**FIPUG:** No position.

**FRF:** No position.

**AARP:** No position.

**FEA:** Agree with OPC.

**AG:** No position.

**Staff Analysis**:

Procedural Options for Active Commission Participation

There are a number of potential options for Commission participation in the review and approval of the final transaction documents and in the collaborative process for structuring, marketing and pricing of the storm recovery bonds. Staff believes that the option selected should balance the need for an efficient process that does not unduly delay the issuance of the bonds with the need to ensure that ratepayer interests are adequately protected. If the Commission decides to use the "Bond Team" approach, there are three basic decisions to be made:

Decision 1: Who should participate on behalf of the Commission in day-to-day activities of the Bond Team? Options include:

- the Commission staff, financial advisor and counsel
- a designated Commissioner, staff, financial advisor and counsel
- a panel of Commissioners, staff, financial advisor and counsel
- the full Commission, staff, financial advisor and counsel

Staff recommends that day-to-day participation should be through the Commission staff, advised by the Commission's financial advisor and counsel. Due to the anticipated frequency of meetings and/or conference calls, staff believes it is impractical for one or more Commissioners to participate in light of other demands on Commissioners' time. In addition, notice requirements under the Sunshine Law could delay the process if a panel of Commissioners (or the full Commission) is designated to participate. If staff's recommendation is adopted, staff can brief Commissioners on the progress of the transaction at whatever frequency individual Commissioners desire.

Decision 2: What process should be used to resolve any issues on which the Bond Team members are unable to reach agreement? Options include:

- decision by the Commission staff and/or financial advisor acting pursuant to authority delegated in the financing order, subject to *de novo* review by the full Commission
- decision by a designated Commissioner, subject to *de novo* review by the full Commission
- decision by a panel of Commissioners, subject to *de novo* review by the full Commission
- decision by the full Commission

Staff recommends that any issue that the Bond Team participants are unable to resolve should initially be presented in writing for resolution by a designated Commissioner, subject to *de novo* review by the full Commission. This approach: (i) avoids any potential concern about the scope of authority that can properly be delegated to the Commission staff and/or financial advisor; (ii) recognizes that if the Commission staff and/or advisor cannot informally resolve the issue with FPL, the issue appropriately should be resolved at a higher level; and (iii) avoids the delay that would be introduced by Sunshine Law requirements and Commissioner scheduling concerns if disputes initially had to be submitted to a panel of Commissioners or the full Commission.

All parties who took a position on this issue indicated that it would be acceptable for a single Commissioner to initially resolve such issues, provided that parties had the right to seek *de novo* review by the full Commission or some other point of entry. (FPL BR at 162; OPC BR at 113) Staff agrees that *de novo* review would be appropriate in this unique situation. The designated Commissioner's decisions could affect the substantive rights of the parties in a way that is fundamentally different from routine Prehearing Officer decisions that are reviewed under the highly deferential reconsideration standard. Staff recommends that all parties to this docket should be provided notice of any dispute taken to the designated Commissioner and provided the opportunity for comment before the designated Commissioner. All parties should also be provided notice of any decision reached by the designated Commissioner.

The parties do not appear to agree on who should have the right to seek full Commission review of a determination made by the designated Commissioner. FPL would limit the right to parties represented on the Bond Team (i.e., FPL and the Commission) whereas the Intervenors would extend the right to all parties. Because the specific features of the securitization transaction can affect the rates to be paid by consumers, and hence the substantial interests of the parties, staff recommends that any party be allowed to seek full Commission review.

Decision 3: How should the pricing of the storm recovery bonds be approved? Options include:

- advance approval by the full Commission contingent upon the final price being supported by fully accountable certifications of lowest cost from FPL, the lead underwriter(s), and the Commission's financial advisor
- advance approval by the full Commission contingent upon the final price being fixed within a specified range (e.g. 1-2 basis points) identified no more than 48 hours prior to final pricing
- pricing subject to limited review by the full Commission after the bonds are priced, but before they are issued

Staff recommends the pricing of the storm recovery bonds be subject to limited review by the full Commission after the bonds have been priced but before the bonds have been issued. FPL will file a proposed form of issuance advice letter with the Commission at least two weeks before the expected pricing date. Within one week of receiving the proposed form of issuance advice letter, the Commission's staff with input from its financial advisor will provide comments and recommendations to FPL regarding the adequacy of information proposed to be provided. Within one business day of pricing, a meeting will be noticed for three business days after

pricing to afford the Commission an opportunity to review the proposed transaction. The first day after pricing is for receipt of the actual details of the transaction including the lowest cost certifications from FPL, the underwriter(s), and the Commission's financial advisor. The second day is for the staff's and the Commission's financial advisor's review of this information. The third day would be for a staff presentation of the results of its review and the Commission's deliberations on the transaction. If the Commission determines that all required certifications have been delivered and the transaction complies with applicable law and the financing order, the transaction proceeds without any further action of the Commission. However, if the Commission were to determine that the transaction fails to comply with applicable law or the financing order, or if FPL, the bookrunning underwriter(s), or the Commission's financial advisor is unable or unwilling to deliver the required certifications in a form acceptable to the Commission, the Commission would have discretion to issue an order to stop the transaction. The Commission would have no authority to issue an order to stop the transaction for any other reason, for example, a change in market conditions after the moment of pricing.

Other Matters

FPL's brief suggests a number of specific limitations on the role of the Commission and its financial advisors. FPL states that, as a result of securities law concerns, FPL must retain ultimate editorial control over the statements made in its registration statement and in the materials for an internet-enabled road show. (FPL BR at 160) FPL also states that participation in marketing and sales calls will be limited to FPL and its underwriters for the same reason. (FPL BR at 161). Staff believes that it is premature to address these or other specific limitations. The question of editorial control, for example, will arise only if the Bond Team and FPL disagree about specific disclosure language. Rather than addressing such issues in the abstract, the mechanism recommended above for resolving any future disputes can be used to focus on the specific language in question if a disagreement about such language cannot be resolved informally.

FPL also questions for the first time in its brief whether Section 366.8260, Florida Statutes, contemplates that activities by the Commission's financial advisor and counsel after entry of the financing order and before the post-financing cost review qualify for payment from bond proceeds. (FPL BR at 145; 159 at fn. 50) Staff recommends that the Commission find and direct that such costs are properly payable from bond proceeds.

Section 366.8260(2)(b)2., Florida Statutes, provides:

> In performing the responsibilities of this subparagraph [2.] and subparagraph 5., the commission may engage outside consultants or counsel. Any expenses associated with such services shall be included as part of financing costs and included in storm-recovery charges.

Subparagraph 2 identifies the contents of a financing order, and authorizes the Commission to "specify the degree of flexibility to be afforded to the electric utility in establishing the terms and conditions of the storm-recovery bonds" and "include any other conditions that the commission considers appropriate and that are not otherwise inconsistent with this section." Section 366.8260(2)(b)2.g. and j., Florida Statutes. Subparagraph 5 relates to the

Commission's after-the-fact review to determine if the actual costs of the storm-recovery bond issuance "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."

Staff believes that if the financing order (1) specifically limits the flexibility afforded to FPL by requiring active participation by the Commission, its financial advisor, and outside counsel in the structuring, marketing and pricing of the bonds, and (2) imposes conditions on FPL the monitoring of which requires the Commission to rely upon the services of a financial advisor and outside counsel, then the fees and expenses of the advisor and counsel qualify for payment from bond proceeds. To avoid any question about this matter, the Commission's conclusion concerning the recovery of these expenses should be included in the financing order.

Staff Analysis of FPL's Proposed Review Process

In its brief on this issue, FPL proposes a review process for active Commission involvement consisting of seven enumerated points. These points are set forth below, each followed by staff's comments and recommendations.

1. Establish Bond Team

FPL and the Commission designate the professionals on their respective teams, representing in-house business, regulatory, finance and legal disciplines as well as outside advisors. The Commission itself shall be represented on the "Bond Team" by and through the pre-hearing officer in this matter, who may be advised by the Commission's staff and financial advisor and other members of the Bond Team. FPL will propose a transaction timeline in consultation with the Bond Team, establishing clear expectations as to all key issuance activities and the responsibility for each. The Bond Team will review the results of competitive solicitations for services for transaction participants. Throughout the process, the Bond Team should expect to meet by conference call no less than weekly for detailed and documented discussion of progress and next steps. (FPL BR at 159)

As previously discussed, staff recommends day-to-day participation in Bond Team activities through Commission staff, advised by the Commission's financial advisor and outside counsel, with a designated Commissioner to resolve any disputes. In addition, the development of the competitive solicitation and selection of underwriters and other transaction participants should be overseen by the Bond Team to ensure that the process is truly competitive and will result in the selection of transaction participants that have experience and ability to achieve an efficient and lowest cost transaction. (TR 1123, 1179–1181, 1185–1186) The underwriters work for the Bond Team but are not on the Bond Team.

2. Transaction Documents, Offering Documents and Legal Opinions

FPL recommends that Staff complete its review of transaction documents filed with FPL's petition on January 13, 2006 and make recommendations for substantive changes in the Staff Recommendation to be filed May 8, 2006 for vote by the Commission at the Special Agenda on May 15, 2006. The transaction documents submitted are in substantially final form and conform to applicable

> law. Finalization of transaction documents is a key step to a successful and timely bond issuance. Subsequent changes in the transaction documents necessary to meet rating agency requirements or to conform to final structuring and pricing requirements will be reviewed with the Bond Team. FPL will be responsible for the initial draft of the registration statement and term sheet which will be provided to the Bond Team for comment and review if requested. FPL as issuer and the party with securities law liability for statements made in these documents will retain final editorial control over the document contents. All legal opinions will be submitted to Bond Team for review and comment if requested. (FPL BR at 159–160)

As discussed in Issues 62, 64, 65, and 66, the various documents that are necessary elements of this proposed transaction should be reviewed and approved consistent with the financing order issued by the Commission. It would be premature for staff to spend a large block of time reviewing and making recommendations for substantive changes to the transaction documents until the Commission has issued its financing order in this docket, providing guidance on what terms will be appropriate for these transaction documents. Thus, it would be inappropriate for the Commission's financing order to approve the transaction documents in substantially the form filed by FPL. Rather, the financing order should authorize FPL and the SPE to enter into the required transaction documents (e.g., the indenture, the storm recovery property sale agreement, the servicing agreement, the administration agreement, the LLC agreement), but leave the terms of those transaction documents to be approved by the Commission's designated personnel and financial advisor taking into account the requirements of the financing order. Staff recommends such review and approvals take place as necessary based on when certain decisions are anticipated to occur throughout the transaction timeline discussed by FPL in Paragraph 1 above. (TR 1186) Subsequent changes or amendments to these documents will be reviewed with, and approved by, the Bond Team before becoming operative. (TR 1703, 1190) Any issues that cannot be resolved by the Bond Team would be submitted to the designated Commissioner for initial decision.

Expert outside legal counsel has advised staff that FPL's assertions regarding securities law liability fail to provide a complete description of securities law liability in relevant respects. Although FPL might also have securities law exposure as a "control person", FPL will not be the issuer of the storm recovery bonds. The SPE will be the issuer and in that capacity will have the most direct exposure to securities law liability. The automatic true-up mechanism will place ratepayers at risk for any securities law liability actually incurred by the SPE. Any damage award payable by the SPE would be a revenue requirement in the true-up of storm-recovery charges to be recovered from ratepayers. Even if a claim asserted by investors is ultimately unsuccessful, attorneys' fees and other litigation expenses incurred by the SPE in defending the matter would be a revenue requirement in the true-up of storm-recovery charges to be reflected on all ratepayers' bills. Consequently, ratepayers have a direct interest that the marketing documents do not contain any statements that are false, misleading, or incomplete. In this respect, the interests of ratepayers are aligned with the interests of the SPE issuer and FPL. Further, as a practical matter, in the absence of fraud, the strength of the securitization law, including the broad nature of the state pledge and the true-up mechanism, make any liability arising from the content of the prospectus or other marketing materials remote unless there has

been a default or other event disrupting or threatening to disrupt the timing or amount of payments on the storm-recovery bonds.

The process for writing and reviewing the prospectus and other disclosure documents requires extensive due diligence on the part of all transaction participants. There should be a balancing of competing interests based on rigorous analysis and the making of informed judgments. Thus, while the Commission itself might not be exposed to securities law liability, if the Commission were to believe that disclosure language proposed by anyone is materially false or misleading, it should decline to allow the storm-recovery bonds to be issued so as to avoid exposing ratepayers to the SPE's potential securities liability by means of the true-up. Similarly, if FPL were to believe disclosure language as proposed by anyone is materially false or misleading, FPL would have a responsibility to decline to allow the storm recovery bonds to be issued. To date, this never has been the case in other securitization transactions, and it is extremely unlikely to be the case in connection with storm recovery bonds. To the contrary, after carefully reviewing all disclosure language in the prospectuses, outside legal counsel for both the issuer and the underwriters in connection with each prior issue of publicly offered ratepayer-backed bonds has delivered a letter confirming that nothing has come to its attention that would lead it to conclude that the prospectus disclosure was materially false or misleading.

Staff recommends all legal opinions related to the proposed storm recovery bond transaction be submitted automatically to the Bond Team for review and comment without the requirement that said opinions be specifically requested from FPL. (TR 1186)

3. Rating Agency Process

FPL will be responsible for obtaining credit ratings. FPL will review progress and any issues encountered with the Bond Team at scheduled update meetings. (FPL BR at 160)

Staff recommends all rating agency presentations be submitted to the Bond Team for review and comment before the presentations are made to the rating agencies. (TR 1186) In prior ratepayer-backed bond transactions when the state commission has retained an active financial advisor, that financial advisor commonly has been an active participant in interfacing with rating agencies. (TR 1175-1176) Staff recommends the Commission's financial advisor similarly be an active participant in rating agency presentations.

4. Structuring and Marketing Process

A detailed marketing plan will be prepared by FPL and the bookrunning underwriter(s) for review and comment by the Bond Team. The bookrunning underwriter(s) will develop a proposed bond structure for marketing purposes reflecting comments of all parties. The structure will be refined over the course of the marketing period and finalized at pricing. In addition to the prospectus and term sheet to be filed with the SEC, a draft set of slides for an internet-enabled roadshow will be provided for review and comment by the Bond Team. FPL will retain ultimate editorial control over these documents as they will likely constitute a "free-writing prospectus" under new SEC rules. Similar to the registration statement, FPL as the party with securities law liability will retain final editorial control over these presentations. During the execution of the marketing plan, it is

> anticipated that update calls with the Bond Team to provide market feedback will become more frequent. Alternatively, the Commission's representative and its advisor may choose to observe marketing presentations to potential investors made by the Company and its underwriters. Participation in marketing and sales calls will be limited to FPL and the underwriters as FPL has potential securities law liability for all statements made to potential investors at these meetings. (FPL BR at 160–161)

Preparation of the offering documents and the actual marketing of the storm recovery bonds are very important steps in the issuance process of ratepayer-backed bonds. Staff believes the limitations suggested by FPL over the Bond Team's involvement in the marketing function are unnecessary and will undermine the transparency of the transaction. (TR 1174–1176) The record shows examples of successful ratepayer-backed bond transactions for the benefit of other utilities that have not been subject to these unnecessary restrictions on Commission involvement in the marketing process. (TR 1175–1176) Moreover, these transactions involved the same financial advisors – Credit Suisse on behalf of the sponsoring utilities and Saber Partners on behalf of the respective Commissions – that are present in same roles in this transaction. (TR 1175–1176; EXH 167, pp. 64–67)

As discussed earlier, staff disagrees with FPL's assertions regarding securities law liability. (TR 1204–1205) Staff's comments with respect to Paragraph 2 above apply equally to Paragraph 4.

> 5. Pricing Process
>
> FPL and the underwriters will consult with the Bond Team on strategy prior to release of pricing indications to the market. As feedback is received, each refinement of price guidance is discussed with the Bond Team. Bookrunning underwriters will develop a "pricing book" containing relevant data to be examined by all parties. It is anticipated that FPL and the Bond Team will assist in the refinement of this document. The Bond Team will discuss and agree on an the estimated range for final spreads that will cause the bonds to clear the market prior to "launching" the transaction with final guidance and scheduling a pricing call. FPL would expect to have the Commission's representative agree that, if we are able to price within that range, that we should execute the transaction, or if not to indicate what alternative the Commission proposes. (FPL BR at 161)

The limitations on the Commission's involvement in the pricing of the storm recovery bonds are unnecessary and will undermine the transparency of the transaction. (TR 1174–1176) The actual interest rate payable on the storm recovery bonds is not fixed until the very last moment. (TR 690) The approach suggested by FPL is fundamentally at odds with the approach used to obtain superior pricing results in the five prior Texas transactions and in the 2005 New Jersey transaction. The Commission's financial advisor needs to be an active and visible participant in the actual pricing process in real time if the Commission is to obtain maximum benefits for ratepayers.

To effectively represent ratepayer interests in this process, staff recommends the full Commission have an opportunity to review the transaction after the bonds have been priced but

before the bonds have been issued. As discussed in Issue 65, FPL will file the issuance advice letter (IAL) and initial true-up letter (combined into one document) in draft form at least two weeks prior to pricing based upon the best information available at that time. FPL will file an IAL in final form with the Commission within one business day of expected pricing at which time a meeting will be noticed for three business days after pricing to afford the Commission an opportunity to review the proposed transaction. The first day after pricing is for receipt of the actual details of the transaction including the lowest cost certifications from FPL, the underwriter(s), and the Commission's financial advisor. The second day is for the staff's and the Commission's financial advisor's review of this information. The third day would be for a staff presentation of the results of its review and the Commission's deliberations. If the Commission determines that all required certifications have been delivered and that the transaction complies with applicable law and the financing order, the transaction proceeds without any further action of the Commission. However, if the Commission were to determine that the transaction fails to comply with applicable law or the financing order, or if FPL, the bookrunning underwriter(s), or the Commission's financial advisor is unable or unwilling to deliver the required certifications in a form acceptable to the Commission, the Commission would have the discretion to issue an order to stop the transaction. (TR 1215–1218) The Commission would have no authority to issue an order to stop the transaction for any other reason, for example a change in market conditions after the moment of pricing.

6. Issuance Advice Letter

As part of the Staff Pre-Issuance Review process proposed by FPL, at least five business days prior to the proposed pricing date for the bonds, FPL will submit to Staff a draft pro-forma issuance advice letter for review by the Bond Team and other responsible parties. This pro-forma issuance advice letter will reflect pricing guidance from the marketplace. At the same time, a draft of the initial true-up letter, reflecting the pro-forma initial bond and tax charges, will be submitted. Not later than 48 hours after the pricing and sale of the bonds, FPL will file with the Commission a final issuance advice letter and a final true-up letter reflecting the final terms of the bonds and the resulting charges. All of the activities described above are contemplated within the scope of FPL's proposed financing order. It is not necessary for the financing order to specify all of the particulars of the due diligence process that the Commission ultimately adopts. Tr. 1506 (Olson). These activities all fall within the Scope of Saber Partners'current contract with the Commission. Ex. 136. (FPL BR at 161-162)

Staff recommends the Commission require the issuance advice letter to contain detailed analyses and representations as discussed above in this issue and in Issue 65. This will obviate the need for a separate initial true-up advice letter. Consistent with staff's comments under Paragraph 5 above, staff recommends the Commission reserve the right to issue a stop order at any time until 5:00 pm Eastern Time on the third business day after pricing if the Commission determines that the transaction fails to comply with applicable law or the financing order, or if FPL, the bookrunning underwriter(s), or the Commission's financial advisor is unable or unwilling to deliver the required certifications in a form acceptable to the Commission.

7. Dispute Resolution
Any disputes relative to the foregoing activities that the Commission has reserved to itself authority to resolve shall be heard before the pre-hearing officer in this matter, with the opportunity for any party represented on the bond team to have the pre-hearing officer's decision reviewed de novo by the full Commission. (FPL BR at 162)

Staff's comments under Paragraph 1 above apply equally to Paragraph 7. In addition, staff recommends that any issue that the Bond Team and FPL are unable to resolve should initially be submitted in writing for resolution by the designated Commissioner, subject to *de novo* review by the full Commission. All parties who took a position on this issue indicated that it would be acceptable for a single Commissioner to initially resolve such issues, provided that parties had the right to seek *de novo* review by the full Commission or some other point of entry. Because the specific features of the securitization transaction can affect the rates to be paid by consumers, and hence the substantial interests of the parties, staff recommends that any party be allowed to seek full Commission review.

Summary

The ratepayers should be effectively represented throughout the proposed transaction. The Commission, its staff, its outside counsel, and its financial advisor, along with FPL and its counsel should work in a collaborative process to ensure the structuring, marketing, and pricing of the storm recovery bonds result in the lowest cost consistent with prevailing market conditions and the terms of the financing order.

Based on the evidence presented, staff believes that it is simply not possible to determine, in a review that takes place after issuance of the bonds and under the limited terms of participation suggested by FPL, whether the interest rates achieved on the bond issuance resulted in lowest overall costs consistent with market conditions at the time of pricing. Thus, staff recommends that the Commission, as an appropriate condition of the financing order, ensure its real time involvement in the pricing of bonds at the time of pricing and adopt a lowest cost approach under which FPL, the bookrunning underwriters involved, and the Commission's financial advisor each individually certifies that lowest overall costs were achieved for the storm recovery bonds under then prevailing market conditions and the terms of the financing order.

The Commission should be represented primarily by its staff, who should be advised by the Commission's financial advisor and outside counsel. Staff should periodically brief the Commissioners and the parties on the progress of the transaction. Issues that arise during the process that cannot be resolved collaboratively should be submitted in writing to a designated Commissioner for guidance. If any party objects to the designated Commissioner's proposed resolution, the matter should be submitted to the Commission for *de novo* consideration. The final structure of the transaction, including pricing, should be subject to approval by the full Commission as outlined above. The Commission should specifically determine that the fees and expenses of its financial advisor and outside counsel in this collaborative process are entitled to payment from the bond proceeds.

Docket No. 150171-EI:

Duke Energy Florida, Inc.

Petition for issuance of nuclear asset-recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy.

Witness: **Direct Testimony of REBECCA KLEIN,** appearing on behalf of the staff of the Florida Public Service Commission

Date Filed: September 4, 2015

**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.

DOCKET No. 25230

| | | |
|---|---|---|
| JOINT APPLICATION FOR | § | PUBLIC UTILITY |
| APPROVAL OF STIPULATION | § | |
| REGARDING TXU ELECTRIC | § | COMMISSION |
| COMPANY TRANSITION TO | § | |
| COMPETITION ISSUES | § | OF TEXAS |

# ISSUANCE ADVICE LETTER

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## AUGUST 15, 2003





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**Kirk R. Oliver**
Treasurer and Assistant Secretary

**Oncor Electric Delivery Company**
**Corporate Finance**
1601 Bryan Street
33rd Floor
Dallas, Texas 75201

Tel 214-812-5565
Fax 214-812-2488

August 15, 2003

Filing Clerk
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

Re: Docket No. 25230, *Joint Application for Approval of Stipulation Regarding TXU Electric Company Transition to Competition Issues*

Ladies and Gentlemen::

Enclosed is the Issuance Advice Letter filed pursuant to Ordering Paragraph 4 of the Financing Order issued on August 5, 2002 in the above-captioned proceeding. Also included are the IRS rulings required to be submitted pursuant to Ordering Paragraph 39.

It should be noted that recovery of transition charges will begin following issuance of the transition bonds as provided in tariffs approved in the Order issued on August 5, 2002, in Docket No. 25230.

Sincerely,

Kirk R. Oliver

cc: Chairman Rebecca Klein
Commissioner Brett Perlman
Commissioner Julie Parsley
Mr. Joseph Fichera
Ms. Martha Elvey
All parties of record in Docket No. 25230

# PUC Docket No. 25230 Service List

| | |
|---|---|
| AEP TEXAS CENTRAL COMPANY/AEP TEXAS NORTH COMPANY/POLR POWER LP | RON FORD<br>AMERICAN ELECTRIC POWER COMPANY<br>STE 610<br>400 W 15TH ST<br>AUSTIN, TX 78701<br>512-481-4558<br>512-481-4591<br>rkford@aep.com |
| CITIES | GEOFFREY M GAY<br>LLOYD GOSSELINK BLEVINS ROCHELLE BALDWIN & TOWNSEND, PC<br>STE 1800<br>111 CONGRESS AVE<br>AUSTIN, TX 78701<br>512-322-5800<br>512-472-0532<br>ggay@lglawfirm.com |
| DFWHC/CICU | MARK F SUNDBACK<br>KENNETH L WISEMAN<br>ANDREWS & KURTH, LLP<br>STE 300<br>1701 PENNSYLVANIA AVE, NW<br>WASHINGTON, DC 20006<br>202-662-2700<br>202-662-2739<br>msundback@akllp.com |
| GARLAND CITY OF | LAMBETH TOWNSEND<br>LLOYD GOSSELINK BLEVINS ROCHELLE BALDWIN & TOWNSEND, PC<br>STE 1800<br>111 CONGRESS AVE<br>AUSTIN, TX 78701<br>512-322-5800<br>512-472-0532<br>ltownsend@lglawfirm.com |
| MESQUITE CITY OF | GEORGIA N CRUMP<br>LLOYD GOSSELINK BLEVINS ROCHELLE BALDWIN & TOWNSEND, PC<br>STE 1800<br>111 CONGRESS AVE<br>AUSTIN, TX 78701-4071<br>512-322-5832<br>512-472-0532<br>gcrump@lglawfirm.com |

# PUC Docket No. 25230 Service List

| | |
|---|---|
| CONSTELLATION NEW ENERGY TEXAS INC. | VANUS J. PRIESTLEY<br>CONSTELLATION NEWENERGY, INC.<br>STE 310<br>701 BRAZOS ST<br>AUSTIN, TX 78746<br>512-381-1900<br>512-381-1898<br>vpriestley@newenergy.com |
| NEW POWER CO | MARIANNE CARROLL<br>CARROLL GROSS REEDER & DREWS, LLP<br>STE 970<br>701 BRAZOS ST<br>AUSTIN, TX 78701<br>512-320-5964<br>512-320-5920<br>mcarroll@texas.net |
| NUCOR STEEL | GARRETT STONE<br>BRICKFIELD BURCHETTE RITTS & STONE, PC<br>1025 THOMAS JEFFERSON ST NW<br>EIGHTH FLOOR - WEST TOWER<br>WASHINGTON, DC 20007<br>202-342-0800<br>202-342-0807<br>gstone@bbrslaw.com |
| OFFICE OF PUBLIC UTILITY COUNSEL | SUZI RAY MCCLELLAN<br>OFFICE OF PUBLIC UTILITY COUNSEL<br>9TH FLOOR<br>1701 N CONGRESS AVE<br>AUSTIN, TX 78701<br>512-936-7500<br>512-936-7520<br>paiz@opc.state.tx.us |
| ONCOR | JO ANN BIGGS<br>HUNTON & WILLIAMS<br>ENERGY PLAZA, 30TH FL<br>1601 BRYAN ST<br>DALLAS, TX 75201<br>214-979-3048<br>214-880-0011<br>jbiggs@worsham.net |
| PUC LEGAL DIVISION | PAULA MUELLER<br>PUBLIC UTILITY COMMISSION OF TEXAS<br>STE 8-110<br>1701 N CONGRESS AVE<br>AUSTIN, TX 78701<br>512-936-7305<br>512-936-7036<br>paula.mueller@puc.state.tx.us |

**PUC Docket No. 25230 Service List**

| | |
|---|---|
| STATE OF TEXAS | TED ROSS<br>OFFICE OF ATTORNEY GENERAL OF TEXAS<br>CONSUMER PROTECTION DIVISION<br>P O BOX 12548<br>CAPITOL STATION<br>AUSTIN, TX 78711-2548<br>512-475-4170<br>512-322-9114<br>ted.ross@oag.state.tx.us |
| TEXAS INDEPENDENT ENERGY LP | ROBERT A RIMA<br>LAW OFFICE OF ROBERT A RIMA<br>STE 130<br>8240 N MOPAC EXWY<br>AUSTIN, TX 78759<br>512-349-9449<br>512-343-9339<br>bob.rima@rimalaw.com |
| TEXAS INDUSTRIAL ENERGY CONSUMERS | LINO MENDIOLA<br>ANDREWS & KURTH LLP<br>STE 1700<br>111 CONGRESS AVE<br>AUSTIN, TX 78701<br>512-320-9200<br>512-320-9292<br>lmendiola@akllp.com |
| TEXAS INDUSTRIES (TXI) | MARK W SMITH<br>SIFUENTES & DRUMMOND, LLP<br>STE 200<br>1002 WEST AVE<br>AUSTIN, TX 78701<br>512-469-9933<br>512-469-9944<br>msmith@utilitylaw.com |
| TEXAS RETAILERS ASSOCIATION | JIM BOYLE<br>LAW OFFICE OF JIM BOYLE<br>STE 550<br>1005 CONGRESS AVE<br>AUSTIN, TX 78701<br>512-474-1492<br>512-474-2507<br>jboyle@jimboylelaw.com |
| TXU ENERGY RETAIL | CAROLYN E SHELLMAN<br>HUNTON & WILLIAMS<br>1601 BRYAN STREET<br>ENERGY PLAZA, 30TH FLOOR<br>DALLAS, TX 75201<br>214-979-3067<br>214-880-0011<br>cshellman@hunton.com |

# ISSUANCE ADVICE LETTER

August 15, 2003

**ADVICE _____**

**THE PUBLIC UTILITY COMMISSION OF TEXAS**

**SUBJECT: ISSUANCE ADVICE LETTER FOR TRANSITION BONDS**

Pursuant to the Financing Order adopted in *Joint Application for Approval of Stipulation Regarding TXU Electric Company Transition to Competition Issues*, Docket No. 25230 (the "Financing Order"), ONCOR ELECTRIC DELIVERY COMPANY (as successor in interest to TXU Electric Company, "Applicant") hereby submits, no later than the second business day after the pricing date of this series of Transition Bonds, the information referenced below. This Issuance Advice Letter is for the Oncor Electric Delivery Transition Bond Company LLC Transition Bonds, Series 2003-1, classes A-1, A-2, A-3, and A-4. Any capitalized terms not defined in this letter shall have the meanings ascribed to them in the Financing Order.

## PURPOSE

This filing establishes the following:

(a) the actual terms and structure of the Transition Bonds being issued;
(b) confirmation of compliance with issuance standards;
(c) the initial Transition Charge for retail users;
(d) the identification of the Transition Property to be sold to a special purpose entity (the "SPE");
(e) the identification of the SPE; and
(f) that the Transition Bonds have been structured and priced in a manner that results in the lowest transition-bond charges consistent with market conditions and the terms of the Financing Order.

## COMPLIANCE WITH ISSUANCE STANDARDS

The Financing Order requires Applicant to confirm, using the methodology approved therein, that the actual terms of the Transition Bonds result in compliance with the standards set forth in the Financing Order. These standards are:

1. The securitization of Qualified Costs will provide tangible and quantifiable benefits to ratepayers, greater than would be achieved absent the issuance of Transition Bonds (See Attachment 4, Schedule A);

2. The total amount of revenues to be collected under the Financing Order is less than the revenue requirement that would be recovered over the remaining life of

the Stranded Costs using conventional financing methods (See Attachment 4, Schedule A);

3. The structuring and pricing of the Transition Bonds proposed by the Applicant in its Application will result in the lowest transition-bond charges consistent with market conditions at the time that the transition bonds are priced and the general parameters (including the protection of the competitiveness of the retail electric market) set out in this Financing Order (See Attachment 4, Schedule B);

4. The amount securitized will not exceed the present value of the revenue requirement over the life of the proposed Transition Bonds associated with the securitized Regulatory Assets when the present value calculation is made using a discount rate equal to the interest rate on the Transition Bonds (See Attachment 4, Schedule C);

5. The annual servicing fee payable to Applicant while it is serving as Servicer (or to any other Servicer affiliated with Applicant) shall not at any time exceed 0.05% of the original principal amount of the Transition Bonds of each series, except that the fee shall not be less than $400,000 (See Attachment 2);

6. The annual servicing fee payable to any other Servicer not affiliated with Applicant shall not at any time exceed 0.60% of the original principal amount of the Transition Bonds (See Attachment 2);

7. The underwriting spread included in the Qualified Costs securitized under the Financing Order shall not exceed 0.480% of the principal amount of the Transition Bonds issued and sold (See Attachment 1);

8. The sum of the up-front costs and the sum of the fixed operating expenses incurred or to be incurred in connection with the proposed transaction authorized by the Financing Order shall not exceed the amounts of the appropriate caps set forth in Appendix C to the Financing Order (See Attachments 1 and 2);

9. The Transition Bonds will be issued in one or more series comprised of one or more classes or tranches having legal final maturities not exceeding 15 years from the date of issuance of such series (See Attachment 3);

10. The amortization of the Transition Bonds shall be as described in the Financing Order (See Attachment 3); and

11. The Applicant certifies to the Commission that the Transition Bonds have been structured and priced in a manner that results in the lowest transition-bond charges consistent with market conditions at the time that the transition bonds are priced and the general parameters (including the protection of the competitiveness of the retail electric market) set out in the Financing Order (See Attachment 4, Schedule B).

## ACTUAL TERMS OF ISSUANCE

| | |
|---|---|
| Transition Bond Series: | Transition Bonds, Series 2003-1 |
| Transition Bond Issuer: | Oncor Electric Delivery Transition Bond Company LLC |
| Trustee: | The Bank of New York |
| Closing Date: | August 21, 2003 |
| Bond Ratings: | AAA by Standard & Poor's Ratings Services<br>Aaa by Moody's Investors Service<br>AAA by Fitch, Inc. |
| Amount Issued: | $500,000,000 |
| Transition Bond Issuance Costs: | See Attachment 1 |
| Transition Bond Support and Servicing: | See Attachment 2 |
| Coupon Rate(s): | See Below |
| Call Features: | 5% Cleanup Call<br>(optional redemption after last scheduled payment date) |
| Expected Principal Amortization Schedule: | See Attachment 3 |
| Expected Final Maturity Date(s): | See Below |
| Legal Final Maturity Date(s): | See Below |

| | Coupon Rate | Expected Final Maturity | Legal Final Maturity |
|---|---|---|---|
| A-1 | 2.26% | 02/15/2007 | 02/15/2009 |
| A-2 | 4.03% | 02/15/2010 | 02/15/2012 |
| A-3 | 4.95% | 02/15/2013 | 02/15/2015 |
| A-4 | 5.42% | 08/15/2015 | 08/15/2017 |

Payments to Investors: Semiannually, beginning February 16, 2004

Initial Annual Servicing Fee as a percent of the original Transition Bond principal balance: $400,000 minimum (0.08%) See Attachment 2

Cumulative Overcollateralization amount for the Transition Bonds, as a percent of the original Transition Bond principal balance: 0.50%

Annual Overcollateralization funding requirements: See Attachment 3

Description of type, amount and maturity (if applicable) of outstanding debt and equity securities of Applicant to be redeemed or retired with proceeds of the Transition Bonds (to the extent known) as shown below:

| **Use of Proceeds (in $000's)** | |
|---|---|
| Oncor 7.875% FMB due 3/1/2023, callable 3/1/2003 | 223,770 |
| Oncor 7.875% FMB due 4/1/2024, callable 4/1/2003 | 132,743 |
| Oncor Common Stock Equity | 123,262 |
| Qualified Issuance Expenses ("QIE") | 19,845 |
| Unused QIE to be carried over to Series 2004 Bonds | 380 |
| Total | 500,000 |

## INITIAL TRANSITION CHARGE

Table I below shows the current assumptions for each of the variables used in the calculation of the initial Transition Charges.

### TABLE I

### Input Variables For Initial Transition Charges

Applicable period: from August 21, 2003 to August 15, 2004
Forecasted retail kWh/kW sales for applicable period:

| | |
|---|---|
| Residential | 39,672,508,000 kWh |
| General Service – Secondary (Non-demand) | 1,212,096,000 kWh |
| General Service – Secondary (Demand) | 158,119,834 kW |
| General Service – Primary (Non-demand) | 26,015,000 kWh |
| General Service – Primary (Demand) | 21,032,413 kW |
| High Voltage Service | 8,146,642 kW |
| Lighting Service | 543,613,000 kWh |
| Instantaneous Interruptible | 12,880,562 kW |
| Noticed Interruptible | 10,659,455 kW |

| | |
|---|---|
| Transition Bond debt service for applicable period: | $43,635,727 |
| Servicing fees: | $400,000 |
| Percent of billed amounts expected to be charged-off: | 0.54% |

Collections curve: 85.25% of billings collected in first month after billing month, 14.21% in second month after billing month

| | |
|---|---|
| Forecasted annual ongoing transaction expenses (excluding Transition Bond principal and interest): | $505,282 |
| Required overcollateralization amount for applicable period: | $208,334 |
| Current Transition Bond outstanding balance: | $500,000,000 |
| Expected Transition Bond outstanding balance as of 08/15/2004: | $477,456,761 |
| Total Periodic Billing Requirement for applicable period: | $57,588,250 |

Allocation of such total among customer classes, in accordance with Utilities Code Section 39.303(c): See Attachment 5

Based on the foregoing, the initial Transition Bond Charges calculated for retail users are as follows:

**TABLE II**

| Regulatory Asset Recovery Class | Initial Transition Charge |
|---|---|
| Residential | $0.000599 / kWh |
| General Service - Secondary | |
| Non-demand | $0.000577 / kWh |
| Demand | $0.158 / kW |
| General Service – Primary | |
| Non-demand | $0.000395 / kWh |
| Demand | $0.161 / kW |
| High Voltage Service | $0.197 / kW |
| Lighting Service | $0.000724 / kWh |
| Instantaneous Interruptible | $0.083 / kW |
| Noticed Interruptible | $0.150 / kW |

**IDENTIFICATION OF SPE**

The owner of the Transition Property (the "SPE") will be:

Oncor Electric Delivery Transition Bond Company LLC

**EFFECTIVE DATE**

In accordance with the Financing Order, the Transition Charge shall be automatically effective upon the Applicant's receipt of payment in the amount of $500,000,000 from the SPE, following Applicant's execution and delivery to the SPE of the Bill of Sale transferring Applicant's rights and interest under the Financing Order, rights and interests that will become Transition Property upon transfer to the SPE as described in the Financing Order.

## NOTICE

Copies of this filing are being furnished to the parties on the attached service list. Notice to the public is hereby given by filing and keeping this filing open for public inspection at the Applicant's corporate headquarters.

## AUTHORIZED OFFICER

An authorized officer of the Applicant shall execute and deliver this Issuance Advice Letter on behalf of the Applicant.

Respectfully submitted,

Kirk R. Oliver
Treasurer and Assistant Secretary

Attachments

## ATTACHMENT 1
## TRANSITION BOND ISSUANCE COSTS

| VARIABLE COSTS | ACTUAL COSTS - THIS SERIES | | ESTIMATED MAXIMUM SERIES THROUGH 2003 | | ESTIMATED MAXIMUM ALL SERIES | |
|---|---|---|---|---|---|---|
| Original Issue Discount | 0.0000% | $0 | 0.0000% | $0 | 0.0000% | $0 |
| Underwriting Spread (1) | 0.4800% | 2,400,000 | 0.4800% | 2,400,000 | 0.4800% | 6,240,000 |
| SEC Registration Fee | 0.0081% | 40,520 | 0.0092% | 46,000 | 0.0092% | 119,600 |
| Subtotal Variable Up-front Expense (a) | 0.4881% | $2,440,520 | 0.5078% | $2,446,000 | 0.5078% | $6,359,600 |
| **FIXED COSTS** | | | | | | |
| Printing Fees | | $0 | | $ 500,000 | | $ 500,000 |
| Trustee Fee and Counsel | | 14,792 | | 10,000 | | 10,000 |
| Applicant Legal Fees and Expenses | | 2,215,656 | | 2,000,000 | | 2,000,000 |
| Blue Sky Fees | | 0 | | 30,000 | | 30,000 |
| Accountant's/Auditor's Fees | | 88,490 | | 150,000 | | 150,000 |
| Rating Agency Fees | | 687,500 | | 800,000 | | 800,000 |
| Legal Fees for Commission's Counsel | | 0 | | 100,000 | | 100,000 |
| IRS Ruling Request Fee | | 6,000 | | 5,000 | | 5,000 |
| SPE Startup Costs | | 0 | | 0 | | 0 |
| Miscellaneous Fees | | 23,263 | | 40,000 | | 40,000 |
| Application Preparation Costs | | 0 | | 0 | | 0 |
| Up-front Servicer Setup Costs | | 0 | | 500,000 | | 500,000 |
| Subtotal Fixed Up-Front Expenses (b) | | $ 3,035,701 | | $ 4,135,000 | | $ 4,135,000 |
| **REACQUISITION COSTS** | | | | | | |
| Current Estimate of Costs (c) | | $13,703,374 | | Not to exceed $13,644,528 | | Not to exceed $42,091,774 |
| COMMISSION'S FINANCIAL ADVISOR COSTS (1) | | $942,308 | | Not to exceed $942,308 | | Not to exceed $2,450,000 |
| Out of U/W Spread (1) | | $276,410 | | $276,410 | | $718,667 |
| Remainder (d) | | $665,898 | | $665,898 | | $1,731,333 |
| | | | | | | |
| **TOTAL ((a) + (b) + (c) + (d))** | | **$19,845,493** | | | | |
| | | | | | | |
| **AMOUNT INCLUDED IN TRANSITION BONDS** | | | | **Not to exceed $20,225,528** | | **Not to exceed $52,586,374** |
| This series of bonds | | **$19,845,493** | | | | |
| Total to date | | **$19,845,493** | | | | |
| Excess costs over cap | | **$0** | | | | |

HEDGING ISSUANCE COSTS: [Describe if applicable]

Notes:
(1) $718,667 of Commission's Financial Advisor Costs included in Underwriting Spread - $276,410 in first tranche, $442,257 in second

## ATTACHMENT 2
## TRANSITION BOND SUPPORT AND SERVICING COSTS *

| SERVICING FEES | ACTUAL COSTS - THIS SERIES | ESTIMATED MAXIMUM - SERIES THROUGH 2003 | ESTIMATED MAXIMUM - ALL SERIES |
|---|---|---|---|
| APPLICANT SERVICING FEES | | | |
| Annual Fee as Percent of Original Balance | $400,000 minimum | 0.05% $400,000 minimum | 0.05% $650,000 |
| THIRD PARTY SERVICING FEES | | | |
| Annual Fee as Percent of Original Balance | 0.60% | | 0.60% |

| ANNUAL ONGOING FIXED OPERATING EXPENSES * | ACTUAL COSTS | ESTIMATED MAXIMUM - ALL SERIES THROUGH 2003 | ESTIMATED MAXIMUM |
|---|---|---|---|
| Trustee Fee and Expenses | $26,000 | $30,000 | $30,000 |
| Independent Manager's Fee | 4,000 | 0 | 0 |
| Trust Operating Expense | 5,000 | 50,000 | 50,000 |
| Trust Accounting Expense | 5,000 | 80,000 | 80,000 |
| Rating Agency Fee | 10,000 | 25,000 | 25,000 |
| Administration Fee | 50,000 | 0 | 0 |
| Miscellaneous Fees and Expenses | $13,846 | 0 | 0 |
| Total Fixed Operating Expenses | **$113,846** | **$185,000** | **$185,000 **** |

* To the extent that contracts are entered into in connection with the issuance
** Limit on aggregate costs for all series

## ATTACHMENT 3
## TRANSITION BOND REVENUE REQUIREMENT INFORMATION
## SERIES 2003-1

*Complete this table for each class of each series of the Transition Bonds.*

**Total Series**

| Payment Dates | Principal Balance | Interest | Principal | Servicing Fees | Over-collateralization Amount | Other Expenses | Total Revenues |
|---|---|---|---|---|---|---|---|
| 08/21/03 | 500,000,000 | | | | | | |
| 02/15/04 | 492,306,305 | 10,410,227 | 7,693,695 | 200,000 | 104,166 | 48,359 | 18,456,447 |
| 08/15/04 | 477,456,761 | 10,682,261 | 14,849,544 | 200,000 | 104,167 | 56,923 | 25,892,895 |
| 02/15/05 | 456,942,229 | 10,514,462 | 20,514,532 | 200,000 | 104,166 | 56,923 | 31,390,083 |
| 08/15/05 | 441,696,293 | 10,282,647 | 15,245,936 | 200,000 | 104,167 | 56,923 | 25,889,673 |
| 02/15/06 | 420,759,491 | 10,110,368 | 20,936,802 | 200,000 | 104,166 | 56,923 | 31,408,259 |
| 08/15/06 | 405,119,707 | 9,873,782 | 15,639,784 | 200,000 | 104,167 | 56,923 | 25,874,656 |
| 02/15/07 | 383,786,579 | 9,697,053 | 21,333,128 | 200,000 | 104,167 | 56,923 | 31,391,271 |
| 08/15/07 | 367,605,693 | 9,339,050 | 16,180,886 | 200,000 | 104,166 | 56,923 | 25,881,025 |
| 02/15/08 | 345,452,767 | 9,013,005 | 22,152,926 | 200,000 | 104,166 | 56,923 | 31,527,020 |
| 08/15/08 | 328,581,952 | 8,566,623 | 16,870,815 | 200,000 | 104,168 | 56,923 | 25,798,529 |
| 02/15/09 | 305,694,545 | 8,226,676 | 22,887,407 | 200,000 | 104,166 | 56,923 | 31,475,172 |
| 08/15/09 | 288,018,970 | 7,765,495 | 17,675,575 | 200,000 | 104,166 | 56,923 | 25,802,159 |
| 02/15/10 | 264,321,740 | 7,409,332 | 23,697,230 | 200,000 | 104,167 | 56,923 | 31,467,652 |
| 08/15/10 | 245,757,142 | 6,882,713 | 18,564,598 | 200,000 | 104,166 | 56,923 | 25,808,400 |
| 02/15/11 | 221,067,258 | 6,423,239 | 24,689,884 | 200,000 | 104,167 | 56,923 | 31,474,213 |
| 08/15/11 | 201,434,510 | 5,812,165 | 19,632,748 | 200,000 | 104,166 | 56,923 | 25,806,002 |
| 02/15/12 | 175,654,700 | 5,326,254 | 25,779,810 | 200,000 | 104,167 | 56,923 | 31,467,154 |
| 08/15/12 | 154,894,114 | 4,688,204 | 20,760,586 | 200,000 | 104,167 | 56,923 | 25,809,880 |
| 02/15/13 | 127,974,759 | 4,174,379 | 26,919,355 | 200,000 | 104,167 | 56,923 | 31,454,824 |
| 08/15/13 | 105,984,296 | 3,468,116 | 21,990,463 | 200,000 | 104,167 | 56,923 | 25,819,669 |
| 02/15/14 | 77,762,165 | 2,872,174 | 28,222,131 | 200,000 | 104,168 | 56,923 | 31,455,396 |
| 08/15/14 | 54,407,684 | 2,107,355 | 23,354,481 | 200,000 | 104,166 | 56,923 | 25,822,925 |
| 02/15/15 | 24,794,740 | 1,474,448 | 29,612,944 | 200,000 | 104,167 | 56,923 | 31,448,482 |
| 08/15/15 | 0 | 671,937 | 24,794,740 | 200,000 | 104,167 | 56,923 | 25,827,767 |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| Totals | | 165,791,965 | 500,000,000 | 4,800,000 | 2,500,000 | 1,357,588 | 674,449,553 |

Effective Annual Weighted Average Interest Rate of the Transition Bonds, Excluding Up-Front and Ongoing Costs: 4.31%
Life of Series. 12 years
Weighted Average Life of Series. 6.85 years
Combined Weighted Average Life of This and All Previously Issued Series: 6.85 years
Call provisions (including premium, if any): See page 3 of Issuance Advice Letter.
Expected Final Maturity Dates: See page 3 of Issuance Advice Letter.
Legal Final Maturity Dates: See page 3 of Issuance Advice Letter.
Annual Overcollateralization Funding Requirements: See Overcollateralization Amount column above.

**ATTACHMENT 3**
**TRANSITION BOND REVENUE REQUIREMENT INFORMATION**
**SERIES 2003-1**

*Complete this table for each class of each series of the Transition Bonds.*

**Class A-1**

| Payment Dates | Principal Balance | Interest | Principal | Servicing Fees | Over-collateralization Amount | Other Expenses | Total Revenues |
|---|---|---|---|---|---|---|---|
| 08/21/03 | 103,000,000 | | | | | | |
| 02/15/04 | 95,306,305 | 1,125,103 | 7,693,695 | 41,200 | 21,458 | 9,962 | 8,891,418 |
| 08/15/04 | 80,456,761 | 1,076,961 | 14,849,544 | 38,718 | 20,166 | 11,020 | 15,996,409 |
| 02/15/05 | 59,942,229 | 909,162 | 20,514,532 | 33,702 | 17,553 | 9,592 | 21,484,542 |
| 08/15/05 | 44,696,293 | 677,347 | 15,245,936 | 26,236 | 13,665 | 7,467 | 15,970,651 |
| 02/15/06 | 23,759,491 | 505,068 | 20,936,802 | 20,238 | 10,541 | 5,760 | 21,478,409 |
| 08/15/06 | 8,119,707 | 268,482 | 15,639,784 | 11,294 | 5,882 | 3,214 | 15,928,656 |
| 02/15/07 | 0 | 91,753 | 8,119,707 | 4,009 | 2,088 | 1,141 | 8,218,697 |
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| Totals | | 4,653,876 | 103,000,000 | 175,397 | 91,353 | 48,157 | 107,968,783 |

## ATTACHMENT 3
## TRANSITION BOND REVENUE REQUIREMENT INFORMATION
## SERIES 2003-1

*Complete this table for each class of **each series** of the Transition Bonds.*

**Class A-2**

| Payment Dates | Principal Balance | Interest | Principal | Servicing Fees | Over-collateralization Amount | Other Expenses | Total Revenues |
|---|---|---|---|---|---|---|---|
| 08/21/03 | 122,000,000 | | | | | | |
| 02/15/04 | 122,000,000 | 2,376,357 | 0 | 48,800 | 25,417 | 11,800 | 2,462,373 |
| 08/15/04 | 122,000,000 | 2,458,300 | 0 | 49,563 | 25,814 | 14,106 | 2,547,783 |
| 02/15/05 | 122,000,000 | 2,458,300 | 0 | 51,104 | 26,617 | 14,545 | 2,550,566 |
| 08/15/05 | 122,000,000 | 2,458,300 | 0 | 53,398 | 27,812 | 15,198 | 2,554,708 |
| 02/15/06 | 122,000,000 | 2,458,300 | 0 | 55,242 | 28,771 | 15,723 | 2,558,036 |
| 08/15/06 | 122,000,000 | 2,458,300 | 0 | 57,990 | 30,203 | 16,505 | 2,562,999 |
| 02/15/07 | 108,786,579 | 2,458,300 | 13,213,421 | 60,229 | 31,369 | 17,142 | 15,780,462 |
| 08/15/07 | 92,605,693 | 2,192,050 | 16,180,886 | 56,691 | 29,526 | 16,135 | 18,475,289 |
| 02/15/08 | 70,452,767 | 1,866,005 | 22,152,926 | 50,383 | 26,241 | 14,340 | 24,109,895 |
| 08/15/08 | 53,581,952 | 1,419,623 | 16,870,815 | 40,789 | 21,244 | 11,609 | 18,364,080 |
| 02/15/09 | 30,694,545 | 1,079,676 | 22,887,407 | 32,614 | 16,986 | 9,282 | 24,025,966 |
| 08/15/09 | 13,018,970 | 618,495 | 17,675,575 | 20,082 | 10,459 | 5,716 | 18,330,327 |
| 02/15/10 | 0 | 262,332 | 13,018,970 | 9,040 | 4,709 | 2,573 | 13,297,624 |
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| Totals | | 24,564,338 | 122,000,000 | 585,925 | 305,169 | 164,674 | 147,620,106 |

## ATTACHMENT 3
## TRANSITION BOND REVENUE REQUIREMENT INFORMATION
## SERIES 2003-1

*Complete this table for each class of **each series** of the Transition Bonds.*

**Class A-3**

| Payment Dates | Principal Balance | Interest | Principal | Servicing Fees | Over-collateralization Amount | Other Expenses | Total Revenues |
|---|---|---|---|---|---|---|---|
| 08/21/03 | 130,000,000 | | | | | | |
| 02/15/04 | 130,000,000 | 3,110,250 | 0 | 52,000 | 27,083 | 12,573 | 3,201,907 |
| 08/15/04 | 130,000,000 | 3,217,500 | 0 | 52,813 | 27,507 | 15,031 | 3,312,851 |
| 02/15/05 | 130,000,000 | 3,217,500 | 0 | 54,455 | 28,362 | 15,499 | 3,315,816 |
| 08/15/05 | 130,000,000 | 3,217,500 | 0 | 56,900 | 29,635 | 16,195 | 3,320,230 |
| 02/15/06 | 130,000,000 | 3,217,500 | 0 | 58,864 | 30,658 | 16,754 | 3,323,776 |
| 08/15/06 | 130,000,000 | 3,217,500 | 0 | 61,793 | 32,184 | 17,587 | 3,329,064 |
| 02/15/07 | 130,000,000 | 3,217,500 | 0 | 64,179 | 33,426 | 18,266 | 3,333,371 |
| 08/15/07 | 130,000,000 | 3,217,500 | 0 | 67,746 | 35,284 | 19,282 | 3,339,812 |
| 02/15/08 | 130,000,000 | 3,217,500 | 0 | 70,728 | 36,837 | 20,130 | 3,345,195 |
| 08/15/08 | 130,000,000 | 3,217,500 | 0 | 75,264 | 39,200 | 21,421 | 3,353,385 |
| 02/15/09 | 130,000,000 | 3,217,500 | 0 | 79,128 | 41,212 | 22,521 | 3,360,361 |
| 08/15/09 | 130,000,000 | 3,217,500 | 0 | 85,052 | 44,298 | 24,207 | 3,371,057 |
| 02/15/10 | 119,321,740 | 3,217,500 | 10,678,260 | 90,272 | 47,017 | 25,693 | 14,058,741 |
| 08/15/10 | 100,757,142 | 2,953,213 | 18,564,598 | 90,285 | 47,023 | 25,697 | 21,680,816 |
| 02/15/11 | 76,067,258 | 2,493,739 | 24,689,884 | 81,997 | 42,707 | 23,338 | 27,331,665 |
| 08/15/11 | 56,434,510 | 1,882,665 | 19,632,748 | 68,818 | 35,843 | 19,587 | 21,639,660 |
| 02/15/12 | 30,654,700 | 1,396,754 | 25,779,810 | 56,033 | 29,184 | 15,948 | 27,277,728 |
| 08/15/12 | 9,894,114 | 758,704 | 20,760,586 | 34,903 | 18,179 | 9,934 | 21,582,306 |
| 02/15/13 | 0 | 244,879 | 9,894,114 | 12,775 | 6,654 | 3,636 | 10,162,058 |
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| | | | | | | | |
| Totals | | 51,450,204 | 130,000,000 | 1,214,005 | 632,293 | 343,297 | 183,639,800 |

**ATTACHMENT 3**
**TRANSITION BOND REVENUE REQUIREMENT INFORMATION**
**SERIES 2003-1**

*Complete this table for each class of **each series** of the Transition Bonds.*

**Class A-4**

| Payment Dates | Principal Balance | Interest | Principal | Servicing Fees | Over-collateralization Amount | Other Expenses | Total Revenues |
|---|---|---|---|---|---|---|---|
| 08/21/03 | 145,000,000 | | | | | | |
| 02/15/04 | 145,000,000 | 3,798,517 | 0 | 58,000 | 30,208 | 14,024 | 3,900,749 |
| 08/15/04 | 145,000,000 | 3,929,500 | 0 | 58,906 | 30,681 | 16,766 | 4,035,853 |
| 02/15/05 | 145,000,000 | 3,929,500 | 0 | 60,738 | 31,634 | 17,287 | 4,039,160 |
| 08/15/05 | 145,000,000 | 3,929,500 | 0 | 63,465 | 33,055 | 18,063 | 4,044,084 |
| 02/15/06 | 145,000,000 | 3,929,500 | 0 | 65,656 | 34,196 | 18,687 | 4,048,038 |
| 08/15/06 | 145,000,000 | 3,929,500 | 0 | 68,923 | 35,898 | 19,617 | 4,053,937 |
| 02/15/07 | 145,000,000 | 3,929,500 | 0 | 71,584 | 37,283 | 20,374 | 4,058,741 |
| 08/15/07 | 145,000,000 | 3,929,500 | 0 | 75,563 | 39,355 | 21,506 | 4,065,925 |
| 02/15/08 | 145,000,000 | 3,929,500 | 0 | 78,889 | 41,088 | 22,453 | 4,071,930 |
| 08/15/08 | 145,000,000 | 3,929,500 | 0 | 83,948 | 43,723 | 23,893 | 4,081,064 |
| 02/15/09 | 145,000,000 | 3,929,500 | 0 | 88,258 | 45,967 | 25,120 | 4,088,845 |
| 08/15/09 | 145,000,000 | 3,929,500 | 0 | 94,866 | 49,409 | 27,000 | 4,100,775 |
| 02/15/10 | 145,000,000 | 3,929,500 | 0 | 100,688 | 52,442 | 28,657 | 4,111,287 |
| 08/15/10 | 145,000,000 | 3,929,500 | 0 | 109,715 | 57,143 | 31,226 | 4,127,584 |
| 02/15/11 | 145,000,000 | 3,929,500 | 0 | 118,003 | 61,460 | 33,585 | 4,142,548 |
| 08/15/11 | 145,000,000 | 3,929,500 | 0 | 131,182 | 68,323 | 37,336 | 4,166,342 |
| 02/15/12 | 145,000,000 | 3,929,500 | 0 | 143,967 | 74,983 | 40,975 | 4,189,426 |
| 08/15/12 | 145,000,000 | 3,929,500 | 0 | 165,097 | 85,988 | 46,989 | 4,227,574 |
| 02/15/13 | 127,974,759 | 3,929,500 | 17,025,241 | 187,225 | 97,513 | 53,287 | 21,292,766 |
| 08/15/13 | 105,984,296 | 3,468,116 | 21,990,463 | 200,000 | 104,167 | 56,923 | 25,819,669 |
| 02/15/14 | 77,762,165 | 2,872,174 | 28,222,131 | 200,000 | 104,168 | 56,923 | 31,455,396 |
| 08/15/14 | 54,407,684 | 2,107,355 | 23,354,481 | 200,000 | 104,166 | 56,923 | 25,822,925 |
| 02/15/15 | 24,794,740 | 1,474,448 | 29,612,944 | 200,000 | 104,167 | 56,923 | 31,448,482 |
| 08/15/15 | 0 | 671,937 | 24,794,740 | 200,000 | 104,167 | 56,923 | 25,827,767 |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| Totals | | 85,123,547 | 145,000,000 | 2,824,672 | 1,471,185 | 801,461 | 235,220,865 |

Attachment 4, Schedule A
Page 1 of 1

## ATTACHMENT 4
## COMPLIANCE WITH SUBCHAPTER G OF THE UTILITIES CODE

## SCHEDULE A

TANGIBLE & QUANTIFIABLE BENEFITS AND REVENUE REQUIREMENTS TESTS - THIS SERIES:

| Name of Asset (List Each Asset Securitized) | (a) Present Value of Conventional Financing Over Securitized Life | (b) Present Value of Securitization Financing (excluding up-front and ongoing costs) | (c) Present Value of Up-front and On-going Costs | (d) Total Cost of Securitization (b) + (c) | (e) Savings/(Cost) of Securitization Financing (a) - (d) |
|---|---|---|---|---|---|
| SFAS 109 | 378,472,192 | 371,363,700 | 18,695,106 | 390,058,806 | (11,586,614) |
| Securities Reacquisition Costs | 131,266,416 | 76,647,232 | 3,858,557 | 80,505,789 | 50,760,627 |
| Martin Lake Unit 4 | 1,109,553 | 1,603,123 | 80,704 | 1,683,827 | (574,274) |
| Rate Case Exp. - Not earning | 330,268 | 477,184 | 24,022 | 501,206 | (170,938) |
| Rate Case Exp. - Earning | 22,294,773 | 13,440,557 | 676,621 | 14,117,178 | 8,177,595 |
| Vol. Retirement and Severance | 7,249,698 | 10,474,630 | 527,311 | 11,001,941 | (3,752,243) |
| DOE Decontamination Fund | 1,580,049 | 2,282,912 | 114,926 | 2,397,838 | (817,789) |
| Advance Notice Units | 1,929,770 | 2,788,202 | 140,363 | 2,928,565 | (998,795) |
| SO2 Allowance | (1,880,037) | (2,716,347) | (136,746) | (2,853,093) | 973,056 |
| Self Insurance Reserve | 3,697,208 | 2,228,887 | 112,206 | 2,341,093 | 1,356,115 |
| Totals | 546,049,890 | 478,590,080 | 24,093,070 | 502,683,150 | 43,366,740 |

(1) The discount rate to be used for determining the present value of columns (b) and (c) is the weighted average annual interest rate of the transition bonds, excluding up-front and ongoing costs.

(2) The present value of up-front and ongoing costs are allocated based on the proportion of each asset's securitized present value in column (b) to the total of column (b).

(3) The values for column (a) shall be calculated in accordance with the Commision's Office of Regulatory Affairs' methodology addressed in Finding of Fact No. 34 in the Financing Order.

**Kirk R. Oliver**
Treasurer and Assistant Secretary

**Oncor Electric Delivery Company**
**Corporate Finance**
1601 Bryan Street
33rd Floor
Dallas, Texas 75201

Tel 214-812-5565
Fax 214-812-2488

August 15, 2003

Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13362
Austin, TX 78711-3326

Re: *Joint Application for Approval of Stipulation Regarding TXU Electric Company Transition to Competition Issues*, Docket No. 25230

ONCOR ELECTRIC DELIVERY COMPANY (as successor in interest to TXU Electric Company, the "Applicant") submits this Certification pursuant to Ordering Paragraph No. 4 of the Financing Order in *Joint Application for Approval of Stipulation Regarding TXU Electric Company Transition to Competition Issues*, Docket No. 25230 (the "Financing Order"). All capitalized terms not defined in this letter shall have the meanings ascribed to them in the Financing Order.

In its issuance advice letter dated August 15, 2003, the Applicant has set forth the following particulars of the Transition Bonds:

| | |
|---|---|
| Name of Transition Bonds: | Transition Bonds, Series 2003-1 |
| SPE: | Oncor Electric Delivery Transition Bond Company LLC |
| Closing Date: | August 21, 2003 |
| Amount Issued: | $500,000,000 |
| Interest Rates and Expected Amortization Schedule: | See Page 3 and Attachment 3 of Issuance Advice Letter |
| Distributions to Investors (quarterly or semi-annually): | Semiannually |
| Weighted Average Coupon Rate: | 4.310% |
| Weighted Average Yield: | 4.312% |

The following activities and endeavors were taken by the Applicant in connection with the design, structuring and pricing of the bonds:

- Included credit enhancement in the form of the true-up mechanism, a 0.50% capital subaccount and a 0.50% overcollateralization subaccount.
- Registered the transition bonds with the Securities and Exchange Commission (the "SEC") to expand the potential investor base.
- Agreed with the Commission's financial advisor to have the SPE maintain its registration and periodic report filing obligation with the SEC and to continue filing such periodic reports (without regard to the number of bondholders and to the extent permitted by law).
- Agreed with the Commission's financial advisor to include additional information in such periodic reports filed with the SEC that includes: the monthly and semi-annual servicer certificates, collection account balances, outstanding transition bond balances that reflect the periodic payments, true-ups (including results) filed with the Commission, and a quarterly affirmation that, in all material respects, each materially significant REP has been billed, made payments and satisfied the creditworthiness requirements outlined in the Financing Order.
- Agreed to maintain a website to include all of the periodic reports, including additional information, filed with the SEC as well as the final prospectus for each series of transition bonds and a current organization chart for the SPE.
- Obtained IRS Private Letter Rulings as described in the Prospectus and as required in the Financing Order.
- Achieved AAA/Aaa/AAA ratings from all three of the major rating agencies.
- Worked with the rating agencies to arrange rating agency conference calls and issuance of pre-sale reports during the marketing period to address investor questions.
- Worked with the Commission's financial advisor to select underwriters that have experience related to transition bond offerings as well as other ABS offerings.
- Used a Joint Book-Runner structure for the underwriting team to broaden the base of potential investors contacted.
- Worked with the Commission's financial advisor and the underwriters (and each of their respective counsels) to finalize documentation in accordance with established standards for transactions of this sort and the terms of the Financing Order.
- Worked with the Commission's financial advisor and the underwriters to develop a summary term sheet (including computational materials) to be distributed to potential investors to show them the benefits of this transaction.

- Worked with the Commission's financial advisor and the underwriters to develop a marketing plan designed to reach the broadest possible market of potential investors.
- Held periodic conference calls with the Commission's financial advisor and economists from each of the underwriters to monitor market conditions that could possibly affect the underlying index (treasury issues) to be used to price the transition bonds.
- Considered variables impacting the final structure of the transaction including the relative benefit of a fixed versus floating rate issue, length of average lives and maturity of the bonds in light of market conditions and investor demand at the time of pricing and adapted the transition bond offering accordingly so that the structure of the transaction would correspond to investor prefereuces and rating agency requirements for AAA ratings.
- Investigated possible new, first-time buyers for transition bonds. For example: investors that typically buy corporate securities who could potentially be enticed to buy these bonds through relative value comparisons. Added the most likely of these new buyers to the targeted investor list.
- Designed the marketing plan to incentivize each of the underwriters to market the bonds aggressively to their customers and to reach out to a broad base of potential investors using proven marketing and underwriting processes.
- Held education sessions (in person and via conference call) with the respective sales forces from each of the underwriters to ensure their knowledge of the transaction and the relative value to the potential investors.
- Had multiple conversations with all of the members of the underwriting team during the marketing phase in which we stressed the requirements of the Financing Order.
- During the period that the bonds were marketed, held frequent market update discussions with the underwriting team to develop recommendations for pricing.
- Provided the preliminary prospectus and summary term sheet to prospective investors.
- Provided potential investors with access to an internet roadshow for viewing on repeated occasions at investors' convenience.
- Held one-on-one and group conference calls with investors, to describe the transition bonds including the legislative, political and regulatory framework and the bond structure.
- Allowed sufficient time for investors to review the preliminary prospectus, summary term sheet and internet roadshow presentation and to ask questions regarding the transaction.

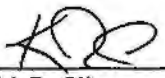
- Worked with the Commission's financial advisor to develop bond allocations, underwriter compensation and preliminary price guidance designed to achieve lowest interest rates consistent with market conditions and the terms of the Financing Order.

Based upon information reasonably available to officers, agents and employees of the Applicant, the Applicant hereby certifies that the structuring and pricing of the Transition Bonds, as described in the issuance advice letter, will result in the lowest transition-bond charges consistent with market conditions and the terms of the Financing Order, all within the meaning of Section 39.301 of PURA.

The foregoing certification does not mean that lower transition-bond charges could not have been achieved under different market conditions, or that structuring and pricing the Transition Bonds under conditions not permitted by the Financing Order could not also have achieved lower transition-bond charges.

The Applicant is delivering this Certification to the Commission and to the Commission's financial advisor, solely to assist them in establishing compliance with the aforesaid Section 39.301, and to no other person. The Applicant specifically disclaims any responsibility to any other person for the contents of this Certification, whether such person claims rights directly or as third-party beneficiary.

ONCOR ELECTRIC DELIVERY COMPANY

By: 

Kirk R. Oliver
Treasurer and Assistant Secretary

**SCHEDULE C**
Securitizaton Cap:

(1) The net amount of assets securitized as shown on Appendix C of the Financing Order: $479,774,472 (1,247,413,626 x 5/13ths)

(2) The securitization cap as shown on Attachment 4, Schedule A, column (a) of the Issuance Advice Letter: $546,049,890

## ATTACHMENT 5
## ALLOCATION OF COSTS TO REGULATORY ASSET RECOVERY CLASSES

| Regulatory Asset Recovery Class (1) | Allocation Factor (2) | Periodic Billing Requirement (3) | Billing Requirement per Rate Class (4) = (2) x (3) | Forecasted kWh/kW (5) | Transition Charge (6) = (4) / (5) |
|---|---|---|---|---|---|
| Residential Service | 0.412705 | $57,588,250 | $23,766,959 | 39,672,508,000 | $0.000599 |
| General Service - Secondary | 0.447323 | | | | |
| Non-demand | | $57,588,250 | $699,139 | 1,212,096,000 | $0.000577 |
| Demand * | | $57,588,250 | $25,061,410 | 158,119,834 | $0.158 |
| General Service - Primary | 0.058982 | | | | |
| Non-demand | | $57,588,250 | $10,275 | 26,015,000 | $0.000395 |
| Demand * | | $57,588,250 | $3,386,395 | 21,032,413 | $0.161 |
| High Voltage Service * | 0.027875 | $57,588,250 | $1,605,272 | 8,146,642 | $0.197 |
| Lighting Service | 0.006836 | $57,588,250 | $393,673 | 543,613,000 | $0.000724 |
| Instantaneous Interruptible * | 0.018568 | $57,588,250 | $1,069,299 | 12,880,562 | $0.083 |
| Noticed Interruptible * | 0.027711 | $57,588,250 | $1,595,828 | 10,659,455 | $0.150 |
| Total | 1.000000 | | $57,588,250 | | |

* Charges are based on a per kW charge. All other classes are based on a per kWh charge.

**INTERNAL REVENUE SERVICE** Department of the Treasury

Index Number: 61.00-00; 61.03-00; 61.43-00; 451.01-00

Washington, DC 20224

John F. Stephens
Assistant Secretary
TXU US Holdings Company
Energy Plaza, 1601 Bryan, 46th Floor
Dallas TX 75201

Person to Contact:
Thomas Preston (ID NO 50-05811)
Telephone Number:
202) 622-3940
Refer Reply To:
CC:FI&P:2-PLR-107643-02
Date:
May 21, 2002

Legend:

| | | |
|---|---|---|
| Parent | = | TXU Corporation<br>EIN: 75-2669310 |
| Company | = | TXU Electric Company<br>EIN: 75-1837355 |
| Subsidiary | = | Oncor Electric Delivery Company<br>EIN: 75-2967830 |
| Issuer | = | TXU Transition Bond Company LLC<br>EIN: 75-2851358 |
| Date A | = | February 18, 2000 |
| Date B | = | January 1, 2002 |
| State A | = | Texas |
| State B | = | Delaware |
| Statute | = | Senate Bill 7 of the 76th Texas Legislature |
| Notes | = | Transition Bonds |
| a | = | 1.30 billion |
| b | = | 0.5 |
| c | = | 15 |
| d | = | 5 |

Dear Mr. Stephens:

On Date A, this office issued a private letter ruling (PLR # 200020045) ("Initial Ruling") concluding that the issuance of a financing order by the State A public utility commission (PUC) authorizing the collection of special charges to recover the utilities' regulatory assets and certain stranded costs, and the transfer to the Company of proceeds from the issuance of Notes did not result in gross income to Company, and that the Notes issued to investors by a special purpose entity (Issuer) would be obligations of the Company.

In a letter dated January 31, 2002, you requested a supplemental ruling because the structure of the proposed transaction changed as a result of the restructuring of the Company. Except as described below, all facts and representations cited in the Initial Ruling are incorporated for purposes of this letter. Any terms defined or legended in the Initial Ruling have the same meaning in this letter.

State A recently introduced competition into its electric industry. As a result, beginning on Date B, Company's customers were allowed to contract directly with alternative suppliers of electricity, and Company began competing with other parties to sell electricity. To implement deregulation, State A enacted Statute, which requires utilities to divide their business activities into a power generation company, a retail electric provider, and a transmission and distribution utility. In order to comply with Statute, Company formed and contributed all of its transmission and distribution assets to Subsidiary, a newly formed, wholly owned subsidiary of Company. Subsidiary, which like Company is regulated by State A's PUC, also assumed all of the liabilities related to the transmission and distribution assets contributed by Company.

Subsequent to the issuance of the Initial Ruling, Company and Subsidiary reached a settlement with PUC staff and several other interested parties whereby Company expects to be issued a financing order authorizing the recovery of regulatory assets, certain other qualified costs, and other expenses relating to the issuance and sale of the Notes, in the aggregate amount of $a, an amount that is less than the amount referenced in the Initial Ruling.

The restructuring undertaken after the issuance of the Initial Ruling to comply with the Statute's requirement that Company separate its business activities into three components, as well as the settlement reached for the issuance of a financing order allowing the Company to securitize an amount of costs different from the amount in the Initial Ruling, do not adversely affect the analysis in the Initial Ruling. Accordingly, the conclusions reached in the Initial Ruling issued on Date A that (1) the issuance of the financing order and the transfer of rights under the financing order to the Issuer will not result in gross income to Company; (2) the issuance of the Notes and the transfer of the proceeds to Company will not result in gross income to Company; and (3) the Notes will be obligations of the Company, are not affected.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative. A copy of this letter must be attached to any income tax return to which it is relevant.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

/s/ William E. Coppersmith

William E. Coppersmith
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)

**Internal Revenue Service** Department of the Treasury

Index Number: 61.00-00; 61-03-00; 61.43-00; 451.01-00

Washington, DC 20224

Laurie S. Marsh
Thelen Reid & Priest LLP
40 West 57th Street
New York, NY 10019

Person to Contact:
Thomas M. Preston (ID NO. 50-05811)
Telephone Number:
(202) 622-4443
Refer Reply To:
CC:DOM:FI&P:2-PLR-117128-99
Date:
Feb. 18, 2000

Legend:

| | | |
|---|---|---|
| Parent | = | Texas Utilities Company, dba TXU Corp<br>EIN: 75-2669310 |
| Company | = | TXU Electric Company<br>EIN: 75-1837355 |
| Issuer | = | TXU Transition Bond Company LLC<br>EIN: To be determined |
| State A | = | Texas |
| State B | = | Delaware |
| Statute | = | Senate Bill 7 of the 76th Texas Legislature |
| Notes | = | Transition Bonds |
| a | = | 1.650 billion |
| b | = | 0.5 |
| c | = | 15 |
| d | = | 5 |

Dear Ms. Marsh:

This letter is in reply to your letter dated October 20, 1999, asking the Internal Revenue Service to rule on the transaction described below.

FACTS

Company, a calendar year taxpayer that uses the accrual method of accounting, operates an electric utility in State A. Company generates, transmits, and distributes electricity to residential, commercial, and industrial customers within a designated territory. Company has the right to sell electricity at retail within its territory and is regulated by State A's public utility commission (PUC) and, to a limited extent, the Federal Energy Regulatory Commission.

State A is deregulating its electric industry. As a result, Company's customers will be allowed to contract directly with alternative suppliers of electricity, and Company will compete with other parties to sell electricity.

To facilitate deregulation, State A enacted Statute, which allows utilities in State A to impose special charges on their customers to recover the utilities' regulatory assets and certain stranded costs. Regulatory assets are assets of a utility for financial accounting purposes. They reflect costs incurred by the utility in prior periods that the utility expects to recover through regulated rates in the future. With deregulation, the Statute allows the generation-related regulatory assets to be recovered through the special charges. Stranded costs are the uneconomic portions of a utility's prudently incurred costs of generation-related assets and obligations. In general, stranded costs reflect the difference between the book value and the market value of these assets. As with regulatory assets, the Statute allows the utility to impose the special charges to recover these costs.

Under Statute, a utility may apply to PUC for a financing order permitting it to recover a specified amount of the costs described above. The special charges authorized by the financing order are called transition charges (TCs) and are imposed on substantially all of a utility's customers in the utility's service area. The TCs are "nonbypassable" and generally cannot be avoided even if a customer buys electricity from another source. The TCs are based, in part, on the amount of electricity purchased by, or made available to, the consumer, whether from the utility or from an alternative supplier.

The utility also may request the PUC to approve the issuance of securities called transition bonds that are secured by the utility's rights to the TCs. The amount of transition bonds approved in the financing order may include the amount of the regulatory assets and/or stranded costs that can be recovered plus the costs of issuing the transition bonds and using the proceeds to retire existing debt and equity of the utility.

Under the financing order, the TCs to be collected by a utility generally will be based on the amount of electricity provided to, or made available to, each customer. Actual collections of the TCs will vary from expected collections due to a number of factors including power usage and delinquencies. The financing order will require the adjustment of the TCs at least annually. Under Statute, when the right to collect TCs and the other rights under the financing order are assigned by the utility to another entity, the rights become a separate property right that is called transition property.

Proposed Transaction

Company has applied to PUC for a financing order authorizing Company to recover regulatory assets in the amount of $a and to issue Notes that will qualify as transition bonds in an aggregate principal amount of approximately $a. The actual principal amount will be determined when the Notes are issued based on the costs incurred in the proposed transaction. These costs relate to credit enhancement, servicing fees, and other expenses relating to the issuance and sale of

the Notes and the retirement of certain of its existing debt and equity. The financing order will authorize TCs in an amount needed to service the Notes, pay transaction costs, and provide for credit enhancement. The financing order also will provide that the right to collect the TCs may be assigned to a special purpose entity (the Issuer), at which point the right becomes transition property.

Company will form Issuer under State B law as a bankruptcy remote limited liability company solely for the purpose of effectuating the proposed transaction. Company will be the sole member of Issuer. Issuer will not elect to be treated as an association taxable as a corporation under Section 301.7701-3(b)(1) of the Procedure and administration Regulations. Company will contribute, as equity to Issuer, cash at least equal to b percent of the issue price of the Notes.

Pursuant to the financing order, Company will transfer the rights that will become the transition property to Issuer, and Issuer will issue and sell Notes to investors. The proceeds from the sale of the Notes, net of issuance costs, will be transferred to Company in consideration for the transition property.

Issuer will initially issue one series of Notes, which may be comprised of one or more classes, each having a different final maturity date. The Notes will have final maturities of no more than c years, and expected maturities, to be determined when the bonds are issued, of less than c years. The expected maturity is the date when all of the principal and interest on a class of Notes is expected to be paid; the final maturity date is the date on which nonpayment is a default.

Interest on the Notes will be payable quarterly or semi-annually at rates that are based on yields that are commensurate with similarly rated debt obligations with comparable weighted average maturities. The Notes are expected to be sold at or near their stated principal amounts. Principal payments will be scheduled to be made quarterly or semi-annually. Principal will be applied in sequential order to each class until the outstanding principal balance of the class is reduced to zero.

In general, the Notes will be payable solely out of the transition property and other assets of Issuer. However, the Notes may be subject to an optional "clean-up" call when the outstanding principal declines to less than d percent of the original issue price. Because the classes will be allocated principal in sequential order, the clean-up call will apply only to the class or classes with the longest maturities.

Initially, Company will act as servicer of the transition property. As servicer, Company will bill and collect TCs from customers, remit amounts collected to Issuer and retain all books and records with respect to the TCs. Deposits of TCs are expected to be

made to a Collection Account within two business days of the receipt of funds (or less frequently with rating agency approval). Pending such deposits, Company will keep records of the amount of such undeposited collections, although it may commingle such amounts with its other funds. Any investment income earned on the TCs prior to remittance will be retained by Company. With certain restrictions, Company may be replaced as servicer. Company will receive a fee as Servicer that will be paid quarterly.

After customer choice is implemented in State A, third-party retail electric providers (REPs) generally will bill and collect payments, including TCs, from customers. In that event, Company, as servicer, will bill the REP for the TCs. REPs may be required to take additional steps to ensure that timely payments will be made, including providing cash deposits of estimated collections. Nonetheless, in all events, the amounts paid will be based on the amount of electricity provided or made available to the customer.

The TCs will be set to provide for the recovery of the costs associated with billing and collecting the TCs as well as for an overcollateralization amount, that will eventually reach at least b percent of the original principal amount of the Notes. The overcollateralization amount will be collected approximately ratably over the expected term of the Notes.

A Collection Account will be established as credit enhancement for the Notes. The Collection Account will consist of four subaccounts entitled General, Overcollateralization, Capital, and Reserve. The General Subaccount will hold all funds in the Collection Account not held in any of the other subaccounts. The servicer will remit all TC collections to the General Subaccount, and the trustee will use the amounts in the General Subaccount to make payments in the following order of priority: (1) certain fees and expenses of Issuer (2) interest on the Notes, (3) specified amounts of principal on the Notes, (4) other expenses and (5) amounts needed to replenish certain Collection Account subaccounts. Investment income earned on the Collection Account also will be available to make these payments. Any remaining unallocated amounts are allocated to the Reserve Subaccount for distribution on subsequent payment dates. Once all Notes (including any new series of transition bonds issued pursuant to a subsequent financing order) have been paid in full, the balance in the Collection Account, if any, will be released to the Issuer or as it directs.

To the extent that the General Subaccount in any period is insufficient to make the required payments, the Trustee will draw upon the Reserve Subaccount, the Overcollateralization Subaccount, and finally, the Capital Subaccount to make these payments. To the extent that amounts in the Capital Subaccount or the Overcollateralization Subaccount are used to make payments of interest, principal, and expenses, future TCs will be adjusted to replenish those subaccounts.

The Notes will provide for the following events of default: (1) a default in the payment of interest that is not cured within five business days, (2) a default in the payment of outstanding principal on the final maturity date, (3) a default in the payment of the redemption price on a redemption date, (4) certain breaches of covenants, representations or warranties by Issuer that go unremedied for 30 days and (5) certain events of bankruptcy or insolvency of Issuer.

In the event of a payment default, the trustee or holders of a majority in principal amount of the Notes then outstanding may declare the Notes to be immediately due and payable.

The Notes will be nonrecourse to Company and will be secured only by, and generally payable solely out of, Issuer's assets, which will include the transition property, the servicing agreement, the Collection Account, and the rights to obtain adjustments to the TCs. Company expects the Notes to obtain the highest rating from two or more nationally recognized credit rating agencies.

## ISSUES

Does the issuance of the financing order and the transfer of the rights under the financing order to Issuer result in gross income to Company?

Does the issuance of the Notes and the transfer of the proceeds to Company result in gross income to Company?

Are the Notes obligations of Company?

## LAW

Section 61 of the Internal Revenue Code generally defines gross income as "income from whatever source derived", except as otherwise provided by law. Gross income includes income realized in any form, whether in money, property, or services. Section 1.61-1(a) of the Income Tax Regulations. This definition encompasses all "accessions to wealth, clearly realized, and over which the taxpayers have complete dominion." Commissioner v. Glenshaw Glass Co., 348 U.S. 426, 431 (1955), 1955-1 C.B. 207.

The right to collect the TCs is of significant value in producing income for Company. Moreover, State A's action in making the TC rights transferable has enhanced that value. Generally, the granting of a transferable right by the government does not cause the realization of income. Rev. Rul. 92-16, 1992-1 C.B. 15 (allocation of air emission rights by the Environmental Protection Agency does not cause a utility to realize gross income); Rev. Rul. 67-135, 1967-1 C.B. 20 (fair market value of an oil and gas lease obtained from the government through a lottery is not includable in income).

The economic substance of a transaction generally governs its federal tax consequences. Gregory v. Helvering, 293 U.S. 465 (1935), XIV-1 C.B. 193. Affixing a label to an undertaking does not determine its character. Rev. Rul. 97-3, 1997-1 C.B. 9. An instrument secured by property may be an obligation of the taxpayer or, alternatively, may be a disposition of the underlying property by the taxpayer. Cf. id. (the Small Business Administration is the primary obligor of certain guaranteed payment rights that are created under its participating security program).

CONCLUSIONS

Based on the facts as represented, we rule as follows:

(1) The issuance of the financing order and the transfer of the rights under the financing order to Issuer will not result in gross income to Company.

(2) The issuance of the Notes and the transfer of the proceeds to Company will not result in gross income to Company.

(3) The Notes will be obligations of Company.

Except as specifically ruled on above, no opinion is expressed or implied regarding the federal tax aspects of the transaction.

This ruling is directed only to Company. Under section 6110(k)(3) of the Code, this ruling may not be used or cited as precedent.

A copy of this letter should be attached to the federal income tax return of Company for the taxable years that include the transaction described in this letter.

Sincerely yours,
Assistant Chief Counsel
(Financial Institutions & Products)

By: /s/ Marshall Feiring
Marshall Feiring
Senior Technician Reviewer, Branch 2

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | |
|---|---|
| In re: Petition for issuance of nuclear asset-recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy. | DOCKET NO. 150171-EI<br><br>DATED: SEPTEMBER 4, 2015 |

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the testimony of Rebecca Klein on behalf of the staff of the Florida Public Service Commission was electronically filed with the Office of Commission Clerk, Florida Public Service Commission, and copies were furnished to the following by electronic mail, on this 4th day of September, 2015.

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**Exhibit 1. Issuance Advice Letter from CenterPoint Energy**

**Series A Transaction**

The attached document is the issuance advice letter from the 2005 CenterPoint Energy Series A transition bond transaction.

**PUC DOCKET NO. 30485**

2005 DEC 12 PM 1:45

| | | |
|---|---|---|
| **APPLICATION OF CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC FOR A FINANCING ORDER** | **§ § §** | **BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS** |

**Contact: James N. Purdue**
**(713) 207-7245**
**Fax: (713) 207-9819**
**Email:** jim.purdue@CenterPointEnergy.com

**December 12, 2005**

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12th day, December, 2005

ADVICE _____

THE PUBLIC UTILITY COMMISSION OF TEXAS

SUBJECT: ISSUANCE ADVICE LETTER FOR TRANSITION BONDS

Pursuant to the Financing Order adopted in *Application of CenterPoint Energy Houston Electric, LLC for a Financing Order*, Docket No. 30485 (the "Financing Order"), CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC, ("Applicant") hereby submits, no later than twenty-four hours after the pricing date of this series of Transition Bonds, the information referenced below. This Issuance Advice Letter is for the CenterPoint Energy Transition Bond Company II, LLC Transition Bonds series A, tranches A-1, A-2, A-3, A-4 and A-5. Any capitalized terms not defined in this letter shall have the meanings ascribed to them in the Financing Order.

PURPOSE

This filing establishes the following:

(a) the total amount of Qualified Costs being securitized;
(b) confirmation of compliance with issuance standards;
(c) the actual terms and structure of the Transition Bonds being issued;
(d) the initial Transition Charge for retail users; and
(e) the identification of the SPE.

QUALIFIED COSTS BEING SECURITIZED

The total amount of Qualified Costs being securitized (the "Securitized Qualified Costs") is presented in Attachment 1.

## COMPLIANCE WITH ISSUANCE STANDARDS

The Financing Order requires Applicant to confirm, using the methodology approved therein, that the actual terms of the Transition Bonds result in compliance with the standards set forth in the Financing Order. These standards are:

1. The securitization of Qualified Costs will provide tangible and quantifiable benefits to ratepayers, greater than would be achieved absent the issuance of Transition Bonds (See Attachment 2);

2. The amount securitized will not exceed the present value of the conventional financing revenue requirement over the life of the proposed Transition Bonds associated with the Securitized Qualified Costs when the present value calculation is made using a discount rate equal to the proposed interest rate on the Transition Bonds (See Attachment 2);

3. The total amount of revenues to be collected under the Financing Order is less than the revenue requirement that would be recovered using conventional financing methods (See Attachment 2);

4. The Transition Bonds will be issued in one or more series comprised of one or more tranches having target final maturities of 13.6 years and legal final maturities not exceeding 15 years from the date of issuance of such series (See Attachment 3);

5. The Transition Bonds will be issued with an original issue discount on several of the tranches to promotes marketability while providing yields that match market conditions; the original issue discount will be fully reflected in the interest rates used to calculate ratepayer benefits; and

6. The structuring and pricing of the Transition Bonds is certified by the Applicant to result in the lowest transition bond charges consistent with market conditions and the terms (including the amortization structure ordered by the Commission, if any) set out in the Financing Order (See Attachment 4).

## ACTUAL TERMS OF ISSUANCE

Transition Bond Series: Series A
Transition Bond Issuer: **CenterPoint Energy Transition Bond Company II, LLC**
Trustee: Wilmington Trust Company
Closing Date: December 16, 2005
Bond Ratings: S&P AAA, Fitch AAA, Moody's Aaa
Amount Issued: $1,851,000,000
Transition Bond Issuance Costs: See Attachment 1, Schedule B.
Transition Bond Support and Servicing: See Attachment 2, Schedule B.

| Tranche | Coupon Rate | Expected Final Maturity | Legal Final Maturity |
|---|---|---|---|
| A-1 | 4.840% | 2/1/2009 | 2/1/2011 |
| A-2 | 4.970% | 8/1/2012 | 8/1/2014 |
| A-3 | 5.090% | 2/1/2014 | 8/1/2015 |
| A-4 | 5.170% | 8/1/2017 | 8/1/2019 |
| A-5 | 5.302% | 8/1/2019 | 8/1/2020 |

| | |
|---|---|
| Effective Annual Weighted Average Interest Rate of the Transition Bonds: | **5.4519%** |
| Life of Series: | **13.6** |
| Weighted Average Life of Series: | **8.3** |
| Call provisions (including premium, if any): | None |
| Amortization Schedule | Attachment 2, Schedule A |
| Target Final Maturity Dates: | Attachment 2, Schedule A |
| Legal Final Maturity Dates: | Attachment 2, Schedule A |
| Annual Overcollateralization Funding Requirements: | None |
| Payments to Investors: | Semiannually Beginning August 1, 2006 |
| Initial annual Servicing Fee as a percent of original Transition Bond principal balance: | 0.05% |

## INITIAL TRANSITION CHARGE

Table I below shows the current assumptions for each of the variables used in the calculation of the initial Transition Charges.

| TABLE I | | |
|---|---|---|
| **Input Values For Initial Transition Charges** | | |
| Applicable period: from **December 16, 2005 through November 30, 2006** | | |
| Forecasted retail kWh/kW sales for the applicable period[1]: | | **67,983,092,984** |
| Transition Bond debt service for the applicable period[2]: | **$** | **77,654,645** |
| Percent of billed amounts expected to be charged-off: | | **1.88% (Residential)**<br>**0.39% (Non-Residential)** |
| Forecasted % of Billings Paid in the Applicable Period: | | **89.03%** |
| Forecasted retail kWh/kW sales billed and collected for the applicable period[3]: | | **60,522,389,354** |
| Forecasted annual ongoing transaction expenses (Excluding Transition Bond principal and interest): | **$** | **1,278,500** |
| Required overcollateralization amount for applicable period: | | **0** |
| Current Transition Bond outstanding balance: | **$** | **1,851,000,000** |
| Target Transition Bond outstanding balance as of 11/30/06: | **$** | **1,832,435,317** |
| Total Periodic Billing Requirement for applicable period: | **$** | **168,234,953** |

Allocation of the PBR among customer classes: See Attachment 3.

[1] Aggregate in kWh equivalence; see Attachment 3, column 7, for billing determinants by rate class.
[2] Cash paid to service debt within the applicable period - not an accrued amount.
[3] Assumed collection curve for the residential rate class of 83.33% in the first month following billing; 14.79% in the second month following billing; and 1.88% charged-off. For all other rate classes, assumed collection curve of 83.33% in the first month following billing; 16.28% in the second month following billing; and 0.39% charged-off.

Based on the foregoing, the initial Transition Charges calculated for retail users are as follows:

| TABLE II | |
|---|---|
| Rate Class | Initial Transition Charge[4] |
| Residential | **0.002899 $/kWh** |
| MGS | **0.385581 $/kW** |
| | **0.002648 $/kWh** |
| LGS | **1.048704 $/kVa** |
| | **1.780475 $/kW** |
| LOS-A | **0.881795 $/kW** |
| LOS-B | **1.248428 $/kW** |
| Non-Metered Lighting | **0.004246 $/kWh** |
| Standby Electric Service – Distribution | **0.387106 $/kW** |
| Interruptible Service Supplemental – Distribution | **2.122377 $/kW** |
| Interruptible Service – Thirty Minute Notice | **0.758917 $/kW** |
| Interruptible Service – Ten Minute Notice | **0.455760 $/kW** |
| Interruptible Service – Instantaneous | **0.868506 $/kW** |
| Interruptible Service Supplemental – Transmission | **0.869578 $/kW** |
| Standby Electric Service – Transmission | **0.376821 $/kW** |
| Standby Interruptible Service | **0.121198 $/kW** |
| SCP | **1.197195 $/kW** |

**IDENTIFICATION OF SPE**

The owner of the Transition Property (the "SPE") will be: **CenterPoint Energy Transition Bond Company II, LLC.**

**EFFECTIVE DATE**

In accordance with the Financing Order, the Transition Charge shall be automatically effective upon the Applicant's receipt of payment in the amount of $1,837,990,612 from **CenterPoint Energy Transition Bond Company II, LLC**, following Applicant's execution and delivery to **CenterPoint Energy Transition Bond Company II, LLC** of the Bill of Sale transferring Applicant's rights and interests under the Financing Order relating to this series of Transition Bonds and other rights and interests that will become Transition Property upon transfer to **CenterPoint Energy Transition Bond Company II, LLC** as described in the Financing Order.

[4] Due to dynamic factors, the transition charge, including the residential charge, will change slightly from period to period, even in cases of no variation from the current forecast.

**NOTICE**

Copies of this filing are being furnished to the parties on the attached service list. Notice to the public is hereby given by filing and keeping this filing open for public inspection at Applicant's corporate headquarters.

**AUTHORIZED OFFICER**

The undersigned is an officer of Applicant and authorized to deliver this Issuance Advice Letter on behalf of Applicant.

Respectfully submitted,

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC

By: H.W. Roesler

Name: H.W. Roesler
Title: Division Vice President Regulatory Relations
CenterPoint Energy, Inc

**ATTACHMENT 1**
**SCHEDULE A**
**CALCULATION OF SECURITIZED QUALIFIED COSTS[5]**

| | |
|---|---|
| Amount permitted to be securitized by Preliminary Order: | $1,493,747,264 |
| EMCs through 12/15/05 | 139,491,591 |
| Interest through 12/15/05 | 208,109,922 |
| Up-front Qualified Costs | 13,009,388 |
| Less: Amount recovered through CTCs, if any | -- |
| Less: Amount Allocated to Texas – New Mexico Power | 3,358,166 |
| **TOTAL SECURITIZED QUALIFIED COSTS** | **$1,851,000,000** |

[5] Refer to the attached workpapers.

**ATTACHMENT 1**
**SCHEDULE B**
**ESTIMATED UP-FRONT QUALIFIED COSTS**

| | | |
|---|---|---|
| **Capped Portion of Costs** | | |
| Underwriters' Fees | $ | 7,344,530 |
| SEC Registration Fee | $ | 177,923 |
| Rating Agency Fees | $ | 787,500 |
| Legal Fees and Expenses for Underwriters' Counsel | $ | 2,000,000 |
| Accountant's/Auditor's Fees | $ | 150,000 |
| Commission's Financial Advisor Fees | $ | 950,000 |
| Trustee Fee and Counsel | $ | 22,500 |
| Servicer Set-up Costs | $ | 315,200 |
| Printing and Filing Costs | $ | 113,653 |
| Company's Advisor's Fee | $ | 478,312 |
| Securitization Proceedings Expenses | $ | 137,097 |
| Miscellaneous | $ | 177,089 |
| **Subtotal, Capped Portion of Costs** | **$** | **12,653,804** |
| **Uncapped Portion of Costs** | | |
| SEC Registration Fee | $ | 40,646 |
| Original Issue Discount | $ | 314,939 |
| **Subtotal, Uncapped Portion of Costs** | **$** | **355,584** |
| **TOTAL UP-FRONT QUALIFIED COSTS** | **$** | **13,009,388** |

**Note: Costs are subject to the caps set forth in the Financing Order. Any difference between the Estimated Up-front Qualified Costs securitized and the actual up-front costs incurred will be resolved through the true-up process described in the Financing Order.**

**ATTACHMENT 2**
**SCHEDULE A**
**TRANSITION BOND REVENUE REQUIREMENT INFORMATION**

**SERIES A, TRANCHE A-1**

| Payment Date | Principal Balance | Interest | Principal | Total Payment |
|---|---|---|---|---|
| | $250,000,000.00 | | | |
| 8/1/2006 | 231,435,317.38 | $7,562,500.00 | $18,564,682.62 | $26,127,182.62 |
| 2/1/2007 | 179,908,675.26 | 5,600,734.68 | 51,526,642.12 | 57,127,376.80 |
| 8/1/2007 | 144,571,637.66 | 4,353,789.94 | 35,337,037.60 | 39,690,827.54 |
| 2/1/2008 | 89,916,590.07 | 3,498,633.63 | 54,655,047.60 | 58,153,681.23 |
| 8/1/2008 | 50,875,178.22 | 2,175,981.48 | 39,041,411.84 | 41,217,393.32 |
| 2/1/2009 | - | 1,231,179.31 | 50,875,178.22 | 52,106,357.54 |

**ATTACHMENT 2**
**SCHEDULE A**
**TRANSITION BOND REVENUE REQUIREMENT INFORMATION**

**SERIES A, TRANCHE A-2**

| Payment Date | Principal Balance | Interest | Principal | Total Payment |
|---|---|---|---|---|
| | $368,000,000.00 | | | |
| 8/1/2006 | 368,000,000.00 | $11,431,000.00 | $ - | $11,431,000.00 |
| 2/1/2007 | 368,000,000.00 | 9,144,800.00 | - | 9,144,800.00 |
| 8/1/2007 | 368,000,000.00 | 9,144,800.00 | - | 9,144,800.00 |
| 2/1/2008 | 368,000,000.00 | 9,144,800.00 | - | 9,144,800.00 |
| 8/1/2008 | 368,000,000.00 | 9,144,800.00 | - | 9,144,800.00 |
| 2/1/2009 | 360,066,563.33 | 9,144,800.00 | 7,933,436.67 | 17,078,236.67 |
| 8/1/2009 | 317,117,443.72 | 8,947,654.10 | 42,949,119.61 | 51,896,773.71 |
| 2/1/2010 | 253,934,484.98 | 7,880,368.48 | 63,182,958.74 | 71,063,327.22 |
| 8/1/2010 | 207,053,841.54 | 6,310,271.95 | 46,880,643.44 | 53,190,915.39 |
| 2/1/2011 | 139,554,687.16 | 5,145,287.96 | 67,499,154.38 | 72,644,442.34 |
| 8/1/2011 | 88,537,461.03 | 3,467,933.98 | 51,017,226.12 | 54,485,160.10 |
| 2/1/2012 | 16,503,845.14 | 2,200,155.91 | 72,033,615.90 | 74,233,771.80 |
| 8/1/2012 | - | 410,120.55 | 16,503,845.14 | 16,913,965.69 |

ATTACHMENT 2
SCHEDULE A
TRANSITION BOND REVENUE REQUIREMENT INFORMATION

SERIES A, TRANCHE A-3

| Payment Date | Principal Balance | Interest | Principal | Total Payment |
|---|---|---|---|---|
| | $252,000,000.00 | | | |
| 8/1/2006 | 252,000,000.00 | $8,016,750.00 | $ - | $8,016,750.00 |
| 2/1/2007 | 252,000,000.00 | 6,413,400.00 | - | 6,413,400.00 |
| 8/1/2007 | 252,000,000.00 | 6,413,400.00 | - | 6,413,400.00 |
| 2/1/2008 | 252,000,000.00 | 6,413,400.00 | - | 6,413,400.00 |
| 8/1/2008 | 252,000,000.00 | 6,413,400.00 | - | 6,413,400.00 |
| 2/1/2009 | 252,000,000.00 | 6,413,400.00 | - | 6,413,400.00 |
| 8/1/2009 | 252,000,000.00 | 6,413,400.00 | - | 6,413,400.00 |
| 2/1/2010 | 252,000,000.00 | 6,413,400.00 | - | 6,413,400.00 |
| 8/1/2010 | 252,000,000.00 | 6,413,400.00 | - | 6,413,400.00 |
| 2/1/2011 | 252,000,000.00 | 6,413,400.00 | - | 6,413,400.00 |
| 8/1/2011 | 252,000,000.00 | 6,413,400.00 | - | 6,413,400.00 |
| 2/1/2012 | 252,000,000.00 | 6,413,400.00 | - | 6,413,400.00 |
| 8/1/2012 | 213,121,395.05 | 6,413,400.00 | 38,878,604.95 | 45,292,004.95 |
| 2/1/2013 | 136,291,216.12 | 5,423,939.50 | 76,830,178.93 | 82,254,118.43 |
| 8/1/2013 | 76,210,863.70 | 3,468,611.45 | 60,080,352.42 | 63,548,963.87 |
| 2/1/2014 | - | 1,939,566.48 | 76,210,863.70 | 78,150,430.18 |

**ATTACHMENT 2**
**SCHEDULE A**
**TRANSITION BOND REVENUE REQUIREMENT INFORMATION**

**SERIES A, TRANCHE A-4**

| Payment Date | Principal Balance | Interest | Principal | Total Payment |
|---|---|---|---|---|
| | $519,000,000.00 | | | |
| 8/1/2006 | 519,000,000.00 | $16,770,187.50 | $ - | $16,770,187.50 |
| 2/1/2007 | 519,000,000.00 | 13,416,150.00 | - | 13,416,150.00 |
| 8/1/2007 | 519,000,000.00 | 13,416,150.00 | - | 13,416,150.00 |
| 2/1/2008 | 519,000,000.00 | 13,416,150.00 | - | 13,416,150.00 |
| 8/1/2008 | 519,000,000.00 | 13,416,150.00 | - | 13,416,150.00 |
| 2/1/2009 | 519,000,000.00 | 13,416,150.00 | - | 13,416,150.00 |
| 8/1/2009 | 519,000,000.00 | 13,416,150.00 | - | 13,416,150.00 |
| 2/1/2010 | 519,000,000.00 | 13,416,150.00 | - | 13,416,150.00 |
| 8/1/2010 | 519,000,000.00 | 13,416,150.00 | - | 13,416,150.00 |
| 2/1/2011 | 519,000,000.00 | 13,416,150.00 | - | 13,416,150.00 |
| 8/1/2011 | 519,000,000.00 | 13,416,150.00 | - | 13,416,150.00 |
| 2/1/2012 | 519,000,000.00 | 13,416,150.00 | - | 13,416,150.00 |
| 8/1/2012 | 519,000,000.00 | 13,416,150.00 | - | 13,416,150.00 |
| 2/1/2013 | 519,000,000.00 | 13,416,150.00 | - | 13,416,150.00 |
| 8/1/2013 | 519,000,000.00 | 13,416,150.00 | - | 13,416,150.00 |
| 2/1/2014 | 513,249,049.38 | 13,416,150.00 | 5,750,950.62 | 19,167,100.62 |
| 8/1/2014 | 448,198,338.27 | 13,267,487.93 | 65,050,711.11 | 78,318,199.04 |
| 2/1/2015 | 360,804,209.00 | 11,585,927.04 | 87,394,129.27 | 98,980,056.32 |
| 8/1/2015 | 290,434,163.05 | 9,326,788.80 | 70,370,045.95 | 79,696,834.75 |
| 2/1/2016 | 197,270,773.41 | 7,507,723.11 | 93,163,389.64 | 100,671,112.75 |
| 8/1/2016 | 121,240,531.42 | 5,099,449.49 | 76,030,241.99 | 81,129,691.49 |
| 2/1/2017 | 21,943,148.46 | 3,134,067.74 | 99,297,382.96 | 102,431,450.70 |
| 8/1/2017 | - | 567,230.39 | 21,943,148.46 | 22,510,378.85 |

**ATTACHMENT 2**
**SCHEDULE A**
**TRANSITION BOND REVENUE REQUIREMENT INFORMATION**

**SERIES A, TRANCHE A-5**

| Payment Date | Principal Balance | Interest | Principal | Total Payment |
|---|---|---|---|---|
| | $462,000,000.00 | | | |
| 8/1/2006 | 462,000,000.00 | $15,309,525.00 | $ - | $15,309,525.00 |
| 2/1/2007 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 8/1/2007 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 2/1/2008 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 8/1/2008 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 2/1/2009 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 8/1/2009 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 2/1/2010 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 8/1/2010 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 2/1/2011 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 8/1/2011 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 2/1/2012 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 8/1/2012 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 2/1/2013 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 8/1/2013 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 2/1/2014 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 8/1/2014 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 2/1/2015 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 8/1/2015 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 2/1/2016 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 8/1/2016 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 2/1/2017 | 462,000,000.00 | 12,247,620.00 | - | 12,247,620.00 |
| 8/1/2017 | 401,924,375.89 | 12,247,620.00 | 60,075,624.11 | 72,323,244.11 |
| 2/1/2018 | 296,111,799.76 | 10,655,015.20 | 105,812,576.12 | 116,467,591.33 |
| 8/1/2018 | 207,644,274.35 | 7,849,923.81 | 88,467,525.42 | 96,317,449.23 |
| 2/1/2019 | 94,860,409.09 | 5,504,649.71 | 112,783,865.25 | 118,288,514.96 |
| 8/1/2019 | - | 2,514,749.45 | 94,860,409.09 | 97,375,158.54 |

**ATTACHMENT 2**
**SCHEDULE B**
**ONGOING QUALIFIED COSTS**

| | ANNUAL AMOUNT |
|---|---|
| Servicing Fee (0.05% of Transition Bonds principal amount) | $ 925,500 |
| Administration Fees and Expenses | $ 100,000 |
| Trustee Fees and Expenses | $ 4,500 |
| Legal and Accounting Costs | $ 125,000 |
| Ongoing Costs of Credit Enhancement (other than Collection Account) | $ - |
| Ongoing Costs of Swaps and Hedges | $ - |
| Independent Managers' Fees | $ 3,500 |
| Rating Agency Fees | $ 50,000 |
| Printing and Filing Fees | $ 20,000 |
| Miscellaneous | $ 50,000 |
| **TOTAL ONGOING QUALIFIED COSTS** | $ 1,278,500 |

**Note: Costs are subject to the caps set forth in the Financing Order. The amounts shown for each category of operating expense on this attachment are the expected expenses for the first year of the transition bonds. Transition charges will be adjusted at least annually to reflect any changes in Ongoing Qualified Costs through the true-up process described in the Financing Order.**

**ATTACHMENT 2**
**SCHEDULE C**
**OVERCOLLATERALIZATION ACCOUNT FUNDING REQUIREMENT**

| Payment Date | Payment Amount[6] | Scheduled Overcollateralization Level |
|---|---|---|
| N/A | $ N/A | $ N/A |
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[6] The overcollateralization account will not be funded.

**ATTACHMENT 2**
**SCHEDULE D**
**CALCULATION OF TRANSITION CHARGES**

| Year | Transition Bond Payments[7] | Ongoing Costs[8] | Total Nominal Transition Charge Requirement[9] | Present Value of Transition Charges[10] |
|---|---|---|---|---|
| 1 | $ 77,654,645 | $ 799,063 | $ 78,453,708 | $ 75,893,496 |
| 2 | $ 179,262,144 | $ 1,278,500 | $ 180,540,644 | $ 168,062,134 |
| 3 | $ 181,815,015 | $ 1,278,500 | $ 183,093,515 | $ 161,618,140 |
| 4 | $ 185,235,708 | $ 1,278,500 | $ 186,514,208 | $ 156,126,233 |
| 5 | $ 188,408,583 | $ 1,278,500 | $ 189,687,083 | $ 150,576,178 |
| 6 | $ 191,283,942 | $ 1,278,500 | $ 192,562,442 | $ 144,956,039 |
| 7 | $ 194,180,682 | $ 1,278,500 | $ 195,459,182 | $ 139,529,744 |
| 8 | $ 197,130,622 | $ 1,278,500 | $ 198,409,122 | $ 134,312,884 |
| 9 | $ 200,130,970 | $ 1,278,500 | $ 201,409,470 | $ 129,295,076 |
| 10 | $ 203,172,131 | $ 1,278,500 | $ 204,450,631 | $ 124,461,837 |
| 11 | $ 206,296,044 | $ 1,278,500 | $ 207,574,544 | $ 119,830,279 |
| 12 | $ 209,512,694 | $ 1,278,500 | $ 210,791,194 | $ 115,395,988 |
| 13 | $ 212,785,041 | $ 1,278,500 | $ 214,063,541 | $ 111,128,792 |
| 14 | $ 215,663,674 | $ 1,278,500 | $ 216,942,174 | $ 106,803,792 |
| Total | $ 2,642,531,895 | $ 17,419,563 | $ 2,659,951,457 | $ 1,837,990,612 |

[7] From Attachment 2, Schedule A.
[8] From Attachment 2, Schedule B.
[9] Sum of transition bond payments and ongoing costs.
[10] The discount rate used is the weighted average effective annual interest rate of the transition bonds (5.4519%). The present value calculation takes into account the timing of the payment dates.

**ATTACHMENT 2**
**SCHEDULE E**
**COMPLIANCE WITH SUBCHAPTER G OF THE UTILITIES CODE**

Tangible & Quantifiable Benefits and Revenue Requirements Tests:[11]

| | Conventional Financing Through Competition Transition Charge (CTC)[12] | Securitization Financing[13] | Savings/(Cost) of Securitization Financing |
|---|---|---|---|
| Nominal | $ 3,623,804,198 | $ 2,659,951,457 | $ 963,852,741 |
| Present Value | $ 2,519,466,018 | $ 1,837,990,612 | $ 681,475,407 |

[11] Calculated in accordance with the methodology cited in the Financing Order.
[12] CTC carrying cost at 11.075% and CTC term of 14 years. The discount rate used is the weighted average effective annual interest rate of the transition bonds (5.4519%).
[13] From Attachment 2, Schedule D.

ATTACHMENT 3[14]

INITIAL ALLOCATION OF COSTS TO TC2 CLASSES

| (1) TC2 Class | (2) PBRAF | (3) Subgroups | (4) Allocation Factor After Intra-Industrial Adjustment | (5) Periodic Billing Requirement | (6) Billing Requirement per TC2 Class (4) * (5) | (7) Forecasted Billing Determinant | (8) Transition Charge (6) / (7) |
|---|---|---|---|---|---|---|---|
| Residential | 40.0412% | | 40.0412% | $ 168,234,953 | $ 67,363,294 | 23,235,966,421 | 0.002899 $/kWh |
| | | 0.1872% | 0.1872% | $ 168,234,953 | $ 314,936 | 816,784 | 0.385581 $/kW |
| MGS | 29.0309% | 28.8437% | 28.8437% | $ 168,234,953 | $ 48,525,185 | 18,325,958,114 | 0.002648 $/kWh |
| | | 16.0015% | 16.0015% | $ 168,234,953 | $ 26,920,116 | 25,669,889 | 1.048704 $/kVa |
| LGS | 16.1206% | 0.1191% | 0.1191% | $ 168,234,953 | $ 200,368 | 112,536 | 1.780475 $/kW |
| LOS-A | 4.7917% | | 4.7976% | $ 168,234,953 | $ 8,071,054 | 9,152,981 | 0.881795 $/kW |
| LOS-B | 2.7598% | | 2.3002% | $ 168,234,953 | $ 3,869,789 | 3,099,729 | 1.248428 $/kW |
| Non-Metered Lighting | 0.6600% | | 0.6600% | $ 168,234,953 | $ 1,110,351 | 261,530,412 | 0.004246 $/kWh |
| Standby Electric Svc. – Distribution | 0.0323% | | 0.0365% | $ 168,234,953 | $ 61,468 | 158,790 | 0.387106 $/kW |
| Interruptible Svc. Supplemental – Dist. | 0.1578% | | 0.1578% | $ 168,234,953 | $ 265,475 | 125,084 | 2.122377 $/kW |
| Interruptible Svc. – 30 Minute Notice | 1.0392% | | 1.1241% | $ 168,234,953 | $ 1,891,132 | 2,491,881 | 0.758917 $/kW |
| Interruptible Svc. – 10 Minute Notice | 1.8814% | | 2.2000% | $ 168,234,953 | $ 3,701,175 | 8,120,882 | 0.455760 $/kW |
| Interruptible Svc. – Instantaneous | 0.2454% | | 0.2486% | $ 168,234,953 | $ 418,249 | 481,573 | 0.868506 $/kW |
| Interruptible Svc. Supplemental – Trans. | 0.0672% | | 0.0743% | $ 168,234,953 | $ 125,078 | 143,838 | 0.869578 $/kW |
| Standby Electric Svc. – Transmission | 0.2383% | | 0.2541% | $ 168,234,953 | $ 427,415 | 1,134,265 | 0.376821 $/kW |
| Standby Interruptible Svc. | 0.2076% | | 0.2275% | $ 168,234,953 | $ 382,773 | 3,158,259 | 0.121198 $/kW |
| Special Contract Pricing | 2.7266% | | 2.7266% | $ 168,234,953 | $ 4,587,094 | 3,831,535 | 1.197195 $/kW |
| Total | 100.0000% | | 100.0000% | | $ 168,234,953 | | |

[14] Column (4) was added to the form of Attachment 3 contained in the Financing Order to accommodate the Allocation Settlement Agreement reached in Docket No. 30485.

**ATTACHMENT 4**
**FORM OF APPLICANT'S CERTIFICATION**

CenterPoint Energy

Date: December 12, 2005

Public Utility Commission of Texas
1701 N. Congress Ave.
P.O. Box 13362
Austin, TX 78711-3326

Saber Partners, LLC
44 Wall Street
New York, NY 10005

Re: *Application of CenterPoint Energy Houston Electric, LLC for a Financing Order*, Docket No. 30485

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC (the "Applicant") submits this Certification pursuant to Ordering Paragraph No. 4 of the Financing Order in *Application of CenterPoint Energy Houston Electric, LLC for a Financing Order*, Docket No. 30485 (the "Financing Order"). All capitalized terms not defined in this letter shall have the meanings ascribed to them in the Financing Order.

In its issuance advice letter dated December 12, 2005, the Applicant has set forth the following particulars of the Transition Bonds:

Name of Transition Bonds: **CenterPoint Senior Secured Transition Bonds, Series A**
SPE: **CenterPoint Energy Transition Bond Company II, LLC**
Closing Date: December 16, 2005
Amount Issued: $1,851,000,000
Expected Amortization Schedule: See Attachment 2, Schedule A to the Issuance Advice Letter
Distributions to Investors (quarterly or semi-annually): Semi-annually
Weighted Average Coupon Rate[15]: 5.1664%
Weighted Average Annual Interest Rate[16]: 5.2331%
Weighted Average Yield[17]: 5.4519%

[15] Semi-annual coupon rates weighted by the principal amount and modified duration of each class.
[16] Annualized weighted average coupon rate, giving effect to compounding.
[17] The internal rate of return giving effect to compounding, calculated including all upfront and ongoing costs.

The following actions were taken in connection with the design, marketing, structuring and pricing of the bonds:

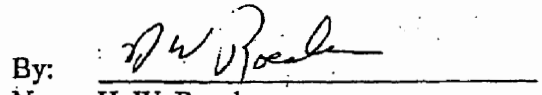
- Included credit enhancement in the form of the true-up mechanism and an equity contribution of 0.50% of the original principal amount.
- Eliminated the overcollateralization account.
- Registered the transition bonds with the Securities and Exchange Commission to facilitate greater liquidity.
- Achieved Aaa/AAA/AAA ratings from each of the three major rating agencies.
- Worked with the Commission's financial advisor to select underwriters that have relevant experience and execution capability.
- Provided the termsheet and preliminary prospectus by e-mail to prospective investors.
- Allowed sufficient time for investors to review the termsheet and preliminary prospectus and to ask questions regarding the transaction.
- Held one-on-one and group conference calls with investors, along with meetings with potential investors in Asia and Europe to describe the legislative, political and regulatory framework and the bond structure.
- Arranged issuance of rating agency pre-sale reports during the marketing period.
- During the period that the bonds were marketed, held daily market update discussions with the underwriting team to develop recommendations for pricing.
- Had multiple conversations with all of the members of the underwriting team during the marketing phase in which we stressed the requirements of the Financing Order.
- Developed and implemented a marketing plan designed to incent each of the underwriters to aggressively market the bonds 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.
- Provided potential investors with access to an internet roadshow for viewing on repeated occasions at investors' convenience. Similar roadshow information was also presented in one-on-one and group meetings with investors.
- Adapted the transition bond offering to market conditions and investor demand at the time of pricing. Variables impacting the final structure of the transaction were evaluated including the relative benefit of a fixed versus floating rate issue, length of average lives and maturity

of the bonds and interest rate requirements at the time of pricing so that the structure of the transaction would correspond to investor preferences and rating agency requirements for AAA ratings.

- Worked with the Commission's financial advisor to develop bond allocations, underwriter compensation and preliminary price guidance designed to achieve lowest interest rates.

Based upon information reasonably available to the officers, agents, and employees of the Applicant, the Applicant hereby certifies that the structuring and pricing of the Transition Bonds, as described in the issuance advice letter, will result in the lowest transition bond charges consistent with market conditions and the terms of the Financing Order (including the amortization structure, if any, ordered by the Commission), all within the meaning of Section 39.301 of PURA.

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC

By: 
Name: H. W. Roesler
Title: Division Vice President Regulatory Relations
CenterPoint Energy, Inc

CenterPoint Energy Houston Electric, LLC
Applicable: Entire Service Area

CNP 828

## 6.1.1.7.2- SCHEDULE TC2- TRANSITION CHARGES

### SECTION 1: APPLICABILITY

This schedule sets out the rates and terms and conditions under which Transition Charges will be billed and collected by CenterPoint Energy Houston Electric, LLC (Company), any successor servicer(s) and any retail electric providers (REP) or collection agents billing or collecting Transition Charges on behalf of CenterPoint Energy Transition Bond Company II, LLC (SPE). The Transition Charges were authorized by the Financing Order approved by the Public Utility Commission of Texas (Commission) in Docket No. 30485 on March 16, 2005 (Financing Order). Pursuant to terms of the Financing Order and the requirements of Section 39.301 *et seq.* of the Texas Utilities Code, all of the Company's rights under the Financing Order, including the right to bill and collect Transition Charges and to adjust Transition Charges pursuant to this Schedule TC2, were transferred to the SPE in connection with the issuance of transition bonds. The rights transferred to the SPE are "transition property" of the SPE (as defined in Section 39.304 of the Utilities Code). On the effective date of this Schedule TC2, the Company will act as servicer on behalf of the SPE to bill, collect, receive and adjust Transition Charges imposed pursuant to this Schedule TC2. However, the SPE may select another party to serve as servicer or the Company may resign as servicer in accordance with the terms and subject to the conditions of the Servicing Agreement and the Financing Order. A successor servicer selected under these conditions will assume the obligations of the Company as servicer under this Schedule TC2. As used in this Schedule TC2, the term "Servicer" includes any successor servicer. All actions by the Company under this Schedule TC2, including collection of Transition Charges, will be undertaken solely in its role as servicer under the Servicing Agreement between the Company and the SPE dated as of December 16, 2005.

This schedule is applicable to:

1. Retail customers located within the certificated service area of Reliant Energy HL&P (HL&P) as such service area existed on May 1, 1999 who receive electric transmission and/or distribution service through a REP served by the Company and to the facilities, premises and loads of such retail customers;

2. Retail customers located within HL&P's certificated service area as it existed on May 1, 1999 who are presently receiving transmission and/or distribution service either directly from another utility, electric cooperative or municipally owned utility (T or D Provider) or through a REP served by another T or D Provider, and whose request to change service to the other T or D Provider was made after May 1, 1999;

3. Retail customers located within HL&P's certificated service area as it existed on May 1, 1999 and who are served by New On-Site Generation. New On-Site Generation means "New On-Site Generation" as defined in Section 25.345(c)(1) of the Commission's Substantive Rules.

4. REPs that serve retail customers located within HL&P's certificated service area as it existed on May 1, 1999.

5. Any other entity which, under the terms of the Financing Order or the Utilities Code, may be obligated to pay, bill, collect, or adjust the Transition Charges.

6. This schedule is applicable to public retail customers located within HL&P's certificated service area as it existed on May 1, 1999 who purchase power from the General Land Office as provided for in the Utilities Code, Section 35.102.

## SECTION 2: CHARACTER OF TRANSITION CHARGES

Transition Charges are non-bypassable charges. All Transition Charges other than those applicable to New On-Site Generation are computed and paid on the basis of individual end-use retail customer consumption or demand. In accordance with Utilities Code Section 39.252(b) and Section 25.345(i)(3) of the Commission's Substantive Rules, the Transition Charges applicable to use of New On-Site Generation that results in a "material reduction" of the customer's use of energy delivered through the Company's transmission and distribution facilities (as defined in Section 25.345(i)(4) of the Commission's Substantive Rules) are computed and paid based on the output of the on-site generation used to meet the internal electric requirements of the customer. Customers with New On-Site Generation will also be required to pay the Transition Charges applicable to energy actually delivered to the Customer through the Company's facilities. Individual end-use retail customers are responsible for paying Transition Charges billed to them in accordance with the terms of this Schedule TC2 whether the charges are billed directly by Servicer or are included in the bills submitted to the customer by a REP or another entity. Payment is to be made to the entity that bills the customer in accordance with the terms of the Servicing Agreement and the Financing Order. The billing entity may be the Company, a successor servicer, a REP or an entity designated to collect Transition Charges in place of the REP.

The Transition Charges are separate charges to be paid in addition to any other applicable charges for services received. Although the Transition Charges are separate charges, they may be included within other charges of the billing entity.

The REP or entity designated to collect Transition Charges in place of the REP will pay Transition Charges (less an allowance for charge-offs calculated pursuant to this Schedule TC2)

to Servicer in accordance with the requirements of the Financing Order and this Schedule TC2 whether or not it has collected the Transition Charges from its customers. To the extent that the REP's actual charge-offs differ from the charge-off allowance, adjustments will be made pursuant to this Schedule TC2. The REP will have no right to reimbursement other than as expressly set out in this Schedule TC2.

Servicer will remit collections to the SPE in accordance with the terms of the Servicing Agreement.

**SECTION 3: TERM**

This Schedule TC2 is effective beginning on the date the transition bonds are issued. Schedule TC2 will remain in effect as provided in the Financing Order until the Transition Charges collected and remitted to the SPE are sufficient to satisfy all obligations of the SPE to pay principal and interest on the transition bonds (as due over the 14 year term of the transition bonds) and to pay all other qualified costs as provided in the Financing Order. However, in no event will the Transition Charges be billed for service provided after 15 years from issuance of the transition bonds, or sooner if the transition bonds are paid in full at an earlier date. This Schedule TC2 is irrevocable.

**SECTION 4: TRANSITION CHARGE CLASSES**

Transition Charges are calculated and applied by Transition Charge Class. There are 15 Transition Charge Classes, nine of which are Capped Classes. Each Transition Charge Class is defined in terms of the base rate tariff classes that existed on HL&P's system on September 1, 1999 ("pre-restructuring rate schedules"). The Transition Charge Classes are defined as follows:

**Residential Class:** The Residential Class is made up of (i) every customer that was served under HL&P rate schedule RS or RTD on the day before the customer discontinued taking service from HL&P under a pre-restructuring rate schedule, and (ii) each new customer that was not served by HL&P under any pre-restructuring rate schedule, but is the type of customer which, if it had been served by HL&P under pre-restructuring rate schedules would have qualified for service under HL&P's rate schedules RS or RTD.

**MGS Class:** The MGS Class is made up of (i) every customer that was served under HL&P rate schedule MGS on the day before the customer discontinued taking service from HL&P on a pre-restructuring rate schedule, and (ii) each new customer that was not served by HL&P under any pre-restructuring rate schedule, but is the type of customer which, if it had been served by HL&P under a pre-restructuring rate schedule would have qualified for service under HL&P's rate schedule MGS and whose demand is estimated by the Company to be less than 400 kVa. This class includes customers served under Rider GLTC. Customers served under rate schedules EIS, HVP and CSB are included in

the MGS class if the customer's contract for service from HL&P provided that the MGS rate was the basis for pricing.

**LGS Class:** The LGS Class is made up of (i) every customer that was served under HL&P rate schedule LGS on the day before the customer discontinued taking service from HL&P on a pre-restructuring rate schedule, and (ii) each new customer that was not served by HL&P under any pre-restructuring rate schedule, but is the type of customer which, if it had been served by HL&P under a pre-restructuring rate schedule would have qualified for service under HL&P's rate schedules LGS and whose demand as estimated by the Company, if served at less than 60,000 volts, is 400 kVa or greater; or if served at 60,000 volts or greater, is at least 400 kVa but less than 2,000 kVa. This class includes customers served under Rider SEL. Customers served under rate schedules EIS, HVP and CSB are included in the LGS class if the customer's contract for service from HL&P provided that the LGS rate was the basis for pricing.

**LOS-A Class:** The LOS-A Class is made up of (i) every customer that was served under HL&P rate schedule LOS-A on the day before the customer discontinued taking service from HL&P on a pre-restructuring rate schedule, and (ii) each new customer that was not served by HL&P under any pre-restructuring rate schedule, but is the type of customer which, if it had been served by HL&P under a pre-restructuring rate schedule would have qualified for service under HL&P's rate schedule LOS-A and has a demand as estimated by the Company of 2,000 kVa or greater. Customers served under rate schedules EIS and HVP are included in the LOS-A class if the customer's contract for service from HL&P provided that the LOS-A rate was the basis for pricing.

**LOS-B Class:** The LOS-B Class is made up of every customer that was served under HL&P rate schedule LOS-B on the day before the customer discontinued taking service from HL&P on a pre-restructuring rate schedule. Customers that were not served by HL&P under any pre-restructuring rate schedule may not be included in this class.

**Non-Metered Lighting Class:** The Non-Metered Lighting Class is made up of (i) every customer that was served under HL&P rate schedules SPL, MLS or MTA on the day before the customer discontinued taking service from HL&P on a pre-restructuring rate schedule, and (ii) each new customer which was not served by HL&P under any pre-restructuring rate schedule, but is taking outdoor lighting services which are provided on an unmetered basis using lighting fixtures controlled by photo-electric devices which would have qualified for service under HL&P's pre-restructuring rate schedules SPL, MLS and MTA.

In addition to the six Transition Charge Classes described above, there will be nine additional Transition Charge Classes, each of which is a capped class ("Capped Classes"). Each of the Capped Classes will be made up solely of customers that actually received service from HL&P during the 12-month period ended April 30, 1999 under the HL&P rate schedule related to the

class and any SIP customers with a contract effective date after April 30, 1999 and before January 1, 2002. The nine Capped Classes, and the related rate schedule, are as follows:

| Capped Class | Related Rate Schedule |
|---|---|
| Standby Electric Service – Distribution | **SES** |
| Interruptible Service Supplemental – Distribution | **ISS** |
| Interruptible Service – 30 minute notice | **IS-30** |
| Interruptible Service – 10 minute notice | **IS-10 & SIP** |
| Interruptible Service – Instantaneous | **IS-I** |
| Interruptible Service Supplemental – Transmission | **ISS** |
| Standby Electric Service – Transmission | **SES** |
| Standby Interruptible Service | **SBI** |
| Special Contract Pricing | **SCP** |

Each customer in one or more of the nine Capped Classes will be charged the Transition Charges for the applicable class only for service the customer actually receives during the billing period up to the Monthly Cap. The Monthly Cap for each customer will be based on the amount of service the customer received under the related rate schedule during the 12-month period ended April 30, 1999 or for any SIP customer, the Monthly Cap will be based on the customer's average monthly interruptible demand corresponding to the initial MFC under the customer's SIP contract effective after April 30, 1999 and before January 1, 2002, and calculated as follows:

(1) For customers which took stand alone standby service (SBI and/or SES without other service), the Monthly Cap for SBI and SES will be the highest demand under the respective rate, during the 12-month period ended April 30, 1999. If a customer began service under SES and/or SBI after April 30, 1999, the Monthly Cap for such customer's will be the highest demand under rate SES or SBI, as applicable, during the period from April 30, 1999 to January 1, 2002, if the customer provides the Company adequate documentation that (i) the additional load served was on-site load normally served by the customer's on-site generation and (ii) the customer's on-site generation was out of service due to forced outage or maintenance. If the customer does not provide the required documentation, the additional load will be billed using the Transition Charges applicable to the LGS Class for distribution voltage customers or LOS-A Class for transmission voltage customers.

(2) For customers which took SBI and/or SES in combination with other services, the Transition Charge for additional load taken in excess of the Monthly Cap will be the Transition Charge for the LOS-A class restated and applied as a cents per KWh charge if the customer provides the Company adequate documentation that (i) the additional load was lawfully served without use of the Company's transmission and distribution facilities and (ii) the customer's on-site generation was out of service due to forced outage or maintenance. If the customer does not provide the required documentation, the additional

load will be billed using the Transition Charges applicable to the LOS-A Class for transmission voltage customers applied on a kW basis.

(3) For any SCP customer that also received service under a non-Capped Class, the SCP rate will have a Monthly Cap based on the amount of service the customer received under the SCP rate schedule during the 12-month period ended April 30, 1999. The Monthly Cap will be the customer's monthly maximum hourly kW under the SCP rate schedule during the peak hours as defined herein, summed for the 12-month period ended April 30, 1999 and divided by the number of months during which the customer actually consumed power under the SCP rate schedule.

(4) For all other customers in Capped Classes, the Monthly Cap will be the customer's monthly maximum hourly kW under the related rate schedule during the peak hours as defined herein, summed for the 12-month period ended April 30, 1999 or alternate period applicable to any SIP customer and divided by the number of months during which the customer actually consumed power under the rate schedule. For monthly service in excess of the Monthly Cap(s), the charge associated with customer's non-capped Transition Charge Class will apply. If the customer is served at distribution voltage and did not have service associated with one of the six non-capped Transition Charge Classes, the customer will be required to pay the Transition Charges applicable to the LGS Class for all monthly service in excess of its Monthly Cap. If the customer is served at transmission voltage and did not have service associated with one of the six non-capped Transition Charge Classes, the customer will be required to pay the Transition Charges applicable to the LOS-A Class for all monthly service in excess of its Monthly Cap.

The categories of service historically provided by HL&P ceased to exist after electric business activities were unbundled pursuant to Section 39.051 of the Utilities Code. Similarly, since the advent of customer choice under Section 39.102 of the Utilities Code, retail customers receive service that may not only have different names, but may have different characteristics than the service historically provided by HL&P. The classifications set out in the preceding paragraphs will be applied to determine the Transition Charge applicable to each customer without regard to the descriptions that may be used to describe the services currently provided to retail customers.

**SECTION 5: PERIODIC BILLING REQUIREMENT ALLOCATION FACTORS**

The initial Periodic Billing Requirement Allocation Factors ("PBRAF") for each Transition Charge Class are set out below. These initial PBRAFs will remain in effect throughout the life of the transition bonds unless a modification of the factors is made pursuant to the allocation factor adjustment provisions in Section 6 of this Schedule TC2:

***INITIAL PERIODIC BILLING REQUIREMENT ALLOCATION FACTORS***

| *TRANSITION CHARGE CLASS* | *PBRAF* |
|---|---|
| Residential | 40.0412% |
| MGS | 29.0309% |
| LGS | 16.1206% |
| LOS-A | 4.7917% |
| LOS-B | 2.7598% |
| Non-Metered Lighting | 0.6600% |
| **CAPPED CLASSES** | |
| Standby Electric Service-Distribution | 0.0323% |
| Interruptible Service Supplemental- Distribution | 0.1578% |
| Interruptible Service –Thirty Minute Notice | 1.0392% |
| Interruptible Service –Ten Minute Notice | 1.8814% |
| Interruptible Service – Instantaneous | 0.2454% |
| Interruptible Service Supplemental – Transmission | 0.0672% |
| Standby Electric Service – Transmission | 0.2383% |
| Standby Interruptible Service | 0.2076% |
| Special Contract Pricing | 2.7266% |

**SECTION 6: ALLOCATION FACTOR ADJUSTMENTS**

The PBRAFs will be subject to adjustment using the procedures in this Section 6. Any adjustment required under this Section 6 will be made effective on the date of an annual Standard True-up Adjustment. Required adjustments will be made in the following order: first, adjustments will be made under Part A; second, adjustments will be made under Part B; and third, adjustments will be made under Part C.

For purposes of determining whether an allocation adjustment is required under Parts B and C of this Section 6 and adjusting PBRAFs pursuant to those Parts, the Transition Charge Classes will be combined into three groups (TC Groups) as follows:

*TC GROUPS*

| *TC GROUP* | *TRANSITION CHARGE CLASSES* | *INITIAL GROUP ALLOCATION PERCENTAGE* |
|---|---|---|
| Residential | Residential | 40.0412% |
| Commercial | MGS, LGS, Non-Metered Lighting | 45.8115% |
| Industrial | All other Transition Charge Classes | 14.1473% |

**Part A: Adjustments Due to Load Loss Qualifying under Utilities Code Section 39.262(k)**

The PBRAFs shall be adjusted consistent with the Utilities Code to reflect the loss of loads due to operations of facilities that are "Eligible Generation" as defined in PUC Subst. Rule 25.345 (c) (2) ("Eligible Generation") except that this Part A shall not apply to, and the term "Eligible Generation" shall not include, load loss due to installation and operation of small power production facilities with a rated capacity of 10 megawatts or less. Any adjustments required under this Part A will be calculated as follows:

Step 1 – The Company will determine the amount of service provided during the twelve months ended April 30, 1999 that has been replaced by Eligible Generation (excluding amounts reflected in either the Initial PBRAFs or a prior adjustment under this Part A) and sum the losses by Transition Charge Class.

Step 2 – The Company will recalculate the PBRAFs for all Transition Charge Classes using the spreadsheet and data used to compute the initial PBRAFs but reducing the demand allocation factors for each Transition Charge Class to reflect the cumulative losses for that class as calculated under Step 1 (including losses for which PBRAF adjustments were made in prior years). No other changes to the spreadsheet or data used to compute the initial PBRAFs will be made. Appendix A to this Schedule TC2 contains the spreadsheet and data used to compute the initial PBRAFs.

Step 3 – An Adjusted Group Allocation Percentage for each TC Group shall then be calculated as the sum of the Adjusted PBRAFs (computed under Step 2) for all Transition Charge Classes within the TC Group.

**Part B: Inter-Group Adjustments Due to Cumulative Load Loss Not Attributable to Eligible Generation**

In connection with each annual Standard True-up Adjustment, the Company will compare the projected billing determinants being used to set Transition Charges for each Transition Charge Class during the ensuing year to the billing determinants in effect on the original effective date of

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Schedule TC2 (adjusted to exclude any billing determinants attributable to Eligible Generation if any adjustment was made under Part A after the original effective date) (such billing determinants as adjusted are hereafter referred to as the "Base Billing Determinants"). The PBRAFs of all Transition Charge Classes in all TC Groups will be adjusted if one or more TC Groups experience load loss (calculated excluding load loss attributable to Eligible Generation for which adjustments have been made under Part A but including load loss attributable to small power production facilities of 10 megawatts or less) aggregating 50% or more on a cumulative basis when measured against the Base Billing Determinants. The adjustments under this Part B will be made using the following procedures:

Step 1:

| | |
|---|---|
| For each TC Group, if $CTCOL_G / PBR_G \geq 0.50$ | Then, no PBRAF adjustment will occur and any adjustment made in previous years under Part B shall be reversed |
| For each TC Group, if $CTCOL_G / PBR_G < 0.50$ | Then, a PBRAF adjustment will be calculated pursuant to Steps 2 through 5. |

Where:

$CTCOL_G$ = cumulative test collections for group $G = \Sigma\ CC_c * FBU_c$ for all classes (c) in Group (G)

$FBU_c$ = forecasted billing determinants for class c

$CC_c$= cumulative test charge for class $c = \{PBRAF_c * PBR_T\} / BBD_c$

$PBRAF_c$= the PBRAFs then in effect, or if an adjustment has been made under Part A, the adjusted PBRAFs from Part A

$PBR_T$= total periodic billing requirement for upcoming period

$BBD_c$= Base Billing Determinants for class c

$PBR_G$= periodic billing requirement for group $= \Sigma\ PBRAF_c * PBR_T$ for all classes in G

Step 2:
For each TC Group in Step 1 where $CTCOL_G / PBR_G < 0.50$, a reduction amount ($RED_G$) will be calculated for group G where

$RED_G = 0.5\ (PBR_G - CTCOL_G)$

Step 3:

For all TC Groups, a reallocation amount for that group ($RA_G$) shall be calculated where:

$$RA_G = GAP_G * \{\Sigma RED_G\} \text{ for all Groups}$$

Where:

$GAP_G$ = Group Allocation Percentage = $\Sigma PBRAF_c$ for all classes in the group

Step 4:

For all TC groups a Group Allocation Percentage Adjustment ($GAPA_G$) shall be calculated where:

$$GAPA_G = (RA_G - RED_G) / PBR_T$$

Where:

$$\Sigma GAPA_G = 0 \text{ for all G}$$

Step 5:

For all TC classes, the PBRAF adjustment for class c ($PBRAFA_c$) will be calculated for use in calculating adjustments to the Transition Charges under Section 8, Part A where

$$PBRAFA_c = GAPA_G * (PBRAF_c / GAP_G)$$

**Part C: Inter-Group Adjustments Due to Year-Over-Year Load Loss Not Attributable to Eligible Generation**

In connection with each annual Standard True-up Adjustment, the Company will compare the projected billing determinants being used to set Transition Charges for each Transition Charge Class during the ensuing year to the forecasted billing determinants used to develop the then currently effective Transition Charges for the class minus the Eligible Generation load loss for the class determined in Step 1 of Part A after the billing determinant for the currently effective Transition Charges was determined (such adjusted amount is hereinafter referred to as the "Prior Year Billing Determinant"). The PBRAFs of all Transition Charge Classes in all TC Groups will be adjusted if (i) one or more TC Groups experience load loss (calculated excluding load loss attributable to Eligible Generation for which adjustments have been made under Part A but including load loss attributable to small power production facilities of 10 megawatts or less) of 10% or greater on a year-over-year basis when compared to the Prior Year Billing Determinants or (ii) any TC Group for which an adjustment was made under this Part C in one or more prior years experiences load growth resulting in projected billing determinants for the current year at a level which, if they had existed in one or more of such prior year(s) would have resulted in no adjustment to PBRAFs in such prior year(s). No reduction in PBRAFs will be made under this Part C for any TC Group for which a reduction amount was computed under Step 5 of Part B. The adjustments under this Part C will be made using the following procedures:

Step 1:
For each TC Group not adjusted under Part B,

| | |
|---|---|
| If $YTCOL_G / PBR_G \geq 0.90$ | Then, no PBRAF adjustment will occur. |
| If $YTCOL_G / PBR_G > 1.00$ | Then, no PBRAF adjustment will occur and any prior year adjustments made under C will be reversed pursuant to step 6. |
| If $YTCOL_G / PBR_G < 0.90$ | Then, a PBRAF adjustment will be calculated pursuant to Steps 2 through 5. |

Where:

$YTCOL_G$ = year-to-year test collections for group G = $\Sigma$ $YC_c$* $FBU_c$ for all classes (c) in Group (G)

$FBU_c$ = forecasted billing determinants for class c

$YC_c$= year-to-year test charge for class c = $\{PBRAF_c * PBR_T\} / FBU_c^{-1}$

$PBRAF_c$= the PBRAFs then in effect, or if an adjustment has been made under Part A, the adjusted PBRAFs from Part A

$PBR_T$= total periodic billing requirement for upcoming period

$FBU_c^{-1}$=prior year's forecasted billing determinants for class c
$PBR_G$= periodic billing requirement for group = $\Sigma$ $PBRAF_c$* $PBR_T$ for all classes in the group

Step 2:
For each TC Group in Step 1 where $YTCOL_G / PBR_G < 0.90$, a year to year reduction amount ($YRED_G$) shall be calculated where

$$YRED_G = 0.9 (PBR_G - YTCOL_G)$$

Step 3:

For all TC Groups, a year to year reallocation amount ($YRA_G$) shall be calculated where:

$$YRA_G = GAP_G * \{\Sigma YRED_G\} \text{ for all groups}$$

Where:

$GAP_G$ = Group Allocation Percentage = $\Sigma$ $PBRAF_c$ for all classes in the group

Step 4:

For all TC groups a year to year group allocation percentage adjustment ($YGAPA_G$) shall be calculated where:

$$YGAPA_G = (YRA_G - YRED_G) / PBR_T$$

Where $\Sigma$ $GAPA_G$ = 0 for all G

Step 5:

For all TC classes, a year to year PBRAF adjustment ($YPBRAFA_c$) shall be calculated for use in calculating adjustments to the Transition Charges under Section 8, Part A where:

$$YPBRAFA_c = YGAPA_G * (PBRAF_c / GAP_G)$$

Step 6:

if$\{\Sigma (YC_c * FBU_c)\}/\{\Sigma (YC_c * FBU_c^{t-1})\} \geq .90$ (for all classes in group G) then the adjustment made in year t shall be discontinued.

if$\{\Sigma (YC_c * FBU_c)\}/\{\Sigma (YC_c * FBU_c^{t-1})\} < .90$ (for all classes in group G) then the adjustment made in year t carries forward.

Where $FBU_c^{t-1}$ is the forecasted billing determinants from the year prior to the year an adjustment was made adjusted to reflect any adjustments made under part A between year t-1 and the current year.

**Part D: Adjustments to Base Class Allocations**

The methodology used to allocate qualified costs and determine Transition Charges shall not be changed except in the limited circumstance described in this paragraph. If, but only if, the total retail stranded costs (determined pursuant to Section 39.253 of the Utilities Code) on a statewide basis exceed $5 billion, then the qualified costs attributable to the Company's share of the statewide stranded costs in excess of $5 billion shall be reallocated using the allocation methodology prescribed in Section 39.253(f) of the Utilities Code. The Company's share of the statewide stranded costs in excess of $5 billion shall be determined by multiplying (i) the percentage obtained by dividing the Company's total stranded costs (determined pursuant to Section 39.253(f)) by the total statewide stranded costs (determined pursuant to Section 39.253(f)) by (ii) the amount by which the total statewide stranded costs (determined pursuant to Section 39.253(f)) exceed $5 billion. The qualified costs attributable to the Company's share of the statewide stranded costs shall then be determined by multiplying (i) the Company's share of the statewide stranded costs by (ii) the percentage obtained by dividing (a) the Company's stranded costs (determined pursuant to Section 39.253(f)) which were securitized pursuant to the Financing Order dated March 16, 2005 in Docket No. 30485 by (b) the Company's total stranded costs (determined pursuant to Section 39.253(f)). The Company shall file the adjustments required herein, within 45 days after the Commission issues any order determining a utility's stranded costs or regulatory assets that causes the total statewide stranded costs (determined pursuant to Section 39.253(f)) to exceed $5 billion or changes the amount by which the total statewide stranded costs (determined pursuant to Section 39.253(f)) exceed $5 billion. Any changes in Transition Charges resulting from a change in the initial or adjusted PBRAFs under this Part D shall be made prospectively from the date of the Commission's order approving adjusted PBRAFs under this Part D. No change in an initial or adjusted PBRAF shall cause the sum of all PBRAFs to be more than or less than 100% or change the total Periodic Billing Requirement for any period. Transition Charges for services rendered prior to such effective date will not be changed. Future changes to the PBRAFs underlying the recomputed Transition Charges, if necessary under Parts A – D of this Section 6 will be computed pursuant to this Section 6 using the initial and adjusted PRBAFs as determined by the Commission pursuant to this Part D.

## SECTION 7: TRANSITION CHARGES

The Transition Charges to be applied beginning on the effective date of this Schedule TC2 are set out below. Transition Charges to be applied in subsequent periods (Adjusted Transition Charges) will be determined in the manner described in Section 8.

*TRANSITION CHARGES*

| *TRANSITION CHARGE CLASS* | *PER UNIT CHARGE* | *BILLING UNIT* |
|---|---|---|
| Residential | $0.002899 | Per kWh |
| MGS | $0.385581<br>$0.002648 | Per kW<br>Per kWh |
| LGS | $1.048704<br>$1.780475 | Per kVa<br>Per kW |
| LOS-A | $0.881795 | Per kW |
| LOS-B | $1.248428 | Per kW |
| Non-Metered Lighting | $0.004246 | Per kWh |
| **CAPPED CLASSES:** | | |
| Standby Electric Service-Distribution | $0.387106 | Per kW |
| Interruptible Service Supplemental- Distribution | $2.122377 | Per kW |
| Interruptible Service –Thirty Minute Notice | $0.758917 | Per kW |
| Interruptible Service –Ten Minute Notice | $0.455760 | Per kW |
| Interruptible Service – Instantaneous | $0.868506 | Per kW |
| Interruptible Service Supplemental - Transmission | $0.869578 | Per kW |
| Standby Electric Service - Transmission | $0.376821 | Per kW |
| Standby Interruptible Service | $0.121198 | Per kW |
| Special Contract Pricing | $1.197195 | Per kW |

The Transition Charges shall be applied on a kW basis for all service provided at Transmission voltage and for all service provided to Capped Classes and to any LGS customer that also received SES-Distribution service. The kW to be used in calculating the bill for those customers obligated to pay on a kW basis will be the highest kW for the month measured over a one hour period occurring on weekdays (Monday through Friday) during the sixteen hours beginning with

and including the hour that ends at seven (a.m.) (07:00) and extending until the hour that ends at ten p.m. (22:00), local time (central standard or central daylight saving time, as appropriate).

Except for customers in the MGS class, the Transition Charges shall be applied on a kVa basis for all service provided at distribution voltage (other than service at distribution voltage to Capped Classes or to LGS customers that also received SES-Distribution service) and whose kVa is greater than 10 kVa in the billing month. The kVa will be the highest kVa measured over a 15 minute period during the month if the metering equipment has indicators for measuring and recording only the highest demand during the billing period, otherwise if the metering equipment measures and records continuously for all 15 minute periods the kVa will be the average of the 4 highest 15 minute periods measured during the billing period. If the demand meters used to meter service to a customer measure service is on a kW basis instead of a kVa basis or measure in intervals different than 15 minutes (*e.g.* 5, 10, 30 minutes) the transition charge to the customer will be based on the kW with the interval measurement period closest to a 15 minute period.

Transition Charges will be applied on a kWh basis for those customers with watt-hour meters and those customers with demand meters whose measured demand is 10 kVa or less, all Residential customers, all Non-Metered Lighting customers and all MGS customers served at distribution voltage.

Each retail customer shall be obligated to pay Transition Charges for its applicable class. The Transition Charge shall be applied to all service received by the customer during the applicable billing period. If a customer was taking service in more than one rate class through one point of service on April 30,1999, or on the day before the customer discontinued taking service from HL&P on a pre-restructuring rate schedule, its Transition Charges shall be determined as follows:

1. For customers taking service under two or more rates through a single meter, the following order will be used to determine Transition Charges for the customer:

(a) If the customer takes service in one or more Capped Classes (other than SCP) through a single meter, the service shall be allocated first to Capped Classes in ascending order of unit Transition Charges beginning with the Capped Class with the lowest unit Transition Charge. All service to the customer, up to the lesser of (i) the highest hourly on-peak kW for total premises load (Total kW) or the Monthly Cap for the class, shall be deemed to be service under the Capped Class with the lowest unit Transition Charge. If the Total kW is greater than the Monthly Cap for the class with lowest unit Transition Charge, the difference up to the Monthly Cap for the Capped Class with the next lowest unit Transition Charge will be deemed to be service under the Capped Class with the next

lowest unit Transition Charge. The remainder will then similarly be allocated to each other Capped Class under which the customer is served until the Total kW has been allocated or all applicable Monthly Caps have been reached.

(b) If the total amount allocated to Capped Classes under (a) is less than the Total kW, the remainder, up to the Monthly Cap for SCP shall be deemed to be service provided under SCP.

(c) Any amount remaining after the allocations in (a) and (b) will be deemed to be service provided under the Transition Charge Class (other than Capped Classes and SCP) that is applicable to the customer. If the customer is not otherwise taking service under any Transition Charge Class (other than Capped Classes and SCP) the amount remaining after the allocations in (a) and (b) shall be deemed to be service under LOS-A, if the customer is served at transmission voltage, or under LGS, if the customer is served at distribution voltage.

In addition, each customer which has New On-Site Generation shall pay an amount each month computed by multiplying the output of the on-site generation used to serve the internal electric requirements of the customer (either kW or kVa, as determined by the Transition Charge class for which the customer would qualify if it were being served by the Company or an REP) by the Transition Charge in effect for services provided to customers in that class during the month. This amount shall be in addition to any Transition Charges applicable to energy or demand actually delivered to the customer through the Company's or another T&D Provider's facilities.

## SECTION 8: STANDARD TRUE-UP FOR ADJUSTMENT OF TRANSITION CHARGES

Transition Charges will be adjusted annually effective on December 1st to ensure that the expected collection of Transition Charges is adequate to pay principal and interest on the transition bonds when due pursuant to the expected amortization schedule, pay as due all other qualified costs and to fund the overcollateralization account to the required level. In addition to these annual true-up adjustments, true-up adjustments may be made more frequently at any time during the term of the transition bonds to correct any undercollection or overcollection, as provided for in the Financing Order, in order to assure timely payment of transition bonds based on rating agency and bondholder considerations. In addition to the foregoing, either of the following two conditions may result in an interim true-up adjustment in the month prior to an upcoming transition bond principal payment date:

(a) The collection of transition charges for the upcoming payment date will result in a difference that is greater than 5% in absolute value, between (i)

the actual outstanding principal balances of the transition bonds plus amounts on deposit in the reserve subaccount and (ii) the outstanding principal balances anticipated in the target amortization schedule; or

(b) To meet a rating agency requirement that any series of transition bonds be paid in full by the expected maturity date for any series of transition bonds that matures after a date determined mutually, at the time of pricing by CenterPoint Houston and the Commission's designated personnel or financial advisor.

In no event will interim true-up adjustments occur more frequently than every three months if quarterly transition bond payments are required or every six months if semi-annual transition bond payments are required; provided, however, that interim true-up adjustments for any transition bonds remaining outstanding during the fourteenth and fifteenth year after the bonds are issued may occur quarterly.

All annual and interim adjustments will be designed to cause (i) the outstanding principal balance of the transition bonds to be equal to the scheduled balance on the expected amortization schedule; (ii) the amount in the overcollateralization subaccount to be equal to the required overcollateralization level; (iii) the amount in the capital subaccount to be equal to the required capital plus any investment earnings on amounts in the capital subaccount to the extent that the investment earnings have not been released to the SPE and (iv) the reserve subaccount to be zero by the payment date immediately preceding the next adjustment or by the final payment date, if the next payment date is the final payment date.

**Part A: TRUE-UP ADJUSTMENT PROCEDURE FOR STANDARD AND INTERIM TRUE-UPS**

Servicer will calculate the Adjusted Transition Charges using the methodology described below and will file the Adjusted Transition Charges with the Commission. Annual adjustments will be filed 15 days prior to the effective date of the Adjusted Transition Charges unless an adjustment to the PBRAFs is required under Section 6 (including Intra-Group Allocation Adjustments under Part D of Section 6) in which case the annual adjustment will be filed not later than 90 days prior to the effective date. Interim Adjustments will be filed not less than 15 days prior to the effective date of the Adjusted Transition Charges.

The Adjusted Transition Charge for the upcoming period for each class ($TC_c$) shall be computed as follows:

For the residential class,

$$TC_c = PBR_T * (PBRAF_c + PBRAFA_c + YPBRAFA_c^b) / FBU_c$$

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For classes in the Commercial and Industrial TC Groups, except if any class in the Industrial Group is forecast for the ensuing period to experience more than a 10% reduction in billing determinants compared to the industrial base billing determinants for that class, then the transition charges for the classes within the Industrial TC Group will be determined according to Section 8, Part B:

$TC_c = TC_c^{-1} \{\Sigma [PBR_T * (PBRAF_c + PBRAFA_c + YPBRAFA_c^t)] / \Sigma(TC_c^{-1} * FBU_c)\}$
For all classes in the applicable group.

Where

$TC_c^{-1}$ = the transition charge for that class from the previous period

$PBR_T$= Periodic Billing Requirement for the ensuing period (the 12 months beginning on the effective date of the adjusted transition charges in the case of annual true-ups and the period until the next scheduled annual true-up in the case of interim adjustments). The Periodic Billing Requirement will be the amounts required to pay principal and interest on the transition bonds when due pursuant to the expected amortization schedule, pay as due all other qualified costs, fund the overcollateralization account to the required level, and recover any net system under-collections or credit any net system over-collections so that (i) the outstanding principal balance of the transition bonds will be equal to the scheduled balance on the expected amortization schedule; (ii) the amount in the overcollateralization subaccount will be equal to the required overcollateralization level; (iii) the amount in the capital subaccount will be equal to the required capital plus any investment earnings on amounts in the capital subaccount to the extent that the investment earnings have not been released to the SPE and (iv) the reserve subaccount will be zero by the payment date immediately preceding the next adjustment or by the final payment date, if the next payment date is the final payment date.

$PBRAF_c$ = the PBRAFs then in effect, or if an adjustment has been made under Section 6, Part A, the adjusted PBRAFs from Section 6, Part A.

$PBRAFA_c$= the adjustment (if any) from Section 6, Part B, Step 5

$YPBRAFA_c^t$= the adjustment from Section 6, Part C, Step 5 for every year t in which an adjustment was made unless that adjustment was discontinued under Section 6, Part C, Step 6.

$FBU_c$= the forecasted billing determinants for the upcoming period

CenterPoint Energy Houston Electric, LLC
Applicable: Entire Service Area

CNP 828

**Part B: Intra Industrial Group Adjustments Due to Cumulative Load Loss Not Attributable to Eligible Generation**

In connection with each annual Standard True-up Adjustment, the Company will compare the projected billing determinants being used to set Transition Charges for each Industrial Group Transition Charge Class during the ensuing year to the billing determinants for the period November 2003 through October 2004 (adjusted to exclude any billing determinants attributable to Eligible Generation if any adjustment was made under Section 6, Part A after October 2004) (such billing determinants as adjusted are hereafter referred to as the "Industrial Base Year Billing Determinants"). The Transition Charges of all Transition Charge Classes in the Industrial TC Group will be adjusted if one or more Transition Charge Classes experience load loss (calculated excluding load loss attributable to Eligible Generation for which adjustments have been made under Section 6, Part A but including load loss attributable to small power production facilities of 10 megawatts or less) aggregating more than 10% on a cumulative basis when measured against the Industrial Base Year Billing Determinants. The adjustments under this Part B will be made using the following procedures:

| | |
|---|---|
| Step 1:<br><br>If $FBU_c / IBD_c \geq 0.90$ for each Industrial TC Class | Then, no adjustments will occur under this Section 8, Part B and the transition charge for each Industrial TC class will be calculated under Section 8, Part A. |
| If $FBU_c / IBD_c < 0.90$ for any Industrial TC Class (Load Loss Class) | Then, adjustments will be calculated pursuant to Steps 2 through 6. |
| Where:<br>$FBU_c$ = forecasted billing determinants for class c<br><br>$IBD_c$ = Industrial Base Year Billing Determinants for class c | |

Step 2:

For each Industrial TC Class in Step 1 where $FBU_c / IBD_c < 0.90$, a reduction amount ($RED_c$) will be calculated as follows:

$$RED_c = PBR_c - TCLL_C$$

Where:

$PBR_c = PBR_T * PBRAF_c$

$TCLL_c$ = Test Collections with 10% Load Loss for Class c = $[PBR_c / (IBD_c * 0.9)] * FBU_c$

$PBR_T$ = total periodic billing requirement for upcoming period

$PBRAF_c$ = the PBRAFs then in effect, including any adjustment made under Section 6, Part A; plus any adjustment made under Section 6, Part B and Section 6, Part C unless the adjustment was discontinued.

Step 3:

For each Industrial TC class for which a reduction amount was not calculated in Step 2 and whose $TC_c^{-1} \leq TC_{LOSA}^{-1}$, a reallocation amount shall be calculated as follows:

$$RA_c = IAP_c * \Sigma RED_c \text{ for all classes}$$

Where:

$IAP_c$ = Intra-Group Allocation Percentage for class c = $PBRAF_c / \Sigma PBRAF_c$ for all Industrial TC Classes for which a reduction amount was not calculated in Step 2 and whose $TC_c^{-1} \leq TC_{LOSA}^{-1}$

$TC_{LOSA}^{-1}$ = Transition Charge implemented for the LOSA TC class in the last true-up filing

$TC_c^{-1}$ = Transition Charge implemented for class c in the last true-up filing

Step 4:

The adjusted transition charge for a class ($TC_c$) shall be calculated as follows:

For those Industrial TC Classes receiving a reallocation amount in Step 3:
$TC_c = [PBR_c + RA_c] / FBU_c$

For all other Industrial TC Classes:
$TC_c = [PBR_c - RED_c] / FBU_c$

Step 5:

Calculate the percent increase in the Transition Charge from the Base Year as follows:

$$PI_c = (TC_c / TC_c^{BASE}) - 1$$

Where:

$TC_c$ = The adjusted transition charge calculated in Step 4

$TC_c^{BASE}$ = The transition charge calculated using the Industrial Base Year Billing Determinants.

Step 6:

A. For any Industrial TC Class where PI is less than the PI for the TC Classes identified in Step 1 as Load Loss Classes:

$$TC_c^{FINAL} = TC_c$$

B. If PI for any Industrial TC Class is greater than or equal to the PI for the Load Loss Classes identified in Step 1, then calculate an initial Equal Percent Increase for that class and the Load Loss Classes identified in Step 1:

$$TC_c^{FINAL} = TC_c^{BASE} * (1 + EPI^{INITIAL})$$

Where:

$EPI^{INITIAL}$ = initial Equal Percent Increase = $\Sigma (TC_c * FBU_c) / \Sigma (TC_c^{BASE} * FBU_c)$ for only those Industrial TC Classes identified in Step 1 as Load Loss Classes and TC classes with a PI greater than or equal to those Industrial TC Load Loss Classes identified in Step 1.

C. In the event that $EPI^{INITIAL}$ for any Industrial TC Class, other than a Load Loss Class identified in Step 1, exceeds the $PI_c$ calculated in Step 5, then for that Class,

$$TC_c^{FINAL} = TC_c$$

D. For the remaining classes, a final Equal Percent Increase will be calculated to reflect the exclusion of the Classes identified in Step 6, Parts A and C above as follows:

$$TC_c^{FINAL} = TC_c^{BASE} * (1 + EPI^{FINAL})$$

Where:

$EPI^{FINAL}$ = final Equal Percent Increase = $\Sigma (TC_c * FBU_c) / \Sigma (TC_c^{BASE} * FBU_c)$ for only those Industrial TC Classes remaining in Step 6, Part D.

## SECTION 9: BILLING AND COLLECTION TERMS AND CONDITIONS

Transition Charges will be billed and collected as set forth in this Schedule TC2. The terms and conditions for each party are set forth below.

A. Billings by Servicer to other T or D Providers:

1. Transition Charges applicable to former retail customers of the Company in multiply certificated service areas who are now taking service directly from other T or D Providers or through REPs served by other T or D Providers will be billed to and collected from the other T or D Provider, which, in turn will be responsible for collecting the Transition Charges from the retail customers and REPs.

2. The T or D Provider shall pay all Transition Charges not later than 35 days after bill is mailed by Servicer. The T or D Provider shall make such payment regardless of whether it collects such charges from the end-use retail customer or REP.

B. Billings by Servicer to New On-Site Generation:

1. Customers subject to Transition Charges for New On-Site Generation shall pay such charges in full not later than sixteen days after the date the bill is mailed to the customer.

2. Transition Charges applicable to New On-Site Generation are in addition to applicable transition charges under A above or C below.

3. If the entity with New On-Site Generation receives transmission or distribution service from the Company or another T or D Provider, Servicer shall have the same right to terminate service or require the other provider to terminate service for non-payment of Transition Charges as the Company has to terminate service for non-payment of charges under the Company's rate schedules. Any termination shall comply with applicable Commission rules.

C. Billings by the REP or its replacement to end-use customers:

1. REPs will bill and collect, or cause to be billed and collected, all Transition Charges applicable to consumption by retail customers served by the REP.

2. If Servicer is providing the metering, metering data will be provided to the REP at the same time as the billing. If Servicer is not providing the metering, the entity providing metering services will be responsible for complying with Commission rules and ensuring that Servicer and the REP will receive timely and accurate metering data in order for Servicer to meet its obligations under the Servicing Agreement and the Financing Order with respect to billing and true-ups.

3. Each REP must (1) have a long-term, unsecured credit rating of not less than "BBB-" and "Baa3" (or the equivalent) from Standard & Poor's and Moody's Investors Service, respectively, or (2) provide (A) a deposit of two months' maximum expected Transition Charge collections in the form of cash, (B) an affiliate guarantee, surety bond, or letter of credit providing for payment of such amount of Transition Charge collections in the event that the REP defaults in its payment obligations, or (C) a combination of any of the foregoing. A REP that does not have or maintain the requisite long-term, unsecured credit rating may select which alternate form of deposit, credit support, or combination thereof it will utilize, in its sole discretion. The indenture trustee shall be the beneficiary of any affiliate guarantee, surety bond or letter of credit. The provider of any affiliate guarantee, surety bond, or letter of credit must have and maintain a long-term, unsecured credit ratings of not less than "BBB-" and "Baa3" (or the equivalent) from Standard & Poor's and Moody's Investors Service, respectively.

4. If the long-term, unsecured credit rating from either Standard & Poor's or Moody's Investors Service of a REP that did not previously provide the alternate form of deposit, credit support, or combination thereof or of any provider of an affiliate guarantee, surety bond, or letter of credit is suspended, withdrawn, or downgraded below "BBB-" or "Baa3" (or the equivalent), the REP must provide the alternate form of deposit, credit support, or combination thereof, or new forms thereof, in each case from providers with the requisite ratings, within 10 business days following such suspension, withdrawal, or downgrade. A REP failing to

make such provision must comply with the provisions set forth in paragraph 3 of Section D, Billings by Servicer to the REP or its replacement (when applicable).

5. The computation of the size of a required deposit shall be agreed upon by Servicer and the REP, and reviewed no more frequently than quarterly to ensure that the deposit accurately reflects two months' maximum collections. Within 10 business days following such review, (1) the REP shall remit to the indenture trustee the amount of any shortfall in such required deposit or (2) Servicer shall instruct the indenture trustee to remit to the REP any amount in excess of such required deposit. A REP failing to so remit any such shortfall must comply with the provisions set forth in Paragraph 3 of the Section D, Billings by Servicer to the REP or its replacement (when applicable). REP cash deposits shall be held by the indenture trustee, maintained in a segregated account, and invested in short-term high quality investments, as permitted by the rating agencies rating the transition bonds. Investment earnings on REP cash deposits shall be considered part of such cash deposits so long as they remain on deposit with the indenture trustee. At the instruction of Servicer, cash deposits will be remitted with investment earnings to the REP at the end of the term of the transition bonds unless otherwise utilized for the payment of the REP's obligations for Transition Bond payments. Once the deposit is no longer required, Servicer shall promptly (but not later than 30 calendar days) instruct the indenture trustee to remit the amounts in the segregated accounts to the REP.

6. In the event that a REP or the Provider of Last Resort (POLR) is billing customers for Transition Charges, the REP shall have the right to transfer the customers to the POLR (or to another certified REP) or to direct Servicer to terminate transmission and distribution service to the end-use customer for non-payment by the end-use customer pursuant to applicable Commission rules.

D. Billings by Servicer to the REP or its replacement (when applicable):

1. Servicer will bill and collect from REPs all Transition Charges applicable to consumption by retail customers served by the REP, including applicable customers served by New On-Site Generation.

2. Payments of Transition Charges are due 35 calendar days following each billing by Servicer to the REP, without regard to whether or when the REP receives payment from the end-use retail customers. Servicer shall accept payment by electronic funds transfer, wire transfer, and/or check. Payment will be considered received the date the electronic funds transfer or wire transfer is received by Servicer, or the date the check clears. A 5% penalty is to be charged on amounts received after 35 calendar days; however, a 10 calendar-day grace period will be allowed before the REP is considered to be in default. A REP in default must

comply with the provisions set forth in paragraph 3 of this Section D. The 5% penalty will be a one-time assessment measured against the current amount overdue from the REP to Servicer. The "current amount" consists of the total unpaid Transition Charges existing on the 36th calendar day after billing by Servicer. Any and all such penalty payments will be made to the indenture trustee to be applied against Transition Charge obligations. A REP shall not be obligated to pay the overdue Transition Charges of another REP. If a REP agrees to assume the responsibility for the payment of overdue Transition Charges as a condition of receiving the customers of another REP that has decided to terminate service to those customers for any reason, the new REP shall not be assessed the 5% penalty upon such Transition Charges; however, the prior REP shall not be relieved of the previously-assessed penalties.

3. After the 10 calendar-day grace period (the 45th calendar day after the billing date), Servicer shall have the option to seek recourse against any cash deposit, affiliate guarantee, surety bond, letter of credit, or combination thereof provided by the REP, and avail itself of such legal remedies as may be appropriate to collect any remaining unpaid Transition Charges and associated penalties due Servicer after the application of the REP's deposit or alternate form of credit support. In addition, a REP that is in default with respect to the requirements set forth in paragraphs 4 and 5 of Section C and paragraph 2 of this Section D shall select and implement one of the following options:

   (a) Allow the POLR or a qualified REP of the customer's choosing to immediately assume the responsibility for the billing and collection of Transition Charges.

   (b) Immediately implement other mutually suitable and agreeable arrangements with Servicer. It is expressly understood that Servicer's ability to agree to any other arrangements will be limited by the terms of the Servicing Agreement and requirements of rating agencies that have rated the transition bonds necessary to avoid suspension, withdrawal or downgrade of the ratings on the transition bonds.

   (c) Arrange that all amounts owed by retail customers for services rendered be timely billed and immediately paid directly into a lock-box controlled by Servicer with such amounts to be applied first to pay Transition Charges before the remaining amounts are released to the REP. All costs associated with this mechanism will be borne solely by the REP.

   If a REP that is in default does not immediately select and implement one of the options specified in (a), (b) or (c) or, after so selecting one of the foregoing options, fails to adequately meet its responsibilities thereunder, then Servicer shall

## Exhibit 2. Supplemental Certificate from Issuing Utility

The attached document contains a supplemental certificate from the issuing utility for these bonds.

CenterPoint Energy

Marc Kilbride
Vice President and Treasurer

P.O. Box 4567
Houston, TX 77210-4567
713 207 5782
Fax: 713 207 3301
marc.kilbride@
CenterPointEnergy.com

December 14, 2005

Saber Partners, LLC
44 Wall Street
New York, NY 10005

Saber Capital Partners, LLC
44 Wall Street
New York, NY 10005

Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Re: CenterPoint Energy Transition Bond Company II, LLC
Senior Secured Transition Bonds, Series A

Gentlemen;

In Docket No. 30485, the Public Utility Commission of Texas (the "Commission") issued its financing order dated March 16, 2005 (the "Financing Order"). The Financing Order authorized CenterPoint Energy Houston Electric, LLC (the "Company") to issue one or more series of transition bonds and to participate in certain related transactions as specified in the Financing Order through a wholly-owned subsidiary of the Company, subsequently identified as CenterPoint Energy Transition Bond Company II, LLC (the "Issuer").

On December 12, 2005, the Company filed at the Commission an issuance advice letter dated December 12, 2005, attached as Exhibit A-1 (the "Issuance Advice Letter"), in connection with $1,851,000,000 aggregate principal amount of the Issuer's Senior Secured Transition Bonds, Series A (the "Transition Bonds"). On December 14, 2005, the Company will submit to the Commission a letter, attached as Exhibit A-2, providing notice that, as a result of an agreement between the Commission's financial advisor and the underwriters subsequent to filing the Issuance Advice Letter, the actual underwriter fees will be $321,598 less than was estimated in the Issuance Advice Letter. Attachment 4 to the Issuance Advice Letter is the Company's certification concerning certain matters related to the Transition Bonds. The Series A Bonds were priced, with respect to Tranche A-1 at 2:57 P.M. New York time, with respect to Tranche A-2, Tranche A-3 and Tranche A-4 at 2:58 P.M. New York time, and with respect to Tranche A-5 at 3:30 P.M. New York Time on December 9, 2005, (the "Pricing Time") when Credit Suisse First Boston LLC, Greenwich

Capital Markets Inc, and Lehman Brothers Inc. (acting for themselves and as representatives of a syndicate of underwriters) agreed to purchase the Transition Bonds in accordance with the terms of the Underwriting Agreement dated December 9, 2005.

As set forth in Exhibit II Attachment C to its April 15, 2005 Requests for Proposals for a Financial Advisor, the Commission has requested additional specific comfort from Saber Partners, LLC and Saber Capital Partners, LLC (together, "Saber"), as the Commission's financial advisor in connection with the Transition Bonds. Saber has requested similar comfort from the Company. Therefore, in connection with the Transition Bonds, we hereby certify to you as follows:

1. Given the terms of the Financing Order, the schedule of principal amounts set forth in the attached Exhibit A-1, market conditions at the Pricing Time, and applicable securities laws, and based on the Company's experience and on market conditions and other information reasonably available to officers, agents and employees of the Company, the structuring, marketing and pricing of the Transition Bonds will result in the lowest transition-bond charges consistent with market conditions and the terms of the Financing Order.

2. On October 11, 2005, a decision was made by the Company and the Commission's financial advisor to proceed with marketing the Transition Bonds as a negotiated sale through a syndicate of selected underwriters. Based on information reasonably available to us as of that date, and given the terms of the Financing Order, the schedule of principal amounts set forth in the attached Exhibit A-1 and applicable securities laws, (a) competitive sales are not customary in the market in which transition bonds typically are marketed, nor are competitive sales generally considered to be the most effective manner in which to market highly structured securities such as the Transition Bonds; and (b) the Issuer could not have expected to achieve lower transition bond charges for any or all tranches of the Transition Bonds through a competitive bidding process than through the negotiated sale of all the Transition Bonds to the syndicate of underwriters jointly selected by the Company and the Commission's designated representative or financial advisor.

3. Given the terms of the Financing Order, market conditions at the time of pricing and the schedule of principal amounts set forth in the attached Exhibit A-1, the amount of compensation payable to the underwriters from proceeds of the Transition Bonds was necessary to achieve the lowest transition bond charges for each tranche of Transition Bonds, and the amount of compensation payable to the underwriters and funded from proceeds of the Transition Bonds have been established at amounts that could not be reduced without increasing overall transition bond charges.

For purposes of this letter, the following definitions apply:

(a) "marketing" means all aspects of presenting the Transition Bonds to the public capital markets and offering the Transition Bonds for sale to investors, including but not limited to targeting particular investors or classes of investors and selecting methods of communicating with investors;

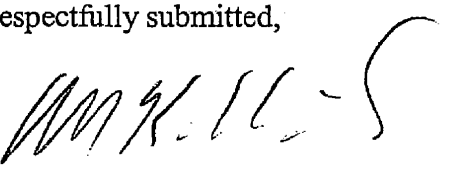
(b) "transition bond charges" means transition charges imposed to pay the annualized cost, expressed as a percentage, of principal, interest and the cost of external credit enhancement, if any, attributable to that tranche;

(c) the "structure" of the Transition Bonds means the structure reflected in the Preliminary Prospectus filed with the United States Securities and Exchange Commission on December 6, 2005, including the transaction documents described and/or contemplated therein; and

(d) the "lowest transition bond charges" means (i) the lowest transition bond charges in respect of the Transition Bonds as a whole, and (ii) the lowest transition bond charges in respect of each tranche of Transition Bonds.

This letter is being delivered to assist you in meeting your obligations under Section 39.301 of PURA and under the Financing Order, and we shall be fully accountable for all matters set forth in this letter. Without our written permission, this letter may not be used by or relied upon by any other person or entity.

Respectfully submitted,



# *Public Utility Commission of Texas*

June 1, 2006

**By UPS Overnight Delivery**

Joseph S. Fichera
Chief Executive Officer
Saber Partners, LLC
44 Wall Street
New York, NY 10005

Re: Contract between the Public Utility Commission of Texas and Saber Partners, LLC

Dear Mr. Fichera:

Enclosed is a signed original of the above referenced contract between the PUC and Saber Partners.

Please give us a call if you have any questions or comments.

Sincerely,

Irene Powell

Irene Powell
Assistant to
Leticia E. Flores
Senior General Law Attorney

/ip

# CONTRACT BETWEEN THE PUBLIC UTILITY COMMISSION OF TEXAS AND SABER PARTNERS

This Agreement ("Agreement"), effective as of the last date signed below by a duly authorized representative of any Party ("Effective Date"), is entered into by and between the Public Utility Commission of Texas, an agency of the state of Texas with its office at 1701 N. Congress Ave., Austin, TX 78701 (the "PUCT" or the "Commission"), Saber Partners, LLC and Saber Capital Partners, LLC (collectively "Saber Partners").

## RECITALS

WHEREAS, pursuant to its statutory responsibility under Chapter 39, Subchapter G of the Public Utility Regulatory Act, ("PURA") the PUCT designated Saber Partners as the PUCT's financial advisor with respect to AEP Texas Central Company's ("AEP") application for a financing order to securitize the stranded costs finalized in Docket No. 31056, Application of AEP Texas Central Company and CPL Retail Energy, LP to Determine True-Up Balances Pursuant to PURA §39.262, to ensure compliance with the statutory requirements of PURA and the terms of the Financing Order issued in Docket No. 32475; and

WHEREAS, Saber Partners has served the Commission effectively as an advocate of the Commission's interests and in protecting ratepayer interests in connection with all five prior series of transition bonds issued pursuant to Chapter 39, Subchapter G of PURA and in ensuring that the structuring and pricing of each of those series of transition bonds achieved the lowest transition bond charges consistent with market conditions and the applicable financing orders;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the PUCT and Saber Partners (the "Parties") hereby agree as follows:

## Article 1. Definitions

When used in this Agreement, the following terms shall have the respective meanings set forth in this Agreement.

**1.1 "Confidential Information"** has the meaning provided in Attachment B to this Agreement.

**1.2 "Intellectual Property Rights"** means any patent, trade secret, confidential or proprietary information, know-how, show-how, maskwork right, copyright (e.g. including but not limited to any moral right), and any other intellectual property protection and intangible legal rights and interests, of any one or more countries, including, for example, but not limited to (a) any publicity or privacy right, (b) any utility model or application, (c) any industrial model or application, (d) any certificate of invention or application, (e) any application for patent, including, for example, but not

limited to any provisional, divisional, reissue, reexamination or continuation application. (f) any substitute, renewal or extension of any such application, and (g) any right of priority resulting from the filing of any such application.

**1.3 "Moral Rights"** means any rights to claim authorship of intellectual property, to object to or prevent the modification of any intellectual property, or to withdraw from circulation or control the publication or distribution of any intellectual property, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right."

**1.4 "Public Utility Commission," "PUCT," or "Commission"** means the Public Utility Commission of Texas acting through its executive director and the agency's designated Contract Administrator.

**1.5 "Saber Partners"** includes Saber Partners, LLC, Saber Capital Partners, LLC, and any successors, heirs and assigns.

**1.6 "Services"** means any and all services performed and any and all goods and products delivered by Saber Partners as specified in Attachment A, Services to Be Performed – AEP Transition Bonds.

**1.7 "Financing Order"** means the Financing Order approved in PUCT Docket No. 32475 (or a subsequent docket number assigned upon remand to the Commission).

**1.8 "Issuance"** means the sale of Transition Bonds approved in Docket No. 32475 (or a subsequent docket number assigned upon remand to the Commission) in the amount specified in the Financing Order.

**1. 9 "Transition Bonds"** means those transition bonds issued pursuant to the Financing Order approved in PUCT Docket No. 32475 (or a subsequent docket number assigned upon remand to the Commission).

## Article 2. Compensation

**2.1 Compensation.** Saber Partners agrees to provide all services (including labor, expenses, and legal services) described in Attachment A for a flat fee of $500.000 (the "Fee"). Of this fee, $100,000 is specifically allocated to payment for legal services to Saber Partners. If Saber Partners documents to the Commission's satisfaction that it necessarily incurred more than $100.000 in legal expenses for legal services to Saber Partners, Saber Partners' fee may be increased to a maximum of $750,000, with any amount over $500.000 specifically allocated to pay such legal expenses. The Commission must pre-approve the increase in fee for legal expenses by written amendment to this Agreement.

**2.2 Payment for Services.** Saber Partners acknowledges that the PUCT has not been appropriated any funds for the purposes of this Agreement. All compensation and reimbursements to Saber Partners provided for by Section 2.1 hereof shall be paid or caused to be paid by wire transfer at the time and directly from the proceeds of the Issuance of the Transition Bonds as a condition of closing. The Parties expressly agree that nothing in this Agreement is intended to constitute an obligation either against or payable from funds appropriated to the PUCT for any purpose, or general revenue funds or any other funds of the State of Texas.

**2.3 Payments made to Subcontractors.** Saber Partners shall pay any subcontractor hereunder the appropriate share of payments received not later than the 10th day after the date Saber Partners receives the payment. The subcontractor's payment shall be overdue on the 11th day after the date Saber Partners receives the payment. The use of any subcontractor by Saber Partners, other than Orrick, Herrington & Sutcliffe, LLP, shall be pre-approved by PUCT. (See Sec. 5.1)

**2.4 Records.** Saber Partners and its subcontractors shall maintain records and books of account relating to services provided under this Agreement . Such records and books shall be made available to the PUCT, its designee, or the Texas State Auditor's Office for review upon reasonable notice during Saber Partners' normal business hours for a period of at least four years after the end of the term of the Agreement.

**2.5 Sole Compensation.** Payments under this Article 2 are Saber Partners' sole compensation under this Agreement. Saber Partners shall not incur expenses with the expectation that the PUCT or AEP will directly pay the expense to a third-Party vendor outside payments made under this Article 2, irrespective of whether in exchange for Services or otherwise.

**2.6 Texas State Auditor's Office.** The Texas State Auditor's ("State Auditor") may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds.

## Article 3. Contract Administration

**3.1 PUCT Contract Administration.** The PUCT designates Darryl Tietjen to serve as its Technical Point of Contact and primary point of contact with Saber Partners throughout the term of this Agreement. The PUCT designates Paula Mueller as its Contract Administrator to serve as the PUCT's point of contact for contract administration. Saber Partners acknowledges that neither the PUCT Contract Administrator nor the PUCT Technical Point of Contact have any authority to amend this Agreement on behalf of the PUCT, except as expressly provided herein. Saber Partners

further acknowledges that such authority is exclusively held by the Commission or its authorized designee, Executive Director Lane Lanford.

**3.2 Saber Partners Contract Administration.** Saber Partners designates Joseph S. Fichera to serve as its Contract Administrator.

**3.3 Reporting.** Saber Partners shall report directly to the PUCT Contract Administrator and shall perform all activities in accordance with reasonable instructions, directions, requests, rules and regulations issued during the term of this Agreement as conveyed to Saber Partners by the PUCT Contract Administrator and the PUCT Technical Point of Contact.

**3.4 Cooperation.** The Parties' Contract Administrators shall handle all communications between them in a timely and cooperative manner. The Parties shall timely notify each other by email or other written communication of any change in designee or contact information. The Parties also recognize that implementation of the securitization in the marketplace is a dynamic process and often is done under tight time demands. The Contract Administrator and Technical Point of Contact shall have a regularly scheduled weekly telephone conference call to discuss the status of Saber Partner's execution of this Agreement and any concern of either Party.

**3.5 Inquiries and Prompt Referral.** Saber Partners will promptly refer all inquiries regarding this Agreement received from state legislators, other public officials, the media, or non-Parties to the PUCT Contract Administrator.

## Article 4. Reports and Records

**4.1 Written Reports.** Saber Partners will provide written reports to the PUCT in the form and with the frequency as specified in Attachment A.

**4.2 Records Review.** Saber Partners shall, for a period of four (4) years following the expiration or termination of this Agreement, maintain its records of the work performed under this Agreement. Saber Partners shall make all records that support the performance of Services and payment available to PUCT and/or its designees or the State Auditor during normal business hours given reasonable notice, upon the request of the PUCT Contract Administrator.

**4.3 Progress Reports.** In addition to the reports required by Attachment A, Saber Partners' Contract Administrator shall provide regular progress reports, either orally or electronically, to the PUCT Contract Administrator or the PUCT Technical Point of Contact, in a format and on a schedule agreed upon. Saber Partners agrees to provide additional ad hoc reports, within reason and in oral, written or electronic form, that may be required by the PUCT. If Saber Partners cannot provide such reports without incurring unreasonable additional expense, Saber Partners shall notify the PUCT's Contract Administrator of the estimated cost for providing the additional reports and

information substantiating the cost, prior to incurring the expense. Failure to provide these reports may result in termination of this contract.

## Article 5. Subcontracting Parties

**5.1 Use of Subcontractors.** The Parties acknowledge and agree that at the time of execution of this Agreement Saber Partners intends to perform the Services required under this Agreement using its own members, employees, and Advisory Board members, with the exception of those legal services to Saber Partners which shall be performed by outside legal counsel retained by Saber Partners. Saber Partners will notify the PUCT Contract Administrator of any other proposed subcontract and will work with the PUCT HUB Coordinator to procure such other subcontractor and to submit appropriate subcontractor selection documentation for approval prior to engaging any other subcontractor, such approval not to be unreasonably withheld. Any such other subcontract or subsequent substitution of a subcontractor must be approved according to the terms of Article 7 herein.

**5.2 Primary Point of Contact.** Joseph S. Fichera will serve as the primary point of contact for the PUCT with Saber Partners' subcontractors on all matters related to this Agreement.

**5.3 Sole Responsibility.** Saber Partners is solely responsible for the quality and timeliness of the work produced by all subcontractors that may be engaged by Saber Partners to provide Services hereunder and for the timely payment for all such work produced by all subcontractors which is accepted by and paid for in accordance with the terms of this Agreement.

**5.4 Prime Vendor Contract.** The Parties expressly agree that this Agreement is intended to constitute a prime vendor contract, with Saber Partners serving as the prime vendor for delivery of the Services made the subject hereof. Saber Partners acknowledges and agrees that Saber Partners is fully liable and responsible for timely, complete delivery of the Services described in this Agreement notwithstanding the engagement of any subcontractor to perform an obligation under this Agreement.

## Article 6. Term, Suspension and Termination

**6.1 Term.** The term of this Agreement shall begin on the Effective Date and shall continue in effect until the later of the issuance of the Transition Bonds or the last deliverable per Attachment A unless sooner terminated under Sections 6.2 or 6.3 of this Agreement.

**6.2 Termination for Cause by the PUCT.** If Saber Partners is in default of any material term of this Agreement, the PUCT may serve upon Saber Partners written notice requiring Saber Partners to cure such default. Unless within thirty (30) days after receipt of said notice by Saber Partners, said default is corrected or arrangements satisfactory to the PUCT, as applicable, for correcting the default have been made by Saber Partners, the

PUCT may terminate this Agreement for default and shall have all rights and remedies provided by law and under this Agreement. In the event of termination, Saber Partners will provide reasonable cooperation to transfer the duties of Saber Partners under the Agreement to another entity without disruption to the progress of the securitization.

**6.2.1 Termination for the Convenience of the PUCT.** The PUCT may, upon thirty (30) days written notice to Saber Partners, terminate this Agreement whenever the interests of the PUCT so require.

**6.3 Termination for Cause by Saber Partners.** If the PUCT fails to comply with any of its obligations hereunder in any material respect, Saber Partners may serve upon the PUCT written notice of default. Should the PUCT fail to remedy such default or fail to present a plan acceptable to Saber Partners to remedy such default within thirty (30) days after receipt of such written notice of default, Saber Partners shall have the right to terminate the Agreement. In the event of termination, Saber Partners will provide reasonable cooperation to transfer the duties of Saber Partners under the Agreement to another entity without disruption to the progress of the securitization.

**6.4 Survival.** In the event that this Agreement expires or is terminated by a Party pursuant to the terms hereof, the rights and obligations of the Parties hereunder shall terminate; provided that the provisions of Article 2, Sections 4.2, 7.3, 7.5 and 19.1 through 19.10 hereof, Articles 10, 11, 12, 14, 15 and 16 hereof and Attachment B in its entirety shall survive any termination or expiration of this Agreement.

## Article 7. Assignment, Amendments and Modifications

**7.1 Material Change Requests.** PUCT may propose changes to Attachment A, Services to Be Performed – AEP Transition Bonds. Upon receipt of a written request from the PUCT for a change to Attachment A, Saber Partners' Contract Administrator shall, within a reasonable time thereafter, submit to the PUCT a detailed written estimate of any proposed price and schedule adjustment(s) to this Agreement. No changes to Attachment A will occur without the written consent of Saber Partners and unless and until the PUCT or its designee approves Saber Partners' proposed modification proposal, including the schedule adjustments and the costs (if any) associated with the modifications, in writing, as provided in accordance with the terms stated in this Agreement.

**7.2 Changes in Law, Rules, or Rulings.** Subsequent changes in federal and state legislation or rules and regulations or rulings by the PUCT may require modification of the terms of this Agreement, including an increase or decrease in the duties of Saber Partners and/or compensation. In the event of such subsequent changes to statutes, rules and/or regulations, the PUCT and Saber Partners shall negotiate the terms of a contract modification, whether an increase or a decrease in Saber Partners' duties and/or compensation, in good faith and incorporate such modification into this Agreement by written amendment.

**7.3 No Assignment of Duties.** This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of any Party (including by merger of Saber Partners or otherwise by operation of law); provided however that Saber Partners shall not otherwise, without the prior written consent of the PUCT, or as provided in Section 7.3.1 herein, assign or transfer this Agreement or any obligation incurred under this Agreement. Any attempt by Saber Partners to assign or transfer this Agreement or any obligation incurred under this Agreement, in contravention of this paragraph, shall be void and of no force and effect.

**7.3.1 Assignment Permitted** This Agreement may not be assigned, changed, amended or modified in any manner except by written instrument executed by authorized representatives of both Parties in accordance with the terms of the Agreement, provided, however, that any activities of Saber Partner, LLC under this Agreement that may require registration as a securities broker or dealer may be assigned by Saber Partners, LLC in its discretion to Saber Capital Partners LLC ("SCP") so long as (i) SCP remains a wholly-owned subsidiary of Saber Partners, LLC, (ii) SCP remains registered as a broker and dealer with the U.S. Securities and Exchange Commission, (iii) SCP remains a member in good standing of the NASD, and (iv) Joseph Fichera remains Chief Executive Officer of SCP, and any assignment by Saber Partners, LLC of any activity or activities of SCP pursuant to the preceding sentence shall not increase or otherwise affect the aggregate amount of compensation payable to Saber Partners, LLC and SCP, collectively, for any services performed under this Agreement, although Saber Partners and SCP shall to the extent practicable arrange to have compensation payable to SCP for any such activity or activities performed by SCP paid directly to SCP. In the event of any breach of this Agreement by SCP following an assignment to SCP pursuant to this Section 7.3.1, both Saber Partners, LLC and SCP shall be jointly and severally liable to the PUCT for damages to the PUCT resulting directly from that breach.

**7.4 Amendments and Modifications.** This Agreement may not be amended or modified in any manner except by written instrument executed by authorized representatives of the Parties in accordance with the terms of this Agreement. Any additional amounts to be securitized for AEP at a later date will be the subject of an amendment to this contract with compensation to be negotiated in good faith at that time.

**7.5 Binding on Successors.** The terms of this Agreement shall be binding on any successor organization of any of the signatory Parties.

## Article 8. Representations, Warranties and Covenants

**8.1 Warranty of Performance.** Saber Partners represents, warrants and covenants that it will perform the services outlined in Attachment A, Services to be Performed – AEP Transition Bonds, in a professional and workmanlike manner, consistent with professional standards of practice in the industry and in accordance with its undertakings in Article 17 hereof.

**8.2 Warranty of Services.** Saber Partners warrants that the services shall be rendered by the qualified personnel referred to in, or as otherwise agreed upon pursuant to, Section 19.11 hereof. If Services provided under this Agreement require a professional license, then Saber Partners represents, warrants and covenants that the activity will be performed only by duly licensed personnel.

## Article 9. Risk of Loss and Property Rights

**9.1 Risk of Loss.** The risk of loss for all items to be furnished hereunder shall remain with Saber Partners until the items are delivered to the PUCT, at which time the risk of loss shall pass to the PUCT.

**9.2 Ownership.** Except for materials where any intellectual property rights are vested in a third-Party, such as software or hardware, in which case such rights shall remain the property of the third Party, all finished materials, conceptions, or products created and/or prepared for on behalf of the PUCT and purchased by the PUCT, or on behalf of the PUCT, which the PUCT has accepted as part of the performance of services hereunder, shall be the PUCT's property exclusively and will be given to the PUCT either at the PUCT's request during the term of the Agreement or upon termination or expiration of the Agreement. Notwithstanding the foregoing, materials created, prepared for, or purchased exclusively by the PUCT or on behalf of the PUCT are the PUCT's exclusive property regardless of whether delivery to the PUCT is effectuated during or upon termination or expiration of this Agreement.

**9.3 Licensed Software.** Saber Partners may obtain software licenses as an agent of the PUCT for software that is used by Saber Partners solely for the purpose of providing services under this Agreement. Saber Partners shall provide the PUCT with a copy of any software license obtained by Saber Partners as an agent for the PUCT for the purpose of providing services under this Agreement.

**9.4 Prior Works.** Except as provided herein, all previously owned materials, conceptions or products shall remain the property of Saber Partners and nothing contained in this Agreement will be construed to require Saber Partners to transfer ownership of such materials to the PUCT.

**9.5 Trademarks.** The Parties agree that no rights to any trademark or service mark belonging to another Party or to any non-Party are granted to any other Party by this Agreement, unless by separate written instrument. The PUCT acknowledges and agrees that use of any trademark associated with any software provided by Saber Partners under this Agreement does not give the PUCT any rights of ownership in the trademark or the software.

**9.6 Program Information.** Program information, data, and details relating to Saber Partners' services under this Agreement shall be maintained separately from other Saber Partners' activities. Saber Partners shall undertake all reasonable care and precaution in the handling and storing of this information.

**9.7 Provision to be Inserted in Subcontracts.** Saber Partners shall insert an article containing paragraphs 9.2 and 9.6 of this Agreement in all subcontracts hereunder except altered as necessary for proper identification of the contracting Parties and the PUCT under this Agreement.

## Article 10. Confidential Information.

**10.1 Confidential Information.** The Parties hereby acknowledge that they may become exposed to Confidential Information in connection with their relationship hereunder. In consideration thereof, the Parties agree to abide by the provisions of the confidentiality agreement in Attachment B hereto, which is hereby incorporated by reference herein.

**10.2 Agreement Not Confidential.** The Parties acknowledge that not all terms of this Agreement may be confidential pursuant to the Texas Public Information Act, regardless of whether those terms are marked "Proprietary" and/or "Trade Secret" and/or "Confidential," and regardless of the provisions of Attachment B hereto.

**10.3 Texas Public Information Act. (Texas Government Code Chapter 552).** The Parties acknowledge that notwithstanding any other provisions of this Agreement, the Texas Public Information Act ("PIA") governs the treatment of all information held by or under the control of the Commission. The Commission will notify Saber Partners of requests for Confidential Information within one business day of receiving the request.

## Article 11. Conflicts of Interest and Employment Restriction

**11.1 No Conflicting Relationships.** Saber Partners certifies to the Commission that no existing or contemplated relationship exists between Saber Partners and the Commission that interfere with fair competition or is a conflict of interest, and that no existing or contemplated relationship exists between Saber Partners and another person or organization, whether or not located within the State of Texas, that constitutes or will constitute a conflict of interest for Saber Partners with respect to the Commission.

**11.2 Independence.** Saber Partners, as the Commission's financial advisor, must be free from any conflicts of interest and must provide the Commission with independent advice. Neither Saber Partners nor any affiliate of Saber Partners may have any financial interest in or any securities trading relationship with any entity that engages in the business of underwriting or trading in bonds or other fixed income products. From the beginning of this engagement and for at least 12 months following the date of issuance of the bonds, neither Saber Partners nor any affiliate of Saber Partners may engage in the business of underwriting or trading in the market for bonds or other fixed income products for their own account or for others.

**11.3 Prohibition on Transactions with Company.** No member of the team of Saber Partners' employees for this assignment is currently executing any securities transactions, advisory assignments, or credit transactions for American Electric Power. During the

term of this Agreement and for a period of one (1) year thereafter, Saber Partners shall not staff any Saber Partners' team members on any such assignments for American Electric Power without the prior written consent of the PUCT. Saber Partners will require that all members of Saber Partners' team agree to a prohibition against stock ownership of stock of American Electric Power during the term of this Agreement and for one (1) year thereafter. Prior to staffing any Saber Partners' employee to perform services under this Agreement, Saber Partners shall notify such employee of the provisions hereof and obtain a written agreement that he or she is bound hereby.

**11.4 Prohibition on Transactions with Parties Adverse to Commission.** Saber Partners agrees that during performance of this Agreement, it will neither provide contractual services nor enter into any agreement, oral or written, to provide services to a person or organization that is regulated or funded by the Commission or that has interests that are directly or indirectly adverse to those of the Commission. The Commission may waive this provision in writing if, in the Commission's sole judgment, such activities of the Contractor will not be adverse to the interests of the Commission.

**11.5 Notice of Conflict.** Saber Partners agrees to promptly notify the PUCT of any circumstance that may create a real or perceived conflict of interest. Saber Partners agrees to use its best efforts to resolve any real or perceived conflict of interest to the satisfaction of the PUCT. Failure of Saber Partners to do so shall be grounds for termination of this contract for cause, pursuant to Section 6.2.

## Article 12. Other Acknowledgements and Agreements by the Parties

**12.1 Indemnification.** Saber Partners shall indemnify, defend and hold harmless the PUCT, the State of Texas, its officers and employees from any and all liabilities, claims, demands or causes of action of whatever kind or nature asserted by a third-Party and occurring or in any way incident to, arising out of, or in connection with wrongful acts of Saber Partners, its agents, employees and subcontractors, committed in the conduct of this Agreement.

## Article 13. Insurance

**13.1 Minimum Insurance.** Saber Partners shall, at its sole cost and expense, secure and maintain as a minimum, from the Effective Date and thereafter during the term of this Agreement, for its own protection and the protection of the PUCT: (a) commercial liability insurance; (b) automobile liability coverage for vehicles driven by Saber Partners employees; and (c) workers' compensation insurance. The commercial liability policy shall provide a minimum coverage of $500,000 per occurrence and $1,000,000 aggregate. The automobile liability policy shall provide a minimum coverage of $500,000 per occurrence. The workers' compensation insurance shall provide the following coverage: $300,000 for medical expenses and coverage for at least 104 weeks, $100,000 for accidental death and dismemberment, 70% of employee's pre-injury income for not less than 104 weeks; and $500 maximum weekly benefit. The PUCT shall be named an additional insured on the commercial liability and automobile policies.

**13.2 Certificates of Insurance.** Saber Partners shall furnish to the PUCT certificates of insurance, signed by authorized representatives of the surety or insurers, of all such bonds and insurance and confirming the amounts of such coverage within ten days of the Effective Date of this Agreement, upon request. Saber Partners shall provide the PUCT Contract Administrator with timely renewal certificates as the coverage renews. Failure to maintain such insurance coverage specified herein, or to provide such certificates promptly, shall constitute a material breach of this Agreement.

## Article 14. Dispute Resolution

**14.1 Alternative Dispute Resolution.** The Parties agree that to the extent required by Chapter 2260 of the Texas Government Code or other Texas statutes, any and all disputes that may arise between the Parties regarding the terms of this Agreement shall be first submitted for settlement by negotiation and mediation, or other means of alternative dispute resolution. The Parties further agree that any such dispute resolution to which Chapter 2260 of the Texas Government Code applies shall be conducted in accordance with PUCT Substantive Rule Chapter 27, Subchapter C.

## Article 15. Sovereign Immunity

**15.1 Sovereign Immunity.** The State of Texas and the PUCT do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them under the laws of the State of Texas or the common law.

## Article 16. Governing Law

**16.1 Governing Law.** Notwithstanding anything to the contrary in this Agreement, this Agreement shall be deemed entered into in the State of Texas and shall be governed by and construed and interpreted in accordance with the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rules of conflict of laws. The Parties consent to the exclusive jurisdiction of the State of Texas. The Parties hereby submit to the jurisdiction of courts located in, and venue is hereby stipulated to, the state courts located in Travis County, Texas. Each Party stipulates that it is subject to the jurisdiction of the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this Agreement. Further, each Party hereby waives any right to assert any defense to jurisdiction being held by the courts located in Travis County, Texas, for any cause of action arising from any act or omission in the performance of this Agreement.

## Article 17. Compliance with Law

**17.1 General.** Saber Partners shall comply with all federal, state and local laws, executive orders, regulations and rules applicable at the time of performance. Saber Partners warrants that all services sold hereunder shall have been produced, sold, delivered, and furnished in strict compliance with all applicable laws and regulations, including Equal Employment Opportunity laws, to which they are subject. All laws and

regulation required in agreements of this character are hereby incorporated by this reference.

**17.2 Taxes.** Saber Partners agrees to comply with any and all applicable state tax laws that may require any filing with and/or payment to the State of Texas as result of any action taken as a result of this Agreement.

**17.3 Worker's Compensation.** Saber Partners agrees that it shall be in compliance with applicable state worker's compensation laws throughout the term of this Agreement.

**17.4 Conflicts.** Saber Partners agrees to abide by the requirements of and policy directions provided by the Texas statutes and the rules and regulations of the PUCT, and will inform and consult with the PUCT when further interpretations or directions are needed in order to fully implement the rules and regulations of the Commission. In the event that Saber Partners becomes aware of inconsistencies between this Agreement and a Texas statute or PUCT rule, Saber Partners will so advise the PUCT and will cooperate fully to revise applicable provisions of this Agreement as necessary.

## Article 18. Saber Partners Certification

**18.1 Effect of Acceptance.** By accepting the terms of this Agreement, Saber Partners certifies that, to the extent applicable:

**18.1.1 Prohibitions on Gifts.** Saber Partners has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Agreement.

**18.1.2 Delinquent Obligations.** Saber Partners is not currently delinquent in the payment of any franchise or sales tax owed the State of Texas, and is not delinquent in the payment of any child support obligations under applicable state law.

**18.1.3 Antitrust.** Neither Saber Partners nor anyone acting for such firm, corporation, or institution has violated the antitrust laws of this State, codified in Section 15.01, et seq., of the Texas Business and Commerce Code or the Federal Antitrust Laws, nor has communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage.

**18.1.4 Family Code.** Saber Partners has no principal who is ineligible to receive funds under Texas Family Code § 231.006 and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**18.1.5 Prohibited Compensation.** Saber Partners has not received compensation from the PUCT, or any agent, employee, or person acting on the PUCT's behalf for participation in the preparation of this Agreement.

**18.1.6 Family Code.** Pursuant to Texas Family Code § 231.006(d), no individual or business entity named in this contract is ineligible to receive the specified grant, loan, or payment; and Saber Partners acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

**18.1.7 Government Code.** Pursuant to Texas Government Code § 2155.004, regarding the collection of state and local sales and use taxes, the individual or business entity named in the proposal and with whom the PUCT is contracting is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate.

**18.1.8 Outstanding Obligations.** Payments due under the contract will be applied towards any debt that is owed to the State of Texas, including but not limited to delinquent taxes and child support.

**18.1.9 Contracting with Executive Head of State Agency.** The Agreement is in compliance with Texas Government Code § 669.003 relating to contracting with the executive head of a State agency.

**18.1.10 Buy Texas.** Saber Partners will comply with Texas Government Code § 2155.4441, pertaining to service contracts regarding the use of products produced in the State of Texas.

## Article 19. General Provisions

**19.1 Relationship of Parties.** Saber Partners is and shall remain at all times an independent contractor, and nothing in this Agreement shall be deemed to create a joint venture, partnership, employment, franchise, master-servant, or agency relationship between the Parties. Except as expressly provided to the contrary elsewhere in this Agreement, no Party has any right or authority to act on behalf of another Party, nor to assume or create any obligation, liability or responsibility on behalf of another Party. Under no circumstances shall the relationship of employer and employee be deemed to arise between the PUCT and Saber Partners' personnel. Saber Partners shall be solely responsible for achieving the results contemplated by this Agreement, whether performed by Saber Partners, its agents, employees or subcontractors.

**19.2 Taxes and Statutory Withholdings.** Saber Partners acknowledges that it is not a PUCT employee, but is an independent contractor. Accordingly, it is Saber Partners' sole obligation to report as income all compensation received by Saber Partners under the terms of this contract. Saber Partners is solely responsible for all taxes (federal, state, local), withholdings, social security, unemployment, Medicare, Worker's Compensation insurance, and other similar statutory obligations (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Saber Partners under this contract. Saber Partners shall defend, indemnify and hold the PUCT harmless to the extent of any obligation imposed by law on the PUCT to pay any tax (federal, state, local), withholding, social security, unemployment, Medicare, Workers'

Compensation insurance, or other similar statutory obligation (of any governmental entity of any country) arising from, relating to, or in connection with any payment made to Saber Partners under this contract.

Further, Saber Partners understands that neither it nor any of its individual employees is eligible for any PUCT employee benefit, including but not limited to holiday, vacation, sick pay, withholding taxes (federal, state, local), social security, Medicare, unemployment or disability insurance, Worker's Compensation, health and welfare benefits, profit sharing, 401(k) or any employee stock option or stock purchase plans. Saber Partners hereby waives any and all rights to any such PUCT employment benefit.

**19.3 Notice.** Except as otherwise stated in this Agreement, all notices provided for in this Agreement shall be (a) in writing, (b) addressed to a Party at the address set forth below (or as expressly designated by such Party in a subsequent effective written notice referring specifically to this Agreement), (c) sent by Certified U.S. mail, Return Receipt Requested, with proper postage affixed and (d) deemed effective upon the third business day after deposit of the notice in the U.S. mail.

IF TO THE PUCT:

ATTENTION: W. LANE LANFORD, EXECUTIVE DIRECTOR
1701 N. Congress Ave., 7th Floor
Austin, TX 78701

With a copy to the PUCT Contract Administrator, Paula Mueller, at the same address.

IF TO Saber Partners:
ATTENTION: JOSEPH S. FICHERA, CEO
Saber Partners, LLC
44 Wall Street
New York, NY 10005

With a copy sent via facsimile to (212) 461-2371.

**19.4 Severability.** The Parties intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Saber Partners and the PUCT acknowledge and agree that each covenant and promise contained herein is a separate obligation independently supported by good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged. Accordingly, if a court of competent jurisdiction determines that the scope and/or operation of any provision of this Agreement is unenforceable as written, then the PUCT and Saber Partners intend that the court should reform such provision (e.g. to a narrower scope and/or operation) as it determines to be enforceable (e.g. maximum enforceable period of time, territory, and/or scope). If, however, any

provision of this Agreement is held to be unenforceable under present or future law, and not subject to reformation, then (a) such provision shall be fully severable, (b) this Agreement shall be construed and enforced as if such provision was never a part of this Agreement, and (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by unenforceable provisions or by their severance.

**19.5 Force Majeure.** No Party shall be responsible to another Party for any resulting loss if fulfillment of any of the terms or provisions of this Agreement is delayed or prevented by any act or event which is beyond the reasonable control of the affected Party (including but not limited to, court decisions, including appeals, acts of God, landslides, lightning, earthquakes, fires, explosions, floods, epidemics or acts of a public enemy, wars, blockades, riots, rebellions, sabotage, insurrections, civil disturbances or similar occurrences; and strikes, work stoppages, secondary boycotts and walkouts).

**19.6 Waiver.** Neither the PUCT nor Saber Partners shall not be required to give notice to enforce strict adherence to all provisions of this Agreement. No breach or provision of this Agreement shall be deemed waived, modified or excused by a Party, unless such waiver, modification or excuse is in writing and signed by an authorized officer of the Party. The failure by or delay of the aggrieved Party in enforcing or exercising any of its rights under this Agreement shall not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement, nor shall it prevent a subsequent enforcement or exercise of such right. The Party shall be entitled to fully enforce any other Party's covenants and promises contained herein, notwithstanding the existence of any claim or cause of action by that aggrieved Party against another Party under this Agreement or otherwise.

**19.7 Headings.** Titles and headings of paragraphs and sections within this Agreement are provided merely for convenience and shall not be used or relied upon in construing this Agreement or the Parties' intentions with respect thereto.

**19.8 Export Laws.** Saber Partners represents, warrants, agrees and certifies that it (a) shall comply with the United States Foreign Corrupt Practices Act (regarding, among other things, payments to government officials) and all export laws and rules and regulations of the United States Department of Commerce or other United States or foreign agency or authority and (b) shall not knowingly permit any non-Party to directly or indirectly, import, export, re-export, or transship any intellectual property or any third Party materials accessed by Saber Partners during the course of this Agreement in violation of any such laws, rules or regulations.

**19.9 Entire Agreement.** This Agreement, including Attachments A and B, constitutes the entire agreement and understanding between the PUCT and Saber Partners relating to the subject matter hereof and supersedes and merges all prior discussions, writings, negotiations, understandings and agreements with respect thereto and shall not be amended or modified, nor shall any right be waived, except by a written amendment that is completely executed and delivered by the PUCT and Saber Partners. Any subsequent change or changes in Saber Partners' duties or compensation shall not affect the validity

or scope or operation of this Agreement. By signing below, each of the Parties hereto acknowledges that it has read, understands and agrees to this Agreement as being effective for all purposes as of the Effective Date, notwithstanding any later date of execution set forth elsewhere in this Agreement.

**19.10 Preprinted Forms.** The use of preprinted forms, such as purchase orders or acknowledgments, in connection with this Agreement is for convenience only and all preprinted terms and conditions stated thereon are void and of no effect. The terms of this Agreement, including but not limited to Article 19.11, cannot be amended, modified or altered by any conflicting preprinted terms, provisions or conditions contained in a preprinted form, such as purchase orders or acknowledgements. If any conflict exists between this Agreement and any terms and conditions on a purchase order, acknowledgment or other preprinted form, the terms and conditions of this Agreement will govern.

**19.11 Specific Personnel.** The composition of Saber Partners personnel for this assignment ("Team"), have been identified by Saber Partners as follows:

As needed to perform the tasks specified herein, Saber Partners anticipates utilizing the services of its members, employees, and Advisory Board members, including Joseph S. Fichera, Michael Noel, Taylor Nance, Ross Comeaux, Paul Sutherland, and Martha Elvey. The law firm of Orrick, Herrington, & Sutcliffe LLP will provide legal counsel to Saber Partners. Dean Criddle will be the representative of Orrick Herrington.

Saber Partners warrants that it shall use its best efforts to avoid any changes to the Team during the course of this Agreement. Should personnel changes occur during the contract period, Saber Partners will recommend to the PUCT personnel with comparable experience and required qualifications and training. The PUCT must approve any change in personnel on this project. Saber Partners shall provide individuals qualified to perform the tasks assigned to such individual. At the PUCT's request, Saber Partners shall remove from the project any individual whom the PUCT finds unacceptable. Saber Partners shall replace such individual with another individual satisfactory to the PUCT as soon as practicable.

IN WITNESS WHEREOF both Parties by their duly authorized representatives have executed this Agreement as of the day and year signed below.

Public Utility Commission of Texas

By: W Lane Lanford

W. Lane Lanford

Executive Director

Date Signed: June 1, 2006

Saber Partners, LLC

By: _____

Joseph S. Fichera,

Manager & CEO

Date Signed: June 1, 2006

Saber Capital Partners, LLC

By: _____

Manager & CEO

Date Signed: June 1, 2006

## ATTACHMENT A

## SERVICES TO BE PERFORMED
## AEP TRANSITION BONDS

1. REGULATORY SUPPORT AND DELIVERABLES.

a. If requested, assist PUCT staff in preparing proposed forms of Financing Orders.

b. Provide advice and recommendations to the PUCT on matters relating to structuring and pricing the Transition Bonds.

c. Under the direction of the PUCT, assist the Commission in evaluating the issuance advice letter.

d. Upon request, provide one or more oral briefings to the Commission, the PUCT Staff or other Parties on the results of the transaction.

e. Provide other written reports as directed by the Commission or the PUCT Staff.

2. TRANSACTION DUTIES--STRUCTURING, PRICING, MARKETING.

a. Advise the Commission in making decisions with respect to structuring, pricing, and marketing of the Transition Bonds. The PUCT retains the authority to select the senior bookrunning manager and underwriting team as well as the authority to determine the compensation for the senior book running manager and the underwriting team. If there is a disagreement between Saber Partners and AEP regarding structuring, marketing, and pricing of the transition bonds, the PUCT shall make the final decision.

b. Provide advice to the Commission related to the structuring, pricing, and marketing of the transition bonds.

c. Review all written marketing materials and provide analysis and recommendations concerning them as requested by the Commission.

d. Participate in reviewing all aspects of interactions with the rating agencies, including (without limitation): (1) cash flow models designed to calculate transition charges and transition bond payments; (2) "stress test" cash flow analyses; (3) business issues related to legal opinions: and (4) the resolution of other rating agency issues. including required capital contributions, overcollateralization, and other credit enhancement levels to achieve triple-A ratings. Provide analysis and recommendations concerning interactions with the rating agencies as requested by the Commission.

e. Review the underwriters' plans for marketing the series of Transition Bonds, including their: (a) strategy to market the bonds to all relevant domestic and international

debt market segments, including potential crossover buyers from the corporate bond market, and (b) marketing materials in both written and electronic form (e.g., sales point memoranda, road shows, and other investor education materials). Provide analysis and recommendations concerning marketing the transition bonds as requested by the Commission.

f. Evaluate market conditions and make recommendations on various aspects of the transaction including: (a) the timing of the proposal; and (b) the alternative tranching structures to target current demand conditions.

g. Review the underwriters' list of investors to whom the underwriters propose to offer the series of Transition Bonds. Provide analysis and recommendations concerning the proposed investors as requested by the Commission.

h. Review or attend written or oral presentations to the Commission by any underwriter or group of underwriters to investors, and participate in discussions relating to structure or price of transition bonds as the Commission requests.

i. Coordinate price talks with underwriters and review and advise the Commission regarding preliminary pricing indications prior to release to the marketplace.

j. Have open access to the bookrunning manager's book and all orders with respect to the series of Transition Bonds.

k. Review the proposed pricing of the series of Transition Bonds and, if there is an oversubscription, recommend whether the oversubscribed Transition Bonds should be re-priced.

l. Obtain written certification from the bookrunning underwriter(s) that the structuring, marketing and pricing of the Transition Bonds resulted in the lowest cost of funds and transition bond charges consistent with market conditions and the terms of the Financing Order.

3. TRANSACTION DUTIES—DOCUMENT REVIEW AND DUE DILIGENCE.

a. Review all transaction documents on behalf of ratepayers, giving particular attention to covenants, representations, and warranties to be given by AEP and by the Special Purpose Entity ("SPE") issuing the Transition Bonds and to remedies and the measure of damages that will apply in the event of any breach of covenant, representation or warranty by AEP or by the SPE. Provide analysis and make recommendations based on the review as requested by the Commission.

b. Review drafts of all SEC registration statements and any written correspondence with SEC staff and participate in discussions with SEC staff. Provide analysis and recommendations based on the review as requested by the Commission.

c. Participate in the underwriters' due diligence efforts as requested by the Commission.

d. Review the issuance advice letter and the Final Report for compliance with the Saber Partners's contract and the Commission's final order. . Provide analysis and recommendations based on the review as requested by the Commission.

e. Review legal opinions given to rating agencies. . Provide analysis and recommendations based on the review as requested by the Commission.

f. Review any Internal Revenue Service private letter ruling requests and letter rulings. . Provide analysis and recommendations based on the review as requested by the Commission.

g. Conduct such other due diligence as may be necessary to support the Final Report.

h. Promptly notify the Commission if Saber Partners becomes aware that any material aspect of the transaction has been performed in a manner that is not legal or ethical or that any decisions made in the transaction have not been appropriately documented, including documentation of any difficulties, anomalies, or unusual circumstances encountered in the transaction and their resolution.

i. Provide other support as requested by the PUCT Staff concerning the services and duties of this Agreement.

4. TRANSACTION AND POST-TRANSACTION DUTIES —ACCOUNTING AND FINANCIAL.

a. Review all relevant information provided by AEP concerning various Qualified Costs (including costs of issuance and on-going servicing costs) and other financeable costs not fixed in the Financing Order. Provide analyses and recommendations concerning these costs as requested by the Commission.

b. Assist AEP in preparing the issuance advice letter, including documentation that the statutory tests have been met as requested by the Commission.

## ATTACHMENT B

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is an integral part of, and should be read in connection with, the attached Agreement between the Parties thereto. Capitalized terms used herein without definition shall have the meanings provided in the Agreement.

A. **"Confidential Information"** means information of or provided by the PUCT or AEP, referred to as "Discloser," that is provided or disclosed to Saber Partners and is marked as confidential or proprietary. If Confidential Information is initially disclosed orally then (1) it must be designated as confidential or proprietary at the time of the initial disclosure and (2) within twenty (20) days after disclosure, the information must be reduced to writing and marked as confidential or proprietary. Notwithstanding the foregoing, no information of Discloser will be considered Confidential Information to the extent the information:

1. is in the public domain other than through violation by Saber Partners of the terms hereof; or

2. is in the possession of Saber Partners prior to the disclosure, except as disclosed under separate confidentiality provisions between Saber Partners and Discloser, or thereafter is independently developed by Saber Partners 's employees or consultants or those of its affiliates who have had no prior access to the information;

3. is rightfully received by Saber Partners from a third Party without breach of any obligation of confidence to Discloser; or

4. is required to be disclosed by law, court order or governmental rule and regulation.

B. **Use of Confidential Information.** Confidential Information disclosed by Discloser to Saber Partners in connection with the Services conducted under the Agreement does not become the property of Saber Partners and will be used by Saber Partners solely for the purposes of this Agreement.

C. **Disclosure of Confidential Information.** Saber Partners agrees to protect Confidential Information with the same standard of care and procedures that it uses to protect its own Confidential Information. Without Discloser's prior written consent, Saber Partners shall not disclose or transfer Confidential Information to any person other than the PUCT and Saber Partners' employees (including contract and affiliate employees and subcontractors having a need to know) or consultants who participate in the Services if the employees and consultants have been made aware of their responsibilities under this Confidentiality Agreement. If Confidential Information is required by law, regulation, or court order to be disclosed, Saber Partners must first

notify Discloser, if legally permitted, and permit Discloser a reasonable opportunity to seek an appropriate protective order.

**D. Breach of Confidentiality Agreement.** Breach of the provisions of this Confidentiality Agreement by Saber Partners may constitute cause for termination of the Agreement pursuant to its terms. Saber Partners recognizes that any such breach may result in irreparable harm to Discloser and agrees that Discloser shall have the right to seek injunctive relief in the event of such a breach.

**E. Return or Destruction of Confidential Information.** Upon the completion of the Services under the Agreement, or the termination of the Agreement or at Discloser's request, Saber Partners shall return to Discloser or, at Saber Partners' option, shall destroy all Confidential Information in Saber Partners 's possession, custody or control, except as otherwise required by law, court order or governmental rule or regulation. Prior to returning or destroying such Confidential Information, Saber Partners shall file a copy of such information with the PUCT if such information is not already filed with the Commission. With respect to any such information which is destroyed, Saber Partners shall certify by written notification to Discloser and Commission that such Confidential Information has been destroyed.

**F. Termination.** The provisions of this Confidentiality Agreement shall expire on the fifth anniversary of the date hereof.

**AFFIRMATION**

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

R A Klein

Rebecca Klein
Saber Partners, Consultants
Indiana Office of Utility Consumer Counselor

Cause No. 45722
CenterPoint Energy Indiana

7/28/2022
Date

## CERTIFICATE OF SERVICE

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

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Jeffery A. Earl
Michelle D. Quinn
Matthew Rice
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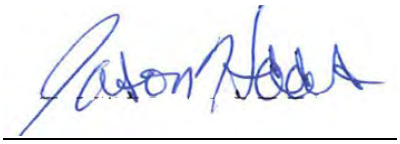

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