DUKE ENERGY FLORIDA

John T. Burnett
DEPUTY GENERAL COUNSEL

September 14, 2015

VIA ELECTRONIC FILING

Ms. Carlotta Stauffer, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Duke Energy Florida, LLC's Rebuttal testimony and exhibits
Docket 150171-EI and 150148-EI

Dear Ms. Stauffer:

Please find enclosed for filing on behalf of Duke Energy Florida, LLC ("DEF"), rebuttal testimony to be filed in Docket 150171-EI. The filing includes the following:

- Rebuttal Testimony of Bryan Buckler with attached Exhibit Nos. ____ (BB-3), (BB-4), (BB-5), (BB-6), and (BB-7);
- Rebuttal Testimony of Patrick Collins with attached Exhibit No. ____ (PC-3);

Thank you for your assistance in this matter. Please feel free to call me at (727) 820-5184 should you have any questions concerning this filing.

Respectfully,

/s/ John T. Burnett

John T. Burnett

JTB/at
Enclosures

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 14th day of September, 2015.

/s/ John T. Burnett

Attorney

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Duke Energy Florida, Inc. For Issuance of a Nuclear Asset-Recovery Financing Order	Docket No. 150171-EI Submitted for Filing September 14, 2015

REBUTTAL TESTIMONY OF BRYAN BUCKLER

ON BEHALF OF
DUKE ENERGY FLORIDA, LLC

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

BY DUKE ENERGY FLORIDA, LLC

FPSC DOCKET NO. 150171-EI

REBUTTAL TESTIMONY OF BRYAN BUCKLER

I. INTRODUCTION AND QUALIFICATIONS.

Q. Please state your name and business address.

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

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

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

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

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

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

II. SUMMARY OF REBUTTAL TESTIMONY

Q. Please summarize your rebuttal testimony

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

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

A. Yes. I am sponsoring the following exhibits:

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

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

III. REBUTTAL TESTIMONY

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

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

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

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

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

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

Primary Issues

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

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

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

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

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

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

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

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

> [T]he commission shall issue a financing order authorizing the financing of reasonable and prudent nuclear asset-recovery costs and financing costs if the commission finds that the issuance of nuclear asset-recovery bonds and the imposition of nuclear asset-recovery charges authorized by the financing order have a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs. Any determination whether nuclear asset-recovery costs are reasonable and prudent shall be made with reference to the general public interest and in accordance with [the RRSSA].

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

> the proposed structuring, expected pricing, and financing costs of the nuclear asset-recovery bonds should have a significant likelihood of resulting in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with the traditional method of financing and recovering nuclear asset-recovery costs. (Section 366.95(2)(c)2.b., Florida Statutes).

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

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

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

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

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

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

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

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

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

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

The actual standard adopted by the Ohio commission was:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other Issues

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

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

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

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

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

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

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

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

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

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

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

Q. Does MSRB Rule G-23 have relevance to the proposed securitization?

A. No, I do not believe so. In addition to the fact that this is not a municipal transaction, Rule G-23 is intended to protect understaffed municipal issuers against self-dealing by financial institutions. Specifically, Rule G-23 prevents a financial institution which has

served as a "financial advisor" to a municipal issuer from simultaneously, or subsequently, serving as underwriter for the issuer on the same transaction. While not always the case, municipal issuers may not be fully or appropriately staffed to effectively evaluate financial advice provided by financial institutions. Rule G-23 was intended to address this imbalance and the potential abuse which may flow from it. As Mr. Sutherland quotes from Mary Shapiro on p. 34 of his testimony as to the underlying intent of the rule, it is described as preventing the financial institution from "[guiding] the municipality towards securities tailored to his firm's advantage, then resign and act as underwriter."

The facts and circumstances here are very different. First, Morgan Stanley did not guide DEF toward pursuing a utility securitization in its role as structuring advisor. Instead, DEF made its decision in order to provide substantial savings to its customers prior to its hiring of Morgan Stanley. Second, there is not an imbalance similar to the one described above between a municipal entity and financial institutions. Duke Energy manages billions of dollars of debt financings each year and is fully capable of assessing the value of any advice it receives from any financial institution and of protecting its interests and those of its customers. As previously stated, the transaction will be able to benefit from the collective experience of all Bond Team members, in addition to several highly qualified underwriters, which should alleviate any potential conflict of interest concerns.

Summary of Rebuttal Testimony

Q. Would you please summarize your rebuttal testimony?

A. I would like to summarize DEF's rebuttal testimony as follows:

- DEF's primary goal for the proposed nuclear asset-recovery bond issuance is to maximize customer savings compared to the traditional method of recovery under the RRSSA.
- DEF has proposed and strongly believes in the Bond Team concept, and in fact believes it is critical to the success of the proposed nuclear asset-recovery bond issuance for the Commission, the Commission staff, and their financial advisors to have equal decision making authority with DEF in the design and operation of all critical phases of this transaction, including, but not limited to:
  - Selection of substantially all service providers, including underwriters;
  - Design of the marketing and sales efforts and identification of prospective investors;
  - Decisions regarding the structuring of the bonds, including maturity profiles;
  - Decisions regarding the initial pricing thoughts for each bond tranche and the ultimate coupon to accept given investor demand;
- The Commission staff should be heavily involved in the Bond Team and related processes.
- DEF, the SPE, and their officers are the only Bond Team participants with U.S. securities law liability, and thus they collectively must make the final decisions on all public disclosures and must also control all communications with investors. DEF should also be allowed, in its sole discretion, to hire its and the SPE's transaction and U.S. securities law external counsel. This being said, DEF

welcomes and encourages all Bond Team members to actively participate in the design of the marketing materials for investors, as well as in the development and implementation of the marketing and sales plan for the bonds.

- DEF strongly believes it should not be subject to a "lowest overall cost" standard and certification with respect to the pricing of the nuclear asset-recovery bonds, as such standard and suggested certification is a "perfection" standard with no objective way of being verified. In other words, DEF and its shareholders should not be unfairly at risk of losses due to the subjective assessment of whether a "perfection" standard has been achieved. Instead, the Bond Team and the other oversight provisions afforded to the Commission by DEF's Form of Financing Order should give the Commission comfort that customers' interests are being protected to the full extent reasonably possible. Further, such protocols as outlined in DEF's Form of Financing Order fully cover the required statutory objectives and provide great certainty that the nuclear asset-recovery bond issuance would be executed in a prudent and highly effective manner.
- DEF agrees to document, in writing, all of the significant prudent and reasonable actions taken by the Bond Team, including DEF, to minimize the overall cost of the financing.

Q. Does this conclude your testimony?

A. Yes.

initial supplemental comments were filed by Ohio Power and Staff. On January 18, 2013, Supplemental Reply Comments were filed by Ohio Power and OCC.

(5) The proposed securitization transaction, as discussed and amended by this Financing Order, results in, consistent with market conditions, both measurably enhancing cost savings to customers and mitigating rate impacts to customers as compared with previously approved recovery methods.

(6) The proposed securitization transactions, as set forth in this Financing Order, are consistent with Section 4928.02, Revised Code.

ORDER:

It is, therefore,

ORDERED, That the application be approved consistent with the conditions set forth in this Financing Order. It is, further,

ORDERED, That, consistent with this Financing Order, within ninety days after the date of the PIR Bond issuance, Ohio Power make a final reconciliation filing in 11-352 in order to address the remaining deferral balance of the DARR. It is, further,

ORDERED, That Ohio Power be authorized to enter into transactions for the issuance of PIR Bonds and to assess and collect PIR Charges, as set forth in this Financing Order. It is, further,

ORDERED, That Ohio Power file the applicable SPE agreement in accordance with the terms of this Financing Order. It is, further,

ORDERED, That Ohio Power file its Issuance Advice Letter with the accompanying certification consistent with this Financing Order. It is, further,

ORDERED, That Ohio Power retain a financial advisor on behalf of the Commission consistent with this Order. It is, further,

ORDERED, That, concurrent with the filing of the Issuance Advice Letter, the Commission's financial advisor shall file its attestation consistent with this Order. It is, further,

4928.232 Proceedings; review of application; disposition.

(A) Proceedings before the public utilities commission on an application submitted by an electric distribution utility under section 4928.231 of the Revised Code shall be governed by Chapter 4903. of the Revised Code, but only to the extent that chapter is not inconsistent with this section or section 4928.233 of the Revised Code. Any party that participated in the proceeding in which phase-in costs were approved under section 4909.18 or sections 4928.141 to 4928.144 of the Revised Code or section 4928.14 of the Revised Code as it existed prior to July 31, 2008, shall have standing to participate in proceedings under sections 4928.23 to 4928.2318 of the Revised Code.

(B) When reviewing an application for a financing order pursuant to sections 4928.23 to 4928.2318 of the Revised Code, the commission may hold such hearings, make such inquiries or investigations, and examine such witnesses, books, papers, documents, and contracts as the commission considers proper to carry out these sections. Within thirty days after the filing of an application under section 4928.231 of the Revised Code, the commission shall publish a schedule of the proceeding.

(C)

(1) Not later than one hundred thirty-five days after the date the application is filed, the commission shall issue either a financing order, granting the application in whole or with modifications, or an order suspending or rejecting the application.

(2) If the commission suspends an application for a financing order, the commission shall notify the electric distribution utility of the suspension and may direct the electric distribution utility to provide additional information as the commission considers necessary to evaluate the application. Not later than ninety days after the suspension, the commission shall issue either a financing order, granting the application in whole or with modifications, or an order rejecting the application.

(D)

(1) The commission shall not issue a financing order under division (C) of this section unless the commission determines that the financing order is consistent with section 4928.02 of the Revised Code.

** (2) Except as provided in division (D)(1) of this section, the commission shall issue a financing order under division (C) of this section if, at the time the financing order is issued, the commission finds that the issuance of the phase-in-recovery bonds and the phase-in-recovery charges authorized by the order results in, consistent with market conditions, both measurably enhancing cost savings to customers and mitigating rate impacts to customers as compared with traditional financing mechanisms or traditional cost-recovery methods available to the electric distribution utility or, if the commission previously approved a recovery method, as compared with that recovery method.

(E) The commission shall include all of the following in a financing order issued under division (C) of this section:

(1) A determination of the maximum amount and a description of the phase-in costs that may be recovered through phase-in-recovery bonds issued under the financing order;

(2) A description of phase-in-recovery property, the creation of which is authorized by the financing order;

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Power Company for Authority to Issue Phase-In-Recovery Bonds and Impose, Charge and Collect Phase-In – Recovery Charges and For Approval of Tariff and Bill Format Changes	))))))	Case No. **12-1969-EL-ATS**

ISSUANCE ADVICE LETTER FOR OHIO POWER COMPANY'S PHASE-IN-RECOVERY BONDS

Pursuant to the Financing Order issued *In the Matter of the Application of Ohio Power Company for Authority to Issue Phase-in-Recovery Bonds and Impose, Charge and Collect Phase-in-Recovery Charges for Tariff and Bill Format Changes in Case No. 12-1969-EL-ATS (the Financing Order),* Applicant hereby submits, no later than the close of business on the second business day after the pricing of this series of Senior Secured Phase-In-Recovery Bonds ("PIR Bonds"), the information referenced below. The issuance Advice Letter is for the PIR Bonds tranches A-1 and A-2. 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 Phase-In Costs and Upfront Financing Costs being securitized;
(b) Confirmation of compliance with issuance standards;
(c) The actual terms and structure of the PIR Bonds being issued;
(d) Together with the concurrent tariff filing being made by the Applicant, the initial Phase-In-Recovery Charges for retail users; and
(e) The identification of the Special Purpose Entity (SPE)

PHASE-IN RECOVERY COSTS BEING SECURITIZED:

The total amount of Phase-In Costs and Upfront Financing Costs being securitized (the amount of the PIR Bonds) is presented in Attachment-1, Schedule A.

COMPLIANCE WITH ISSUANCE STANDARDS

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

1. The total amount of Phase-In Recovery Charge revenues to be collected under the Financing Order is less than the revenue requirement that would be recovered using the existing cost recovery mechanism of the Applicant (the Deferred Asset Recovery Rider ("DARR") authorized by the Commission on December 14, 2011. Case Nos. 11-351-EL-AIR and 11-352-EL-AIR.) (See Attachment 2, Schedule C and D);

2. The present value of the revenues to be billed under the Financing Order will not exceed the present value of revenue that would be expected to be billed using the existing cost recovery method of the Applicant; (See Attachment 2, Schedule D);

3. The PIR Bonds will be issued in one series comprised of two tranches having an expected scheduled final payment date no later than 6.71 years from the date of issuance and a legal final maturity not exceeding 7.71 years from the date of issuance of such series (See Attachment 2, Schedule A); and

4. The structuring and pricing of the PIR Bonds is certified by the Applicant to result in the Phase-In-Recovery Charges as of the date of issuance consistent with market conditions and the terms set out in this Financing Order (See Attachment 3) that demonstrates both measurably enhanced cost savings to customers and mitigates rate impacts to customers as compared with Applicant's existing cost recovery methods previously approved by the Commission.

ACTUAL TERMS OF ISSUANCE

PIR Bond Series: Senior Secured Phase-In-Recovery Bonds, Tranches A-1 and A-2
PIR Bond Issuer (SPE): Ohio Phase-In-Recovery Funding LLC

Trustee: U.S. Bank National Association

Closing date: August 1, 2013

Bond ratings: S&P AAA, Moody's Aaa

Amount Issued: $ 267,408,000

PIR Bond Issuance Costs (upfront financing costs): See Attachment 1, Schedule B

PIR Bond Support and Servicing (ongoing financing costs): See Attachment 2, Schedule B

Tranche	Coupon Rate	Expected Final Maturity	Legal Final Maturity
A-1	0.9580%	07/1/2017	07/01/2018
A-2	2.0490%	07/1/2019	07/01/2020

Effective Annual Weighted Average Interest Rate of the PIR Bonds	1.58%
Life of Series:	5.92 years
Weighted Average Life of Series:	3.34 years
Call Provisions (including premium, if any):	Not callable
Target Amortization Schedule:	Attachment 2, Schedule A
Expected Final Maturity Date:	See above
Legal final Maturity Date:	See above
Payments to Investors:	Semiannually Beginning July 1, 2014
Initial annual Servicing Fee as a percent of original PIR Bond principal balance:	0.10%

INITIAL PHASE-IN RECOVERY CHARGES

Table I below shows the current assumptions for each of the variables used in the calculation of the initial Phase-In Recovery Charges

TABLE I	
Input Values For Initial Phase-In Recovery Charges	
Applicable period: from August 1, 2013 to July 1, 2014	
Forecasted retail kWh sales for the applicable period:	41,973,915,178
PIR Bond debt service for the applicable period:	$38,309,931
Percent of billed amounts expected to be charged-off	0.28%
Forecasted % of retail kWh sales billed and collected in the Applicable Period (%):	89.71%
Forecasted retail kWh sales billed and collected for the applicable period:	37,652,792,497
Current PIR Bond outstanding balance:	$267,408,000
Target PIR Bond outstanding balance as of 7/1/2014	$232,471,522
Total Periodic Billing Requirement for applicable period:	$39,234,350

The Applicant submits this Issuance Advice Letter to the Commission in compliance with the Financing Order of March 20, 2013 and Entry on Rehearing of April 10, 2013 in Case No. 12-1969-EL-ATS to permit the issuance of the PIR Bonds on August 1, 2013.

July 24, 2013

Respectfully submitted,

/s/ Steven T. Nourse
Steven T. Nourse
American Electric Power Service Corp.
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
Tel: (614) 716-1915
Email: stnourse@aep.com

Counsel for Ohio Power Company

Cc: Parties of Record

ATTACHMENT-1
SCHEDULE-A

TOTAL AMOUNT SECURITIZED

Amount permitted to be Securitized by Financing Order	$298,018,000
Phase-In-Costs	$263,667,605
Upfront Financing Costs	$3,740,395
TOTAL AMOUNT SECURITIZED	**$267,408,000**

ATTACHMENT-1
SCHEDULE-B

ESTIMATED UP-FRONT FINANCING COSTS

		AMOUNT
1	Underwriters' Fees	$ 903,132
2	Legal Fees	$1,674,500
3	Rating Agency Fees	$ 300,000
4	Company Advisor Fees & Expenses	$ 50,000
5	Printing/Edgarizing	$ 20,000
6	SEC Registration Fees	$ 37,919
7	Miscellaneous Administration Costs	$ 75,844
8	Accountant Fees	$ 170,000
9	Trustee's Fees	$ 9,000
10	Financial Advisor's Fees	$ 500,000
10	**TOTAL UP-FRONT FINANCING COSTS**	$3,740,395

ATTACHMENT-2
SCHEDULE-A

PIR BOND REVENUE REPAYMENT SCHEDULE

Tranche A-1				
Payment Date	Principal Balance ($)	Interest ($)	Principal ($)	Total Payment ($)
8/1/13	164,900,000			
7/1/14	129,963,522	1,448,097	34,936,478	36,384,575
1/1/15	107,763,420	622,525	22,200,102	22,822,628
7/1/15	84,536,959	516,187	23,226,461	23,742,648
1/1/16	61,790,651	404,932	22,746,308	23,151,240
7/1/16	38,672,593	295,977	23,118,058	23,414,035
1/1/17	16,232,132	185,242	22,440,461	22,625,702
7/1/17	-	77,752	16,232,132	16,309,884
1/1/18	-	-	-	-
7/1/18	-	-	-	-
1/1/19	-	-	-	-
7/1/19	-	-	-	-
1/1/20	-	-	-	-
7/1/20	-	-	-	-
Total		**3,550,712**	**164,900,000**	**168,450,712**

Amounts rounded to the nearest dollar

Tranche A-2				
Payment Date	Principal Balance ($)	Interest ($)	Principal ($)	Total Payment ($)
8/1/13	102,508,000			
7/1/14	102,508,000	1,925,357	-	1,925,357
1/1/15	102,508,000	1,050,194	-	1,050,194
7/1/15	102,508,000	1,050,194	-	1,050,194
1/1/16	102,508,000	1,050,194	-	1,050,194
7/1/16	102,508,000	1,050,194	-	1,050,194
1/1/17	102,508,000	1,050,194	-	1,050,194
7/1/17	94,878,311	1,050,194	7,629,689	8,679,883
1/1/18	72,047,744	972,028	22,830,568	23,802,596
7/1/18	47,922,805	738,129	24,124,939	24,863,068
1/1/19	24,586,670	490,969	23,336,135	23,827,104
7/1/19	-	251,890	24,586,670	24,838,560
1/1/20	-	-	-	-

7/1/20	-	-	-	-
Total		**10,679,540**	**102,508,000**	**113,187,540**

Amounts rounded to the nearest dollar

ATTACHMENT-2
SCHEDULE-B

ONGOING FINANCING COSTS

	ANNUAL AMOUNT
Ongoing Servicer Fee (Applicant as Servicer)[1] (0.10% of initial principal balance of the bonds)	$267,408
Administration Fees	$50,000
Accountants Fees	$75,000
Legal Fees	$45,000
Trustee's Fees & Expenses	$3,000
Independent Managers Fees	$5,000
Rating Agency Fees	$35,000
Printing/EDGAR expenses	$2,500
Return on Capital Account[2]	$71,398
Miscellaneous	$26,602
TOTAL ONGOING FINANCING COSTS	$580,908

Note: The amounts shown for each category of operating expense on this attachment are the expected expenses for the first year of the PIR bonds. Phase-In Recovery Charges will be adjusted at least annually to reflect any changes in Ongoing Financing Costs through the true-up process described in the Financing Order, subject to the adjustment for such Ongoing Financing Costs in any year not exceeding 105% of an amount equal to the total of such costs estimated in the application for the Financing Order.

[1] Assumes Applicant will act as Servicer for the life of the PIR Bonds. If in the future a third party that is not an EDU acts as servicer for the PIR Bonds, the servicing fee may be increased up to 0.75% of the initial principal balance of the PIR Bonds in accordance with the Financing Order.

[2] Applicant funded capital subaccount in an amount equal to 0.50% of the PIR Bond issuance amount and earns an annual rate of return of 5.34% thereon.

ATTACHMENT-2

SCHEDULE-C

SUMMARY OF PHASE-IN RECOVERY CHARGES

Year	PIR Bond Payment[1] ($)	Ongoing Financing Costs[2] ($)	Total nominal Phase-In Recovery Charge Requirement[3] ($)	Present Value of Phase-In Recovery Charges[4] ($)
0.0				
0.9	38,309,931	532,499	39,234,350	37,384,072
1.4	23,872,822	290,454	24,407,084	22,651,265
1.9	24,792,842	290,454	25,336,386	22,902,226
2.4	24,201,434	290,454	24,739,012	21,780,698
2.9	24,464,230	290,454	25,004,458	21,441,904
3.4	23,675,897	290,454	24,208,171	20,219,216
3.9	24,989,767	290,454	25,535,299	20,773,023
4.4	23,802,596	290,454	24,336,149	19,282,665
4.9	24,863,068	290,454	25,407,321	19,607,875
5.4	23,827,104	290,454	24,360,904	18,311,397
5.9	24,838,560	290,454	25,382,566	18,583,180
6.4	-	-	-	-
6.9	-	-	-	-
Total	281,638,252	3,437,039	287,951,701	242,937,520

Amounts rounded to the nearest dollar

[1] From Attachment 2, Schedule A

[2] From Attachment 2, Schedule B

[3] Sum of PIR Bond payments and ongoing financing costs and taxes owed.

[4] The discount rate used is the weighted average cost of debt for Ohio Power.

ATTACHMENT-2
SCHEDULE-D

COMPLIANCE WITH THE NOMINAL AND PRESENT VALUE STANDARD[1]

	Existing DARR Rate ($)[2]	Securitization Financing ($)	Savings/(Cost) of Securitization Financing ($)
Nominal	306,550,309	287,951,701	18,598,608
Present Value	266,766,198	242,937,520	23,828,678

[1] Calculated in accordance with the methodology used in the Application

[2] Carrying costs at 5.34%

ATTACHMENT-3

CERTIFICATION OF COMPLIANCE

Ohio Power Company
1 Riverside Plaza
Columbus, OH 43215

Date: July 24, 2013

Re: Application of Ohio Power Company, Case No. 12-1969-EL-ATS

Applicant, Ohio Power Company, submits this Certification pursuant to the Financing Order *In the Matter of the Application of Ohio Power Company for Authority to Issue Phase-in-Recovery Bonds and Impose, Charge and Collect Phase-in-Recovery Charges for Tariff and Bill Format Changes in Case No. 12-1969-EL-ATS (the Financing Order).* All capitalized terms not defined in this letter shall have the meanings ascribed to them in the Financing Order and the Issuance Advice Letter referenced herein.

In its Issuance Advice Letter dated July 24, 2013, the Applicant has set forth the following particulars of the PIR Bonds:

Name of PIR Bonds: Senior Secured Phase-In-Recovery Bonds
PIR Bond Issuer: Ohio Phase-In-Recovery Funding LLC
Trustee: U.S. Bank National Association
Closing date: August 1, 2013
Amount Issued: $ 267,408,000

Expected Amortization Schedule: See Attachment 2, Schedule A to the Issuance Advice Letter
Distributions to Investors: Semi-annually on January 1 and July 1
Weighted Average Coupon Rate: 1.58%
Weighted Average Yield: 1.59%
Expected Final Maturity (Tranche A-1): July 1, 2017
Expected Final Maturity (Tranche A-2): July 1, 2019
Legal Final Maturity (Tranche A-1): July 1, 2018
Legal Final Maturity (Tranche A-2): July 1, 2020
Estimated NPV Savings of: $ 23,828,678

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

- Included credit enhancement in the form of the true-up mechanism and an equity contribution of 0.50% of the original principal amount of the PIR Bonds to be deposited in the capital subaccount.
- Registered the PIR Bonds with the Securities and Exchange Commission to facilitate greater liquidity.
- Achieved preliminary Aaa/AAA ratings from the two major rating agencies with final Aaa/AAA as a condition to closing.
- Selection of underwriters that have relevant experience and execution capabilities was affirmed by the Company, the Commission Staff and the Commission's Financial Advisor.
- The marketing presentations were developed to emphasize the strong credit quality and security related to these bonds, and provides relative value analysis to other competing securities.
- 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.
- Ensured that the offering materials and investor presentation materials describe the legislative, political and regulatory framework and the bond structure with a focus on corporate/agency/other crossover buyers specifically targeted to achieve the transaction objectives, and held telephone one-on one conference calls with potential investors to discuss and answer questions.
- 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, the Commission's designated representative(s) and Commission's Financial Advisor to develop recommendations for pricing.
- Developed and implemented a marketing plan designed to encourage each of the underwriters to aggressively market the PIR 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.

- Adapted the PIR Bonds offering to market conditions and investor demand at the time of pricing within the constraints set by the Financing Order. Variables impacting the final structure of the transaction were evaluated including the 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 underwriter compensation and preliminary price guidance designed to achieve lowest possible interest rates.

Based upon the information reasonably available to the officers, agents, and employees of the Applicant, the Applicant hereby certifies that the structuring and pricing of the PIR Bonds, as described in the Issuance Advice Letter, will result in the Phase-In-Recovery Charges as of the date of issuance, consistent with market conditions and the terms set out in the Financing Order that both measurably enhances cost savings to customers and mitigates rate impacts to customers as compared with the DARR cost recovery methods previously approved for the Applicant.

The forgoing certifications do not mean that lower Phase-In-Recovery charges could not have been achieved under different market conditions, or that structuring and pricing the PIR Bonds under conditions not permitted by the Financing Order could not also have achieved lower Phase-In-Recovery Charges.

Applicant is delivering this Certification to the Commission solely to assist the Commission in establishing compliance with the aforementioned standard. 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.

Respectfully submitted,

OHIO POWER COMPANY

By: /s/ Renee V. Hawkins
Name: Renee V. Hawkins
Title: Assistant Treasurer

we energies

231 W. Michigan Street
Milwaukee, WI 53203
www.we-energies.com

Filed Electronically

October 9, 2006

Mr. Eric Callisto, Executive Assistant
Public Service Commission of Wisconsin
610 North Whitney Way
Madison WI 53707-7854

RE: 6630-ET-100 Application of Wisconsin Electric Power Company for a Financing Order Authorizing the Issuance of Environmental Trust Bonds and for the Approval of Related Affiliated Interest Agreements

Dear Eric:

I wish to express my appreciation to you, Dave Gilles and others at the Public Service Commission of Wisconsin ("Commission") for your efforts to assist the Company in making a filing under the Environmental Trust Financing ("ETF") law. I regret that our collective efforts will not result in an issuance.

The law and the Commission's Financing Order, dated October 12, 2004, established a new and as yet untested way of issuing debt in Wisconsin. We were the first to attempt a securities issuance under the new law, and first efforts by their very nature carry significant challenges.

While federal regulations clearly hold the Company, its officers, as well as its directors responsible for all representations to investors, the Financing Order anticipated a collaborative process among the Commission, its consultant and the Company where all parties had a major role. Despite our mutual efforts to reconcile a situation where parties have significant input but not equal liability, we were unable to do so. It may be that such a structure is ultimately irreconcilable. A lesson learned from this process is that the strict liability of the Company, its officers, and directors must be taken into account in the future.

Thomas Edison, arguably the father of the electric utility industry, once described his unsuccessful attempts to develop a workable light bulb by saying "I have not failed. I've just found 10,000 ways that won't work." I hope that the lessons we have all learned over the past several months may in some way assist in any potential efforts to issue ETF bonds in the future.

Kindest regards,

Roman A. Draba, Vice President
Regulatory Affairs and Policy

cc: D. Gilles, R. Norcross, D. Sapper, C.O'Connor

COMPOSITE EXHIBIT OF DEF's ANSWERS TO STAFF'S INTERROGATORIES REFERENCED IN THIS TESTIMONY

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23. Please refer to Exhibit PC-2. Please identify every transaction on this list in which the sponsoring utility was held responsible for a federal security law liability. Please also identify any transaction in which DEF believes there was a potential securities law violation.

Answer: Neither DEF nor Morgan Stanley is aware of any situation in which a sponsoring utility was held responsible for a federal security law violation. However, we believe it is irrelevant whether any of the sponsoring utilities in other transactions have been held responsible for federal securities law violations. The key consideration is that federal securities law liability exists. DEF, as well as Morgan Stanley, take the existence of federal securities law liability seriously and would never deem it to be immaterial simply because we are not aware of any violations for similar transactions to date.

10. Are the setup costs that DEF seeks to recover only incremental costs that are not currently recovered by any other cost recovery mechanism? If not, please explain your rationale for not using incremental costs.

Answer: DEF considers these costs to be incremental to DEF. Specifically, Servicer Set-up Fees (Line 2) include amounts DEF expects to incur to modify its existing information technology system to bill, collect, remit, and report on nuclear asset-recovery charges. The work is performed by Duke Energy Business Services (service company) employees and contractors who are shared amongst and charged to all of the Duke Energy affiliates. The SPE Set-up Fees (Line 9) include the costs of establishing the SPE as well as estimated costs of the SPE's Delaware legal counsel. These costs are also incremental and are not currently recovered by any other cost recovery mechanism.

15. Please refer to Buckler Direct, page 20, lines 16-22. Please identify the costs proposed for the informational technology program modifications listed on line 2 of Exhibit BB-1, page 1 of 2. How was this estimate developed and will DEF perform the work?

Answer:

The chart below identifies the estimated costs, as of earlier in 2015, for the information technology program modifications at each stage of the project.

Project Stage	Estimated Cost (in thousands)
Analysis & Design	$544
Build & Unit Test	257
Component Test	121
Product Acceptance Test	355
User Acceptance Test	166
Integrated Regression Test	38
Deployment & Warranty	416
Total	**$1,898**

The project estimate was developed by determining the project scope, and then gathering the business and functional requirements. After the business and functional requirements are determined, the Informational Technology team evaluates the impacts and estimates the hours to complete the project for both Information Technology and Business Units. A blended hourly rate factor and the total estimated labor hours are used to calculate the estimated cost for the project. Duke Energy and its contractors are performing all work to the billing system and interfaces.

The project teams consists of 9 Duke Energy Business Services (service company) employees, which are shared resources among all of the jurisdictions, and 4 outside contractors. The projects that the service company employees would have been tasked to work on cross all of the affiliated entities.

The **analysis & design** stage is to document the inventory of impacted items such as reports, interfaces, programs, files and databases. Initially 121 impact items were identified such as batch processing, general ledger interface, code table, on-line query

tool, on-line dialog, databases, report generators and reports. Screen mock ups and report mock ups are created and interface files are defined to the field level. Design documents are developed that narrate the data flows or work flows. While performing the detailed inventory analysis, the project team determined that labor hours and costs could be materially reduced by utilizing an available charge field in the billing system, and thus the total estimate for this IT project is now significantly lower than the above estimate. The table below illustrates the project to date costs (as of July 31, 2015) which have in fact been greatly reduced due to the diligence by the project team. This will save programming time which reduces business risk and in the end will save the customers cost. Instead of the ~$1.9 million of costs estimated earlier in the process, DEF is now hopeful that the costs will be significantly lower.

Actual Costs Incurred Through July 2015

Project Stage	Actual Cost (in thousands)
Analysis & Design	75
Build & Unit Test	35
Component Test	*
Product Acceptance Test	*
User Acceptance Test	*
Integrated Regression Test	*
Deployment & Warranty	*
Total as of July 31, 2015	**$110**

**** Actual costs will be determined as project completes each stage***

The **build & unit test** stage is commonly referred to as coding in which developers may find their coding tasks to be much more or less complicated than originally assessed in inventory. During this stage thousands of lines of program code must be analyzed and tested. The developer must prove that the coded solution is viable in terms of executable code. Successful completion of this stage occurs when the billing system can execute the instruction set and produce the expected results.

The **component test** stage is a sub-stage of the build & unit test stage. It is planned separately after the coding and unit test is complete. Component test is conducted in a

system test environment at a higher level than unit test by the project team members. This allows the project team to identify and correct problems with the code or job flows prior to exposure to the business partners. The team will execute approximately 350 component test scripts and 3,000 test steps by the end of this test phase, and approximately 200 rates in four billing groups will be tested and verified.

The **product acceptance test** stage is a business partners stage. The business partners will be engaged in processing, data, report validations and verifications. Any process errors will be documented and tracked, and daily meetings will be conducted to review defect correction progress. Test scripts are estimated to be approximately 500 scripts containing 20,000 test steps. All billing rates and all billing scenarios (e.g. cancel/rebill and cancel/adjust) will be tested during this stage.

The **user acceptance test** stage is to focus on validating that all defects have been fixed and ensure all business requirements have been met. There will be an estimated 200 scripts executed during this phase of testing.

The **integration regression test** stage is conducted independent of the project team and business partners. A test support team moves the changes made to the project into a test environment and then performs a set of regression test scripts to ensure that the changes made to the environments as a whole will not have a negative impact.

The **deployment & warranty** stage is the act of planning for and then executing the steps needed to move the products developed during the execution stages of the project life cycle into the production environment. The project team will still address and correct any defects that may be found once the project has been deployed into the production environment. The project team will work in conjunction with the production support team to train them on the changes that were made and how to properly support them. The duration of the warranty period depends on the nature of the project. The warranty period is expected to span 90 to 100 days as it must include two billing cycle month ends and two revenue collection cycle month ends.

34. Is it a conflict of interest to have DEF's financial advisor also be an underwriter, and therefore, a purchaser of the bonds?

Answer: Morgan Stanley is DEF's structuring advisor for this proposed transaction, and its responsibilities include reviewing of enacted legislation; reviewing Company financing objectives; reviewing rating agency criteria with the Company; developing preliminary financing structures; developing interest rate risk management structures, if applicable; developing the mechanics of properly effecting the Financing, including assistance with preparing billing and collection systems; assistance with preparing related testimony of various Company witnesses; reviewing draft transaction documents; assistance in developing and applying for a proposed financing order; and providing expert direct testimony and rebuttal testimony (if any).

DEF, through its inquiries of its legal advisors and financial institutions, notes it is common for firms to participate as both structuring advisor and underwriter on utility securitization transactions. The document attached to this response (bearing Bates numbers 150148-STAFFROG2-34-000001 through 000002) includes listings of utility securitization transactions provided by Goldman Sachs and Morgan Stanley. These listings demonstrate that it is a common practice for these financial institutions to participate as both structuring advisor and underwriter on utility securitization transactions. The participation of a financial institution as both structuring advisor and underwriter may result in efficiencies in both costs and timing that will benefit customers. We are not currently aware of any conflict of interest concerns. However, if such conflict of interest concerns were to be expressed, we would propose to address those concerns through the underwriting request for proposal process and through disclosure in the prospectus as well as undertake the hiring of multiple underwriters. DEF proposes to engage multiple underwriters to ensure the best advice is obtained, and to diminish the influence of any one advisor. DEF would like to attain advice from the most experienced financial institutions in the utility securitization arena to ensure sufficient investor demand is obtained and a successful transaction results. Further, DEF plans to engage the underwriters early enough in the process to ensure their input is taken into consideration before finalizing the structure that would be presented to the rating agencies and investors. Please note the document referenced above is confidential. A redacted version is attached hereto. An unredacted version has been filed with the FPSC along with DEF's Notice of Intent to Request Confidential Classification dated August 31, 2015.

As indicated in my testimony and discussed in the response to Interrogatory No. 17, DEF, in consultation with the other members of the Bond Team, expects to conduct a request-for-proposal process to select underwriters for the transaction. Morgan Stanley should not be excluded from participation in the request-for-proposal process or the related underwriting services if it demonstrates it has satisfactory experience marketing and selling utility securitization bonds, and assuming sufficient expertise and influence is obtained by hiring multiple appropriately qualified underwriters.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Duke Energy Florida, Inc. For Issuance of a Nuclear Asset-Recovery Financing Order	Docket No. 150171-EI Submitted for Filing September 14, 2015

REBUTTAL TESTIMONY OF PATRICK COLLINS

ON BEHALF OF
DUKE ENERGY FLORIDA, LLC

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

BY DUKE ENERGY FLORIDA, LLC

FPSC DOCKET NO. 150171-EI

REBUTTAL TESTIMONY OF PATRICK COLLINS

I. INTRODUCTION AND QUALIFICATIONS

Q. Please state your name and business address.

A. My name is Patrick Collins. My current business address is 1585 Broadway, New York, New York 10036.

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

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

Q. Has your employment position changed since you filed the July 27, 2015 testimony?

A. No, it has not.

II. SUMMARY OF REBUTTAL TESTIMONY

Q. Please summarize your rebuttal testimony.

A. The purpose of my rebuttal testimony is to address Commission staff witnesses' statements relating to the SEC's treatment of the nuclear asset-recovery bonds as asset-backed securities and to discuss the merits of the proposed monthly remittances of funds to the Special Purpose Entity (SPE) from DEF.

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

A. Yes. I am sponsoring the following exhibit:

- Exhibit No. __ (PC-3), Composite exhibit of interrogatory responses referenced in this rebuttal testimony

III. REBUTTAL TESTIMONY

Q. Do you have any comments in response to Mr. Sutherland's assertion that the bonds could not be viewed as "asset-backed securities" by the SEC?

A. Yes. There is little doubt that the SEC and other regulatory bodies consider utility securitizations to be "asset-backed securities" in a legal context under Item 1101(c) of Regulation AB. DEF has described its position in full in DEF's responses to Questions 20, 25, 28 and 29 in the Staff's Second Set of Interrogatories (Nos. 8-39), attached as composite Exhibit No. __ (PC-3). As such, DEF currently anticipates filing its registration statement on the new Form SF-1. DEF does not believe that the 2007 Financial Accounting Standards Board (FASB) Statement referenced on p. 8 of Mr. Sutherland's testimony in any way would alter this legal conclusion. That statement in no way purports to reflect the *legal treatment* for SEC registration purposes; instead, it reflects the bonds treatment for financial reporting purposes (which has little, if any,

relevance in this context). Furthermore, for the reasons set forth in DEF's response to Question 28 in Staff's Second Set of Interrogatories (Nos. 8-39), it would appear to be unproductive to adopt the approach used in the referenced West Virginia financings to obtain an SEC no-action letter (which was obtained for the original 2007 West Virginia financing). See Exhibit No. __ (PC-3).

Q. Do you have any comments in response to Mr. Sutherland's assertion regarding the marketing of the bonds in the context of the "asset-backed securities" discussion?

A. Yes. DEF recognizes that the property interest securing utility securitizations (here, the nuclear asset-recovery property) is unique and is unlike the collateral backing traditional, commoditized securitizations like loans or leases. Further, there are a few distinctions that are important to make in the context of marketing the bonds. First, with respect to marketing, in order to get the best execution possible for customers, it is necessary to get as many potential investors interested in the bonds. That should include a wide group of fixed income investors, including investors who would otherwise purchase high quality assets such as AAA-rated credit cards or other AAA-rated securitizations (one may refer to these types of securities as asset-backed securities, but it is essential not to confuse this informal, marketing reference with the actual legal definition described above under Item 1101(c) of Regulation AB with the SEC). Second, marketing to investors who would otherwise purchase those types of securities should not and will not preclude marketing the bonds to investors in the broader fixed income capital markets. Third, marketing to those same investors referenced above does not and will not mean that the nuclear asset-recovery bonds are marketed as a pool of receivables. Any assertion otherwise by Mr.

Sutherland is not indicative of how DEF plans to market the bonds. Mr. Sutherland's comments imply that the marketing should exclude any investor who invests in AAA-rated credit cards, for example. This should not be the case and doing so would have a negative pricing impact on the bonds.

Q. If monthly remittances are allowed by the rating agencies and approved by the Commission, what is your opinion regarding including earnings on collections pending monthly remittance?

A: Commission staff witness Sutherland (page 32, lines 18-20) states: "If DEF is permitted to remit its collection of nuclear asset-recovery charges monthly, then DEF should also be required to remit to the trustee DEF's actual earnings on those collections pending monthly remittance." As stated on page 12, line 9-10 of Michael Covington's testimony "DEF would include in any remittance investment earnings which are estimated to have been earned on such collections while in the hands of DEF."

DEF does not expect to segregate collections received from nuclear asset-recovery charges from its general funds prior to remitting such funds to the trustee. Therefore, DEF will manage these funds in accordance with its normal cash management practices. My understanding is that those practices include investing excess cash, if any, in the Duke Energy internal money pool arrangement (e.g., lending to Duke Energy's other regulated utility companies) or in overnight money market funds. Investments in the Duke Energy internal money pool arrangement earn interest at the Tier-1 commercial paper rate. Investments in money market fund earn interest at prevailing market rates. As DEF's cash position can change significantly on a daily basis, DEF does not believe it

would be possible to accurately attribute actual cash investment earnings of DEF to nuclear asset-recovery charge collections. Rather, DEF proposes to allocate investment earnings to such collections based on the average of the beginning and ending Tier-1 commercial paper rate (i.e., 30-day Federal Reserve "AA" Industrial Commercial Paper Composite Rate) for each month. This method is consistent with the process used by DEF when allocating interest to over and under-collections on DEF's cost recovery clauses. DEF also believes monthly remittances would be less costly than daily remittances as they would simply require one administrative transaction per month versus 20-23 individual transactions per month. This reduces transaction costs as well as labor required to run reports and to verify and prepare wire transfers on a daily basis and subsequently reconcile the daily remittances to the monthly remittance requirements.

Q. Does this conclude your testimony?

A. Yes. Thank you.

COMPOSITE EXHIBIT OF DEF's ANSWERS TO STAFF'S INTERROGATORIES REFERENCED IN THIS TESTIMONY

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20. Please refer to Buckler Direct, page 22, lines 2-5. Please explain how DEF's proposed nuclear asset-recovery bonds are directly and/or indirectly impacted by the new SEC regime.

Answer: As stated in Patrick Collins's original testimony on p. 40, lines 5 through 11, in August of 2014, the SEC adopted revisions to Regulation AB, commonly referred to as Regulation AB II, relating to the registration, disclosure, and reporting for publicly-offered asset-backed securities issued after November 23, 2015. Once these new regulations are effective, the registration of asset-backed securities, as defined by Item 1101(c) of Regulation AB, will be required to be made on one of two new forms: Form SF-1 and Form SF-3. DEF currently anticipates that it will file on Form SF-1 because DEF anticipates only a single offering of nuclear asset-recovery bonds.

The new filing requirements have not gone into effect yet, although the SEC has encouraged "pilot filings" to be made in anticipation of the effective date and several issuers are undergoing the full review process in this pilot program relating to the new Form SF-3. To date, I am not aware of any filing made or being pursued using a pilot program for Form SF-1. As such, utilizing filings under a new and updated regulatory regime, there naturally will be a certain amount of uncertainty with the exact implementation and timing of the process.

25. Please refer to Collins Direct, page 40, lines 14-20. Do the nuclear asset-recovery bonds have to be classified as asset-backed securities? For purposes of this response, please identify the specific requirement or authority for this designation.

Answer: There appears to be little doubt that the SEC (under whose authority such a designation is made) and other regulators generally consider a utility securitization, such as DEF's proposed transaction, as an "asset-backed security."

Regulation AB II relies upon the definition of "asset-backed securities" from Item 1101(c) of Regulation AB. Under these new regulations, any issuer issuing a publicly-registered asset-backed security under this definition must utilize registration statement Form SF-1 or Form SF-3, as appropriate. Regulation AB II, however, includes other provisions beyond the type of registration form to be used for registered securities. So, for guidance as to how the SEC is to consider DEF's proposed transaction, we looked to recent rulemaking from the SEC relating to other provisions of Regulation AB II that utilize the same definition of asset-backed securities. As such, Regulation AB II includes provisions around asset-level data disclosure requirements relying on the same definition of asset-backed securities. In that rulemaking, the staff determined that asset-backed securities backed by "stranded costs" would be expressly exempted from the asset-level data requirements of Regulation AB II. The implication is that the SEC's staff believes that utility securitizations fall under the definition of asset-backed securities[1], which is the same definition that dictates Forms SF-1 or SF-3 to be used.

Further, we can also look to other rulemaking wherein the SEC and other regulators dealing with the definition of asset-backed securities in other contexts. An example occurs from the Dodd-Frank Act. As required by the Dodd-Frank Act[2], the SEC, together with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, and the Department of Housing and Urban Development issued risk retention rules in October 2014 that relate to "asset-backed securities" as defined under Section 3(a)(79) of the Securities Exchange Act (the "Exchange Act"). These six agencies determined that "public utility securitizations"[3] were asset-backed

[1] Asset-Backed Securities Disclosure and Registration, 79 Fed. Reg. 57183, 57196 (Sept. 24, 2014)
[2] Section 941 amended Section 15G of the Securities Exchange Act of 1934
[3] "Any securitization transaction where the asset-back[ed] securities issued in the transaction are secured by the intangible property right to collect charges for the recovery of specified costs and such other assets, if any, of an issuing entity that is wholly owned, directly or indirectly, by an investor owned utility company that is subject to the regulatory authority of a State public utility commission or other appropriate State agency." Credit Risk Retention 79 Fed. Reg. 77601, 77761 (Dec. 24, 2014)

securities under Section 3(a)(79), and specifically exempted these securitizations from the risk retention rules. It is clear from this rulemaking and the related release that the applicable regulatory authorities generally categorize utility securitizations as asset-backed securities.

Based on these two rulemakings which occurred after the 2007 no-action letter (further discussed below in Question 28), it is our belief that the SEC generally thinks of utility securitizations as "asset-backed securities" under both Item 1101(c) of Regulation AB and 3(a)(79) of the Exchange Act.

28. In 2007, Monongahela Power Company and Potomac Edison Company each organized a wholly-owned finance subsidiary ("Finance Subsidiary") for the principal purpose of issuing securitized Environmental Control Bonds under West Virginia statutes. The Amended and Restated LLC Agreements gave the Finance Subsidiaries flexibility to issue additional types of securitized bonds which might be authorized by financing orders of the West Virginia PSC[4]. In a no action letter dated September 17, 2007[5], SEC staff

[4] http://www.sec.gov/Archives/edgar/data/1384731/000095012007000199/exhibit3_2.htm; http://www.sec.gov/Archives/edgar/data/1384732/000095012007000187/ex3-2.htm Section 2.11 of the Amended and Restated LLC Agreement for each stated:

> "Additional Issuance. If the Company receives a financing order or other authorization or approval from the PSCWV, the Company may, in its sole discretion, acquire additional and separate property (including property other than Environmental Control Property) and issue one or more Additional Issuances that are backed by such separate additional property. Any new Additional Issuance may include terms and provisions unique to that Additional Issuance.
>
> (a) The Company shall not issue additional Environmental Control Bonds or other Additional Securities if the Additional Issuance would result in the then-current ratings on any Outstanding Series of Environmental Control Bonds or other Outstanding Additional Securities being reduced or withdrawn.
>
> (b) (b) The following conditions must be satisfied in connection with any Additional Issuance:
>
> (i) if the Additional Issuance is a new series of Environmental Control Bonds, such Bonds shall be rated "Aaa" by Moody's and "AAA" by S&P and Fitch;
>
> (ii) each Additional Issuance shall have recourse only to the assets pledged in connection with such Additional Issuance, shall be nonrecourse to any of the Company's other assets and shall not constitute a claim against the Company if cash flow from the pledged assets is insufficient to pay such Additional Issuance in full;
>
> (iii) the Company has delivered to the Trustee an Opinion of Counsel of a nationally recognized firm experienced in such matters to the effect that after such issuance, in the opinion of such counsel, if either or both of Mon Power or the Seller were to become a debtor in a case under the United States Bankruptcy Code (Title 11, U.S.C.), a federal court exercising bankruptcy jurisdiction and exercising reasonable judgment after full consideration of all relevant factors would not order substantive consolidation of the assets and liabilities of the Company with those of the bankruptcy estate of Mon Power or the Seller, subject to the customary exceptions, qualifications and assumptions contained therein;
>
> (iv) the Company has delivered to the Trustee a certificate meeting the criteria of Section 3.19(c)(iv) of the Indenture stating that the securities issued pursuant to such Additional Issuance shall have the benefit of a true-up mechanism;
>
> (v) the transaction documentation for such Additional Issuance provides that holders of the securities of such Additional Issuance will not file or join in the filing of any bankruptcy petition against the Company;
>
> (vi) if the holders of the securities of any Additional Issuance are deemed to have any interest in any of the Collateral pledged under the Indenture (other than Collateral

confirmed that securitized Environmental Control Bonds issued by the Finance Subsidiaries would not be treated as "asset-backed securities" for purposes of old Regulation AB. Consistent with that SEC no action letter, in 2007 and again in 2009 each Finance Subsidiary used SEC Form S-1 to offer securitized Environmental Control Bonds.[6] Is there anything in new Regulation AB II that would preclude DEF from taking a similar approach and causing Nuclear Asset-Recovery Bonds issued for its benefit to be offered on SEC Form S-1 rather than SEC Form SF-1?

Answer: Yes. After the effective date of Regulation AB II on November 24, 2015, Form S-1 is not permitted to be used for "asset-backed securities" as defined under Item 1101(c) of Regulation AB. Only Forms SF-1 and SF-3 are permissible registration statement forms for those securities.

As discussed above in Question 25, the staff of the SEC has reaffirmed its general position since the issuance of its 2007 no-action letter for the West Virginia securitizations that utility securitizations are "asset-backed securities." Hence, if steps are taken to structure the security so that it technically falls outside the definition of "asset-backed security", as were taken in the West Virginia transactions, it is uncertain whether or not the staff of the SEC would continue to adhere to its position in the 2007 no-action letter, and further discussions with SEC staff would be necessary. If it is determined that an additional no-action letter is required to be obtained from the SEC, significant delays and additional expenses would likely to be incurred.

pledged with respect to such Additional Issuance), the holders of such securities must agree that any such interest is subordinate to the claims and rights of the Holders of such other related series of Environmental Control Bonds;

(vii) the Additional Issuance shall have its own bank accounts or trust accounts; and

(viii) the Additional Issuance shall bear its own trustees fees and servicer fees, except that the allocation of such fees with respect to any Additional Issuance of Environmental Control Bonds shall be governed by the terms of the Indenture and the Servicing Agreement."

[5] http://www.sec.gov/divisions/corpfin/cf-noaction/2007/mpef091907-1101.htm

[6] http://www.sec.gov/Archives/edgar/data/1384732/000095012007000009/forms-1.htm; http://www.sec.gov/Archives/edgar/data/1384732/000095012007000009/forms-1.htm; http://www.sec.gov/Archives/edgar/data/1384731/000095012007000035/forms-1.htm; http://www.sec.gov/Archives/edgar/data/1384731/000119312509247388/ds1.htm.

Another relevant question to ask is why the PE Environmental/MP Environmental Funding precedent would be followed even if DEF could prevail upon the SEC to adhere to its 2007 position. Other than the 2007 and 2009 West Virginia transactions, no other utility securitization has utilized a Form S-1 registration statement. It is my understanding that even the Florida Commission permitted FPL to file its registration statement using Form S-3 (and not a Form S-1), following inquiries with the SEC by FPL and the Commission about the potential use of Form S-1. Further, the West Virginia Commission abandoned any interest in the use of a Form S-1 for subsequent utility securitizations. The West Virginia 2013 financing by Appalachian Consumer Rate Relief Funding LLC utilized a Form S-3 (rather than Form S-1).

Finally, it appears that one of the structuring assumptions behind the SEC's 2007 no action letter in the West Virginia securitizations was the flexibility of PE Environmental/MP Environmental Funding to issue additional indebtedness (including additional debt securities that were not environmental control bonds) in future transactions. Section 366.95(5)(a)3., Florida Statutes, does not permit the SPE, which is created for the purposes of issuing nuclear asset-recovery bonds, to issue anything other than nuclear asset-recovery bonds.

Accordingly, and consistent with overwhelming historic and recent precedent, DEF currently anticipates filing its registration statement on new Form SF-1 and treating the securities as "asset-backed securities" for the purposes of SEC registration and Regulation AB.

29. Must the proposed Nuclear Asset Recovery Bonds be treated as "asset-backed securities" for purposes of Section 943 of the Dodd-Frank Act and SEC Rule 17g-7?

Answer: As explained in Question 25 above, the definition of "asset-backed securities" under Section 3(a)(79) of the Exchange Act (which was added by the Dodd Frank Act in July 2010) includes public utility securitizations of the type contemplated by DEF, which is why the risk retention rulemaking under Section 941 of the Dodd-Frank Act specifically exempted public utility securitizations from the scope of the risk retention rules. However, it does not appear that all of the rating agencies have posted 17g-7 reports for recent utility securitizations and we are unable to explain their legal rational. S&P noted in a release entitled "Standard & Poor's Expands Structured Finance Ratings To Comply With SEC Rule 17g-7" on September 1, 2011 that:

> Certain securities that we believe fall under the Exchange Act ABS definition typically do not contain representations, warranties and enforcement mechanisms that are available to investors (examples include tender option bonds and match-funded ABCP) and, therefore, Standard & Poor's will not publish benchmarks (described below) or in most cases 17g-7 disclosure reports in these circumstances.

S&P may have taken the position that in stranded cost transactions that the representations, warranties and enforcement mechanisms are not "available to investors", and consequently determined that a 17g-7 report was not required to comply with paragraph (a)(ii)(N)(1) of Rule 17g-7. However, we note that Fitch Ratings does appear to have determined that a "utility tariff ABS" transaction, like the one contemplated by DEF, is an "asset-backed security" under the Exchange Act since Fitch Ratings published reports pursuant to SEC Rule 17g-7 for both the First Energy and LIPA public utility securitizations. In addition, Fitch Ratings updated its description of the representations, warranties and enforcement mechanisms commonly found in utility tariff ABS transactions on June 12, 2015 as part of their report entitled "Representations, Warranties and Enforcement Mechanisms in Global Structured Finance Transactions", presumably to permit compliance with paragraph (a)(ii)(N)(1) of Rule 17g-7 which specifically applies to an "asset-backed security" as defined under Section 3(a)(79) of the Exchange Act. Since Rule 17g-7 applies to the rating agencies, they would be better positioned to respond regarding their application of Rule 17g-7 to utility securitizations, but even if they view rule 17g-7 as not being applicable (which does not universally appear to be the case), it does not necessarily follow that the rating agencies believe that utility securitizations fall outside the scope of "asset-backed securities" under Section 3(a)(79)

of the Exchange Act, especially since the rating agencies generally categorize these securities as asset-backed securities in their reports related to utility securitizations.