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April 20, 2011

By E-mail: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attn: Elizabeth M. Murphy, Secretary

Re: Release No. 34-64148 (File No. S7-14-11)

By E-mail: regs.comments@occ.treas.gov

Office of the Comptroller of the Currency
250 E Street, S.W.
Mail Stop 2-3
Washington, DC 20219

Re: Credit Risk Retention - Docket Number OCC-2010-0002

By E-mail: regs.comments@federalreserve.gov

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
Attn: Jennifer J. Johnson, Secretary

Re: Docket No. R-1411

By E-mail: Comments@FDIC.gov

Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429
Attn: Robert E. Feldman, Executive Secretary, Comments

Re: RIN 3064-AD74

Ladies and Gentlemen:

Sidley Austin LLP ("Sidley") submits this letter in response to the request for comments made by the Securities and Exchange Commission (the "Commission") in Release No. 34-64148 (the "Release") that proposes rules to implement the credit risk retention requirements of section 15G of the Securities Exchange Act of 1934 (the "Proposed Rules") in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act").

Section 15G authorizes the Commission and the federal banking agencies to provide for exemptions and exceptions to the risk retention requirements of the section and the rules thereunder applicable to issuers of asset-backed securities ("ABS") and other securitizers.

For the reasons discussed in Part I below, we believe that that securities issued on behalf of regulated electric utility companies for the recovery of "stranded costs," storm recovery costs, pollution control costs, rate stabilization costs and other state sanctioned purposes should be exempt from the credit risk retention requirements of the Proposed Rules. These transactions are sometimes referred to as "stranded cost" securitizations, since stranded costs recovery issuances served as the model for all later transactions, and we refer to them in this letter as "Utility Securitizations."

Further, while it may be beyond the scope of the request for comments under the Release, for the reasons discussed in Part II of this letter, we believe that other provisions of the Dodd-Frank Act should be interpreted in a manner which addresses the special nature of Utility Securitizations, consistent with the public interest and the needs of investors.

Part I: Application of the Risk Retention Rules to Utility Securitizations

Introduction

Since the first Utility Securitizations were sold in 1997, Sidley has represented public utility companies, underwriters and public agency issuers in connection with the issuance of over $25 billion of Utility Securitizations in 28 transactions. These transactions constitute approximately 50%[1] of all Utility Securitizations completed since the asset class was first created. (See Appendix A for a listing of these Utility Securitizations). Virtually all Utility Securitizations have been treated as "asset-backed securities" and have been sold in public registered offerings.

The securitized asset in a Utility Securitization is created pursuant to special state legislation and authorized by state utility regulatory commission action (often referred to as a "financing order"). The asset consists of the irrevocable right to impose and collect a special, formulaically adjusted and

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[1] Based upon aggregate principal amount.

nonbypassable charge on all or certain classes of utility customers. This special charge must be periodically adjusted to ensure that revenues are sufficient to pay the debt service on the debt securities.

To achieve the desired tax treatment, each issuer in a Utility Securitization is capitalized by the utility with an equity contribution in an amount equal to one-half of one percent of the amount of the securitization. This is the minimum equity contribution required under applicable IRS Revenue Procedures (discussed below). This minimal equity contribution from the utility lowers the cost to utility customers, by maximizing the use of lower cost (securitized) debt, and minimizing the use of higher cost utility equity.

Since the purpose of utility securitization is to provide specific amounts of cost recovery for utilities, the imposition of a 5% risk retention would require grossing up the size of a transaction by 105.26% (dividing by .95), needlessly increasing debt service and transaction costs for customers. Alternatively, the utility would have to recover the 5% risk retention through traditional financing means, at an even higher cost to utility customers. In sum, any increased risk retention would undermine the very statutory purpose of a Utility Securitization, which is to provide a lower cost financing mechanism for utility customers.

The Proposed Rules would provide various exemptions from the proposed risk retention requirements for certain securitization transactions consisting of assets with negligible credit risk exposure. We believe that such an exemption should be applied to Utility Securitizations for a very simple reason — these transactions involve virtually no exposure to the process of originating and underwriting the securitized asset (i.e., the charges being payable by all or certain classes of utility customers). These charges are creatures of state legislation and entail no origination or underwriting process as there is in mortgages, loans or other receivables.[2] As noted in the legislative history of section 15G and by the agencies in their preamble to the Proposed Rule, section 15G was intended to address deficiencies in the "originate-to-distribute model" under which some lenders loosened their loan underwriting standards knowing the loan could be sold into a securitization with little or no exposure of the lender to the quality of the loan. The securitized asset in a Utility Securitization is not created on an "originate-to-distribute" basis. The rationale for the implementation of the risk retention requirements simply does not apply to Utility Securitizations. Indeed, because the credit risk of the securitized asset in Utility Securitizations is so widely spread (i.e., the "debtors" being all or one or more classes of the utility's customers), and

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[2] For this reason, the SEC has proposed in its amendments to Regulation AB to exempt stranded cost securitizations from its asset-level data and waterfall computer program requirements. Asset-Backed Securities, 75 Fed. Reg. 23328, 23360 ("Proposed Regulation AB II," May 3, 2010) (noting that the reason for the proposed exemption is "because transition property is not originated on a customer-by-customer basis, and is instead the right to impose charges on customers based on electrical usage.")

because the charges comprising the asset can be adjusted as needed to satisfy any cash flow requirements, no analogous origination or underwriting process applies to this asset class.

The imposition of credit risk retention requirements would raise the cost of a financing to utility customers without any corresponding public benefit. As further described below, the history of Utility Securitizations provides indisputable evidence that no risk retention (or additional equity contribution) is necessary, and the unique features and characteristics of the assets underlying Utility Securitizations warrant unique treatment by the Commission.

The History of Utility Securitizations

Utility Securitizations have been used successfully in at least sixteen States to finance the recovery of stranded costs in connection with utility industry restructurings, as well as the recovery of costs and reserves for hurricane and ice storms, for rate stabilization purposes and the recovery of pollution control capital expenditures. Existing and pending state legislation also authorizes Utility Securitization for other purposes, including the recovery of "green energy" costs. Since 1997, when the first Utility Securitizations were authorized, over $43 billion of Utility Securitizations have been issued in 53 transactions. (See Appendix A for a listing of these Utility Securitizations).

Uniform Utility Securitization Structure

Utility Securitizations involve the issuance of ratepayer-supported bonds by a special-purpose, bankruptcy remote affiliate (the "SPE") of a regulated electric utility (the "Utility"). To our knowledge, all Utility Securitizations have a virtually identical structure. We believe that this uniform structure has the necessary features and characteristics to assure that the public interest would be protected by an exemption from the credit risk retention rules.

Each Utility Securitization is authorized by a specific state statute that permits the regulated electric utility to finance the recovery of specified capital expenditures through securitization transactions. Each statute authorizes the state public utility commission to issue a financing order to implement the financing. The legislation and financing order authorize the imposition and collection of a special usage-based charge upon customers of the Utility (the "Special Charge"), and further authorize the issuance of bonds secured by the Special Charge.

The right to impose, collect and adjust the Special Charge from time to time is a property right created by the legislation which is sold by the Utility to the SPE. The SPE in turn is authorized to issue bonds and pledge its rights to the Special Charge to secure repayment of the bonds. The Special Charge is imposed upon the Utility's customers, both present and future, and is nonbypassable (i.e., the payment of the charge cannot be avoided by the customer even if the Utility's operations are sold, or if the Utility goes bankrupt, or if the customer purchases electricity from another energy supplier).

In each Utility Securitization, the Utility (or its affiliate) acts as servicer to collect the Special Charge from the Utility's customers and to remit the Special Charge to the bond trustee for the benefit of the bondholders. In some states, due to the introduction of electric service competition, the Special Charge may be collected by an alternative electric provider, who must remit the Special Charge to the servicer.

Pursuant to the state legislation and the financing order, the Special Charge is subject to automatic periodic adjustment so that the estimated revenues from the Special Charge are always sufficient to repay the bonds as they become due. This right to adjust the Special Charge makes Utility Securitizations unique. Unlike other asset-backed securities, the asset securing payment of the bonds increases in size to account for losses and delays in payment by some utility customers in a manner designed to ensure that the Special Charge is always sufficient to pay the bonds.

The state legislation authorizing a Utility Securitization includes the state's pledge that neither the state nor the public utility commission will impair the right to impose or collect the Special Charge. This state pledge is protected under the Impairment and Takings Clauses of the Constitution and, where applicable, parallel state constitutional provisions.

Utility Securitizations have been uniformly rated AAA/Aaa by the rating agencies because of the unique security features afforded by the state legislation and associated financing order. Such ratings are invariably a condition of issuance of the securities.

An additional reason for the uniformity of structure among Utility Securitizations is that each is premised upon complying with certain Revenue Procedures issued by the Internal Revenue Service (specifically, Revenue Procedure 2002-49, 2002-2 C.B. 172, which was expanded by Revenue Procedure 2005-62, 2005-2 C.B. 507).[3] These Revenue Procedures ensure favorable "debt-for-tax" treatment, which means

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[3] Revenue Procedure 2005-62, 2005-2 C.B. 507, expanded the scope of previous guidance providing treatment for "stranded cost" recovery to other forms of cost recovery by regulated utilities under "specified cost recovery legislation." For purposes of the Revenue Procedure, specified cost recovery legislation is legislation that—
(1) is enacted by a State to facilitate the recovery of certain specified costs incurred by a public utility company;
(2) authorizes the utility to apply for, and authorizes the public utility commission or other appropriate State agency to issue, a financing order determining the amount of specified costs the utility will be allowed to recover;
(3) provides that pursuant to the financing order, the utility acquires an intangible property right to charge, collect, and receive amounts necessary to provide for the full recovery of the specified costs determined to be recoverable, and assures that the charges are nonbypassable and will be paid by customers within the utility's historic service territory who receive utility goods or services through the utility's transmission and distribution system, even if those customers elect to purchase these goods or services from a third party;
(4) guarantees that neither the State nor any of its agencies has the authority to rescind or amend the financing order, to revise the amount of specified costs, or in any way to reduce or impair the value of the intangible property right, except as may be contemplated by periodic adjustments authorized by the specified cost recovery legislation;
(5) provides procedures assuring that the sale, assignment, or other transfer of the intangible property right from the utility to a financing entity that is wholly owned, directly or indirectly, by the utility will be perfected under State

that the receipt of the securitization proceeds will not result in income to the utility at the time of sale and that the Utility Securitization will be considered debt of the Utility for federal tax purposes. This tax treatment lowers the cost of the financing to Utility customers.

Utility Securitizations Have Suffered No Credit Losses

To our knowledge, none of the securities issued in connection with any Utility Securitization have suffered any credit losses, nor have any such securities ever been the subject of a rating agency downgrade (from AAA/Aaa). This stable credit performance has persisted despite the energy crisis in California, utility bankruptcies, catastrophic hurricanes and other calamities. This stable and unparalleled credit history underscores the unique nature of the assets underlying a Utility Securitization and the absence of any need for more strenuous regulation of Utility Securitizations.

Conclusion and Requested Relief from Risk Retention Rules

As discussed above, we believe that Utility Securitizations are supported by an asset with unique features and characteristics such that the proposed risk retention requirements are just not needed. This asset consists of an irrevocable right to impose and collect a special, usage-based, nonbypassable charges payable by the Utility's customers. This right is authorized, created and protected by specific state legislation and state regulatory body action in order to provide a lower cost funding mechanism for utility ratepayers. Imposing the risk retention requirement would defeat the legislative purpose behind Utility Securitizations and would not provide any compensating benefit. Because of the risk spreading and statutory protections, there is no credit underwriting necessary. The right to periodically adjust the Special Charge from time to time in order to assure that the charge generates adequate revenues to repay the securities further eliminates the need for any additional credit support.

In sum, the statutorily-created asset which supports Utility Securitizations is unique, stable, reliable and relatively risk-free to investors, and should be exempt from the credit risk retention requirements in the final Rule.

Part II. Additional Comments Concerning Other Provisions of the Dodd-Frank Act and Regulation AB

Although beyond the scope for the request for comments, we believe that other provisions of the Dodd-Frank Act should be interpreted in a manner which addresses the special nature of Utility Securitizations,

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law as an absolute transfer of the utility's right, title, and interest in the property; and (6) authorizes the securitization of the intangible property right to recover the fixed amount of specified costs through the issuance of bonds, notes, other evidences of indebtedness, or certificates of participation or beneficial interest that are issued pursuant to an indenture, contract, or other agreement of a utility or a financing entity that is wholly owned, directly or indirectly, by the utility.

consistent with the public interest and the needs of investors. For instance, under Section 942(a) of the Dodd-Frank Act, Section 15(d) of the Exchange Act is amended to exclude all registered asset-backed securities from the automatic reporting suspension provisions. However, Section 15(d)(2) grants the Commission the authority to adopt new suspension or termination schemes for different classes of registered asset-backed securities "on such terms and conditions … as it deems necessary or appropriate in the public interest or for the protection of investors." Many Utility Securitizations have had a limited numbers of investors. The inability to suspend or terminate reporting requirements may unnecessarily increase costs to utility customers, without providing any corresponding benefit to investors or the protection of the public interest.

Other provisions of the Dodd-Frank Act have limited or no applicability to Utility Securitizations, and accordingly provide no addition investor protection.

For instance, under Rule 193 of the Securities Act, an issuer of asset-backed securities is required to perform a review of the assets underlying the securitization transaction and disclose the nature of the review. It is unclear what this means in the context of a Utility Securitization where the securitized asset is created by statute and an irrevocable regulatory financing order and consists of payments from a class or classes of utility customers specified in that financing order, along with the right to adjust charges automatically to correct for over and under collections. As the financing order is irrevocable, what benefit would such a review have for investors?

Additionally, Section 932 of the Dodd-Frank Act requires an issuer or underwriter to make publicly available the findings and conclusions of a third party due diligence report obtained by the issuer or the underwriter. No such third party due diligence reports are customary or required in Utility Securitizations.

Similarly, the Dodd-Frank Act requires a description and comparison of representations, warranties and enforcement mechanisms to be included in reports accompanying each rating. It is unclear what this means in the context of a statutory asset comprising a Utility Securitization. To what are the representations, warranties and covenants to be compared to?

The Dodd-Frank Act also requires the filing of Form ABS-15G regarding repurchase requests of the assets underlying a securitization. These provisions are not applicable to Utility Securitizations. Although a few early Utility Securitizations (completed a decade or so ago) did have a repurchase covenant, the covenant was limited to an obligation to buy back the entire property interest in the event the underlying regulatory financing order was overturned. Clearly this is not the type of repurchase obligation that was contemplated under filing Form ABS-15G.

The difficulties with applying the Dodd-Frank Act, and indeed, the entire Regulation AB reporting regimen, to Utility Securitizations is that these laws and rules were never drafted with Utility

Securitizations in mind. The asset securing a Utility Securitization is simply not comparable to the failed commercial assets which prompted the Dodd-Frank Act and related legislative and regulatory actions. When the Commission considers new regulations as part of Proposed Regulation AB II in light of the Dodd-Frank Act and related regulatory changes, we urge the Commission to consider the unique characteristics of Utility Securitizations. To that end, if the Regulation AB reporting regimen is to continue to be made applicable to Utility Securitizations,[4] we suggest that the Commission should consider creating a specifically designed and streamlined list of assessment criteria for Utility Securitizations.

In conclusion, we urge the Commission to apply and interpret the provisions of the Dodd-Frank Act and any associated rules in a manner which is consistent with minimizing the cost to utility customers, as well as the protection of investors.

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Sidley thanks the Commission for providing it with the opportunity to comment on the Proposed Rules. If you have any questions concerning these comments or would like to discuss these comments further, please contact Eric D. Tashman at (415) 772-1214 or via e-mail at etashman@sidley.com.

We appreciate the opportunity to submit these comments.

Sincerely,

Eric D. Tashman

[4] Indeed, as discussed above, the security issued in an Utility Securitization (i.e., a security secured by the right to impose and collect an irrevocable, nonbypassable and adjustable Special Charge on utility customers) should be excluded from the definition of "asset-backed security" under Section 941(a) of the Dodd-Frank Act.

Appendix A
List of Utility ABS Transactions
As of April 20, 2011

State	Utility	Date	Amount ($Million)
Arkansas	Entergy Arkansas Restoration Funding	8/11/2010	124
Louisiana	Entergy Gulf States Louisiana (1)	7/15/2010	244
Louisiana	Entergy Louisiana (1)	7/15/2010	469
West Virginia	MP Environmental Funding	12/30/09	64
West Virginia	PE Environmental Funding	12/30/09	22
Texas	CenterPoint Energy Restoration	11/18/09	665
Texas	Entergy Texas Restoration Funding	10/30/09	546
Louisiana	Entergy Gulf States Louisiana (1)	8/20/2008	278
Louisiana	Entergy Louisiana (1)	7/22/08	688
Louisiana	CLECO 2008 - Hurricane Recovery	2/28/08	180
Texas	CenterPoint Energy	02/12/08	488
Texas	Entergy Gulf States	06/29/07	330
Maryland	Baltimore Gas and Electric	06/29/07	623
Florida	Florida Power and Light	05/22/07	652
West Virginia	MP Environmental Funding	04/11/07	344
West Virginia	PE Environmental Funding	04/11/07	115
Texas	AEP Texas Central Transition Funding	10/06/06	1,740
New Jersey	Jersey Central Power and Light	08/04/06	182
Texas	CenterPoint Energy	12/16/05	1,851
California	Pacific Gas & Electric	11/03/05	844
Pennsylvania	West Penn Power	09/22/05	115
New Jersey	Public Service Electric & Gas	09/09/05	102
Massachusetts	Nstar (Boston Edison)	02/15/05	674
California	Pacific Gas & Electric	02/03/05	1,887
New Jersey	Rockland Electric	07/28/04	46
Texas	TXU Electric Delivery	05/28/04	790
New Jersey	Atlantic City Electric	12/18/03	152
Texas	Oncor Electric Delivery	08/14/03	500
New Jersey	Atlantic City Electric	12/11/02	440
New Jersey	Jersey Central Power and Light	06/04/02	320
Texas	Central Power and Light	01/31/02	797
New Hampshire	Public Service of New Hampshire	01/17/02	50
Michigan	Consumers Energy	10/31/01	469
Texas	Reliant Energy	10/17/01	749
Massachusetts	Western Massachusetts	05/15/01	155
New Hampshire	Public Service of New Hampshire	04/20/01	525
Connecticut	Connecticut Light & Power	03/27/01	1,440
Michigan	Detroit Edison	03/02/01	1,750
Pennsylvania	PECO Energy	02/15/01	805
New Jersey	PSE&G	01/25/01	2,500
Pennsylvania	PECO Energy	04/27/00	1,000
Pennsylvania	West Penn Power	11/16/99	600
Pennsylvania	Pennsylvania Power & Light	07/29/99	2,420
Massachusetts	Boston Edison	07/14/99	725
California	Sierra Pacific Power (2)	04/08/99	24
Pennsylvania	PECO Energy	03/18/99	4,000
Montana	Montana Power (2)	12/22/98	63
Illinois	Illinois Power	12/10/98	864
Illinois	Commonwealth Edison	12/07/98	3,400

State	Utility	Date	Amount ($Million)
California	Southern California Edison	12/04/97	2,463
California	San Diego Gas & Electric	12/04/97	658
California	Pacific Gas & Electric	11/25/97	2,901
Washington	Puget Sound Electric	7/30/97	35
		Total	**$43,744**

Sources: Securities Data Corporation, Public Records, Morgan Stanley
(1) Issued as exempt municipal bonds
(2) Private offering