Dear Kayla and Ted,

We appreciate the continued engagement with you and the Staff regarding the classification of utility recovery bonds (URBs) under SEC regulations. The discussions have been professional and productive, and we recognize that recent Staff transitions have posed challenges.

Following Kayla and Donial's discussions with Mike Mitchell, Pete Morgan, and Weili Chen in recent weeks, we want to summarize our objectives and views while proposing an immediate step forward.

Specifically, we believe that withdrawing the July 2024 Compliance & Disclosure Interpretation (CDI) aligns with both regulatory clarity and the directives of President Trump's January 31, 2025, Executive Order *"Unleashing Prosperity Through Deregulation"*, as well as the detailed legal analysis provided to the Staff in our January 16 and February 12, 2025 meetings. This action would reverse an administrative burden that imposes costs without providing any corresponding public benefit.

Objectives and Views of Governors and State Regulators

- **URBs should be classified as corporate bonds.** We seek to align the classification of URBs under the federal securities laws and regulations with their intrinsic character as corporate bonds, which is entirely consistent with the SEC's mandate to foster orderly and efficient markets consistent with investor protection. As state-regulated instruments with an intrinsic corporate character, URBs should benefit from broader market participation and increased secondary market liquidity—which benefits investors that have invested, or seek to invest, in URBs, while reducing financing costs for captive utility customers, as an industry news article highlighted on Friday, March 14, 2025.

- **Classification of URBs as ABS is unsupported and inconsistent with their corporate character.** The Staff has long directed URB issuers to register and report under Regulation AB, but no clear SEC analysis has justified their classification as asset-backed securities (ABS). In fact, the Staff initially viewed URBs as analogous to corporate debt in 1997.

- **URBs do not meet core requirements of ABS.** Despite the Staff's historical direction to register and report under Regulation AB, our legal analysis provided to the Staff establishes that URBs differ from ABS in fundamental ways: they are not supported by self-liquidating financial assets but rather:
    1. depend on the continued business operation of utilities (or their successors).
    2. require active charge management via periodic true-ups.

- **Classification of URBs as corporate securities does not raise investor protection concerns.** Recognizing URBs for their corporate character does not raise any of the investor protection concerns that led to post-financial crisis ABS regulations. URBs are backed by state legislation, irrevocable financing orders, periodic true-up adjustments, and state pledges, ensuring repayment stability. The ratings methodology for URBs focuses largely on the integrity of these features, while the ratings methodology for ABS is distinctly different and focuses on the composition and credit and cash flow

characteristics of the underlying financial assets and their obligors, as another industry news article highlighted on Friday, March 21, 2025. As a result, URBs have consistently been rated in the highest category and remained resilient, without senior-subordinate credit tranching or third-party credit support, even during financial crises and utility bankruptcies.

- **Market precedents support the corporate bond classification.** In 2016, Duke Energy Florida Project Finance LLC's URB offering was the first to register on the new registration forms under Regulation AB II and was the subject of extensive review and discussion with the Staff. The Duke Energy Florida statutory prospectus and free writing prospectus market primer described the offered URBs as "corporate securities" without Staff or investor objection. Market indices historically treated URBs as corporate bonds until Bloomberg's 2022 reclassification—now subject to litigation. Importantly, Bloomberg is not a U.S.-regulated entity and does not adhere to legal definitions such as those set forth in the Exchange Act, Regulation AB, or IRS Revenue Procedures.

- **Reclassifying URBs as corporate bonds would not disrupt disclosure practices.** URBs have operated under a tailored disclosure framework for over 25 years. Those disclosure practices have been informed, in part, by principles found in Regulation AB, but there are also significant portions of Regulation AB that are not relevant to URBs. Recognizing URBs as corporate securities would not change fundamental disclosure practices in any significant way but would allow registrants, as Duke Energy Florida Project Finance LLC did, to focus on the proper characterization of URBs as corporate securities.

- **Regulatory clarity is essential.** As the primary regulator of registered URBs, the SEC should lead the market by establishing clear, consistent standards for market participants.

Proposed Path Forward

- **Immediate Withdrawal of the July 2024 CDI:** We believe the weight of our legal analysis warrants withdrawal of the July 2024 CDI immediately. This step would restore the pre-2024 *status quo*, allowing issuers to proceed with established disclosure practices that align with our legal analysis as well as existing financing orders.

- **Maintain Market Stability:** Some issuers are in, or preparing for, registration in reliance on financing orders that were informed by, and issued under, pre-2024 disclosure standards. Withdrawing the CDI would prevent unnecessary delays and uncertainty for these issuers.

- **Develop a Long-Term Solution:** Withdrawal of the CDI would alleviate the impact on URB issuers coming to market in the immediate term, while affording time to formulate a more complete and durable solution, such as a revised interpretation in the form that we have proposed, which recognizes URBs as corporate bonds and clarifies and harmonizes their character as corporate securities with the registration, disclosure, and reporting regime under which they operate.

  As indicated in materials we have provided to the Staff, if the Staff believes it is necessary to harmonize the future treatment of URBs as corporate bonds with their past treatment as ABS, a more nuanced approach could also work, where URBs are

recognized predominantly as corporate in nature, but with certain limited characteristics in common with ABS, which, if the Staff prefers, could serve as a basis to continue to register URB offerings and report on ABS forms.

- **Improve Liquidity for Outstanding URBs:** URBs are traded in the secondary market. SEC clarification that outstanding URBs are not ABS will significantly expand the secondary market for these outstanding URBs.

With two meetings among the Staff and a smaller contingent of our group now completed, we would also like to schedule a broader discussion to align all stakeholders on next steps.

Sincerely,

Jared Polis
Governor of Colorado

Alice Busching Reynolds
President
California Public Utilities Commission

Eric Blank
Chair
Colorado Public Utilities Commission

Jonathan A. Feipel
Executive Director
Illinois Commerce Commission

Floyd McKissick
Commissioner, North Carolina Utilities Commission and
Chair, Committee on Consumers and the Public Interest
National Association of Regulatory Utility Commissioners (NARUC)

David Springe
Executive Director
The National Association of State Utility Consumer Advocates (NASUCA)