May 9, 2025

Hon. Paul S. Atkins
Chairman
U.S. Securities and Exchange Commission
100 F St N. E.
Washington, DC 20549

Dear Chairman Atkins,

On September 10, 2024, a group of eight Governors submitted a letter (the "Governors' Letter") to your predecessor urging him to reconsider the problematic reclassification of utility recovery bonds ("URBs") from corporate bonds to asset-backed securities ("ABS") by index providers such as Bloomberg and now as suggested by SEC Division of Corporation Finance staff (the "Staff").[1] According to a report by The Wall Street Journal, this ABS classification has resulted **in more than $3 billion in increased interest costs** on SEC-registered URBs sold between 2022 and 2024 alone. These additional costs, stemming from the ABS designation, will continue to be embedded in all future URB issues, affecting many more millions of electricity customers across multiple states. The Governors' Letter was followed by resolutions in November, 2024 from the National Association of Regulatory Utility Commissioners ("NARUC") and the National Association of State Utility Consumer Advocates ("NASUCA") who represent everyday American electricity consumers calling for the same outcome.

In the intervening time, we have appreciated the continued engagement with Staff regarding the classification of URBs under SEC regulations beginning in December, 2024 through March, 2024. The discussions have been professional and productive. We also appreciate that, in considering the question, the Staff seeks to consider other relevant points of view. Nevertheless, Staff is bound by the legal definitions of "asset-backed security," which require that the security be serviced by a pool of self-liquidating financial assets and, in the case of the definition included in Item 1101 of Regulation AB, that the securities be serviced by a "discrete" pool of assets. The "Legal Analysis re Treatment of Utility Recovery Bonds under the SEC's Registration, Disclosure, and Reporting Framework" provided to Staff on February 11, 2025, as supplemented by our January 28, 2024 "Timeline in the SEC's regulation of URBs[2]," definitively shows that URBs are *neither* serviced by self-liquidating financial assets *nor* is there a discrete pool of assets. As we have received no substantive feedback or analysis from the Staff to this point, if Staff does not agree, **it is essential that we have an opportunity to respond to any competing points of view before the SEC and the Staff reach any conclusion on the question.**

As you consider your priorities as Chair, we believe that immediately withdrawing the July 2024 Compliance & Disclosure Interpretation (CDI) aligns with both regulatory clarity and the directives of the President's January 31, 2025, Executive Order 14192[3] *"*Unleashing Prosperity Through Deregulation*,"* as well as the detailed legal analysis discussed with Staff in January 16 and February 12, 2025 meetings. In addition, it is important to note that the CDI was issued without any "public engagement" as President Trump's previous SEC Chair, Jay Clayton, emphasized was important to have in his "Statement on Staff Views" of September 13, 2018. Withdrawal of this CDI would reduce costs imposed on millions of

[1] See Section 112. Form SF-1 112.01 Form Eligibility for Public Utility Securitizations , as updated July 31, 2024.

[2] See "Legal Analysis re Treatment of Utility Recovery Bonds under the SEC's Registration, Disclosure, and Reporting Framework" 2-11-25 and "Timeline in SEC Regulation of URBs" 1-28-25

[3] OMB Memorandum M-25-20, "Guidance Implementing Section 3 of Executive Order 14192", clarifies that the scope of regulatory or deregulatory action under EO 14192 includes "guidance documents, policy statements, and interagency agreements."

everyday Americans who must buy electricity – increased costs that do not provide them with 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 ABS and the increased costs that this imposes on utilities to comply that is passed through completely onto ratepayers. In fact, the Staff initially viewed URBs as analogous to corporate debt in 1997 and said so in written comments.

- **URBs do not meet core requirements of ABS.** Despite the Staff's historical direction without analysis to register and report under Regulation AB, our legal analysis establishes that URBs differ from ABS in fundamental ways: they are *not* supported by a discrete pool of assets nor self-liquidating financial assets, but rather:
    - depend on the continued business operation of utilities (or their successors).
    - require active charge management via periodic true-up adjustments of rates.[4]

- **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, at the direction of the Staff, 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. Independent market indices historically treated URBs like the Duke Energy

[4] In the case of Regulation AB, the ABS definition also requires that the securities be serviced by a "discrete" pool of assets, which refers to an asset pool that is both identified and fixed/static at the time the securities are issued. The legal analysis establishes that URBs are not supported by a "discrete" pool of assets. See, "Legal Analysis re Treatment of Utility Recovery Bonds under the SEC's Registration, Disclosure, and Reporting Framework" 2-11-25, Section III.3 on page 8.

Florida bonds as corporate bonds until 2022, when Bloomberg reclassified them as ABS without explanation. That decision became the subject of a class action litigation about the harm to ratepayers it caused. The July C&DI which was announced just after this lawsuit was filed appears to assist Bloomberg whether it was intended or not. 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 bespoke 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 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, *and as President Trump has advocated,* the SEC should lead the market by establishing clear, consistent standards for market participants without imposing unjustified regulatory "taxes" on businesses, especially those that are directly passed on to electric utility consumers who must buy this essential commodity.

Proposed Path Forward

- **Immediate Withdrawal of the July 2024 CDI:** Executive Order 14192 asks agencies to take swift action in reducing inappropriate or unnecessary regulatory burdens. This directive and 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.

- **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 our detailed analyses, if the Staff believes it is necessary to harmonize the treatment of URBs as corporate bonds with their past treatment as ABS, a more nuanced approach could also work. URBs could be recognized 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 for administrative purposes.

- **Improve Competition/Liquidity for Outstanding URBs that Benefits All Investors:** URBs are traded in the secondary market. SEC clarification that outstanding URBs are not ABS will significantly expand the secondary market liquidity for these outstanding URBs allowing investors to more freely buy and sell the URBs.

- **Maintain Market Stability:** This mis-classification of URBs is having an immediate impact on utilities and their finance subsidiaries, particularly those that are in registration for URB offerings at this time. For example, one of those subsidiary-registrants, Kentucky Power Cost Recovery LLC (together with its utility parent company, "Kentucky Power"), completed the lengthy and highly deliberative process to obtain a financing order from its public service commission ("PSC") on January 11, 2024, long before the Staff's CDI was published. The terms of that financing order, as with those of other URB issuers, were informed by the long-standing pre-2024 disclosure standards, including in particular disclosure relating to the intrinsic corporate characteristics of URBs. As a result, the Kentucky state regulator's financing order included explicit requirements that the bonds be offered and sold in a manner consistent with their corporate character and not as ABS. As the Staff knows, those pre-2024 disclosure standards (and, by extension, the terms of the PSC's adopted financing order) align squarely with the legal and market precedent outlined above.

Need for Immediate Action Consistent with Executive Order 14192; Effect on Pending Registrants

After reviewing the January 29, 2025 Staff comment letter relating to the pending Kentucky Power registration statement and the relevant disclosure contained in that registration statement, we see that the registrant's disclosure had described the corporate character of the URBs, which aligned very closely with our legal analysis, while the Staff's comments on that disclosure directed the registrant to remove language that directly or indirectly suggested that the bonds are not ABS.

Since publication of the July 31, 2024 CDI, any utility conducting a registered URB offering and receiving a Staff comment letter like the one received by Kentucky Power is faced with one of two paths forward:

(1) engage in discussions with the Staff in support of their disclosures, which, given the Staff's CDI, any registrant might expect to be a lengthy and uncertain process, or

(2) yield to the view set forth in the Staff's CDI even though it is inconsistent with the URBs' corporate character and increases the cost borne by ratepayers.

In the case of Kentucky Power, this latter path also required the utility to amend its financing order to conform the order to the Staff's more recent views. On March 28, 2025, Kentucky Power filed an application with its PSC seeking to amend its January 11, 2024 financing order, citing the Staff's intervening July 31, 2024 CDI as the reason. That application was approved by its PSC on April 11, 2025 and the registrant filed an amended registration statement giving effect to the Staff's comments.

This "comply or die" dynamic reflects the practical pressures that contribute to market inertia and help explain why many utilities have continued to follow the status quo as the path of least resistance. In the current market environment, a utility registrant or regulator seeking to engage the Staff on a re-examination of its treatment of URBs faces a real concern: that any delay or uncertainty could lead to an increase in interest rates, undercutting the objective of securing the lowest possible financing costs. Based on our experience with regulated utilities—who often have other incentives and may not always be in a position to prioritize the lowest capital cost for customers in these state supported financings—we believe it explains why many in the industry choose to proceed under the current interpretation, even where, as our detailed legal analysis and timeline shows, that interpretation's legal and policy foundations are questionable and a more nuanced approach is both legally correct and necessary.

While the Staff acknowledges that CDIs are highly informal in nature and, as a result, are not binding, the example of Kentucky Power demonstrates how utilities and regulators are reacting to the CDI, resulting in increased compliance and interest costs, which are passed on to the utility's captive customers through higher electricity bills. We respectfully submit that the weight of legal precedent warrants withdrawal of the July 31, 2024 CDI immediately, which will 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. Immediate withdrawal of the CDI would also eliminate unnecessary delays and uncertainty for issuers in registration at this time and for our utilities contemplating additional URB offerings in the future.

Conclusion

We are optimistic that your quick action to resolve this issue can remove unnecessary regulatory compliance costs that could affect the lives of millions of American ratepayers.

Sincerely,

Jared Polis
Governor
State of Colorado

Josh Stein
Governor
State of North Carolina

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

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

Rory M. Christian
Chair and Chief Executive Officer
New York Public Service Commission

Alice Reynolds
President
California Public Utilities Commission

Jonathan A. Feipel
Executive Director
Illinois Commerce Commission

Eric Blank
Chair
Colorado Public Utilities Commission

cc: Hon. Heather M. Pierce
Hon. Caroline A. Crenshaw
Hon. Mark T. Uyeda

Ted Yu
Associate Director
Division of Corporation Finance

Kayla Roberts
Chief, Office of Structured Finance
Division of Corporation Finance