UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

Credit Risk Retention	SEC Release No. 34-64148 File No. S7-14-11

COMMENTS OF THE EDISON ELECTRIC INSTITUTE

The Edison Electric Institute (EEI) is filing these comments in response to the proposed rules implementing Section 941(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which is codified as new Section 15G of the Securities Exchange Act of 1934. In the Release, the Commission proposes the overall regime under which issuers and originators are required to retain 5% of the risk of certain securitizations as well as various exemptions from the risk retention requirement. As discussed below, EEI believes that those exemptions should be expanded to include certain utility securitizations.

EEI is the association of the United States shareholder-owned electric companies, international affiliates, and industry associates worldwide. Our U.S. members serve 95 percent of the ultimate customers in the shareholder-owned segment of the industry, and represent approximately 70 percent of the U.S. electric power industry. Our members include vertically integrated electric utilities as well as disaggregated generation, transmission, and energy services companies, both within holding company systems and as stand-alone companies (together, electric utilities).

I. BACKGROUND

Since 1997, electric utilities have utilized securitizations in order to obtain financing at the lowest possible cost. These securitizations have been backed by revenue streams approved by state public service commissions, often pursuant to express statutory authority. In some instances, these revenue streams reflect recoveries of environmental and other costs that the utility is required to incur. In other instances, these revenue streams reflect the establishment of reserves and other amounts that the utility is permitted to recover. In each instance the applicable public service commission has approved the collection of the revenue stream from customers. These approvals are irrevocable and the revenues are collectable notwithstanding the financial conditions or other circumstances of the particular utility.

The issuer in utility securitizations typically has been a "special purpose entity" established by the utility and to which the utility has irrevocably transferred its rights to the related revenue stream. In turn, the SPE issued debt securities, and these issuances typically have been in registered public offerings. Because the debt securities are backed by revenue streams approved by state public service commissions – and, ultimately, by the utilities' diverse customer base, which can include several million customers – they are of superior credit quality. The securities all have been rated AAA, and, to date, these securities have proven to be sound investments and no defaults have occurred.

II. EXEMPTING UTILITY SECURITIZATIONS

Section 15G contemplates that there are a range of securitizations that are of a sufficient credit quality that no risk retention is necessary. For instance, securitizations that are backed solely by "qualified residential mortgages" have a complete exemption. EEI believes that utility securitizations backed by revenue streams approved by public service commissions are of an equal, if not better, credit quality, and similarly should be exempted. Both the characteristics of the ultimate obligor (often all of the customers in a utility's service territory) combined with the credit structure of the securitization (public service commission approved collection of revenue streams through rates) provide stable and assured repayment. Given these characteristics, utility securitizations clearly do not entail the risks of improperly aligned incentives and the lack of discipline in the origination process for securitizations that Section 15G was intended to address.

Moreover, because almost all electric utilities operate under a regime that guarantees a statutory rate of return, the incremental cost of any retention will be passed through to customers. Currently, utilities are able to finance 99.5% of their securitizations with low-cost debt. Were they to have to increase the retention from 0.5% to 5%, or even a lesser level, they would be required to invest additional equity that, in turn, would be more costly to customers. While the incremental cost may not appear to be significant, in the aggregate over time it will have a measurable impact on customer rates.

III. OTHER COMMENT LETTERS

Sidley Austin LLP filed a comment letter with respect to be proposed rules on April 20, 2011. Dewey & LeBoeuf filed a comment letter with respect to the rules on April 15, 2011. These two firms have substantial experience with utility securitizations, and we fully endorse the comments included in their letters.

IV. CONCLUSION

EEI requests that the Commission exempt from the retention requirements of Section 15G utility securitizations backed by revenue streams approved by state public service commissions. Our recommendation is consistent with the purpose of the Dodd-Frank Act and ensures that, in appropriate circumstances, electric utilities can continue to utilize securitizations without unnecessary cost.

If the Commission has any questions about these comments, please contact me at rmcmahon@eei.org or (202) 508-5571. Thank you.

Respectfully submitted,

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