Asset Securitization Report

Florida Utility Regulator Files Complaints with EU Over Structured Finance Ratings

By Allison Bisbey

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The Florida Public Service Commission takes issue with the way that three U.S. credit rating agencies classify certain bonds issued on behalf of two power companies that operate in the state.

On Wednesday, the utility regulator filed a complaint with the European Securities and Markets Authority, which requires rating agencies to add an "sf" modifier to ratings for certain kinds of transactions. It wants the EU regulator to instruct Standard & Poor's, Moody's Investors Service and Fitch Ratings to stop using the two-letter modifier for bonds backed by special fees that Florida Power & Light and Duke Energy Florida charge their customers.

The Florida Commission argues that these securities don't meet the E.U.'s criteria for structured finance because there is no tranching of credit risk; cash flow is distributed to all bondholders with the same priority.

Incorrectly applying the "sf" modifier restricts the market for these bonds, because many investors are unwilling or unable to purchase structured finance instruments, according to the complaints, copies of which were obtained by Asset Securitization Report. This has potentially reduced the initial offering prices for these bonds.

The modifier also restricts the ability of investors to sell the bonds in the secondary market, the complaints state.

All three complaints are signed by the Florida Commission's executive director, Braulio L. Baez, its general counsel, Keith C. Hetrick, and by Joseph Fichera, chief executive of Saber Partners, the regulator's financial advisor.

In June, Duke Energy Florida issued $1.3 billion of bonds backed by a special charge on the utility's electric delivery and transmission services. The fees are associated with the retirement of the Crystal River Unit 3 nuclear power plant; issuing bonds backed by the fees allows the utility to fund the retirement up front. S&P, Moody's and Fitch all assigned triple-A ratings to the bonds, adding the "sf" modifier.

Florida Power & Light issued $652 million in bonds in 2007 backed by a special charge funding repairs to power lines and facilities from hurricanes. All three credit rating agencies initially assigned ratings to the bonds without the "sf" modifier; all three subsequently added the modifier to their ratings after the EU regulation took effect in 2009.

The complaints note that the rating agencies' classification of the utility bonds is inconsistent with that of Barclays, which classified the Duke Energy Florida recovery bonds as "corporate/utility instruments" for the purposes of its fixed-income indexes.

The complaints also include a legal opinion from law firm Orrick, Harrington & Sutcliffe outlining both the legal and policy reasons why the "sf" modifier should not be appended to ratings of the bonds.

No one at Moody's, Fitch, or S&P was immediately available for comment.