



May 3, 2017

Honorable Andrew Kerr  
Honorable Matt Jones  
Senate State, Veterans & Military Affairs Committee

**Re: Review and Analysis of HB17-1339, The Colorado Energy Impact Assistance Act Based on U.S. Financial Market Precedents**

Dear Senators Kerr and Jones, and members of the Committee:

My name is Joseph S. Fichera, and I am a founder, senior managing director, and chief executive officer of Saber Partners, LLC, a New York financial advisory firm for corporations and governments. I have over 35 years of financial markets experience. More information is available at [www.saberpartners.com](http://www.saberpartners.com).

My areas of expertise include corporate governance, financial markets, capital markets finance and effective regulation. I provide independent expert advice to corporate and municipal finance issuers, investors, regulators and brokerage firms.

I have participated in the market for “ratepayer-backed bonds” since 1999. I have published articles on the subject in *Asset Securitization Report*, *Thomson Reuters*, *Natural Gas & Electricity*, and *Intelligent Utility*. I also have presented on the subject before the National Association of Regulatory Utility Commissioners (NARUC) and National Association of Consumer of State Utility Advocates (NASUCA).

In addition, I have served as the financial advisor on ratepayer-backed bonds to the Public Service Commissions in Florida, West Virginia, Texas, New Jersey, Wisconsin and to Vermont Electric Power Producers, Inc., a nonprofit corporation that administers renewable energy programs for the Vermont Public Service Board. In this capacity, I represented the interests of the consumers of electricity in the regulatory process (testimony) and in the structuring, marketing and pricing of ratepayer-backed bonds. More information is available at [www.saberpartners.com/rocbonds](http://www.saberpartners.com/rocbonds)

I have reviewed in detail the provisions of HB17-1339, The Colorado Energy Impact Assistance Act and compared them to other successful financial market precedents that have lowered financing costs of consumers of electricity. Because I am unable to be with you in person today, I am offering my finance related sworn testimony in writing for your consideration as you discuss HB17-1339.

***What are ratepayer-backed bonds?***

Ratepayer-backed bonds are issued pursuant to specific State legislative authority (like HB17-1339). Ratepayer-backed bonds have common features in all the states that have successfully authorized and used them. The legislation provides the legal framework for national independent

rating agencies to give the bonds their top ratings which means the lowest interest or costs to consumers. The legislation has three basic features:

- (i) provides for an automatically adjustable charge to be imposed on retail purchasers of electric service in a specified service area, even if there is a change in the provider of the electric service;
- (i) provides that the right to bill and collect that special charge is a separate “property right” which can be transferred to a “bankruptcy-remote” issuer in a “true sale” for bankruptcy purposes (protecting these investors from claims against the sponsoring utility); and
- (ii) includes a pledge by the State to impose and periodically to adjust the charge so long as the bonds remain outstanding.

***Who is the issuer of the bonds and why is it called “bankruptcy remote?”***

It is a limited purpose subsidiary established by the sponsoring utility for the sole purpose of owning the property that is established by the legislation through the issuance of the bonds. The utility owns the subsidiary but it is established under the law in such a way that legally it is independent of the parent sponsoring utility for all purposes, the most important of which is that it is unlikely to be consolidated with the obligations of the parent utility in the case of a bankruptcy of the utility. It also means that the subsidiary is unlikely to ever be bankrupt also. These two scenarios are known as “bankruptcy remote.” Consequently, the rating agencies and investors can have confidence that the revenues from the charge can only go to pay the principal and interest on the bonds and any related issuing expenses and ongoing administrative costs.

***Have ratepayer-back bonds been used in other States?***

Yes, twenty-two other States have laws in place allowing ratepayer-backed bonds to be used. States have used these bonds for a variety of purposes to lower the overall rates paid by electricity consumers. Pension funds and other conservative investors like the quality of these bonds compared to other investments because of the protections provided by the legislation and the support from consumer groups and utilities that use them.

This type of bonds was first used in the 1990’s to refinance so-called “stranded costs” of electric generation assets of investor-owned utilities (IOUs) in States that were deregulating their electricity markets. Over time, the benefits of this type of low-cost financing was extended to other purposes. Over \$50 billion dollars in ratepayer-backed bonds have been used to finance or refinance IOU expenditures such as costs for storm recovery, environmental measures, energy efficiency, and retired nuclear power plants.

***Why does HB17-1339 create a nonbypassable charge on ratepayer bills?***

The nonbypassable charge is the central component of the “property right” being pledged to provide for repayment of the bonds. This charge is only paid by ratepayers/customers who take delivery of electricity by means of the IOU’s wires.

***Why is the charge automatically adjustable?***

The charge must be adjusted at least once each six months, either upward or downward, to provide for the scheduled payment of debt service on the bonds. This give assurances to the rating agencies and investors that the bonds will be paid on time.

***What is the State Pledge?***

Like the other 22 State statutes which authorize ratepayer-backed bonds, HB17-1339 includes a pledge that the State will enforce (meaning not alter once it is created) the imposition of the charge, including the automatic true-up adjustment, so long as the bonds remain outstanding. Together with the nonbypassable nature of the charge and the automatic true-up adjustment mechanism, the State pledge is designed to make certain that principal and interest on the bonds will be paid when they are legally due, and that the payments will come solely from IOU customers.

***In the event of a default on the bonds, who is the party ultimately responsible for the bonds?***

Only the consumers within the IOU's service area who take delivery of electricity by means of the IOU's wires collectively are the ultimate party responsible for debt service on the bonds. Any ratepayer/customer (and only those ratepayers/customers) taking delivery of electricity over the IOU's wires will be obligated to pay a nonbypassable charge on its utility bill. Investors take the risk that electricity will cease to be delivered to consumers by means of the IOU's wires and therefore there will be insufficient money to pay the bonds.

This works with the rating agencies and investors because electricity is an essential commodity. The rating agencies – to whom the bondholders look to evaluate all possibilities of a default – will only provide AAA ratings on the bonds if they think a payment default scenario is exceedingly remote.

Investors/bondholders know they are depending on deliveries of electricity - and only deliveries of electricity - to get paid back. So, long as all other parties meet their contractual obligations, it is explicit that there will be no other sources of funds. HB17-1339 uses rating agency accepted language to create ratepayer-backed bonds which do not require the IOU or the State of Colorado to use their own financial resources to guarantee repayment of the bonds.

The State is obligated to make payments only in its capacity as a customer of the IOU, being obligated to pay the CO- EIA charge on electricity delivered to the State by means of the IOU's wires.

The law is written this way to make it clear to everyone that investors must take the risk of no use of the IOU's wires to deliver electricity to anyone.

***Do ratepayer-backed bonds rely on the full faith and credit of the State of Colorado?***

No, absolutely not. This is a corporate financing by a newly created limited purpose entity. In the event of a payment default on the bonds, so long as the State complies with its pledge to enforce the imposition of the charge, including the automatic true-up adjustment, the State of Colorado is not pledging its financial resources to guarantee the bonds. HB17-1339 clearly states in Section 40-41-112 (2) on page 28 that these bonds are not an obligation or debt of the State:

*Holders of CO-EIA Bonds have no right to have taxes levied by the State or by any county, municipality, or other political subdivision of the State for the payment of the principal or interest on CO-EIA Bonds. The issuance of CO-EIA Bonds does not directly, indirectly or contingently obligate the State or a political subdivision of the State to levy any tax or make any appropriation for payment of principal or interest on the CO-EIA Bonds.*

### ***How will principal and interest on the bonds be paid if the IOU becomes bankrupt?***

As discussed above, the bonds will be issued by a limited purpose entity that would be a subsidiary of the IOU that is “bankruptcy remote” from the IOU. This means that if the IOU ever went into bankruptcy, creditors of the IOU would not be able to access the revenues of this issuing entity to pay the IOU’s debt. The revenues are solely for the purpose of repaying the ratepayer-backed bonds. This also means that if the IOU becomes bankrupt, the charge will continue to be imposed, periodically adjusted, collected and remitted to a trustee for the benefit of bondholders. If necessary, even a substitute servicer (to calculate charges, send out bills and collect charges) could be hired in place of the IOU to facilitate the imposition, adjustment, collection and remittance of the charge to the trustee for the benefit of bondholders.

### ***What is the tenor (length) of the bonds?***

Ratepayer-backed bonds can be issued for a variety of tenors (otherwise known as maturities) just like home mortgages. Like home mortgages, principal and interest on most ratepayer-backed bonds is scheduled to be paid on a level aggregate debt service basis or in a manner to maintain a level annual charge. This means by the last payment date, there generally is no “balloon” or large final payment due.

Because it is in the best interest of customers to have the lowest per month charges, the longer the tenor (the repayment period), the lower the cost to ratepayers/customers in each of the early years. Tenor is determined with the advice of financial consultants so that the lowest interest rate and lowest costs to ratepayers/customers is achieved. Ratepayer-backed bonds are typically issued with ten, fifteen, eighteen, twenty year tenors. There is currently a market demand for longer tenor ratepayer-backed bonds. HB17-1339 permits long tenor bonds to be created. A decision on tenor would be made as part of the analysis done before bonds are issued.

### ***Is there a market for these bonds?***

Yes, there is a very deep and broad market which benefits issuers of this type of bonds because there is so much demand that the interest rate spread to US Treasuries (the additional amount of yield over a US Government bond needed to get investors to buy it) can be very low, much lower than the IOU could sell bonds backed by the IOU’s its own credit. This benefits consumers’ bottom line directly.

AAA rated ratepayer-backed bonds are considered a safe investment for pension funds. Colorado pension funds and related entities would most likely be interested in owning these bonds because of their safety and duration.

For example, the most recent use for these bonds was in a June 2016 transaction on which I advised the State of Florida Public Service Commission. The IOU, Duke Energy Florida and a newly created subsidiary called Duke Energy Project Finance, LLC, issued \$1.24 billion of

ratepayer-backed bonds with a scheduled final maturity of 20 years and a weighted average interest rate of only **2.72%**. That bond issue was completely sold within 2 days.

Thank you for the opportunity to provide this sworn testimony.

I declare under penalty of perjury that the foregoing is true and correct.

Sincerely

A handwritten signature in black ink, appearing to read "J. Fichera", written in a cursive style.

Joseph S. Fichera  
Chief Executive Officer