NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

Resolution 2024-01

Resolution Urging Clarification of Utility Recovery Bond Classification by the SEC

Whereas regulated utilities authorized by specific state legislation use utility recovery bonds, also referred to as "ratepayer-backed bonds," "utility securitization bonds," or "stranded cost bonds," to help finance critical projects such as climate adaptation, disaster recovery, and asset retirement without adding to utility rate base or waiting for traditional rate recovery processes;

Whereas state legislation authorizing utility recovery bonds provides unique protections not available to investors in other types of corporate bonds, including the right to charge and collect all of the revenue from irrevocable non-bypassable charges from electric service customers in the issuer's territory regardless of what entity serves those customers and the right to periodic true-ups of such charges to ensure adequate funds are available to make all required payments to holders of utility recovery bonds;

Whereas these legislative provisions have allowed utility recovery bonds to achieve the highest possible credit ratings (AAA/Aaa), thereby reducing costs for utility customers compared to traditional utility financing;

Whereas since June 2016 through August 2022, the bonds were recognized as corporate utility bonds by Barclays Index Services, the predecessor to Bloomberg Index Services, Ltd. (Bloomberg), which greatly expanded the potential market for and competition among investors for the bonds, which leads to lower borrowing rates;

Whereas in August 2022, Bloomberg reclassified utility recovery bonds as "asset backed securities," and, in July 2024, an interpretation by the staff of the SEC Division of Corporation Finance on Form SF-1 eligibility for utility recovery bonds may imply a similar reclassification;

Whereas there is no evidence that Bloomberg's action or any similar reclassification by the SEC is or would be reflective of the inherent credit quality and investment risk of the utility recovery bonds;

Whereas Bloomberg's reclassification has restricted the pool of potential investors for utility recovery bonds and, despite the continued high credit ratings of the bonds, unnecessarily increased utilities' borrowing costs, resulting in higher electric rates for millions of American households;[1]

[1] The issue is explained in a March 24, 2024, Wall Street Journal article entitled "Bonds Got Relabeled. Now Millions of Americans Get Higher Electric Bills," that provides the following example of the implications of reclassification:

Whereas there is no evidence that the bill impact on electricity consumers was considered when Bloomberg reclassified utility recovery bonds as asset-backed securities or when the SEC Division of Corporate Finance changed its guidance on the appropriate Securities Act form for registering utility recovery bonds;

Whereas the Governors of eight states have signed a letter detailing the implications of the treatment of utility recovery bonds as asset-backed securities and requesting the Chairman of the SEC to act in the public interest and to answer questions and otherwise address the problematic reclassification by Bloomberg and unexplained suggested guidance by SEC staff of utility recovery bonds;[2]

Now, therefore be it resolved, that NASUCA urges index providers and the SEC to reconfirm classification of utility recovery bonds as corporate bonds or otherwise in a way that accurately reflects their exceedingly low risk, thus preventing unnecessary increases in electricity costs for consumers in states that use this form of financing.

Be it further resolved, that NASUCA authorizes its Executive Committee to develop specific positions and take appropriate actions, consistent with the terms of this resolution and the needs of its Members and their utility consumers. The Executive Committee shall notify the membership of any action pursuant to this resolution.

Submitted by the NASUCA Accounting and Finance Committee

Approved by the Membership
November 10, 2024
Anaheim, California

Abstained:

South Carolina ORS

North Carolina AG

In the May offering that started the fight, PG&E got a spread of about 1.60 percentage points above corresponding U.S. Treasury rates, while triple-A-rated corporate bonds issued by Johnson & Johnson were trading at a spread of 0.88 percentage point. On a similar offering in July, the utility's borrowing costs shot up to 1.95 percentage points above Treasurys, while the spread of Johnson & Johnson bonds to Treasurys narrowed to 0.69 percentage point. *See* https://www.wsj.com/finance/bonds-got-relabeled-now-millions-of-americans-get-higher-electric-bills-d765c609

[2] *See* letter at https://saberpartners.com/wp-content/uploads/2024/10/2024.09.10-FINAL-Governors-to-SEC-re-utility-recovery-bond-classification.pdf (attachments omitted).