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January 12, 2017

BY ECF, EMAIL, AND HAND DELIVERY

The Honorable Christopher S. Sontchi
U.S. Bankruptcy Judge
U.S. Bankruptcy Court District of Delaware
824 North Market Street, 5th Floor
Wilmington, Delaware 19801

Re: *In re Energy Future Holdings Corp., et al.*, Case No. 14-10979 (Bankr. D. Del.)

Dear Judge Sontchi:

We are counsel to NextEra Energy, Inc. ("NextEra") in the above-captioned cases. We write to join the request for a protective order filed by the Debtors by letter dated January 12, 2017 (the "Request"), and to respectfully request that the Court enter a protective order quashing the notices of deposition served by American Stock Transfer & Trust Company, LLC (the "EFH Indenture Trustee") and Contrarian Capital Management, LLC ("Contrarian") on December 22, 2016, including such notices directed to NextEra and Mark Hickson (together, the "Deposition Notices"), for the reasons set forth in the Request, each of which reasons is incorporated herein.

As set forth in the Debtors' Request, there are at least two independent reasons why the Court should quash the Deposition Notices, including that the testimony sought by the EFH Indenture Trustee and Contrarian is neither (a) relevant to confirmation of the Plan, as required by Rule 26 of the Federal Rules of Civil Procedure (the "Federal Rules"); nor (b) "related to changes in the Plan," as required by paragraph 8(c) of the *Supplemental Order Approving the Revised Schedule for the EFH/EFIH Confirmation Proceedings* (Dkt. No. 10327) (the "Supplemental Scheduling Order"). Each of those two reasons applies with equal force to the notices of deposition directed to NextEra and Mr. Hickson, which seek testimony concerning EFH Corp.'s net operating losses (the "NOLs") that is both irrelevant to Plan confirmation and unrelated to any change in the Plan, and should have been adduced (if ever) when NextEra produced Mr. Hickson for deposition on October 25, 2016.

NextEra and Mr. Hickson should not be burdened by preparing for and attending an unnecessary, improper, and duplicative deposition.

BACKGROUND

To date, NextEra has produced over 64,000 pages of documents in response to document requests served by various Participating Parties in connection with Plan confirmation, including requests served by the EFH Indenture Trustee concerning the NOLs. On October 11, 2016, the EFH Indenture Trustee served on NextEra a notice of deposition pursuant to Federal Rule 30(b)(6) (attached hereto as Exhibit A), and thereby requested that

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NextEra also produce a designee concerning, *inter alia*, three topics purportedly related to the NOLs:

1. The amount, value of, and Your ability or any other potential purchaser's ability, to use EFH Corp.'s tax attributes, including but not limited to NOLs that may be available to EFH Corp., Reorganized EFH, You, or any other potential purchaser, after accounting for the use of EFH Corp.'s tax attributes in connection with the Spin-Off of TCEH.
2. All analyses, calculations and communications relating to the foregoing.
3. The methods by which you have historically valued tax attributes, including but not limited to NOLs. (Exhibit A at 7.)

By email to counsel for all Participating Parties on October 13, 2016 (attached hereto as Exhibit B), counsel for NextEra designated Mr. Hickson to testify on its behalf pursuant to Federal Rule 30(b)(6) concerning the topics noticed by the EFH Indenture Trustee (and others noticed by the Asbestos Objectors). On October 18, 2016, counsel for the EFH Indenture Trustee informed the undersigned counsel in person that the EFH Indenture Trustee did not intend to question Mr. Hickson during his scheduled deposition, but that counsel for Contrarian might. On October 21, 2016, and October 24, 2016, counsel for Delaware Trust Company (the "EFIH First Lien Trustee") and counsel for Computershare Trust Company, N.A. and Computershare Trust Company of Canada (together, the "EFIH Second Lien Trustee") purported to notice Mr. Hickson for deposition in his individual capacity.

Mr. Hickson is NextEra's Senior Vice President, Corporate Development, Strategy, Quality and Integration, and is based in NextEra's headquarters in Juno Beach, Florida. He appeared for deposition in New York on October 25, 2016. During that deposition, Mr. Hickson answered questions from counsel for Participating Parties including the Asbestos Objectors, the EFIH First Lien Trustee, and the TCEH Ad Hoc Group, both in his capacity as Federal Rule 30(b)(6) designee for NextEra and in his individual capacity. (Hickson Tr. 164:3-6) (excerpts attached hereto as Exhibit C). Counsel for the EFH Indenture Trustee appeared at Mr. Hickson's deposition but declined to ask any questions. (Exhibit C at 4:11-14.) Counsel for Contrarian did not appear at the deposition.

On November 15, 2016, the deadline for objections to the then-operative version of the Plan, the EFH Indenture Trustee's and Contrarian's filings asserted that EFH Corp. may not have received adequate value for the NOLs. In particular, the EFH Indenture Trustee purported to reserve its right "to object to any modified version of the Plan" on grounds that "would include, but not necessarily be limited to, the fact that in certain circumstances EFH Corp. might not be compensated for . . . net operating losses." (Dkt. No. 10143 at ¶ 4.) Similarly, Contrarian objected to confirmation "because [the Plan] contemplates the transfer . . . of NOLs . . . without . . . fair equivalent value to EFH Corp." (Dkt. No. 10144 at ¶ 8.)

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All Participating Parties completed fact discovery. On December 7, 2016, after the Debtors had filed their Fifth Amended Plan (Dkt. No. 10290) and the confirmation hearing had been adjourned, the Court entered the Supplemental Scheduling Order (Dkt. No. 10327). Paragraph 8(c) of the Supplemental Scheduling Order reopened discovery and authorized “supplemental notices of deposition *related to changes in the Plan*, including the resulting impact on Participating Parties.” (Emphasis added.) Neither the EFH Indenture Trustee nor Contrarian objected to the entry of the Supplemental Scheduling Order.

On December 22, 2016, and notwithstanding that NextEra had previously produced Mr. Hickson for deposition as its designee concerning topics relating to the NOLs and counsel for the EFH Indenture Trustee had declined to question him concerning any of those topics (or otherwise), the EFH Indenture Trustee served on NextEra a second, duplicative notice of deposition pursuant to Federal Rule 30(b)(6) (attached hereto as Exhibit D), and thereby requested that NextEra produce a designee concerning substantively identical NOL-related topics.¹ On that same date, December 22, 2016, the EFH Indenture Trustee served a notice of subpoena for Mr. Hickson’s deposition in his individual capacity (attached hereto as Exhibit E), and Contrarian served a notice of joinder concerning all deposition notices served by the EFH Indenture Trustee (attached hereto as Exhibit F).

The parties engaged in good-faith consultation but have been unable to resolve their dispute as to the Deposition Notices and unfortunately must request the Court’s intervention.

ARGUMENT

A. The Deposition Testimony Sought From NextEra And Mr. Hickson Is Irrelevant To Plan Confirmation

The EFH Indenture Trustee and Contrarian seek testimony from NextEra and Mr. Hickson concerning the NOLs. As more fully set forth in the Debtors’ Request, all such testimony is irrelevant to Plan confirmation because both of the two potential Plan objections to which such testimony allegedly relates are foreclosed as a matter of law by this Court’s

¹ Those topics include: (1) “[t]he amount, value of, and Your ability . . . to use EFH Corp.’s tax attributes, . . . after accounting for the use of [those] attributes in connection with the Spin-Off”; (2) “[a]ll analyses, calculations and Communications relating to the foregoing, including whether any was done or not done”; (3) “[t]he methods by which [NextEra] historically valued tax attributes, including . . . NOLs, in connection with Your financial reporting and otherwise”; and (4) “[t]he basis for any privilege asserted in connection with any document requests served on You by the EFH Indenture Trustee.” (Exhibit D at 7.)

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prior rulings. This ground alone suffices to warrant entry of an Order quashing the Deposition Notices.

**B. The Deposition Testimony Sought From NextEra
And Mr. Hickson Is Unrelated To Changes In The Plan**

The EFH Indenture Trustee's and Contrarian's deposition notices to NextEra and Mr. Hickson should also be quashed on the separate ground that they exceed the scope of discovery permitted under the Supplemental Scheduling Order by seeking testimony unrelated to any change in the Plan. The Court's Supplemental Scheduling Order appropriately limited the scope of any "supplemental notices of deposition" to those seeking testimony "related to changes in the Plan" arising from the Debtors' filing of the Fifth Amended Plan on December 1, 2016. Despite that Court-ordered limitation, the EFH Indenture Trustee and Contrarian do not seek to depose NextEra or Mr. Hickson concerning any "changes in the Plan." Instead, the EFH Indenture Trustee (joined by Contrarian) seeks testimony concerning the "amount, value of, and [NextEra's] ability . . . to use EFH Corp.'s tax attributes," "[a]ll [related] analyses, calculations and Communications," "methods by which [NextEra] historically valued tax attributes," and "[t]he basis for any privilege asserted in connection with any document requests served on [NextEra] by the EFH Indenture Trustee [all of which related to the NOLs]." (Exhibit D at 7.)

That the EFH Indenture Trustee seeks testimony wholly unrelated to changes in the Plan is evident not only from the text of the Plan amendments (which did not purport to affect the NOLs), but also from the indisputable fact that the deposition topics noticed by the EFH Indenture Trustee are substantively identical to deposition topics it noticed last October long before the Plan was amended. (Exhibit A at 7; Exhibit D at 7.)²

Even assuming *arguendo* that deposition testimony concerning the NOLs were somehow relevant to Plan confirmation (and it is not), the time to conduct discovery unrelated to the recent changes in the Plan was months ago. Indeed, at the EFH Indenture Trustee's request, NextEra produced Mr. Hickson for deposition concerning these very same subjects on October 25, 2016. The EFH Indenture Trustee and Contrarian chose not to adduce any testimony during that deposition. They should not be permitted to do so now in contravention

² The EFH Indenture Trustee's fourth (and ancillary) deposition topic—"the basis for any privilege asserted in connection with [the EFH Indenture Trustee's] document requests"—does not alter this conclusion as it purports to seek testimony concerning privilege assertions as to documents responsive to requests concerning the NOLs.

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of the Supplemental Scheduling Order and thereby impose on NextEra and Mr. Hickson the undue burden of preparing for and appearing at a second deposition.³

* * *

For the foregoing reasons and those set forth in the Debtors' Request, NextEra respectfully requests that the Court enter an order quashing the Deposition Notices and granting such other and further relief as the Court may deem just and proper. We appreciate Your Honor's attention to these matters.⁴

Respectfully Submitted,

/s/ Robin D. Ball
Robin D. Ball

Enclosures

cc: All EFH Plan Confirmation Participating Parties (by ECF)

³ Accordingly, the Court should also quash the Deposition Notices because they violate Federal Rule 30(a)(2)(A)(ii)'s prohibition on taking a deposition without leave of Court where a "deponent has already been deposed in the case." *See State Farm Mut. Auto. Ins. Co. v. New Horizont, Inc.*, 254 F.R.D. 227, 235 (E.D. Pa. 2008) (denying leave to conduct Rule 30(b)(6) deposition where noticing parties provided "**no** reason, let alone a good reason" why questions concerning noticed topics were not asked during prior Rule 30(b)(6) deposition of same party) (emphasis in original).

⁴ NextEra reserves its right to serve written responses and objections to the Deposition Notices in the event that the Court declines to grant the Request.

EXHIBIT A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

ENERGY FUTURE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 14-10979 (CSS)

Jointly Administered

**AMENDED NOTICE OF DEPOSITION OF NEXTERA PURSUANT TO FED. R. CIV. P.
30(b)(6), MADE APPLICABLE BY BANKRUPTCY RULE 7030 IN CONNECTION
WITH CONFIRMATION OF THE DEBTORS' THIRD AMENDED JOINT PLAN OF
REORGANIZATION OF ENERGY FUTURE HOLDINGS CORP., ET AL., PURSUANT
TO CHAPTER 11 OF THE BANKRUPTCY CODE
AS IT RELATES TO THE EFH/EFIH DEBTORS**

TO: NextEra Energy, Inc.
c/o Chadbourne Park
1301 Avenue of the Americas
New York, NY 10019
Attn: Howard Seife
David M. Lemay
Christy L. Rivera

PLEASE TAKE NOTICE THAT pursuant to Rules 26 and 30(b)(6) of the Federal Rules of Civil Procedure (the “Federal Rules”), made applicable to this proceeding pursuant to Rules 7026, 7030 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), American Stock Transfer & Trust Company, LLC, as successor trustee to The Bank of New York Mellon Trust Company, N.A. (in such capacity, the “EFH Indenture Trustee”) under the indentures for certain notes issued by Energy Future Holdings Corp. (“EFH Corp.”), by its undersigned counsel, will take the deposition upon oral examination of a designee or designees

¹ The last four digits of Energy Future Holdings Corp.’s tax identification number are 8810. The location of the debtors’ service address is 1601 Bryan Street, Dallas, Texas 75201. Due to the large number of debtors in these chapter 11 cases, for which the debtors have requested joint administration, a complete list of the debtors and the last four digits of their federal tax identification Numbers is not provided herein.

of NextEra Energy, Inc. (“NextEra”) in connection with confirmation of the Debtors’ Third Amended Joint Plan of Reorganization of Energy Future Holdings Corp., *et al.*

PLEASE TAKE FURTHER NOTICE THAT the deposition will take place at such time and place as may be agreed to by the parties. The deposition will take place before a court reporter and will be recorded by stenographic means, may be videotaped, and shall continue from day to day until it has been completed.

PLEASE TAKE FURTHER NOTICE THAT pursuant to Bankruptcy Rules 7030 and 9014 and Federal Rule 30(b)(6), NextEra must designate one or more persons to testify on their behalf with regard to all matters known or reasonably available to NextEra on the matters set forth on Schedule A attached hereto. The EFH Indenture Trustee requests that NextEra provide, as soon as reasonably possible, a written designation of the name(s) and position(s) of the persons who consent to testify on behalf of NextEra.

Dated: Wilmington, DE
October 11, 2016

CROSS & SIMON, LLC

By: /s/ Christopher P. Simon

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cfong@nixonpeabody.com

*Co-Counsel to American Stock Transfer &
Trust Company, LLC, as Indenture Trustee*

SCHEDULE A
INSTRUCTIONS

1. Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rules 7030 and 9014 of the Federal Rules of Bankruptcy Procedure, you are directed to designate one or more of your officers, directors, managing agents, or other persons who consent to testify on your behalf and who have knowledge of and are adequately prepared to testify concerning the topics enumerated below.

2. The use of the singular form includes the plural and vice versa, any use of gender includes both genders, and a verb tense includes all other verb tenses.

3. All terms and phrases used herein shall be construed in an ordinary, common-sense manner, and not in a technical, strained, overly-literal, or otherwise restrictive manner.

4. The EFH Indenture Trustee reserves the right to supplement these deposition topics based on ongoing discovery.

DEFINITIONS

All terms herein shall have the same meaning as terms defined in the Debtors' Third Amended Plan (as defined below), Disclosure Statement (as defined below) and the Merger Agreement (as defined below) and exhibits thereto. The definitions set forth below are to be construed in the broadest sense with reference to the Bankruptcy Rules and the Federal Rules of Civil Procedure.

1. "Affiliate" of any specified Person shall mean any other Person that directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Person specified.

2. "AST" shall mean American Stock Transfer & Trust Company, LLC.

3. “Bankruptcy Code” shall mean Title 11 of the United States Code, and all provisions thereof.

4. “Chapter 11 Cases” shall mean the Chapter 11 cases commenced by the Debtors in the United States Bankruptcy Court for the District of Delaware on April 29, 2014, and jointly administered under case number 14-10979.

5. “Communication” shall mean every manner or means of disclosure, transfer, or exchange of information, including, but not limited to, any of the following: (a) any written letter, memorandum, or other Document of any kind by mail, courier, other delivery services, telecopy, facsimile, telegraph, electronic mail, voicemail, or any other means; (b) any telephone call, whether or not such call was by chance or prearranged, formal or informal; and (c) any conversation or meeting between two or more persons, whether or not such contact was by chance or prearranged, formal or informal.

6. “Debtors” shall mean, collectively, EFH Corp. and its affiliated entities, as debtors-in-possession, as applicable, which filed voluntary Chapter 11 petitions under the Bankruptcy Code commencing these Chapter 11 Cases, and any of their direct or indirect subsidiaries, Affiliates, divisions, subdivisions, departments, predecessors, successors, partners, principals, officers, directors, attorneys, accountants, agents, employees, representatives, and other persons acting on its behalf, including, but not limited to, Kirkland & Ellis, LLP, Proskauer Rose LLP and/or Munger, Tolles & Olsen LLP, and/or Cravath Swaine and Moore, LLP, and/or McElroy, Deutsch, Mulvaney & Carpenter, LLP, and/or Stevens & Lee, PC, and/or O’Kelly Ernst & Bielli, LLC, Alvarez & Marsal North America, LLC as well as any financial or other advisor to the forgoing.

7. “Disclosure Statement” shall mean the Disclosure Statement for the Third Amended Joint Plan of Reorganization of Energy Future Holdings, Corp., et al., Pursuant to Chapter 11 of the Bankruptcy Code as it Applies to the EFH Debtors and EFIH Debtors [D.I. 9200].

8. “Document” or “Documents” shall have the meaning prescribed by Rule 7034 of the Federal Rules of Bankruptcy Procedure, including, without limitation, any tangible thing upon which any expression, Communication or representation has been recorded by any means, and includes, but is not limited to, all electronically stored information, Communications, sworn statements, deposition transcripts, affidavits, recordings, photographs, computer data, electronic mail, handwritten notations, correspondence, memoranda, notes, financial calculations, calendars, appointment books, and all other writings and recordings of every kind that are in your actual or constructive possession, custody, or control.

9. “Third Amended Plan” shall mean the Third Amended Joint Plan of Reorganization of Energy Future Holdings Corp., et. al., Pursuant to Chapter 11 of the Bankruptcy Code [D.I. 9374], as it may be amended, modified or supplemented.

10. “Merger Agreement” shall mean the Agreement and Plan of Merger between NextEra and EFH Merger Co. LLC.

11. “NextEra” shall mean NextEra Energy, Inc., or any of its affiliates.

12. “NOL” shall mean net operating loss.

13. “Person” or “persons” shall mean all natural persons, corporations, partnerships or other business associations, and all other legal or governmental entities or associations.

14. “Plan Support Agreement” shall mean the plan support agreement executed by the EFH/EFIH Debtors and NextEra.

15. “Valuation” means any evaluation, study, estimate, appraisal or assessment to determine or estimate the monetary worth of an asset or liability or a business or entity, by any means, method or techniques whatsoever, whether proposed, draft or final.

16. “You” or “Your” shall refer to any Person to whom these Requests have been addressed and all of their current and former Affiliates, parents, direct or indirect subsidiaries, members, officers, directors, representatives, employees, agents, consultants, accountants, attorneys, financial advisors, predecessors, successors, assigns, and any other Person currently or formerly acting or purporting to act on the Person’s behalf for any purpose whatsoever.

RULE 30(b)(6) DEPOSITION TOPICS

The topics identified below are preliminary and subject to revision and supplementation based upon ongoing discovery and other developing factual circumstances.

A. Facts Related to NOLs and other Tax Attributes

1. The amount, value of, and Your ability or any other potential purchaser’s ability, to use EFH Corp.’s tax attributes, including but not limited to NOLs that may be available to EFH Corp., Reorganized EFH, You, or any other potential purchaser, after accounting for the use of EFH Corp.’s tax attributes in connection with the Spin-Off of TCEH.

2. All analyses, calculations and communications relating to the foregoing.

3. The methods by which you have historically valued tax attributes, including but not limited to NOLs.

B. Merger Agreement and Plan Support Agreement

4. All conditions precedent to the consummation of the transactions contemplated in the Merger Agreement.

5. Any effort by You to finance or raise funds to implement the transactions contemplated by the Third Amended Plan and the Merger Agreement and Your communications

with potential funding sources, if any, with regard to the value of any tax attributes of EFH or Reorganized EFH that may be retained (as it relates to the value of NOLs).

SCHEDULE 1

1. Indenture dated as of November 1, 2004, between Energy Future Holdings Corp. (“EFH”), as issuer, and the Indenture Trustee, as trustee, as amended and supplemented by the Officer’s Certificate, dated as of November 26, 2004, the Supplemental Indenture, dated as of July 1, 2010, and the Second Supplemental Indenture, dated as of April 15, 2013 (collectively, the “Series P Indenture”).
2. Indenture dated as of November 1, 2004, between EFH, as issuer, and the Indenture Trustee, as trustee, as amended and supplemented by the Officer’s Certificate, dated as of November 26, 2004, the Supplemental Indenture, dated as of December 5, 2012, and the Second Supplemental Indenture, dated as of April 15, 2013 (collectively, the “Series Q Indenture”).
3. Indenture dated as of November 1, 2004, between EFH, as issuer, and the Indenture Trustee, as trustee, as amended and supplemented by the Officer’s Certificate, dated as of November 26, 2004, the Supplemental Indenture, dated as of December 5, 2012, and the Second Supplemental Indenture, dated as of April 15, 2013 (collectively, the “Series R Indenture”).
4. Indenture dated as of November 16, 2009, between EFH, as issuer, and the Indenture Trustee, as trustee, as amended and supplemented by the Supplemental Indenture, dated as of January 25, 2013, and the Second Supplemental Indenture, dated as of April 15, 2013 (collectively, the “9.75% Senior Notes Indenture”).
5. Indenture dated as of January 12, 2010, between EFH, as issuer, and the Indenture Trustee, as trustee, as amended and supplemented by the First Supplemental Indenture, dated as of March 16, 2010, the Second Supplemental Indenture, dated as of April 13, 2010, the Third Supplemental Indenture, dated as of April 14, 2010, the Fourth Supplemental Indenture, dated as of May 21, 2010, the Fifth Supplemental Indenture, dated as of July 2, 2010, the Sixth Supplemental Indenture, dated as of July 6, 2010, the Seventh Supplemental Indenture, dated as of July 7, 2010, the Eighth Supplemental Indenture, dated as of January 25, 2013, and the Ninth Supplemental Indenture, dated as of April 15, 2013 (collectively, the “10.00% Senior Notes Indenture”).
6. Indenture dated as of October 31, 2007, among EFH, as issuer, the Guarantors party thereto and the Indenture Trustee, as trustee, as amended and supplemented by the First Supplemental Indenture, dated as of July 8, 2008, the Second Supplemental Indenture, dated as of August 3, 2009, the Third Supplemental Indenture, dated as of July 29, 2010, the Fourth Supplemental Indenture, dated as of October 18, 2011, and the Fifth Supplemental Indenture, dated as of April 15, 2013 (collectively, the “10.875% Senior Notes and 11.250%/12.000% Senior Toggle Notes Indenture”, and collectively with the Series P Indenture, the Series Q Indenture, the Series R Indenture, the 9.75% Senior Notes Indenture, and the 10.00% Senior Notes Indenture, the “Indentures”).

EXHIBIT B

Kirby, Robert

From: Kirby, Robert
Sent: Thursday, October 13, 2016 4:53 PM
To: 'EFH_DS_Discovery_Service_List@kirkland.com'
Cc: Seife, Howard; Rosenblatt, Andrew; Ashley, Marc D.; Ball, Robin D.; Rivera, Christy; Daucher, Eric; 'Matthew B. McGuire'; 'landis@lrclaw.com'
Subject: In re Energy Future Holdings Corp., Case No. 14-10979 - NextEra's Rule 30(b)(6) Designation

Counsel:

Please be advised that NextEra Energy, Inc. ("NextEra") intends to designate Mark Hickson to testify on its behalf pursuant to Fed. R. Civ. P. 30(b)(6) concerning the topics set forth in the Asbestos Objectors' Notice of Deposition of NextEra, dated September 15, 2016, and in the EFH Indenture Trustee's Amended Notice of Deposition of NextEra, dated October 11, 2016. NextEra reserves its right to designate one or more additional or different Rule 30(b)(6) witnesses concerning those deposition topics, and/or to assert any appropriate objections to those deposition topics.

Mr. Hickson is available to be deposed in that capacity on Tuesday, October 25. We will host that deposition at Chadbourne's offices located at 1301 Avenue of the Americas, New York, New York 10019.

Please provide the names of those who will attend the deposition in person for the security list. If any counsel plans to attend by phone, please let me know and we will set up the following dial-in:

Tel.: 888-543-1114
Passcode: 212 408 5438

Best Regards,
Bob

Robert Kirby | Associate
Chadbourne & Parke LLP
1301 Avenue of the Americas, New York, NY 10019 - 6022
tel 212-408-5438 | fax 212-541-5369
rkirby@chadbourne.com | <http://www.chadbourne.com>
vCard: <http://www.chadbourne.com/vcard/rkirby.vcf>

Please consider the environment before printing this email.

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In Re:

Energy Future Holdings Corporation,

et al.,

Debtors.

Chapter 11

Case No. 14-10979

Jointly Administered

-----x

*CONTAINS CONFIDENTIAL AND
HIGHLY CONFIDENTIAL PORTIONS*

DEPOSITION OF MARK HICKSON

New York, New York

October 25, 2016

Reported by:

MARY F. BOWMAN, RPR, CRR

JOB NO. 114645

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October 25, 2016

10:45 a.m.

Deposition of MARK HICKSON held
at the offices of Chadbourne & Parke,
LLP, 1301 Avenue of the Americas, New
York, New York, before Mary F. Bowman,
a Registered Professional Reporter,
Certified Realtime Reporter, and Notary
Public of the State of New Jersey.

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APPEARANCES:

CHADBOURNE & PARKE
Attorneys for NextEra and The Witness
350 South Grand Avenue
Los Angeles, CA 90071
BY: ROBIN BALL, ESQ.
HOWARD SEIFE, ESQ.
ROBERT KIRBY, ESQ.

KIRKLAND & ELLIS
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Washington, DC 20005
BY: BRYAN STEPHANY, ESQ.
MCCLAIN THOMPSON, ESQ.

WILMERHALE
Attorneys for Delaware Trust as Indenture
Trustee for EFIH First Liens
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Washington, DC 20006
BY: ISLEY GOSTIN, ESQ.

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KRAMER LEVIN NAFTALIS & FRANKEL

Attorneys for Computer Share

EFIH 2nd Lien Indenture Trustee

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New York, NY 10036

BY: NOAH HERTZ-BUNZL, ESQ.

NIXON PEABODY

Attorneys for American Stock Transfer as

Indenture Trustee at EFH

100 Summer Street

Boston, MA 02110

BY: RICHARD PEDONE, ESQ.

AKIN GUMP STRAUSS HAUER & FELD

Attorneys for UMB Bank, As Indenture Trustee

for the Unsecured 11.25 Percent/12.25

Percent Senior Toggle Notes Due 2018

One Bryant Park

New York, NY 10036

BY: WILLIAM MONGAN, ESQ.

APPEARANCES:

VENABLE

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New York, NY 10020

BY: JEFFREY SABIN, ESQ.

SULLIVAN & CROMWELL

Attorneys for EFH Committee

125 Broad Street

New York, NY 10004

BY: BRIAN GLUECKSTEIN, ESQ.

SHEARMAN & STERLING

Attorneys for Deutsche Bank

EFH First Lien DIP Agent

599 Lexington Avenue

New York, NY 10022

By: FAY TELONI, ESQ.

APPEARANCES:

KAZAN, MCCLAIN, SATTERLEY & GREENWOOD
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and as successor-in-interest to the estate of
George Fenicle

55 Harrison Street
Oakland, CA 94607

BY: STEVEN KAZAN, ESQ. (By Telephone)

WHITE & CASE
Attorneys for TCEH Ad Hoc Group

1155 Avenue of the Americas
New York, New York 10036-2787

BY: CHRIS SHORE, ESQ.

Also Present:

Charles Sieving, NextEra Energy
EVP and General Counsel
Robert B. Sandler, NextEra Energy
Chief Litigation Counsel

1 Hickson

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3 WITNESS EXAM BY: PAGE:

4 M. Hickson Mr. Kazan 7

5 Ms. Gostin 50

6 Mr. Shore 106

7

8 EXHIBIT INDEX:

9 NUMBER DESCRIPTION PAGE:

10 Exhibit 1 document entitled Fourth 56

11 Amended Joint Plan of

12 Reorganization

13 Exhibit 2 document Bates stamped EFH 65

14 06436033

15 Exhibit 3 document Bates stamped EFH 90

16 06329439

17 Exhibit 4 document Bates stamped EFH 93

18 0640732

19 Exhibit 5 document Bates stamped EFH 96

20 06432818

21 Exhibit 6 document Bates stamped EFH 100

22 06422903

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24

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EXHIBIT D

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

ENERGY FUTURE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 14-10979 (CSS)

Jointly Administered

**NOTICE OF DEPOSITION OF NEXTERA PURSUANT TO FED. R. CIV. P. 30(b)(6),
MADE APPLICABLE BY BANKRUPTCY RULE 7030 IN CONNECTION WITH
CONFIRMATION OF THE DEBTORS' FIFTH AMENDED JOINT PLAN OF
REORGANIZATION OF ENERGY FUTURE HOLDINGS CORP., ET AL., PURSUANT
TO CHAPTER 11 OF THE BANKRUPTCY CODE
AS IT RELATES TO THE EFH/EFIH DEBTORS**

TO: NextEra Energy, Inc.
c/o Chadbourne Park
1301 Avenue of the Americas
New York, NY 10019
Attn: Howard Seife
David M. Lemay
Christy L. Rivera

PLEASE TAKE NOTICE THAT pursuant to Rules 26 and 30(b)(6) of the Federal Rules of Civil Procedure, made applicable to this proceeding pursuant to Rules 7026, 7030, 9014 and 9016 of the Federal Rules of Bankruptcy Procedure, American Stock Transfer & Trust Company, LLC, as successor trustee to The Bank of New York Mellon Trust Company, N.A. (in such capacity, the "EFH Indenture Trustee") under the indentures for certain notes issued by Energy Future Holdings Corp. ("EFH Corp."), by its undersigned counsel, will take the deposition upon oral examination of a designee or designees of NextEra Energy, Inc.

¹ The last four digits of Energy Future Holdings Corp.'s tax identification number are 8810. The location of the debtors' service address is 1601 Bryan Street, Dallas, Texas 75201. Due to the large number of debtors in these chapter 11 cases, for which the debtors have requested joint administration, a complete list of the debtors and the last four digits of their federal tax identification numbers is not provided herein.

(“NextEra”) in connection with confirmation of the *Debtors’ Fifth Amended Joint Plan of Reorganization of Energy Future Holdings Corp., et al.*

PLEASE TAKE FURTHER NOTICE THAT the deposition will take place at such time and place as may be agreed to by the parties. The deposition will take place before a court reporter and will be recorded by stenographic means, may be videotaped, and shall continue from day to day until it has been completed.

PLEASE TAKE FURTHER NOTICE THAT pursuant to Bankruptcy Rules 7030 and 9014 and Federal Rule of Civil Procedure 30(b)(6), NextEra must designate one or more persons to testify on their behalf with regard to all matters known or reasonably available to NextEra on the matters set forth on Schedule A attached hereto. The EFH Indenture Trustee requests that NextEra provide, as soon as reasonably possible, a written designation of the name(s) and position(s) of the persons who consent to testify on behalf of NextEra.

Dated: Wilmington, DE
December 22, 2016

CROSS & SIMON, LLC

By: /s/ Christopher P. Simon

Christopher P. Simon (Del. Bar No. 3697)

105 North Market Street, Suite 901

Wilmington, Delaware 19801

Telephone: (302) 777-4200

Facsimile: (302) 777-4224

csimon@crosslaw.com

- and -

NIXON PEABODY LLP

Amanda D. Darwin

Richard C. Pedone

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100 Summer Street

Boston, Massachusetts 02110

Telephone: (617) 345-1000

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adarwin@nixonpeabody.com

rpdone@nixonpeabody.com

-and-

Christopher J. Fong

437 Madison Avenue

New York, NY 10022

Telephone: 212-940-3724

Facsimile: 855-900-8613

cfong@nixonpeabody.com

*Co-Counsel to American Stock Transfer &
Trust Company, LLC, as Indenture Trustee*

SCHEDULE A
INSTRUCTIONS

1. Pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rules 7030 and 9014 of the Federal Rules of Bankruptcy Procedure, You are directed to designate one or more of Your officers, directors, managing agents, or other persons who consent to testify on Your behalf and who have knowledge of and are adequately prepared to testify concerning the topics enumerated below.
2. The use of the singular form includes the plural and vice versa, any use of gender includes both genders, and a verb tense includes all other verb tenses.
3. All terms and phrases used herein shall be construed in an ordinary, common-sense manner, and not in a technical, strained, overly-literal, or otherwise restrictive manner.
4. The EFH Indenture Trustee reserves the right to supplement these deposition topics based on ongoing discovery.

DEFINITIONS

All terms herein shall have the same meaning as terms defined in the Debtors' Fifth Amended Plan and Disclosure Statement (as defined below) and exhibits thereto. The definitions set forth below are to be construed in the broadest sense with reference to the Bankruptcy Rules and the Federal Rules of Civil Procedure.

1. "Affiliate" of any specified Person shall mean any other Person that directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the Person specified.
2. "AST" shall mean American Stock Transfer & Trust Company, LLC.
3. "Bankruptcy Code" shall mean Title 11 of the United States Code, and all provisions thereof.

4. “Chapter 11 Cases” shall mean the Chapter 11 cases commenced by the Debtors in the United States Bankruptcy Court for the District of Delaware on April 29, 2014, and jointly administered under case number 14-10979.

5. “Communication” shall mean every manner or means of disclosure, transfer, or exchange of information, including, but not limited to, any of the following: (a) any written letter, memorandum, or other Document of any kind by mail, courier, other delivery services, telecopy, facsimile, telegraph, electronic mail, voicemail, or any other means; (b) any telephone call, whether or not such call was by chance or prearranged, formal or informal; and (c) any conversation or meeting between two or more persons, whether or not such contact was by chance or prearranged, formal or informal.

6. “Debtors” shall mean, collectively, EFH Corp. and its affiliated entities, as debtors-in-possession, as applicable, which filed voluntary Chapter 11 petitions under the Bankruptcy Code commencing these Chapter 11 Cases, and any of their direct or indirect subsidiaries, Affiliates, divisions, subdivisions, departments, predecessors, successors, partners, principals, officers, directors, attorneys, accountants, agents, employees, representatives, and other persons acting on its behalf, including, but not limited to, Kirkland & Ellis, LLP, Proskauer Rose LLP and/or Munger, Tolles & Olsen LLP, and/or Cravath Swaine and Moore, LLP, and/or McElroy, Deutsch, Mulvaney & Carpenter, LLP, and/or Stevens & Lee, PC, and/or O’Kelly Ernst & Bielli, LLC, Alvarez & Marsal North America, LLC as well as any financial or other advisor to the forgoing.

7. “Disclosure Statement” shall mean the *Disclosure Statement for the Fifth Amended Joint Plan of Reorganization of Energy Future Holdings, Corp., et al., Pursuant to*

Chapter 11 of the Bankruptcy Code as it Applies to the EFH Debtors and EFIH Debtors [D.I. 10293].

8. “Document” or “Documents” shall have the meaning prescribed by Rule 7034 of the Federal Rules of Bankruptcy Procedure, including, without limitation, any tangible thing upon which any expression, Communication or representation has been recorded by any means, and includes, but is not limited to, all electronically stored information, Communications, sworn statements, deposition transcripts, affidavits, recordings, photographs, computer data, electronic mail, handwritten notations, correspondence, memoranda, notes, financial calculations, calendars, appointment books, and all other writings and recordings of every kind that are in Your actual or constructive possession, custody, or control.

9. “Fifth Amended Plan” or “Plan” shall mean the Amended Chapter 11 Plan (*Fifth Amended Joint Plan of Reorganization of Energy Future Holdings Corp., et. al., Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. 10290]), as it may be amended, modified or supplemented.

10. “Merger Agreement” shall mean the Agreement and Plan of Merger between NextEra and EFH Merger Co. LLC.

11. “NextEra” shall mean NextEra Energy, Inc., or any of its affiliates.

12. “NOL” shall mean net operating loss.

13. “Person” or “persons” shall mean all natural persons, corporations, partnerships or other business associations, and all other legal or governmental entities or associations.

14. “Valuation” means any evaluation, study, estimate, appraisal or assessment to determine or estimate the monetary worth of an asset or liability or a business or entity, by any means, method or techniques whatsoever, whether proposed, draft or final.

15. “You” or “Your” shall refer to any Person to whom this Notice has been addressed and all of their current and former Affiliates, parents, direct or indirect subsidiaries, members, officers, directors, representatives, employees, agents, consultants, accountants, attorneys, financial advisors, predecessors, successors, assigns, and any other Person currently or formerly acting or purporting to act on the Person’s behalf for any purpose whatsoever.

RULE 30(b)(6) DEPOSITION TOPICS

The topics identified below are preliminary and subject to revision and supplementation based upon ongoing discovery and other developing factual circumstances.

A. Facts Related to NOLs and other Tax Attributes

1. The amount, value of, and Your ability or any other potential purchaser’s ability, to use EFH Corp.’s tax attributes, including but not limited to NOLs that may be available to EFH Corp., Reorganized EFH, You, or any other potential purchaser, after accounting for the use of EFH Corp.’s tax attributes in connection with the Spin-Off of TCEH.

2. All analyses, calculations and Communications relating to the foregoing, including whether any was done or not done.

3. The methods by which You have historically valued tax attributes, including but not limited to NOLs, in connection with Your financial reporting and otherwise.

4. The basis for any privilege asserted in connection with any document requests served on You by the EFH Indenture Trustee.

EXHIBIT E

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

ENERGY FUTURE HOLDINGS CORP., *et al.*,¹

Debtors.

Chapter 11

Case No. 14-10979 (CSS)

Jointly Administered

**EFH INDENTURE TRUSTEE'S NOTICE OF SUBPOENA TO MARK HICKSON TO
TESTIFY AT A DEPOSITION REGARDING MATTERS RELATING TO
CONFIRMATION OF THE DEBTORS' FIFTH AMENDED JOINT PLAN OF
REORGANIZATION OF ENERGY FUTURE HOLDINGS CORP., ET AL., PURSUANT
TO CHAPTER 11 OF THE BANKRUPTCY CODE
AS IT RELATES TO THE EFH/EFIH DEBTORS**

TO: Mark Hickson
NextEra Energy, Inc.
c/o Chadbourne Park
1301 Avenue of the Americas
New York, NY 10019
Attn: Howard Seife
David M. Lemay
Christy L. Rivera

PLEASE TAKE NOTICE THAT pursuant to Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure, made applicable to this proceeding pursuant to Rules 7026, 7030, 9014, and 9016 of the Federal Rules of Bankruptcy Procedure, American Stock Transfer & Trust Company, LLC, as successor trustee to The Bank of New York Mellon Trust Company, N.A. (in such capacity, the "EFH Indenture Trustee") under the indentures for certain notes issued by Energy Future Holdings Corp. ("EFH Corp."), by its undersigned counsel, is serving the attached Subpoena to **Mark Hickson** to testify at a deposition in connection with confirmation of the *Debtors' Fifth Amended Joint Plan of Reorganization of Energy Future Holdings Corp., et al.* as it relates to the EFH Debtors and EFIH Debtors.

¹ The last four digits of Energy Future Holdings Corp.'s tax identification number are 8810. The location of the debtors' service address is 1601 Bryan Street, Dallas, Texas 75201. Due to the large number of debtors in these chapter 11 cases, for which the debtors have requested joint administration, a complete list of the debtors and the last four digits of their federal tax identification numbers is not provided herein.

PLEASE TAKE FURTHER NOTICE THAT the deposition will take place at such time and place as may be agreed to by the parties. The deposition will take place before a court reporter and will be recorded by stenographic means, may be videotaped, and shall continue from day to day until it has been completed.

Dated: Wilmington, DE
December 22, 2016

CROSS & SIMON, LLC

By: /s/ Christopher P. Simon
Christopher P. Simon (Del. Bar No. 3697)
105 North Market Street, Suite 901
Wilmington, Delaware 19801
Telephone: (302) 777-4200
Facsimile: (302) 777-4224
csimon@crosslaw.com

- and -

NIXON PEABODY LLP

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Facsimile: (617) 345-1300
adarwin@nixonpeabody.com
rpedone@nixonpeabody.com

-and-

Christopher J. Fong
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New York, NY 10022
Telephone: 212-940-3724
Facsimile: 855-900-8613
cfong@nixonpeabody.com

*Co-Counsel to American Stock Transfer &
Trust Company, LLC, as Indenture Trustee*

B2560 (Form 2560 – Subpoena to Testify at a Deposition in a Bankruptcy Case or Adversary Proceeding) (12/15)

UNITED STATES BANKRUPTCY COURT

District of DelawareIn re Energy Future Holdings Corp., et al.

Debtor

(Complete if issued in an adversary proceeding)

Case No. 14-10979(CSS)Chapter 11

Plaintiff

V.

Adv. Proc. No. _____

Defendant

SUBPOENA TO TESTIFY AT A DEPOSITION
IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)To: Mark Hickson

(Name of person to whom the subpoena is directed)

☒ **Testimony:** YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

| | |
|--------------|----------------------|
| PLACE TBD | DATE AND TIME TBD |
|--------------|----------------------|

The deposition will be recorded by this method:
Stenographic and video tape

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 12/22/16

CLERK OF COURT

OR /s/ Christopher SimonSignature of Clerk or Deputy ClerkAttorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)
American Stock Transfer & Trust Co. LLC, who issues or requests this subpoena, are:

Rick Pedone, 100 Summer St. Boston, MA 02110, rpedone@nixonpeabody.com, 617-345-1305

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

B2560 (Form 2560 – Subpoena to Testify at a Deposition in a Bankruptcy Case or Adversary Proceeding) (Page 2)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

B2560 (Form 2560 – Subpoena to Testify at a Deposition in a Bankruptcy Case or Adversary Proceeding) (Page 3)

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

....

(g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

EXHIBIT F

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

ENERGY FUTURE HOLDINGS CORP., *et al.*,

Debtors.

Chapter 11

Case No. 14-10979 (CSS)

(Jointly Administered)

**CONTRARIAN CAPITAL MANAGEMENT, LLC'S NOTICE
OF DEPOSITIONS IN CONNECTION WITH CONFIRMATION OF
DEBTORS' FIFTH AMENDED JOINT PLAN OF REORGANIZATION OF
ENERGY FUTURE HOLDINGS CORP., ET AL., PURSUANT TO CHAPTER 11
OF THE BANKRUPTCY CODE AS IT RELATES TO THE EFH AND EFIH DEBTORS**

PLEASE TAKE NOTICE that pursuant to Rules 26, 30, 34, and 45 of the Federal Rules of Civil Procedure, made applicable to this proceeding pursuant to Rules 7026, 7030, 9014, and 9016 of the Federal Rules of Bankruptcy Procedure, Contrarian Capital Management, LLC (as advisors, or affiliates of advisors to holders, or managers of various accounts with investment authority, contractual authority or voting authority, "Contrarian"), by and through its undersigned counsel, joins in the notices of depositions served by the EFH Indenture Trustee on December 22, 2016 in connection with confirmation of the *Debtors' Fifth Amended Joint Plan of Reorganization of Energy Future Holdings Corp., et al. Pursuant to Chapter 11 of the Bankruptcy Code* as it relates to the EFH Debtors and the EFIH Debtors. Contrarian also reserves the right to question all other parties noticed for depositions.

Dated: December 22, 2016
Wilmington, Delaware

HOGAN ♦ MCDANIEL

By: /s/: Garvan F. McDaniel
Garvan F. McDaniel, Esq.
1311 Delaware Avenue
Wilmington, Delaware 19806
Telephone: (302) 656-7540
Facsimile: (302) 656-7599
Email: gfmcdaniel@dkhogan.com

– and –

KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP

David S. Rosner, Esq.
Andrew K. Glenn, Esq.
Daniel A. Fliman, Esq.
1633 Broadway
New York, New York 10019
Telephone: (212) 506-1700
Facsimile: (212) 506-1800
Email: DRosner@kasowitz.com
AGlenn@kasowitz.com
DFliman@kasowitz.com

Counsel to Contrarian Capital Management, LLC