

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

In re ENERGY FUTURE HOLDINGS CORP., <i>et al.</i> , <i>Debtors.</i>))))))	Chapter 11 Case No. 14-10979 (CSS) (Jointly Administered) Related to D.I. 10551
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**OBJECTION OF DELAWARE TRUST COMPANY,
AS TRUSTEE FOR THE EFIH FIRST LIEN NOTES,
TO CONFIRMATION OF
SEVENTH AMENDED JOINT PLAN OF REORGANIZATION**

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Dated: February 3, 2017

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Delaware Trust Company, indenture and collateral trustee (“Trustee” or “First Lien Trustee”) for the first-lien notes (“Notes” or “First Lien Notes”) issued by Energy Future Intermediate Holding Company LLC and EFIH Finance Inc. (together, “EFIH” or the “EFIH Debtors”), submits this objection (the “Objection”) to the Seventh Amended Joint Plan of Reorganization of Energy Future Holdings Corp., D.I. 10551 (the “Plan”).¹

PRELIMINARY STATEMENT

The Plan cannot be confirmed because (among other defects) it fails to provide the Trustee and holders of the Notes (the “Noteholders” or “First Lien Noteholders”) with the “indubitable equivalent” of their Secured Claims.

The Third Circuit has held that EFIH is contractually obligated to pay the Makewhole Claims of the First Lien Noteholders and the holders (the “Second Lien Noteholders”) of the second-lien notes issued by EFIH (the “Second Lien Notes”). Today, those Makewhole Claims, together with the fees and expenses incurred in defending those Claims, all related Claims for damage and the like, and all interest accruing thereon, are over-secured by liens on EFIH’s interest in Oncor. After repayment of the only senior Claim—the DIP facility—that collateral is worth some \$4.3 billion.

The Plan replaces that collateral with something worth far less. Rather than pay the Makewhole Claims on the Effective Date, the Plan provides that a litigation vehicle controlled by holders of the unsecured “PIK” notes (the “PIK Noteholders”) will continue the makewhole litigation indefinitely. The Makewhole Claims will be paid only after all objections have been exhausted and those Claims have been allowed by final, non-appealable orders. In the interim, the Plan releases the Noteholders’ liens on EFIH’s

¹ Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Plan.

interest in Oncor, disclaims any obligation by NextEra or the Reorganized Debtors to satisfy the Makewhole Claims, and provides a replacement lien only on a cash reserve—the EFIH Claims Reserve—that would be the sole source of recovery for any allowed Makewhole or other Claims in respect of the EFIH First Lien Notes. The Debtors—at the insistence of the PIK Noteholders—propose to fund the EFIH Claims Reserve with only \$1.313 billion (the “Proposed Reserve Amount”) and to distribute the remaining \$3 billion of the Noteholders’ collateral to junior creditors on or soon after the Effective Date, including as much as \$700 million or so to the PIK Noteholders.

The Plan does not provide the “indubitable equivalent” of the Noteholders’ over-Secured Claims because it does not ensure payment in full of those Claims to the extent they are ultimately allowed. The Proposed Reserve Amount reserves interest on the Makewhole Claims for only three years after the Effective Date. The EFIH Claims Reserve will therefore almost surely be insufficient to pay, in full, all Claims under the Notes (the “First Lien Claims”), and all Claims under the Second Lien Notes (“Second Lien Claims”), if the litigation continues beyond three years. Yet, the PIK Noteholders have refused to agree to terminate the litigation three years after the Effective Date. If they are set on exhausting all remaining challenges to the Third Circuit’s decision, “Phase Two” on remand, and appeals thereto, the litigation could easily drag on past three years.

The PIK Noteholders’ desire to litigate EFIH’s solvency and alleged bankruptcy-law defenses to the Makewhole Claims in Phase Two underscores the other principal problem with the EFIH Claims Reserve. Even if EFIH’s supposed insolvency provided grounds for disallowing the Makewhole Claim against EFIH (and it does not), it would not provide any basis for disallowing a claim by the First Lien Trustee or Noteholders

against the trustee for the Second Lien Notes (the “Second Lien Trustee”) and the Second Lien Noteholders under the parties’ inter-creditor agreement. That agreement—the EFIH Collateral Trust Agreement—requires the Second Lien Trustee and Second Lien Noteholders to turn over any distributions they receive from the creditors’ common collateral to the First Lien Trustee until all First Lien Claims, whether or not allowed against EFIH in bankruptcy, are paid in full. Indeed, to further assure payment in full of the First Lien Claims, EFIH is a party to the Collateral Trust Agreement and obligated thereunder to refrain from making distribution to the Second Lien Trustee and Noteholders until the First Lien Notes are paid in full. Yet, in violation of the Collateral Trust Agreement, EFIH proposes to distribute \$2.2 billion to the Second Lien Trustee on the EFH Effective Date in principal and accrued interest on the Second Lien Notes.

Accordingly, the Plan must be clear that the EFIH Claims Reserve covers, not just the Makewhole Claim, but (if that Claim is disallowed) the First Lien Trustee’s separate Claim against EFIH for breaching its obligation under the Collateral Trust Agreement to refrain from making any such distributions in respect of the Second Lien Notes (a “Breach Claim”). The Plan must likewise be clear that the EFIH Claims Reserve stays in place until the Breach Claim is resolved—and hence until *both* the makewhole and inter-creditor litigations are resolved. That further reinforces the inadequacy of a three-year reserve. And if either EFIH, or the Second Lien Trustee, does hold back distributions to the Second Lien Noteholders as required by the Collateral Trust Agreement, the Proposed Reserve Amount is again inadequate, because it does not reserve for the Second Lien Noteholders’ Future Interest Claims that would accrue on the amount held back.

Because the Debtors recognized that their proposal for funding the EFIH Claims Reserve was suspect at best, they insisted in their negotiations with the PIK Noteholders that the Plan permit the Court to order the Debtors to fund the EFIH Claims Reserve in a greater amount.² The PIK Noteholders agreed to support the Plan no matter how large a reserve the Court requires—even if the Court orders that no distributions can be made to them until all First and Second Lien Claims have either been paid in full, or disallowed by Final Order.³ And the Court can, of course, order that EFIH comply with its obligations under the Collateral Trust Agreement to withhold distributions to the Second Lien Noteholders until all allowed First Lien Claims have been paid, and direct it to add to the EFIH Claims Reserve the amount needed to cover the Future Interest Claims of the Second Lien Noteholders (and/or, if EFIH is determined to breach the Collateral Trust Agreement, the amount needed to cover the interest and fees accruing through resolution of, not just the Makewhole Claims, but also the First Lien Trustee’s Breach Claim).

After repayment of the DIP facility and hold back (or repayment) of the \$2.2 billion in Second Lien principal and interest, around \$2.1 billion will remain. At a minimum, the Court should order that all of that be placed in the EFIH Claims Reserve, and none distributed to the PIK Noteholders on the Effective Date. It should also order that the EFIH Claims Reserve remain in place until all Claims of the First Lien Notes and Second Lien Notes, including any Breach Claim or Future Interest Claim, has been resolved by Final Order. Deferring until a later date the consideration of various

² See Plan Art. I.A.161 (definition of “EFIH Claims Reserve”); Deposition of Paul Keglevic (Jan. 18, 2017) (“Keglevic Dep.”), attached as Exhibit A to the Declaration of Philip Anker filed herewith (“2017 Anker Decl.”), at 91:3-91:24.

³ See Notice of Filing of that Certain Plan Support Agreement, D.I. 10530, Ex. A, § 7 & Schedule 1; Deposition of Anthony Horton (Jan. 20, 2017) (“Horton Dep.”), attached as Exhibit B to the 2017 Anker Decl., at 92:8-93:3; Keglevic Dep. 61:25-63:20.

intramural disputes of the Claims (whether for reserve or allowance purposes) is the most prudent course for this Court and the Debtors' estates, if they really want to proceed with a streamlined confirmation hearing and do not want to endanger the transaction with NextEra.

The Plan also contains other objectionable provisions, many of which could be addressed by the proposed modifications set forth in Exhibit A hereto. These proposed modifications would not, however, resolve the Trustee's objections to the EFIH Claims Reserve, which must be increased in amount, and remain in place until all EFIH First Lien Claims have been finally resolved, to provide the Noteholders with the "indubitable equivalent" of their over-Secured Claims.

ARGUMENT

I. THE PLAN DOES NOT COMPLY WITH SECTION 1129(b)'S REQUIREMENTS FOR THE TREATMENT OF SECURED CLAIMS

A. Because The Plan Strips The Liens Of The Trustee And Noteholders, The Plan Cannot Be Confirmed Unless It Provides The "Indubitable Equivalent" Of Their Secured Claims

Where, as here, a plan allows the debtor to keep an over-secured creditor's collateral and to pay the secured creditor over time, the secured creditor generally must retain its lien on its collateral until it is paid in full. *See* 11 U.S.C. § 1129(b)(2)(A)(i); *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2070-2072 (2012). If, as here, the debtor seeks the extraordinary relief of stripping off an over-secured creditor's lien before paying its claim in full, *see* Plan Art. VIII.B (releasing liens securing First Lien Claims on Effective Date), the Bankruptcy Code mandates that the plan must ensure the secured creditor will realize the "indubitable equivalent" of its secured claim. 11 U.S.C. § 1129(b)(2)(A)(iii).

As the Third Circuit has explained, “[i]ndubitable means ‘not open to question or doubt,’ while equivalent means one that is ‘equal in force or amount’ or ‘equal in value.’ The Code fixes the relevant ‘value’ as that of the collateral. Thus, the ‘indubitable equivalent’ under subsection (iii) is the unquestionable value of a lender’s secured interest in the collateral.” *In re Phila. Newspapers, LLC*, 599 F.3d 298, 310 (3d Cir. 2010) (Fisher, J., majority opinion), *abrogated on other grounds by RadLAX*, 132 S. Ct. 2065; *accord id.* at 326 (Ambro, J., dissenting) (“‘Indubitable equivalent’ is not defined in the Code, but there can be no doubt that the secured creditor receives consideration equal to its claim in value or amount.”).

Accordingly, where, as here, a debtor gives an over-secured creditor substitute collateral, that substitute must not increase the secured creditor’s risk that it may become under-secured and not be paid in full. The “substitute collateral [must] give[] the creditor an ample cushion against becoming undersecured,” so that the substitute collateral “doesn’t increase the risk of [the creditor] becoming undersecured in the future.” *In re River E. Plaza, LLC*, 669 F.3d 826, 831 (7th Cir. 2012). In other words, where “‘a debtor seeks to alter the collateral securing a creditor’s loan, providing the ‘indubitable equivalent’ requires that the substitute collateral not increase the creditor’s risk exposure.” *In re Arnold & Baker Farms*, 85 F.3d 1415, 1422-1423 (9th Cir. 1996). “The indubitable equivalent standard requires both the absence of any reasonable doubt that the secured creditor will receive the payments to which it is entitled, and that the changes forced upon the objecting creditor are ‘completely compensatory,’ meaning the objecting creditor is fully compensated for the rights it is giving up.” *In re Inv. Co. of the Sw., Inc.*, 341 B.R. 298, 324 (B.A.P. 10th Cir. 2006).

Thus, a debtor's desire "to tap at least some portion of the equity that has built up in collateral to fund a plan" "cannot result in any reasonable possibility that a creditor will not be fully protected at all times until its claim is satisfied." *See id.* at 324-326. If any "scenario reasonably exists where the [substituted] collateral would not fully secure [the creditor's] debt," the plan does not satisfy the "indubitable equivalent" standard. *Id.* Instead, the court must "without a reasonable doubt conclude that [the secured creditor] will in fact remain oversecured until it is paid in full." *Id.*; *see Arnold & Baker Farms*, 85 F.3d at 1422-1423 (holding that plan giving over-secured creditor only part of its real-estate collateral did not provide "indubitable equivalent"; though bankruptcy court valued that portion in excess of creditor's claim, creditor was "forced to assume the risk of receiving less on the sale without being able to look to the remaining undistributed collateral for security").

As Judge Hand put it in *Murel*, the decision establishing the "indubitable equivalent" standard now embodied in the Code (*see Phila. Newspapers*, 599 F.3d at 310), an over-secured creditor must either "get [its] money or ... the property" when the plan goes effective, or it must get a "substitute of the most indubitable equivalence" to that payment-in-full treatment. *In re Murel Holding Corp.*, 75 F.2d 941, 942-943 (2d Cir. 1935). A secured creditor cannot be forced to accept any substitute that puts it at risk of not being paid everything it is owed. And the "indubitable equivalent" standard requires that the substitute collateral be sufficient to ensure that the full amount of the secured creditor's asserted claim—even those amounts the debtor has challenged in pending litigation—will, if ultimately allowed, be paid in full. *See Inv. Co. of the Sw.*, 341 B.R. at 303-304, 324 n.83; *In re San Felipe @ Voss, Ltd.*, 115 B.R. 526, 531 (S.D. Tex. 1990); *In*

re U.S. Mineral Prods., 2005 WL 5898300, at *12-13, *22 (Bankr. D. Del. 2005); *In re Azabu Bldgs. Co.*, 2007 WL 1964306, at *8 (Bankr. D. Haw. 2007); *In re Wheeling-Pittsburgh Steel Corp.*, 123 B.R. 18, 21-22 (Bankr. W.D. Pa. 1990).

B. The EFIH First Lien Claims Are Over-Secured

There is no dispute that, if the First Lien Claims were all allowed as of the Effective Date, EFIH would be able to pay them in full in cash. The Trustee and Noteholders have asserted a Makewhole Claim of approximately \$432 million that came due on June 19, 2014, when EFIH redeemed the Notes. In accordance with the relevant indentures, they have also asserted a Claim for interest on the makewhole, at the contractual rate, from the redemption date until the makewhole is paid in full, as well as interest on such interest (i.e., compound interest).⁴ In addition, the Trustee has asserted a Claim for reimbursement of the fees and expenses incurred in enforcing the First Lien Note Indentures, Collateral Trust Agreement, and Pledge Agreement, together with related damage claims and/or interest thereon.⁵ If the Effective Date occurs on April 30, 2017, as the Debtors target, the Trustee estimates these Claims will total approximately \$633 million.⁶

Today, these Claims are secured by first-priority liens on substantially all of EFIH's assets, including its interest in Oncor.⁷ That collateral is worth far more than the current amount of those Claims. NextEra's acquisition of EFIH and its interest in Oncor

⁴ See Supplemental Indenture Ex. A ("Notes"), attached as Exhibit E to Declaration of Philip Anker, D.I. 6602 ("2015 Anker Decl."), § 1.

⁵ See EFIH First Lien Notes Indenture ("Indenture"), attached as Exhibit C to 2015 Anker Decl., § 7.07; Collateral Trust Agreement ("Collateral Trust Agreement"), attached as Exhibit A to 2015 Anker Decl., § 7.10, 7.11; Pledge Agreement ("Pledge Agreement"), attached as Exhibit B to 2015 Anker Decl., § 15.

⁶ See Expert Report of Christopher J. Kearns (Jan. 25, 2017) ("Kearns Report"), attached as Exhibit H to Anker 2017 Decl., at 8-12.

⁷ See Collateral Trust Agreement § 1.1 (definitions of "Parity Lien Obligations" and "Obligations"), § 2.1; Pledge Agreement § 1; Indenture § 10.04.

will generate approximately \$9.8 billion for EFIH.⁸ After payment of the EFIH DIP facility of approximately \$5.5 billion, approximately \$4.3 billion will remain.⁹ The Trustee and Noteholders have priority over all other creditors to that \$4.3 billion in value.¹⁰ The Debtors admit there is more than sufficient value to pay all First Lien Claims (and Second Lien Claims) in full on the Effective Date.¹¹

C. The Debtors Propose To Grant Replacement Collateral—The EFIH Claims Reserve—Worth Only \$1.3 Billion

Although the Bankruptcy Code requires that the Trustee and Noteholders be paid in full, the Plan limits the source of recovery for such payment. It would release the Trustee's and Noteholders' liens on the Effective Date and would relieve Reorganized EFIH and NextEra from any liability for Makewhole Claims.¹² The only source of recovery for such Claims would apparently be the EFIH Claims Reserve.¹³

The EFIH Claims Reserve is to be funded with cash from proceeds of the First and Second Lien Trustees' collateral to pay any Makewhole Claims or other Claims of the First and Second Lien Noteholders that are ultimately allowed. *See* Plan Art. I.A.161. The First and Second Lien Trustees will receive first and second-priority liens on the EFIH Cash Reserve to secure the First and Second Lien Claims, respectively.¹⁴ The amount of the EFIH Claims Reserve will be either (1) an amount agreed by the Debtors and PIK Noteholders—who have every incentive to underfund the reserve, since they will recover any value not allocated to the First and Second Lien Noteholders—or (2) any

⁸ Horton Dep. 16:7-16:11; Keglevic Dep. 39:14-39:18.

⁹ Horton Dep. 16:12-17:5; Keglevic Dep. 39:19-40:17.

¹⁰ Keglevic Dep. 39:19-40:17, 49:15-49:19.

¹¹ Deposition of Andrew Wright (Jan. 26, 2017) ("Wright Dep."), attached as Exhibit C to the 2017 Anker Decl., at 31:7-31:12.

¹² *See* Plan Art. VIII.B; *id.* Art. VI.A; Wright Dep. 41:23-42:21.

¹³ *See* Keglevic Dep. 54:8-54:14.

¹⁴ *See* Plan Arts. III.B.19(b), III.B.20(b).

greater amount this Court may require. *See* Plan Art. I.A.161. Neither Reorganized EFIH nor NextEra will have any obligation under any circumstances to contribute cash to the EFIH Claims Reserve after the Effective Date. *See id.*

Of the \$4.3 billion in collateral value currently securing the First and Second Lien Claims, the Debtors and PIK Noteholders propose to deposit only \$1.313 billion in the EFIH Claims Reserve and to distribute the remaining \$3 billion to junior creditors—including as much as \$700 million to the PIK Noteholders.¹⁵ Specifically, EFIH plans to distribute approximately \$2.2 billion on the Effective Date to the Second Lien Trustee to repay the outstanding principal and interest on the Second Lien Notes.¹⁶ EFIH will also pay administrative expenses, currently estimated to be approximately \$10 million for EFIH.¹⁷ The Debtors will also fund \$72 million (\$2 million per month for three years) to establish a “Post-Effective Date Administrative Account” to pay the post-Effective Date fees and expenses of the EFH Plan Administrator Board and the MLOC (the estate’s post-Effective Date representatives) in continuing to challenge the Makewhole Claims.¹⁸ Finally, the Debtors propose to distribute the remaining balance, estimated to be around \$700 million or more, to the PIK Noteholders.¹⁹

While the PIK Noteholders will receive this distribution on or shortly after the Effective Date, the Plan contemplates indefinite litigation over the Makewhole Claims. The litigation will be pursued by the “EFH Plan Administrator Board,” under the supervision of a “Makewhole Litigation Oversight Committee” (the “MLOC”), which

¹⁵ Excerpted Ying Report (“Ying Report”), Amended Plan Supplement, D.I. 10729 (“Am. Plan Supp.”), Ex. C(1); Horton Dep. 13:19-15:6, 17:2-17:9; Keglevic Dep. 40:18-41:8, 49:15-50:12.

¹⁶ Horton Dep. 20:18-21:4; Keglevic Dep. 40:23-41:11; Am. Plan Supp., Ex. C(2).

¹⁷ Am. Plan Supp., Ex. B.

¹⁸ Plan Arts. I.A.339 (definition of “Post-Effective Date Administrative Account”), VII.K.1, VII.K.3; Am. Plan Supp., Ex. B.

¹⁹ Horton Dep. 26:13-26:23, 34:7-36:11; Keglevic Dep. 43-44:2, 44:24-45:25.

will control decisions to litigate or settle the Makewhole Claims. *See* Plan Art. VII.K. The members of the MLOC will be the principal holders of the unsecured PIK Notes—Avenue, GSO, York, and potentially Angelo Gordon.²⁰

The Plan provides that any Makewhole Claims allowed by Final Order, together with all contractual interest (including interest on interest), must be paid in full in cash. *See* Plan Art. III.B.19(b)(iv), (c). It also provides that all reasonable and documented fees and expenses, incurred before or after the Effective Date, allowed under section 506(b) (as to pre-effective date fees only) and under the applicable agreements, together with contractual interest, must be paid in full in cash. *Id.* Art. III.B.19(b)(iii), (c). Finally, it provides that “any other Claims” allowed by Final Order—including presumably the Trustee’s Breach Claim if EFIH does not hold back distributions to the Second Lien Noteholders—together with all contractual interest (including interest on interest), must be paid in full in cash. *Id.* Art. III.B.19(b)(iv), (c). The Second Lien Claims receive similar treatment. *Id.* Art. III.B.20(b)(iii)-(iv), (c).

As the litigation continues, however, the amount of the First Lien Claims (and Second Lien claims) will increase over time, potentially by a substantial sum. That is so for at least three reasons. *First*, interest will accrue on the Makewhole Claim (and on the interest thereon) until the makewhole (and such interest) is paid in full. Similarly, to the extent that pre-Effective Date fees and expenses are not paid on the Effective Date, interest will also accrue on such fees (and on the interest thereon) until such amounts are paid in full. *Second*, the Trustee will incur post-Effective Date fees and expenses in connection with the litigation (as well as in the inter-creditor litigation). *Third*, if EFIH

²⁰ *See* Stipulation of Facts attached as Exhibit D to the 2017 Anker Decl. (“PIK Stip.”) at ¶ 1; Keglevic Dep. 67:10-69:3; Wright Dep. 69:4-69:7.

does not honor its obligation under the Collateral Trust Agreement to withhold distributions to the Second Lien Noteholders until all claims of the First Lien Noteholders have been paid in full, the Trustee will also have the Breach Claim for EFIH's default.

D. The Plan Does Not Provide The “Indubitable Equivalent” Of The First Lien Claims

Although the Trustee and Noteholders are over-secured today, the Debtors propose to drastically reduce their security, replacing their lien on \$4.3 billion of value with a non-recourse lien on a fixed cash reserve of only \$1.3 billion, while distributing the remaining \$3 billion in value to junior creditors on or soon after the Effective Date. Meanwhile, the amount of the First and Second Lien Claims will increase the longer the PIK Noteholders continue litigating, as interest (accruing at more than \$250,000 a day) and fees mount, thereby eroding their security position. As described below, the First and Second Lien Claims could surpass the \$1.3 billion mark less than two years after the Effective Date, and certainly by the third anniversary of the Effective Date, if the litigation has not been resolved by then, exposing the Noteholders to the risk that they will not be paid in full. Unless this Court, at a minimum, requires the Debtors to fund the EFIH Claims Reserve with all remaining \$2.1 billion in collateral proceeds (after repayment of the DIP facility and hold back of the \$2.2 billion in Second Lien principal and interest)—with no distribution to the PIK Noteholders on the Effective Date—the Plan will not provide the “indubitable equivalent” of the Noteholders’ Secured Claims.

1. The EFIH Claims Reserve Is Inadequate

a. The Proposed Reserve Amount Covers Interest On The Make-Whole Claims For Only Three Years

The Plan provides that unless this Court orders otherwise, the EFIH Claims Reserve will be funded in an amount sufficient to pay contractual, compound interest on

the Makewhole Claims of the First Lien and Second Lien Notes for only three years after the Effective Date. *See* Plan Art. I.A.161 (definition of “EFIH Claims Reserve”).

In proposing this limit, the EFIH board did not determine that three years was the longest possible timeframe for the Makewhole litigation. Rather, three years was the most the Debtors could negotiate with the PIKs, who will benefit from a shortfall in the EFIH Claims Reserve.²¹ Yet, the Debtors admit that if the litigation lasts beyond three years, the Proposed Reserve Amount—which includes interest for only three years²²—will almost assuredly be insufficient to pay the First and Second Lien Claims in full.²³

The Debtors point to a selective review, prepared by Kirkland & Ellis, of other cases purporting to show that three years is sufficient.²⁴ That review does not withstand scrutiny. As described below, the Debtors’ review demonstrates that the relief they are requesting from the Third Circuit—rehearing and certification to the New York Court of Appeals—could prolong the appellate proceedings by upwards of two years or more. And the Debtors do not account for additional paths the appeal could take, which could prolong it further.

But the most significant defect in the Debtors’ review is that it assumes that the PIK Noteholders will not commence “Phase Two” of the Makewhole litigation on remand—even though the PIK Noteholders have already pressed the Debtors to do so.

²¹ *See* Keglevic Dep. 92:15-93:19, 98:21-99:6 (“Q. The board did not determine what the longest realistic timeframe for litigation might be, did it? A. The board did not. The board – we relied on the fact – well, number one, the board was told that that’s the most the PIKs, we could get them to do, and the other provisions of the deal, and the board then was told that that was a conservative estimate based on Kirkland’s analysis.”); Horton Dep. 89:25-92:7 (“Q. And the PIKs refused to agree to have a minimum period longer than three years; is that right? A. That’s correct. Q. Okay. A. Unless the judge ordered otherwise.”).

²² *See* Disclosure Statement at 18; Ying Report at 12; Horton Dep. 51:12-55:11; Keglevic Dep. 58:12-58:16.

²³ *See* Keglevic Dep. 60:25-61:13, 85:7-86:3; Horton Dep. 53:3-55:11; Wright Dep. 68:16-69:3.

²⁴ *See* Am. Plan Supp., Ex. E.

If there is a Phase Two, and the PIK Noteholders continue to appeal and seek rehearing from all adverse decisions, the litigation could extend well beyond three years. The Debtors' review simply disregards Phase Two altogether.

The Trustee and the Noteholders, of course, believe that any remaining challenges the PIK Noteholders may bring in Phase Two are without merit and that the Makewhole Claims will, consistent with the Third Circuit's controlling decision, be allowed. Indeed, following the Third Circuit's decision, Debtors' counsel (Kirkland & Ellis) recommended, and the EFH/EFIH Debtors' respective boards of directors approved, an agreement in principle with the First Lien and Second Lien Noteholders to settle the First Lien Makewhole Claims at 97% and the Second Lien Makewhole Claims at 92% (or 94-95% and 85-87.5%, respectively, if the PIK Noteholders agreed to support a plan implementing those settlements).²⁵ Moreover, even after the Debtors pivoted to the PIK deal, they still took the position that the proposed settlement was "certainly within the realm of a reasonable settlement range for the Make-whole Litigation."²⁶

Likewise, the PIK Noteholders have asserted their own Makewhole Claims. The principal holders of the PIK Notes—Avenue, GSO and York—voiced no objection when the Trustee for the PIK Notes (the "PIK Notes Trustee") filed a proof of claim asserting a Makewhole Claim on their behalf, and when the PIK Notes Trustee opposed the Debtors' objection to that Makewhole Claim, asserting (among other things) that:

"Section 3.07 of the PIK Indenture unambiguously provides that the PIK Noteholders are entitled to payment of a call premium if, following a bankruptcy-triggered acceleration, the EFIH Debtors repay or 'call' the PIK Notes prior to certain dates set forth therein."

²⁵ See Disclosure Statement at 12-13; Energy Future Holdings Corp. Form 8-K (Dec. 16, 2016) ("EFH Form 8-K"), attached as Exhibit E to 2017 Anker Decl., at 2-4.

²⁶ See Debtors' Omnibus Reply, D.I. 10516, at 8; Keglevic Dep 17:19-18:11, 20:10-21:9, 23:3-24:15, 26:15-27:6; Horton Dep. 103:16-103:22.

See PIK Stip. ¶ 2 (quoting Response of UMB Bank, D.I. 5788, at 2). Indeed, those same holders (Avenue, GSO and York) will run the MLOC, and any post-Effective Date challenges the MLOC asserts against the First and Second Lien Makewhole Claims may therefore be met with arguments that the PIK Noteholders are estopped by their own trustee’s position that their Makewhole Claims were valid.

Nonetheless, regardless of the weakness of any remaining challenges to the First and Second Lien Makewhole Claims, there is no assurance that the litigation will be resolved within three years. The PIK Noteholders have stipulated that “[e]ach of Avenue, GSO and York is not prepared ... to agree, to avoid any risk of a Shortfall, ... to drop any ongoing or further challenges to the ... Makewhole Claims ... by the third anniversary of the EFH Effective Date.” PIK Stip. at ¶ 6(c); Horton Dep. 73:10-73:20, 74:5-75:25. Rather, the PIK Noteholders have indicated to the Debtors that they “want to keep all of their options open” as to all available challenges to the Makewhole Claims. *See* Horton Dep. 97:4-99:4.

They might, for example, pursue the Debtors’ pending petition for panel rehearing or rehearing *en banc*. *See* No. 16-1351 (3d Cir. Dec. 15, 2016). In that petition, the Debtors requested (for the first time) that the Third Circuit certify to the New York Court of Appeals the question of contract interpretation that the Third Circuit decided, or in the alternative, that it hold the petition until the Second Circuit decides *Momentive* (No. 15-1682), which was argued in November 2016.

To be sure, the Third Circuit rarely grants petitions for rehearing, particularly where (as here) the panel decision is unanimous. *See* Fed. R. App. P. 35(a); 3d Cir. Local Rules 35.1, 35.4; 3d Cir. IOP 9.3. But even if the Third Circuit were to deny the petition,

the Debtors and the PIK Noteholders could file a petition for certiorari with the U.S. Supreme Court. Indeed, the review that Kirkland performed for the EFIH Board assumes that the PIK Noteholders would so insist. *See* Am. Plan Supp., Ex. E. Even if a cert petition were denied, the four-month briefing schedule means a decision would likely come next term, in October 2017 or later. *See* Sup. Ct. R. 13.1, 13.3, 15.3, 15.5, 15.6.

Moreover, though perhaps unlikely, the appeal could take other paths that would prolong the proceedings. If *Momentive* were decided in a way contrary to the Third Circuit's decision while EFIH's petition for rehearing or cert were pending, and the Third Circuit were persuaded to certify the question to the New York Court of Appeals, an answer could take more than eight months (based on average times in 2015).²⁷ Moreover, if the outcome led the Third Circuit to reverse its ruling on contract interpretation, it would then need to reach the three additional, independent, grounds for reversal that the Trustee raised on appeal, but which the Third Circuit never reached.²⁸ Any decision on those grounds then could be subject to petitions by the losing party for rehearing in the Third Circuit and for certiorari in the Supreme Court.

Indeed, the Debtors' own review estimated that, even if the petitions for rehearing and certiorari are denied, it could take nearly nine months from the Third Circuit's decision (on average) for the appellate proceedings to conclude.²⁹ And if rehearing were granted and the question certified to the New York Court of Appeals, the Debtors' review concluded that it could take one year and 8 months (on average)—or as much as *two*

²⁷ *See* Court Of Appeals Of The State Of New York, 2015 Annual Report Of The Clerk Of The Court, at 10, *available at* <https://www.nycourts.gov/ctapps/news/annrpt/AnnRpt2015.pdf>. The Debtors' review is in accord. *See* Am. Plan Supp., Ex. E (average time of 262 days).

²⁸ *See* Brief for Appellants, No. 16-1351 (3d Cir. May 9, 2016), at 34-59; *In re Energy Future Holdings Corp.*, 842 F.3d 247, 261 n.4 (3d Cir. 2016).

²⁹ *See* Am. Plan Supp., Ex. E.

years and 8 months—from the Third Circuit’s decision before the proceedings would be resolved.³⁰ And that assumes a petition for certiorari would be denied.³¹

But even if all remaining challenges the Debtors and PIK Noteholders might pursue in the Third Circuit and the Supreme Court are rejected, they could still bring additional challenges to the Makewhole Claims on remand in Phase Two of the makewhole litigation. **Remarkably, the Debtors’ analysis of the likely duration of the makewhole litigation fails to allot *any* time for Phase Two.**³²

The Court bifurcated the makewhole litigation, with “Phase One” to “determine whether the EFIH Debtors are liable under applicable non-bankruptcy law for or on a Redemption Claim,” and “Phase Two” to “determine (a) whether the EFIH Debtors are insolvent, and, if so, whether that insolvency gives rise to any defenses arising under the Bankruptcy Code in favor of the EFIH Debtors that bar or limit the amount of such a Redemption Claim,” as well as to determine the amount of the Makewhole Claims if allowed. *See* Bifurcation Order, No. 14-50363, D.I. 128, at 2.

The PIK Noteholders have given no indication that they are willing to forgo Phase Two (and, in any event, there will need to be at least that portion of Phase Two to liquidate the allowed amount of the Makewhole Claims, together with interest).³³ In fact, after the Third Circuit issued its decision, the PIK Notes Trustee served a Rule 30(b)(6) deposition notice on the Debtors regarding “Proposed Phase 2 of the Makewhole Litigation.”³⁴ And hours after the Third Circuit issued its decision, counsel to the PIK

³⁰ *See id.*

³¹ *See* Wright Dep. 79:11-79:25.

³² *See* Am. Plan Supp., Ex. E; Wright Dep. 88:14-90:3.

³³ *See* Keglevic Dep. 73:12-73:17.

³⁴ *See* Notice of Rule 30(b)(6) Deposition of Debtors dated Dec. 22, 2016, attached as Exhibit F to 2017 Anker Decl.

Noteholders e-mailed Debtors' counsel asking, "[w]ould the company consider delaying confirmation to proceed with an expedited Phase 2 proceeding?"³⁵ Debtors' counsel responded, "Phase 2 involves a lot of issues and will not be expedited."³⁶

Phase Two could well present multiple issues. One issue would be solvency, which could be quite time-consuming to resolve. Indeed, the Debtors urged the Court to bifurcate the makewhole litigation precisely because "[d]iscovery and trial concerning solvency" "will be expensive and time consuming" and "is likely to significantly delay the adversary proceeding."³⁷ In granting that request, the Court similarly observed that, while "the Trustee is entitled to discovery from the EFIH Debtors as to their valuation and solvency," "the Court is cognizant that such discovery would be immensely time consuming and expensive and would significantly delay resolution of the adversary proceeding."³⁸ In addition to questions of fact, a dispute over solvency could present questions of law. For example, as of what date is solvency to be determined (the Petition Date, the Effective Date, some other date)?

The PIK Noteholders also apparently intend to argue that bankruptcy law provides "defenses" to the Makewhole Claims. For example, they might argue that the Claims should be disallowed as "unmatured interest" under §502(b)(2). Or they might challenge the Makewhole Claims as "unreasonable" "charges" or "fees" under §506(b). Or they might urge the Court to disallow the Claims pursuant to its "equitable" powers.

³⁵ See E-mail dated Nov. 17, 2016 from Mr. Alberino to Mr. Husnick, Bates No. EFH06584368, attached as Exhibit G to 2017 Anker Decl.

³⁶ See *id.*

³⁷ See Letter to The Honorable Christopher S. Sontchi from Andrew R. McGaan, P.C. in Contemplation of August 19, 2014 Teleconference Proposing Bifurcation of Makewhole Litigation, No. 14-50363, D.I. 108.

³⁸ See Opinion (Aug. 5, 2014), Adv. Pro. No. 14-50363, D.I. 105, at 23.

To be sure, all such challenges lack merit. Courts in this District have held that Makewhole Claims “are in the nature of liquidated damages” that “fully mature at the time of breach” and “should not be disallowed as unmatured interest under Section 502(b)(2).” *In re School Specialty, Inc.*, 2013 WL 1838513, at *5 (Bankr. D. Del. 2013); *In re Trico Marine Servs., Inc.*, 450 B.R. 474, 480-481 (Bankr. D. Del. 2011). Courts have also held that makewhole payments calculated using a discount rate tied to U.S. Treasury securities rates, like the Makewhole Claims here, are “reasonable” under section 506(b). *School Specialty*, 2013 WL 1838513, at *4-*5. And the Supreme Court has held that whatever “equitable powers” bankruptcy courts retain, bankruptcy courts cannot disallow valid state-law claims that do not fall within one of the specified grounds for disallowance under §502(b). *See Travelers Cas. & Sur. Co. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 450-452 (2007); *see also United States v. Noland*, 517 U.S. 535, 540-541, 543 (1996); *Law v. Siegel*, 134 S. Ct. 1188, 1194, 1196 (2014). Indeed, it is telling that the Debtors’ analysis of the “scenarios reflecting the reasonably probable paths the Makewhole Litigation may take going forward” (Am. Plan Supp., Ex. E) did not give any consideration to Phase Two at all.³⁹

But the PIK noteholders evidently do not concede these points. Resolving these issues could therefore potentially require another round of fact and expert discovery, summary judgment briefing, argument, and if genuine issues of material fact existed (e.g., with respect to solvency), a trial. Furthermore, the losing party could seek to pursue at least two levels of appellate review. If there were a reversal and remand at either level, or a petition for rehearing or for certiorari, the proceedings could last even longer. The Debtors seemingly contemplate that the PIK Noteholders will litigate

³⁹ *See* Wright Dep. 75:17-77:20, 84:24-85:13, 88:14-90:3.

aggressively to challenge the First and Second Lien Makewhole Claims; as noted, they propose to reserve (from the collateral of the First and Second Lien Notes) \$2 million per month, or \$72 million over three years, to fund those challenges.

As the preceding discussion illustrates, there are numerous paths the Makewhole litigation could take that could result in the litigation lasting beyond three years. Phase One has already lasted nearly three years. Even if the Third Circuit denies rehearing and the Supreme Court denies certiorari, it is not likely to be completed until the fourth quarter of this year (or later). And if the Third Circuit grants rehearing and certifies a question to the New York Court of Appeals, the Debtors' own review demonstrates that Phase One might not be completed until as long as two years and four months after the Effective Date (i.e., until August 2019)—or more than five years after it was commenced in April 2014. So even if Phase Two were to take no longer to complete than Phase One—and there is no assurance of that—Phase Two might not be completed until *four to seven* years after the Effective Date. Indeed, the Debtors concede that their review of the 'most likely scenarios' demonstrates that Phase One, alone, could last more than five years, and they acknowledge that Phase Two could go even longer (though they have done no analysis of the likely duration of Phase Two).⁴⁰

Experience in other cases validates these concerns. In the *Dow Corning* bankruptcy, for example, litigation over post-petition interest has spanned more than a decade *after* the Sixth Circuit issued a decision reversing the bankruptcy court and

⁴⁰ See Wright Dep. 90:5-92:11 ("Q. Okay. So based on that example – A. Right. Q. – you've got two years and nine months already, plus potentially another two years and nine months just to get done phase one, right? A. It could happen that way, yes. Q. And have the Debtors done any analysis that demonstrates that phase two will be shorter than phase one? A. We've done no analysis either way. It could be shorter; it could be longer. I don't know. I'm not a litigator. I think there may be some possibilities that some of it could happen even in parallel, so").

remains ongoing. Dow Corning, a solvent debtor, objected to claims by unsecured noteholders for post-petition interest at the contract default rate. In 1999, the bankruptcy court ruled that they were entitled to interest at the contract rate (not the federal judgment rate); in 2001, the bankruptcy court ruled on summary judgment that the creditors were entitled only to the base contract rate, not the default rate; in 2004, the district court affirmed; in 2006, the Sixth Circuit reversed, holding that there is a presumption in solvent-debtor cases in favor of the default rate and remanded for proceedings consistent with its ruling; in 2007, the Supreme Court denied a petition for certiorari; in 2009, following mediation efforts, the parties moved for summary judgment; and in 2013, the district court denied summary judgment. There is no indication on the docket that the matter has been resolved yet, and the Trustee understands that the litigation is on-going.

In the *Bank of New England* bankruptcy, an inter-creditor litigation—in which senior creditors opposed a distribution to junior creditors before the senior creditors had been paid post-petition interest—lasted more than a decade, including two appeals to the First Circuit. Litigation in two other on-going makewhole disputes has already lasted nearly three years (*Momentive*, where disallowance of a makewhole is pending before the Second Circuit) or exceeded three years (*Chesapeake*, where the Second Circuit has stayed its mandate affirming allowance of a makewhole, pending the issuer's filing of a petition for certiorari). In the *Coudert Brothers* bankruptcy, the bankruptcy court's order disallowing a claim as time-barred was followed by more than six years of litigation, including two appeals to the Second Circuit, which reversed the bankruptcy court's orders both times. In the *GM* bankruptcy, avoidance-claim litigation against the debtor's lenders has been pending since 2009, and in the *Lyondell* and *Tribune* bankruptcies,

fraudulent-transfer litigation against the debtor's former shareholders has been pending since 2010 and 2011, respectively. All three litigations are still ongoing, following various appellate proceedings. Further details and citations for all of the foregoing cases, as well as for several others, are in the Appendix to this Objection.

In short, three years from the Effective Date is not sufficient. There is no assurance that the litigation will be resolved by then, and the Debtors concede that Proposed Reserve Amount will not be sufficient to pay the First and Second Lien Claims in full if not. That does not provide the "indubitable equivalent" of those over-Secured Claims.

b. The Proposed Reserve Amount Covers First-Lien and Second-Lien Fees and Expenses For Only Three Years

The Proposed Reserve Amount includes the Debtors' estimates of the fees and expenses that will be incurred by the First Lien Trustee and Noteholders (\$1.5 million per month) and the Second Lien Trustee and Noteholders (\$1.0 million per month) in the makewhole litigation for a period of only three years.⁴¹ If the litigation continues beyond three years (or if the Debtors' estimates of fees during the first three years is understated), the Proposed Reserve Amount could prove inadequate in this respect as well.

c. The EFIH Claims Reserve Must Cover The First Lien Trustee's Breach Claim And Stay In Place Until It Is Resolved (Or Reserve Additional Funds For The Second Lien Trustee's Future Interest Claim)

Section 2.4(c) of the Collateral Trust Agreement obligates EFIH to refrain from making any distributions to the Second Lien Trustee or Second Lien Noteholders until all

⁴¹ See Ying Report at 12.

claims of the First Lien Trustee and First Lien Noteholders have been paid in full.⁴² Furthermore, section 2.4(d) obligates the Second Lien Trustee and Second Lien Noteholders to hold any distributions they receive from EFIH in violation of section 2.4(c) in trust for the First Lien Noteholders and to remit such funds upon demand to the First Lien Trustee.⁴³ The First Lien Trustee has brought an action for turnover against the Second Lien Trustee, which is before the District Court on appeal. Although this Court dismissed that inter-creditor action, the Court's holding that the First Lien Trustee was not entitled to turnover because its Makewhole Claim was not "payable under the documentation" does not appear to remain viable following the Third Circuit's decision holding that EFIH owes such Claims under the applicable indentures.

The Plan provides for repayment of the \$2.2 billion in principal and interest owing on the Second Lien Notes. *See* Plan Art. III.B.20(b)(i)-(ii), (c). If EFIH holds back distribution of that amount pursuant to section 2.4(c), or if EFIH violates section 2.4(c) but the Second Lien Trustee holds back such distribution from the Second Lien Noteholders pursuant to section 2.4(d), then, in either case, the Second Lien Noteholders may have a "Future Interest" Claim against EFIH for the contractual interest that will accrue post-Effective Date on the held-back principal and interest (as set forth in the Plan objection filed by the Second Lien Trustee).

⁴² *See* Collateral Trust Agreement § 2.4(c) ("***At any time prior to the Discharge of Parity Lien Obligations*** and after (1) commencement of any Insolvency or Liquidation Proceeding in respect of EFIH ... , ***no payment of money (or the equivalent of money) shall be made from the proceeds of Collateral by EFIH to ... any Junior Lien Representative or any holder of Junior Lien Obligations*** with respect to Junior Lien Obligations (including, without limitation, payments and prepayments made for application to Junior Lien Obligations)" (emphasis added)).

⁴³ *See* Collateral Trust Agreement § 2.4(d) ("All proceeds of Collateral received by any Junior Lien Representative or any holder of Junior Lien Obligations in violation of Section 2.4(c) will be held by such Person in trust for the account of the holders of Parity Lien Obligations and remitted to any Parity Lien Representative upon demand by such Parity Lien Representative").

It appears, however, that the Debtors intend to distribute the \$2.2 billion to the Second Lien Trustee on the Effective Date and to ask the Court to order the Second Lien Trustee to distribute those amounts to the Second Lien Noteholders. *See* Plan Arts. IV.B.9, VI.A.; Am. Plan Supp., Ex. C(2). The Debtors' request that the Court direct the Second Lien Trustee to distribute those amounts is improper. The Second Lien Trustee is obligated under the inter-creditor agreement to hold all distributions it receives in trust for the First Lien Noteholders until they have been paid in full.⁴⁴ There is no basis for this Court to direct one non-debtor to breach its contractual obligation to another.⁴⁵ And if the Debtors seek to immunize the Second Lien Trustee from liability in the inter-creditor action, such relief would be an unlawful third-party release of claims by one non-debtor against another. Indeed, the case on which the Debtors rely (*see* Am. Plan Supp., Ex. C(2)) so holds.⁴⁶

Moreover, the relief the Debtors request would violate sections 2.4(c) and (d) of the Collateral Trust Agreement, and, if granted, would give rise to a Claim by the First Lien Trustee against EFIH for breach of that Agreement.⁴⁷ In particular, if the First Lien Makewhole Claim were disallowed against EFIH, but allowed against the Second Lien

⁴⁴ *See* Collateral Trust Agreement § 2.4(d).

⁴⁵ *See In re Prime Motor Inns*, 130 B.R. 610, 614 (S.D. Fla. 1991); *In re 4 Front Petroleum*, 345 B.R. 744, 752 n.7 (Bankr. N.D. Okla. 2006).

⁴⁶ *See In re TCI 2 Holdings, LLC*, 428 B.R. 117, 139-142 (Bankr. D.N.J. 2010) (holding that even if §1129(b)(1) permits a cram-down plan to override §510(a) and distribute amounts to second-lien noteholders in violation of a subordination agreement, the plan could not release the first-lien noteholders' claim against the second-lien noteholders for breach of that agreement).

⁴⁷ That Claim would be a Secured Claim. *See* Collateral Trust Agreement § 7.14. Furthermore, the Debtors' argument for disputing the Future Interest Claim—that §1129(b)'s clause "[n]otwithstanding section 510(a)" authorizes the Court to confirm a plan that does not comply with a subordination agreement—has no application here. Section 2.4(c) is a contractual obligation that *EFIH* owes directly to the First Lien Trustee, barring *EFIH* from distributing the collateral securing the First Lien Claims until those Claims have been paid in full; it is not a subordination agreement among creditors. In any event, whether or not the Court could require specific performance of *EFIH*'s obligation, the Trustee would have a claim against *EFIH* for damages. *See In re Continental Airlines*, 25 F.3d 120, 132-136 (3d Cir. 1997); *In re Chemtura Corp.*, 439 B.R. 561, 604 (Bankr. S.D.N.Y. 2010).

Trustee in the inter-creditor action, and if the First Lien Trustee were unable (or had to incur additional time and expense) to collect because the Second Lien Trustee had already distributed the \$2.2 billion to the Second Lien Noteholders, the First Lien Trustee would have a Breach Claim against EFIH for the amount of the Makewhole Claim (plus interest) that it could have recovered had EFIH performed in accordance with section 2.4(c) of the Collateral Trust Agreement.

This circumstance could arise if the PIK Noteholders were somehow to prevail in Phase Two. The issue in Phase Two is whether there are grounds under the Bankruptcy Code to disallow a make-whole claim that is otherwise valid under state law. In the unlikely event the PIK Noteholders won on those grounds, that is precisely the circumstance in which the First Lien Trustee may recover from the Second Lien Trustee under the Collateral Trust Agreement. A principal point of an inter-creditor agreement is to allow the senior creditor to recover its claim from the junior creditor if the senior creditor cannot recover its valid state-law claim from the debtor because of limitations imposed by bankruptcy law. The Collateral Trust Agreement provides just that. It permits the First Lien Trustee to recover against the Second Lien Trustee for claims that are “payable under the documentation” governing the First Lien Notes, even if such claims are not enforceable against the debtor under bankruptcy law.⁴⁸

Thus, the EFIH Claims Reserve must cover the Breach Claim. And the EFIH Claims Reserve must *remain in place* until the Breach Claim is resolved. In other words,

⁴⁸ See Collateral Trust Agreement §1.1 (definitions of “Parity Lien Obligations” and “Obligations”), § 2.4(c)-(d). The Collateral Trust Agreement also requires that the distributions to be turned over are “from the proceeds of Collateral.” *See id.* While the Second Lien Trustee might assert a technical argument that distributions under the Plan are not “proceeds of Collateral,” on grounds that the NextEra transaction takes the form of a merger with EFH rather than a sale of EFIH’s interest in Oncor, the Plan recognizes that the funds realized from the NextEra transaction are the proceeds of collateral. It classifies the First and Second Lien Claims separately and gives them priority over the unsecured PIK Noteholders to those proceeds.

if the First Lien Makewhole (and other) Claims were disallowed against EFIH, the funds reserved for those Claims must remain in the EFIH Claims Reserve as a reserve for the First Lien Trustee's Breach Claim. And those funds must stay in the EFIH Claims Reserve until the Breach Claim is resolved, which may not occur until *both* the makewhole litigation against EFIH *and* the inter-creditor litigation against the Second Lien Trustee are resolved, and the First Lien Trustee determines whether it can collect any judgment in the inter-creditor action.

That raises two issues. First, the Plan's language must be clear. It provides that the EFIH Claims Reserve covers both Makewhole Claims and "any other Claims relating to the EFIH First Lien Notes and the EFIH Second Lien Notes." Plan Art. 1.A.161. If it is not already clear, the Plan must be clear that those "Claims" include the Breach Claim. Furthermore, the Plan provides that the Trustee's lien on the EFIH Claims Reserve will be released, and the funds therein transferred to the EFH/EFIH Distribution Account, when all "Claims based upon or under the EFIH First Lien Notes and all Claims based upon or under the EFIH Second Lien Notes" have been allowed and paid in full, or disallowed. Plan Art. VIII.B; *id.* III.B.19(b). Again, if not already clear, the Plan must be clear that those "Claims" include the Breach Claim (and hence the lien and reserve will not be released until the Breach Claim is allowed and paid in full or disallowed).

Second, the amount funded in the EFIH Claims Reserve must be sufficient to cover interest and fees for the duration of *both* the makewhole litigation *and* the inter-creditor action. Three years is plainly insufficient for that: The inter-creditor action may be stayed pending the outcome of the makewhole litigation, since recovery by the First Lien Trustee in the makewhole litigation could moot the inter-creditor action.

Alternatively, if EFIH or the Second Lien Trustee honors its obligation under the Collateral Trust Agreement to hold back distributions, the Proposed Reserve Amount will again be inadequate because it does not include any reserve for the Second Lien Future Interest Claim that may accrue on the held-back amounts.⁴⁹ While the Debtors dispute the Future Interest Claim, *see* Am. Plan Supp., Ex. C(2), that Claim has not been adjudicated, much less disallowed by Final Order, and the Debtors concede that if it is allowed, the Proposed Reserve Amount will be insufficient to pay all First and Second Lien Claims in full.⁵⁰

**d. The Proposed Reserve Amount Does Not Cover
Compound Interest Calculated On A Daily Basis**

The Proposed Reserve Amount does not reserve any amounts for the additional interest that would be owed if interest in respect of the First and Second Lien Claims compounds daily, rather than semi-annually. In calculating the Proposed Reserve Amount, the Debtors assumed interest compounds on a semi-annual basis.⁵¹

While the First Lien Notes provide that scheduled interest payments are to be paid semi-annually,⁵² they obligate EFIH in the event of default to “pay interest ... on overdue principal and premium, if any, from time to time on demand at the interest rate on the Notes” and to “pay interest ... on overdue installments of interest (without regard to any applicable grace period) from time to time on demand at the interest rate on the Notes,” with interest “computed on the basis of a 360-day year comprised of twelve 30-day months.”⁵³

⁴⁹ *See* Ying Report at 12; Keglevic Dep. 59:9-60:13, 99:17-100:16; Horton Dep. 60:2-66:24.

⁵⁰ *See* Horton Dep. 60:2-66:24; Keglevic Dep. 59:9-60:24.

⁵¹ *See* Horton Dep. 55:12-55:22; Keglevic Dep. 58:17-58:20.

⁵² *See* Notes ¶ 1 (“The Issuer will pay interest semi-annually in arrears on June 1 and December 1 of each year.”).

⁵³ *See* Notes ¶ 1.

Accordingly, the Trustee has asserted Claims for interest compounding on a daily basis. The Plan provides that if the Makewhole Claims are allowed by Final Order, the Trustee and Noteholders will be entitled to interest thereon, including interest on interest “as calculated in accordance with the EFIH First Lien Notes” and any related agreements. *See* Plan Art. III.B.19(b)(iv); *see also id.* Art. III.B.19(b)(iii) (providing for interest on fees and expenses “to the extent provided by such notes, indenture, or agreements”).

The Debtors acknowledge that if the Trustee and Noteholders are entitled to daily compounding, the Proposed Reserve Amount will likely be insufficient to pay all interest.⁵⁴ Accordingly, those amounts must be reserved for as well.

2. The EFIH Claims Reserve Should Be Increased And No Distributions Should Be Made To The PIK Noteholders On The Effective Date

The Proposed Reserve Amount of \$1.313 billion is too low. In addition to barring any distribution on the Second Lien Notes as the Collateral Trust Agreement requires, the Court should preclude EFIH from making distributions on the Effective Date to the PIK Noteholders. As noted, of the \$4.3 billion securing the First and Second Lien Claims, the Debtors propose to distribute on the Effective Date approximately \$2.2 billion to the Second Lien Trustee, notwithstanding that doing so will be in direct violation of the EFIH Collateral Trust Agreement. The Debtors propose to deposit only \$1.3 billion of the remaining \$2.1 billion into the EFIH Claims Reserve, and to distribute most of the remainder—\$700 million or so—to the PIK Noteholders on the Effective Date. The potential shortfall in the EFIH Claims Reserve could equal or exceed that amount. Accordingly, at a minimum, the full \$2.1 billion should be placed in the EFIH Claims Reserve on the Effective Date.

⁵⁴ *See* Horton Dep. 55:12-55:22; Keglevic Dep. 61:14-61:24.

The Proposed Reserve Amount will likely be insufficient to pay all Allowed First and Second Lien Claims in full if any of the Debtors' assumptions underlying the Proposed Reserve Amount proves incorrect.⁵⁵ The two assumptions that most impact the adequacy of the Proposed Reserve Amount are (a) that the makewhole litigation and the inter-creditor action (on which the Breach Claim hinges) will be resolved within three years, and (b) that the Second Lien Trustee's Future Interest Claim will not be allowed. As discussed above, there is no assurance that either assumption will prove correct.

If the first assumption does not hold, then even if the Future Interest Claim were disallowed, the Proposed Reserve Amount would experience a shortfall if the makewhole litigation continues beyond three years. In four years, the shortfall could exceed \$200 million, and if in five years, it could be nearly \$400 million.⁵⁶

If the Future Interest Claim were allowed, and all outstanding principal on the Second Lien Notes were held back, the Proposed Reserve Amount would have a shortfall in less than *two* years after the Effective Date.⁵⁷ The Debtors' expert calculates that after three years, there would be a shortfall of approximately \$576 million—nearly the entire amount the Debtors propose to distribute to the PIK Noteholders on the Effective Date.⁵⁸ The Debtors acknowledge that if that calculation were carried out to four years, the First and Second Lien Claims would exceed \$2.2 billion—more than the entire \$2.1 billion remaining from the NextEra sale proceeds (after deducting the amount of the DIP facility and Second Lien principal and interest).⁵⁹ While those calculations of the Future Interest Claim assume that all outstanding Second Lien principal is held back, if instead the

⁵⁵ See Kearns Report at 23-24.

⁵⁶ See Kearns Report at 24-25.

⁵⁷ See Kearns Report at 26-28.

⁵⁸ See Horton Dep. 62:7-66:24.

⁵⁹ See Horton Dep. 62:7-66:24.

amount held back is limited to the First Lien Makewhole Claim and interest thereon, the total First and Second Lien Claims to be paid from the EFIH Claims Reserve will still surpass the \$2.1 billion mark within five years after the Effective Date.⁶⁰

Accordingly, the Court should require that the full \$2.1 billion be escrowed and that none of it be distributed to the PIK Noteholders on the Effective Date. As discussed above, the PIK Noteholders have refused to agree to terminate the Makewhole litigation three years after the Effective Date. *See* PIK Stip. ¶ 6(c). They have likewise refused to cover any shortfall that results. *Id.* ¶ 6(a)-(b) (“Avenue, GSO and York is not prepared in connection with the Plan ... to guarantee or back-stop ... the Shortfall” or “to disgorge any payments or distributions it receives under the Plan ... to the extent necessary to eliminate the Shortfall”); *see also* Horton Dep. 73:10-73:20, 74:5-75:25. That is not permissible. The unsecured PIK Noteholders cannot shift the risk of a shortfall to the over-secured First Lien Noteholders. The collateral proceeds proposed to be paid to the PIK Noteholders must be held back in the EFIH Claims Reserve to ensure the Trustee and the Noteholders will remain fully protected and truly receive the “indubitable equivalent” of their secured claims.

Nor can the Debtors cram down the Trustee and Noteholders with a Proposed Reserve Amount of only \$1.3 billion based on the notion, advanced by the Debtors, that the Plan’s retention-of-jurisdiction provisions would permit the Trustee and the Noteholders to seek relief in this Court to prevent a shortfall, such as by halting the

⁶⁰ *See* Kearns Report at 27-28 (total claims exceed \$2.4 billion in April 2022, five years after Effective Date); *cf. id.* at 26-27 (if full Second-Lien principal repayment is held back, total claims exceed \$2.4 billion in April 2021, four years after Effective Date); Am. Plan Supp., Ex. C(2) at 7.

litigation or requiring additional funding.⁶¹ That notion turns the absolute priority rule on its head. The risk of a shortfall should not be placed on secured creditors by requiring them to ask for their collateral back after it has been paid out to unsecured creditors; instead, the collateral should be held in reserve, and unsecured creditors should bear the burden of asking for its release if an unquestioned excess ever develops.

In any event, the Plan's retention-of-jurisdiction provision merely provides that the Court will retain jurisdiction to enter "such orders as may be necessary to execute, implement, or consummate the Plan" and to "resolve any cases ... that may arise in connection with the Consummation, interpretation, or enforcement of the Plan." *See* Plan Arts. XI.8, XI.12. Normally, such provisions are understood to retain jurisdiction merely to enforce the terms of the Plan, not to modify them. *Cf.* 11 U.S.C. § 1127(a)-(b).

While the Trustee reserves all rights to argue the point, the Debtors have not pointed to anything in the Plan providing that the Court must (or even may) require the PIK Noteholders or any other party to contribute additional funds to the EFIH Claims Reserve or dismiss any pending challenges to the Makewhole Claims.⁶² Nor is it clear that the Court could prohibit the EFH Plan Administrator Board or MLOC from pursuing their litigation rights, or that it would even have jurisdiction to do so if the litigation were pending before the District Court or Third Circuit at the time. Thus, there is at least a question whether the Plan's retention-of-jurisdiction provisions ensure that the Trustee and Noteholders will remain over-secured and never face the risk of non-payment. And if there is any question, the Plan does not provide the indubitable equivalent.

⁶¹ *See* Am. Plan Supp., Ex. C(2); Keglevic Dep. 50:25-54:14; Horton Dep. 40:5-41:5, 63:8-63:19, 65:13-65:24; Wright Dep. 121:13-126:3.

⁶² *See* Wright Dep. 121:13-123:2.

Evidently recognizing as much, the principal PIK Noteholders, according to the Debtors, had agreed, in concept, to a “top up or tap out” provision.⁶³ As the Trustee understands it, if the EFIH Claims Reserve were running low in the future, the First and Second Lien Noteholders could ask this Court to require those PIK Noteholders to increase the EFIH Claims Reserve out of their own funds or terminate any further challenges to the Makewhole Claims.⁶⁴ But despite repeated requests, the Debtors provided no documentation establishing that there is any such agreement, let alone evidencing its terms.⁶⁵

3. The Plan Lacks Protections For The EFIH Claims Reserve

At a minimum, the Plan should be modified to include the following protections:

Perfected first-priority lien. The Plan grants the First Lien Trustee a first-priority lien on the EFIH Claims Reserve (Plan Art. III.B.19(b)), but does not require that the lien be perfected, that there be a control agreement, or that the financial institution holding the EFIH Claims Reserve agree to waive lien or set-off rights with respect to the EFIH Claims Reserve.⁶⁶ If the First Lien Trustee does not have control of the EFIH Claims Reserve, its lien may not be perfected under applicable law,⁶⁷ and the financial institution holding the reserve could obtain a setoff right or lien senior to the Trustee’s.⁶⁸

Accordingly, the Plan should provide that the First Lien Trustee will be granted a lien on the EFIH Claims Reserve (and all assets therein and proceeds thereof) pursuant to

⁶³ See Wright Dep. 52:11-54:6

⁶⁴ See Wright Dep. 52:11-55:3.

⁶⁵ As the First Lien Trustee was finalizing this Objection, the Debtors filed an additional Plan Supplement that, apparently, is intended to be the “top up or tap out” proposal. Based on a quick review, it appears to be riddled with holes, but the Trustee has not had the time to analyze it with care, let alone the time to discuss it with counsel and EFIH First Lien Noteholders or to take discovery regarding it. It will do so, and seek leave from the Court to address this additional Plan Supplement in a further submission.

⁶⁶ See Horton Dep. 127:9-128:2, 130:3-130:24; Wright Dep. 127:10-128:8.

⁶⁷ See, e.g., UCC §§ 9-104, 9-106, 9-314(a), 9-327, 9-328.

⁶⁸ See, e.g., UCC §§ 9-327, 9-328.

a control agreement (or by having the Claims Reserve maintained through the First Lien Trustee) and any other security agreements or arrangements necessary to ensure that the First Lien Trustee's lien will have first priority and be fully perfected. It should also specify that no other entity (including any bank or securities intermediary) will obtain any lien or setoff right with respect to the EFIH Claims Reserve (aside from the subordinated lien granted under the Plan to the Second Lien Trustee).

No other liens except junior lien for Second Lien Trustee. While the Plan provides that the First and Second Lien Trustees will be granted replacement liens on the EFIH Claims Reserve, it does not appear to bar additional liens on the EFIH Claims Reserve. The Plan contains language suggesting that there could be additional liens. *See* Plan Art. III.B.20(b) (providing that Second Lien Trustee will be granted a replacement lien “which Lien shall have priority over *all other Liens* on the EFIH Claims Reserve, except the Lien provided to the EFIH First Lien Notes Trustee” (emphasis added)). These provisions should be modified to make clear that (1) no liens will be granted on the EFIH Claims Reserve except for the replacement liens granted to the First and Second Lien Trustees, and (2) the Second Lien Trustee's lien will be junior in all respects—including lien and payment priority—to the First Lien Trustee's lien, consistent with and subject to the Collateral Trust Agreement.

Collateral Trust Agreement governs. The Plan does not appear to address the inter-creditor rights and obligations between the First Lien Trustee and First Lien Noteholders, on the one hand, and the Second Lien Trustee and Second Lien Noteholders, on the other, with respect to the EFIH Claims Reserve. The Plan should provide that they will be governed by the Collateral Trust Agreement.

Investment. The Plan provides that the EFIH Claims Reserve will be an interest-bearing account, but does not specify how the reserve funds will be invested or which entity will have control over investment decisions. *See* Plan Arts. I.A.115, I.A.161 (definitions of “EFH/EFIH Distribution Account” and “EFIH Claims Reserve”). According to the Debtors, such investment decisions will be controlled by the EFH Plan Administrator Board, in its discretion.⁶⁹ The Plan should provide that the EFIH Claims Reserve will be invested in Cash, in accordance with 11 U.S.C. § 345, and that investment decisions will be subject to the consent of the First Lien Trustee.

No disbursements to other parties. The Plan does not restrict disbursements of funds from the EFIH Claims Reserve. The Plan should prohibit any disbursements from the EFIH Claims Reserve except (1) to pay any allowed Claims of the First Lien Trustee and Noteholders, until all such Claims have been allowed and paid in full or disallowed; (2) thereafter to pay any allowed Second Lien Claims, until all Second Lien Claims have been allowed and paid in full or disallowed; and (3) only thereafter, to pay remaining creditors in accordance with the Plan.

4. The Plan Shortchanges The First And Second Lien Noteholders While Paying The Fees Of The Unsecured PIK Notes Trustee And EFH Plan Administrator Board

The Plan contemplates that the fees and expenses of the First Lien Trustee will not be paid on the Effective Date (or paid only in part, subject to disgorgement), and may be held up in a lengthy “fee review process” before payment in full is finally made. And if the EFIH Claims Reserve has a shortfall, they may never be paid.

Yet the Plan provides that the Debtors will pay *all* fees and expenses of the PIK Notes Trustee on the Effective Date, without any review of such fees, and such payment

⁶⁹ *See* Horton Dep. 126:3-126:19; Wright Dep. 126:14-126:21, 128:10-128:25.

will not be subject to disgorgement, even if the EFIH Claims Reserve has a shortfall.⁷⁰ Furthermore, the Plan provides that the Trustee's and Noteholders' collateral will fund the Post-Effective Date Administrative Account that will pay the post-Effective Date fees and expenses of the EFH Plan Administrator Board in prosecuting challenges to the Makewhole Claims.⁷¹ The First and Second Lien Trustees and Noteholders will have no lien on this Post-Effective Date Administrative Account.⁷² Worse, the Plan provides that if there is a shortfall in the Post-Effective Date Administrative Account, the EFH Plan Administrator Board may pay its fees and expenses *out of the EFIH Claims Reserve*.⁷³

In other words, the Plan uses the First and Second Lien Noteholders' collateral to fund litigation *against them*—and gives the PIKs a \$1.3 billion retainer (plus the Effective-Date distribution)—while draining the EFIH Claims Reserve and increasing the risk of a shortfall. These provisions have no place in a Plan that purports to give the First and Second Lien Noteholders the “indubitable equivalent” of their Secured Claims.

5. The Plan Must Preserve The Agreements Governing The Notes For Claims Against EFIH And The Inter-Creditor Action

The Plan provides that on the Effective Date, all notes, indentures, security documents, and other documents evidencing the First and Second Lien Claims will be “canceled” and “discharged,” and that the “obligations of the Debtors or Reorganized Debtors, as applicable, thereunder or in any way related thereto shall be deemed satisfied in full and discharged.” *See* Plan Art. IV.I.

⁷⁰ *See* Plan Art. I.A.159 (definition of “EFIH Base Payment Amount”), IV.R; Horton Dep. 30:10-33:22; Keglevic Dep. 48:21-49:14.

⁷¹ *See* Plan Arts. I.A.339 (definition of “Post-Effective Date Administrative Account”), VII.K.3.

⁷² *Id.*

⁷³ *See* Plan Art. VII.K.3; Horton Dep. 38:18-39:5.

The Plan must be clear that these agreements, including the EFIH First Lien Note Indentures and Notes, continue in force post-Effective Date for purposes of establishing and supporting the First Lien Claims. The Plan also must be clear that the Collateral Trust Agreement continues in force after the Effective Date for purposes of the inter-creditor action and for purposes of establishing the Claims and rights of the First Lien Trustee and Noteholders against EFIH, including any Breach Claim. While the Plan includes language that is evidently designed to accomplish that, *see* Plan Arts.

III.B.19(b), IV.I, the Trustee has proposed clarifying language in Exhibit A hereto.

II. THE PLAN IS NOT FEASIBLE

Section 1129 provides that a plan cannot be confirmed unless the Court finds that “[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan.” 11 U.S.C. § 1129(a)(11). The Plan provides that all Allowed First Lien Claims must be paid in full. Yet, if the EFIH Claims Reserve is funded with only \$1.313 billion, it will be insufficient to ensure that those Claims will, in fact, be paid in full.

Accordingly, unless the Court orders that the Debtors increase the funding of the EFIH Claims Reserve, the Plan is not feasible and cannot be confirmed for this reason as well.

III. THE PLAN INCLUDES ADDITIONAL PROVISIONS THAT DO NOT COMPLY WITH SECTION 1129’S REQUIREMENTS

A. The Fee Review Process

As noted, the Amended Plan Supplement proposes a lengthy process for reviewing the fees and expenses of the Trustee and the Noteholders. *See* Am. Plan Supp., Ex. D ((1) invoices for pre-Effective Date fees and expenses to be submitted within 45 days after the Effective Date; (2) 80% of fees and 100% of expenses to be paid within 15

business days after the Effective Date, subject to disgorgement; (3) objections to invoices to be asserted within 90 calendar days after receipt of such invoices (but no earlier than 90 days after entry of the Confirmation Order); and (4) any request for a court hearing to be filed no earlier than 30 days after any objection). But the EFIH Debtors have had most of the Trustee's invoices for well over a year; have not filed any objection to them; and were prepared to pay 100% of those fees and expenses pursuant to the settlement they negotiated in December 2016—a settlement that (as noted above) the Debtors still believe is reasonable.

There is no valid reason for further delay in paying those fees; the primary motive appears to be to impair the secured creditors' ability to protect their rights, in some misguided effort to extract value from them. The Trustee has filed a motion requesting immediate reimbursement of its fees and expenses as adequate protection and pursuant to section 506(b) of the Bankruptcy Code.⁷⁴ That motion is set for hearing on March 28, 2017 (before the Debtors' projected emergence in April 2017). The Debtors—or the PIK Noteholders—should not be permitted to substitute the Trustee's pending motion with a “fee review process” that would impose more delay.

Likewise, the fee review process provides excessive delay for the review of post-Effective Date fees. There is no reason the EFH Plan Administrator Board needs 45 days after each monthly invoice to determine whether it has any objection to it. Nor is there any reason the Trustee should have to wait 30 days before seeking relief from the Court.

⁷⁴ See Motion of Delaware Trust Company, As Trustee For The EFIH First Lien Notes, For An Order Directing Payment And Reimbursement of Certain Fees And Expenses, D.I. 10703 (Jan. 23, 2017).

B. The Plan Asserts An Improper “Blanket Objection”

The Plan states that it “shall serve as the Debtors’ objection to all other EFIH First Lien Note Claims ... under the respective indentures.” Plan Art. VII.A. That provision does not comply with section 1129(a)(1) and other Code provisions governing claims allowance. A timely proof of claim is deemed allowed unless a party objects in a written objection asserting the basis for the objection. 11 U.S.C. §§ 501, 502(a); Fed. R. Bankr. P. 3001(f), 3007(a); *In re Allegheny Int’l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992). The Plan cannot be used to circumvent that process. *See In re Simmons*, 765 F.2d 547, 553 (5th Cir. 1985); *In re Dynamic Brokers, Inc.*, 293 B.R. 489, 496 (B.A.P. 9th Cir. 2003).

C. To The Extent The Plan Could Be Read To Deny Any Other Rights Of The Trustee And The Noteholders, It Cannot Be Confirmed

1. Plan Injunction of claims against the Released Parties

The Plan provides that the First Lien Trustee and Noteholders are not Releasing Parties granting releases in favor of the Released Parties, including the PIK Noteholders. It also provides that nothing in the Plan prevents the First Lien Trustee and Noteholders from seeking disgorgement of distributions to the PIK Noteholders if the EFIH Claims Reserve has a shortfall. *See* Plan Arts. I.A.360, I.A.361, VI.A (footnote 3), VIII.D. But the Plan’s injunction provision provides that “all Entities that ... hold Claims ... that ... shall be discharged pursuant to Art. VIII.A”—the Debtors’ bankruptcy discharge—“are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Reorganized Debtors, *or the Released Parties*: (i) commencing ... any action ... with respect to any such claims” Plan Art. VIII.F (emphasis added). To the extent that language might be read to enjoin the First Lien Trustee and Noteholders from pursuing claims against the Released Parties,

including potential disgorgement claims against the PIK Noteholders, it would be an unlawful third-party release. The Trustee has proposed clarifying language in Exhibit A.

2. Right to prosecute makewhole appeal or other claims-allowance litigation

The Plan's definition of "Allowed" provides that "except as otherwise set forth herein," the Plan is not intended to impair any party's rights in an appeal from an order disallowing its Claim. Plan Art. I.A.13. The quoted language might be read to suggest that some unspecified provisions in the Plan do impair such rights. If the Plan were so read to impair the Trustee's and Noteholders' statutory right to litigate the pending makewhole appeal (or the inter-creditor action)—notwithstanding all of the Plan's provisions that explicitly contemplate continued litigation of the appeal (and inter-creditor action) after the Effective Date—the Plan could not be confirmed. *See* 11 U.S.C. § 1129(a)(1). The Trustee has proposed clarifying language in Exhibit A.

3. Exclusive jurisdiction

The Plan provides that the Court will retain "exclusive" jurisdiction over claims-allowance and the Plan. *See* Plan Art. XI. To the extent the Plan's "exclusive" jurisdiction provision could be read to impair a party's right to seek the withdrawal of the reference or pursue an appeal, it is not permissible. Proposed clarifying language is in Exhibit A.

4. Drafting issues

The Plan contains a number of apparent drafting mistakes. For example, it defines the term "Plan" as the *Fifth* amended plan, rather than the *Seventh* amended plan. The Trustee has endeavored to correct or clarify such errors in Exhibit A. The Trustee will work with Debtors' counsel to address them in advance of the confirmation hearing.

JOINDER IN EFIH SECOND LIEN TRUSTEE'S OBJECTION TO PLAN

The Trustee hereby joins in the objections asserted in the *EFIH Second Lien Trustee's Objection to Debtors' Plan of Reorganization*, filed contemporaneously herewith, to the extent the Second Lien Trustee's Objection addresses proposed terms of the Plan that also apply to the First Lien Trustee and Noteholders.

RESERVATION OF RIGHTS

The Trustee reserves the right to supplement this Objection to the extent any further change to the Plan affects the rights of the Trustee and the Noteholders, including with respect to the Second Amended Plan Supplement.

In addition, while the Trustee has endeavored to propose language in Exhibit A to address many of its concerns about the Plan, the Trustee and Noteholders reserve the right to propose additional or different language to address those concerns based on their on-going review and based on consultation with the Second Lien Trustee, Second Lien Noteholders, and the Debtors. The Trustee will coordinate with the Second Lien Trustee on Plan language and will seek to work with the Debtors in advance of the confirmation hearing to reach consensus on mutually satisfactory language where possible and to narrow the scope of the disputes to be heard at confirmation.

CONCLUSION

The Court should deny confirmation of the Plan unless it is modified as set forth above and in Exhibit A.

Dated: February 3, 2017

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Appendix

APPENDIX A: PRECEDENT CASES**I. In re Dow Corning Corp., No. 95-20512 (Bankr. E.D. Mich.)**

Issue: Rate and amount of post-petition interest to be paid to unsecured creditors of solvent debtor.

Time pending: 17 years, *still pending*.

Date	Event	
Apr. 15, 1999	Bankruptcy court hearing on unsecured creditors' objections to plan confirmation on interest-rate issue.	
July 30, 1999	Bankruptcy court decision overruling unsecured creditors' objections on interest-rate issue.	237 B.R. 380 (Bankr. E.D. Mich.)
Dec. 1, 1999	Bankruptcy court decision confirming plan and overruling unsecured creditors' objections to plan confirmation on section 1129(b) grounds.	244 B.R. 678 (Bankr. E.D. Mich.)
Sept. 28, 2000	Debtors file objections to unsecured claims.	No. 97-00009 (Bankr. E.D. Mich.)
Mar. 16, 2001	Unsecured creditors file motions for summary judgment in opposition to claim objection.	
May 3, 2001	Bankruptcy court decision denying motions for summary judgment.	No. 97-00009, Dkt. 430 (Bankr. E.D. Mich.)
Mar. 31, 2004	District court decision on appeal affirming bankruptcy court.	2004 WL 764654 (E.D. Mich.)
July 27, 2005	Court of appeals oral argument on appeal.	No. 04-1608 (6th Cir.)
July 26, 2006	Court of appeals decision on appeal reversing and remanding.	456 F.3d 668 (6th Cir.)
Oct. 31, 2006	Petition for rehearing in court of appeals denied.	No. 04-1608, Dkt. 97 (6th Cir.)
Nov. 15, 2006	Court of appeals grants motion to stay mandate pending cert petition.	No. 04-1608, Dkt. 104 (6th Cir.)
Mar. 26, 2007	Supreme Court denies cert.	549 U.S. 1317
Aug. 2009	On remand in district court, unsecured creditors file motions for summary judgment.	No. 97-00009 (Bankr. E.D. Mich.)
Jan. 28, 2010	District court oral argument on motions for summary judgment.	No. 95-20512 (Bankr. E.D. Mich.)
Apr. 30, 2013	Parties file joint petition in court of appeals for writ of mandamus compelling district court to rule on motions for summary judgment.	No. 13-1541, Dkt. 1 (6th Cir.)
May 14, 2013	District court decision denying motions for summary judgment.	No. 97-00009, Dkt. 645, (Bankr. E.D. Mich.).
<i>Still pending</i>		

APPENDIX A: PRECEDENT CASES**II. In re Bank of New England Corp., No. 91-10126 (Bankr. D. Mass.)**

Issue: Right of secured creditor to payment of post-petition interest before payment to junior creditors.

Time pending: 10 years, 1 month.

Date	Event	
May 23, 2001	Chapter 7 trustee files motion seeking authorization to make distributions to junior bondholders.	Dkt. 1432 ¹
Nov. 1, 2001	Bankruptcy court decision granting chapter 7 trustee's motion.	269 B.R. 82 (Bankr. D. Mass.)
Feb. 3, 2003	District court decision on appeal affirming decision of bankruptcy court.	295 B.R. 419 (D. Mass.)
Apr. 13, 2004	Court of appeals decision on appeal reversing and remanding.	364 F.3d 355 (1st Cir.)
Oct. 12, 2004	Supreme Court denies cert.	543 U.S. 926
Jan. 9, 2007	Bankruptcy court bifurcates issues on remand and issues decision on burden of proof.	359 B.R. 384 (Bankr. D. Mass.)
Apr. 10, 2009	Bankruptcy court decision on remand granting chapter 7 trustee's motion.	404 B.R. 17 (Bankr. D. Mass.)
Mar. 15, 2010	District court decision on appeal affirming decision of bankruptcy court.	426 B.R. 1 (D. Mass.)
June 23, 2011	Court of appeals decision on appeal affirming.	646 F.3d 90 (1st Cir.)

¹ Unless otherwise indicated, references to docket entries are references to entries on docket in the main bankruptcy case (or, where applicable, adversary proceeding) in the bankruptcy court.

APPENDIX A: PRECEDENT CASES**III. In re Motors Liquidation Co., No. 09-50026, Adv. Pro. No. 09-00504 (Bankr. S.D.N.Y.)**

Issue: Avoidance action seeking determination that creditors' lien on debtors' assets had been released and avoidance and recovery of payments to those creditors.

Time Pending: 7 years, 7 months, *still pending*.

Date	Event	
July 31, 2009	Avoidance action complaint filed.	Dkt. 1
July 1, 2010	Motions for summary judgment filed.	
Mar. 1, 2013	Bankruptcy court decision granting summary judgment for defendant.	486 B.R. 596 (Bankr. S.D.N.Y.)
June 5, 2013	Court of appeals grants leave for direct appeal.	Dkt. 83
Mar. 25, 2014	Court of appeals oral argument on appeal.	No. 13-2187 (2d Cir.)
June 17, 2014	Court of appeals certifies question to Delaware Supreme Court.	755 F.3d 78 (2d Cir.)
Oct. 17, 2014	Answer from Delaware Supreme Court to certified question.	103 A.3d 1010 (Del.)
Jan. 21, 2015	Court of appeals decision reversing bankruptcy court and remanding with instructions for the bankruptcy court to enter partial summary judgment for plaintiff.	777 F.3d 100 (2d Cir.)
May 20, 2015	Amended complaint filed.	Dkt. 91
Nov. 2015	Defendants file motions to dismiss amended complaint.	
June 30, 2016	Bankruptcy court decision denying motions following remand.	552 B.R. 253 (Bankr. S.D.N.Y.)
<i>Still pending</i>		

APPENDIX A: PRECEDENT CASES**IV. *In re Adelphia Commc'ns Corp.*, No. 02-41729, Adv. Pro. No. 03-4942 (Bankr. S.D.N.Y.)**

Issue: Action by creditors' committee against bank lenders asserting, among others, fraudulent transfer claims and claims for aiding and abetting breaches of fiduciary duties by principals of debtors.

Time pending: 7 years, 6 months.

Date	Event	
July 6, 2003	Complaint filed by creditors' committee.	Dkt. 1
Oct. 2003	Certain defendants file motions to dismiss.	
Feb. 9, 2006	District court withdraws the reference in adversary proceeding except with respect to pending motions to dismiss.	No. 05-9050, Dkt. 22 (S.D.N.Y.)
June 11, 2007	Bankruptcy court decision granting in part and denying in part motions to dismiss.	365 B.R. 24 (Bankr. S.D.N.Y.)
Sept. 5, 2007	District court grants in part and denies in part leave to appeal bankruptcy court decision.	No. 05-9050, Dkt. 79, (S.D.N.Y.)
Oct. 31, 2007	Creditor trust (as successor to creditors' committee) files amended complaint.	No. 05-9050, Dkt. 132, (S.D.N.Y.)
Jan. 17, 2008	District court decision affirming in part bankruptcy court decision on appeal.	390 B.R. 64 (S.D.N.Y.)
June 17, 2008	District court decision granting motions to dismiss amended complaint.	390 B.R. 80 (S.D.N.Y.)
Dec. 8, 2008	District court enters final judgment.	No. 05-9050, Dkt. 921, (S.D.N.Y.)
May 26, 2010	Court of appeal summary order affirming district court decision on appeal.	No. 09-0039, 379 F. App'x 10 (2d Cir.)
Jan 5, 2011	Supreme Court grants motion to dismiss cert petition.	562 U.S. 1126

APPENDIX A: PRECEDENT CASES**V. In re Coudert Bros. LLP, No. 06-12226 (Bankr. S.D.N.Y.)****Issue:** Allowance of claim for malpractice.**Time pending:** 6 years, 7 months.

Date	Event	
Mar. 13, 2009	Debtor files motion to disallow claim and dismiss action.	Dkt. 153
July 22, 2009	Bankruptcy court decision disallowing claim and dismissing action on statute-of-limitations grounds.	Dkt. 1208
Sept. 8, 2009	Bankruptcy court denies motion for reconsideration.	2009 WL 2928911 (Bankr. S.D.N.Y.)
June 14, 2010	District court decision on appeal affirming decision of bankruptcy court.	No. 09-9561, 2010 WL 2382397 (S.D.N.Y.)
Feb. 28, 2012	Court of appeals decision on appeal reversing denial of reconsideration on choice-of-law issue.	673 F.3d 180 (2d Cir.)
Aug. 19, 2013	Bankruptcy court decision on remand.	2013 WL 4478824 (Bankr. S.D.N.Y.)
Oct. 25, 2013	Bankruptcy court denies motion for reconsideration.	Dkt. 1610
Sept. 19, 2014	District court decision on appeal affirming.	No. 13-8578, Dkt. 22 (S.D.N.Y.)
Aug. 20, 2015	Court of appeals oral argument.	No. 14-3688, Dkt. 70
Dec. 29, 2015	Court of appeals decision reversing decision on remand, vacating disallowance order, and reinstating claim.	809 F.3d 94 (2d Cir.)

APPENDIX A: PRECEDENT CASES**VI. In re Glob. Indus. Techs., Inc., No. 02-21626 (Bankr. W.D. Pa.)**

Issue: Insurers' objections to creation of silica trusts pursuant to plan of reorganization on grounds that creation of trusts involved improper collusion between debtors and tort claimants.

Time pending: 6 years, 9 months.

Date	Event	
May 19, 2006	Insurers file objections to plan confirmation.	Dkts. 5991, 5993, 5994, 5995, 5996
July 21, 2006	Debtors move to strike insurers' plan objections for lack of standing.	Dkt. 6375
Sept. 21, 2007	Bankruptcy court decision on debtors' motion to strike for lack of standing.	Dkt. 7703
Nov. 13, 2007	Bankruptcy court decision confirming plan.	Dkt. 7886
July 25, 2008	District court decision on appeal affirming bankruptcy court decisions.	No. 07-1749, 2008 WL 6838582 (W.D. Pa.)
May 21, 2009	Court of appeals panel oral argument on appeal.	No. 08-3650
June 15, 2010	Court of appeals issues order <i>sua sponte</i> setting appeal for hearing <i>en banc</i> .	
Oct. 13, 2010	Court of appeals oral argument <i>en banc</i> .	
May 4, 2011	Court of appeals <i>en banc</i> decision reversing on issue of standing, vacating order confirming plan, and remanding.	645 F.3d 201 (3d Cir.)
Nov. 17, 2011	Supreme Court denies cert.	132 S. Ct. 551
Sept. 14, 2012	On remand, following discovery, insurers settle and withdraw objections to confirmation of revised plan.	Dkts. 10732, 10733, 10734
Feb. 13, 2013	Bankruptcy court decision confirming plan.	2013 WL 587366 (Bankr. W.D. Pa.)

APPENDIX A: PRECEDENT CASES**VII. In re Lyondell Chem. Co., No. 09-10023, Adv. Pro. No. 10-05525 (Bankr. S.D.N.Y.)**

Issue: Action by estate “litigation” trust seeking avoidance under Bankruptcy Code of intentional fraudulent transfers and constructive fraudulent transfers made in connection with leveraged merger.

Time pending: 6 years, *still pending*.

Date	Event	
Dec. 23, 2010	Complaint filed by litigation trust.	Dkt. 1
Apr. 2011	Defendants file motions to dismiss.	
Jan. 14, 2014	Bankruptcy court decision granting in part and denying in part motions to dismiss.	503 B.R. 348 (Bankr. S.D.N.Y.)
Apr. 18, 2014	Plaintiff files amended complaint.	Dkt. 753
Aug. 1, 2014	Defendants file motion to dismiss amended complaint.	Dkt. 770
Nov. 18, 2015	Bankruptcy court decision granting in part and denying in part motions to dismiss amended complaint.	541 B.R. 172 (Bankr. S.D.N.Y.)
July 27, 2016	District court decision on appeal reversing bankruptcy court decision.	554 B.R. 635 (S.D.N.Y.)
Oct. 5, 2016	District court denies motion for reconsideration.	No. 16-518, 2016 WL 5818591 (S.D.N.Y.)
<i>Still pending</i>		

APPENDIX A: PRECEDENT CASES**VIII. In re Lyondell Chem. Co., No. 09-10023, Adv. Pro. No. 10-4609 (Bankr. S.D.N.Y.)**

Issue: Action by creditor trust seeking avoidance under state law of intentional fraudulent transfers and constructive fraudulent transfers made in connection with leveraged merger.

Time pending: 6 years, *still pending*.

Date	Event	
Dec. 1, 2010	Complaint filed by creditor trust.	Dkt. 1
Jan. 2011	Defendants file motions to dismiss.	
Jan. 14, 2014	Bankruptcy court decision granting in part and denying in part motions to dismiss.	503 B.R. 348 (Bankr. S.D.N.Y.)
Apr. 18, 2014	Plaintiff files amended complaint.	Dkt. 1941
July 2015	Defendants file motion to dismiss amended complaint.	
Nov. 18, 2015	Bankruptcy court decision granting in part and denying in part motions to dismiss amended complaint.	541 B.R. 172 (Bankr. S.D.N.Y.)
May 4, 2016	Defendants file motion to dismiss remaining claims.	Dkt. 2387
July 20, 2016	Bankruptcy court issues report and recommendation to district court recommending grant of motion to dismiss.	Dkt. 2414
Aug. 2016	Parties file objections and responses to report and recommendation.	
<i>Still pending</i>		

APPENDIX A: PRECEDENT CASES**IX. In re W.R. Grace & Co., No. 01-01139 (Bankr. D. Del.)****Issue:** Unsecured creditors' right to post-petition interest at default rate.**Time pending:** 5 years, 8 months.

Date	Event	
June 13, 2008	Debtors file objection to unsecured creditors' proof of claim.	Dkt. 18922
Sept. 29, 2008	Bankruptcy court hearing on objection.	
May 19, 2009	Bankruptcy court decision denying right to post-petition interest at default rate.	2009 WL 1469831 (Bankr. D. Del.)
Nov. 2, 2009	Unsecured creditors file objection to plan confirmation.	Dkt. 23657
Jan. 31, 2011	Bankruptcy court decision confirming plan and overruling objections.	446 B.R. 96 (Bankr. D. Del.)
June 11, 2012	District court decision affirming bankruptcy court decisions on appeal.	475 B.R. 34 (D. Del.)
June 17, 2013	Court of appeals oral argument.	No. 12-1404
Feb. 3, 2014	Court of appeals grants parties' motion to dismiss.	

APPENDIX A: PRECEDENT CASES**X. In re ASARCO LLC, No. 05-21207 (Bankr. S.D. Tex.)**

Issue: Whether professionals paid from a debtor's bankruptcy estate can be compensated for time spent defending their fee applications (fees-on-fees).

Time pending: 5 years, 4 months.

Date	Event	
Feb. 8, 2010	Debtors' counsel files final fee application.	Dkt. 13915
July 20, 2011	Bankruptcy court decision granting fee application.	2011 WL 2974957 (Bankr. S.D. Tex.)
Aug. 8, 2012	District court decision on appeal affirming in part, reversing and remanding in part.	477 B.R. 661 (S.D. Tex.)
Sept. 27, 2012	Bankruptcy court order on remand.	Dkt. 16712
Mar. 26, 2013	District court decision on appeal affirming bankruptcy court's order on remand.	Nos. 11-290, 12-318, 2013 WL 1292704 (S.D. Tex.)
Apr. 30, 2014	Court of appeals decision on appeal affirming in part and reversing and remanding in part.	751 F.3d 291 (5th Cir.)
Oct. 2, 2014	Supreme Court grants cert.	135 S. Ct. 44
June 15, 2015	Supreme Court decision affirming decision of court of appeals.	135 S. Ct. 2158

APPENDIX A: PRECEDENT CASES**XI. In re Rash, No. 92-10305 (Bankr. E.D. Tex.)**

Issue: Appropriate standard of valuation of vehicle in chapter 13 under section 506(a) of the Bankruptcy Code.

Time pending: 5 years, 2 months.

Date	Event	
May 1, 1992	Secured creditor files motion for relief from stay.	
June 16, 1992	Bankruptcy court evidentiary hearing on motion for relief from stay and debtors' objection to secured creditor's proof of claim.	
Jan. 11, 1993	Bankruptcy court decision valuing collateral and denying relief from stay.	149 B.R. 430 (Bankr. E.D. Tex.)
Sept. 13, 1994	Court of appeals decision reversing on appeal.	31 F.3d 325 (5th Cir.)
Aug. 16, 1995	Panel rehearing in court of appeals denied.	62 F.3d 685 (5th Cir.)
Oct. 18, 1995	Rehearing <i>en banc</i> in court of appeals granted.	68 F.3d 113 (5th Cir.)
July 30, 1996	<i>En banc</i> court of appeals decision affirming bankruptcy court decision.	90 F.3d 1036 (5th Cir.)
June 16, 1997	Supreme Court decision reversing decision of <i>en banc</i> court of appeals and remanding.	520 U.S. 953
July 28, 1997	Court of appeals remands to district court with instructions to remand to bankruptcy court.	118 F.3d 1081 (5th Cir.)

APPENDIX A: PRECEDENT CASES**XII. In re: Tribune Co. Fraudulent Conveyance Litig., No. 11-2296 (S.D.N.Y.)**

Issue: Actions by creditors seeking avoidance of fraudulent transfers made in connection with leveraged buyout.

Time pending: 5 years, 11 months, *still pending*.

Date	Event	
Mar. 1, 2011	Creditors file motion from relief from stay to file fraudulent transfer actions outside of bankruptcy.	No. 08-13141, Dkt. 8201 (Bankr. D. Del.)
Apr. 25, 2011	Bankruptcy court grants creditors' motion for relief from stay.	No. 08-13141, Dkt. 8740 (Bankr. D. Del.)
June – Dec. 2011	Creditors file fraudulent transfer actions.	
Dec. 9, 2011	Judicial Panel on Multidistrict Litigation consolidates fraudulent transfer actions in S.D.N.Y. district court.	831 F. Supp. 2d 1371 (U.S. J.P.M.L.)
Nov. 6, 2012	Defendants file motions to dismiss individual creditor actions.	Dkts. 1670, 1671.
Sept. 23, 2013	District court decision granting motions to dismiss individual creditor actions.	499 B.R. 310 (S.D.N.Y.)
Nov. 5, 2014	Court of appeals oral argument on appeal.	No. 13-3992 (2d Cir.)
Mar. 29, 2016	Court of appeals decision affirming on appeal.	818 F.3d 98 (2d Cir.)
Sept. 12, 2016	Cert. petition filed.	No. 16-317
<i>Still pending</i>		

APPENDIX A: PRECEDENT CASES**XIII. In re Calpine Corp., No. 05-60200 (Bankr. S.D.N.Y.)**

Issue: Enforceability of a “no-call” provision in bankruptcy and allowance of a claim for damages for a breach of that provision.

Time pending: 4 years, 6 months.

Date	Event	
Jan. 26, 2007	Debtors file refinancing motion.	Dkt. 3481
Feb. 27, 2007	Bankruptcy court evidentiary hearing on refinancing motion (including on issue of solvency).	
Mar. 5, 2007	Bankruptcy court decision.	365 B.R. 392 (Bankr. S.D.N.Y.)
Nov. 5, 2007	District court oral argument on appeal.	No. 07-3088 (S.D.N.Y.)
Sept. 15, 2010	District court decision affirming on appeal.	No. 07-3088, 2010 WL 3835200 (S.D.N.Y.)
July 2011	Parties withdraw appeal to court of appeals by stipulation.	No. 10-4302 (2d Cir.)

APPENDIX A: PRECEDENT CASES**XIV. In re Boston Generating LLC, No. 10-14419, Adv. Pro. No. 12-01879 (Bankr. S.D.N.Y.)**

Issue: Action by creditor trust seeking avoidance under state law of constructive fraudulent transfers made in connection with leveraged recapitalization.

Time pending: 4 years, 5 months, *still pending*.

Date	Event	
Aug. 17, 2012	Complaint filed by liquidating trust.	Dkt. 1
Aug. 1, 2013	Amended complaint filed by liquidating trust.	Dkt. 96
Nov. 1, 2013	Defendants file motions to dismiss.	
May 27, 2014	Bankruptcy court hearing on motions to dismiss.	
<i>Still pending</i>		

APPENDIX A: PRECEDENT CASES**XV. Chesapeake Energy Corp. v. The Bank of New York Mellon Trust Co., No. 13-01582 (S.D.N.Y.)****Issue:** Whether redemption of notes triggers obligation to pay makewhole.**Time pending:** 3 years, 11 months, *still pending*.

Date	Event	
Mar. 8, 2013	Chesapeake files complaint seeking declaration that redemption will not trigger makewhole.	Dkt. 1
May 8, 2013	District court decision holding that redemption would not trigger makewhole.	957 F. Supp. 2d 316 (S.D.N.Y.)
Mar. 6, 2014	Court of appeals oral argument on appeal.	No. 13-1893 (2d Cir.)
Nov. 25, 2014	Court of appeals decision reversing and remanding for proceedings on damages.	773 F.3d 110 (2d Cir.)
July 10, 2015	District court decision on damages.	2015 WL 4191419 (S.D.N.Y.)
June 13, 2016	Court of appeals oral argument on appeal.	No. 15-2366, Dkt. 75 (2d Cir.)
Sept. 15, 2016	Court of appeals decision affirming on appeal.	837 F.3d 146 (2d Cir.)
Sept. 29, 2016	Chesapeake files petition for rehearing in court of appeals.	No. 15-2366, Dkt. 104 (2d Cir.)
Nov. 4, 2016	Court of appeals denies petition for rehearing.	No. 15-2366, Dkt. 110 (2d Cir.)
Nov. 17, 2016	Court of appeals grants motion to stay mandate pending cert petition.	No. 15-2366, Dkt. 120 (2d Cir.)
<i>Still pending</i>		

APPENDIX A: PRECEDENT CASES**XVI. In re MPM Silicones, LLC, No. 14-22503, Adv. Pro. No. 14-22503 (Bankr. S.D.N.Y.)**

Issue: Rate of interest required to “cramdown” secured creditor under section 1129(b)(2)(A)(i) and allowance of makewhole claim following redemption.

Time pending: 2 years, 9 months, *still pending*.

Date	Event	
May 9, 2014	Complaint filed seeking declaration that debtors do not owe makewhole.	Dkt. 1
Sept. 9, 2014	Bankruptcy court decision confirming plan and ruling in adversary proceeding.	2014 WL 4436335 (S.D.N.Y.)
May 4, 2015	District court decision on appeal affirming decision of bankruptcy court.	531 B.R. 321 (S.D.N.Y.)
June 16, 2016	Court of appeals oral argument on appeal.	No. 15-1682 (2d Cir.)
<i>Still pending</i>		

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)
)

**SEVENTH AMENDED JOINT PLAN OF REORGANIZATION
OF ENERGY FUTURE HOLDINGS CORP., *ET AL.*,
PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

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Co-Counsel to the Debtor Energy Future Holdings Corp.

--and--

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, which are being jointly administered, a complete list of the debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the debtors' claims and noticing agent at <http://www.efhcaseinfo.com>.

9. “*Adjusted Company Cash Amount*” means the “Adjusted Company Cash Amount” as defined in the Merger Agreement.

10. “*Administrative Claim*” means a Claim for costs and expenses of administration of the Estates under sections 503(b) (including 503(b)(9) Claims), 507(b), or 1114(e)(2) of the Bankruptcy Code, other than DIP Claims, including: (a) the actual and necessary costs and expenses incurred after the Petition Date through the Effective Date of preserving the applicable Estates and operating the businesses of the Debtors; (b) Allowed Professional Fee Claims; (c) all fees and charges assessed against the Estates under chapter 123 of title 28 of the United States Code, 28 U.S.C. §§ 1911–1930; and (d) all Intercompany Claims authorized pursuant to the Cash Management Order.

11. “*Administrative Claims Bar Date*” means the deadline for Filing requests for payment of Administrative Claims, which: (a) with respect to General Administrative Claims, shall be 30 days after the Effective Date; and (b) with respect to Professional Fee Claims, shall be 45 days after the Effective Date.

12. “*Affiliate*” has the meaning set forth in section 101(2) of the Bankruptcy Code.

13. “*Allowed*” means with respect to any Claim or Interest, except as otherwise provided herein: (a) a Claim or Interest as to which no objection has been Filed prior to the Claims Objection Deadline and that is evidenced by a Proof of Claim or Interest, as applicable, timely Filed by the applicable Bar Date or that is not required to be evidenced by a Filed Proof of Claim or Interest, as applicable, under the Plan, the Bankruptcy Code, or a Final Order; (b) a Claim or Interest that is scheduled by the Debtors as neither disputed, contingent, nor unliquidated, and as for which no Proof of Claim or Interest, as applicable, has been timely Filed in an unliquidated or a different amount; or (c) a Claim or Interest that is upheld or otherwise allowed (i) pursuant to the Plan, (ii) in any stipulation that is approved by the Bankruptcy Court, (iii) pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection herewith, or (iv) by Final Order (including any such Claim to which the Debtors had objected or which the Bankruptcy Court had disallowed prior to such Final Order); ~~provided, however, that, without prejudice to the releases set forth in Article VIII.B-D, and except as otherwise set forth herein, the consummation of the Plan and the occurrence of the Effective Date is not intended to impair the right of any Holder or any of the Indenture Trustees to prosecute an appeal from, or otherwise petition for review of, any order or judgment of the Bankruptcy Court (or any other court of competent jurisdiction) disallowing any Claim; provided, further, for the avoidance of doubt, all parties reserve all rights in connection with any such appeal or petition, including (a) the right of any of the Reorganized Debtors to move for the dismissal of any such appeal or petition on grounds of equitable mootness or any other prudential basis and (b) the right of any Holder or any of the Indenture Trustees to oppose any such motion on any grounds, including on grounds that the relief sought in the appeal or petition is contemplated by or provided for under the Plan. Except as otherwise specified in the Plan or any Final Order, the amount of an Allowed Claim shall not include interest or other charges on such Claim from and after the Petition Date.~~ Notwithstanding anything to the contrary herein, no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes such Debtor or Reorganized Debtor, as applicable.

14. “*Allowed EFIH General Unsecured Claim*” means, as set forth more fully in the EFIH Unsecured Creditor Plan Support Agreement, (a) the Charging Lien Advance; (b) the principal amount outstanding of the EFIH Unsecured Notes, in the amount of \$1,568 million; (c) any accrued but unpaid prepetition interest, in the amount of \$81 million; and (d) any accrued but unpaid postpetition interest at the Federal Judgment Rate, in the amount of \$5 million (based on an assumed EFH Effective Date of April 30, 2016, subject to adjustment based on the actual EFH Effective Date) plus any additional amounts, including postpetition interest at the Federal Judgment Rate, accruing on such Allowed EFIH General Unsecured Claim from the EFH Effective Date until the Allowed EFIH General Unsecured Claim has been paid in full pursuant to the terms of this Plan, but excluding any recovery on account of asserted Makewhole Claims.

15. “*Alternative E-Side Plan*” means “Alternative E-Side Plan,” as such term is defined in the EFIH Unsecured Creditor Plan Support Agreement.

16. “*Amended and Restated Split Participant Agreement*” means that certain Amended and Restated Split Participant Agreement, by and among Oncor Electric, Reorganized TCEH, and OpCo, to be entered into on or before the TCEH Effective Date, which shall govern the rights and obligations of each party thereto with respect to

69. “*DIP Orders*” means, collectively: (a) the TCEH DIP Order; and (b) the EFIH First Lien Final DIP Order.

70. “*Direct Professional Fee Claims*” means Professional Fee Claims incurred by a Professional for the benefit of only one of the following: (a) the EFH Debtors; (b) the EFIH Debtors; or (c) the TCEH Debtors.

71. “*Disbursing Agent*” means the Reorganized Debtors or the Entity or Entities authorized to make or facilitate distributions under the Plan as selected by the Debtors or the Reorganized Debtors, as applicable, in consultation with the Plan Sponsor and the TCEH Supporting First Lien Creditors, *provided* that (a) the EFH Notes Trustee shall be the Disbursing Agent for Classes A4, A5, A6, and B5; (b) the EFIH Unsecured Notes Trustee shall be the Disbursing Agent for distributions to Holders of EFIH Unsecured Note Claims; ~~and~~ (c) the EFIH First Lien Notes Trustee shall be the Disbursing Agent for the EFIH First Lien Note Claims; and (d) the EFIH Second Lien Notes Trustee shall be the Disbursing Agent for distributions to Holders of EFIH Second Lien Note Claims.

72. “*Disclosure Statement*” means, as applicable, the TCEH Disclosure Statement and/or the EFH Disclosure Statement.

73. “*Disclosure Statement Order*” means, as applicable, the TCEH Disclosure Statement Order and/or the EFH Disclosure Statement Order.

74. “*Disinterested Directors and Managers*” means the disinterested directors and managers of EFH Corp., EFIH, and EFCH/TCEH.

75. “*Disinterested Directors Settlement*” means the settlement negotiated by and among the Disinterested Directors and Managers regarding Debtor Intercompany Claims set forth in the Initial Plan.

76. “*Disputed*” means with regard to any Claim or Interest, a Claim or Interest that is not yet Allowed.

77. “*Distribution*” means, as part of the Spin-Off, and following the Contribution and the Reorganized TCEH Conversion, distribution of (a) the Reorganized TCEH Common Stock; (b) the net Cash proceeds of the New Reorganized TCEH Debt (or at the TCEH Supporting First Lien Creditors’ election, all or a portion of such New Reorganized TCEH Debt) and the Spin-Off Preferred Stock Sale, if any, (c) the Spin-Off TRA Rights (if any); and (d) proceeds from the TCEH Settlement Claim, if determined as of the TCEH Effective Date, and to the extent not determined as of the TCEH Effective Date, the right to receive recoveries under the TCEH Settlement Claim; provided, that following the TCEH Effective Date, Reorganized TCEH will nominally hold the right to receive recoveries under the TCEH Settlement Claim but the Holders of Allowed TCEH First Lien Secured Claims will hold all legal and equitable entitlement to receive recoveries under the TCEH Settlement Claim, in the case of clauses (a), (b), and (c) above, received in the Contribution to Holders of Allowed TCEH First Lien Secured Claims.

78. “*Distribution Date*” means the Effective Date and any Periodic Distribution Date thereafter.

79. “*Distribution Record Date*” means other than with respect to any publicly-held securities, the record date for purposes of making distributions under the Plan on account of Allowed Claims and Allowed Interests (other than DIP Claims), which date shall be the date that is five (5) Business Days after the Confirmation Date, as applicable, or such other date as designated in an order of the Bankruptcy Court; *provided, however*, that the Distribution Record Date for all Holders of EFH Unexchanged Note Claims, EFH Legacy Note Claims, and EFH LBO Note Claims shall be November 20, 2016; *provided further, however*, that the Distribution Record Date for the Holders of Allowed Class C3 Claims shall be the date that is five (5) Business Days after the TCEH Confirmation Date, or such other date as designated in an order of the Bankruptcy Court, regardless of whether distributions on account of such Claims are made on the TCEH Effective Date or the EFH Effective Date.

80. “*DTC*” means the Depository Trust Company.

81. “*EFCH*” means Energy Future Competitive Holdings Company LLC, a Delaware limited liability company.

113. “*EFH/EFIH Committee Standing Motion*” means the *Motion of the EFH Official Committee for Entry of an Order Granting Derivative Standing and Authority to Prosecute and Settle Claims on Behalf of the Luminant Debtors’ Estates* [D.I. 3605].

114. “*EFH/EFIH Debtors*” means, collectively: (a) the EFH Debtors; and (b) the EFIH Debtors.

115. “*EFH/EFIH Distribution Account*” means one or more interest-bearing escrow accounts, including the segregated EFIH Claims Reserve and Post-Effective Date Administrative Account, as applicable, designated by EFH Corp. prior to the EFH Effective Date to hold Cash consisting of (a) the Merger Sub Cash Amount, (b) the Cash distributed to satisfy Allowed EFH Non-Qualified Benefit Claims, (c) the EFIH Unsecured Creditor Cash Pool, and (d) any other amounts to be funded into the EFH/EFIH Distribution Account pursuant to the terms of the Plan or Merger Agreement, which ~~account~~accounts shall be administered by the EFH Plan Administrator Board.

116. “*EFH/EFIH Plan Supporters*” means, collectively: (a) the Plan Sponsor; and, (b) excluding the EFH Debtors and the EFIH Debtors, all other parties to the Plan Sponsor Plan Support Agreement and the EFIH Unsecured Creditor Plan Support Agreement.

117. “*EFH/EFIH Rejected Executory Contract and Unexpired Lease List*” means the list of Executory Contracts and Unexpired Leases to be rejected, as determined by the Plan Sponsor, in its sole discretion, the form of which shall be included in the Plan Supplement.

118. “*EFH Group*” means the “affiliated group” (within the meaning of Section 1504(a)(1) of the Internal Revenue Code), and any consolidated, combined, aggregate, or unitary group under state or local law, of which EFH Corp. is the common parent.

119. “*EFH LBO Note Claims*” means, collectively: (a) the EFH LBO Note Primary Claims; and (b) the EFH LBO Note Guaranty Claims.

120. “*EFH LBO Note Guaranty Claim*” means any Claim against EFIH derived from or based upon the EFH LBO Notes.

121. “*EFH LBO Note Indenture*” means that certain Indenture, as amended or supplemented from time to time, dated October 31, 2007, by and among EFH Corp., as issuer, EFCH and EFIH as guarantors, and the EFH Notes Trustee.

122. “*EFH LBO Note Primary Claim*” means any Claim against EFH Corp. derived from or based upon the EFH LBO Notes.

123. “*EFH LBO Notes*” means, collectively: (a) the EFH LBO Senior Notes; and (b) the EFH LBO Toggle Notes.

124. “*EFH LBO Senior Notes*” means the 10.875% senior notes due November 1, 2017, issued by EFH Corp. pursuant to the EFH LBO Note Indenture.

125. “*EFH LBO Toggle Notes*” means the 11.25%/12.00% toggle notes due November 1, 2017, issued by EFH Corp. pursuant to the EFH LBO Note Indenture.

126. “*EFH Legacy Note Claims*” means, collectively: (a) the EFH Legacy Series P Claims; (b) the EFH Legacy Series Q Claims; and (c) the EFH Legacy Series R Claims.

127. “*EFH Legacy Note Indentures*” means, collectively: (a) the EFH Legacy Series P Indenture; (b) the EFH Legacy Series Q Indenture; and (c) the EFH Legacy Series R Indenture.

128. “*EFH Legacy Notes*” means, collectively: (a) the EFH Legacy Series P Notes; (b) the EFH Legacy Series Q Notes; and (c) the EFH Legacy Series R Notes.

161. “*EFIH Claims Reserve*” means the interest-bearing account established on the EFH Effective Date pursuant to the EFH Unsecured Creditor Plan Support Agreement, ~~as applicable, using the Merger Sub Cash Amount and Cash on hand at EFH as of the EFH Effective Date, (and excluding in all instances, an amount equal to the value of the~~ Cash on hand at EFH Corp. as of the EFH Effective Date), which shall consist of (a) the maximum amount that could ultimately be Allowed as of the EFH Effective Date in respect of the EFH First Lien Makewhole Claims and EFH Second Lien Makewhole Claims, together with contractual interest thereon that has accrued or accrues through the EFH Effective Date (including Additional Interest and interest on interest) based on the EFH/EFIH Debtors’ books and records, determined in consultation with the Initial Supporting Creditors, or as ordered by the Bankruptcy Court, (b) the EFH/EFIH Debtors’ good-faith estimate, determined in consultation with the Initial Supporting Creditors (or in an amount ordered by the Bankruptcy Court) of all contractual interest (including Additional Interest and interest on interest) accruing or on account of the EFH First Lien Makewhole Claims and EFH Second Lien Makewhole Claims for a period of three years from the EFH Effective Date (or longer if ordered by the Bankruptcy Court), ~~or until such time as such Claims may become Allowed and are paid in full, in Cash,~~ (c) the amount of pre-EFH Effective Date fees and expenses of the EFH First Lien Notes Trustee and the EFH Second Lien Notes Trustee (or Holders of EFH First Lien Notes or Holders of EFH Second Lien Notes) that may be Allowed under or on account of the EFH First Lien Notes and the EFH Second Lien Notes (together, if ordered by the Bankruptcy Court, with contractual interest thereon), including Additional Interest and interest on interest that have not been paid on or by the EFH Effective Date, (d) the EFH/EFIH Debtors’ good-faith estimate, determined in consultation with the Initial Supporting Creditors (or in an amount ordered by the Bankruptcy Court), of post-EFH Effective Date fees and expenses that may be Allowed under or on account of the EFH First Lien Notes or EFH Second Lien Notes (together with, if ordered by the Bankruptcy Court, contractual interest on post-EFH Effective Date fees, including Additional Interest and interest on interest), and (e) any other Claims relating to the EFH First Lien Notes and the EFH Second Lien Notes (including the Trustee Indemnification Claims, the Future Interest Claims, any Claim based upon or under the EFH Collateral Trust Agreement, and any Claims accruing prior to the EFH Effective Date that are not paid in full, in Cash, on the EFH Effective Date), together with contractual interest thereon (including Additional Interest and interest on interest), to the extent the EFH/EFIH Debtors, the Initial Supporting Creditors, the EFH First Lien Notes Trustee, and the EFH Second Lien Notes Trustee collectively agree to escrow amounts on account of one or more of such categories of Claims or the Bankruptcy Court otherwise enters an order requiring amounts on account of one or more of such categories of Claims to be escrowed; *provided, however*, that neither Reorganized EFH nor the Plan Sponsor shall have any obligation to fund the EFH Claims Reserve with Cash on hand after the EFH Effective Date and the EFH Claims Reserve shall be funded solely using the Merger Sub Cash Amount and Cash on hand at EFH immediately prior to the EFH Effective Date. For the avoidance of doubt, no amount of Cash on hand at EFH Corp. shall be used to fund the EFH Claims Reserve.

162. “*EFIH Debtor Intercompany Claim*” means any Claim by an EFH Debtor against another EFH Debtor.

163. “*EFIH Debtors*” means, collectively: (a) EFH; and (b) EFH Finance.

164. “*EFH DIP Secured Cash Management Banks*” means the “Secured Cash Management Banks,” as defined in the EFH First Lien Final DIP Order.

165. “*EFH DIP Secured Cash Management Obligations*” means the “Secured Cash Management Obligations,” as defined in the EFH First Lien Final DIP Order.

166. “*EFH DIP Secured Hedge Banks*” means the “Secured Hedge Banks,” as defined in the EFH First Lien Final DIP Order.

167. “*EFH DIP Secured Hedge Obligations*” means the “Secured Hedge Obligations,” as defined in the EFH First Lien Final DIP Order.

168. “*EFH Finance*” means EFH Finance Inc., a Delaware corporation.

~~169. “*EFH First Lien 6.875% Notes*” means the EFH First Lien Notes that bear interest (because of an increase in the rate of 50 basis points due to the EFH Debtors’ failure to register them) under the applicable agreements at a rate of 7.375% per annum (CUSIPs 29269Q AE7 & U29197).~~

~~170.~~ “*EFIH First Lien 10.0% Notes*” means the ~~EFIH First Lien Notes that bear interest under the applicable agreements at a rate of 10.000% per annum (CUSIP 29269QAA5).~~

~~171.~~ “*EFIH First Lien 10.5% Notes*” means ~~the EFIH First Lien Notes that bear interest (because of an increase in the rate of 50 basis points due to the EFIH Debtors’ failure to register them) under the applicable agreements at a rate of 10.500% per annum (CUSIPs 29269QAK3 & U29197AG2).~~

~~169, 172.~~ “*EFIH First Lien 2017 Note Indenture*” means that certain Indenture, as amended or supplemented from time to time, dated August 14, 2012, by and among the EFIH Debtors, as issuers, and the EFIH First Lien Notes Trustee.

~~170, 173.~~ “*EFIH First Lien 2017 Notes*” means the 6.875% senior secured notes due August 15, 2017, issued by the EFIH Debtors pursuant to the EFIH First Lien 2017 Note Indenture.

~~171, 174.~~ “*EFIH First Lien 2020 Note Indenture*” means that certain Indenture, as amended or supplemented from time to time, dated August 17, 2010, by and among the EFIH Debtors, as issuers, and the EFIH First Lien Notes Trustee.

~~172, 175.~~ “*EFIH First Lien 2020 Notes*” means the 10.0% senior secured notes due December 1, 2020, issued by the EFIH Debtors pursuant to the EFIH First Lien 2020 Note Indenture.

~~173, 176.~~ “*EFIH First Lien DIP Agent*” means Deutsche Bank AG New York Branch, or its duly appointed successor, in its capacity as administrative agent and collateral agent for the EFIH First Lien DIP Facility.

~~174, 177.~~ “*EFIH First Lien DIP Claim*” means any Claim derived from or based upon the EFIH First Lien DIP Credit Agreement or the EFIH First Lien Final DIP Order, including Claims for all principal amounts outstanding, interest, fees, expenses, costs, and other charges.

~~175, 178.~~ “*EFIH First Lien DIP Collateral*” means the “EFIH DIP Collateral,” as defined in the EFIH First Lien Final DIP Order.

~~176, 179.~~ “*EFIH First Lien DIP Contingent Obligations*” means the “Contingent Obligations,” as defined in the EFIH First Lien DIP Credit Agreement, including any and all expense reimbursement obligations of the Debtors that are contingent as of the EFH Effective Date.

~~177, 180.~~ “*EFIH First Lien DIP Credit Agreement*” means that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement, dated as of June 19, 2014, as amended, supplemented, or modified from time to time, by and among EFIH, EFIH Finance, the banks, financial institutions, and other lenders from time to time party thereto, the EFIH First Lien DIP Agent, and the other agents and entities party thereto, collectively with the “EFIH First Lien DIP Documents,” as defined in the EFIH First Lien Final DIP Order.

~~178, 181.~~ “*EFIH First Lien DIP Facility*” means the EFIH Debtors’ \$5.4 billion debtor-in-possession financing facility, as approved on a final basis pursuant to the EFIH First Lien Final DIP Order.

~~179, 182.~~ “*EFIH First Lien DIP Repayment Amount*” means an amount in Cash sufficient to repay all outstanding Allowed EFIH First Lien DIP Claims in accordance with Article II.B.2 of the Plan.

~~180, 183.~~ “*EFIH First Lien Final DIP Order*” means the *Final Order (A) Approving Postpetition Financing For Energy Future Intermediate Holding Company LLC and EFIH Finance Inc., (B) Granting Liens and Providing Superpriority Administrative Expense Claims, (C) Approving the Use of Cash Collateral by Energy Future Intermediate Holding Company LLC and EFIH Finance Inc., (D) Authorizing the EFIH First Lien Repayment, (E) Authorizing Issuance of Roll-Up Debt to the Extent Authorized by the Settlement Orders, and (F) Modifying the Automatic Stay* [D.I. 859], as amended by the *Amended Final Order (A) Approving Postpetition Financing for Energy Future Intermediate Holding Company LLC and EFIH Finance Inc., (B) Granting Liens and Providing Superpriority Administrative Expense Claims, (C) Approving the Use of Cash Collateral by Energy Future Intermediate Holding*

Company LLC and EFIH Finance Inc., (D) Authorizing the EFIH First Lien Repayment, (E) Authorizing Issuance of Roll-Up Debt to the Extent Authorized by the Settlement Orders, and (F) Modifying the Automatic Stay [D.I. 3856].

~~184.~~ *“EFIH First Lien Intercreditor Action” means the pending appeal by the EFIH First Lien Notes Trustee against the EFIH Second Lien Notes Trustee for turnover and other relief (Delaware Trust Company, as Indenture Trustee v. Computershare Share Trust Company, N.A., et al, No. 16-cv-461 (D. Del.).*

~~181.~~^{185.} *“EFIH First Lien Makewhole Claims” means the Makewhole Claims in respect of the EFIH First Lien Notes.*

~~182.~~^{186.} *“EFIH First Lien Note Claim” means any Secured Claim derived from or based upon the EFIH First Lien Notes (including, for the avoidance of doubt, any Claim based upon or under the EFIH Collateral Trust Agreement).*

~~183.~~^{187.} *“EFIH First Lien Note Indentures” means, collectively: (a) the EFIH First Lien 2017 Note Indenture; and (b) the EFIH First Lien 2020 Note Indenture.*

~~184.~~^{188.} *“EFIH First Lien Notes” means, collectively: (a) the EFIH First Lien 2017 Notes; and (b) the EFIH First Lien 2020 Notes (and the EFIH First Lien 2017 Note Indenture and the EFIH First Lien 2020 Note Indenture).*

~~185.~~^{189.} *“EFIH First Lien Notes Trustee” means Delaware Trust Company, as successor indenture trustee to BNY.*

~~186.~~^{190.} *“EFIH First Lien Principal Settlement” means that certain settlement approved by the EFIH First Lien Principal Settlement Order.*

~~187.~~^{191.} *“EFIH First Lien Principal Settlement Order” means the *Order Approving EFIH First Lien Settlement* [D.I. 858].*

~~188.~~^{192.} *“EFIH Intercreditor Litigation” means the litigation commenced by the EFIH First Lien Notes Trustee against the EFIH Second Lien Notes Trustee for turnover and other relief, *Delaware Trust Company, as Indenture Trustee v. Computershare Share Trust Company, N.A., et al.*, Adv. Pro. Np. 14-50410-CSS (Bankr. D. Del.) and any pending appeals related thereto.*

~~189.~~^{193.} *“EFIH Professional Fee Escrow Account” means an escrow account established and funded pursuant to Article II.A.2(b) of the Plan for Professional Fee Claims allocated to the EFIH Debtors or the Reorganized EFIH Debtors pursuant to pursuant to Article II.A.2(d) of the Plan.*

~~190.~~^{194.} *“EFIH Professional Fee Reserve Amount” means the total amount of Professional Fee Claims estimated to be allocated to the EFIH Debtors or the Reorganized EFIH Debtors in accordance with Article II.A.2(c) of the Plan.*

~~191.~~^{195.} *“EFIH Second Lien Makewhole Claims” means the Makewhole Claims in respect of the EFIH Second Lien Notes.*

~~192.~~^{196.} *“EFIH Second Lien Note Claim” means any Secured Claim derived from or based upon the EFIH Second Lien Notes.*

~~193.~~^{197.} *“EFIH Second Lien Note Indenture” means that certain Indenture, as amended or supplemented from time to time, dated April 25, 2011, by and among the EFIH Debtors, as issuers, and the EFIH Second Lien Notes Trustee.*

~~194.~~^{198.} *“EFIH Second Lien Notes” means, collectively: (a) the 11.0% senior secured second lien notes due October 1, 2021 (the “EFIH Second Lien 11.0% Notes”); and (b) the 11.75% senior secured second lien*

notes due March 1, 2022 (the “EFIH Second Lien 11.75% Notes”), issued by the EFIH Debtors pursuant to the EFIH Second Lien Note Indenture (and the EFIH Second Lien Note Indenture).

~~195.199.~~ “*EFIH Second Lien Notes Trustee*” means Computershare Trust, as successor indenture trustee to BNY.

~~196.200.~~ “*EFIH Second Lien Note Repayment Amount*” means an amount in Cash sufficient to repay all outstanding EFIH Second Lien Note Claims in accordance with, and to the extent provided in, Article III.B.20 of the Plan, excluding any amounts paid on account of EFIH Second Lien Note Claims that are Makewhole Claims.

~~197.201.~~ “*EFIH Second Lien Partial Repayment*” means the partial repayment of EFIH Second Lien Notes, in the amount of up to \$750 million, effectuated pursuant to the *Order (A) Authorizing Partial Repayment of EFIH Second Lien Notes; (B) Approving EFIH DIP Consent; and (C) Authorizing Consent Fee* [D.I. 3855].

~~198.202.~~ “*EFIH Senior Toggle Note Indenture*” means that certain Indenture, as amended or supplemented from time to time, dated December 5, 2012, by and among the EFIH Debtors, as issuers, and the EFIH Unsecured Notes Trustee.

~~199.203.~~ “*EFIH Senior Toggle Notes*” means the 11.25%/12.25% senior unsecured notes due December 1, 2018, issued by the EFIH Debtors pursuant to the EFIH Senior Toggle Note Indenture.

~~200.204.~~ “*EFIH Supporting Unsecured Creditors*” means the holders or investment advisors or managers of discretionary accounts of beneficial holders that hold, or direct the vote of, EFIH Unsecured Note Claims that are party to the EFIH Unsecured Creditor Plan Support Agreement.

~~201.205.~~ “*EFIH Unexchanged Note Indenture*” means that certain Indenture, as amended or supplemented from time to time, dated November 16, 2009, by and among the EFIH Debtors, as issuers, and the EFIH Unsecured Notes Trustee.

~~202.206.~~ “*EFIH Unexchanged Notes*” means the 9.75% unsecured notes due October 15, 2019, issued by the EFIH Debtors pursuant to the EFIH Unexchanged Note Indenture.

~~203.207.~~ “*EFIH Unsecured Creditor Cash Pool*” means (a) the balance, if any, of any Cash held by EFIH after first giving effect to all other transactions and distributions that are contemplated by the Plan or the Merger Agreement to occur on or before the EFH Effective Date, including the funding of the EFIH Claims Reserve in accordance with the Plan and any order of the Bankruptcy Court regarding the amount required to fund the EFIH Claims Reserve, and (b) any other amounts payable to Holders of Claims entitled to distributions from the EFIH Unsecured Creditor Cash Pool as expressly provided in the Plan.

~~204.208.~~ “*EFIH Unsecured Creditor Equity Pool*” means (a) the Reorganized EFH Class B Common Stock as set forth in Article IV.B.9 of the Plan, which shall, on the EFH Effective Date, convert to the right to receive the NextEra Class B Common Stock and (b) any other amounts payable to Holders of Claims entitled to distributions from the EFIH Unsecured Creditor Equity Pool as expressly provided in the Plan.

~~205.209.~~ “*EFIH Unsecured Creditor Plan Support Agreement*” means that certain plan support agreement entered into by the EFH Debtors, the EFIH Debtors, the EFIH Unsecured Notes Trustee, and the EFIH Supporting Unsecured Creditors, on January 2, 2017.

~~206.210.~~ “*EFIH Unsecured Creditor PSA Order*” means the order entered by the Bankruptcy Court on [___], 2017, authorizing the EFH Debtors and the EFIH Debtors’ entry into the EFIH Unsecured Creditor Plan Support Agreement.

~~207.211.~~ “*EFIH Unsecured Creditor Recovery Pool*” means, collectively, the EFIH Unsecured Creditor Equity Pool and the EFIH Unsecured Creditor Cash Pool.

~~266.270-~~ “*Luminant Makewhole Settlement*” means those transactions in settlement of Luminant’s obligations to Oncor under the Tax and Interest Makewhole Agreements, by which EFIH purchased Luminant’s obligations from Oncor in August 2012, and Luminant paid EFIH the same respective amount in September 2012.

~~267.271-~~ “*Makewhole Claim*” means any Claim, whether secured or unsecured, derived from or based upon makewhole, applicable premium, redemption premium, or other similar payment provisions provided for by the applicable indenture or other agreement calculated as of the EFH Effective Date (or in the case of the EFIH First Lien Notes, the closing date of the EFIH First Lien DIP Facility, and in the case of EFIH Second Lien Notes, the closing date of the EFIH Second Lien Partial Repayment, with respect to the amount repaid at such time) or any other alleged premiums, fees, or Claims relating to the repayment of the principal balance of any notes, including any Claims for damages, or other relief arising from the repayment, prior to the respective stated maturity or call date, of the principal balance of any notes or any denial of any right to rescind any acceleration of such notes.

~~268.272-~~ “*Makewhole Litigation Oversight Committee*” means the committee, including the Pre-Effective Date Makewhole Litigation Oversight Committee, that shall oversee the litigation and/or settlement of the EFIH First Lien Makewhole Claims and EFIH Second Lien Makewhole Claims on behalf of the EFIH Debtors consistent with the terms and conditions set forth in the Plan and as set forth in greater detail in the Amended Plan Supplement.

~~269.273-~~ “*Management Agreement*” means that certain management agreement, dated as of October 10, 2007, by and among EFH Corp., TEF, Kohlberg Kravis Roberts & Co. L.P., TPG Capital, L.P., Goldman, Sachs & Co., and Lehman Brothers Inc.

~~270.274-~~ “*Merger*” means that certain merger on the EFH Effective Date of Reorganized EFH with and into Merger Sub in a transaction intended to qualify as a tax-free reorganization under section 368(a) of the Internal Revenue Code, with Merger Sub continuing as the surviving entity.

~~271.275-~~ “*Merger Agreement*” means that certain Agreement and Plan of Merger, dated as of July 29, 2016, by and among NextEra, Merger Sub, EFH Corp., and EFIH, as may be amended, supplemented, or otherwise modified from time to time in accordance therewith, including all exhibits and schedules attached thereto, which shall be included in the Plan Supplement.

~~272.276-~~ “*Merger Closing*” means “Closing,” as that term is defined in the Merger Agreement.

~~273.277-~~ “*Merger Effective Time*” means “Effective Time,” as that term is defined in the Merger Agreement.

~~274.278-~~ “*Merger Sub*” means EFH Merger Co., LLC, a Delaware limited liability company wholly owned by NextEra, with whom and into which Reorganized EFH will merge.

~~275.279-~~ “*Merger Sub Cash Amount*” means the Cash to be delivered by Merger Sub to the EFH/EFIH Distribution Account at the Merger Closing in accordance with the Merger Agreement.

~~276.280-~~ “*Merger Sub Account*” means a segregated, restricted account, and invested and disbursed in accordance with that certain escrow agreement, dated as of the EFH Effective Date, between Merger Sub and U.S. Bank National Association, and used solely to satisfy Allowed Legacy General Unsecured Claims Against the EFH Debtors that are based on asbestos claims and related costs, including court costs, expert witness costs, attorneys’ fees, the cost to procure insurance and all other related costs from time to time during the fifty year term of the escrow agreement and, to the extent any balance (including accrued interest, if any) remains at the end of such term, such balance shall only be paid over to a charity specified in accordance with the terms of such escrow agreement.

~~277.281-~~ “*Minority Interest Acquisition*” means the acquisition by Merger Sub, NextEra, or an Affiliate of NextEra of (a) the Oncor Minority Interest in one or more privately negotiated transactions with TTI or Oncor Management or (b) the portion of the Oncor Minority Interest held by TTI pursuant to the drag-along rights set forth in Section 3.3 of the Investor Rights Agreement.

Series 2001A due May 1, 2022 (15% ceiling); (z) Series 2001B due May 1, 2030 (15% ceiling); and (aa) Series 2001A due May 1, 2027 (variable rate), to which, among others, the PCRB Trustee is party.

~~321.325.~~ “PCRB Trustee” means BNYM, as indenture trustee for the PCRBs.

~~322.326.~~ “Pension Plans” means the two single-employer defined benefit plans insured by the PBGC and covered by Title IV of ERISA, 29 U.S.C. §§ 1301-1461, including (a) the plan sponsored by EFH Corp., and (b) the plan sponsored by Oncor Electric.

~~323.327.~~ “Periodic Distribution Date” means, unless otherwise ordered by the Bankruptcy Court, the first Business Day that is 120 days after the Effective Date, and, for the first year thereafter, the first Business Day that is 120 days after the immediately preceding Periodic Distribution Date. After one year following the Effective Date, the Periodic Distribution Date will occur on the first Business Day that is 180 days after the immediately preceding Periodic Distribution Date, unless and until otherwise ordered by the Bankruptcy Court.

~~324.328.~~ “Petition Date” means April 29, 2014, the date on which the Debtors commenced the Chapter 11 Cases.

~~325.329.~~ “PIK Settlement” means the transactions contemplated by the EFIH Unsecured Creditor Plan Support Agreement.

~~326.330.~~ “Plan” means this ~~Fifth~~Seventh Amended Joint Plan of Reorganization of Energy Future Holdings Corp., et al., Pursuant to Chapter 11 of the Bankruptcy Code, including the Plan Supplement and Amended Plan Supplement.

~~327.331.~~ “Plan Sponsor” means NextEra, acting through its wholly-owned subsidiary, NextEra Energy Capital Holdings, Inc., the beneficial owner of approximately \$45 million principal amount of EFIH Senior Toggle Notes and a creditor and party in interest in the Chapter 11 Cases, unless and until such time as the Merger Agreement shall have been terminated in accordance with its terms and without consummation of the Merger. For the avoidance of doubt, upon the termination of the Merger Agreement, any consent rights of the Plan Sponsor set forth in this Plan shall be inoperative.

~~328.332.~~ “Plan Sponsor Cash Amount” means collectively, (a) the Merger Sub Cash Amount; (b) the EFIH First Lien DIP Repayment Amount; and (c) the EFIH Second Lien Note Repayment Amount.

~~329.333.~~ “Plan Sponsor Investment” means, collectively: (a) the Plan Sponsor Cash Amount; and (b) the NextEra Common Stock Investment.

~~330.334.~~ “Plan Sponsor Plan Support Agreement” means that certain Alternative E-Side Restructuring Agreement, dated as of July 29, 2016, by and among the Plan Sponsor, the EFH Debtors, the EFIH Debtors, and certain Holders of Claims Against the EFH Debtors and EFIH Debtors, as amended on September 19, 2016 and as may be amended, supplemented or otherwise modified from time to time in accordance therewith.

~~331.335.~~ “Plan Sponsor PSA Order” means the Order (A) Authorizing Entry Into the Merger Agreement, (B) Approving the Termination Fee, and (C) Authorizing Entry Into and Performance Under the Plan Support Agreement [D. I. 9584], entered by the Bankruptcy Court on September 19, 2016.

~~332.336.~~ “Plan Supplement” means the compilation of documents and forms of documents, schedules, and exhibits to the Plan, ~~to be Filed by the Debtors no later than 14 days before the Confirmation Hearing or such later date as may be approved by the Bankruptcy Court on notice to parties in interest, and additional documents Filed with the Bankruptcy Court before the Effective Date as amendments to the Plan Supplement on November 10, 2016 (Docket No. 10101)~~ comprised of, among other documents, the following, if any and as applicable: (a) New Organizational Documents; (b) the Rejected Executory Contract and Unexpired Lease List; (c) the Assumed Executory Contract and Unexpired Lease List (which shall include the Employment Agreements and provide that such Employment Agreements are assigned to Reorganized TCEH on the TCEH Effective Date); (d) a

list of retained Causes of Action; (e) the Reorganized TCEH Debtor Management Incentive Plan; (f) the New Employee Agreements/Arrangements; (g) the Reorganized TCEH Registration Rights Agreement; (h) the identity of the members of the New Boards and management for the Reorganized Debtors; (i) the New Reorganized TCEH Debt Documents; (j) the Merger Agreement; (k) the Tax Matters Agreement; (l) the Transition Services Agreement; (m) the Reorganized TCEH Shareholders' Agreement; (n) the Oncor Letter Agreement; (o) the Separation Agreement; (p) the Spin-Off Tax Receivable Agreement or the Taxable Separation Tax Receivable Agreement (as applicable); (q) the Amended and Restated Split Participant Agreement; (r) the Taxable Separation Memorandum; and (s) the TRA Information Form. Any reference to the Plan Supplement in the Plan shall include each of the documents identified above as (a) through (s), as applicable. Other than with respect to the assumption and assignment of the Employment Agreements as set forth herein, the documents that comprise the Plan Supplement shall be: (i) subject to any consent or consultation rights provided hereunder and thereunder, including as provided in the definitions of the relevant documents; and (ii) in form and substance reasonably acceptable (or, to the extent otherwise provided hereunder or thereunder, including as provided in the applicable definitions of the applicable documents, acceptable) to the Plan Sponsor, the TCEH Supporting First Lien Creditors, and the DIP Agents. The Parties entitled to amend the documents contained in the Plan Supplement shall be entitled to amend such documents in accordance with their respective terms and Article X of the Plan through and including the Effective Date.

~~333.337-~~ “*Plan Support Agreement*” means that certain Plan Support Agreement, dated as of August 9, 2015 (as amended on September 11, 2015, October 27, 2015, and November 12, 2015, and as may be amended, supplemented, or otherwise modified from time to time in accordance therewith), by and among the Debtors, the Original Plan Sponsors, the TCEH Supporting First Lien Creditors, the TCEH First Lien Agent, the TCEH Supporting Second Lien Creditors, the TCEH Committee, and certain other Entities, including all exhibits and schedules attached thereto.

~~334.338-~~ “*Post-Closing Audit*” means the “Post-Closing Audit” as defined in the Merger Agreement.

~~335.339-~~ “*Post-Effective Date Administrative Account*” means the interest-bearing escrow account segregated within the EFH/EFIH Distribution Account pursuant to the EFIH Unsecured Creditor Plan Support Agreement, governed by an escrow agreement reasonably acceptable to the Debtors, the Plan Sponsor, the EFH Plan Administrator Board, and the Initial Supporting Creditors containing funds, if any, that are available after first funding the EFIH Claims Reserve in accordance with the Plan and any order of the Bankruptcy Court regarding the amount required to fund the EFIH Claims Reserve, in an amount reasonably acceptable to the Debtors and EFH Plan Administrator Board, in consultation with the Initial Supporting Creditors, sufficient to satisfy reasonable and documented fees and expenses incurred on and after the EFH Effective Date by (i) the Debtors and the EFH Plan Administrator Board arising from or related to any and all litigation, proceedings, and settlements relating to the EFIH First Lien Makewhole Claims and the EFIH Second Lien Makewhole Claims and (ii) the Plan Sponsor, in an amount not to exceed \$200,000, arising from responding to third-party discovery in connection with litigation and proceedings relating to the EFIH First Lien Makewhole Claims and the EFIH Second Lien Makewhole Claims; *provided, however*, that the Post-Effective Date Administrative Account shall be funded from amounts that would otherwise be funded to the EFH/EFIH Distribution Account pursuant to the terms of the Plan or Merger Agreement and shall not, for the avoidance of doubt, include the value of Cash on hand at EFH Corp. as of the EFH Effective Date; *provided, further, however*, that ~~the EFIH First Lien Note Trustee, the EFIH Second Lien Note Trustee, the Holders of EFIH First Lien Note Claims, and the Holders of EFIH Second Lien Note Claims shall not have a lien on the Post Effective Date Administrative Account; provided, further, however, that~~ upon (but not until) resolution of all litigation, proceedings, and settlements relating to the EFIH First Lien Makewhole Claims and the EFIH Second Lien Makewhole Claims, any amount of Cash remaining in the Post-Effective Date Administrative Account shall revert to the EFH/EFIH Distribution Account.

~~336.340-~~ “*Pre-Effective Date Makewhole Litigation Oversight Committee*” means the Makewhole Litigation Oversight Committee upon the EFH Confirmation Date and prior to the EFH Effective Date, which shall be comprised of four representatives, all of whom shall be Unconflicted Initial Supporting Creditors.

~~337.341-~~ “*Preferred Stock Entity*” means, as part of the Spin-Off, the new Entity pursuant to which certain assets and liabilities will be transferred as part of the Spin-Off Preferred Stock Sale, it being understood that, if the Spin-Off is effectuated pursuant to the terms and conditions set forth in Article IV.B.2, the Preferred Stock Entity will undertake the Preferred Stock Entity Conversion on the TCEH Effective Date.

- (c) *Voting:* Class B2 is Unimpaired under the Plan. Holders of Claims in Class B2 are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such Holders are not entitled to vote to accept or reject the Plan.

19. Class B3 - EFIH First Lien Note Claims.

- (a) *Classification:* Class B3 consists of EFIH First Lien Note Claims, if any.
- (b) *Allowance:* As Class B3 Claims, the EFIH First Lien Note Claims are Allowed in an amount equal to the sum of:
- (i) any accrued but unpaid prepetition interest (including any Additional Interest and interest on interest) at the applicable rate set forth in, and calculated in accordance with, the EFIH First Lien Notes, the EFIH First Lien 2017 Note Indenture, the EFIH First Lien 2020 Note Indenture, and/or any related agreement, as applicable;
 - (ii) any accrued but unpaid postpetition interest (including any Additional Interest and interest on interest) at the applicable rate set forth in, and calculated in accordance with, the EFIH First Lien Notes, the EFIH First Lien 2017 Note Indenture, the EFIH First Lien 2020 Note Indenture, and/or any related agreement, as applicable, through the closing date of the EFIH First Lien DIP Facility (excluding interest on interest, which shall be through the EFH Effective Date or any later date on which such postpetition interest is paid in full in Cash);
 - (iii) subject to the terms of the Plan Supplement and the Amended Plan Supplement, all reasonable and documented fees and expenses and indemnification claims, (and interest thereon, including Additional Interest and interest on interest, to the extent provided by the EFIH First Lien Notes, the EFIH First Lien 2017 Note Indenture, the EFIH First Lien 2020 Note Indenture, and/or any related agreement), whether incurred or accruing before, on, or after the EFH Effective Date, including those reasonable and documented fees and expenses and indemnification claims incurred in connection with any appeal, remand, or other litigation of any Makewhole Claims, (a) that (with respect only to such fees, expenses and claims incurred prior to the EFH Effective Date) are allowed under section 506(b) of the Bankruptcy Code and (b) that are owed under the EFIH First Lien Notes, the EFIH First Lien 2017 Note Indenture, the EFIH First Lien 2020 Note Indenture, and/or any related agreement ~~(and interest thereon to the extent provided by such notes, indentures, or agreements)~~, as applicable; and
 - (iv) the amount of any other Claims, including any Makewhole Claims, and interest thereon, including, for the avoidance of doubt, any Additional Interest and interest on interest (whether accruing before, on or after the EFH Effective Date, at the applicable rate set forth in, and as calculated in accordance with, the EFIH First Lien Notes, the EFIH First Lien 2017 Note Indenture, the EFIH First Lien 2020 Note Indenture, and/or any related agreement, as applicable, or otherwise as determined by Final Order) of the EFIH First Lien Notes Trustee or Holders of EFIH First Lien Notes, if and to the extent such Claims are held to be allowed by a court of competent jurisdiction pursuant to a Final Order, whether entered before, on, or after the EFH Effective Date;

provided, however, that on the EFH Effective Date, the EFIH First Lien Notes Trustee shall be granted a first-priority Lien (the “Replacement EFIH First Lien”) on the EFIH Claims Reserve ~~(except with respect to an amount equal to the value of Cash on hand at EFH Corp. as of the EFH Effective Date)~~, which Lien shall not be released until all EFIH First Lien Note Claims have either been (i) Allowed (whether before, on, or after

the EFH Effective Date) and paid in full (to the extent Allowed), including all interest thereon, in Cash or (ii) disallowed by Final Order, and which Lien shall have priority over ~~all other Liens~~ the Replacement EFIH Second Lien on the EFIH Claims Reserve. The Replacement EFIH First Lien shall include the following terms (to be set forth in the EFH Confirmation Order and/or such other agreements and instruments as the EFIH First Lien Notes Trustee may agree, each in form and substance acceptable to the EFIH First Lien Notes Trustee):

- On the EFH Effective Date, the EFIH Debtors shall grant the EFIH First Lien Notes Trustee a perfected, first-priority security interest in and Lien upon the EFIH Claims Reserve and on all Cash and any other assets deposited at any time (whether on or after the EFH Effective Date) in the EFIH Claims Reserve and all proceeds thereof. The EFIH First Lien Notes Trustee shall have control of the EFIH Claims Reserve (and all assets therein and all proceeds thereof) pursuant to such arrangements as may be necessary or appropriate under applicable law (including a control agreement and/or maintaining any bank account in which EFIH Claims Reserve funds are deposited with the EFIH First Lien Notes Trustee or with a bank that agrees to enter into a subordination agreement in favor of the EFIH First Lien Notes Trustee) to ensure that the Replacement EFIH First Lien will remain properly perfected at all times on and after the EFH Effective Date and that no other entity (including any bank or securities intermediary) will obtain any security interest in, Lien upon, or setoff right with respect to, the EFIH Claims Reserve (or any assets therein or any proceeds thereof), other than the Replacement EFIH Second Lien granted pursuant to Article III.B.20 of this Plan.
- Except solely for the Replacement EFIH Second Lien, no security interest or Lien shall be granted at any time on or after the EFH Effective Date in or upon the EFIH Claims Reserve (or any Cash or other assets therein or any proceeds thereof). The Replacement EFIH First Lien shall be a senior lien with priority over the the Replacement EFIH Second Lien, and the EFIH First Lien Notes Trustee and Holders of EFIH First Lien Note Claims shall have priority in right of payment from the EFIH Claims Reserve to pay all Allowed EFIH First Lien Note Claims over the right of payment of the EFIH Second Lien Notes Trustee and Holders of EFIH Second Lien Note Claims from the EFIH Claims Reserve.
- The EFIH Claims Reserve shall be invested in Cash, in accordance with section 345 of the Bankruptcy Code, and all investment decisions with respect to the EFIH Claims Reserve shall be subject to prior written consent of the EFIH First Lien Notes Trustee.
- No distributions or disbursements shall be made from the EFIH Claims Reserve to any entity, account or reserve (including any Holder of any Claim or Interest, including the EFIH Unsecured Notes Trustee or any Holder of the EFIH Unsecured Notes, or any professional or other representative of any such Holder or Trustee; the EFH Plan Administrator Board or the Makewhole Litigation Oversight Committee or any of their respective professionals or other representatives; or the Post-Effective Date Administrative Account or the EFH/EFIH Distribution Account), except as follows: (i) until all EFIH First Lien Note Claims have either been Allowed (whether before, on, or after the EFH Effective Date) and paid in full (to the extent Allowed), including all interest thereon, in Cash or disallowed by Final Order, no such distributions or disbursements shall be made except solely to pay any Allowed EFIH First Lien Note Claims; thereafter (ii) until all EFIH Second Lien Note Claims have either been Allowed (whether before, on, or after the EFH Effective Date) and paid in

full (to the extent Allowed), including all interest thereon, in Cash or disallowed by Final Order, no such distributions or disbursements shall be made except solely to pay any Allowed EFIH Second Lien Note Claims; and thereafter (iii) any remaining funds in the EFIH Claims Reserve may be released to the EFH/EFIH Distribution Account for administration in accordance with the Plan.

- The EFIH Collateral Trust Agreement shall govern the rights and obligations of the EFIH First Lien Notes Trustee (and Holders of EFIH First Lien Note Claims), on the one hand, and the EFIH Second Lien Notes Trustee (and Holders of EFIH Second Lien Note Claims), on the other hand, with respect to the EFIH Claims Reserve (and all Cash and other assets therein and any proceeds thereof), which shall be deemed to be Collateral (as such term is defined in the Collateral Trust Agreement) granted to the EFIH First Lien Notes Trustee, in its capacity as Collateral Trustee (as such term is defined in the Collateral Trust Agreement), to secure the payment of the Parity Lien Obligations (as such term is defined in the Collateral Trust Agreement and which term, for the avoidance of doubt, shall be deemed to include the EFIH First Lien Note Claims) and the Junior Lien Obligations (as such term is defined in the Collateral Trust Agreement and which term, for the avoidance of doubt, shall be deemed to include the EFIH Second Lien Note Claims).

- (c) *Treatment:* Except to the extent that a Holder of an Allowed Claim in Class B3, with the consent of the Plan Sponsor (such consent not to be unreasonably withheld) and the consent of the Initial Supporting Creditors (prior to the appointment of the Makewhole Litigation Oversight Committee) or the Makewhole Litigation Oversight Committee, agrees to a less favorable treatment of its Allowed Claim, each such Holder shall receive, up to the Allowed amount of its Claim, payment in full in Cash.
- (d) *Voting:* Class B3 is Impaired under the Plan. Therefore, Holders of Allowed Claims in Class B3 are entitled to vote to accept or reject the Plan.

20. Class B4 - EFIH Second Lien Note Claims: [Conforming changes should be made to Article III.B.20 (and any other Plan provisions) regarding the treatment of the EFIH Second Lien Note Claims to parallel the changes made to Article III.B.19 (and any other Plan provisions) regarding the treatment of the EFIH First Lien Note Claims.]

- (a) *Classification:* Class B4 consists of EFIH Second Lien Note Claims.
- (b) *Allowance:* Unless otherwise separately agreed by the Debtors, with the consent of the Plan Sponsor, and a Holder of a Class B4 Claim, as Class B4 Claims, the EFIH Second Lien Note Claims are Allowed in an amount equal to the sum of:
 - (i) the principal amount outstanding, plus accrued but unpaid prepetition interest (including any Additional Interest and interest on interest) at the applicable rate set forth in, and calculated in accordance with, the EFIH Second Lien Notes, the EFIH Second Lien Note Indenture, and/or any related agreement, as applicable;
 - (ii) any accrued but unpaid postpetition interest (including any Additional Interest and interest on interest) on such principal at the applicable rate set forth in, and calculated in accordance with, the EFIH Second Lien Notes, the EFIH Second Lien Note Indenture, and/or any related agreement, as applicable, through the EFH Effective Date;
 - (iii) subject to the terms of the Plan Supplement and the Amended Plan Supplement, all reasonable and documented fees and expenses and indemnification claims, whether incurred or accruing before, on, or after the EFH Effective Date,

including those reasonable and documented fees and expenses and indemnification claims incurred in connection with any appeal, remand, or other litigation of any Makewhole Claims, (a) that (with respect only to such fees, expenses and claims incurred prior to the EFH Effective Date) are allowed under section 506(b) of the Bankruptcy Code and (b) that are owed under the EFIH Second Lien Notes, the EFIH Second Lien Note Indenture, and/or any related agreement (and interest thereon, to the extent provided by such notes, indentures, or agreements), as applicable; and

- (iv) the amount of any other Claims, including any Makewhole Claims, and interest thereon, including, for the avoidance of doubt, any Additional Interest and interest on interest (whether accruing before, on or after the EFH Effective Date, as calculated in accordance with the EFIH Second Lien Notes, the EFIH Second Lien Note Indenture, and/or any related agreement, as applicable, or otherwise as determined by Final Order) of the EFIH Second Lien Notes Trustee or Holders of EFIH Second Lien Notes, if and to the extent such Claims are held to be allowed by a court of competent jurisdiction pursuant to a Final Order, whether entered before, on, or after the EFH Effective Date;

provided, however, that the EFIH Second Lien Notes Trustee shall be granted a Lien (the “Replacement EFIH Second Lien”) on the EFIH Claims Reserve (except with respect to an amount equal to the value of Cash on hand at EFH Corp. as of the EFH Effective Date) until all EFIH Second Lien Note Claims have either been (i) Allowed (whether before, on, or after the EFH Effective Date) and paid in full (to the extent Allowed), in Cash or (ii) disallowed by Final Order, which Lien shall ~~have priority over all other Liens on the EFIH Claims Reserve, except the~~ be junior in all respects to the Replacement EFIH First Lien provided to the EFIH First Lien Notes Trustee pursuant to Article III.B.19 of this Plan.

- (c) *Treatment:* Except to the extent that a Holder of an Allowed Claim in Class B4, with the consent of the Plan Sponsor (such consent not to be unreasonably withheld) and the consent of the Initial Supporting Creditors (prior to the appointment of the Makewhole Litigation Oversight Committee) or the Makewhole Litigation Oversight Committee, agrees to a less favorable treatment of its Allowed Claim, each such Holder shall receive, up to the Allowed amount of its Claim, payment in full in Cash.
- (d) *Voting:* Class B4 is Impaired under the Plan. Therefore, Holders of Allowed Claims in Class B4 are entitled to vote to accept or reject the Plan.

21. Class B5 - EFH LBO Note Guaranty Claims.

- (a) *Classification:* Class B5 consists of EFH LBO Note Guaranty Claims.
- (b) *Allowance:* Unless otherwise separately agreed by the Debtors, with the consent of the Plan Sponsor, and a Holder of a Class B5 Claim, as Class B5 Claims, the EFH LBO Note Guaranty Claims are Allowed in an amount equal to the sum of: (i) the principal amount outstanding, plus accrued but unpaid prepetition interest, under the EFH LBO Note Indenture; (ii) accrued postpetition interest on such principal at the Federal Judgment Rate; and (iii) the amount of any other Claims (but in any case excluding any Makewhole Claims) under the EFH LBO Notes or EFH LBO Note Indentures, if and to the extent such Claims are Allowed, whether Allowed before, on or after the EFH Effective Date.
- (c) *Treatment:* Except to the extent that a Holder of an Allowed Claim in Class B5, with the consent of the Plan Sponsor (such consent not to be unreasonably withheld), agrees to a less favorable treatment of its Allowed Claim, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Claim in Class B5, each such

9. Merger, Merger Consideration, and Other Plan Sponsor Payments.

The Merger shall be effectuated and funded as follows on the EFH Effective Date in accordance with the Merger Agreement:

- (a) Reorganized EFH will merge with and into Merger Sub in a tax-free reorganization under section 368(a)(1)(A) of the Internal Revenue Code, with Merger Sub being the surviving entity resulting from the Merger, on the terms and subject to the conditions of the Merger Agreement and pursuant to the Plan and the applicable provisions of Chapter 10 of the Texas Business Organizations Code and the General Corporate Law of the State of Delaware. Pursuant to the Merger, Merger Sub shall acquire all assets and liabilities of Reorganized EFH.
- (b) The Reorganized EFH Class A Common Stock issued and outstanding immediately prior to the Merger Effective Time shall be converted into the right to receive the NextEra Class A Common Stock Investment and the Reorganized EFH Class B Common Stock issued and outstanding immediately prior to the Merger Effective Time shall be converted into the right to receive the NextEra Class B Common Stock Investment, and each of the NextEra Class A Common Stock and the NextEra Class B Common Stock shall be distributed to certain Holders of Claims in accordance with the Plan.
- (c) The Plan Sponsor shall, or shall cause an Affiliate of the Plan Sponsor to, deliver to EFIH by wire transfer of immediately available funds the EFIH First Lien DIP Repayment Amount, which shall be used to fund repayment of the EFIH First Lien DIP Claims, or, in lieu of making such wire transfer to EFIH, may transfer by wire transfer of immediately available funds the EFIH First Lien DIP Repayment Amount directly to the EFIH First Lien DIP Agent in accordance with terms of Section 1.3 of the Merger Agreement.
- (d) Merger Sub will deliver the Merger Sub Cash Amount by wire transfer of immediately available funds to the EFH Plan Administrator Board for deposit in the EFH/EFIH Distribution Account; *provided, however*, that on the EFH Effective Date, \$100,000,000 of the Merger Sub Cash Amount shall be set aside and such amount shall be deposited and held in the Merger Sub Account in accordance with the terms thereof; *provided, further, however*, that, if any funds remain available after first funding the EFIH Claims Reserve in accordance with the Plan and any order of the Bankruptcy Court regarding the amount required to fund the EFIH Claims Reserve, up to \$[] of the Merger Sub Cash Amount will be delivered by wire transfer to the EFH Plan Administrator Board for deposit in the Post-Effective Date Administrative Account; *provided, further, however*, that all or a portion of the Merger Sub Cash Amount shall be deposited into the EFIH Claims Reserve, as in an amount to be determined by the EFH Debtors and the EFIH Debtors in consultation with the Initial Supporting Creditors or as otherwise ordered by the Bankruptcy Court.
- (e) EFIH will deliver any Cash on hand at EFIH as of the EFH Effective Date by wire transfer of immediately available funds to the EFH Plan Administrator Board for deposit in the EFH/EFIH Distribution Account; *provided however*, that all or a portion of such Cash shall be deposited into the EFIH Claims Reserve, in an amount to be determined by the EFH Debtors and the EFIH Debtors in consultation with the Initial Supporting Creditors or otherwise ordered by the Bankruptcy Court.
- (f) The EFH Plan Administrator Board shall fund payment of the EFIH First Lien Note Claims and EFIH Second Lien Note Claims from the EFH/EFIH Distribution Account on the EFH Effective Date to the extent such Claims are Allowed as of the EFH Effective Date, in accordance with Article III.B.19 and Article III.B.20 of the Plan; *provided, however, that if such payments are not made on the EFH Effective Date, they shall be*

paid as soon as reasonably practicable after the EFH Effective Date, and the funds to make such payments (including all interest accruing before, on and after the EFH Effective Date on such EFIH First Lien Note Claims and EFIH Second Lien Note Claims through the date of payment of such Claims in full) shall be deposited into the EFIH Claims Reserve.

After the EFH Effective Date, the Auditor shall conduct the Post-Closing Audit in accordance with the Merger Agreement. If the Adjusted Company Cash Amount is greater than the Estimated Company Cash Amount, NextEra shall deliver by wire transfer of immediately available funds to the EFH Plan Administrator Board an amount equal to the difference in such amounts, to be distributed in accordance with the Plan. If the Adjusted Company Cash Amount is less than the Estimated Company Cash Amount, NextEra shall receive, by wire transfer of immediately available funds from the EFH Plan Administrator Board, an amount equal to the difference in such amounts. Upon conclusion of the Post-Closing Audit, the EFH Plan Administrator Board shall direct that an amount of Cash shall be transferred from the EFH/EFIH Distribution Account to (i) the EFH Creditor Recovery Pool equal to the amount, if any, by which the Adjusted Company Cash Amount exceeds the NextEra Class A Common Stock Investment or (ii) NextEra equal to the amount, if any, by which the NextEra Common Stock Investment exceeds the sum of the Adjusted Company Cash Amount and the amount, if any, the Merger Sub Cash Amount was reduced pursuant to Section 1.7(a)(vi) of the Merger Agreement.

For the avoidance of doubt, the provisions in this Article IV.B.9 are intended to ensure the satisfaction of the continuity of interest requirement under sections 355 and 368 of the Internal Revenue Code, and reasonable adjustments shall be made, including by issuing additional shares of NextEra Common Stock (with a corresponding decrease in the Merger Sub Cash Amount), to the extent NextEra reasonably concludes such adjustments are necessary to ensure such satisfaction, and further reasonable adjustments shall be made to the allocation of NextEra Common Stock and the Merger Sub Cash Amount to account for the payment of Cash to the Holders of Allowed EFH Non-Qualified Benefit Claims in accordance with the Plan and the general provisions of this paragraph.

10. Dissolution and Liquidation of Certain Subsidiaries of EFH Corp.

(a) Dissolution and Liquidation of Certain TCEH Debtor Entities.

EFCH, TCEH, TCEH Finance, and such other TCEH Debtor entities (other than the TCEH Debtors being transferred in the Spin-Off and the EFH Shared Services Debtors) as designated by the TCEH Debtors and the TCEH Supporting First Lien Creditors, shall be dissolved and liquidated in accordance with the Plan and applicable law; *provided, however*, that EFCH and TCEH will not be liquidated until the EFH Effective Date, and shall remain subsidiaries of EFH Corp. that are disregarded from EFH Corp. for U.S. federal income tax purposes until such time; *provided, further*, that EFCH and TCEH shall be liquidated no later than immediately prior to the Merger Effective Time (which, for the avoidance of doubt, shall be on the EFH Effective Date as provided above) and, if not liquidated, shall be deemed dissolved immediately prior to the Merger Effective Time without any further court or corporate action, including the filing of any documents with the Secretary of State for any state in which either such Entity is incorporated or any other jurisdiction. For the avoidance of doubt, none of (i) the TCEH First Lien Supporting Creditors (ii) the TCEH Debtors; (iii) the Reorganized TCEH Debtors; (iv) the EFH Shared Services Debtors; (v) the Reorganized EFH Shared Services Debtors, or (vi) with respect to each of the foregoing Entities in clauses (i) through (vi), such Entity and its current and former Affiliates, and such Entities' and their current and former Affiliates' current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, and assigns, subsidiaries, and each of their respective current and former equity holders, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such, shall have or incur any liability whatsoever in connection with or as a result of the dissolution or liquidation of any entity, in accordance with the terms of this Article IV.B.10(a).

(b) Dissolution and Liquidation of Certain EFH Debtors and EFIH Debtors.

On or before the EFH Effective Date and before the Merger Effective Time, all EFH Debtors and EFIH Debtors, excluding: (a) EFH Corp.; (b) EFIH; (c) LSGT Gas Company LLC; (d) EECI, Inc., (e) EEC Holdings, Inc.; and (f) LSGT SACROC, Inc., not already disposed of, wound down, or liquidated in accordance with applicable law

7. Cash on Hand at EFH Corp. and EFIH.

Reorganized EFH and Reorganized EFIH shall, through the Disbursing Agent, use Cash on hand at EFH Corp. and EFIH to fund distributions to certain Holders of Allowed Claims against the EFH Debtors and the EFIH Debtors and to fund the EFIH Claims Reserve in accordance with the Plan and any order of the Bankruptcy Court regarding the amount required to fund the EFIH Claims Reserve.

8. Plan Sponsor Cash Amount.

The EFH Debtors and the EFIH Debtors shall use the Plan Sponsor Cash Amount to fund any initial distributions and to fund the EFIH Claims Reserve in accordance with the Plan and any order of the Bankruptcy Court regarding the amount required to fund the EFIH Claims Reserve. The EFH Plan Administrator Board shall use any remaining Plan Sponsor Cash Amount to fund the payment of certain fees and distributions to certain Holders of Claims against the EFH Debtors and the EFIH Debtors in accordance with the Plan. The Plan Sponsor Cash Amount shall not be reduced or increased pursuant to the PIK Settlement and for the avoidance of doubt shall be calculated in accordance with the terms set forth in the Merger Agreement.

9. Cash on Hand at EFH Shared Services Debtors.

Any Cash on hand at the EFH Shared Services Debtors as of the TCEH Effective Date shall be used to fund distributions to Holders of Allowed Claims against the EFH Shared Services Debtors in accordance with the terms of the Plan. Any Cash on hand at the EFH Shared Services Debtors that remains on hand after payment in full of all Allowed Claims against the EFH Shared Services Debtors pursuant to the Plan shall be transferred to Reorganized TCEH.

D. Intercompany Account Settlement.

The Debtors and the Reorganized Debtors, as applicable, including, in the case of any Conflict Matter between any Debtors, each Debtor acting at the direction of its respective Disinterested Director or Manager and without the consent of any other Debtor, subject to the consent of the Plan Sponsor and the TCEH Supporting First Lien Creditors, as applicable (such consent not to be unreasonably withheld), shall be entitled to transfer funds between and among themselves as they determine to be necessary or advisable to enable the Reorganized Debtors to satisfy their obligations under the Plan; *provided, however*, that (1) the TCEH Debtors shall not transfer funds to a Debtor that is not a TCEH Debtor, and (2) the EFH Debtors and EFIH Debtors shall not transfer funds to a Debtor that is not an EFH Debtor or an EFIH Debtor, respectively, except as otherwise provided elsewhere in the Plan. Except as set forth herein, any changes in intercompany account balances resulting from such transfers will be accounted for and settled in accordance with the Reorganized Debtors' historical intercompany account settlement practices and shall not violate the terms of the Plan.

E. Competitive Tax Sharing Agreement.

On the TCEH Effective Date, the Competitive Tax Sharing Agreement shall automatically terminate as to the parties and all Claims and Causes of Action arising thereunder or in any way related thereto as to the parties shall be forever fully discharged, canceled, and released.

F. Oncor Tax Sharing Agreement.

On the EFH Effective Date, the Oncor Tax Sharing Agreement will be assumed by Reorganized EFH, as such agreement may be amended or assigned in a manner agreed by Oncor, Reorganized EFH, and the Plan Sponsor.

G. Corporate Existence.

Except as otherwise provided in the Plan, including as set forth in Article IV.B.11, each Debtor shall continue to exist after the Effective Date as a separate corporate Entity, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the

case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and by-laws (or other formation documents) in effect before the Effective Date, except to the extent such certificate of incorporation and by-laws (or other formation documents) are amended under the Plan or otherwise (consistent with the Merger Agreement, as applicable), and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable state or federal law). The Reorganized TCEH Debtors will continue to fund the Nuclear Decommissioning Obligations in the ordinary course of business after the TCEH Effective Date.

H. Vesting of Assets in the Reorganized Debtors.

Except as otherwise provided in the Plan, on the Effective Date, all property in each Estate, all Causes of Action, and any property acquired by any of the Debtors pursuant to the Plan shall vest in each applicable Reorganized Debtor or the EFH Plan Administrator Board, as applicable, free and clear of all Liens, Claims, charges, Interests, or other encumbrances. Except as otherwise provided in the Plan, on and after the Effective Date, each of the Reorganized Debtors may operate their business and may use, acquire, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

I. Cancellation of Existing Securities and Agreements.

Except as otherwise provided in the Plan (including Article III.B.19 and III.B.20), on and after the Effective Date, all notes, instruments, certificates, agreements, indentures, mortgages, security documents, and other documents evidencing Claims or Interests, including Other Secured Claims, TCEH First Lien Secured Claims, EFIH First Lien Note Claims, EFIH Second Lien Note Claims, EFCH 2037 Note Claims, TCEH Second Lien Note Claims, TCEH Unsecured Note Claims, PCRБ Claims, EFIH Unsecured Note Claims, EFH Legacy Note Claims, EFH LBO Note Primary Claims, EFH LBO Note Guaranty Claims, EFH Unexchanged Note Claims, EFH Swap Claims, EFH Series N Note Claims, and DIP Claims, shall be deemed canceled, surrendered, and discharged without any need for further action or approval of the Bankruptcy Court or a Holder to take further action with respect to any note(s) or security and the obligations of the Debtors or Reorganized Debtors, as applicable, thereunder or in any way related thereto shall be deemed satisfied in full and discharged, and the Indenture Trustees, the TCEH First Lien Agent, and the DIP Agents shall be released from all duties thereunder; *provided, however*, that notwithstanding Confirmation or Consummation, any such indenture or agreement that governs the rights of the Holder of a Claim shall continue in effect solely for purposes of: (1) allowing Holders of Allowed Claims to receive distributions under the Plan; (2) allowing the Indenture Trustees, the TCEH First Lien Agent, and the DIP Agents to make the distributions in accordance with the Plan (if any), as applicable; (3) preserving any rights of the DIP Agents, the TCEH First Lien Agent, or the Indenture Trustees to payment of fees, expenses, and indemnification obligations as against any money or property distributable to the Holders under the relevant indenture, the TCEH Credit Agreement, the TCEH First Lien Intercreditor Agreement, or DIP Agreement, including any rights to priority of payment and/or to exercise charging liens; (4) allowing the Indenture Trustees, TCEH First Lien Agent, and DIP Agents to enforce any obligations owed to each of them under the Plan, including any Indenture Trustee's pursuit of (x) the allowance and payment of Makewhole Claims ~~under the Plan~~ or any other Claims, and with respect to which the EFH Debtors and the EFIH Debtors reserve all rights consistent with the EFIH Unsecured Creditor Plan Support Agreement, and (y) the EFIH ~~First Lien~~ Intercreditor ~~Action~~ Litigation or any other pending proceeding; and (5) allowing the Indenture Trustees, TCEH First Lien Agent, and DIP Agents to appear in the Chapter 11 Cases or any proceeding in which they are or may become a party; *provided, further, however*, that the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code, the Confirmation Order, or the Plan, or result in any expense or liability to the Debtors or Reorganized Debtors, as applicable. For the avoidance of doubt, the TCEH First Lien Intercreditor Agreement, the TCEH Credit Agreement, and the TCEH First Lien Note Indenture remain in effect solely to the extent necessary to preserve the TCEH First Lien Creditor Allocation Disputes and the TCEH First Lien Creditor Deposit L/C Collateral Allocation Dispute, and any (a) claims or Causes of Action by the TCEH First Lien Notes Trustee, TCEH First Lien Agent, or Holders of TCEH First Lien Claims against other Holders of TCEH First Lien Claims, the TCEH First Lien Agent, or the TCEH First Lien Notes Trustee arising in connection with the TCEH First Lien Creditor Allocation Disputes, or (b) claims or Causes of Action by any Holder of Allowed Class C3 Claims against any other Holder of Allowed Class C3 Claims (other than the TCEH First Lien Agent, except in the TCEH First Lien Agent's capacity as a nominal defendant to declaratory judgment claims in respect of which no monetary recovery is sought)

in the TCEH First Lien Creditor Deposit L/C Collateral Allocation Dispute (or any claims, Causes of Action or defenses of any other party to such dispute); *provided, further, however*, that except as expressly set forth in the Plan, after the Effective Date, the Debtors and the Reorganized Debtors shall not be obligated to pay any fees or expenses under either the TCEH First Lien Intercreditor Agreement, the TCEH First Lien Note Indenture, or the TCEH Credit Agreement arising in connection with the TCEH First Lien Creditor Allocation Disputes or the TCEH First Lien Creditor Deposit L/C Collateral Allocation Dispute, and all related Claims shall be released and discharged consistent with Article VIII.A of the Plan. Notwithstanding anything to the contrary in the foregoing, provisions of this Article IV.I, (x) the cancelation and discharge of the EFIH First Lien Note Indentures, the EFIH Second Lien Note Indenture, ~~and the EFIH Collateral Trust Agreement, and all other notes, instruments, certificates, agreements, mortgages, security documents and other documents evidencing any Claims or rights associated with or under the EFIH First Lien Notes or the EFIH Second Lien Notes~~ shall be limited solely to the ~~Debtors or~~ Reorganized Debtors and shall not affect the rights of the EFIH First Lien Notes Trustee or Holders of the EFIH First Lien Note Claims vis-à-vis any other party, including the EFIH Second Lien Notes Trustee and Holders of the EFIH Second Lien Note Claims, or vice versa, and such cancelation and discharge shall further ~~be limited~~ apply only to the extent of payments made pursuant to Article III.B.19 or Article III.B.20 of the Plan, respectively. ~~For, and shall not limit or affect the Allowance or payment of any EFIH First Lien Note Claim or any EFIH Second Lien Note Claim (or any other Claim of the EFIH First Lien Notes Trustee, Holders of the EFIH First Lien Note Claims, the EFIH Second Lien Notes Trustee or Holders of the EFIH Second Lien Notes) in accordance with the other terms of the Plan, including Article III.B.19 and Article III.B.20, respectively; (y) for~~ the avoidance of doubt, the EFIH First Lien Note Indentures, the EFIH Second Lien Notes Indenture, ~~and the EFIH Collateral Trust Agreement~~ and all other notes, instruments, certificates, agreements, mortgages, security documents and other documents evidencing any Claims or rights associated with or under the EFIH First Lien Notes or the EFIH Second Lien Notes shall remain in effect (and the EFIH First Lien Notes Trustee and the EFIH Second Lien Notes Trustee shall remain as trustee, registrar, and paying agent) for the purposes set forth in (1)-(5) of this section, as applicable; and (z) The the EFIH First Lien Note Indentures ~~and the EFIH Second Lien Note Indenture, and all other agreements governing those notes, the EFIH Collateral Trust Agreement, and all other all other notes, instruments, certificates, agreements, mortgages, security documents and other documents evidencing any Claims or rights associated with or under the EFIH First Lien Notes or the EFIH Second Lien Notes~~ shall remain in place from and after the Effective Date for purposes of establishing ~~the~~ and supporting the Allowance and payment in accordance with the terms of the Plan of Claims associated with or under the EFIH First Lien Notes and the EFIH Second Lien Notes (including the right of the EFIH First Lien Notes Trustee and Holders of EFIH First Lien Notes and of the EFIH Second Lien Notes Trustee and Holders of EFIH Second Notes to seek and, if successful, receive interest at the contractual rates accruing on all of their Allowed Claims, including Additional Interest and interest on interest, until those Claims are paid in full, and to receive their fees, costs and indemnification), until all Claims associated with or under the EFIH First Lien ~~Note Claims~~ Notes and all Claims associated with or under the EFIH Second Lien ~~Note Claims~~ Notes have either been Allowed by Final Order and been paid in full, in Cash (with all applicable contractual interest), or have been disallowed by Final Order.

J. Corporate Action.

On the Effective Date, as applicable, all actions contemplated under the Plan with respect to the applicable Debtor or Reorganized Debtor, as applicable, shall be deemed authorized and approved in all respects, including: (1) implementation of the Restructuring Transactions, including execution of the Transaction Agreements and consummation of the Merger; (2) selection of the directors and officers for the Reorganized Debtors; (3) on the TCEH Effective Date, as applicable, adoption of, entry into, and assumption and/or assignment of the New Employee Agreements/Arrangements and the Employment Agreements; (4) adoption of the Reorganized TCEH Debtor Management Incentive Plan; (5) incurrence of the New Reorganized TCEH Debt and distribution of such New Reorganized TCEH Debt or the net proceeds, if any; (6) issuance and distribution of the Reorganized TCEH Common Stock; (7) implementation of the Taxable Separation (including any issuance of stock or securities thereunder); (8) (i) the Spin-Off Preferred Stock Sale (if any); (ii) issuance and distribution of the common stock of the Preferred Stock Entity (if any); and (iii) issuance of the Reorganized TCEH Sub Preferred Stock (if any) (9) issuance and distribution of the Reorganized EFH Common Stock (including its exchange for NextEra Common Stock); (10) issuance and distribution of the NextEra Common Stock pursuant to the Merger; (11) issuance and distribution of the common stock of the Preferred Stock Entity; and (12) all other actions contemplated under the Plan (whether to occur before, on, or after the Effective Date). All matters provided for herein involving the corporate structure of the Debtors or the Reorganized Debtors, as applicable, and any corporate action required by the Debtors or the Reorganized Debtors in connection with the Plan shall be deemed to have occurred and shall be in effect as of the Effective Date, without

R. *Payment of Certain Fees.*

1. Payment of Fees of Certain Creditors of the EFIH Debtors.

Without any further notice to or action, order, or approval of the Bankruptcy Court, the EFH Plan Administrator Board shall pay from the EFH/EFIH Distribution Account on the EFH Effective Date any reasonable and documented unpaid fees and expenses incurred on or before the EFH Effective Date by professionals payable under the Merger Agreement.

On the EFH Effective Date, the EFH Plan Administrator Board shall (a) if any funds remain available after first funding the EFIH Claims Reserve in accordance with the Plan and any order of the Bankruptcy Court regarding the amount required to fund the EFIH Claims Reserve, pay no less than the EFIH Base Payment Amount and (b) not dispute that such EFIH Base Payment Amount (including any fees owed to Centerview, financial advisor to the EFIH Unsecured Notes Trustee, pursuant to the terms of Centerview's engagement agreement with the EFIH Unsecured Notes Trustee, including any fees owed upon consummation of a "Transaction" (as defined in that certain original engagement letter, dated March 10, 2015)), are reasonable and allowed claims under the EFIH Unsecured Note Indentures, without prejudice to the right of the EFIH First Lien Notes Trustee, the EFIH Second Lien Notes Trustee, Holders of EFIH First Lien Notes or Holders of EFIH Second Lien Notes to object to the allowance or payment of the EFIH Base Payment Amount. The payment of such amounts to the EFIH Unsecured Notes Trustee in accordance with the terms of the EFIH Unsecured Creditor Plan Support Agreement shall not be subject to disgorgement, setoff, recoupment, reduction or reallocation of any kind and is without prejudice to the EFIH Unsecured Notes Trustee's subsequent exercise of any charging lien; provided, however, that if the EFIH Claims Reserve proves to be insufficient to pay all Allowed EFIH First Lien Note Claims and Allowed EFIH Second Lien Note Claims (including all interest thereon) in full, the EFIH Base Payment Amount shall be subject to disgorgement to satisfy such Allowed Claims (including all interest thereon) in full. The payment of the EFIH Base Payment Amount shall be considered a "charging lien advance" pursuant to Sections 6.12, 6.13 and 7.07 of the EFIH Unsecured Note Indentures.

~~The~~ if any funds remain available after first funding the EFIH Claims Reserve in accordance with the Plan and any order of the Bankruptcy Court regarding the amount required to fund the EFIH Claims Reserve, the EFH Plan Administrator Board shall pay from the EFH/EFIH Distribution Account the reasonable and documented fees and expenses allowed under the EFH Notes Indentures; *provided, however*, that such fees and expenses shall be subject to approval by the Fee Committee, with respect to the reasonableness of such documented fees and expenses in their reasonable discretion, and shall be subject to the right of the EFIH First Lien Notes Trustee, the EFIH Second Lien Notes Trustee, Holders of EFIH First Lien Notes or Holders of EFIH Second Lien Notes to object to the allowance or payment of such fees and expenses and to approval by the Bankruptcy Court and; provided further, however, that, if any funds remain available after first funding the EFIH Claims Reserve in accordance with the Plan and any order of the Bankruptcy Court regarding the amount required to fund the EFIH Claims Reserve, such fees and expenses shall be paid on the EFH Effective Date or as soon as reasonably practicable thereafter following Fee Committee and Bankruptcy Court approval thereof; *provided, further*, that, for the avoidance of doubt, such fees and expenses shall not be included in the amount of any Allowed Claims under the EFIH Unsecured Notes Indentures or the EFH Notes Indentures. In addition, the EFIH Unsecured Notes Trustee shall have the right to seek payment of all or a portion of the EFIH Unsecured Notes Trustee Fees and Expenses from the EFH/EFIH Distribution Account if any funds remain available after first funding the EFIH Claims Reserve in accordance with the Plan and any order of the Bankruptcy Court regarding the amount required to fund the EFIH Claims Reserve and if there are sufficient amounts in the EFH/EFIH Distribution Account to provide a 100% recovery to the Holders of Allowed EFIH Unsecured Note Claims, which fees and expenses application shall be subject to approval by the Fee Committee, with respect to the reasonableness of such documented fees and expenses in their reasonable discretion, and shall be subject to the right of the EFIH First Lien Notes Trustee, the EFIH Second Lien Notes Trustee, Holders of EFIH First Lien Notes or Holders of EFIH Second Lien Notes to object to the allowance or payment of such fees and expenses and to approval by the Bankruptcy Court. If the EFIH Claims Reserve proves to be insufficient to pay all Allowed EFIH First Lien Note Claims and Allowed EFIH Second Lien Note Claims (including all interest thereon) in full, any payment of the EFIH Base Payment Amount, any other EFIH Unsecured Notes Trustee Fees and Expenses or any fees and expenses allowed under the EFH Notes Indentures shall be subject to disgorgement to satisfy such Allowed Claims (including all interest thereon) in full.

Without any further notice to or action, order, or approval of the Bankruptcy Court, the EFH Plan Administrator Board shall pay from the EFH/EFIH Distribution Account the reasonable and documented fees and expenses of the Auditor in conducting the Post-Closing Report and as otherwise provided in the Merger Agreement.

~~At~~ Except as provided above with respect to the disgorgement of the EFIH Base Payment Amount, any other EFIH Unsecured Notes Trustee Fees and Expenses and any fees and expenses allowed under the EFH Notes Indentures if the EFIH Claims Reserve proves to be insufficient to pay all Allowed EFIH First Lien Note Claims and Allowed EFIH Second Lien Note Claims (including all interest thereon) in full, all amounts distributed and paid pursuant to this Article IV.R.1. shall not be subject to disgorgement, setoff, recoupment, reduction, or reallocation of any kind.

2. Payment of Fees of Certain Creditors of the TCEH Debtors.

Without any further notice to or action, order, or approval of the Bankruptcy Court, the Reorganized TCEH Debtors shall pay on the TCEH Effective Date any reasonable and documented unpaid fees and expenses incurred on or before the TCEH Effective Date by professionals (a) payable under (1) the TCEH DIP Order (which fees and expenses shall be paid by Reorganized TCEH), and (2) the Cash Collateral Order (which fees and expenses shall be paid by TCEH or Reorganized TCEH), including any applicable transaction, success, or similar fees for which the applicable Debtors have agreed to be obligated, and (b) retained by any individual member of the TCEH First Lien Ad Hoc Committee that is a TCEH Supporting First Lien Creditor. Reorganized TCEH shall indemnify (a) the TCEH First Lien Agent for any reasonable and documented fees and expenses (including the reasonable and documented fees and expenses of its counsel and agents) incurred after the TCEH Effective Date solely in connection with the implementation of the Plan, including but not limited to, making distributions pursuant to and in accordance with the Plan, and any disputes arising in connection therewith; and (b) any member or members of the TCEH First Lien Ad Hoc Committee for any reasonable and documented fees and expenses (including the reasonable and documented fees and expenses of its counsel and agents) incurred after the TCEH Effective Date solely in connection with the TCEH First Lien Creditor Deposit L/C Collateral Allocation Dispute.

All amounts distributed and paid pursuant to this Article IV.R.2 shall not be subject to disgorgement, setoff, recoupment, reduction, or reallocation of any kind.

S. *Treatment of Certain Claims of the PBGC and Pension Plan.*

Nothing in the Chapter 11 Cases, the Disclosure Statement, the Plan, the Confirmation Order, or any other document filed in the Chapter 11 Cases shall be construed to discharge, release, limit, or relieve any individual from any claim by the PBGC or the Pension Plans for breach of any fiduciary duty under ERISA, including prohibited transactions, with respect to the Pension Plans, subject to any and all applicable rights and defenses of such parties, which are expressly preserved. The PBGC and the Pension Plans shall not be enjoined or precluded from enforcing such fiduciary duty or related liability by any of the provisions of the Disclosure Statement, Plan, Confirmation Order, Bankruptcy Code, or other document filed in the Chapter 11 Cases. For the avoidance of doubt, the Reorganized Debtors shall not be released from any liability or obligation under ERISA, the Internal Revenue Code, and any other applicable law relating to or arising from the Pension Plans.

T. *Spin-Off Tax Receivable Agreement.*

If the Spin-Off is effectuated pursuant to the terms and conditions set forth in Article IV.B.2, at the election of the TCEH Supporting First Lien Creditors, on the TCEH Effective Date and before the Distribution, Reorganized TCEH shall enter into the Spin-Off Tax Receivable Agreement, under which Reorganized TCEH shall agree to make payments in respect of its (or its subsidiaries') specified tax items to or for the benefit of the TCEH First Lien Creditors (or their assigns). In addition, and notwithstanding the foregoing, Reorganized TCEH may enter into one or more tax receivable agreements or other similar arrangements after the Distribution. Only Holders of Allowed TCEH First Lien Secured Claims that timely return a TRA Information Form shall be entitled to receive beneficial interests in the Spin-Off TRA Rights (if any). Holders of Allowed TCEH First Lien Secured Claims that fail to timely return a properly completed TRA Information Form shall not receive any beneficial interests in the Spin-Off TRA Rights (if any) or any entitlement to any other distribution or consideration on account of or in connection with the Spin-Off Tax Receivable Agreement.

rejection, the Debtors or the Reorganized Debtors, as applicable, shall have 30 days following entry of a Final Order resolving such dispute to alter its treatment of such contract or lease.

I. Nonoccurrence of Effective Date.

In the event that the Effective Date does not occur with respect to a Debtor, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases with respect to such Debtor pursuant to section 365(d)(4) of the Bankruptcy Code, unless such deadline(s) have expired.

J. Contracts and Leases Entered Into After the Petition Date.

Contracts and leases entered into after the Petition Date by any Debtor, including any Assumed Executory Contracts or Unexpired Leases, will be performed by the applicable Debtor or the applicable Reorganized Debtor liable thereunder in the ordinary course of their business. Accordingly, any such contracts and leases (including any Assumed Executory Contracts or Unexpired Leases) that have not been rejected as of the date of the Confirmation Date shall survive and remain unaffected by entry of the Confirmation Order.

ARTICLE VI. PROVISIONS GOVERNING DISTRIBUTIONS

A. Timing and Calculation of Amounts to Be Distributed.

Unless otherwise provided in the Plan, on the Effective Date (or if a Claim or Interest is not an Allowed Claim or Allowed Interest on the Effective Date, on the date that such Claim or Interest becomes an Allowed Claim or Allowed Interest, or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim or Allowed Interest shall receive the full amount of the distributions that the Plan provides for Allowed Claims and Allowed Interest in the applicable Class. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, but shall be deemed to have been completed as of the required date. If and to the extent that there are Disputed Claims or Disputed Interests, distributions on account of any such Disputed Claims or Disputed Interests shall be made pursuant to the provisions set forth in Article VII of the Plan. Except as otherwise provided in the Plan (including with respect to Claims based on or derived from the EFIH First Lien Notes and EFIH Second Lien Notes), Holders of Claims and Interests shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date. For the avoidance of doubt, distributions to Holders of Allowed Class C3 Claims shall be made in accordance with Article III.B.29 of the Plan, notwithstanding the pendency of the TCEH First Lien Creditor Deposit L/C Collateral Allocation Dispute.

With respect to Holders of Class C5 Claims that are Allowed as of the TCEH Effective Date, the amount of the Effective Date distribution will be calculated as if each Disputed Class C5 Claim were an Allowed Class C5 Claim equal to the lesser of (a) the asserted amount of such Claim and (b) the amount estimated by the Bankruptcy Court in accordance with Article VII.C of the Plan. On each Periodic Distribution Date, the Disbursing Agent shall make additional Pro Rata distributions to Holders of Allowed Class C5 Claims until such Claims have received the maximum recovery available to Holders of Class C5 Claims under the Plan.

Before the TCEH Effective Date, the TCEH Debtors shall create, in consultation with the TCEH Committee, a list of Disputed Class C5 Claims that shall be Allowed Class C5 Claims as of the TCEH Effective Date. Following the creation of such list, the TCEH Debtors shall, as soon as reasonably practicable thereafter submit, to the Bankruptcy Court an order, in form and substance reasonably acceptable to the TCEH Committee, allowing such Claims; *provided, however*, that entry of such order shall not in any way impede, delay, or otherwise interfere with the occurrence of the TCEH Effective Date.

As set forth in Article IV.B.9(c) and Article IV.B.9(f), Holders of Allowed EFIH First Lien DIP Claims, Holders of Allowed Class B3 Claims, and Holders of Allowed Class B4 Claims, as applicable, shall receive distribution on account of such Claims on the EFH Effective Date ~~or as soon as reasonably practicable after the EFH~~

~~Effective Date~~, except with respect to (a) distributions ~~made~~ on account of EFIH First Lien Makewhole Claims and EFIH Second Lien Makewhole Claims, ~~and that are~~ Allowed ~~by Final Order~~ after the EFH Effective Date (which Allowed Makewhole Claims ~~and interest thereon~~ shall be paid in full, in Cash, from the EFIH Claims Reserve, as soon as reasonably practicable after becoming Allowed ~~Makewhole Claims by Final Order~~); ~~(b) all reasonable and documented fees and expenses (as described in greater detail in);~~ (b) distributions on account of Claims Allowed under Article III.B.19(b)(iii) and Article III.B.20(b)(iii) (which shall be paid in full in ~~cash~~ Cash as soon as reasonably practicable following (i) completion of the fee review process ~~to be~~ set forth in the Plan Supplement ~~and Amended Plan Supplement~~ or (ii) any order of the Bankruptcy Court approving any motion or other request of the EFIH First Lien Notes Trustee, the EFIH Second Lien Notes Trustee, Holders of EFIH First Lien Notes or Holders of EFIH Second Lien Notes for payment of such Claims), ~~provided~~, that any ~~fees and expenses allowed~~ such Claims Allowed pursuant to ~~such approval~~ the fee review process ~~set forth in the Plan Supplement and Amended Plan Supplement~~ or ~~any such order of the Bankruptcy Court~~ before the EFH Effective Date will be paid on the EFH Effective Date or as soon as reasonably practicable after the EFH Effective Date; and (c) any other distributions made on account of ~~Allowed~~ Class B3 Claims and ~~Allowed~~ Class B4 Claims Allowed after the ~~EFH~~ Effective Date (which Allowed Class B3 Claims and Allowed Class B4 Claims shall be paid in full, in Cash, from the EFIH Claims Reserve or the EFH/EFIH Distribution Account, as applicable, as soon as reasonably practicable after becoming Allowed). To the extent the unpaid principal and interest (including Additional Interest and interest on interest) for the EFIH Second Lien Notes are not paid to the EFIH Second Lien Notes Trustee as the Paying Agent under the EFIH Second Lien Indenture on the EFH Effective Date, then Holders of EFIH Second Lien Notes will continue to accrue interest on such unpaid amounts, which shall be paid, in full, in Cash, from the EFIH Claims Reserve or the EFH/EFIH Distribution Account. To the extent the unpaid interest (including Additional Interest and interest on interest) for the EFIH First Lien Notes ~~are is~~ not paid on the EFH Effective Date, then Holders of EFIH First Lien Notes will continue to accrue interest on such unpaid amounts, which shall be paid, in full, in Cash from the EFIH Claims Reserve or the EFH/EFIH Distribution Account.³

If any funds remain available after first funding the EFIH Claims Reserve in accordance with the Plan and any order of the Bankruptcy Court regarding the amount required to fund the EFIH Claims Reserve, Holders of Allowed Class B6 Claims may receive a distribution on the EFH Effective Date, though the actual size of the distribution to be issued on the EFH Effective Date, if any, cannot be determined with finality at this time. The size of the distribution is dependent on, among other factors, (a) the amount required under the Plan and any order of the Bankruptcy Court to fund the EFIH Claims Reserve, and whether the Makewhole Claims asserted by Holders of EFIH First Lien Note Claims or EFIH Second Lien Note Claims are Allowed by Final Order or disallowed by Final Order, (b) the payment of all Professional Fee Claims from the EFIH Professional Fee Escrow Account and any amounts remaining in such accounts have been refunded to the EFH/EFIH Distribution Account, (c) the payment of the reasonable and documented fees and expenses allowed under the EFIH Unsecured Notes Indenture (which fees and expenses, for the avoidance of doubt, shall not be included in the amount of any Allowed Claims under the EFIH Unsecured Notes Indenture), (d) the conclusion of the Post-Closing Audit according to the terms of the Merger Agreement and the payments to or from the EFH/EFIH Distribution Account based on the results of the Post-Closing Audit, and (e) ensuring sufficient reserves are in place to fund (1) General Administrative Claims Against the EFIH Debtors, and Priority Tax Claims Against the EFIH Debtors, (2) ensuring sufficient reserves are in place to fund post-EFH Effective Date Professional Fee Claims and reasonable and documented post-EFH Effective Date fees and expenses that are allowed under the EFIH First Lien Notes, the EFIH First Lien 2017 Note Indenture, the EFIH First Lien 2020 Note Indenture, and/or any related agreement, or the EFIH Second Lien Notes, the EFIH Second Lien Note

³ Nothing in the Plan prevents the EFIH First Lien Notes Trustee, the EFIH Second Lien Notes Trustee, or Holders of EFIH First Lien Note Claims and Holders of EFIH Second Lien Note Claims from arguing (a) for a larger EFIH Claims Reserve than what the EFH/EFIH Debtors have estimated in the Disclosure Statement or disclosed in the Amended Plan Supplement and/or (b) that the EFIH Claims Reserve should be established to pay all contractual interest in respect of the EFIH First Lien Notes and the EFIH Second Lien Notes accruing for a period longer than three years from the EFH Effective Date (and all parties' rights to challenge such assertions are also hereby expressly reserved). In the event the EFIH Claims Reserve proves to be insufficient to satisfy any Allowed Class B3 Claims or Allowed Class B4 Claims, nothing in the Plan prevents the EFIH First Lien Notes Trustee and EFIH Second Lien Notes Trustee from seeking the disgorgement of any Plan distribution made to Holders of Allowed Class B5 or Class B6 Claims and/or seeking to enforce any ruling requiring disgorgement. No automatic disgorgement provision is currently contemplated by the PIK Settlement.

Indenture, and/or any related agreement, and (3) the costs of winding down the EFIH Debtors. The EFH Debtors and EFIH Debtors provided additional disclosures regarding their good-faith and non-binding estimates of amounts set forth in subclauses (b), (c), and (e) in the Plan Supplement.

Except as set forth in this Article VI.A, in Article IV.B.9(b)-9(c), and in Article IV.B.9(f) of the Plan, no distributions shall otherwise made to Holders of Claims against the EFH Debtors or the EFIH Debtors, until the EFH Debtors and the EFIH Debtors have made determinations with respect to factors (a)-(e) in the above paragraph of this Article VI.A.

Any Makewhole Claim or other Claim based on or derived from the EFIH First Lien Notes or EFIH Second Lien Notes (and interest thereon, including Additional Interest and interest on interest) ultimately Allowed by Final Order shall be paid in full, in Cash, from the EFIH Claims Reserve (and, if and to the extent the EFIH Claims Reserve proves insufficient to pay any such Claim, including all interest thereon, in full, from the EFH/EFIH Distribution Account, the Post-Effective Date Administrative Account and/or any other account, reserve or funds established pursuant to the Plan to distribute value from the EFIH Debtors to holders of Allowed Claims or Interests). Any Makewhole Claim against an EFH Debtor or an EFIH Debtor that is not based on or derived from the EFIH First Lien Notes or EFIH Second Lien Notes that becomes Allowed, whether before, on, or after the EFH Effective Date, shall receive treatment set forth in its respective class set forth in Article III.B of the Plan. Notwithstanding anything to the contrary in the Plan, the Merger Agreement, or any related agreements, none of (i) the Plan Sponsor; (ii) Merger Sub; (iii) the EFH Debtors; (iv) the Reorganized EFH Debtors; (v) Reorganized EFIH; (vi) ~~Reorganized EFIH~~; ~~(vii)~~ any other entity acquired, directly or indirectly, by the Plan Sponsor pursuant to the terms of, or as a result of, the Plan, the Merger Agreement, or any related agreement, or ~~(viii)~~ (vii) with respect to each of the foregoing Entities in clauses (i) through ~~(viii)~~ (vii), such Entity and its current and former Affiliates, and such Entities' and their current and former Affiliates' current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), predecessors, successors, and assigns, subsidiaries, and each of their respective current and former equity holders, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such, shall have or incur any liability whatsoever in connection with or as a result of any Makewhole Claim being Allowed; provided, however, that, for the avoidance of doubt, nothing in the foregoing shall limit or affect the allowance and/or payment of any Makewhole Claims based on or derived from the EFIH First Lien Notes or EFIH Second Lien Notes in accordance with the other terms of this Plan, including Article III.B.19 and Article III.B.20, and the foregoing (i) through (vii) shall not include (1) the EFIH Claims Reserve, (2) the EFH/EFIH Distribution Account, (3) the Post-Effective Date Administrative Account, (4) any other account, reserve or funds established pursuant to the Plan to distribute value from the EFIH Debtors to holders of Allowed Claims or Interests, (5) the EFH Plan Administrator Board, (6) the Makewhole Litigation Oversight Committee, or (7) any Holder of a Claim or Interest that receives any Plan distribution of value from the EFIH Debtors, including Holders of the EFIH Unsecured Notes or the EFIH Unsecured Notes Trustee.

B. Rights and Powers of EFH Plan Administrator Board.

The EFH Plan Administrator Board shall be authorized to direct the Disbursing Agent to make distributions from the EFH/EFIH Distribution Account to Holders of Allowed Claims and Allowed Interests against the EFH Debtors and the EFIH Debtors on the EFH Effective Date, or as soon as reasonably practicable thereafter, in accordance with the Plan and to exercise such other powers as may be vested in the EFH Plan Administrator Board by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the EFH Plan Administrator Board to be necessary and proper to implement the provisions of the Plan. The EFH Plan Administrator Board shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

The EFH Plan Administrator Board may, but is not required to, establish governance and organizational documents before or after the EFH Effective Date (but to the extent such governance and organizational documents are established before the EFH Effective Date, they will be filed with the Bankruptcy Court); provided that such governance and organizational document shall be provided to the Makewhole Litigation Oversight Committee. Any Holder of a Claim or Interest seeking to compel the EFH Plan Administrator Board to make distributions from the EFH/EFIH Distribution Account or manage any reserves shall seek relief from the Bankruptcy Court in accordance with the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the District of Delaware, and any

other applicable rules or procedures. The EFH Plan Administrator Board or its professionals on behalf of the EFH Plan Administrator Board shall keep an accounting of distributions made from, and funds contributed to, the EFH/EFIH Distribution Account that sets forth whether such distributions or contributions, as applicable, were made for the benefit of the EFH Debtors or their creditors, on the one hand, or the EFIH Debtors on the other hand. Such accounting will be shared with the professionals for the Holders of Claims and Interests Against the EFH Debtors and EFIH Debtors, including the EFIH [First Lien Notes Trustee, the EFIH Second Lien Notes Trustee, and Holders of EFIH First Lien Notes and EFIH Second Lien Notes, the EFIH Unsecured Notes Trustee](#) and the advisors to the EFIH Unsecured Notes Trustee, on a professionals' eyes only basis [\(except as otherwise ordered by the Bankruptcy Court\)](#).

C. Disbursing Agent.

All distributions under the Plan shall be made to Holders of Allowed Claims and Allowed Interests by the Disbursing Agent (including at the direction of the EFH Plan Administrator Board, as applicable) on the applicable Effective Date, or as soon as reasonably practicable thereafter, in accordance with the Plan. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

D. Rights and Powers of Disbursing Agent.

1. Powers of the Disbursing Agent.

The Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby, including making distributions from the EFH/EFIH Distribution Account at the direction of the EFH Plan Administrator Board; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan.

2. Expenses Incurred On or After the Effective Date.

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Disbursing Agent in performing its duties under the Plan on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement claims (including reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in Cash by the Reorganized Debtors. Reorganized TCEH and the Reorganized EFH Shared Services Debtors shall only be obligated to pay the reasonable fees and expenses incurred by the Disbursing Agent for distributions related to Claims against the TCEH Debtors and the EFH Shared Services Debtors, and the Reorganized EFH Debtors and Reorganized EFIH Debtors shall only be obligated to pay the reasonable fees and expenses incurred by the Disbursing Agent for distributions related to Claims against the EFH Debtors and EFIH Debtors.

E. Delivery of Distributions and Undeliverable or Unclaimed Distributions.

1. Record Date for Distribution.

On the Distribution Record Date, the Claims Register shall be closed and any party responsible for making distributions shall be authorized and entitled to recognize only those record Holders listed on the Claims Register as of the close of business on the Distribution Record Date. The record Holder for the TCEH Credit Agreement Claims solely for purposes of the Distribution Record Date shall be the TCEH First Lien Administrative Agent.

2. Delivery of Distributions in General.

Except as otherwise provided herein, the Reorganized Debtors shall make distributions to Holders of Allowed Claims and Allowed Interests as of the Distribution Record Date at the address for each such Holder as indicated on the Debtors' records as of the date of any such distribution; *provided, however*, that the Distribution Record Date shall not apply to publicly-traded Securities. The manner of such distributions shall be determined at the discretion of the

may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein (a) constitute or be deemed a waiver by such insurers of any rights or defenses, including coverage defenses, held by such insurers, or (b) establish, determine, or otherwise imply any liability or obligation, including any coverage obligation, of any insurer.

**ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT,
UNLIQUIDATED, AND DISPUTED CLAIMS**

A. Allowance of Claims.

Except as otherwise set forth in the Plan, after the Effective Date, each of the Reorganized Debtors shall have and retain any and all rights and defenses such Debtor had with respect to any Claim immediately before the Effective Date. This Article VII of the Plan shall not apply to the DIP Claims, TCEH First Lien Claims, TCEH Second Lien Note Claims, or TCEH Unsecured Note Claims, which Claims shall be Allowed in full and shall not be subject to any avoidance, reductions, set off, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaims, cross-claims, defenses, disallowance, impairment, objection, or any other challenges under any applicable law or regulation by any person or entity.

Except as specifically provided as Allowed Claims pursuant to Article III.B of the Plan or otherwise objected to by the Debtors in the Chapter 11 Cases, the Plan shall serve as the Debtors' objection to all other ~~EFIH First Lien Note Claims, EFIH Second Lien Note Claims,~~ EFH LBO Note Claims, and EFH Legacy Note Claims under the respective indentures. If the Bankruptcy Court sustains the Debtors' objection to these Claims, the Confirmation Order shall disallow such Claims. The Holders of such Claims may respond to the Debtors' objection to such Claims by filing an objection to the Plan.

B. Claims Administration Responsibilities.

Except as otherwise specifically provided in the Plan, after the Effective Date, the applicable Reorganized Debtor(s) or the EFH Plan Administrator Board, as applicable, shall have the sole authority: (1) to File, withdraw, or litigate to judgment, objections to Claims; (2) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court; *provided, however*, as further set forth in Article VII.K of the Plan, with respect to the EFH First Lien Makewhole Claims and the EFH Second Lien Makewhole Claims, the EFH Plan Administrator Board and/or the Makewhole Litigation Oversight Committee (and not the Reorganized Debtors) shall have the sole authority to take the actions set forth in (1)-(3) hereof..

Except with respect to Claims and Causes of Action released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article VIII, if one or more Entities have sought and obtained standing to prosecute a Cause of Action on behalf of one or more of the Debtors' Estates and such Entities are prosecuting such Causes of Actions as of the Effective Date, then such Entities will have the sole authority, solely with respect to such Causes of Action, to File, withdraw, litigate to judgment, settle, compromise, or take any other actions in respect of such Causes of Action.

C. Estimation of Claims.

Before or after the Effective Date, the Debtors or the Reorganized Debtors, as applicable, with the consent of the Plan Sponsor with respect to any Disputed Claim against any EFH Debtor or any EFH Debtor, may (but are not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection. Notwithstanding any provision to the contrary in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the

H. Reimbursement or Contribution.

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless before the Confirmation Date: (1) such Claim has been adjudicated as non-contingent; or (2) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered before the Confirmation Date determining such Claim as no longer contingent.

I. No Distributions Pending Allowance.

Except as otherwise set forth herein, if an objection to a Claim or portion thereof is Filed as set forth in Article VII.A and VII.B of the Plan, no payment or distribution provided under the Plan shall be made on account of such Disputed Claim or portion thereof unless and until such Disputed Claim becomes an Allowed Claim.

J. Distributions After Allowance.

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. Except as otherwise set forth in the Plan ([including Article III.B.19 and Article III.B.20](#)), as soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim the distribution (if any) to which such Holder is entitled under the Plan as of the Effective Date, less any previous distribution (if any) that was made on account of the undisputed portion of such Claim, without any interest, dividends, or accruals to be paid on account of such Claim unless required under such order or judgment of the Bankruptcy Court.

K. Preservation of Makewhole Appellate Rights and Litigation of Makewhole Claims.

1. Rights and Powers of Makewhole Litigation Oversight Committee.

The Makewhole Litigation Oversight Committee shall be appointed as of the EFH Confirmation Date to oversee the litigation and/or settlement of the EFIH First Lien Makewhole Claims and EFIH Second Lien Makewhole Claims ~~by~~ [on behalf of the](#) EFIH Debtors [and](#) the EFH Plan Administrator Board.

The Makewhole Litigation Oversight Committee and/or the EFIH Unsecured Notes Trustee shall have the right to seek relief from the Bankruptcy Court to facilitate distributions on behalf of the Holders of the Class B6 Claims, and all parties-in-interest shall have the right to contest or otherwise oppose such request for relief.

The Makewhole Litigation Oversight Committee shall have the right to retain its own professionals, including counsel, in its sole and absolute discretion. The reasonable and documented fees and expenses of the Makewhole Litigation Oversight Committee, including professional fees, shall be paid from funds, [if any](#), in the EFH/EFIH Distribution Account prior to and senior to any disbursements to Holders of Claims (other than [to Holders of Claims under the EFIH First Lien Notes and/or EFIH Second Lien Notes, including](#) the EFIH First Lien Makewhole Claims and EFIH Second Lien Makewhole Claims, [and all interest thereon](#), as set forth below) ~~and but only~~ after funding (a) the [EFIH Claims Reserve in accordance with the Plan and any order of the Bankruptcy Court regarding the amount required to fund the](#) EFIH Claims Reserve and (b) the Post-Effective Date Administrative Account; *provided, that if* the EFIH [Claims Reserve proves to be insufficient to pay all Allowed EFIH First Lien Makewhole Note Claims and/or the Allowed](#) EFIH Second Lien ~~Makewhole Claims are Allowed in an amount in excess of the EFIH Claims Reserve.~~ [Note Claims \(including all interest thereon\) in full, any payment of any fees and expenses of](#) the Makewhole Litigation Oversight ~~Committee's fees~~ [Committee](#) shall be subject to disgorgement to satisfy such Allowed Claims [\(including all interest thereon\) in full](#); *provided, further, however,* that no Cash on hand at EFH Corp. as of the EFH Effective Date shall be used to satisfy such reasonable and documented fees and expenses of the Makewhole Litigation Oversight Committee. The Makewhole Litigation Committee ~~Fees~~ [fees and expenses](#) will not be subject to approval by the Bankruptcy Court or the Fee Review Committee unless otherwise ordered by the Bankruptcy Court and will be evaluated for reasonableness by the Makewhole Litigation Oversight Committee and any other entities that may be

agreed upon; *provided, however*, the EFIH First Lien Notes Trustee (and Holders of EFIH First Lien Note Claims) and the EFIH Second Lien Notes Trustee (and Holders of EFIH Second Lien Notes Claims) reserve the right to argue at the Confirmation Hearing that all of the fees and expenses of the Makewhole Litigation Oversight Committee and the Post-Effective Date Administrative Account must be subject to at least the same review process as will apply to their fees and expenses, and the foregoing is without prejudice to the right of the EFIH First Lien Notes Trustee, the EFIH Second Lien Notes Trustee, Holders of EFIH First Lien Notes or Holders of EFIH Second Lien Notes to object at any time (before or after the EFH Effective Date) to the allowance or payment of any such fees and expenses.

2. Powers of EFIH Debtors in Conjunction with the Makewhole Litigation Oversight Committee.

Prior to the EFH Effective Date, the EFIH Debtors, shall pursue (or not pursue, as the case may be), in consultation with the Makewhole Litigation Oversight Committee, all remedies for the litigation of, and/or objections to, the EFIH First Lien Makewhole Claims and EFIH Second Lien Makewhole Claims and (a) will obtain the consent of the Makewhole Litigation Oversight Committee with respect to any settlement of the EFIH First Lien Makewhole Claims and EFIH Second Lien Makewhole Claims prior to the EFH Effective Date with such consent (i) to be in the Makewhole Litigation Oversight Committee's sole discretion if any settlement is at or above 50% of any EFIH First Lien Makewhole Claims (as calculated as of the EFH Effective Date) or 50% of the EFIH Second Lien Makewhole Claims (as calculated as of the EFH Effective Date) and (ii) not to be unreasonably withheld if any settlement is below 50% of the EFIH Second Lien Makewhole Claims (as calculated as of the EFH Effective Date) or 50% of the EFIH Second Lien Makewhole Claims (as calculated as of the EFH Effective Date), and (b) shall cease prosecution of objections to the EFIH First Lien and Second Lien Makewhole Claims if directed by the Makewhole Litigation Oversight Committee and upon five business days' prior notice to counsel for the EFH Notes Trustee and Fidelity. Unless otherwise agreed to by each of the Unconflicted Initial Supporting Creditors, any decision of the Pre-Effective Date Makewhole Litigation Oversight Committee shall be by consent of those holding a majority of the total amount of EFIH Unsecured Notes held by the Unconflicted Initial Supporting Creditors.

The benefit of any settlement of the First Lien Makewhole Claims and/or Second Lien Makewhole Claims approved by the Makewhole Litigation Oversight Committee or, prior to the Confirmation Date, by the Initial Supporting Creditors, shall be distributed *ratably* among all Holders of Allowed Class B5 Claims and Allowed Class B6 Claims pursuant to the terms of the Alternative E-Side Plan until such time such Holders have received a 100% recovery on account of their respective Allowed Claims. For the avoidance of doubt, neither the Initial Supporting Creditors nor the members of the Makewhole Litigation Oversight Committee, as applicable, shall receive any consideration in excess of their *pro rata* share as holders of EFIH Unsecured Notes.

For the avoidance of doubt, the Makewhole Litigation Oversight Committee shall consult with the EFIH Debtors and its advisors regarding such litigation of, objections to, and/or settlement of, the EFIH First Lien Makewhole Claims and the EFIH Second Lien Makewhole Claims.

3. Powers of EFH Plan Administrator Board in Conjunction with Makewhole Litigation Oversight Committee.

After the EFH Effective Date, the EFH Plan Administrator Board will take all actions necessary (or refrain from taking all actions necessary, as applicable), and solely as directed by the Makewhole Litigation Oversight Committee, to pursue all remedies for litigation of, and objections to, the EFIH First Lien Makewhole Claims and EFIH Second Lien Makewhole Claims; *provided, however*, that the Makewhole Litigation Oversight Committee shall periodically consult with the EFH Plan Administrator Board and its advisors (to be selected by the EFH Plan Administrator Board in its sole discretion) regarding the litigation of the EFIH First Lien Makewhole Claims and EFIH Second Lien Makewhole Claims.

The Makewhole Litigation Oversight Committee will have the right to consult with the EFH Plan Administrator Board regarding any change to, or whether there should be a change to, counsel of record for the EFH/EFIH Debtors (and their successors) in the litigation of EFIH First Lien Makewhole Claims and EFIH Second Lien Makewhole Claims, including any appeals related to such makewhole litigation.

The EFH Plan Administrator Board shall obtain the consent of the Makewhole Litigation Oversight Committee with respect to any settlement of the EFIH First Lien Makewhole Claims and EFIH Second Lien

Makewhole Claims, with such consent (a) to be in the Makewhole Litigation Oversight Committee's sole discretion if any settlement is at or above 50% of any EFIH First Lien Makewhole Claims (as calculated as of the EFH Effective Date) or 50% of the EFIH Second Lien Makewhole Claims (as calculated as of the EFH Effective Date) and (b) not to be unreasonably withheld if any settlement is below 50% of the EFIH Second Lien Makewhole Claims (as calculated as of the EFH Effective Date) or 50% of the EFIH Second Lien Makewhole Claims (as calculated as of the EFH Effective Date); *provided, however*, notice of any such settlement shall be filed on the Bankruptcy Court docket.

Notwithstanding the foregoing, the Makewhole Litigation Oversight Committee shall have an independent right to litigate and settle the EFIH First Lien Makewhole Claims and/or the EFIH Second Lien Makewhole Claims, which shall not be subject to the consent of the EFH Plan Administrator Board; *provided, however*, notice of any such settlement shall be filed on the Bankruptcy Court docket.

The fees and expenses incurred by the EFIH Debtors, the EFH Plan Administrator Board, and the Plan Sponsor (up to \$200,000 as set forth in the definition of Post-Effective Date Administrative Account) arising from or related to litigation with respect to the EFIH First Lien Makewhole Claims and/or the EFIH Second Lien Makewhole Claims shall be paid from the funds, if any, in the Post-Effective Date Administrative Account, which shall be established on the EFH Effective Date. ~~If the Post Effective Date Administrative Account is insufficient to satisfy such fees and expenses, the EFIH Debtors, Reorganized EFIH Debtors, and the EFH Plan Administrator Board shall be authorized to deduct such fees and expenses from~~ (after first funding the EFIH Claims Reserve in accordance with the Plan and any order of the Bankruptcy Court regarding the amount required to fund the EFIH Claims Reserve). For any and all actions taken by the Plan Sponsor at the express written request of the EFH Plan Administrator Board arising from or related to any and all litigation, proceedings, and settlements relating to the EFIH First Lien Makewhole Claims and the EFIH Second Lien Makewhole Claims, the EFH Plan Administrator Board shall reimburse the Plan Sponsor from the funds, if any, in the EFH/EFIH Distribution Account for the reasonable and documented fees and out-of-pocket expenses in excess of \$200,000. If the EFIH Claims Reserve proves to be insufficient to pay all Allowed EFIH First Lien Note Claims and Allowed EFIH Second Lien Note Claims (including all interest thereon) in full, any payment of any fees and expenses of the EFH Plan Administrator Board shall be subject to disgorgement to satisfy such Allowed Claims (including all interest thereon) in full.

ARTICLE VIII. SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

A. *Discharge of Claims and Termination of Interests.*

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Reorganized Debtors), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtors before the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the Holder of such a Claim or Interest has accepted the Plan. Any default or "event of default" by the Debtors or Affiliates with respect to any Claim or Interest that existed immediately before or on account of the Filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.

B. Release of Liens.

Except as otherwise specifically provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan (including as set forth in Article III.B.19(b) and Article III.B.20(b)), on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, except for Other Secured Claims that the Debtors elect to Reinstate in accordance with Article III.B.1 (subject to the consent of the Plan Sponsor), III.B.17 (subject to the consent of the Plan Sponsor), III.B.27, or III.B.37 of the Plan (and, with respect to any Allowed Other Secured Claims Against the TCEH Debtors asserted by the Taxing Units or the Texas Comptroller which the TCEH Debtors shall Reinstate on the TCEH Effective Date until such Allowed Other Secured Claims are satisfied in the full Allowed amount), all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtors and their successors and assigns, in each case, without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors. The Liens on the collateral securing the EFIH First Lien Note Claims and EFIH Second Lien Note Claims, as applicable, will be released on the EFH Effective Date; *provided, however*, that the EFIH First Lien Notes Trustee and EFIH Second Lien Notes Trustee will be granted Liens on the EFIH Claims Reserve, as described in Article III.B.19 and Article III.B.20; *provided, further, however*, that such Liens shall be released at such time when all Claims based upon or under the EFIH First Lien Notes (including, for the avoidance of doubt, any Claims based upon or under the EFIH Collateral Trust Agreement) and all Claims based upon or under the EFIH Second Lien Notes have either been (1) Allowed (whether before, on, or after the EFH Effective Date) and paid in full (to the extent Allowed), including all interest thereon, in Cash or (2) disallowed by Final Order; *provided, further, however*, that upon release of such Liens set forth in this sentence, the funds of the EFIH Claims Reserve shall revert to the EFH/EFIH Distribution Account. For the avoidance of doubt, for purposes of determining whether any such ~~Makewhole~~ Claims are Secured Claims entitled to treatment as Class B3 or Class B4 Claims (rather than Unsecured Claims entitled to treatment as Class B6 Claims), the secured status of such ~~Makewhole~~ Claims shall be determined as if such Liens had not been released on the EFH Effective Date and remained in effect to the same extent they did immediately before the EFH Effective Date.

C. Releases by the Debtors.

In addition to any release provided in the Settlement Order, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, each Released Party is deemed released and discharged by the Debtors, the Reorganized Debtors, and their Estates from any and all Claims and Causes of Action, including Claims and Causes of Action identified, claimed, or released in the Standing Motions, the Litigation Letters, or the Disinterested Directors Settlement, as well as all other Claims and Causes of Action, whether known or unknown, including any derivative claims, asserted on behalf of the Debtors, that the Debtors, the Reorganized Debtors, or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim or Interest, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership or operation thereof), the Debtors' in--or out-of-court restructuring efforts, intercompany transactions (including dividends paid), transactions pursuant and/or related to the Master Separation Agreement dated December 12, 2001, the TCEH Credit Agreement, the TCEH First Lien Notes, the Cash Collateral Order (and any payments or transfers in connection therewith), the TCEH First Lien Intercreditor Agreement, the Liability Management Program, the Tax Sharing Agreements, the 2007 Acquisition, the Management Agreement, the 2009 amendment to the TCEH Credit Agreement, the 2011 Amend and Extend Transactions, the 2005 Oncor Transfer, the 2013 Revolver Extension, the Luminant Makewhole Settlement, the Tax and Interest Makewhole Agreements, the TCEH Intercompany Notes, the Shared Services, any preference or avoidance claim pursuant to sections 544, 547, 548, and 549 of the Bankruptcy Code, the formulation, preparation, dissemination, negotiation, or Filing of the Terminated Restructuring Support Agreement, the Plan Support Agreement, the EFIH Unsecured Creditor Plan Support Agreement, the Plan Sponsor Plan Support Agreement, the EFH/EFIH Committee Settlement, the EFIH First Lien Principal Settlement, the Original Confirmed Plan, or any Restructuring Transaction, contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any

judgment claims in respect of which no monetary recovery is sought) solely with respect to the TCEH First Lien Creditor Deposit L/C Collateral Allocation Dispute. Notwithstanding anything to the contrary in the foregoing, the Plan shall not enjoin any party from pursuing the claims and Causes of Action set forth in Section 6.12 of the Parent Disclosure Letter delivered in connection with the Merger Agreement; *provided, however*, that such Claims and Causes of Action shall be subject to treatment pursuant to the Plan and shall be discharged as set forth in Article VIII.A hereof. ~~The~~ Notwithstanding anything to the contrary in the foregoing, the Plan shall not enjoin or otherwise prevent Holders of the EFH First Lien ~~Note Claims~~ Notes, Holders of EFH Second Lien ~~Note Claims~~ Notes, the EFH First Lien Notes Trustee, or the EFH Second Lien Notes Trustee from prosecuting any appeal of any order or any other action or proceeding of any kind with respect to any Makewhole Claims or any other Claims held by such parties, including any Claims against any Released Parties (including any Claims for disgorgement of any Plan distributions to any such Released Parties); *provided, however*, that (x) the liens securing the collateral of the EFH First Lien Notes and EFH Second Lien Notes will be released on the EFH Effective Date, (y) the EFH Debtors, the EFH Debtors, the EFH First Lien Notes Trustee, the Holders of EFH First Lien Notes, the Holders of EFH Second Lien Notes, and the EFH Second Lien Notes Trustee reserve all rights with respect to the rights, claims, and defenses of each of the EFH Debtors, EFH Debtors, the EFH First Lien Notes Trustee, the Holders of the EFH First Lien Notes, the Holders of EFH Second Lien Notes, and the EFH Second Lien Notes Trustee with regard to the litigation over the allowance of any Makewhole Claims or any other Claims asserted by the EFH First Lien Notes Trustee, the Holders of the EFH First Lien Notes, the EFH Second Lien Notes Trustee, and the Holders of the EFH Second Lien Notes against any of the EFH Debtors, the EFH Debtors, the EFH Plan Administrator Board, the Makewhole Litigation Oversight Committee, the EFH Unsecured Notes Trustee, or the Holders of EFH Unsecured Note Claims, and (z) the EFH First Lien Notes Trustee and EFH Second Lien Notes Trustee shall ~~each receive a Lien~~ receive the Replacement EFH First Lien and the Replacement EFH Second Lien, respectively, on the EFH Claims Reserve as set forth in Article III.B.19 and Article III.B.20 ~~on the EFH Claims Reserve of this Plan and shall (together with the Holders of the EFH First Lien Notes and the Holders of EFH Second Lien Notes) otherwise receive all protections and treatments set forth in the Plan.~~

G. Liabilities to, and Rights of, Governmental Units.

Nothing in the Plan or the Confirmation Order shall release, discharge, or preclude the enforcement of: (i) any liability to a Governmental Unit that is not a Claim; (ii) any Claim of a Governmental Unit arising on or after the Effective Date, other than taxes determined under the prompt determination procedure in section 505 of the Bankruptcy Code, to the extent applicable; (iii) any liability to a Governmental Unit on the part of any Entity other than the Debtors or Reorganized Debtors; or (iv) any valid right of setoff or recoupment by any Governmental Unit.

H. Environmental Law Matters.

Nothing in the Plan or the Confirmation Order shall release, discharge, or preclude the enforcement of (or preclude, release, defeat, or limit the defense under non-bankruptcy law of): (i) any liability under Environmental Law to a Governmental Unit that is not a Claim; (ii) any Claim under Environmental Law of a Governmental Unit arising on or after the Effective Date; (iii) any liability under Environmental Law to a Governmental Unit on the part of any Entity to the extent of such Entity's liability under non-bankruptcy law on account of its status as owner or operator of such property after the Effective Date; (iv) any liability to a Governmental Unit on the part of any Entity other than the Debtors or Reorganized Debtors; or (v) any valid right of setoff or recoupment by any Governmental Unit. All parties' rights and defenses under Environmental Law with respect to (i) through (v) above are fully preserved. For the avoidance of doubt, the United States is not a Releasing Party under the Plan.

Nothing in the Plan or the Confirmation Order shall enjoin or otherwise bar any Governmental Unit from asserting or enforcing, outside this Court, any liability described in the preceding paragraph. Nothing in the Plan or the Confirmation Order authorizes: (i) the transfer or assignment of any governmental license, permit, registration, authorization, or approval, or (ii) the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements under Environmental Law. The Bankruptcy Court retains jurisdiction, but not exclusive jurisdiction, to determine whether environmental liabilities asserted by any Governmental Unit are discharged or otherwise barred by the Confirmation Order or the Plan, or the Bankruptcy Code.

B. Conditions Precedent to Confirmation of a Plan as to the EFH Debtors and EFIH Debtors.

It shall be a condition to Confirmation of the Plan with respect to the EFH Debtors and EFIH Debtors that the following shall have been satisfied or waived pursuant to the provisions of Article IX.E of the Plan:

1. the Bankruptcy Court shall have entered the EFH Disclosure Statement Order and the EFH Confirmation Order in a manner consistent in all material respects with the Plan, the Settlement Order, the Merger Agreement, and the EFIH Unsecured Creditor Plan Support Agreement, and in form and substance reasonably satisfactory to the EFH Debtors, the EFIH Debtors, and the Plan Sponsor;

2. the Settlement Order shall remain in full force and effect; and

3. the EFH Confirmation Order shall, among other things:

- (a) authorize the EFH Debtors, the Reorganized EFH Debtors, the EFIH Debtors, and the Reorganized EFIH Debtors to take all actions necessary to enter into, implement, and consummate the contracts, instruments, releases, leases, indentures, and other agreements or documents created in connection with the Plan, including the Restructuring Transactions and the Transaction Agreements;
- (b) decree that the provisions of the EFH Confirmation Order and the Plan are nonseverable and mutually dependent;
- (c) authorize the EFH Debtors, the Reorganized EFH Debtors, the EFIH Debtors, and the Reorganized EFIH Debtors, as applicable/necessary, to: (i) implement the Restructuring Transactions; (ii) issue and distribute the Reorganized EFH Common Stock pursuant to the exemption from registration under the Securities Act provided by section 1145 of the Bankruptcy Code or other exemption from such registration or pursuant to one or more registration statements; (iii) make all distributions and issuances as required under the Plan, including Cash and the Reorganized EFH Common Stock; and (iv) enter into any agreements, transactions, and sales of property as set forth in the Plan Supplement;
- (d) provide that, pursuant to section 1146 of the Bankruptcy Code, the assignment or surrender of any lease or sublease, and the delivery of any deed or other instrument or transfer order in furtherance of, or in connection with, any transfers of property pursuant to the Plan, including any deeds, mortgages, security interest filings, bills of sale, or assignments executed in connection with any disposition or transfer of assets contemplated under the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax, and upon entry of the EFH Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment;
- (e) provide for the release of the EFIH First Lien Notes Trustee's Lien on the EFIH Claims Reserve ~~upon entry of a Final Order disallowing at such time when all Claims based upon or under the EFIH First Lien Makewhole Claims Notes (including, for the avoidance of doubt, any Claims based upon or under the EFIH Collateral Trust Agreement) have either been (1) Allowed (whether before, on, or after the EFH Effective Date) and paid in full (to the extent Allowed), including all interest thereon, in Cash or (2) disallowed by Final Order~~ and, upon such release, the funds in the EFIH Claims Reserve attributable to the Claims of Holders of EFIH First Lien Notes shall be deposited in the EFH/EFIH Distribution Account;
- (f) provide for the release of the EFIH Second Lien Notes Trustee's Lien on the EFIH Claims Reserve ~~upon entry of a Final Order disallowing at such time when all Claims based upon or~~

under the EFIH Second Lien ~~Makewhole Claims~~ Notes have either been (1) Allowed (whether before, on, or after the EFH Effective Date) and paid in full (to the extent Allowed), including all interest thereon, in Cash or (2) disallowed by Final Order and, upon such release, the funds in the EFIH Claims Reserve attributable to the Claims of Holders of EFIH Second Lien Notes shall be deposited in the EFH/EFIH Distribution Account;

- (g) authorize the EFIH Unsecured Notes Trustee to comply with the directives of the Threshold Supporting Creditors (as defined in the EFIH Unsecured Creditor Plan Support Agreement); and
- (h) provide that, from and after the EFH Effective Date, the Reorganized EFH Debtors and Reorganized EFIH Debtors shall have no liabilities other than those liabilities expressly set forth in the Plan.

C. Conditions Precedent to the TCEH Effective Date.

It shall be a condition to the TCEH Effective Date that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.E of the Plan:

1. the TCEH Confirmation Order shall have been duly entered in form and substance reasonably acceptable to the TCEH Debtors, EFH Shared Services Debtors, and the TCEH Supporting First Lien Creditors;
2. the Settlement Order shall remain in full force and effect;
3. the final version of the Plan, the Plan Supplement, and all of the schedules, documents, and exhibits contained therein (including the New Employee Agreements/Arrangements and the Employment Agreements), in each case solely with respect to the TCEH Debtors and EFH Shared Services Debtors, shall have been Filed in a manner consistent in all material respects with the Plan, the Transaction Agreements (as applicable to the TCEH Debtors and EFH Shared Services Debtors), the Plan Support Agreement, and the Settlement Order, and shall be in form and substance reasonably acceptable to the TCEH Debtors, the EFH Shared Services Debtors, and the TCEH Supporting First Lien Creditors;
4. all Allowed Professional Fee Claims with respect to the TCEH Debtors and EFH Shared Services Debtors approved by the Bankruptcy Court shall have been paid in full or amounts sufficient to pay such Allowed Professional Fee Claims after the TCEH Effective Date have been placed in the TCEH Professional Fee Escrow Account pending approval of the Professional Fee Claims by the Bankruptcy Court;
5. the TCEH Debtors and the EFH Shared Services Debtors shall have obtained all authorizations, consents, regulatory approvals, including from the FERC, NRC, and FCC, as applicable, rulings, or documents that are necessary to the Restructuring Transactions pertaining to the TCEH Debtors and the EFH Shared Services Debtors, including the Spin-Off or the Taxable Separation, as applicable, and shall remain in full force and effect, and the RCT shall have approved the substitute bond with respect to the TCEH Debtors' mining reclamation obligations;
6. all conditions to the completion of the transactions contemplated by the Tax Matters Agreement and the Taxable Separation Tax Receivable Agreement or the Spin-Off Tax Receivable Agreement, as applicable, shall have been satisfied or shall have been waived by the party entitled to waive them, and the transactions contemplated by the Transition Services Agreement, the Tax Matters Agreement, the Separation Agreement, the Amended and Restated Split Participant Agreement, and the Taxable Separation Tax Receivable Agreement or Spin-Off Tax Receivable Agreement, as applicable, shall be completed substantially simultaneously on the TCEH Effective Date, and, other than in respect of the Spin-Off Tax Receivable Agreement or Taxable Separation Tax Receivable Agreement, as applicable, shall be in form and substance reasonably acceptable to the Plan Sponsor;
7. any waiting period applicable to the Spin-Off or the Taxable Separation under the HSR Act or similar law or statute shall have been terminated or shall have expired; and

Contracts or Unexpired Leases effected under the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void as to such Debtors; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims, Interests, or Causes of Action as to such Debtors; (b) prejudice in any manner the rights of such Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by such Debtor or any other Entity. Notwithstanding the foregoing and for the avoidance of doubt, (i) the Settlement embodied in the Settlement Agreement shall remain in full force and effect and the failure of Confirmation or Consummation to occur with respect to any or all Debtors shall not affect the Settlement or any provisions of the Settlement Agreement and (ii) if the Spin-Off is effectuated, the Approval Order (and the agreements authorized thereby) shall remain in full force and effect and the failure of Confirmation or Consummation to occur with respect to any Debtor (other than a TCEH Debtor) shall not affect the Approval Order or the Tax Matters Agreement.

ARTICLE XI. RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction (subject to any withdrawal of the reference of any proceeding by the district court or any appeal of any order, judgment or decree of the Bankruptcy Court) over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code to the extent provided under applicable law, including jurisdiction to:

1. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;
2. approve any settlements of Claims, including Makewhole Claims, to the extent one or more parties seeks Bankruptcy Court approval of such settlement of Claims;
3. hear and determine matters related to the DIP Facilities and the DIP Orders;
4. decide and resolve all matters related to the granting and denying, in whole or in part, of any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
5. resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Cure Claims pursuant to section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Reorganized Debtors' amending, modifying, or supplementing, after the Effective Date, pursuant to Article V of the Plan, any Executory Contracts or Unexpired Leases to the Assumed Executory Contracts and Unexpired Lease List, Rejected Executory Contracts and Unexpired Lease List, or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;
6. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;
7. adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;
8. enter and implement such orders as may be necessary to execute, implement, or consummate the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement, including injunctions or other actions as may be necessary to restrain interference by an Entity with Consummation or enforcement of the Plan;
9. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;