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JOINT REPORT AND APPLICATION OF ONCOR ELECTRIC DELIVERY COMPANY LLC AND NEXTERA ENERGY, INC. FOR REGULATORY APPROVALS PURSUANT TO PURA §§ 14.101, 39.262 AND 39.915	§ § § § § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**RESPONSE OF NEXTERA ENERGY, INC.
TO COMMISSION STAFF'S
FIFTH REQUEST FOR INFORMATION**

NextEra Energy, Inc. ("NextEra Energy") files this Response to the aforementioned requests for information.

I. WRITTEN RESPONSES

Attached hereto and incorporated herein by reference are NextEra Energy's written responses to the aforementioned requests for information. Each such response is set forth on or attached to a separate page upon which the request has been restated. Such responses are also made without waiver of NextEra Energy's right to contest the admissibility of any such matters upon hearing. NextEra Energy hereby stipulates that its responses may be treated by all parties exactly as if they were filed under oath.

II. INSPECTIONS

In those instances where materials are to be made available for inspection by request or in lieu of a written response, the attached response will so state. For those materials that a response indicates may be inspected at Oncor's voluminous room, please call at least 24 hours in advance for an appointment in order to assure that there is sufficient space and someone available to accommodate your inspection. To make an appointment at the Oncor voluminous room located at 1005 Congress Avenue, Suite B-50, Austin, Texas 78701, please call Emma Azarani at 512-879-0926.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all parties of record in this proceeding by hand delivery, overnight delivery, fax, or U.S. first class mail on this the 2nd day of January, 2017.

____
Ann M. Coffin

Staff RFI 5-1:
Refer to the NextEra's Response to Staff RFI 1 54. Please describe and provide all documented results of any analysis performed to determine the effect of the removal of $150 million in escrow account funding for asbestos claims on the sufficient of the remaining escrow amounts to satisfy likely claims.

RESPONSE:
NextEra Energy does not believe there will be any effect from the removal of $150 million in escrow account funding for asbestos claims on the sufficiency of the remaining escrow amounts to satisfy likely claims. Based upon the professional analyses performed by independent consultants identified in the highly sensitive work papers of NextEra Energy witness John Reed, the establishment of a $100 million escrow fund is sufficient to address the asbestos claims. The documents responsive to this RFI are the highly sensitive confidential report of Aon Global Risk Consulting issued August 11, 2016 and the highly sensitive confidential report of Ankura Consulting Group issued October 21, 2016, both of which are included in John Reed's highly sensitive work papers filed in this docket November 3, 2016. Additionally, consistent with NextEra Energy's response to Staff's RFI 1-40 and Proposed Regulatory Commitment 32, NextEra Energy has committed that none of the expenses or liabilities related to EFH's bankruptcy, including costs incurred to address these legacy liabilities, will be recovered through rates charged by Oncor.

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration.

Staff RFI 5-2:
Refer to NextEra's Response to Staff RFI 1-67. Please provide:
a. An estimate of the range of tax liability that may arise from a determination that the spin-off of Vistra Energy Corp. (formerly TCEH Corp.) is taxable.
b. Copies of all analyses supporting that range and the risks that such liability will occur.
c. Given the tax opinions required by the Merger Agreement, a statement of whether, and, if applicable, a description of the basis on which and the possible adjustments by which the acquisition by NextEra can proceed to closure.

RESPONSE:
a. See NextEra Energy's response to subparts (a) and (c) of Staff RFI 1-104.

b. See NextEra Energy's response to subparts (a), (c), and (d) of Staff RFI 1-104. See also pages 11-17 of the testimony of Paul Keglevic, Executive Vice President, Chief Financial Officer, and Co-Chief Restructuring Officer of EFH, which is provided as Attachment 1 to this response.

c. NextEra Energy expects to receive all of the tax opinions that are required under the Merger Agreement at the Closing (the "Required Tax Opinions"), as long as the supplemental Private Letter Ruling regarding the impact of the transaction between EFH and NextEra Energy on the tax-free nature of the spin-off of Vistra Energy Corp. (formerly TCEH Corp.) (the "Supplemental PLR") contains the requested rulings. NextEra Energy understands that the IRS is actively working on the Supplemental PLR and has not discussed with EFH any possible adjustments to the requested rulings. Accordingly, NextEra Energy is not currently aware of any possible adjustments to the requested rulings in the Supplemental PLR, or any related impact on the Required Tax Opinions.

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
ENERGY FUTURE HOLDINGS CORP., *et al.*,[1]	)	Case No. 14-10979 (CSS)
	)	
Debtors.	)	(Jointly Administered)

DECLARATION OF PAUL KEGLEVIC IN SUPPORT OF CONFIRMATION OF THE THIRD AMENDED PLAN OF REORGANIZATION

1 The last four digits of Energy Future Holdings Corp.'s tax identification number are 8810. The location of the debtors' service address is 1601 Bryan Street, Dallas, Texas 75201. Due to the large number of debtors in these chapter 11 cases, for which joint administration has been granted, 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.

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Pursuant to 28 U.S.C. § 1746, I, Paul Keglevic, hereby declare as follows under penalty of perjury:

1. I make this Declaration in support of confirmation of the Debtors' Third Amended Joint Plan of Reorganization (the "Plan").

2. I am the Executive Vice President, Chief Financial Officer, and Co-Chief Restructuring Officer of Energy Future Holdings Corp. ("EFH Corp." or "EFH"), its direct subsidiary, Energy Future Competitive Holdings Company LLC ("EFCH"), EFCH's direct subsidiary, Texas Competitive Electric Holdings Company LLC ("TCEH LLC"), and together with EFCH and TCEH LLC's direct and indirect subsidiaries ("TCEH"); and EFH Corp.'s direct subsidiary Energy Future Intermediate Holding Company LLC ("EFIH"). I am also sole Director and President of EFH Corporate Services, Inc. ("EFH Corporate Services") and a Director of EFH Properties Company ("EFH Properties").

3. EFH Corp. is a corporation organized under the laws of the state of Texas. EFH Corp.'s direct subsidiary EFCH, a limited liability company organized under the laws of the state of Delaware; EFH Corp.'s direct subsidiary, EFIH, a limited liability company organized under the laws of the state of Delaware; and various other direct and indirect subsidiaries of EFH Corp. that are debtors in these chapter 11 cases, are collectively referred to herein as the "Debtors."

4. I have worked for the Debtors since July of 2008. I am generally familiar with the Debtors' businesses, day-to-day operations, financial matters, results of operations, cash flows, and underlying books and records. Except as otherwise indicated below, all facts set forth are based upon my personal knowledge of the Debtors' businesses, operations, and related financial information gathered from my review of their books and records, relevant documents,

including documents filed in this bankruptcy proceeding, and information supplied to me by the members of the Debtors' management team and advisors.

I. TCEH's Plan of Reorganization

5. The Debtors' Plan for the TCEH Debtors is largely similar to the Debtors' Sixth Amended Plan of Reorganization confirmed in November 2015 (the "Confirmed Plan"). Under the current Plan, as was the case in the Confirmed Plan, Reorganized TCEH will be spun off to the TCEH first lien creditors utilizing a structure intended to be treated as a tax-free reorganization under the Internal Revenue Code, paired with a step-up in the tax basis in certain assets offset by the consumption of some of the EFH Group's net operating losses, or "NOLs" (the "Tax-Free Spin-Off").

6. On the date when the Plan becomes effective, TCEH will transfer all of its interests in its subsidiaries to Reorganized TCEH and EFH Corp. will transfer its equity interests in EFH Corporate Services and EFH Properties, two wholly-owned direct subsidiaries of EFH Corp., to Reorganized TCEH.[2] Under the Internal Revenue Code, these transfers should not trigger any taxable gain, and the IRS has provided the Debtors with a Private Letter Ruling giving comfort that this will be the case.[3]

7. In connection with these transfers, Reorganized TCEH will contribute certain assets—including the Comanche Peak power plant and TXUE's retail business—with fair value higher than their tax basis to a subsidiary, "PrefCo."[4] Reorganized TCEH will then sell all of PrefCo's preferred stock to one or more third party investors (the "Preferred Stock Sale"). This

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[2] *See* DX002 Third Amended Disclosure Statement for the Second Amended Joint Plan of Reorganization [D.I. 8747 at 10-11] ("Disclosure Statement").

[3] *See* DX343 July 28, 2016 IRS Private Letter Ruling [EFH06374939] ("Private Letter Ruling").

[4] *See* DX002 Disclosure Statement [D.I. 8747 at 10].

will be treated as a taxable sale of the assets under the Internal Revenue Code, triggering a taxable gain, but also providing a step-up in the tax basis of those assets. Parties have also referred to the Preferred Stock Sale as a "Busted 351." To offset the gain from the taxable sale of the step-up assets, the Tax-Free Spin-Off will consume roughly $5.86 billion of the projected $8.3 billion of NOLs accrued by the EFH Group.[5]

8. As currently structured and together with the Private Letter Ruling, the Tax-Fee Spin-Off and Busted 351 will allow TCEH to separate from EFH in a way that results in no material tax liability for EFH Corp. while providing Reorganized TCEH with a basis step-up and preserving a projected billion dollars of NOLs for EFH and reorganized EFH.

9. I understand that certain EFH creditors have challenged the Tax-Free Spin-Off and Busted 351 because they believe Reorganized TCEH will receive benefits—the step-up in tax basis and the use of offsetting NOLs—to the detriment of EFH without compensation. I also understand that these creditors believe the Tax-Free Spin-Off could be accomplished without the Busted 351 and consumption of the NOLs. However, I believe the Tax-Free Spin-Off incorporating the Busted 351 is the only path acceptable to the TCEH first lien creditors and therefore the only viable restructuring path that will maximize value to both sides of the Debtors' capital structure and avoid potentially disastrous tax consequences for EFH Corp.

10. I also understand that certain EFH creditors object to the transfer of EFH Corporate Services and EFH Properties to Reorganized TCEH because they believe EFH Corp. is not receiving consideration for these transfers. These transfers, however, have been part of the Debtors' plans of reorganization since April 2015, and were closely considered and negotiated

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[5] As discussed herein, Reorganized TCEH's ability to undertake certain business activities will be limited for a time following the Busted 351, subject to unwinding of the tax-free treatment by the IRS.

by the Debtors and TCEH first lien creditors and reviewed and approved by the Disinterested Directors, who had the assistance of their independent advisors. Despite bifurcated confirmation proceedings, the Plan is integrated, and provides for the holistic reorganization of both the E Side and the T Side. As explained below, EFH Corp.'s decision to transfer EFH Corporate Services and EFH Properties Company to Reorganized TCEH is a reasonable exercise of the Debtors' business judgment. If EFH Corporate Services and EFH Properties were not transferred to Reorganized TCEH and instead remained with EFH Corp. following the separation of Reorganized TCEH, these entities could incur significant potential financial obligations that I believe would eliminate any positive equity value at those entities.

11. In sum, based on all facts available to me, the Plan is the only viable restructuring path that avoids a multi-billion dollar stranded tax at EFH Corp., preserves NOLs for Reorganized EFH, allows for timely emergence from bankruptcy by both Reorganized TCEH and Reorganized EFH, and maximizes value to each of the Debtors' estates.

II. The Termination of the Debtors' Confirmed Plan and Negotiation of an Alternative Plan

12. The Plan is the best option available to all of the Debtors' constituencies. It is the culmination of more than three years of negotiation and analysis of alternatives by the Debtors, their advisors, the Disinterested Directors, their advisors, and the various creditor constituencies.

13. To understand the Plan in context, it is valuable to understand how the Debtors prepared for the potential failure and termination of the Confirmed Plan. On December 7, 2015, the Bankruptcy Court entered Orders confirming the Debtors' Sixth Amended Plan of Reorganization and approving the Settlement Agreement.[6] The Confirmed Plan anticipated two

[6] DX026 Order Confirming the Sixth Amended Joint Plan of Reorganization [D.I. 7244]; DX027 Order Approving Amended Restated Settlement Agreement [D.I. 7243].

significant transactions: Reorganized TCEH would be spun off to the TCEH first lien creditors in a tax-free spin-off (largely similar to the one proposed in the current Plan), and Reorganized EFH would merge with a consortium of investors including certain T-Side creditors and entities affiliated with the Hunt Companies ("Ovation").[7]

14. The Debtors devoted significant resources following confirmation of the Confirmed Plan toward obtaining regulatory approvals, including approval by the Public Utility Commission of Texas ("PUCT"), as required by the Merger Agreement between EFIH and Ovation. While the Debtors hoped to close the transaction with Ovation, the Co-Chief Restructuring Officers ("Co-CROs") were also aware of the significant uncertainty surrounding the regulatory process, so we worked with management and the Debtors' advisors starting in early 2016 to consider alternatives to the Confirmed Plan that could be pursued in the event the Confirmed Plan was not consummated. As a Co-CRO, development, structuring, and negotiation of the alternative plan became one of my primary responsibilities.

15. I understood that under the Plan Support Agreement ("PSA"), which was approved by the Bankruptcy Court on September 18, 2015, the obligation of the PSA Parties to support the Confirmed Plan would terminate on April 30, 2015, unless *(a)* all PUCT approvals were obtained by April 30, 2015, in which case the termination date extended automatically to June 30, 2015, or *(b)* if all other conditions but the PUCT approvals were obtained, the investor consortium could extend the termination date to May 31, 2015, and again to June 30, 2015, with a $50 million reduction in the TCEH unsecured creditors' recovery for each extension.[8]

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7 *See* DX031 Disclosure Statement for the Fifth Amended Joint Plan of Reorganization [D.I. 6124 at 18-20].

8 DX035 Sept. 18, 2015 Order Authorizing Debtors to Enter Into and Perform Under Plan Support Agreement [D.I. 6097 at Ex. A § 11(g)] ("PSA Order").

16. I also understood that termination of the PSA Parties' obligation to support the Confirmed Plan did not terminate every obligation under the PSA. For example, even if the Confirmed Plan and Merger Agreement were terminated, the TCEH junior creditors who were parties to the PSA were still obligated to:

- not object to any Alternative Restructuring, as defined by the PSA;[9]
- not support any plan or other arrangement that is not an Alternative Restructuring;[10] and
- vote in the same manner on any Alternative Restructuring as the TCEH first lien group.[11]

17. Nonetheless, the Debtors' exclusivity period had expired, and I knew the TCEH first lien creditors could file their own plan of reorganization in the event the Confirmed Plan was terminated.

18. By late February 2016, while management and the Debtors' advisors remained committed to the Confirmed Plan, consistent with the terms of the PSA, we began to hold preliminary discussions with creditors and their advisors to obtain input on a potential Alternative Restructuring (as defined by the PSA) that could be enacted if the required regulatory approvals were not received. I understand that the Disinterested Directors also began to discuss the terms of an Alternative Restructuring separately with their own advisors around this time.

19. On March 24, 2016, the PUCT issued an order approving the change of control application submitted by Oncor and Ovation, but subjected the order to significant conditions, including subsequent approval as a tariff of the lease between Oncor AssetCo and OEDC, which was critical to the conversion of Oncor to a real estate investment trust, or "REIT," as Ovation

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9 *Id.* at Ex. A § 5.1(b).

10 *Id.*

11 *Id.* at Ex. A § 5.1(a)(i).

planned to do.[12] On April 7, 2016, counsel to the TCEH first lien creditors wrote to counsel to the TCEH unsecured noteholders to inform them that the TCEH first lien creditors viewed the PUCT order as insufficient to automatically extend the April 30 deadline.[13] The TCEH first lien creditors also indicated to the Debtors that they planned to send a Plan Support Termination Notice on May 1, 2016, and would file their own plan of reorganization if the Debtors did not file a new plan at that time.

20. In light of these concerns, the Debtors and their advisors worked quickly to reach agreement on an Alternative Restructuring that would maximize value for all constituencies and avoid a stranded tax liability. On April 25, 2016, the Debtors' counsel sent a term sheet to advisors to the TCEH first lien creditors, EFIH second lien noteholders, EFIH PIK noteholders, and Fidelity proposing terms for a consensual standalone plan of reorganization that was consistent with the Alternative Restructuring provisions of the PSA.[14] With respect to the T Side, this alternative plan *(i)* maintained a TCEH tax-free spin-off, but allowed a toggle to a taxable separation if spin-off requirements could not be satisfied, *(ii)* contemplated a mutually acceptable tax matters agreement between Reorganized TCEH and Reorganized EFH that would facilitate a Reorganized TCEH spinoff on an expedited basis before the effectiveness of the E-

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[12] DX344 Mar. 24, 2016 Order by the Public Utility Commission of Texas re Joint Report and Application of Oncor, Ovation Acquisition, and Shary Holdings for Regulatory Approvals [PUCT Dkt. 45188].

[13] DX097 Apr. 7, 2016 Letter from A. Kornberg to T. Lauria re TCEH [EFH06366082 at EFH06366094-96].

[14] DX688 Apr. 25, 2016 Email from A. Yenamandra to Nixon Peabody attaching Plan Term Sheet [EFH06322144]; DX683 Apr. 25, 2016 Email from A. Yenamandra to Kasowitz attaching Plan Term Sheet [EFH06320809]; DX684 Apr. 25, 2016 Email from A. Yenamandra to Sullivan & Cromwell attaching Plan Term Sheet [EFH06320817]; DX685 Apr. 25, 2016 Email from A. Yenamandra to Fried Frank attaching Plan Term Sheet [EFH06320825]; DX686 Apr. 25, 2016 Email from A. Yenamandra to Akin Gump, Foley Lardner attaching Plan Term Sheet [EFH06320833]; DX687 Apr. 25, 2016 Email from A. Yenamandra to Kramer Levin attaching Plan Term Sheet [EFH06320841].

Side plan, and *(iii)* provided the TCEH unsecured creditors a $550 million settlement payment, subject to possible reduction, as set forth in the PSA and Settlement Agreement.[15]

21. While the Debtors have always sought to avoid a taxable separation of TCEH, I believe that, had the taxable toggle not been incorporated into the Plan, the TCEH first lien creditors would likely have filed their own standalone plan. By including the toggle, the Debtors were able to retain control of their restructuring while preserving the ability to negotiate with the TCEH first lien creditors to avoid a taxable transaction.

22. I participated in a meeting of the Debtors' Joint Boards of Directors on April 30, 2016. Following a presentation by the Debtors' Co-CROs and advisors, and separate meetings of the Disinterested Directors and their advisors, the Boards approved the filing of the alternative plan and disclosure statement. As expected, the next day, on May 1, 2016, the TCEH first lien creditors sent a letter to the Debtors and the other PSA Parties informing us of their termination of their obligation to support the Confirmed Plan.[16] Immediately after receipt of this letter, which I understood to be a Plan Support Termination Notice pursuant to the PSA, the Debtors filed their Plan of Reorganization and a related Disclosure Statement and Scheduling Motion.[17]

23. While the E-Side and T-Side Debtors filed a Joint Plan and Disclosure Statement, I understood that the TCEH first lien creditors wanted TCEH to emerge from bankruptcy as quickly as possible, and feared that drawn-out E-Side proceedings could unnecessarily delay its emergence. I also understood that, to avoid that possibility, the TCEH first lien creditors were still willing to file their own standalone plan of reorganization using a taxable separation.

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[15] *See* DX095 Apr. 29, 2016 Joint Boards Restructuring Update [EFH06323765 at EFH06323772].

[16] DX682 May 1, 2016 Plan Support Termination Notice [EFH06303995].

[17] DX022 May 1, 2016 Motion of EFH for Order Scheduling Certain Hearing Dates and Deadlines re Plan Confirmation [D.I. 8358]; DX023 May 1, 2016 Disclosure Statement for the New Joint Plan of Reorganization [D.I. 8356]; DX024 May 1, 2016 Joint Plan of Reorganization [D.I. 8355].

Indeed, on May 19, 2016, the TCEH first lien creditors filed a form of a standalone TCEH plan of reorganization, and informed the Bankruptcy Court that they were willing to pursue confirmation of that plan if confirmation of TCEH and EFH were not decoupled.[18] To dissuade the TCEH first lien creditors from doing so, the Debtors agreed to bifurcate the confirmation proceedings so the TCEH Debtors could be confirmed prior to the EFH Debtors.[19]

III. The Plan, Including Tax-Free Spin-Off and Busted 351, Maximizes Value for Both Sides of the Debtors' Capital Structure.

A. Negotiation with the TCEH First Lien Creditors

24. Since before the Debtors filed for chapter 11, we have been concerned about a restructuring transaction that results in a significant stranded tax liability. Over the past three years, the TCEH first lien creditors consistently raised the possibility of a taxable separation of TCEH absent certain concessions from the Debtors, including the utilization of NOLs to achieve the maximum potential tax step-up in tax basis.[20] Since expiration of the Debtors' exclusivity period, this possibility became much more likely, unless the TCEH restructuring progressed on an accelerated schedule.

25. Indeed, under the PSA, the TCEH first lien creditors preserved their ability to pursue a taxable transaction in an alternative restructuring.[21] In the Debtors' negotiations with them in the spring of 2016 in pursuit of an alternative restructuring, the TCEH first lien creditors also insisted on maintaining their ability to toggle to a taxable transaction. Had the Debtors not

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[18] DX758 May 19, 2016 Supplemental Response of the TCEH First Lien Ad Hoc Committee to the Scheduling Motion [D.I. 8480 ¶ 3; *id.* at Exhibit A].

[19] *See* DX019 May 24, 2016 Order Scheduling Certain Hearing Dates and Deadlines re Plan Confirmation [D.I. 8514].

[20] *See, e.g.,* DX332 Mar. 27, 2014 Presentation to EFH Corp. Board of Directors [EFH2D00066835 at EFH2D00066837].

[21] DX035 PSA Order [D.I. 6097 at Ex. A § 5.4]; *see also* DX134 Aug. 9, 2015 Presentation to the Boards of Directors [EFH06002898 at EFH06002909].

agreed to this toggle, it is likely that the TCEH first lien creditors would have filed a standalone plan that included a taxable separation. As with previous iterations of potential TCEH restructurings, the Plan included the Preferred Stock Sale and basis step-up to incentivize the TCEH first lien creditors to pursue the Tax-Free Spin-Off.

26. In addition to my discussions with the TCEH first lien creditors, I have also spoken to potential acquirers of the Debtors' economic interest in Oncor. These bidders have largely been unconcerned by consumption of the EFH Group's NOLs in the Tax-Free Spin-Off, and contrary to the warnings of the Plan objectors, the Tax-Free Spin-Off was no impediment to generating interest in an E-Side transaction. In fact, NextEra Energy, who has agreed to acquire EFH's economic interest in Oncor, has not made availability of NOLs a closing condition of the Merger Agreement, or subject to a purchase price or closing adjustment.[22]

B. The Private Letter Ruling

27. On July 28, 2016, the Debtors received a Private Letter Ruling from the IRS, which confirmed that a TCEH taxable separation could create a massive "stranded" tax liability at EFH Corp.[23] Specifically, the Debtors initially sought a ruling from the IRS that the cancellation of TCEH first lien debt in a taxable separation would not give rise to any tax liability. The IRS informed the Debtors in late May 2016 that they were tentatively adverse to the Debtors' position. Consistent with those initial indications, the Private Letter Ruling included an express ruling that cancelation of the TCEH debt would indeed give rise to taxable gain.[24]

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22 DX003 July 29, 2016 Merger Agreement [D.I. 9190-2 at Ex. A Ex. 1].

23 DX343 Private Letter Ruling [EFH06374939].

24 *Id.* at EFH06374954.

28. After the IRS announced its tentative adverse position on the cancelation of debt ruling, the Debtors sought confirmation in the Private Letter Ruling that the Tax-Free Spin-Off could be successfully executed. The IRS provided this assurance in the Private Letter Ruling. Specifically, the IRS ruled that cancelation of the TCEH debt would not give rise to any tax liability in the Tax-Free Spin-Off (so long as all other requirements for a tax-free reorganization were satisfied). The rulings provided by the IRS also show that NOLs not consumed in the restructuring could survive and be used by Reorganized EFH.[25]

C. The Tax-Free Spin-Off is the Only Viable Path Forward.

29. Thus, in light of the the Private Letter Ruling, a taxable transaction could have devastating tax consequences for the E Side, including potentially over $26 billion of taxable gain which would wipe out all of the EFH Group's NOLs and leave behind a $6.5 billion cash tax liability, as illustrated by ***Figure 1*** below:

Figure 1: Calculation of Tax Liability
[all figures in millions]

Tax Basis of TCEH Assets (Including EFH Shared Services Debtors)	6,500
Total TCEH Debt (face, excluding DIP, accrued but unpaid interest)	33,269
Total Taxable Gain	*26,769*
Projected NOL	8,328
Total Taxable Income	*18,441*
Tax Rate	35%
Total Tax Liability (federal, excl. state)	6454.35

30. This would in turn likely result in the only available option for a disposition of Oncor to also be taxable, resulting in additional billions of dollars of additional liability. Since EFH Corp. is the EFH Group's taxpayer, it would be primarily liable for these taxes, and any

[25] *Id.* at EFH06374953-56.

chance of recovery to the EFH Corp. creditors would be eliminated. On the other hand, the Tax-Free Spin-Off should not, based on the Private Letter Ruling, trigger any such tax, and should preserve approximately $1.2 billion of NOLs for Reorganized EFH Corp.[26] As illustrated by ***Figure 2***, below, the Debtors estimate that net present value of those NOLs could be approximately $380 million:

Figure 2: E-Side CODI and NOL Valuation

		(in millions)
Projected NOL assuming all Debtors Emerge 12/31/16		8,328
Less: Taxable Gain in Preferred Stock Sale		(5,860)
	NOLs Remaining After Spin-Off	2,468
Less: Projected E-Side CODI[1]		(1259.00)
	Surviving NOLs	1,209.00
Tax Rate		35.43%
	Potential Tax Savings	428.3487
NPV factor, 6% Discount Rate[2]		89.12%
	NPV of NOLs	***381.7511***

[1] Based on EVR analysis of distributable value of current NEE bid.
[2] Assumes (a) no 382 limits because of NUBIG/Notice 2003-65;
(b) LRP allocated taxable income from Oncor starting in 2017.

31. Ignoring the substantial benefit of avoiding this potentially massive tax, certain EFH creditors have demanded additional consideration for use of the EFH Group's NOLs. The TCEH first lien creditors have steadfastly rejected any argument that they should compensate EFH Corp. for the step-up in basis, because the transaction presents both benefits and downsides to Reorganized TCEH. In the Tax-Free Spin-Off, the TCEH first lien creditors will receive a marginally greater value of basis step-up compared to a taxable separation. As illustrated by

[26] Approximately $2.5 billion of NOLs should survive immediately after the Busted 351 transaction. Based on the value of NextEra's bid, those NOLs will be subject to approximately $1.3 billion of further reduction on account of CODI related to the E-side restructuring. NOL projections are based on an emergence date of December 31, 2016.

Figure 3, below, the net present value of the step-up in the Tax-Free Spin-Off could be approximately $430 million higher than the value of the step-up that the TCEH First Lien Creditors would receive in a taxable separation:

Figure 3: Calculation of Incremental Value of Spin-Off Step-Up vs. Taxable Step-Up

Calculation of Incremental Value of Spin-Off Step-Up vs. Taxable Step-Up	(in millions)
Fair Market Value of TCEH (EVR midpoint)	11,319
Less: NPV of Tax Basis Step-Up in Preferred Stock Sale (EVR midpoint)[1]	(1,122)
TCEH FMV (midpoint)	10,197
Less: Tax Basis of TCEH Assets	(6,500)
Step-Up in Taxable Transaction	3,697
Step-Up in Taxable Transaction	(3,697)
Step-Up in Preferred Stock Sale	5,860
Incremental Step-Up	2,163
Tax Rate	35.49%
Total Tax Savings from Incremental	768
NPV Factor of 15-year straight-line depreciation at 8.2% discount rate[2]	56.47%
NPV of Incremental Tax Savings	**434**

[1]EVR Step-Up Valuation performed prior to updated D&P valuation for Busted 351 Assets and removal of natural gas plants

[2]15-year straightline depreciation used as a simplying assumption. 382 limitations not included.

32. However, in connection with the Tax-Free Spin-Off, the Tax Matters Agreement will prohibit Reorganized TCEH from (a) engaging in certain types of M&A activity (specifically, it cannot be acquired in a taxable transaction) or selling all of its assets; (b) instituting certain types of stock repurchase programs, including the repurchase of more than 20% of outstanding stock; and (c) shutting down assets under certain circumstances. Additionally, so-called "dividend recapitalizations," which are a key tool used by companies to

adjust their capital structures, are more likely to be taxable to Reorganized TCEH's shareholders.[27] Moreover, the Tax Matters Agreement allocates certain material risks to Reorganized TCEH that Reorganized TCEH would arguably not be liable for in a taxable separation, including (a) various "ordinary-course" tax liabilities; (b) potential taxability of dividend recapitalizations; and (c) most risks relating to any tax liability that results if the EFH Group's NOLs were insufficient to shelter the gain associated with the Busted 351 transaction.[28] Perhaps mostly importantly, Reorganized TCEH will have "consolidated group" or "-6" liability with respect to any tax liability that arises in 2016, including with respect to a "busted" spin-off; while tax liability from a "busted" spin-off is allocated to EFH and EFIH in various circumstances under the Tax Matters Agreement, Reorganized TCEH would remain jointly and severally liable to the IRS in the event EFH and EFIH could not pay the tax. In exchange for taking on these restrictions, the TCEH first lien creditors sought the maximum possible step-up in tax basis as quickly as possible in order for them to support the Tax-Free Spin-Off.

33. To be clear, it is highly uncertain that a value-maximizing solution can be achieved without the consent of the TCEH first lien creditors. Their consent to the Tax-Free Spin-Off is—and always has been—conditioned on utilizing EFH Group NOLs to maximize the tax basis step-up for Reorganized TCEH. The suggestion by certain EFH creditors of consummating the Tax-Free Spin-Off without utilizing the EFH Group's NOLs is unrealistic and impractical: any effort to pursue such a plan would be met with vigorous objection by the TCEH

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27 I understand that this is because the "earnings and profits" of the EFH Group will be allocated between Reorganized TCEH and EFH in the Spin-Off, with the significant majority, or all, of such earnings and profits being allocated to Reorganized TCEH. Dividends are taxable to shareholders to the extent of a company's earnings and profits. By contrast, in a taxable separation, none of this historic earnings and profits—or earnings and profits associated with the restructuring—would be allocated to Reorganized TCEH.

28 DX006 July 28, 2016 Plan Supplement (Ancillary Agreements), Ex. 1 (Tax Matters Agreement) [D.I. 9100 at Ex. 1].

first lien creditors, and the possibility that those creditors would file a standalone plan for TCEH that contemplates a taxable separation, leaving EFH Corp. with a multi-billion dollar tax liability. Thus, the Preferred Stock Sale, and the utilization of the EFH Group's NOLs in connection therewith, ultimately benefits *all* parties, including the EFH creditors that are objecting to the Plan.

34. The Debtors' management team and professionals have addressed these issues with the Boards since before the Debtors filed for bankruptcy. In addition, together with their separate advisors, the Disinterested Directors have thoroughly evaluated these issues since their engagement. Based on all facts available, including projected tax attributes and the Private Letter Ruling from the IRS, the Tax-Free Spin-Off and the Preferred Stock Sale and basis step-up transaction set forth in the Plan is the only viable restructuring path that avoids a multi-billion dollar stranded tax at EFH Corp. and preserves NOLs for Reorganized EFH and its acquirer. Given the potential benefit of the preserved NOLs, the avoidance of stranded tax, and the step-up in basis for Reorganized TCEH, I believe that the Plan is a value-maximizing transaction for all parties.

IV. EFH Corp.'s Transfer of EFH Properties and EFH Corporate Services to Reorganized TCEH

35. The Plan contemplates the transfer of EFH Corp.'s equity interests in EFH Properties and EFH Corporate Services to Reorganized TCEH. These contemplated transfers are primarily being effectuated through the Separation Agreement and the Plan. I understand that the EFH Indenture Trustee has objected to this aspect of the Plan and argued that EFH Corp. should be compensated for the transfer of equity in EFH Properties and EFH Corporate Services Company to Reorganized TCEH.

A. Transferring EFH Properties and EFH Corporate Services to Reorganized TCEH Has Been Part of Every Plan Filed In These Cases.

36. The proposed transfer of EFH Properties and EFH Corporate Services to the T Side is not a new idea or recent development. The transfers are the product of lengthy negotiations dating back to before the Petition Date. And the transfers were part of each plan filed in these cases—from the first plan filed[29] to the Confirmed Plan.[30] The rationale for doing so in the context of the current Plan remains the same.

37. The consistency of this construct is no accident. Rather, it is a decision that reflects sound business judgment because EFH Properties and EFH Corporate Services have no material value to the E Side or any potential acquirer of E-Side assets going forward. Instead, potential E-Side acquirers, creditors and third parties alike, have consistently viewed EFH Properties and EFH Corporate Services as a hindrance. Accordingly, the value of the E Side's other assets is maximized by transferring EFH Properties and EFH Corporate Services.

38. The reluctance to acquire these assets is unsurprising given the nature of the entities. EFH Properties is a cash-flow neutral entity that holds the leasehold interest in the Debtors' corporate headquarters in downtown Dallas, Texas—Energy Plaza. While EFH Properties does not own Energy Plaza, it is nonetheless liable for all maintenance and operational costs associated with managing and subleasing the entire building. And EFH Corporate Services is a cost center: it provides back office functions for the Debtors such as procuring, paying for, and billing at cost to subsidiaries such functions as information technology infrastructure, corporate secretarial, security, compliance, and internal auditing. It is not intended to make a

[29] DX044 Apr. 14, 2015 Disclosure Statement for the Joint Plan of Reorganization [D.I. 4143 at 17, 38]. The construct even predates filing. *See* DX321 Oct. 29, 2014 Presentation to the Boards of Directors [EFH06125893 at EFH06125923].

[30] DX123 Aug. 9, 2015 Presentation to the Boards of Directors [EFH060002898 at EFH06002907]; DX031 Sept. 21, 2015 Disclosure Statement for the Fifth Amended Joint Plan of Reorganization [D.I. 6124 at 20].

profit, its services are charged without a mark-up, and its services are overwhelmingly provided for the benefit of TCEH.

39. In contrast, the E Side's most valuable and marketable asset is its economic interest in Oncor. But Oncor is more marketable as a standalone asset than when packaged with other E-Side entities—especially those with limited value and no use to a prospective purchaser of Oncor. The Merger Agreement reflects the lack of interest in other E-Side entities, explicitly providing as conditions to closing that (1) there be no E-Side employees; and (2) aside from the enumerated entities to be acquired (which do not include EFH Properties or EFH Corporate Services), all subsidiaries will be liquidated or transferred.[31]

40. The TCEH first lien creditors, too, were not eager to acquire these assets, and the Debtors spent parts of eighteen months convincing them to take EFH Properties and EFH Corporate Services as part of a comprehensive transaction. I participated in these negotiations with the TCEH first lien creditors on these issues since before the Debtors filed for bankruptcy in 2014. At the very outset of these cases and throughout these proceedings, the Debtors' management, Boards of Directors, and Disinterested Directors evaluated the proposed transfers and determined that it was in each Debtor's best interest to transfer EFH Properties and EFH Corporate Services to the T Side.[32] The Disinterested Directors of EFH Corp. and TCEH (and their advisors) were also involved in evaluating these transfers, and supported the Debtors' ultimate decision to transfer EFH Properties and EFH Corporate Services.

41. The rationale for these transfers has not changed since they were originally proposed in the Debtors' first plan of reorganization. Nonetheless, the Debtors' management

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31 DX003 Aug. 3, 2016 Approval Order [D.I. 9190-2 at 104-105 (Merger Agreement §§ 7.2(i), (j))].

32 *See, e.g.*, DX134 Aug. 9, 2015 Presentation to Boards: Approval of Amended Plan and Merger Transaction Documents [EFH06002898 at EFH06002907].

and the Boards of Directors, along with the Disinterested Directors, carefully reevaluated and considered the proposed transfers in connection with the current Plan in meetings on July 22, 2016 and July 27, 2016, and approved agreements that would effectuate the proposed transfers on July 27, 2016.[33]

42. By transferring EFH Properties and EFH Corporate Services to Reorganized TCEH, I believe the Debtors were able to make the remaining E-Side assets more attractive to potential buyers, and in turn maximize the value of the E-Side estate to the benefit of its creditors.

B. EFH Properties

43. EFH Properties' leasehold interest in Energy Plaza derives from a sale-leaseback transaction in 2002. The lease was secured with a series of guarantees and then letters of credit until 2009, when the beneficiary drew down a letter of credit provided by TCEH under its credit facility. This drawdown resulted in prepayment of base rent for the duration of the lease into an escrow account serviced by Wells Fargo, as well as two payables: one from EFH Corp. to TCEH (which was settled in full) and one from EFH Properties to EFH Corp. The payable from EFH Properties to EFH Corp. remains on the books of EFH Properties in the amount of approximately $158 million (consisting of an original $115 million payable plus accrued interest).

44. As part of the Plan's transfer of EFH Properties to Reorganized TCEH, all of the cash held by EFH Properties immediately prior to such transfer (net of the amount, if any, required to be paid by EFH Properties to the Environmental Protection Agency ("EPA") under the terms of a proposed settlement) will be distributed or otherwise transferred to EFH Corp. or a subsidiary or other affiliate designated by EFH Corp. All intercompany claims held by the

[33] DX057 July 22, 2016 Restructuring, Tax, and M&A Update [EFH06365720 at EFH06365730-44]; DX048 July 27, 2016 Restructuring, Tax, and M&A Update [EFH06365761 at EFH06365769-89].

Debtors against EFH Properties will be released. The proposed treatment of EFH Properties as part of the Debtors' chapter 11 Plan is based on a careful consideration of multiple factors, including EFH Properties' status as a minimally cash-flow positive entity, and the fact that the vast majority of its income comes from its subtenants which include TCEH entities.

45. As I explained to the Joint Boards of Directors on July 22, 2016, and again on July 27, 2016, there are a number of considerations that weigh in favor of transferring EFH Properties to Reorganized TCEH.[34] EFH Properties subleases to tenants—EFH Corporate Services and ultimately Luminant—who operate primarily for the benefit of TCEH. If EFH Properties remains at EFH Corp., there is significant risk it becomes cash-flow negative. Reorganized TCEH's subtenants have little incentive and no significant obligation requiring them to remain in Energy Plaza should EFH Properties remain at EFH Corp. The EFH Corporate Services sublease is month-to-month, and there are several available locations at comparable rental rates,[35] and Luminant's sub-sublease of Oncor's space at Energy Plaza ends in March 2017.[36]

46. EFH Properties projects that it will approximately be net zero cash flow from 2018 onward, even without projecting any payment on the intercompany payables to EFH Corp. EFH Properties' revenue stream is projected to be less than $5,000 a year by 2018.[37] In addition, operating expenses will average $11.5 million between 2016 and 2020, while capital

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34 DX057 July 22, 2016 Restructuring, Tax, and M&A Update [EFH06365720 at EFH06365734-43]; DX058 July 22, 2106 Board Minutes [EFH06365751 at EFH06365752]; DX048 July 27, 2016 Restructuring, Tax, and M&A Update [EFH06365761 at EFH06365781-89]; DX049 July 27, 2016 Joint Board Minutes [EFH06365754 at EFH06365755].

35 DX464 Aug. 11, 2014 Jones Lang LaSalle - TCEH Cost Comparison Analysis [EFH05620329].

36 DX048 July 27, 2016 Restructuring, Tax, and M&A Update [EFH06365761 at EFH06365783].

37 DX048 July 27, 2016 Restructuring, Tax, and M&A Update [EFH06365761 at EFH06365784]; DX385 Sept. 2015 2016-22 LRP Review - EFH Board [EFH06365622 at EFH06365686]. This projection excludes the potential return of a $5 million deposit being held in an escrow account at Wells Fargo.

expenditures are projected to be $1.6 million in 2016, and roughly $800,000 per year in future years. Although the incurrence of maintenance and capital expenses detailed above may increase the ultimate value of Energy Plaza, such improvements, along with the leasehold estate, will revert to the owner-lessor, Zurich, upon the expiration of the Energy Plaza lease.

47. As illustrated by ***Figure 4***, below, if Reorganized TCEH vacated Energy Plaza, EFH Properties would have a cumulative net cash loss of approximately $13.8 million from January 2017 to the end of the Lease in February 2022, before accounting for the potential recoupment of a $5 million deposit with the owner-lessor:[38]

Figure 4: EFH Properties Projected Cash Flow

EFH Properties
2015 LRP - 2016 - 2020 Plan
Includes Energy Plaza and EFH Parking Facilities

2015 LRP - EFH Properties Stand Alone	2017	2018	2019	2020	2021	5-YR TOTAL
2015 LRP Management EBITDA	**4,866,814**	**804,504**	**804,503**	**804,504**	**n/a**	
Capex	(800,000)	(800,000)	(800,000)	(800,000)	n/a	
Cash Flow	**4,066,814**	**4,504**	**4,503**	**4,504**	**n/a**	
Adjustments						
Plus FDIC Adustments[2]	939,734	3,124,565	2,103,071	2,051,441	n/a	
Plus Reduction of Variable Expenses due to EFH Affiliate Vacancy	1,347,898	1,347,898	1,347,898	1,347,898	n/a	
Less: EFH Affiliate Revenue	(7,411,114)	(8,138,158)	(7,588,612)	(7,588,612)	n/a	
Less: EFH Affiliate Employee Parking Revenue	(212,654)	(212,654)	(212,654)	(212,654)	n/a	
Plus 3rd Party Parking Expense	88,200	88,200	88,200	88,200	n/a	
Total Adjustments	(5,247,937)	(3,790,149)	(4,262,097)	(4,313,727)	n/a	
Management EBITDA - EP Pro Forma - No ReOrg TCEH Rental Income	**(381,122)**	**(2,985,646)**	**(3,457,594)**	**(3,509,223)**	**(3,509,223)**	**(13,842,809)**
Capex	(800,000)	(800,000)	(800,000)	(800,000)	(800,000)	(4,000,000)
Cash Flow	**(1,181,122)**	**(3,785,646)**	**(4,257,594)**	**(4,309,223)**	**(4,309,223)**	**(17,842,809)**

1. Assumed that Oncor carries out its contractual obligation until 3/31/2017 and then Luminant rent is reflected in EFH Affiliate line item
2. Positive adjustment reflects FDIC extending its lease for 3-4 more floors than projected in the 2015 LRP at the same rental rate as in the 2015 LRP.

48. Given the current market for commercial real estate in downtown Dallas and the available term until the end of the lease, our brokers have informed us that it is unlikely that EFH Properties could find new tenants to recoup a significant portion of the lost rental income from

[38] DX048 July 27, 2016 Restructuring, Tax, and M&A Update [EFH06365761 at EFH06365785]; DX385 Sept. 2015 2016-22 LRP Review - EFH Board [EFH06365622 at EFH06365686].

Reorganized TCEH; thus leaving EFH Corp. with a sizeable net loss.[39] Separately, the Debtors determined that Reorganized TCEH would incur approximately $16 million in relocation expenses if Reorganized TCEH moved to a new space.[40] In other words, all parties would incur unnecessary costs and losses should EFH Properties remain at EFH Corp. post-emergence.

49. As previously noted, EFH Corporate Services is on a month-to-month lease and Luminant's sub-sublease expires in March 2017. If Reorganized TCEH does not take the equity in EFH Properties, there is little incentive for EFH Corporate Services and Luminant to remain in Energy Plaza and assume the burden of the lease. Even if the FDIC renews its sublease, the absence of EFH Corporate Services and Luminant (by way of Oncor) will likely result in EFH Properties having a cumulative net cash loss of between January 2017 through the end of the lease in February 2022.[41]

50. To this end, Reorganized TCEH has indicated that it is considering vacating Energy Plaza (and will likely do so if it does not own the equity of EFH Properties).

51. EFH Properties is projected to be cash flow neutral from 2018 through the end of the lease in 2022, even assuming EFH Corporate Services and Luminant remain as subtenants (before accounting for the potential return of a $5 million security deposit upon expiration of the

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[39] DX048 July 27, 2016 Restructuring, Tax, and M&A Update [EFH06365761 at EFH06365785] (FN2 provides "Positive adjustment reflects FDIC extending its lease for 3-4 more floors than projected in the 2015 LRP at the same rental rate as in the 2015 LRP."); DX385 Sept. 2015 2016-22 LRP Review - EFH Board [EFH06365622 at EFH06365686].

[40] DX048 July 27, 2016 Restructuring, Tax, and M&A Update [EFH06365761 at EFH06365787].

[41] DX048 July 27, 2016 Restructuring, Tax, and M&A Update [EFH06365761 at EFH06365786]; DX385 Sept. 2015 2016-22 LRP Review - EFH Board [EFH06365622 at EFH06365686]. This loss does not include approximately $5 million that the Owner-Lessor would be obligated to pay EFH Properties upon expiration of the lease in 2022 (or upon the resolution of any dispute asserted by the Owner-Lessor) to the extent EFH Properties has satisfied all of its obligations under the Energy Plaza lease. Further, the Energy Plaza lease runs through February 2022 and EFH Properties projects additional SG&A and Capital Expenditure expenses during the first two months of 2022, resulting in an approximately $18.5 million loss before accounting for the potential $5 million deposit reimbursement. *Id.* Assuming that deposit is recouped, EFH Properties is projected to result in a net loss of $13.5 million over the life the lease assuming EFH Corporate Services and Luminant vacate Energy Plaza.

lease).[42] As a result of this cash neutral projection, as well as the downside scenarios for EFH Corp. were it left with the equity of EFH Properties post-emergence, the TCEH first lien creditors have indicated that they are not willing to take the equity of EFH Properties if, as part of such transfer, Reorganized TCEH is required to assume the intercompany payables between EFH Properties and the Debtors or otherwise make any payment to EFH Corp. on account of such transfer. As a result, those payables will be cancelled pursuant to the terms of the Plan and no payment is contemplated beyond EFH Corp.'s receipt of the projected $18 million in net cash on hand (net of a settlement with the EPA) from EFH Properties.

52. In sum, EFH Properties is likely to have a cumulative net cash loss if Reorganized TCEH vacates Energy Plaza while Reorganized TCEH would incur $16 million in relocation costs if it were to vacate Energy Plaza. Conversely, if the equity in EFH Properties is transferred to Reorganized TCEH as contemplated under the Plan, EFH Corp. will receive the cash on hand at EFH Properties, and Reorganized TCEH will receive the benefits of its tenancy in Energy Plaza.

53. As a result, I believe that the proposed transfer of the equity of EFH Properties to Reorganized TCEH is a reasonable exercise of the Debtors' business judgment.

C. EFH Corporate Services

54. I understand that certain Plan objectors have argued that EFH Corporate Services has positive equity value and, as such, the E-Side should receive consideration or otherwise be compensated for the transfer of this purported value to Reorganized TCEH. I do not agree with this view.

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[42] DX048 July 27, 2016 Restructuring, Tax, and M&A Update [EFH06365761 at EFH06365788]; DX050 July 27, 2016 Restructuring, Tax, and M&A Update [EFH06365951 at EFH06365975].

1. Background

55. EFH Corporate Services is a wholly-owned subsidiary of EFH Corp. that provides a host of business services to TCEH entities (i.e., Luminant and TXU Energy), EFH Corp., EFIH, and Oncor, through separate Shared Services Agreements or operating procedures (collectively, the "Shared Services").

56. The functions provided by Shared Services include: legal, human resources, treasury, enterprise and market risk management, controller, tax services, financial planning, strategy and business development, information technology and infrastructure, external affairs (including political and regulatory advocacy), investor and media relations, corporate secretarial, security, compliance, and ethics issues, internal auditing and Sarbanes-Oxley compliance, supply chain services, business services administration, and facility design and construction and real estate management.[43]

57. Currently, EFH Corporate Services has approximately 420 employees, including many of the Company's senior executives.[44]

58. EFH Corporate Services is and was always intended to be a "zero-profit" entity. All Shared Services are billed at cost and without mark-up. All service costs incurred are billed out in full on a monthly basis.[45] The only cash on hand at EFH Corporate Services is that which is required for daily operations. I understand that as of April 30, 2016, EFH Corporate Services

[43] DX047 April 29, 2014 Declaration of Paul Keglevic in Support of First Day Motions [D.I. 98 at 26].

[44] DX586 Employee Data Spreadsheet [EFH06365709].

[45] DX651 April 1, 2014 Amended and Restated Shared Services Agreement between EFH Corporate Services Co. and TCEH [EFH04269629 at EFH04269632, EFH04269636]; DX661 April 1, 2014 Shared Services Agreement between EFH Corporate Services Co. and EFIH [EFH04801624 at EFH04801627, EFH04801631]; *see also* DX057 July 22, 2016 Restructuring, Tax, and M&A Update [EFH06365720 at EFH06365731].

had approximately $22 million in cash on hand.[46] That cash, which represents working capital, has been primarily funded by TCEH.

59. The services provided by EFH Corporate Services overwhelming support T-Side entities. Currently, E-Side service billings comprise approximately 5% of EFH Corporate Services' total service billings. In other words, 95% of the work currently performed by EFH Corporate Services supports TCEH.[47]

60. Additionally, TCEH pre-paid for certain of EFH Corporate Services' assets, including IT hardware and software, and the Shared Services Agreement provides TCEH with an ongoing right to use.[48]

2. EFH Corporate Services Is A Zero-Profit Entity That Has No Independent, Standalone Value To The E-Side.

61. EFH Corporate Services is a zero-profit entity specifically designed to provide Shared Services at cost. Any cash on hand consists only of what is needed to conduct daily operations. There is a fundamental lack of assets at EFH Corporate Services, as it is primarily comprised of people, licenses, and contracts.

62. I am aware that an expert for the EFH Indenture Trustee has asserted that EFH Corporate Services has a positive equity value of approximately $12.88 million. I also understand that, based on this opinion, the EFH Indenture Trustee has argued that the proposed transfer is improper because there is no consideration being provided to the E-Side in exchange for EFH Corporate Services.

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[46] DX057 July 22, 2016 Restructuring, Tax, and M&A Update [EFH06365720 at EFH06365731].

[47] DX368 2016 6+6 projection allocation 072216.xlsx [EFH06365711]; DX057 July 22, 2016 Restructuring, Tax, and M&A Update [EFH06365720 at EFH06365732].

[48] DX651 April 1, 2014 Amended and Restated Shared Services Agreement between EFH Corporate Services Co. and TCEH [EFH02921638 at EFH04269684].

63. I do not agree that any theoretical net book value of EFH Corporate Services necessarily translates to equity value for which the E-Side should be provided consideration.

64. *First*, to the extent that there is any residual net book value, it is almost certainly attributable to prepayments made by TCEH, given the current allocation of service billings. The overwhelming majority of services performed by EFH Corporate Services support TCEH. Current service bill allocations reveal that 95% of EFH Corporate Services monthly service bills are attributable to work performed for the benefit of TCEH.[49] As a result, TCEH is likewise responsible for 95% of the service bill costs paid to EFH Corporate Services each month. Accordingly, any residual net book value reflected on the EFH Corporate Services balance sheet would be primarily attributable to payments made by TCEH.

65. ***Second***, any theoretical net book value would be effectively eliminated by potential liabilities that could be triggered if EFH Corporate Services were to remain on the E Side and not be transferred to Reorganized TCEH. Even if EFH Corporate Services had some theoretical net book value—which, as a zero-profit entity, it does not—the potential liabilities that could be triggered if EFH Corporate Services is not transferred to the T-Side would eliminate any theoretical equity value.

66. Potential liabilities could include severance costs, statutory obligations under the WARN Act (including benefits), and other "wind-down" costs such as liabilities associated with termination of third-party contracts. While not all of these costs have been quantified, examination of even a few demonstrates that the magnitude of the potential liabilities would far outweigh any theoretical net book value. For example, if EFH Corporate Services were not transferred to the T Side, the overwhelming majority of employees would have no work to do

[49] DX368 2016 6+6 projection allocation 072216.xlsx [EFH06365711].

and would likely be terminated, triggering significant severance obligations of approximately $38 million for EFH Corporate Services.[50] Likewise, the same scenario could trigger significant liabilities for EFH Corporate Services under the statutory obligations of the WARN Act, including 60 days of compensation and benefits. I understand that this could result in additional liabilities of approximately $10.4 million. Even if these liabilities were significantly discounted based on the fact that they are potential liabilities that have not yet materialized, it is clear that they would outweigh the theoretical net book value asserted by the EFH Indenture Trustee.

67. ***Third***, given that approximately 95% of the work performed by EFH Corporate Services is for T-Side entities and does not generate profit, it is clear that EFH Corporate Services has minimal (if any) value to the E Side. Of the approximately 420 EFH Corporate Services employees, only a small fraction performs any work for the E-Side entities. The minimal E-Side service requirements would not justify the costs of retaining the entire employee base of EFH Corporate Services.

68. Retaining EFH Corporate Services on the E-Side likewise does not create value by virtue of costs avoided. Pursuant to the Interim Transition Services Agreement, the E Side will continue to receive services previously provided by EFH Corporate Service at substantially the same cost for a period of time, and this runway makes it unlikely that EFH Corp. and EFIH will suffer any material costs as a result of the transfer.[51]

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[50] DX471 May 2015 Severance Calculator for Business Services 5-18-15 rev 5-26-15 [EFH06009585].

[51] DX006 July 28, 2016 Plan Supplement (Ancillary Agreements), Ex. 2 Transition Services Agreement [D.I. 9100 Ex. 2 § 3.1].

3. Transferring EFH Corporate Services to Reorganized TCEH Reflects Reasonable Business Judgement.

69. The transfer of EFH Corporate Services to Reorganized TCEH is one piece of a larger deal and cannot be viewed in a vacuum. Rather, the transfer of EFH Corporate Services should be viewed holistically, in the context of the proposed Plan as a whole. To try to pull apart pieces of the deal that has already been negotiated would present scenarios that key parties have not agreed to (and may not be willing to agree to).

70. When viewed in this context, I do not believe any dollar amount of "consideration" for EFH Corporate Services is necessary, as the E-Side realizes benefits in the context of the overall Plan. For example, the E Side realizes a benefit in the form of avoiding a potentially significant stranded tax liability that far exceeds any theoretical net book value.

71. Even if focusing solely on the proposed transfer, it is clear that the E-Side receives significant benefits and/or avoids significant potential costs and liabilities as a result of the transfer of EFH Corporate Services to the E-Side. For this reason, I believe it is reasonable to transfer EFH Corporate Services to Reorganized TCEH as contemplated under the Plan.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Dated: August 13, 2016

/s/ Paul Keglevic

Name: Paul Keglevic

Title: Exec. Vice President, Chief Financial Officer, and Co-Chief Restructuring Officer

Company: Energy Future Holdings Corp.

Staff RFI 5-3:
Refer to NextEra's Response to Staff RFI 1-95. Please identify and describe the likely schedule of any other request for interconnection to Oncor's system likely to be delayed (and by how much) by requiring prior approval of the Texas Public Utility Commission before initiating the process of seeking approval of such other requests.

RESPONSE:
NextEra Energy has not identified the specific schedules for Public Utility Commission of Texas approval of any other interconnection requests to Oncor's system, but does not anticipate that requiring prior Commission approval would introduce meaningful delays.

This response was prepared by or under the direct supervision of Jess Totten, Principal, Osprey Energy Group, LLC.

Staff RFI 5-4:
Refer to NextEra's Response to Staff RFI 1-106. Moving beyond the fact that the obligation to acknowledge separateness is in itself self-evidently an obligation, please describe what additional obligations relevant to Oncor ring-fencing arise from such acknowledgement, isolating the specific additional obligations that such acknowledgement brings from those of the other cited factors with which it operates "in concert."

RESPONSE:
The acknowledgement by potential lenders does not create additional obligations, nor is it intended to. It does strengthen the separateness of Oncor's financing from obligations of NextEra Energy and its other affiliates, but does not obligate lenders beyond the acknowledgment itself.

This response was prepared by or under the direct supervision of John Reed, Chairman and CEO of Concentric Energy Advisors, Inc.

Staff RFI 5-5:
Refer to the Response of NextEra to Staff RFI 1-12, and more particularly to its reference to NextEra Energy's response to Cities RFI 3-6. With respect to the "Day 1" readiness planning, please provide:

a. A detailed schedule showing all completed activities, their scheduled and actual completion dates, and their interdependencies.
b. A description of the goals and objectives of the underlying process and of the purpose of its major activities.
c. A description (from planning documents if available) of the post-closing time horizon across which the results of the process are intended to apply.
d. A description [of] goals, objectives, and content of any plans expected to address consolidated operations after that time horizon.
e. Activity descriptions, dates, and interdependencies for any such plans intended to address consolidation on a longer-term basis.

RESPONSE:

a. The completed integration activities, their scheduled and revised completion dates, and their interdependencies are provided as Highly Sensitive Attachment 1 - Integration Completed Work Plans (status as of 12-22-16) to this response.

b. A description of the goals and objectives of the integration process can be found in Highly Sensitive Attachment 1 to NextEra Energy's response to Cities RFI 1-22. Pages 3 and 25 of the attachment contain the integration goals (Guiding Principles and Description of Day 1 Readiness) and the objectives/purpose are found in the integration team charters on pages 14-24 of this same attachment.

c. There is no current description or plan for a post-closing time horizon as the focus for integration activites is Day 1 readiness.

d. There are no current plans that address consolidated operations after the post-closing time horizon. See NextEra Energy's responses to Cities RFI 3-6 and Staff RFI 1-12.

e. There are no current plans that address consolidation on a longer-term basis. See NextEra Energy's responses to Cities RFI 3-6 and Staff RFI 1-12.

The documents responsive to this request are designated highly sensitive protected materials and are being provided pursuant to the terms of the Protective Order in this docket.

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration.

Staff RFI 5-6:

Refer to the response of NextEra to Staff RFI 1-15. Please:

a. Supplement the answer about when NextEra has requested a decision with a statement describing NextEra's current expectation about a FERC decision date.
b. Describe NextEra's view of the degree of certainty that it will receive a FERC decision before the deadline for this Commission's decision on the acquisition.
c. Provide a summary of your knowledge and experience with respect to occasions when the FERC has denied such waivers, the reasons, and any distinctions you believe exist between the circumstances of NextEra's Oncor acquisition and of those where you understand waivers to have been denied.
d. Describe the impacts of non-receipt of a FERC decision before this Commission's deadline or a decision denying the waiver risks on the ability of this Commission to require compliance with any state statute or regulation, or any policy, procedure, or other source of guidance under which Oncor now operates with respect to affiliate pricing.

RESPONSE:

a. The Federal Power Act does not specify an amount of time for FERC to issue an order on a waiver request. NextEra Energy's expectation continues to be that FERC will issue a decision on the petition for waiver of the affiliate pricing rules within approximately three months of the date the petition was submitted (*e.g.*, on or about February 1, 2017). Note that this expectation is not based on any discussion with FERC staff, but rather on a general sense of the time it often takes FERC to issue orders on waiver requests.

b. See NextEra Energy's response to Staff RFI 5-6 subpart (a). NextEra Energy cannot speculate on a specific degree of certainty as to when FERC will issue a decision on its petition for waiver of FERC's affiliate pricing rules. As a matter of reference, NextEra Energy notes that it sought an essentially identical waiver during the then pending acquisition of Hawaii Electric Industries, Inc. ("HEI") FERC granted the waiver request in approximately 4.5 months. Although NextEra Energy's expectation is that FERC will issue an order on the pending waiver request on or about February 1, 2017, *i.e.*, approximately 3 months, should FERC take the same length of time to issue an order on the current petition as the HEI waiver request, *i.e.*, approximately 4.5 months, the FERC decision on the pending waiver request would be issued prior to the Commission's deadline for a decision on the Oncor acquisition (April 29, 2017).

c. To NextEra Energy's knowledge, FERC has not denied a requested waiver of the affiliate pricing rules by a holding company system that implements "at cost" affiliate pricing pursuant to eligibility as a "single-state holding company system" under the requirements of 18 C.F.R. § 35.44(b)(4), but which would no longer qualify for such eligibility following a merger with an out-of-state public-utility company.

d. The issuance of a FERC order on the petition for waiver of the FERC affiliate pricing rules is not a condition precedent to the merger agreement, and thus the non-receipt of a FERC decision before the Commission's decision on the acquisition should have no impact. With regard to the denial of the waiver request, NextEra Energy believes that a denial likewise would have no impact on the ability of the Commission to require compliance with any state statute or regulation, or any policy, procedure, or other source of guidance under which Oncor now operates with respect to affiliate pricing. As NextEra Energy explained to FERC in its petition:

> The [FERC] permitted a special pricing rule for single state holding company systems in part because it believed that the purchase and sale of general and administrative goods and services by franchised public utilities would be susceptible to appropriate state oversight. '[T]here may be greater state regulatory authority to oversee these types of services transactions and the goods to support those services than in the multi-state context, and this state oversight will serve to complement that of the [FERC] in protecting customers against inappropriate cross-subsidization.' Rule 25-6.1351 of the Florida Administrative Code prescribes rules for sales and purchases of non-power goods and services to and from affiliates by FPL and other utilities subject to FPSC jurisdiction. The FPSC is able to monitor FPL's compliance with those rules through review of a comprehensive report on all affiliate contracts that FPL is required to file each year under Rule 25-6.1351, and the FPSC conducts audits of FPL's compliance as appropriate. Under Texas law Oncor is subject to comprehensive regulation of contracts with unregulated affiliates in order to prevent potential market-power abuses and cross-subsidization between regulated and unregulated activities. Applicable requirements include: (i) the filing of an annual report of activities with affiliates; (ii) the filing of all affiliate contracts; (iii) the tracking and documentation of the movement of employees between Oncor and any competitive affiliate; and (iv) the filing of an annual report on informal resolution of complaints relating to violations of its Code of Conduct. Thus, after completion of the Oncor Acquisition affiliate contracts entered into by any traditional utilities within NextEra's holding company system will be subject to state commission review, and no regulatory gap will exist.

NextEra Energy Inc., Petition for Waiver of Affiliate Pricing Rules, FERC Docket No. ER17-301, pp. 22-23 (filed Nov. 2, 2016) (footnotes omitted). Accordingly, NextEra Energy believes the ability of the Commission to require compliance with any state statute or regulation, or any policy, procedure, or other source of guidance under which Oncor now operates with respect to affiliate pricing will be unchanged whether FERC approves or denies the waiver request.

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration of NextEra Energy and John J. Reed, Chairman and CEO of Concentric Energy Advisors.

Staff RFI 5-7:

Refer to the Response of NextEra to Staff RFI 1-83, particularly the statement providing that, "Also, the Fourth Amended Joint Plan of Reorganization of Energy Future Holdings Corp., et al., Pursuant to Chapter 11 of the Bankruptcy Code (Docket No. 9612) filed on September 21, 2016 and the Fifth Amended Joint Plan of Reorganization of Energy Future Holdings Corp., el al., Pursuant to Chapter 11 of the Bankruptcy Code (Docket No. 9612), filed on December l, 2016, makes clear that neither NextEra Energy, EFH Merger Co., LLC nor any of its affiliates, including Oncor Holdings and Oncor, will be responsible for make-whole legacy liabilities." Please:

a. Identify the specific provisions that provide this clarity.
b. Explain how they do so with particularity.
c. Identify and briefly summarize the issues and status of any litigation now pending whose results could impose such liability despite the provisions identified in part (a).

RESPONSE:

a. The relevant provision of the Fifth Amended Plan is the final paragraph of Article VI.A, which provides as follows:

   Any Allowed Makewhole Claim based on or derived from the EFIH First Lien Notes or EFIH Second Lien Notes (whether Allowed as Secured Class B3 or Class B4 Claims, as applicable, or as Unsecured Class B6 Claims) shall be paid in full, in Cash, from the EFH/EFIH Distribution Account as soon as reasonably practicable after becoming Allowed Makewhole Claims by Final Order. 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) 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) with respect to each of the foregoing Entities in clauses (i) through (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.

b. The first sentence of the paragraph quoted above establishes that any first lien or second lien makewhole claim shall be paid "from the EFH/EFIH Distribution Account," which is the pool of funds established under the Plan for payment of creditor claims. The second sentence of the paragraph quoted above makes clear that any other makewhole claim shall receive their normal class treatment under the Plan, which will involve either disallowance or pro rata sharing in the pools of funds established to pay unsecured creditors. In other words, allowance of makewhole claims is zero-sum from a creditor perspective: allowing one creditor's makewhole claim simply results in dilution of the recoveries of other creditors (with secured creditors always being paid in full and diluting unsecured creditor recoveries dollar-for-dollar). The final sentence of the paragraph establishes that none of the Reorganized Debtors or any entity being acquired directly or indirectly by NextEra Energy as part of the transaction, including Oncor, "shall have or incur any liability whatsoever in connection with or as a result of any Makewhole Claim being Allowed."

c. There is no such litigation.

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration.

Staff RFI 5-8:

Refer to the Response of NextEra to Staff RFI 1-83, particularly the statement providing that, "The asbestos legacy liabilities will reside at non-Oncor NextEra Energy affiliates with liabilities to be addressed over time utilizing funds set aside in escrow. Please:

a. Provide all documents that make clear where the liabilities will reside.
b. Identify the sections that make clear where the liabilities will reside.
c. Explain how those sections make clear where the liabilities will reside.
d. Provide any documents that make clear how the liabilities will be "addressed."
e. Identify the sections that make clear how the liabilities will be "addressed."
f. Explain how those sections make clear how the liabilities will be "addressed."

RESPONSE:

a. Please refer to Section 5.1(g)(ii) of the Merger Agreement, Section 5.1(g)(ii) of the Company Disclosure Letter, including, in particular, clause (4) of Section 5.1(g)(ii) of the Company Disclosure Letter, and Section 7.2(j) of the Company Disclosure Letter. Additionally, asbestos proof of claim forms submitted in the bankruptcy case may in some cases identify where the potential liabilities will reside, though it would require a review and analysis of each and every such form to determine the accuracy of the individual assertions. This analysis has not been performed.

b. Please refer to the response to subpart (a) above.

c. Section 5.1(g)(ii) of the Merger Agreement and Section 5.1(g)(ii) of the Company Disclosure Letter provide EFH's representations to NextEra with respect to where asbestos liabilities reside and will reside. Section 7.2(j) of the Company Disclosure Letter sets forth the organizational structure of the subsidiaries referenced in clause 4 of Section 5.1(g)(ii) of the Company Disclosure Letter. NextEra Energy notes that none of these documents provide for any such asbestos liabilities residing at Oncor.

d. Please refer to Section 1.7(c) of the Merger Agreement and Exhibit D to the Merger Agreement with respect to the asbestos escrow account and asbestos escrow agreement.

e. Please refer to the response to subpart (d) above.

f. To the extent that any asbestos liabilities become due and payable, funds in the asbestos escrow account will be disbursed from such account and applied to claims as they become due and payable, in accordance with the asbestos escrow agreement.

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration.

Staff RFI 5-9:
Refer to the Response of NextEra to Staff RFI 1-83. Please provide an estimate (including your estimate of the likely maximum amount) of:

a. Total make-whole dollar exposure (wherever responsibility for it may lie)
b. Total asbestos claim dollar exposure (wherever responsibility for it may lie)
c. Total tax liability dollar exposure (wherever responsibility for it may lie).

RESPONSE:

a. See NextEra Energy's response to Staff RFI 1-105.

b. NextEra Energy's assessment of total potential asbestos claim dollar exposure is in the range of [redacted] million to [redacted] million.

c. See NextEra Energy's response to Staff RFI 1-104.

The redacted language above responsive to this request is designated highly sensitive protected materials and are being provided pursuant to the terms of the Protective Order in this docket.

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration.

Staff RFI 5-10:

Refer to the Response of NextEra to Staff RFI 1-88. Please with respect:

a. Confirm that no NextEra entity operates or has operated under a code or similar source of governance required by the Florida Public Service Commission
b. If not confirmed, please provide with respect to all such codes the information requested in Staff RFI 1-88.
c. Confirm that FPL does not operate under any Code, except insofar as its activities are implicated by the FERC requirements discussed in the response to RFI 1-88.
d. If not confirmed, please provide with respect to all such other codes the information requested by Staff RFI 1-88.

RESPONSE:

a. NextEra confirms that no NextEra entity operates or has operated under a code or similar source of governance required by the Florida Public Service Commission.

b. Not applicable.

c. NextEra confirms that FPL does not operate under any Code, except insofar as its activities are implicated by the FERC requirements discussed in Nextera Energy's response to Staff RFI 1-88.

d. Not applicable.

This response was prepared by or under the direct supervision of Jess Totten, Principal, Osprey Energy Group, LLC.

Staff RFI 5-11:
Refer to the Response of NextEra to Staff RFI 1-105. Under the assumption that the Third Circuit's decision holds as postulated in the response, please:

a. Estimate the additional length of time, if any, that will likely be required to complete bankruptcy proceedings.
b. Confirm that the amounts at issue before the Third Circuit do not arise to a level that would affect amounts currently expected to be available to secured creditors.
c. If not, please explain and estimate the amounts available to secured creditors at risk.

RESPONSE:

a. NextEra Energy estimates that the plan of reorganization will be confirmed by the bankruptcy court in late February. This is expected to be the last action that the bankruptcy court will be required to take in connection with approval of the transaction. The bankruptcy cases themselves are expected to remain open for a substantial period of time (likely a year or more) after the completion of the transaction while matters unrelated to the Oncor transaction are addressed, such as reaching resolution with respect to disputed creditor claims. This is standard in major chapter 11 cases, and will have no effect on the timing of closing of the proposed transaction.

b. The makewhole claims at issue are secured claims belonging to the first lien and second lien secured creditors. As a result, the resolution of these claims may increase, and will not decrease, the total recoveries of secured creditors. To be clear, these claims represent potential incremental recoveries to the first and second lien creditors in addition to their claims for principal and accrued interest. NextEra Energy confirms that the amounts at issue do not rise to a level that would prevent the secured creditors from being paid in full on their claims.

c. Not applicable.

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration.

Staff RFI 5-12:

Refer to the Response of NextEra to Staff RFI 2-02. Please:

a. Identify the Oncor positions that will have dual reporting responsibilities involving a NextEra counterpart.
b. Describe the role of each NextEra counterpart with respect to his or her Oncor counterpart.
c. Provide a chart showing the post-closing Oncor organization structure down to the first level below officer and indicate all linkages to a NextEra counterpart.
d. Provide an organization chart at the NextEra parent and all other levels required to show where all NextEra persons with Oncor counterparts fit in the NextEra organizations to which they belong.

RESPONSE:

NextEra Energy interprets the reference to "NextEra Staff RFI 2-02" as referring to Oncor's response to Staff RFI 2-02. Based upon this interpretation, NextEra Energy provides the following response:

a. The Oncor response to Staff RFI 2-02 refers to the announcement regarding E. Allen Nye, Jr. becoming CEO of Oncor at the close of the transaction and the expectation that Mr. Nye will report to James Robo, CEO of NextEra Energy. NextEra Energy has not yet identified the Oncor positions that will have dual reporting responsibilities involving a NextEra Energy counterpart.

b. NextEra Energy has not yet identified the Oncor positions that will have dual reporting responsibilities involving a NextEra Energy counterpart.

c. NextEra Energy and Oncor are still engaged in integration planning, and the post-closing Oncor organization structure with linkages has not been developed.

d. NextEra Energy and Oncor are still engaged in integration planning, and NextEra Energy has not developed the requested parent organization chart showing these relationships.

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration.

Staff RFI 5-13:
Refer to the John Reed Exhibit JR-5. Please provide NextEra's complete presentation to S&P's Rating Evaluation Service that Exhibit JR-5 was in response to.

RESPONSE:
NextEra Energy did not prepare for or provide to Standard & Poor's ("S&P") a formal presentation (e.g. Power Point slides) in connection with S&P's June 30, 2016 Rating Evaluation Service letter that was previously provided as Exhibit JR-5 to Mr. John Reed's Direct Testimony. Instead, please see NextEra Energy's Supplemental Response to TIEC RFI 4-7 (filed on 12/27/2016) and an email sent to S&P on June 15, 2016, which was previously provided on page 2260 of Highly Sensitive Attachment 1 to NextEra Energy's response to TIEC RFI 3-1.

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration of NextEra Energy and John J. Reed, Chairman and CEO of Concentric Energy Advisors.

Staff RFI 5-14:
Refer to the John Reed Exhibit JR-5. The scenario analyzed calls for NextEra's purchase of 80% of Oncor's equity and the issuance of a 3 to 5%, Oncor IPO. Please provide NextEra's complete presentation to S&P's Rating Evaluation Service and the RES response letter from S&P that includes the acquisition of 100% of Oncor's equity.

RESPONSE:
NextEra Energy has not engaged S&P in its Rating Evaluation Service with a scenario that contemplates the acquisition of 100% of Oncor's equity. Instead, it has been NextEra Energy's view that such an analysis is unnecessary as the acquisition of 100% of Oncor's equity is incrementally better than the acquisition of 80% of Oncor's equity. Owning 100% of Oncor is incrementally better because of the greater degree of control of Oncor by NextEra Energy as well as greater contribution of regulated utility operations to NextEra Energy's overall credit profile. This view has been confirmed by S&P in its August 2, 2016 "Research Update: NextEra Energy Inc. And Subsidiaries 'A-' Ratings Affirmed On Acquisition Of Ownership Interest In Oncor," which was previously provided as pages 21-27 of Exhibit JR-5 to Mr. John Reed's Direct Testimony. At page 23, S&P states:

> "The merger agreement contemplates NextEra achieving effective control over Oncor's resources and cash flows through the acquisition of the minority owner's interest and the subsequent elimination of insulation measures, including the independent board of directors, which would provide the most benefit to NextEra's business risk profile. Alternatively, NextEra's business risk profile could benefit from the acquisition of the 80% ownership interest in Oncor through the elimination of the requirement for independent directors and the elimination of certain insulation provisions currently in place that would give NextEra control over the level of Oncor's common dividends (although not Oncor's dividend policy) and capital spending. Under either outcome, NextEra's business risk profile would benefit just enough to move to the excellent category, although the latter outcome is barely sufficient. We view NextEra's business risk profile as strengthening just enough post acquisition, either through full ownership or through the acquisition of the 80% ownership interest, to get to the excellent category in large part because we expect NextEra's non-utility operations to continue to contribute about one-third of the company's overall credit profile."

This response was prepared by or under the direct supervision of John J. Reed, Chairman and CEO of Concentric Energy Advisors.

Staff RFI 5-15:
Refer to the John Reed Exhibit JR-5, page 5. "Sources and uses of cash are as represented by NextEra and shown in the table below:" Please provide NextEra's representations to S&P regarding the specific sources and uses that resulted in S&P's chart presented on page 5.

RESPONSE:
Please refer to Highly Sensitive Attachment 1 to NextEra Energy's Supplemental response to TIEC 4-7 (filed on 12/27/2016).

This response was prepared by or under the direct supervision of John J. Reed, Chairman and CEO of Concentric Energy Advisors.

Staff RFI 5-16:
Refer to the NEE response to Staff 1-19. Please explain why Oncor does not plan to use a commercial paper program to fund its future temporary cash needs. Please compare potential Oncor commercial paper interest costs to that of Oncor's credit facility.

RESPONSE:
As described in Oncor's response to Staff RFI Set No. 1 (NEE), Question No. 1-19, it is anticipated that Oncor will retain its revolving credit facility following the close of the Proposed Transactions. Subsequent to the transaction close, if the Company's credit rating profile improves to a level that will support utilizing an effective commercial paper program, Oncor will evaluate the then current bank and commercial paper markets. As appropriate, Oncor will opt to fund its short-term cash needs through the market that best optimizes the cost and availability of funds.

Oncor's current cost to borrow from its credit facility is one-month LIBOR plus 100 basis points, or approximately 1.75% based on current rates. Comparable rates on a fully liquid A2/P2 commercial paper program (which Oncor would not qualify for at present) would be expected to be lower, on a relative basis.

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration.

Staff RFI 5-17:
Refer to the NEE response to Staff 1-20. While this response says that financing plans for Oncor post merger have not yet been established, Oncor has provided a cash flow statement that includes a rough financing plan through 2022 as part of the response to Oncor 1-28. Please confirm that this provides an accurate financing plan.

RESPONSE:
The cash flow from financing activities presented in Oncor's highly sensitive confidential response to Cities RFI Set No. 2 (Oncor), Question No. 2-03 [as referenced in Oncor's response to Staff RFI Set No. 1 (NEE), Question No. 1-28] represent reasonable financing plans given the assumptions underlying the financial plan reviewed by Oncor's board of directors in May 2016.

However, as described in Item 1A. "Risk Factors" and Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Oncor's Form 10-K Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 For the Fiscal Year Ended December 31, 2015 ("2015 Form 10-K"), there are a number of factors that could have a material negative impact on Oncor's operations, financial results, and financial condition, or could cause actual results or outcomes to differ materially from any projected outcome contained in any forward-looking statement. For additional information, please see Oncor's 2015 Form 10-K available through the "Investors" section of Oncor's web-site www.oncor.com.

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration.

Staff RFI 5-18:
Refer to the NEE response to Staff 1-21, Cities 2-1 page 23. Please provide the Moody's RAS feedback on April 28 as referenced.

RESPONSE:
See highly sensitive Attachment 1 to this response for the referenced Moody's RAS feedback. The documents responsive to this request are designated highly sensitive protected materials and are being provided pursuant to the terms of the Protective Order in this docket.

This response was prepared by or under the direct supervision of John J. Reed, Chairman and CEO of Concentric Energy Advisors.

Staff RFI 5-19:
Refer to the NEE response to Staff 1-21, Cities 2-1 page 29. Please provide the "recapitalization" plan referenced that would achieve the targeted 18.1% CFO pre-WC to Debt ratio referenced.

RESPONSE:
Please note that the "recapitalization" or financing plan, often referred to as a sources and uses, that is referenced on page 29 of NextEra Energy's responses to Cities RFI 2-1, can be found on page 2 of the Moody's Investors Service letter to NextEra Energy dated May 16, 2016, which is page 8 of 21 of Attachment 1 to NextEra Energy's response to TIEC RFI 4-7.

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration.

Staff RFI 5-20:
Refer to the NEE response to Staff 1-21, Cities 2-1, page 37. Please provide the RAS feedback from Moody's by May 16th, as requested in this slide.

RESPONSE:
See Highly Sensitive Attachment 1 to NexEra Energy's response to TIEC RFI 4-7 subpart (a) for the Moody's RAS letter dated May 16, 2016.

This response was prepared by or under the direct supervision of John J. Reed, Chairman and CEO of Concentric Energy Advisors.

Staff RFI 5-21:
Refer to the NEE response to Staff 1-22, Cities 2-1, page 82. Please provide the RES process feedback from S&P from July 2014 requested on this slide.

RESPONSE:
See Highly Sensitive Attachments 1 and 2 to this response. The documents responsive to this request are designated highly sensitive protected materials and are being provided pursuant to the terms of the Protective Order in this docket.

This response was prepared by or under the direct supervision of John J. Reed, Chairman and CEO of Concentric Energy Advisors.

Staff RFI 5-22:
Refer to the NEE response to Staff 1-22, Cities 2-1, page 122. This slide states "NextEra would then issue the requisite equity to effectuate capitalization equivalent to FFO- to - Debt of 24.5%." Please specifically describe the financing plan described that would meet this metric.

RESPONSE:
Please note that the financing plan, often referred to as a sources and uses, that is referenced on page 122 of NextEra Energy's responses to Cities RFI 2-1, can be found on page 44 of the presentation to Standard & Poor's dated March 27, 2015, which is also page 124 of 152 of NextEra Energy's responses to Cities RFI 2-1. This is the financing plan or sources and uses necessary to achieve Funds From Operations divided by Total Debt ("FFO-to-Debt") of 18%. NextEra Energy has not calculated the requisite equity to effectuate capitalization equivalent to FFO-to-Debt of 24.5%.

This response was prepared by or under the direct supervision of John J. Reed, Chairman and CEO of Concentric Energy Advisors.

Staff RFI 5-23:
Refer to the NEE response to Staff 1-22, Cities 2-l, page 109. This slide references in the footnote the S&P RES Indicative Rating Feedback letters dated 8/8/2014, 8/27/2014, and 10/10/2014. Please provide each RES letter referenced.

RESPONSE:
Please refer to the materials provided in NextEra Energy's response to Staff RFI 5-21 as well as highly sensitive Attachment 1 to this response. The documents responsive to this request are designated highly sensitive protected materials and are being provided pursuant to the terms of the Protective Order in this docket. Additionally, please note that the redactions reflected on the responsive documents are redacted to remove non-Oncor information.

This response was prepared by or under the direct supervision of John J. Reed, Chairman and CEO of Concentric Energy Advisors.

Staff RFI 5-24:
Refer to the NEE response to Staff 1-22, Cities 2-1, pages 125, 1.26 and 132. Please provide each of the S&P RES service letters requested by NextEra on these pages.

RESPONSE:
See Highly Sensitive Attachment 1 to this response. The documents responsive to this request are designated highly sensitive protected materials and are being provided pursuant to the terms of the Protective Order in this docket. Additionally, please note that the redactions reflected on the responsive documents are redacted to remove non-Oncor information.

This response was prepared by or under the direct supervision of John J. Reed, Chairman and CEO of Concentric Energy Advisors.

Staff RFI 5-25:
Refer to the NEE response to Staff 1-25. The response states:

"Moody's states its expectation that NextEra Energy will manage its balance sheet to keep cash flow from operations pre-working capital changes ("CFO pre-WC") divided by debt above 18 percent by year-end 2018. Immediately at transaction close, which is expected in the first half of 2017, NextEra Energy's credit metrics will not be in line with this target. Subsequent to transaction dosing, several key components of NextEra Energy's financing plan will improve Moody's target metric in 2017 and beyond, including (1) NextEra Energy's agreement to sell its FiberNet subsidiary for gross proceeds of $1.5 billion, which is expected to close during the first half of 2017; (2) the November 1, 2016 $1.5 billion common stock offering through a forward sale agreement, which is expected to settle no later than November 1, 2017; (3) the August 2016 issuance of approximately $1.5 billion of equity units, or mandatorily convertible debentures that convert to NextEra Energy common equity in 2019; and (4) an additional $700 million of mandatorily convertible debentures that will convert to NextEra Energy common equity in 2018"

Please provide NEE's capital structure and credit metrics for 2017, 2018 and 2019, with and without each of the four financings described.

RESPONSE:
NextEra Energy has no responsive documents as the Company has not performed an analysis of capital structure and credit metrics for 2017, 2018 and 2019, with and without each of the four financings described.

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration of NextEra Energy and John J. Reed, Chairman and CEO of Concentric Energy Advisors.

Staff RFI 5-26:
Refer to the NEE response to Staff 1-62. Please confirm if NextEra Energy expects to maintain a capital structure of 60% debt and 40% equity following the Proposed Transactions, as stated in part c of the response.

RESPONSE:
NextEra Energy will target certain specific cash flow coverage metrics (*i.e.*, Funds From Operations divided by Total Debt; CFO Pre-Working Capital Changes divided by Total Debt; and Total Debt divided by Funds From Operations) with each of the credit rating agencies (*i.e.*, S&P Global Ratings, Moody's Investors Service, and Fitch Ratings, respectively), from which the resultant capital structure will roughly be 60% debt and 40% equity following the Proposed Transactions, consistent with that stated in subpart (c) of NextEra Energy's response to Staff RFI 1-62..

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration.

Staff RFI 5-27:
Refer to the NEE response to Staff 2-16. Please confirm that the debt issued to finance the Proposed Transactions will be obligations of NEECH. Please also confirm whether NEE will guarantee this debt, as it does for other NEECH debt.

RESPONSE:
NextEra Energy ("NEE") guarantees certain payment obligations of NextEra Energy Capital Holdings ("NEECH"), including most of those under NEECH's debt, including all of its debentures and commercial paper issuances, as well as most of its payment guarantees and indemnifications. The debt issued to finance the Proposed Transactions will be an obligation of NEECH that is guaranteed by NEE.

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration of NextEra Energy and John J. Reed, Chairman and CEO of Concentric Energy Advisors.

<u>Staff RFI 5-28</u>:
Refer to the NEE response to TIEC RFI 1-4, page 102. Please provide the Table 1 Peer Comparison information for NEE and each of its peers as of September 30, 2016, in the same format as the table, or the latest date for which this information is available.

<u>RESPONSE</u>:
NextEra Energy does not have the requested information. The referenced Table 1 Peer Comparison was prepared by Standard & Poor's.

This response was prepared by or under the direct supervision of Mark Hickson, Senior Vice President of Corporate Development, Strategy, and Integration.

Staff RFI 5-29:
Refer to the Oncor response to Staff 2-11. Please provide the specific type of Oncor debt securities that are assumed in this analysis, such as First Mortgage Bonds, Senior Secured Debt, Senior Unsecured Debt, etc. Please also provide the duration of the assumed new issuance. Please also compare these assumed new debt issuances to those that have been issued by Oncor since 2008.

RESPONSE:
Please refer to Oncor's response to Staff's RFI 5-29.

Staff RFI 5-30:
Refer to the NEE response to TIEC RFI 1-4, page 117. "NextEra will fund its portion of the transaction of about 9.5 Billion with debt, $1.5 Billion of equity units, and asset sale proceeds." Please compare and contrast this S&P representation with NEE's response to Staff 1-16 regarding transaction financing.

RESPONSE:
NextEra Energy has no responsive documents, as the Company has not performed an analysis that compares and contrasts S&P's statement as identified above with NextEra Energy's response to Staff RFI 1-16. Although no such document exists, the components of the overall financing that have been completed are detailed in NextEra Energy's response to subpart (a) of Staff RFI 1-16 and are consistent with S&P's statement above, which specifically addresses the acquisition of EFH/EFIH. As detailed in subpart (a) to NextEra Energy's response to Staff RFI 1-16, on August 8, 2016, NextEra Energy issued the $1.5 billion of equity units as identified in S&P's statement to fund a portion of the proposed acquisition of EFH/EFIH. Additionally, NextEra Energy has sold some of its non-core assets as a means of recycling capital into these Proposed Transactions. These asset sales included NextEra Energy's Marcus Hook, which is comprised of two gas-fired generation assets, and FiberNet, which is a fiber optics business, for total combined gross proceeds of roughly $2.3 billion.

Separately, on November 1, 2016, NextEra Energy entered into a forward sale agreement in which it committed to issue 12 million shares of common equity by no later than November 1, 2017, in exchange for approximately $1.5 billion, which will be used to fund a portion of the TTHC/TTI acquisition.

Although not yet finalized, the remaining amounts are expected to be funded primarily with debt, as indicated in S&P's statement referenced above in NextEra Energy's response to Staff RFI 5-30. The ultimate financing plan will be determined in such a manner that will allow NextEra Energy to maintain its strong credit ratings which should allow Oncor to be upgraded with all three of the credit rating agencies post transaction closing.

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Staff RFI 5-31:
Refer to the NEE response to TIEC RFI 1-4, page 147. "The $11 billion dollars of NEECH holdco debt is structurally subordinated to $10 billion of non-recourse debt, mostly at NEER's Power projects. (NEECH holdco debt is also structurally subordinated to $11 billion of debt at FPL)." Please explain the structural subordination and relationship of the NEECH debt that is expected to finance the transactions and its structural relationship to each of the existing debt financing categories listed above.

RESPONSE:
NextEra Energy Capital Holdings ("NEECH"), a direct wholly-owned subsidiary of NextEra Energy ("NEE"), is the non-EFH, non-Oncor NEE affiliate that will be issuing debt used in conjunction with the Proposed Transactions and is the debt-financing entity of NEE. NEE guarantees certain payment obligations of NEECH, including most of those under NEECH's debt, including all of its debentures and commercial paper issuances, as well as most of its payment guarantees and indemnifications.

Therefore, NEECH creditors should be considered as though they benefit from all of NEE subsidiaries' cash flows, not just those of NEECH's subsidiaries. As such, NEECH creditors are effectively NEE creditors, with NEE being the utility holding company.

Utility holding companies generally have no operations, and assets that are limited to equity interests in its operating company subsidiaries. Structural subordination refers to the typically junior claim of holding company creditors, relative to the operating company creditors that have a more direct claim on the respective operating company's cash flows and assets because of the corporate legal structure.

NEE receives cash flows from its subsidiaries, which are principally NextEra Energy Resources ("NEER"), a wholly-owned subsidiary of NEECH, and Florida Power & Light Company ("FPL"). These cash flows are largely made from the net income of NEER's power projects after it services its non-recourse project debt at the NEER operating company subsidiaries, and the net income of FPL after it services its first mortgage bond debt at FPL, also an operating company. As a result, NEE, and therefore NEECH, are structurally subordinated to the $10 billion of non-recourse debt that is mostly at NEER's power projects and the $11 billion of first mortgage bond debt at FPL.

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Staff RFI 5-32:

Refer to the NEE response to TIEC RFI 1-4, page 150. "NextEra will also incur roughly $10 billion of debt in acquiring the debt of Oncor's bankrupt parent Energy Future Holdings Corp. and could raise the percentage of debt at the holding company level a few percentage points above the 40% Moody's assumes longer-term, but the equity unit conversions in 2018 and 2019 will help to reduce that metric."

Please explain the differences between Moody's belief that NEE debt will be in the low 40's percent of its capital structure, while the response to Staff 1-62 states that NEE is targeting a future 60% debt level.

RESPONSE:

Moody's reference to 40% debt at the holding company is not the same as NextEra Energy holding company level's capital structure, for which NextEra Energy previously indicated that it is targeting 60% debt. The 60% debt level targeted by NextEra Energy is the sum of short-term and long-term debt divided by the sum of short-term debt, long-term debt, and total equity (or total capitalization). The 40% NextEra Energy debt level referenced by Moody's is the total NEECH holding company debt divided by total NextEra Energy consolidated debt, which includes the debt of all of NextEra Energy's subsidiaries.

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Staff RFI 5-33:
Refer to the NEE response to Cities RFI 2-2, page 34. Please provide the presentations, "additional information", financial model and Q&A prepared for the rating agencies, as referenced.

RESPONSE:
Please refer to the attached voluminous index for presentations, "additional information," financial model and Q&A prepared for Fitch (highly sensitive Item 1) and Moody's (highly sensitive Item 2) in April 2016 as well as the materials previously submitted in NextEra Energy's responses to Cities RFI 2-1 (including the Supplemental response), TIEC RFI 3-1, TIEC RFI 3-2, TIEC RFI 3-3, and TIEC RFI 4-7 (including the Supplemental response). Please note that while Standard & Poor's (S&P) would not agree to undertake additional scenarios related to the acquisition of Oncor following the March 27, 2015 Rating Evaluation Service (RES), S&P did agree to review the same scenario with an updated forecast in June 2016. There was no formal presentation provided to S&P in connection with this RES; however, S&P was provided with Excel files that have been previously provided in NextEra Energy's response to TIEC RFI 3-1 and a Word document which has previously been provided in NextEra Energy's response TIEC RFI 4-7, as supplemented.

The documents responsive to this request are designated highly sensitive protected materials and are being provided pursuant to the terms of the Protective Order in this docket.

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VOLUMINOUS INDEX

Documents Prepared by NextEra Energy for Rating Agencies

1. Fitch--presentations, "additional information," financial model and Q&A; 44 pages

2. Moody's-- presentations, "additional information," financial model and Q&A; 58 pages