UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:	)	Chapter 11
ENERGY FUTURE HOLDINGS CORP., *et al.*,[1]	)	Case No. 14-10979 (CSS)
	)	(Jointly Administered)
Debtors.	)	**Related to Docket Nos. 4142-44**

ENERGY FUTURE INTERMEDIATE HOLDINGS COMPANY LLC'S STATEMENT IN SUPPORT OF INTERCOMPANY SETTLEMENT IN THE PLAN

On April 14, 2015, Energy Future Holdings Corp. ("**EFH**"), Energy Future Intermediate Holdings Company LLC ("**EFIH**"), and Energy Future Competitive Holdings Company LLC ("EFCH") and Texas Competitive Electric Holdings Company LLC (together with EFCH, "**TCEH**" and, with EFH and EFIH, the "**Debtors**"), along with their other affiliates who are debtors in these chapter 11 cases, filed the "Joint Plan of Reorganization of Energy Future Holdings Corp., *et al.*, Pursuant to Chapter 11 of the Bankruptcy Code" (the "**Plan**"). Among other things, the Plan proposes the full settlement (the "**Settlement**") of intercompany claims, causes of action and disputes among EFH, EFIH, and TCEH, including avoidance actions under sections 544, 547, and 548 of the Bankruptcy Code, and resolves other matters involving a conflict between one or more of those Debtors , such as the tax treatment of the Plan transactions.

[1] The last four digits of Energy Future Holdings Corp.'s tax identification number are 8810. The location of the debtors' service address is 1601 Bryan Street, Dallas, Texas 75201. Due to the large number of debtors in these chapter 11 cases, which are being jointly administered, a complete list of the debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the debtors' claims and noticing agent at http://www.efhcaseinfo.com.

(collectively, "**Conflict Matters**"). A Joint Statement of Summary of Settlement of Intercompany Claims (the "**Joint Statement**"), which the respective disinterested directors and managers of EFH, EFIH, and TCEH released to representatives of their major creditor constituencies on April 3, 2015, describes the Settlement. A copy of the Joint Statement is attached as **Exhibit A**.

EFIH, acting at the direction of its sole Independent Manager, Charles H. Cremens, in accordance with the authority the full EFIH Board of Managers delegated to him with respect to determining and resolving Conflicts Matters, has approved the Settlement on behalf of EFIH and supports the Plan's proposed settlement of Conflict Matters.

BACKGROUND

1. On April 29, 2014, EFH, EFIH, TCEH and certain of their affiliates filed voluntary petitions with the Court under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code. The Court has entered a final order for joint administration of these chapter 11 cases [D.I. 849].

2. On September 16, 2014, the Court entered an order authorizing EFH, EFIH and TCEH each to "seek and retain separate advisors … to advise or otherwise represent the applicable Debtor" on potential conflict matters [D.I. 2051]. On January 13, 2015, the Court authorized EFH's retention of Proskauer Rose LLP ("**Proskauer**") and TCEH's retention of Munger, Tolles & Olson LLP ("**MTO**") [D.I. 3281 and 3279] and on January 16, 2015, authorized EFIH's retention of Cravath, Swaine & Moore LLP ("**Cravath**") [D.I. 3321], *nunc pro tunc* as of November 16, 2014 for MTO and Cravath and as of November 19, 2014 for Proskauer, to advise and represent each of those Debtors in

connection with Conflict Matters, as defined in the respective employment applications, reporting to and acting at the direction of their respective independent directors and managers. Proskauer, MTO and Cravath are hereinafter referred to as "**Conflicts Counsel**". The Court also authorized EFIH's retention of Goldin Associates, LLC ("**Goldin**") as EFIH's financial advisor in connection with Conflict Matters on January 13, 2015 [D.I. 3277].

3. Shortly after Cravath's and Goldin's initial retention, Cravath and Goldin began their investigation of potential intercompany claims and other Conflicts Matters. Cravath's work began with a substantial review of the facts and investigative work that Kirkland & Ellis LLP ("**Kirkland**") and Sidley Austin LLP ("**Sidley**") had done regarding potential intercompany claims. Cravath did not undertake its own factual investigation; rather, Cravath reviewed many of what it determined to be the key underlying documents on which Kirkland and Sidley had relied in their analyses, and Cravath interviewed company witnesses in an effort to verify the facts as Kirkland and Sidley had presented them.

4. Cravath conducted an extensive review of relevant written materials including:

- public filings;
- offering memoranda, indentures and prospectuses for note offerings and exchanges;
- board and audit committee minutes; underlying transactions documents and agreements, payment schedules, company-prepared transaction summaries and deal memoranda;
- Duff & Phelps reports;
- memoranda Kirkland and Sidley prepared on potential intercompany claims, the liability management program, the LBO and the history of the company before and after the LBO;

- interview memoranda Sidley prepared in connection with its investigation; and
- other materials produced in the chapter 11 cases relevant to intercompany transfers.

Cravath also consulted extensively with Goldin, which had performed its own due diligence on financial issues related to possible intercompany claims.

5. Cravath, along with Proskauer and MTO, participated in a due diligence session with Kirkland on December 17, 2014 at Kirkland's offices. Kirkland described various intercompany transfers it had examined in connection with potential intercompany claims and made available underlying documents concerning the transfers.

6. In due diligence sessions on January 28, 2015 and February 3, 2015, Cravath interviewed several company witnesses about various intercompany transactions. Cravath participated in the January 28, 2015 session by telephone and attended the February 3, 2015 meeting in person. A portion of the February 3, 2015 interview time was conducted in a group setting with all Conflicts Counsel present. Cravath, MTO and Proskauer also each interviewed the company witnesses outside the presence of other Conflicts Counsel. Among the witnesses were: Andrew Wright (Deputy General Counsel), Anthony Horton (Treasurer); Michael Carter (Assistant Treasurer and Senior Vice President of Corporate Planning) and Kris Moldovan (Assistant Treasurer). Cravath also had follow-up telephone conversations with Messrs. Wright and Carter in which Cravath sought and obtained additional information about certain payments and intercompany transfers.

7. Goldin, acting at Cravath's request and under Cravath's direction, independently investigated, verified and evaluated financial information about the

company, about note issuances and exchanges, and about company and note valuations and market information relevant to the potential claims and defenses.

8. Cravath and Goldin also participated in several meetings with EFIH creditor and interest holder groups, including meetings with single groups and larger meeting involving several constituencies, to understand the positions, arguments, and concerns of each of the constituencies and to discuss consensual means of resolving them. These included three in-person meetings with representatives of all significant EFH and EFIH stakeholders, two in-person meetings with representatives of holders of over 75% of EFIH unsecured notes, one in-person meeting with the EFH/EFIH Unsecured Creditors Committee, one in-person meeting with representatives of the EFH shareholders, three in-person meetings with other Conflict Matter advisors and with Kirkland over the structure and terms of a plan term sheet, and numerous telephone conferences with all of the above.

9. Based on the foregoing work, Cravath prepared a detailed outline of over 50 pages describing all of EFIH's material intercompany claims and defenses, incorporating several additional exhibits and Goldin's financial analyses, which Cravath sent to Mr. Cremens on February 12, 2015. On February 13, 2015, Cravath and Goldin presented their investigative assessments to Mr. Cremens in person. Cravath provided Mr. Cremens with an overview of the legal framework regarding avoiding power claims and then presented and discussed its analysis of intercompany claims, including the avoidability and recoverability of various intercompany transfers and the potential effect bringing such claims might have on recoveries in the chapter 11 cases by holders of claim against or interests in EFIH.

10. After further consultation with Mr. Cremens about EFIH's negotiating position, Cravath commenced negotiations with Proskauer and MTO over the treatment of potential intercompany claims.

11. Cravath met in person with Proskauer on February 23, 2015 to discuss potential claims and defenses between EFIH and EFH. The bulk of intercompany claims between EFIH and EFH run in favor of EFIH, including not only avoiding power claims associated with the Liability Management Program, but also nearly $1.3 billion of EFH Legacy Notes that EFIH holds, representing about 66% of all general unsecured claims against EFH. EFH's principal assets are cash and the LLC membership interests of EFIH and of EFCH, the parent of TCEH. EFCH's own membership interests appear worthless. If EFIH has enough value to satisfy all claims against it, then its membership interests that EFH holds would have value to fund a recovery to EFIH on its claims against EFH, but any recovery would effectively come from the increased value of EFIH's membership interests and simply increase EFIH's solvency, which would flow back to EFH. If EFIH does not have adequate value to satisfy its obligations, then any recovery from EFH would be limited to some portion of EFH's cash in addition to the portion to which it would be entitled on account of the Legacy Notes, but it is uncertain that the additional cash would compensate for the litigation expense required to pursue the avoiding power claims. Accordingly, after consulting further with Mr. Cremens, Cravath did not engage in further discussions with Proskauer over EFIH's claims against EFH.

12. Cravath met in person with MTO on February 24, 2015 to discuss potential claims and defenses between EFIH and TCEH. After the initial meeting, negotiations became more focused. On March 6, 2015, Cravath and MTO had a follow-

up discussion on their respective potential claims. On March 16, 2015, MTO sent Cravath a presentation detailing TCEH's claims against EFIH and rebutting potential defenses to EFIH's claims against TCEH, which MTO and Cravath discussed by telephone. A copy of the MTO presentation is attached as **Exhibit B**. On March 20, 2015, Cravath sent MTO EFIH's written detailed response to TCEH's claims and defenses, a copy of which is attached as **Exhibit C**. Cravath fully briefed Mr. Cremens on its discussions with MTO on the potential claims and defenses.

13. Following these preliminary meetings with other Conflicts Counsel, Cravath, Goldin and Mr. Cremens met with TCEH's Disinterested Manager and EFH's Disinterested Directors and their Conflicts Matters advisers on March 25 and 26, 2015 to attempt a complete settlement of intercompany claims in the context of a chapter 11 plan. Over the course of these full-day meetings, EFH, EFIH, and TCEH vigorously presented their claims and defenses to each other and negotiated a resolution, resulting in the Settlement shortly after the meetings concluded.

14. The negotiations with Conflicts Counsel were spirited, with all sides presenting and responding to each other's claims. Throughout the process Cravath and Goldin were in regular communication with Mr. Cremens about their investigations and negotiations, so that he could make an informed decision about the probability of success in litigation, the complexity of the litigation, the expense and inconvenience of litigating any potential claims, and the interests of EFIH's creditors.

15. The Settlement protects EFIH and its nondebtor Oncor subsidiaries from any claims by EFH or TCEH and provides for EFIH to release any claims, including claims under EFH's Legacy Notes, against EFH or TCEH. The Settlement was based on Mr. Cremens' view that EFIH will have adequate value to satisfy all allowed claims

against it. Accordingly, the Settlement reserves to Mr. Cremens, as the sole Disinterested Manager of EFIH, a "fiduciary out" and a right to modify or withdraw the Plan if instead EFIH does not ultimately have adequate value to satisfy all allowed claims.

16. Following the settlement meetings, Cravath and Goldin prepared further analyses of the claims, the Settlement, and the proposed Plan and presented them to Mr. Cremens on March 31, 2015. At that meeting, Mr. Cremens, acting as the sole Disinterested Manager of EFIH, and in accordance with the authority delegated to him by the full EFIH Board of Managers, approved the Settlement. A copy of the Minutes of that meeting is attached as **Exhibit D**.

CONCLUSION

17. EFIH's and its professionals' investigative approach thoroughly assessed the potential intercompany claims, including the probabilities of success in litigation; the complexities, expenses and inconvenience of litigation; and the interests of its creditors and equity holder. Having followed a sound investigative approach, EFIH was able after extensive arms-length negotiation with EFH and TCEH to reach a fair, reasonable settlement that is in the best interest of the EFIH estate. For these reasons, EFIH supports approval of the Settlement.

Dated: April 14, 2014

Respectfully submitted,

/s/ Joseph H. Huston, Jr.

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Attorneys for Debtor Energy Future Intermediate Holding Company LLC

EXHIBIT A

April 3, 2015

JOINT STATEMENT OF SUMMARY OF SETTLEMENT OF INTERCOMPANY CLAIMS

The respective disinterested directors and managers of Energy Future Holdings Corp. ("EFH"), Energy Future Intermediate Holding Company LLC ("EFIH"), and Energy Future Competitive Holdings Company LLC and Texas Competitive Electric Holdings Company LLC (collectively, "TCEH"), have agreed to a settlement of prepetition intercompany claims, causes of action and disputes, including, without limitation, avoidance actions pursuant to 11 U.S.C. §§ 544, 547 and 548 ("Settlement"). These claims, causes of action and disputes have been designated by the disinterested directors and managers as "Conflict Matters" (as such term is defined in the applicable board resolutions of EFH, EFIH, and TCEH) subject to the sole control of the disinterested directors and managers.

The Settlement is subject to Bankruptcy Court approval under 11 U.S.C. § 1123(b) and Federal Rule of Bankruptcy Procedure 9019 as part of a joint plan of reorganization for EFH, EFIH, TCEH and their subsidiaries in the jointly administered bankruptcy cases captioned *In re Energy Future Holdings Corp., et al.*, Case No. 14-10979 (CSS) (the "EFH Case").

The following summary of the Settlement is qualified in its entirety by the terms of a plan of reorganization to be filed, which will incorporate and detail the following terms:

- TCEH shall have an allowed unsecured non-priority claim of $700,000,000 against EFH, which claim shall receive the same form of distributable value as all other unsecured non-priority EFH creditors under any plan of reorganization (the "TCEH Claim").
- After full satisfaction of all allowed administrative, priority and secured claims against EFH, the next $1,410,000,000 of distributable value from the EFH estate shall be distributed as follows: (a) EFH shall retain 49.645% for distribution on account of allowed unsecured claims and interests (other than the TCEH Claim); (b) TCEH shall receive 49.645% on account of the TCEH Claim (i.e. up to $700,000,000 million of the first $1,410,000,000 of distributable value for unsecured creditors from the EFH estate); and (c) the EFH equity holders shall receive 0.709%.
- Distributable value from the EFH estate in excess of $1,410,000,000 shall be distributed as follows: (a) TCEH shall receive 50%, until TCEH receives an additional $105,000,000, for a total distribution to TCEH of $805,000,000; and (b) EFH shall retain 50% for distribution on account of allowed unsecured claims and interests (other than the TCEH Claim).
- Once TCEH has received a total of $805,000,000 in distributable value, all remaining distributable value from the EFH estate shall be retained by EFH and distributed in accordance with the terms of the plan of reorganization.

April 3, 2015

- The sharing of distributable value between EFH's stakeholders and TCEH as described above shall not be affected by the total amount of allowed unsecured claims against EFH. If allowed claims of creditors of EFH (other than TCEH) are less than $700,000,000, EFH shall remain entitled to the same percentages of distributable value from the EFH estate as described above. If allowed claims of creditors of EFH (other than TCEH) are greater than $700,000,000, TCEH shall remain entitled to the same percentages of distributable value from the EFH estate as described above, up to a maximum aggregate distribution of $805,000,000 to TCEH.

- Other than the allowed claim and distribution right of TCEH in the EFH estate as described above, there will not be any allowed prepetition claims between any of EFH, EFIH, and TCEH or any of their subsidiaries, including Oncor Electric Distribution Holdings Company LLC and its subsidiary.

- Each of (a) the disinterested directors of EFH, (b) the disinterested manager of EFIH, and (c) the disinterested manager of TCEH may (without the consent of the other disinterested managers or disinterested directors, as applicable) terminate the Settlement if any of them determines, after consultation with counsel, that termination of the Settlement would be consistent with the exercise of their fiduciary duties.

The plan of reorganization to be filed will provide for the spin-off of TCEH in a tax-free transaction (with a partial step-up in tax basis), and the tax-free reorganization of EFH and EFIH through one of three possible scenarios, each of which may include a REIT structure: sale to a third party; backstopped recapitalization by existing stakeholders in the EFH Case; or stand-alone reorganization.

This statement and summary are being furnished on a confidential basis to the advisors to the official unsecured creditors' committees and the other organized stakeholder constituencies in the EFH Case, to the full boards of EFH, EFIH, and TCEH, and to Kirkland & Ellis LLP and Evercore Group L.L.C.

This statement is subject to all confidentiality agreements and Federal Rule of Evidence 408.

Disinterested Directors of Energy Future Holdings Corp.

Disinterested Manager of Energy Future Intermediate Holding Company LLC

Disinterested Manager of Energy Future Competitive Holdings Company LLC and Texas Competitive Electric Holdings Company LLC

EXHIBIT B

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Energy Future Competitive Holdings Company LLC

Texas Competitive Electric Holdings Company LLC

Presentation to Cravath, Swaine & Moore LLP

March 16, 2015

Topics

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I. Shared Services

II. Reimbursement (Make-Whole) Agreements

III. Repayment of Oncor Debt by TCEH

IV. Dividend of Oncor

V. Basis Step-Up Claim

VI. Response to EFIH Claims

Part I

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Shared Services

Shared Services

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- TCEH has claims against EFIH for constructive fraudulent transfer, contribution, indemnity, and unjust enrichment claims based upon:
  - Overallocation of shared services costs, including corporate overhead
  - Overallocation of restructuring fees and expenses prepetition
- Overallocation of shared services costs
  - Since at least 2010, shared services costs have been substantially overallocated to the T-Side
  - Historically, EFH paid approximately 18% of shared services expenses
  - Starting in fiscal year 2010, EFH began pushing down most of these costs to its business units – in practice, this meant allocating costs to the T-Side
    - No shared services costs were allocated to EFIH before 2014
    - Share of costs allocated to Oncor declined materially over same period

Historical Allocation of Shared Services

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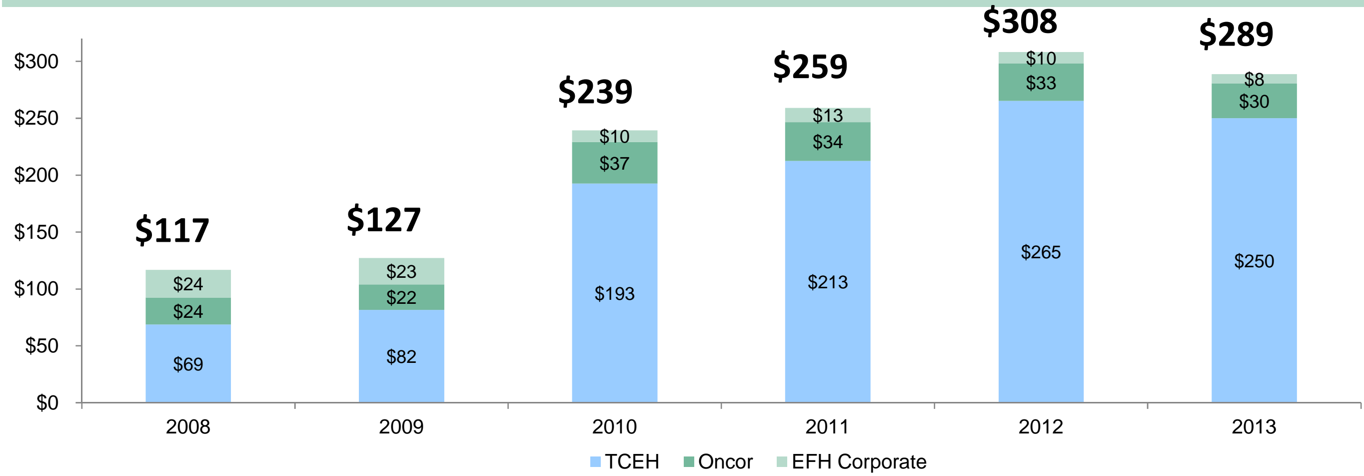
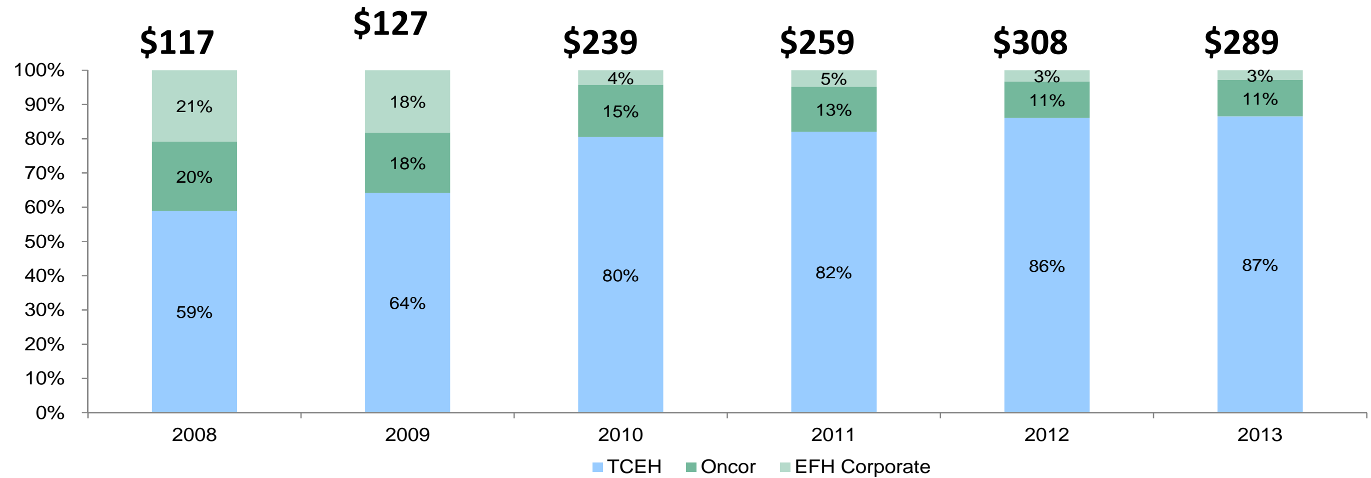
Shared services expenses increased from $117 million in 2008 to $289 million in 2013
The percentage of shared services expenses allocated to the T-side increased from 59% in 2008 to 87% in 2013 whereas allocations to both EFH Corporate and Oncor declined





No historical allocation to EFIH

Note: TCEH represents historical expenses allocated to Luminant and TXU Energy

Source: Company data room

Shared Services: Potential Corporate Overhead[1]

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- Shared services include a number of corporate overhead cost categories that are likely unrelated to underlying individual business unit operations
- While EFIH is generally viewed as a pass-through entity, EFIH should have been allocated, at minimum, its proportionate share of certain corporate overhead expenses after 2010.

Selected Categories	2010 – 2013 Total	Actual Allocation				Potential Reallocation to EFIH		
		EFH	Oncor	TCEH	EFIH	20%	-	40%
Corporate Board & Related Expenses	$18	~$0 / 0%	~$0 / 1%	$18 / 99%	$0 / 0%	$4	-	$7
TXU Corporate Controller & Admin	$25	~$0 / 0%	$2 / 6%	$24 / 94%	$0 / 0%	$5	-	$10
Corporate Planning	$11	~$0 / 1%	$2 / 19%	$9 / 81%	$0 / 0%	$2	-	$4
Finance & Investor Relations	$16	~$0 / 2%	~$0 / 0%	$16 / 98%	$0 / 0%	$3	-	$7
Corporate Secretary & Governance	$7	~$0 / 0%	~$0 / 2%	$7 / 98%	$0 / 0%	$1	-	$3
Corp. Development & Strategy	$10	~$0 / 0%	~$0 / 0%	$10 / 100%	$0 / 0%	$2	-	$4
Business Services Administration	$23	$1 / 3%	$3 / 12%	$19 / 85%	$0 / 0%	$5	-	$9
Corporate Tax	$29	~$0 / 0%	$7 / 26%	$22 / 74%	$0 / 0%	$6	-	$12
External Affairs	$62	$13 / 20%	~$0 / 1%	$49 / 79%	$0 / 0%	$12	-	$25
Sponsor Fees[2]	$141[2]	$0 / 0%	$0 / 0%	$141 / 100%	$0 / 0%	$28	-	$57
Total	**$345**	**$14 / 4%**	**$14 / 4%**	**$317 / 92%**	**$0 / 0%**	**$69**	-	**$138**
Underallocation						**($69)**	-	**($138)**

(1) Preliminary assessment. Subject to further diligence
(2) Represents cash share only. Total expenses of $152 million

Allocation of Prepetition Restructuring Fees

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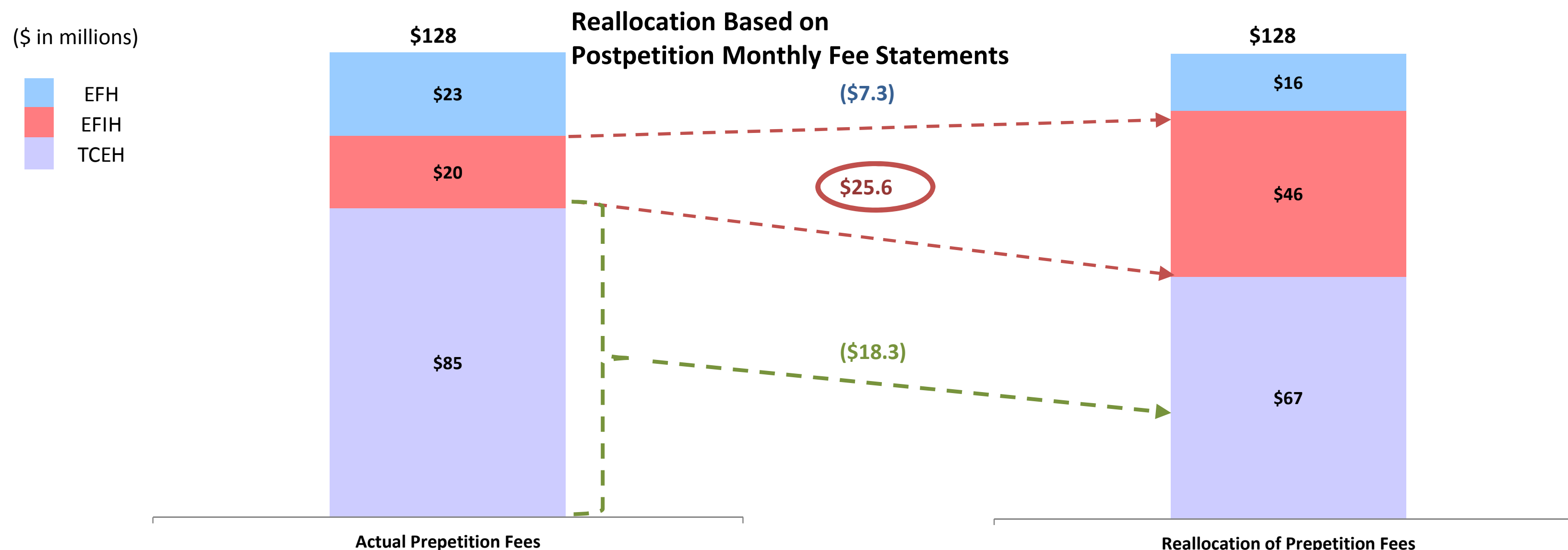
- Restructuring fees and expenses were largely allocated based on the face value of debt
  - This methodology unfairly penalized TCEH and did not fairly allocate fees based on the prepetition focus of the restructuring
  - Per the Interim Compensation Order, post-petition fees are allocated based on direct and indirect benefits conferred to the Debtors
  - Reallocating prepetition fees based on post-petition allocation percentages confirms that EFIH was underallocated > $25 million



Note: Advisors that work exclusively for one constituency not included. Includes Alvarez & Marsal, Deloitte & Touche, Epiq, Enoch Kever, Ernst & Young, Evercore, Filsinger, Gibson Dunn, Kirkland & Ellis, McDermott Will & Emery, Perry Street, PwC, Richards Layton, Sidley Austin, Thompson & Knight and certain advisors classified as “Other” by the Debtors (Advanced Discovery, Bryan Cave, Cousins Chipman & Brown, Cross and Simon, Haynes and Boone, Shearman & Sterling, Hunton & Williams, Bingham McCutchen and Potter Anderson Corroon); Reallocated fee numbers apply cumulative post-petition average fee percentage allocations, as disclosed in monthly fee statements filed through 3/1/2015. Allocations based on both direct and indirect fees as defined in the Interim Fee Order. Pre-petition fees and allocations per Company (Deloitte prepetition fees as disclosed in retention application filed 5/29/2014)
Source: Court filings (Monthly Fee Statements filed to date), diligence materials

Part II

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Reimbursement (Make-Whole) Agreements

Reimbursement Agreements

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- Background
  - In connection with deregulation, EFCH, Luminant, Oncor, and other TXU entities entered into a Master Separation Agreement dated as of December 14, 2001 ("MSA")
    - Pursuant to the MSA, EFCH transferred certain regulatory assets to Oncor
    - Oncor subsequently securitized the regulatory assets
- Tax Reimbursement Agreement (2002)
  - Luminant agrees to reimburse Oncor for federal income tax associated with the Generation-Related Regulatory Assets
- Interest Reimbursement Agreements (2002 and 2004)
  - Under the 2002 agreement, Luminant agreed to reimburse Oncor for the "financing costs" incurred by Oncor as a result of carrying Generation-Related Regulatory Assets on its books
  - Under the 2004 agreement, Luminant agreed to reimburse Oncor for "the difference between the present value and book value of the Generation-Related Regulatory Assets"

Reimbursement Agreements

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- Settlement of Reimbursement Agreement
  - In 2012, Oncor decided that it wanted to reduce its credit exposure to Luminant in anticipation of T-Side restructuring
  - Oncor therefore proposed that Luminant buy out its remaining obligations under the Reimbursement Agreements
  - In an effort to minimize its exposure to an avoidance claim when Luminant filed for bankruptcy, Oncor insisted that Luminant make any settlement payment directly to EFIH rather than to Oncor
  - Oncor thus agreed to assign its purported rights under the Reimbursement Agreements to EFIH in exchange for $159M
  - Luminant paid the same amount ($159M) as settlement consideration directly to EFIH
  - In the event of a bankruptcy, Oncor would have an unsecured claim and would be subject to insider preference and fraudulent transfer liability for payments received in the year before the petition date

Reimbursement Agreements

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- TCEH has claims against EFIH and Oncor to avoid the $159M settlement payment as a fraudulent transfer
  - Insider fraudulent transfer claim
    - Under the UFTA (adopted in Texas and Delaware), a transfer is fraudulent as to present creditors if the transfer was made (1) to an insider (2) for an antecedent debt, (3) the debtor was insolvent at the time, and (4) the insider had reasonable cause to believe that the debtor was insolvent.
    - All of these elements are satisfied
    - Luminant's estate can avoid the one-year statute of limitations by stepping into the shoes of the IRS under 11 U.S.C. § 544(b), *see In re Porras*, 312 B.R. 81 (Bankr. W.D. Tex. 2004)
  - By stepping into the shoes of the IRS, Luminant's estate can avoid other payments made under the Reimbursement Agreements during the period that Oncor had "reasonable cause to believe" that Luminant was insolvent
    - EFIH/Oncor Exposure: more than $309M (with 4-year reach-back period)

Reimbursement Agreements

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- Actual fraudulent transfer
  - Luminant has a claim to avoid the $159M settlement in September 2012 as an actual fraudulent transfer
  - Several statutory and non-statutory badges of fraud are present:
    - Transfer to an insider
    - Luminant was insolvent and Oncor was aware of its financial condition
    - The transaction was structured in anticipation of a potential avoidance claim in the event that Luminant filed for bankruptcy
    - Oncor received more from the settlement than it would have received on a claim against Luminant's bankruptcy estate, *see Quadrant Structured Prods. Co. v. Vertin*, 102 A.3d 155, 169 (Del. Ch. 2014) (denying motion to dismiss actual fraudulent transfer claim on analogous facts)

Part III

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Repayment of Oncor Debt by TCEH

Repayment of Joint Credit Facility

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- Background
  - Before the LBO, TCEH and Oncor were joint borrowers under $4.5B of joint credit facilities
  - As of the LBO, amounts outstanding under the joint credit facilities were approximately $2.4B
  - In the LBO, TCEH repaid approximately $2B of the joint credit facility, while Oncor repaid approximately $385M
- TCEH has a claim against Oncor for fraudulent transfer based on payment of debt for which Oncor was jointly liable
  - TCEH can avoid state law statutes of limitations by stepping into the shoes of the IRS under 11 U.S.C. § 544(b)
  - There is at least a triable issue as to whether the LBO rendered TCEH insolvent

Repayment of Joint Credit Facility

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- Oncor was jointly liable with TCEH for all borrowings under the revolving credit agreements
  - The revolving credit agreements are governed by New York law
  - Under New York law, when two or more entities take on an obligation, there is a presumption of joint liability, and express words of severance are required to overcome the presumption. *See Dallas Gas Partners, L.P. v. Prospect Energy Corp.*, 733 F.3d 148, 160 (5th Cir. 2013) (applying New York law)
  - The TCEH/Oncor revolving credit agreements do not contain any express words of severance

Part IV

MUNGER TOLLES & OLSON LLP

Oncor Dividend

Oncor Dividend

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- Oncor was formerly a wholly-owned subsidiary of EFCH (f/k/a TXU US Holdings)
  - EFCH dividended its shares in Oncor to EFH
  - EFCH did not receive any consideration from EFH for the dividend
  - There is evidence that this dividend may have occurred as part of the October 2007 LBO
    - Exhibit 21 to EFH's 10-K for 2006 reflects that, as of December 31, 2006, Oncor remained a subsidiary of EFCH
- To the extent that the dividend can be collapsed into the LBO transaction, the dividend is vulnerable to challenge as a constructive fraudulent transfer
  - EFCH clearly did not receive reasonably equivalent value
  - No contemporaneous solvency analysis in connection with the dividend
  - EFCH can step into the shoes of the IRS under 11 U.S.C. §544(b) to avoid state law statutes of limitations on avoidance actions

Part V

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Basis Step-Up Claim

Taxable Sale

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- A tax-free transaction requires TCEH to forgo the value of a full step-up in basis
- A TCEH taxable sale is a viable alternative to a tax-free spin of TCEH
  - Whether TCEH "checks the box" to become a regarded entity is controlled by the TCEH independent manager
  - Bankruptcy courts have approved stranded tax transactions
  - The Tax Allocation Agreement is subject to rejection or avoidance
- A taxable sale of TCEH would prevent a tax-free transfer of Oncor through an EFH reorganization
- A taxable sale of TCEH could allocate material liability to EFIH
  - For example, assume that TCEH, a disregarded entity, has $10 of ordinary income and $100 of capital gain, EFIH, a disregarded entity, has $10 of ordinary income, and EFH Corporation has no independent items of income or loss
  - Under these facts, there is a Consolidated Tax Liability of $42 (assuming a 35% tax rate) and under the first step of the TAA, it would be allocated first to EFH Corporation and then sub-allocated to its disregarded entities, TCEH and EFIH, based on their proportionate share of the EFH Group's ordinary income
  - No additional amount would be allocated under the second step of the TAA
  - 50% (10/20) of the $42 would therefore be allocated to EFIH, making EFIH liable for $21 under the TAA

Sensitivity Analysis: Full vs. Partial Step-up in Basis

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Value of Full Step-up versus Partial Step-up in Basis[1]

Delta Between Full and Partial Step-up in Basis

Discount Rate	Illustrative TCEH Value ($mm)				
	$13,000	**$14,500**	**$16,000**	**$17,500**	**$19,000**
6.0%	$363	$678	$992	$1,307	$1,622
7.0%	$337	$630	$922	$1,215	$1,507
8.0%	$315	$587	$860	$1,133	$1,406
9.0%	$294	$549	$804	$1,060	$1,315
10.0%	$276	$515	$754	$994	$1,233

- A taxable transaction would provide the T-Side with additional value ranging from $276M to $1,622M depending on TCEH's enterprise value and the discount rate
- Assumes value associated with partial step-up fully available to TCEH

Note: Simplified calculations for illustrative purposes. Analysis is dependent on available NOL balance, among other factors. Based on range of discount rates and discounted to December 31, 2015
(1) Assumes Company-provided MACRS depreciation of step-up in basis, 35% tax rate, and sufficient net income available to realize tax benefits for illustrative purposes
(2) Based on ~$4.6 billion NOL estimate as of emergence and ~$6.7 billion tax basis
Source: Company presentation and filings, restructuring data room

Part VI

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Response to EFIH Claims

Repayment of TCEH Intercompany Notes

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- Relevant Timeline:
  - October 2007: EFH and TCEH entered the original intercompany notes (P&I and SG&A)
  - November 2008: EFH used some of the proceeds from the sale of a minority interest in Oncor to pay off the P&I Note in full
  - May 2009: EFH and TCEH entered into a new P&I Note, but with the addition of a guarantee from EFIH
  - April 7, 2011: EFIH guaranteed SG&A Note
  - February 2012: EFIH issued $1.15B in new debt and dividended $950M to EFH, which EFH used to repay a portion of P&I Note
  - August 2012: EFIH issued $850M of new debt; $680M of proceeds were held in escrow for EFH to repay TCEH intercompany notes
  - January 2013: EFH paid approximately $700M to TCEH in satisfaction of remaining obligations under the intercompany notes

Repayment of TCEH Intercompany Notes

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- EFIH has asserted that it has avoidance claims based upon the February and August 2012 dividends that financed the repayment of intercompany notes (the "Challenged Transfers")
- Three purported claims
  - "Insider" fraudulent transfer
  - Constructive fraudulent transfer
  - Preference
- As demonstrated on the following slides, these claims lack merit for several reasons:
  - EFIH was solvent at the time of the Challenged Transfers
  - EFIH received reasonably equivalent value in exchange for the transfers
  - Any preference claim is time-barred
  - Even if EFIH could avoid the Challenged Transfers, recovery would not confer a benefit on EFIH estate

Repayment of TCEH Intercompany Notes

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- Solvency is an essential element of any potential claim to avoid the Challenged Transfers
- Here, the evidence is overwhelming that EFIH was solvent when it made the Challenged Transfers
  - Contemporaneous with the February 2012 and January 2013 transfers, EFIH management prepared solvency calculations showing that EFIH was balance-sheet solvent by a substantial margin
  - During the same period, EFIH represented to underwriters of the debt offerings that it was solvent under all three solvency tests
  - Market evidence further supports EFIH solvency at the time of the Challenged Transfers
    - EFIH access to the credit markets
    - Trading prices of EFIH unsecured debt
  - Deloitte issued clean audit opinions for EFIH
  - EFIH is currently solvent

Repayment of TCEH Intercompany Notes

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- EFIH represented to underwriters that it was solvent under all three applicable tests:
  - Balance-sheet
  - Adequacy of capital
  - Ability to pay debts

Energy Future Holdings Corp.
Energy Future Intermediate Holding Company LLC
EFIH Finance Inc.

Dealer Manager Agreement

December 21, 2012

c/o Goldman Sachs, & Co.
200 West Street
New York, New York 10282

Ladies and Gentlemen:

Energy Future Intermediate Holding Company LLC, a Delaware limited liability company ("EFIH"), and EFIH Finance Inc. a Delaware corporation ("EFIH Finance"), plan, on the terms and subject to the conditions described in the Offer Mater[illegible] below), to make offers

(bb) EFIH, at the Commencement Date and immediately after the Exchange Date, will be Solvent. As used herein, the term "Solvent" means, with respect to EFIH on a particular date, that on such date (i) the fair market value of the assets of EFIH is greater than the total amount of liabilities (including contingent liabilities) of EFIH, (ii) the present fair salable value of the assets of EFIH is greater than the amount that will be required to pay the probable liabilities of EFIH on its debts as they become absolute and matured, (iii) EFIH is able to realize upon its assets and pay its debts and other liabilities, including contingent obligations, as they mature and (iv) EFIH does not have unreasonably small capital.

Repayment of TCEH Intercompany Notes

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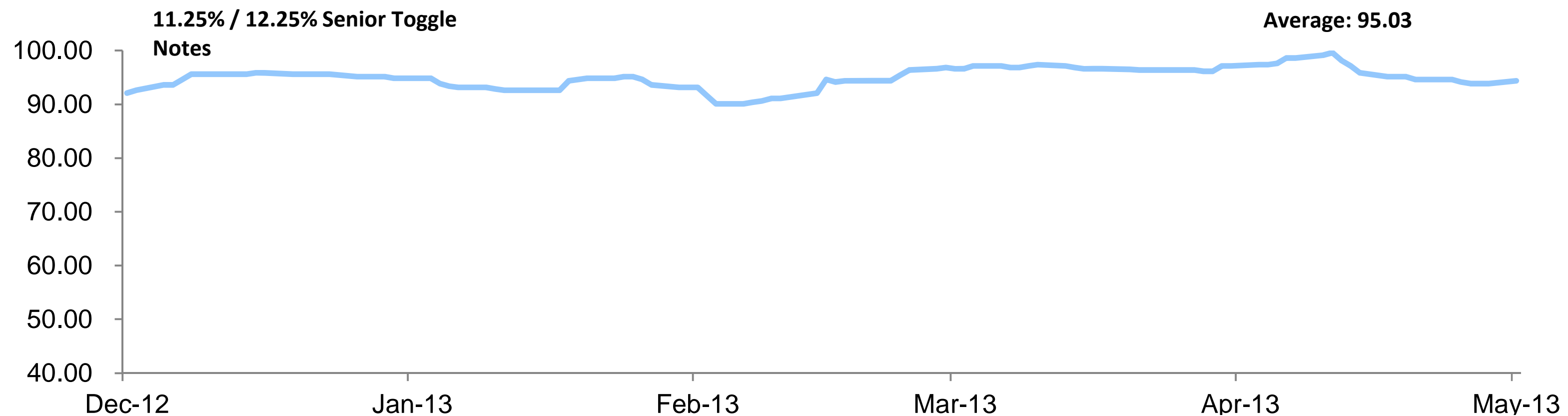
- Market evidence reinforces the conclusion that EFIH was solvent at the time of the Challenged Transfers
  - EFIH unsecured debt was trading near par



  - There was robust demand for EFIH debt issued in February 2012 and August 2012
    - Investors were aware that proceeds of debt issuances would be used to repay intercompany notes

Repayment of TCEH Intercompany Notes

MUNGER TOLLES & OLSON LLP

- Even if EFIH could prove that it was insolvent at the time of the Challenged Transfers, its claims would fail for other reasons
- Insider fraudulent transfer
  - EFIH cannot show that TCEH had any reason, let alone "reasonable cause," to believe that EFIH was insolvent at the time of the Challenged Transfers, Del. Code Ann. tit. 6, §1305; *see also* Texas Bus. & Comm. §24.006(b) (same)
- Constructive Fraudulent transfer
  - EFIH guaranteed the TCEH intercompany notes and therefore received reasonably equivalent value
  - Guarantees provided in 2009 and 2011 are not avoidable
- Preference
  - Any preference claim is untimely: One-year reach-back period for insider preference claims is a substantive element of the claim and cannot be tolled
  - Earmarking: Proceeds of debt issued by EFIH in February 2012 and August 2012 were earmarked for repayment of intercompany notes (thereby discharging EFIH guarantee obligations)

Repayment of TCEH Intercompany Notes

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- Even if EFIH could avoid the Challenged Transfers, it could not recover from TCEH
- To recover on an avoidance action, EFIH must show that recovery would benefit the estate (*Adelphia Recovery Trust v. Bank of Am., N.A.*, 390 B.R. 80 (S.D.N.Y. 2008))
- As noted above, EFIH guaranteed the obligations of EFH to TCEH under the TCEH intercompany notes
  - If a court avoided the Challenged Transfers, TCEH would have a claim against EFIH based on these guarantees
  - TCEH would recover 100% on its guarantee claim against EFIH
  - The parties would be left in the same position that they would have been in absence of avoidance and recovery
  - Accordingly, the EFIH estate would not benefit from recovery

EFIH Holdings of TCEH Debt: No Setoff

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- EFIH holds approximately $79M of 10.25% TCEH Unsecured notes due 2015
- EFIH will not be able to setoff these debt holdings against its liability on claims by TCEH and Luminant
    - EFIH cannot setoff TCEH notes until it has repaid liability on avoidance actions (11 U.S.C. § 502(d))
    - EFIH cannot setoff TCEH notes against avoidance action liability to Luminant (lack of mutuality)
    - The indenture for the 10.25% unsecured notes bars setoff
        - "No-action" clause (§ 6.06) bars a noteholder from pursuing individual remedies without support of other noteholders
        - "No-action" clause also bars a noteholder from obtaining "a preference or priority" over other holders
        - EFIH thus is barred from using setoff to receive greater recovery than other noteholders (to the detriment of the other noteholders)

EXHIBIT C

EFIH PRELIMINARY RESPONSE TO T-SIDE CLAIMS AND DEFENSES

Counsel for Energy Future Competitive Holdings Company LLC ("**EFCH**") and Texas Competitive Electric Holdings Company LLC ("**TCEH**") (the "**T-Side**") presented their view of intercompany claims against Energy Future Intermediate Holdings Company LLC ("**EFIH**") and the T-Side's defenses to EFIH's intercompany claims against the T-Side on March 16, 2014. This memorandum responds at a high level to that presentation, discussing the T-Side's claims in the order in which the T-Side presented its claims and defenses. This memorandum is not intended to waive EFIH's ability or right to assert any additional or more detailed defenses or to waive any claim, defense, or legal right if matters are not resolved consensually.

I. T-Side Claims Against EFIH

T-Side counsel presented five claims against EFIH, each of which is discussed below. In summary, the T-Side might have a legal basis for its claims for misallocation of shared services and restructuring fees, if there were any such misallocation, but the history of shared services allocations shows that EFIH paid all or nearly all its fair share. EFIH does not have liability on buyout of the Reimbursement (Make-Whole) Agreements, as it was merely facilitating an agreement that was reached between Oncor and Luminant whereby Luminant was able to settle its outstanding liabilities under the Reimbursement (Make-Whole) Agreements at a 20.5% discount rate. Any claim with respect to the joint credit facility claims would be a claim only against Oncor, not EFIH, and Oncor and TCEH each repaid their respective shares of the borrowings. The only evidence arguably supporting the T-Side's fourth claim for the transfer of Oncor to EFIH is a simple typographical error; none of the operative documents suggest otherwise. Finally, the T-Side's loss in basis step-up does not give rise to a legal claim, only a request for consideration and negotiated compensation.

A. Shared Services

The T-Side asserts claims against EFIH for "overallocation" of (i) shared services costs and (ii) prepetition restructuring fees and expenses. The T-Side assserted claims for constructive fraudulent transfer, contribution, indemnity, and unjust enrichment to recover any overallocation but does not address how it would meet the elements for any of those claims. If some limited reallocation of shared services costs and prepetition fees to EFIH were appropriate, the allocation methods the T-Side proposed do not take account of the actual use of services.

1. Allocation of shared service costs.

The T-Side claims that "[s]ince at least 2010, shared service costs have been substantially overallocated to the T-Side." (T-Side Presentation at 4.) The T-Side argues that EFIH "should have been allocated, at minimum, its proportionate share of certain corporate overhead expenses after 2010." (T-Side Presentation at 6.) The T-Side suggests that EFIH's proportionate share of the corporate overhead expenses is between 20% and 40% of the corporate overhead expenses. EFIH disagrees.

First, EFH determined the shared services costs from 2010 through 2013 by specified allocation methods, including: time required, share of total business services' billings, assets, embedded controller headcount, and multifactor formulas. (*See* 1.1.10.1.1 PEO-2012 Business Services SLA.) The allocations to the T-Side were made under those allocation methods, and the T-Side has not identified why any of those methods resulted in an "overallocation" to the T-Side. The T-Side points to the percentage amounts paid by the T-Side, but the T-Side does not identify what, if anything, was improper about the allocation methods that were used. The T-

Side proposes to use face value of debt or enterprise value as the allocation method.[1] The T-Side has not explained why either of those metrics more fairly allocates shared services costs than the allocation methods that were used.

The T-Side properly bears the lion's share of the shared services, as it uses them the most. EFIH has few, if any, employees and is effectively a single asset holding company for a ring-fenced, independent-board controlled company. It uses little of the services. In addition, Oncor has its own corporate services so it too makes less use of shared services but pays separately for what it receives.

Second, the T-Side proposes to reallocate a portion of shared services that fall into a grouping, which the T-Side has invented, called "potential corporate overhead", which are those services that, according to the T-Side, are "likely unrelated to underlying individual business unit operations". (T-Side Presentation at 6.)[2] "[U]nrelated to underlying individual business unit operations" should not be the starting point for any reallocation; the starting point should be whether the shared services actually involve or service the business unit.

There are some service categories in the T-Side's list that do not involve EFIH. For example, "External Affairs" covers costs related to political and government lobbying and public policy advocacy. (*See* 1.1.10.1.1 PEO-2012 Business Services SLA at 68-79.) EFIH, as a holding company, does not use those services, and thus EFIH should not be allocated any portion of those costs. "Corporate Secretary & Governance" relates to coordination of EFH board and committee meetings, physical security, effective training to address employee safety,

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[1] It is not clear whether the T-Side proposes to use the petition date to assess face value of debt and enterprise value or use some other date.

[2] The T-Side's potential corporate overhead list is composed of ten "Selected Categories" of shared services. The names of those ten Selected Categories do not all match the categories in the historical shared services spreadsheet. For example, "Corporate Board & Related Expense" is not a category on the historical spreadsheet. In addition, it is difficult to determine which shared services within a category have been included to arrive at the totals in the T-Side's chart on slide 6 of the T-Side's presentation.

training regarding the Code of Conduct, and ethics and compliance matters. (*See* 1.1.10.1.1 PEO-2012 Business Services SLA at 49.) Those services are not ones that EFIH as a holding company uses.

The T-Side's list also includes a category called "Corporate Board & Related Expenses", which is not a specifically listed category in the historical shared costs spreadsheet. That category seems to correspond with certain costs that are part of the Business Services Administration category in the historical spreadsheet.[3] Those costs include the following: "Board of Directors Expense", "Board of Directors – Non Cash", "Board of Directors Comp – Cash". On their face those descriptions would suggest that they should be allocated across the business units. However, under the 2014 SLA, which re-evaluated the methods of allocation and includes allocations to EFIH, the allocation of these costs is again 100% to TCEH as it was in 2010-2013. (*See* 1.1.10.2.1 PEO-EFIH SSA at 40.) Thus, EFIH should not have any responsibility for those costs.

The T-Side's list also includes the LBO "Sponsor Fees". EFIH should not have any responsibility for paying any portion of those fees, because EFIH was not involved in the LBO debt financing. To the extent EFIH issued debt during the Liability Management Program for which the Sponsors may have been involved, EFIH issued that debt for the benefit of EFH and the T-Side. As a result, EFIH believes those fees should be borne by EFH and the T-Side, not EFIH.

Third, to the extent shared services are reallocated for any shared service category, EFIH should be allocated only a portion for the services within any category that it used, not the total costs across the category. The 2014 SLA is instructive on this point. It allocates to EFIH a portion

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[3] "Business Services Administration" is also listed as a selected category on the T-Side's list.

of the costs for only six categories of services and only for certain services within those six categories.[4] (*See* 1.1.10.2.1 PEO-EFIH SSA.)

Fourth, reallocating 20% to 40% to EFIH regardless of the category of shared service or the year is not a better method of allocation. The 2014 SLA allocation methods are more accurate than the 20% to 40% the T-Side proposed. For example, for certain expenses such as Treasury Administration and Investor Relations, the 2014 SLA uses the "Face Value of Debt Method" to allocate percentages, and for 2014, the Face Value of Debt Method results in 20% of both of those costs to EFIH. (*See* 1.1.10.2.1 PEO-EFIH SSA at 29-30.) However, EFIH's outstanding debt was not always 20%; it was much less in 2010, 2011 and 2012. Thus, EFIH's percentage of those expenses would be less in 2010 than in 2014. Therefore, applying 20% for all four years would not result in a fair allocation. In addition, it does not appear that enterprise value was ever used as a method of allocation from 2010-2013 for any of the shared services for which EFIH has been allocated a percentage of costs under the 2014 SLA.[5]

The numbers the T-Side presented using the 20% to 40% allocation shifted the costs too far. Based on an April 2014 presentation on the allocation of shared services under the 2014 SLA, EFIH's fair portion of shared services was approximately 1.5% of the annual shared services costs. That amount for 2014 was about $4.3 million. (*See* 1.4.10.1.3 PEO-EFIH Service Bill Allocations 4.11.14 at 3.) That amount was consistent with the estimate Michael Carter provided during due diligence meetings with Conflicts Counsel; he stated that EFIH's allocation would be approximately $4 million per year.

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[4] The six categories (and the specific services within the category where EFIH has an allocation for 2014) are: (1) Business Services Administration (Business Service Administration and Sponsor Fees); (2) Corporate Tax (Corporate Tax Project); (3) Corporate Consolidation (Corporate Consolidations); (4) Treasury (Treasury Administration and Investor Relations); (5) Corporate Controller (Controller Administration); and (6) Legal Services (Internal Legal).

[5] In addition, EFIH's total enterprise value is not 40% of the combined enterprise values of the T-Side and EFIH, as the T-Side argues. EFIH's total enterprise value is significantly less and has varied from year-to-year.

Last, it is unclear what portion, if any, of shared services costs to be reallocated to EFIH should benefit the T-Side, as opposed to EFH or Oncor.

2. Allocation of Restructuring Fees.

The T-Side argues that it was "overallocated" prepetition restructuring fees. EFIH understands prepetition restructuring fees were billed directly to a company if the services could be directly allocated to the company (*e.g.*, EFH, EFIH, TCEH). Prepetition restructuring services that could not be allocated to a specific company were allocated based on the face amount of debt. (T-Side Presentation at 7.) The T-Side argues that using the face amount of debt was unfair because the T-Side had the most debt and the allocation was not based on the prepetition focus of the restructuring.

Using outstanding debt to allocate prepetition restructuring fees that could not be directly allocated to a particular company is not inherently unfair. The percentages of outstanding debt that were used for the allocation were 20% for EFIH, 75% for the T-Side and 5% for EFH, which is consistent with how some of the shared services costs are allocated in the 2014 SLA using the same percentages. Indeed, the T-Side even proposed using 20% for reallocating shared services costs because it was the value of the outstanding debt for EFIH.

The T-Side proposes that the prepetition restructuring fees should based more on "the prepetition focus of the restructuring". (T-Side Presentation at 7.) EFIH, while open to considering a reallocation, believes that the T-Side had the most outstanding debt and has a complicated capital structure so it should bear a large portion of the prepetition restructuring costs. By contrast, EFIH was a holding company with a relatively straightforward capital structure with less debt, so less restructuring services were needed. Indeed, if prepetition restructuring fees should be "based on the prepetition focus of the restructuring", EFIH would

have a claim that *it* was overallocated, since its restructuring needs were minimal compared to EFH's and the T-Side's.

The T-Side argues that the post-petition fee allocation percentages "confirm" that EFIH was underallocated prepetition restructuring fees. (T-Side Presentation at 7.) EFIH's understanding of the post-petition restructuring fee allocation is that if the fees cannot be directly allocated to a specific estate, they are allocated based on the percentages of restructuring fees that are billed directly to the estates. Thus, if one estate receives more attention in a particular period, and thus has more direct billings, its share of the shared fees will increase. Here, EFIH received more attention shortly after the petition was filed, but that attention has now shifted to the T-Side. Using the percentages for post-petition fees therefore would be skewed against EFIH as they simply reflect where the attention has been, not on the overall appropriate allocation.

Even if there were to be a reallocation of prepetition restructuring fees, it is not clear how much of the reallocation amount should be paid to the T-Side, as opposed to EFH.

B. Reimbursement (Make-Whole) Agreements

The T-Side asserts that it has both a constructive fraudulent transfer claim and an actual fraudulent transfer claim against EFIH and Oncor to avoid the $159 million Oncor make-whole settlement payment. EFIH is not responsible for any claims the T-Side might have against Oncor.

1. <u>The settlement payment was made beyond the reach-back period.</u>

T-Side can bring claims related to the Oncor make-whole payment only if it can step into the shoes of the IRS and use the 10-year reach-back. (T-Side Presentation at 11.) The ability to use that statute is unclear. *In re Vaughan Co.*, 498 B.R. 297, 305 (D.N.M. 2013) (holding that a

trustee who sought to avoid transfers under New Mexico's UFTA could not make use of the IRS reach-back).

2. There is virtually no evidence of actual intent.

There is virtually no evidence to support an actual fraudulent transfer claim. *First*, there is no direct evidence of intent to hinder, delay, or defraud. *Second*, as to circumstantial evidence and as the T-Side acknowledges, there are at most four badges of fraud (including insolvency, discussed below). Courts often dismiss claims that are based on only a few badges of fraud, particularly where, as here, many other badges point in the opposite direction. *See ASARCO LLC v. Americas Mining Corp.*, 396 B.R. 278, 374 (S.D. Tex. 2008); *In re Gulf Fleet Holdings, Inc.*, 491 B.R. 747, 767-68 (Bankr. W.D. La. 2013); *In re Midway Games Inc.*, 428 B.R. 303, 325 (Bankr. Del. 2010). And the statute is clear that the court may consider the presence or absence of all badges. Del. Code Ann. tit. 6 § 1306(b).

3. There was reasonably equivalent value and no reasonable cause to believe Luminant was insolvent.

A constructive fraudulent transfer claim requires proof of that the debtor did not receive reasonably equivalent value. Del. Code Ann. tit. 6 §§ 1304(a)(2), 1305(a); 11 U.S.C. § 548(a)(1)(B). Luminant likely received reasonably equivalent value in the transaction. To satisfy its antecedent debt owing to Oncor, Luminant paid $159 million, which represented a present value discount of Luminant's remaining obligation of $212 million at a 20.5% present value discount rate. Further, EFIH would not have had reasonable cause to believe Luminant was insolvent at the time, as Deloitte issued a clean audit opinion for that year.

4. Any payments made under the Reimbursement Agreements are not recoverable from EFIH.

Any payments under the Reimbursement Agreements to Oncor the T-Side seeks to recover should be made against Oncor, not EFIH. Other than the $159 million settlement payment, EFIH did not receive payments under the Reimbursement Agreements.

C. Repayment of Joint Credit Facility

The T-Side asserts a constructive fraudulent transfer claim against Oncor based on the repayment of joint credit facilities at the time of the LBO closing. (T-Side Presentation at 15.) The T-Side bases its claim on the general background presumption of joint liability, unless the governing contract states otherwise. But the TCEH/Oncor revolving credit agreements at issue provide for several—not joint—repayment obligations for "each Borrower" to "each Lender". (*See* TXU Energy Company and TXU Electric Company Revolving Credit Agreement (Mar. 31, 2005), at 25; *see also* EFCH/TCEH Credit Agreement (Oct. 10, 2007), at 181 *and* Oncor Revolving Credit Agreement (Oct. 10, 2007), at 79.) Thus, the T-Side's claim for repayment is without merit.

D. Oncor Dividend

The T-Side argues that there might be evidence that the Oncor Dividend occurred as part of the October 2007 LBO, based on Exhibit 21 to EFH's 10-K for year-end 2006 that purports to show Oncor as a subsidiary of EFCH. (T-Side Presentation at 17.) To the contrary, there is simply an error in that exhibit.

Company management stated that the location of TXU Electric Delivery Company (Oncor) in the Subsidiary Hierarchy in EFH's 2006 10-K is an indentation error. TXU Electric Delivery Company was not a subsidiary of TXU US Holdings Company in 2006. Company management was not sure whether the error was in the original Word document or whether it

was done by the financial printer, but it was just a mistake. The Subsidiary Hierarchy in EFH's 2005 10-K shows TXU Electric Delivery properly positioned as a subsidiary of TXU Corp, and not of TXU US Holdings.

E. Basis Step-Up Claim

The T-Side does not assert a legal basis for the claim; there is none. Discussions on this matter, if any, would be based on other considerations.

II. T-Side Responses To EFIH Claims

EFIH has claims against TCEH for the repayment of the TCEH Intercompany Demand Notes. In October 2007, EFH issued a P&I Note and a SG&A Note (collectively the "**Demand Notes**"), which were payable on demand to TCEH. EFIH and EFCH guaranteed the P&I Note in May 2009 and the SG&A Note in April 2011. In February 2012, EFIH issued $1.15 billion of debt and dividended $950 million of the proceeds to EFH, which in turn used that money to pay down the P&I Note. In August 2012, EFIH issued $850 million of debt and put $680 million of the proceeds in escrow. On January 30, 2013, EFIH dividended the $680 million to EFH, which in turn used the money to satisfy the obligations under the Demand Notes. The offering memoranda for the EFIH debt issuances in February and August 2012 state that proceeds from the offerings would be dividended to EFH for EFH to repay the Demand Notes. The T-Side maintains that EFIH does not have a valid fraudulent transfer or preference claim.

A. EFIH Has a Valid Fraudulent Transfer Claim Against TCEH as the Entity for whose Benefit a Fraudulent Transfer was Made.

Under § 550(a)(1), a trustee may recover from the entity "for whose benefit" an avoided transfer was made. Here, EFIH has fraudulent transfer avoidance claims against EFH for the February 2012 and January 2013 dividends under 11 U.S.C. § 548(a)(1)(B). EFIH may recover from TCEH because the dividends were made to EFH for TCEH's benefit.

1. EFIH has valid fraudulent transfer claims against EFH.

EFIH has fraudulent transfer claims under 11 U.S.C. § 548(a)(1)(B) as well as under the Delaware UFTA, Del. Code Ann. tit. 6 § 1305. The dividends satisfy the elements of § 548(a)(1)(B) because EFIH did not receive reasonably equivalent value from EFH in exchange for the dividends and EFIH was insolvent or in a distressed financial condition when it made the dividends.

The dividends also satisfy the elements under the Delaware UFTA for an insider preference. EFIH made a transfer to an insider (EFH) for the benefit of a creditor (TCEH) on account of an antecedent debt (the guarantee on the Demand Notes) when EFIH was insolvent and when EFH had reasonable cause to believe that EFIH was insolvent. *See* Del. Code Ann. tit. 6 § 1305(b).

a. *EFIH was insolvent in February 2012 and January 2013.*

The T-Side offered five arguments regarding EFIH's solvency. (T-Side Presentation at 24.) Solvency is measured "on the date that such transfer was made". 11 U.S.C. § 548(a)(1)(B)(ii).

First, the T-Side argues that "[c]ontemporaneous with the February 2012 and January 2013 transfers, EFIH management prepared solvency calculations showing that EFIH was balance-sheet solvent by a substantial margin." (T-Side Presentation at 24.) Those calculations were not formal solvency analysis. It is also not clear when EFIH management performed those informal calculations. Furthermore, any informal calculations would have been based on Duff & Phelps' valuations of Oncor, but those valuations were not as of the dates of the dividend transactions.[6]

[6] The valuation date for a Duff & Phelps valuation report closest to any of the dividend payments dates was December 1, 2012. That valuation date is too late to be of any relevance to the February 2012 dividend. December 1, 2012 is not a meaningful valuation date for the January 2013 dividend either, as EFIH continued to issue debt in December 2012 and January 2013.

To be sure, EFIH's insolvency in February 2012 might be a close call, but the numbers do support a finding of EFIH being insolvent in February 2012. EFIH, in February 2012, had almost $3.9 billion of its own debt, had guaranteed more than $1.8 billion of EFH's debt and had guaranteed the Demand Notes under which more than $640 million was outstanding at the time. The value of EFIH's stake in Oncor in February 2012 was between $4.6 and $5.6 billion.

By January 2013, EFIH's debt had increased substantially. EFIH had more than $7.7 billion of its own debt, had guaranteed $54 million of EFH debt, and at the time of the dividend had the guarantees on the Demand Notes under which approximately $700 million remained outstanding. The value of EFIH's stake in Oncor was between $5.1 billion and $6.2 billion.

Even if EFIH was balance-sheet solvent, EFIH was insolvent under the cash-flow test in February 2012 and January 2013. In February 2012, depending on underlying assumptions, EFIH was facing a cash-flow shortfall of almost $4 billion by 2013, with an implied price to earnings multiple required for refinancing of almost 14 times. In January 2013, EFIH was facing a cash flow shortfall of almost $8.7 billion within one year with an implied price to earnings multiple required for refinancing of more than 28 times.

Second, the T-Side argues that EFIH represented to underwriters that it was solvent, but a representation does not make it so. The representations might have expressed management's belief, but there were no formal solvency analyses done, and any informal calculations management did were based on Oncor valuations that were not as of the time of the dividends.

The representations also are not a defense to EFIH's claims under the Delaware UFTA. The UFTA determines whether EFH, despite whatever representations EFIH made, had "reasonable cause to believe" EFIH was insolvent. It imposes an objective test. By virtue of its management of EFIH, EFH had "reasonable cause to believe" that EFIH was insolvent if the underlying facts would have shown insolvency. *See* 3 Collier on Bankruptcy ¶ 60, 53 (14th ed.)

(stating that reasonable cause to believe exists when a "state of facts is brought to the creditor's notice, respecting the affairs and pecuniary condition of the debtor, as would lead a prudent business person to the conclusion that the debtor is insolvent"); *see also In re Henwood & Nowak*, 27 F.2d 888, 889 (D. Mass. 1928) (a subsidiary corporation receiving payment from its insolvent parent corporation within four months of bankruptcy was chargeable with knowledge of the insolvency of the parent).

Third, that EFIH was able to access credit markets and how the market responded does not establish that EFIH was solvent at the time of the dividend in February 2012 or January 2013. As the court in *In re Tronox* stated, the fact that a company was able to issue secured debt to the market "does not deserve any weight in the solvency analysis". 503 B.R. 239, 298 (Bankr. S.D.N.Y. 2013).

The T-Side also argues that EFIH's unsecured debt was trading "near par". (T-Side Presentation at 26.) The only information the T-Side provides is on EFIH 11.25/12.25% Senior Toggle Notes which were issued in December 2012. The T-Side provides no information about the trading of EFIH debt throughout 2012. Furthermore, EFH unsecured debt guaranteed by EFIH (*see* EFH 10.875% Notes and EFH 11.25/12.2% PIK Notes), which can be viewed as a proxy for EFIH unsecured debt, was trading at a significant discount throughout 2012 and into January 2013.

The T-Side's last argument that EFIH is "currently solvent" is not simply relevant. For there to be a constructive fraudulent transfer, EFIH need only be insolvent "on the date that such transfer was made". 11 U.S.C. § 548(a)(1)(B)(ii). That EFIH might have become solvent after the transaction is of no moment.

b. *EFIH did not receive reasonably equivalent value.*

EFIH received nothing from EFH in exchange for the dividends and thus did not receive reasonably equivalent value. The T-Side argues EFIH received reasonably equivalent value because EFIH was released as the guarantor of the Demand Notes. The T-Side can prevail on that argument only if the two transactions—EFIH's dividends to EFH and EFH's payment to TCEH—are collapsed. The collapsing doctrine is an equitable doctrine to protect general creditors, not to preserve otherwise voidable transactions. *See generally Chase Manhattan Mortgage Corp. v. Shapiro (In re Lee)*, 530 F.3d 458 (6th Cir. 2008) (refusing to collapse separate transfers to permit assertion of earmarking defense). A court looking at these transactions may treat the dividends simply as dividends.

Furthermore, because the transfers were structured as dividends rather than direct payments by EFIH to TCEH, EFIH lost its contribution claim against EFH as the principal obligor of the Notes. EFIH did not receive anything for the loss of its contribution claim against EFH and thus did not receive reasonably equivalent value.

2. <u>EFH was not a mere conduit</u>.

The mere conduit defense does not apply here. Although the Offering Memoranda stated that proceeds from the issuances would dividended to EFH to repay the Demand Notes, EFH was not bound to use the funds from the dividend to repay the Demand Notes. EFH could have redirected the funds for its own use. Accordingly, EFH exercised dominion and control over the funds dividended by EFIH and therefore was not a mere conduit. *See In re Lambertson Truex, LLC*, 458 B.R. 155, 158-59 (Bankr. D. Del. 2011).

B. EFIH Has Valid Preference Claims for the Dividends.

Alternatively, EFIH may avoid the dividend payments as preferences under 11 U.S.C. § 547(b). The February 2012 and January 2013 dividends were made for the benefit of a creditor,

TCEH, a fact made clear in the February 2012 and August 2012 offering memoranda. The dividends were made on account of the guarantees of the Demand Notes, which constitute antecedent debts. *See In re Nirvana Rest. Inc.*, 337 B.R. 495, 502 (Bankr. S.D.N.Y. 2006). The dividends were also made when EFIH was insolvent. The January 2013 dividend was made within the one-year reach-back period covered by the tolling agreement. The February 2012 dividend would be actionable under the UFTA provision for preferential transfers to an insider, Del. Code Ann. tit. 6, §1305(b), if the IRS ten-year reach-back period applies.

The T-Side argues that the one-year reach-back period for insiders is a substantive element and cannot be tolled. But reach-back periods in the bankruptcy code are statutes of limitation that may be tolled, both in equity and by agreement of the parties. *See In re Stanwich Financial Services Corp.*, 291 B.R. 25, 28 (Bankr. D. Conn. 2003); *see also Young v. United States*, 535 U.S. 43, 49-50 (2002) ("It is hornbook law that limitations periods are customarily subject to equitable tolling …. That is doubly true when [Congress] is enacting limitations periods to be applied by bankruptcy courts, which are courts of equity and apply the principles and rules of equity jurisprudence.") (internal quotation marks omitted).

The T-Side's earmarking defense is also inapplicable. Although the offering memoranda for the February 2012 and August 2012 offerings state that EFIH would dividend the proceeds to EFH and EFH would use the proceeds to pay down the Demand Notes, EFIH was not required to make the dividends to EFH. Therefore, there was no agreement for purposes of the earmarking defense. *See In re Winstar Communs. Inc.*, 554 F.3d 382, 401-02 (3d Cir. 2009). The fact that EFIH was not obligated to make the dividends to EFH can be seen in the escrow agreement for the August 2012 offering, which contains no mandate that the funds be used solely for the purpose of repayment of the Demand Notes.

C. Recovery of the Dividends Would Benefit EFIH's Estate.

Recovery of the dividends used to pay off the Demand Notes would benefit EFIH's estate. Whether an avoidable transfer action is for the benefit of the estate is determined as of the petition date. *In re Asarco LLC*, 513 B.R. 499 (S.D. Tex. 2014). Here, EFIH was insolvent as of the petition date. As a result, TCEH would not recover 100% on its hypothetical revived guarantee claim, because the claim would be treated as a general unsecured claim. The recovery would result in a net benefit to EFIH.

Furthermore, only an "allowed" claim may share in distribution. 11 U.S.C. § 502(a). Section 502(d) requires the court to "disallow any claim of an entity from which property is recoverable" under the avoidance provisions of the Bankruptcy Code unless the entity "has paid the amount" for which it is liable. 11 U.S.C. § 502(d). Here, EFIH's avoidable transfer claims against the T-Side bar the T-Side's claims against EFIH until the T-Side returns the value of the dividends. The disallowance of the T-Side's claims under § 502(d) provides a benefit to the EFIH estate as well.

EXHIBIT D

ENERGY FUTURE INTERMEDIATE HOLDING COMPANY LLC (the "Company") MINUTES OF THE MEETING OF THE INDEPENDENT MANAGER OF THE BOARD OF MANAGERS

Date:	March 30, 2015, at 3:15 p.m. ET		
Location:	Offices of Cravath, Swaine & Moore LLP		
Manager:	Charles H. Cremens		
Advisors:	Richard Levin *(Cravath)*	Philip A. Gelston *(Cravath)*	Harrison J. Goldin *(Goldin Associates LLC)*
	David W. Prager *(Goldin Associates LLC)*	Karthik Bhavaraju *(Goldin Associates LLC)*	

Mr. Charles H. Cremens, the sole independent manager of the Board of Managers of the Company, was in attendance. Richard Levin acted as secretary. Participants referred to the materials distributed at the meeting by Goldin Associates LLC ("**Goldin**").

Mr. Levin called the meeting to order and explained that the purpose of the meeting was to review the proposed terms of the settlement as part of the Company's chapter 11 plan of all prepetition intercompany claims, causes of action and disputes of and against the Company, which Mr. Cremens had previously determined are matters on which there is an actual conflict of interest between the Company and another Debtor (such matters, "**Conflicts Matters**") and to determine whether to approve the settlement.

Mr. Cremens invited representatives of Goldin to review with him the materials they had prepared for the meeting. Representatives of Goldin made a presentation summarizing the terms of the intercompany settlement and releases contained in the most recent version of the chapter 11 plan for the Company and certain of its affiliates. Representatives of Cravath, Swaine & Moore LLP ("**Cravath**") provided a short presentation on the proposed settlement. The presentation included a discussion among Mr. Cremens, Goldin's representatives and Cravath's representatives in response to numerous questions from Mr. Cremens. Both Goldin and Cravath representatives referenced prior memoranda, presentations, and meetings with Mr. Cremens regarding the substantive legal, financial and practical issues raised by the Conflict Matters.

Following careful consideration and discussion with his advisors, Mr. Cremens determined that, as long as the total consideration available to the creditors of Company under the proposed chapter 11 plan is adequate to satisfy all allowed claims against the Company, the proposed settlement of intercompany claims, causes of action and disputes of and against the Company is desirable and in the best interests of the Company, its creditors and other parties in interest.

Thereupon, Mr. Cremens, as the sole independent manager of the Board of Managers of the Company, adopted the following resolutions:

WHEREAS, on April 29, 2014, Energy Future Intermediate Holding Company LLC (the "**Company**") and certain of its affiliates (collectively with the Company, the "**Debtors**") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "**Court**");

WHEREAS, Charles H. Cremens is a member of the Board of Managers of the Company (the "**Board**") who is disinterested within the meaning of Section 144 of the Delaware General Corporation Law or the Company's governing documents, to the extent applicable, with respect to Conflicts Matters (such member, the "**Disinterested Manager**");

WHEREAS, the Board has delegated to the Disinterested Manager full authority to resolve Conflicts Matters;

WHEREAS, the Disinterested Manager, after consultation with Cravath, Swaine & Moore LLP ("**Cravath**") and Goldin Associates, LLC ("**Goldin**"), advisors to the Company (reporting to and acting under the direction of the Disinterested Manager) with respect to Conflicts Matters (Cravath and Goldin collectively, the "**Conflicts Matters Advisors**"), has conducted an extensive review and analysis of the potential intercompany claims by and against the Company and the potential defenses thereto;

WHEREAS, the Disinterested Manager and the Conflicts Matters Advisors have participated in numerous meetings and telephone conferences with Kirkland & Ellis LLP and Evercore Group L.L.C. (collectively, the "**Primary Advisors**") and the Conflicts Matters counsel and advisors to other Debtors to discuss the resolution of intercompany claims;

WHEREAS, the Debtors, after consultation with the Primary Advisors and the Conflicts Matters advisors, have formulated a proposed chapter 11 plan (as may hereafter be amended, supplemented, or modified from time to time, the "**Plan**") to resolve outstanding claims against and equity interests in the Company and its affiliated Debtors and a draft disclosure statement (as may hereafter be amended, supplemented, or modified from time to time, the "**Disclosure Statement**") providing information about the Plan for holders of claims or interests; and

WHEREAS, the Plan contains settlements and compromises with respect to Conflict Matters, the resolution of which have been delegated to the Disinterested Manager and the disinterested managers or directors of the other Debtors.

NOW, THEREFORE, BE IT,

RESOLVED, that in the judgment of the Disinterested Manager, it is desirable and in the best interests of the Company, its creditors, and other parties in interest that the Company shall and hereby does agree in principle with the settlements and compromises with respect to Conflicts Matters contained in the Plan.

RESOLVED, that any officer of the Company (collectively, the "**Authorized Officers**"), including the co-chief restructuring officers, acting alone or with one or more other Authorized Officers be and hereby are authorized, empowered, and directed to take all actions or to not take any action in the name of the Company with respect to the transactions contemplated by these resolutions as such Authorized Officer shall deem necessary, advisable, or desirable in such Authorized Officers' reasonable business judgment as may be necessary, advisable or desirable in order to fully carry out the intent and accomplish the purposes of the transactions contemplated herein.

There being no further business to come before the meeting, it was adjourned at 3:45 p.m. ET

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Richard Levin
Acting Secretary

CERTIFICATE OF SERVICE

Joseph H. Huston, Jr., hereby certifies that on April 14, 2014, he caused true and correct copies of the foregoing *Energy Future Intermediate Holdings Company LLC's Statement In Support Of Intercompany Settlement In The Plan* to be served electronically through the Court's CM/ECF system, and also through the Debtors' claims and noticing agent upon all parties requesting or otherwise entitled to notice.

/s/ Joseph H. Huston, Jr.
Joseph H. Huston, Jr.