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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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

United States Bankruptcy Court
824 North Market Street
Wilmington, Delaware
January 13, 2015
9:30 AM

B E F O R E :
HON CHRISTOPHER S. SONTCHI
U.S. BANKRUPTCY JUDGE

ECRO OPERATOR: LESLIE MURIN

1 HEARING re Application for an Order Approving the Employment
2 of Cravath, Swaine & Moore LLP as Counsel to Energy Future
3 Intermediate Holding Company LLC Under Sections 327(a) and
4 1107(b) of the Bankruptcy Code, Effective Nunc Pro Tunc to
5 November 16, 2014 [D.I. 3028; filed December 16, 2014]

6
7 HEARING re Debter Energy Future Holdings Corp.'s Application
8 for Entry of an Order Authorizing the Retention and
9 Employment of Proskauer Rose LLP as Counsel for Debtor and
10 Debtor in Possession Energy Future Holdings Corp. Effective
11 Nunc Pro Tunc to November 19, 2014 [D.I. 3037; filed
12 December 16, 2014]

13
14 HEARING re Debtor Energy Future Holdings Corp.'s Application
15 for Entry of an Order Authorizing the Retention and
16 Employment of O'Kelly Ernst & Bielli, LLC as Co-Counsel for
17 Debtor and Debtor in Possession Energy Future Holdings Corp.
18 Effective Nunc Pro Tunc to November 19, 2014 [D.I. 3038;
19 filed December 16, 2014]

20
21 HEARING re Debtor Energy Future Competitive Holdings Company
22 LLC and Texas Competitive Electric Holdings Company LLC's
23 Application for Entry of an Order Authorizing the Retention
24 and Employment of Munger Tolles & Olson LLP as Counsel to
25 Debtors and Debtors in Possession Energy Future Competitive

1 Holdings Company LLC and Texas Competitive Electric Holdings
2 Company LLC Effective Nunc Pro Tunc to November 16, 2014
3 [D.I. 3040; filed December 16, 2014]

4

5 HEARING re Application of Energy Future Competitive Holdings
6 Company LLC and Texas Competitive Electric Holdings Company
7 LLC for Entry of an Order Authorizing them to Retain and
8 Employ Greenhill & Co., LLC as independent Financial Advisor
9 Nunc Pro Tunc to November 17, 2014 [D.I 3062; filed December
10 17, 2014]

11

12 HEARING re Application of the Official Committee of
13 Unsecured Creditors of Energy Future Holdings Corporation,
14 Energy Future Intermediate Holding Company, LLC, EFIH
15 Finance, Inc. and EECI, Inc., for an Order (A) Authorizing
16 the Retention and Employment of Guggenheim Securities, LLC
17 as Investment Banker to the Committee Nunc Pro Tunc to
18 November 12, 2014 and (B) Waiving Certain Information
19 Requirements Pursuant to Local Rule 2016-2(h) [D.I. 3118;
20 filed December 22, 2014]

21

22 HEARING re Application of the Official Committee of
23 Unsecured Creditors of Energy Future holdings Corporation,
24 Energy Future Intermediate Holding Company, LLC, EFIH
25 Finance, Inc., and EECI, Inc. for an Order Authorizing the

1 Retention and Employment of Sullivan & Cromwell LLP as
2 Counsel to the Committee Nunc Pro Tunc to November 5, 2014
3 [D.I. 3120; filed December 22, 2014]

4
5 HEARING re Application of the Official Committee of
6 Unsecured Creditors of Energy Future Holdings Corp., Energy
7 Future Intermediate Holding Company, LLC, EFIH Finance,
8 Inc., and EECI, Inc. for an Order Under Bankruptcy Code
9 Sections 328(a) and 1103(a) and Bankruptcy Rules 2014(a) and
10 2016(b) Approving the Employment and Retention of
11 Montgomery, McCracken, Walker & Rhoads, LLP Nunc Pro Tunc to
12 November 5, 2014, as Delaware Bankruptcy Counsel and
13 Conflicts Counsel to the Committee [D.I. 3121; filed
14 December 22, 2014]

15
16 HEARING re Joint Application of the Official Committee of
17 TCEH Unsecured Creditors and the Official Committee of EFH
18 Unsecured Creditors Pursuant to Sections 105(a), 1102(b)(3),
19 and 1103(a) of the Bankruptcy Code, Bankruptcy Rules 2014
20 and 5002, and Local Rule 2014-1, for Entry of Order
21 Approving Retention and Employment of Kurtzman Carson
22 Consultants LLC as Administrative Agent for the Committees
23 Nunc Pro Tunc to July 7, 2014 [D.I. 3122; filed December 22,
24 2014]

25

1 HEARING re Application of the Official Committee of
2 Unsecured Creditors of Energy Future Holdings Corporation,
3 Energy Future Intermediate Holding Company, LLC, EFIG
4 Finance, Inc., and EECI, Inc. for an Order Authorizing the
5 Retention and Employment of AlixPartners, LLP ad
6 Restructuring Advisor to the Committee Nunc Pro Tunc to
7 November 20, 2014 [D.I. 3126; filed December 22, 2014]

8
9 HEARING re Application for an Order Approving the Retention
10 of Stevens & Lee, P.C. as Co-Counsel to Energy Future
11 Holdings Company LLC Under Sections 327(a) and 1107(b) of
12 the Bankruptcy Code, Effective Nunc Pro Tunc to November 26,
13 2014 [D.I. 3139; filed December 24, 2014]

14
15 HEARING re Application for an Order Approving the Employment
16 of Goldin Associates, LLC as Special Financial Advisor to
17 Energy Future Intermediate Holding Company LLC Under Section
18 327(a) of the Bankruptcy Code, Effective Nunc Pro Tunc to
19 December 11, 2014 [D.I. 3144; filed December 26, 2014]

20

21

22

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2 KIRKLAND & ELLIS LLP

3 Attorneys for debtors

4

5 BY: EDWARD SASSOWER, ESQ

6

7 KRAMER LEVIN

8 Attorneys for EFI

9

10 BY: GREG HOROWITZ, ESQ (TELEPHONIC)

11

12 MORRISON & FORSTER

13 Attorneys for TCEH Committee

14

15 BY: BRETT MILLER, ESQ.

16 TODD GOREN, ESQ.

17

18 SOLOMON AND CROMWELL

19 Attorneys for EFH official committee

20

21 BY: ANDY DIETDERICH, ESQ.

22 BRIAN GLUECHSTEIN

23

24 BROWN & REMNICK

25 Attorneys for the TCEH (second liens)

1 BY: JEFF JONAS, ESQ.

2

3 WHITE AND CASE

4 Attorneys for ad hoc TCEH unsecured notes

5 BY: CHRISTOPHER SHORE, ESQ.

6

7 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

8 Attorneys for ad hoc committee of TCEH first lien
9 creditors

10

11 BY: PAUL WEISS, ESQ

12

13 KIRKLAND & ELLIS

14 Attorney for the Debtors

15

16 BY: STEVE HESSLER, ESQ.

17

18 MCELROY, DEUTSCH, MULVANEY & CARPENTER LLP

19 Attorneys for TCEH debtors

20

21 BY: DAVID PRIMACK, ESQ.

22

23 MUNGER TOLLES & OLSON

24 Attorneys for TCEH

25

1 BY: THOMAS WALPER, ESQ.

2 TODD ROSEN

3

4 U.S. TRUSTEE

5

6 BY: ANDREA SCHWARTZ

7 RICHARD SCHEPACARTER

8 ANDREW VERA

9

10 STEVENS & LEE

11 Co-counsel for EFIH

12

13 BY: JOHN DEMMY

14

15 CRAVATH, SWAINE & MOORE

16 Co-counsel for EFIH

17

18 BY: RICHARD LEVIN

19

20 O'KELLY ERNST & BIELLI

21 Co-counsel debtor Energy Future Holdings Corp

22

23 BY: DAVID CLAUDER, ESQ.

24

25 PROSKAUER ROSE

1 Attorneys for EFH

2

3 BY: JEFF J. MARWIL

4 MARK THOMAS

5

6 ALSO PRESENT TELEPHONICALLY:

7 EMPHRAIM DIAMOND

8 ARLENE R. ALVES

9 DESIREE M. AMADOR

10 NII-AMAR AMAMOO

11 CAITLIN BARR

12 PEG A. BRICKLEY

13 MATTHEW BROD

14 MABLE BROWN

15 JEREMY COFFEY

16 KEN COLLIER

17 LOUIS A. CURCIO

18 Michael L. DAVITT

19 Adam M. DENHOFF

20 ANDREW DEVORE

21 STACEY DORE

22 DAVID M. DUNN

23 RYAN ECKERT

24 JON ERNSWILLER

25 MARITA ERBECK

- 1 BENJAMIN D. FEDER
- 2 MARK FLANNAGAIN
- 3 SARAH FOSS
- 4 JULIA FROST-DAVIES
- 5 CHARLES GARRISON
- 6 MEGGIE GILSTRAP
- 7 SETH GOLDMAN
- 8 MARK F. HEBBEIN
- 9 ANGELA K. HERRING
- 10 WILLIAM HILDBOLD
- 11 PATRICK HOLOHAN
- 12 SANDRA HORWITZ
- 13 HOSEPH H. HUSTON, JR.
- 14 NATHASH HWANGPO
- 15 ANNA KALENCHITS
- 16 Chris D. KENNY
- 17 CHARLES KOSTER
- 18 STUART KOVENSKY
- 19 MICHELE F. KYROUZ
- 20 MICHAEL LEE
- 21 DANIEL A. LOWENTHAL
- 22 KENNETH MAIMAN
- 23 ROBERT K. MALONE
- 24 ROSS MARTIN
- 25 PATRICK C. MAXCY

- 1 THOMAS MOERS MAYER
- 2 HAL F. MORRIS
- 3 NAOMI MORRIS
- 4 TUVIA PERETZ
- 5 MEREDITH PFISTER
- 6 MATTHEW ROOSE
- 7 RAVI SARAWGI
- 8 FREDIC SOSNICK
- 9 PATRICK STRAWBRIDGE
- 10 ANDREW M. THAU
- 11 AMER TIWANA
- 12 CARL TULLSON
- 13 MATTHEW UNDERWOOD
- 14 BRADY C. WILLIAMSON
- 15 APAMA YENARNANDRA
- 16 DANIEL ZAZOVE
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P R O C E E D I N G S

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CLERK: Please rise.

THE COURT: Please be seated. Good morning.

MR. SASSOWER: Good morning, your Honor. Happy New Year.

THE COURT: Happy New Year.

MR. SASSOWER: For the record, Edward Sassower of Kirkland & Ellis LLP, on behalf of the debtors.

Your Honor, the debtors have either resolved or adjourned the majority of the items that are on the agenda. All that remains is a handful of retention applications relating to the conflict matter, professionals or the EFH committee.

But before we turn to those retention applications I'd like to give the Court a short update on the progress we've made since we were here last on December 18th and then I think a few other people would also like to make some opening remarks.

THE COURT: Okay.

MR. SASSOWER: The first update, your Honor, is with respect to plan negotiations. The level of activity has certainly picked up since your Honor encouraged the parties to begin plan negotiations as soon as possible. Consistent with 408 and confidentiality I won't get into those plan negotiations other than to note that they are

1 happening.

2 The debtor's goal is to file a plan as early as
3 possible in the year. The debtors hope to make that plan as
4 consensual as possible, hopefully at the time of filing, if
5 not then before we get to the confirmation hearing.

6 In an effort to streamline the confirmation
7 process as much as possible, the debtors anticipate that
8 when they file the plan and disclosure statement they'll
9 also file a motion to approve a scheduling order that will
10 govern any litigation relating to the disclosure statement
11 and or the plan.

12 I will also note that he debtors have an
13 exclusivity hearing coming up. Exclusivity currently is set
14 to expire on February 23rd. As a result the debtors will be
15 filing a motion next week to extend their exclusivity
16 periods. So that motion can be heard at the February 10th
17 hearing date.

18 Your Honor, the second update is with respect to a
19 variety of ongoing litigation work streams. In connection
20 with the legacy discovery protocol the debtors are required
21 to certify that they have completed producing documents in
22 connection with the first set of legacy discovery requests
23 within 150 days of those requests and the debtors believe
24 that they are on track to satisfy this obligation in the
25 coming weeks and to date have produced over half a million

1 documents and over 3.25 million pages.

2 Beyond this, your Honor, the EFIH first lien,
3 second lien and PIC may call an interest rate litigations
4 are ongoing and Mr. McGaan and Mr. McKane are in the Court
5 today to the extent that you have any questions about any of
6 those litigation work streams.

7 THE COURT: I'm sorry, which work streams at the
8 end there?

9 MR. SASSOWER: The litigation work streams. The
10 EFIH first lien, second lien and PIC may call an interest
11 rate litigations as well as any of the discovery.

12 And the third and final update, your Honor, is
13 with respect to the bidding procedures. This morning we
14 filed a certification of counsel. That includes the revised
15 bidding procedures and proposed form of order. The bidding
16 procedures and order are not on this morning's agenda, but
17 Mr. Hessler is available to the extent you have any
18 questions about that submission and we otherwise request
19 that the Court enter that order at your earliest
20 convenience.

21 THE COURT: I did see that this morning and I
22 noted, and maybe this is what people are going to want to be
23 heard on to a certain extent in their comments, but I noted
24 that the COC indicates the sign off on the committees,
25 official committees, but it was a little vague in connection

1 with the ad hoc committees in that they had not provided
2 comments, but it didn't indicate assent so I don't know if I
3 should hear from Mr. Hessler on that or whether or I should
4 allow other people to comment if they with before--

5 MR. HESSLER: I can comment quickly, your Honor.
6 My guess is that they'll speak up, but we don't have their
7 assent to the extent we didn't receive any feedback.

8 THE COURT: Okay. So you've received in effect
9 silence, you don't know.

10 MR. HESSLER: Silence as to the substantive.
11 There were some back and forth emails that didn't really
12 provide any comments to the proposed form or the manner of
13 notice, but there were one or two replies. We followed up
14 subsequent to the communications as described in the
15 certification files that we did not receive any comments
16 that we otherwise able to respond to with regards to the
17 manner of notice.

18 THE COURT: All right. Thank you.

19 MR. HESSLER: Thank you, your Honor.

20 MR. SASSOWER: I guess I'll just further note that
21 as you saw from the submission that the proposed form of
22 order does include comments from the two official committees
23 and it does reflect the affirmative votes of the
24 participating directors at EFH, EFIH, EFCH and TCH as well
25 as the subsequent affirmative votes of the boards--

1 THE COURT: I saw that.

2 MR. SASSOWER: --of those entities.

3 THE COURT: Yeah. I didn't have an opportunity to
4 actually read the attachments, but I did read the
5 certification. In connection with the make whole
6 litigation, where is Mr. McGaan? There he is.

7 MR. MCGAAN: Yes sir.

8 THE COURT: You might as well go to the podium. I
9 saw that there was some activity in connection with the
10 second lien make whole litigation about whether that is
11 going to go forward or be delayed. Can you give me more
12 information on that?

13 MR. MCGAAN: I'm not sure precisely what you're
14 referring to. There is a motion that goes to rightness.

15 THE COURT: Right.

16 MR. MCGAAN: So they challenge whether it's right
17 to be litigating their make whole claim at this time and
18 we're in the middle of the briefing on that.

19 THE COURT: Okay.

20 MR. MCGAAN: And it may be--

21 THE COURT: That's what I'm talking about.

22 MR. MCGAAN: Yes, okay. We're in the midst of
23 briefing. I think we filed our opposition brief, if memory
24 serves, very recently and their reply is due soon.

25 THE COURT: Okay. And that's going to be

1 scheduled up for a hearing--

2 MR. MCGAAN: Yes.

3 THE COURT: --or is that going to go under
4 certification of completion of briefing? I assume it'll be
5 a hearing.

6 MR. MCGAAN: I believe it'll be teed up to be
7 argued before your Honor unless your Honor would prefer
8 simply to handle it on the papers.

9 THE COURT: No, that's the kind of thing--

10 GREG HOROWITZ: Your Honor?

11 THE COURT: Yes.

12 GREG HOROWITZ: Your Honor, this is Gregory
13 Horowitz from Kramer Levin on behalf of the EFI second lien.
14 If I may just make a brief comment.

15 THE COURT: Yes.

16 GREG HOROWITZ: Our reply brief is due today and
17 we will get it in by the end of the day today. We did have
18 an agreement with the debtors that the parties would jointly
19 request oral argument obviously.

20 THE COURT: Okay.

21 GREG HOROWITZ: Up to the Court, but we do plan
22 to--the parties I think both agree that oral argument would
23 be a good idea here.

24 THE COURT: Okay.

25 MR. MCGAAN: I don't disagree with that. He

1 reminds me that that is the case.

2 THE COURT: Okay. I agree. So go ahead and
3 request and once I receive the binder we'll be in contact
4 and setup a hearing time.

5 MR. MCGAAN: Will do, your Honor. Thanks.1

6 THE COURT: Okay. Anything further, Mr. Sassower:

7 MR. SASSOWER: No, your Honor. With that I'll
8 yield the podium to Mr. Miller.

9 THE COURT: All right. Thank you.

10 MR. SASSOWER: Thank you.

11 BRETT MILLER: Good morning, your Honor. Brett
12 Miller, Morrison & Forster on behalf of the TCEH committee.
13 As Mr. Sassower said as well as the COC says that the TCEH
14 committee provided comments to the form of order and
15 procedures and has no objection to the entry of the order.
16 That said, the TCEH committee continues to have the position
17 that now is not the ideal time to Oncor--to mark it Oncor as
18 we are now engaged in significant plan negotiations. We've
19 come a long way since the plan kickoff dinner that Mr.
20 Weisfelner was not invited to and though we still have a
21 long way to get a deal done, the committee hopes that the
22 sale process does not detrimental affect the parties being
23 at the table and working to come together on a consensual
24 plan.

25 So with that, again, the committee has no

1 objection. Thank you.

2 THE COURT: Okay, thank you.

3 GREG HOROWITZ: Your Honor, I don't know--I can't
4 tell if other people are going to the podium, but it's Greg
5 Horowitz again. May I be heard briefly on the bid
6 procedures.

7 THE COURT: You'll have your opportunity, but let
8 me hear people who are in court first.

9 GREG HOROWITZ: Thank you.

10 MR. DIETTERICH: Good morning, your Honor. Andy
11 Dietderich, Solomon and Cromwell for the EFH official
12 committee. We also provided comment on the bidding
13 procedures. They raised any number of hard issues. We've
14 resolved those consensually with the debtor.

15 The central question I think everyone is wrestling
16 with, we're wrestling with as well, which is how do you both
17 pursue standalone plan alternatives and disposition
18 alternatives for Oncor. We respect the different views
19 we've heard. Some people arguing for speed. Some people
20 arguing to take farther steps on a standalone plan before
21 the sale process. Others arguing to do the sale process so
22 you have indications that then help you in the standalone
23 plan negotiations.

24 I don't think the E committee knows what the right
25 answer is, but our view is that both should be pursued with

1 all possible speed. And so we have--we sign on. We support
2 the bidding procedures, but we also ask the debtor to make
3 sure that their attention is not solely on the third-party
4 disposition process, but also on the plan process and we
5 think there is enough intelligence and capacity at the
6 various firms involved to really have our cake and eat it
7 too and do both at the same time. Thank you.

8 THE COURT: Thank you.

9 MR. JONAS: Good Morning, your Honor. Jeff Jonas
10 from Brown & Remnick on behalf of the TCEH second liens.
11 Your Honor, we continue to be opposed to the Oncor sale and
12 the bidding procedures. I'll be brief. We're especially
13 disappointed that this is being put forth and is being
14 supported by our independent director, Hugh Sawyer, now when
15 fairly fulsome settlement discussions among creditor groups
16 recently have gotten underway with respect to which we are
17 cautiously optimistic.

18 We believe restarting the Oncor sale process now
19 could be detrimental to the success of those settlement
20 efforts and moreover we're concerned that Mr. Sawyer's
21 handling of this substantially undermines his ability to be
22 an honest broker in connection with those settlement
23 discussions. Thank you, your Honor.

24 THE COURT: You're welcome.

25 CHRIS SHORE: Happy New Year, your Honor. Chris

1 Shore from White and Case on behalf of the ad hoc group of
2 TCH unsecured notes. Let me just kind of step back and bit
3 and maybe give your Honor a state of the estate because
4 you're not--I don't think you're getting the full picture of
5 what's going on and what people are talking about. There's
6 still no Oncor valuation that's been done by the company,
7 but it's looking like, based on a whole host of factors,
8 like the Oncor sale if structured right can clear EFH to EFH
9 equity with the sponsors getting whatever they cannot pay in
10 the form of make wholes or post-petition interests

11 That structure is going to require a tax free
12 plan, not a standalone sale, and that strategy is going to
13 require a complete no cost disengagement of the T side and
14 the T side pursuant to an RSA type structure. We are all
15 talking about ways to hold the structure together, how to
16 deal with a standalone sale and typical of the 20-way
17 negotiation, it's pretty complex, it gets pretty heated with
18 the debtors constantly with the drum beat of we're going to
19 file a plan thinking what they're doing is fostering
20 settlement discussions.

21 Let me turn to the bid procedures, not by way of
22 re-argument. We didn't comment on the order because your
23 Honor in the decision said that it was the committee that
24 had to comment and sign off on the order. But we're still
25 not on board with the bid procedures process and let me

1 address that. In that regard, you know, we all I think
2 appreciated the holiday armistice, but it looks like the
3 armistice is going to be over.

4 We still see the Oncor sale as what it was
5 described, your Honor, in the testimony as a catalyst for
6 fostering plan negotiations. We also view it as a mechanism
7 to moving back to the RSA structure in which the E side is
8 going to get everything. The sponsors are going to get
9 their tax free spin and avoid liability and the T side is
10 going to get turned over to the first lien lenders. It's
11 all right. We get it. The war will be back. But as now
12 nothing remarkably good is happening on the T side.

13 After a couple of months and having obtained
14 independent advisors, Mr. Sawyer not surprisingly has not
15 changed his testimony based upon the minutes we just got,
16 you know, where they're going to go forward with the sale
17 process with the idea that if at any time someone comes
18 forward and tells TCH or approves the TCH that something
19 better is available, they'll exercise a fiduciary out, but
20 now they're going to pursue the sale process.

21 What came in last night or this morning at 3:00
22 o'clock is remarkable in three respects and I think it does
23 need to be noted. First, we did spend a lot of time in
24 November and December working on a fiduciary failsafe, one
25 that would address what would happen in the event of an

1 actual conflict with the counsel being in place to deal with
2 the debtors and the ability of a fiduciary to exclude all
3 the conflicted people from the decision and make a decision
4 with respect to a particular conflict matter.

5 Despite having that fiduciary failsafe in place,
6 there has been no activating of Mr. Sawyer on the bid
7 procedures, even though your Honor ruled that there is an
8 actual conflict. It's an important matter that a fiduciary
9 when a conflict exists make an unconflicted decision and we
10 put a mechanism in place that would have been satisfied by
11 the sending of a notice that said the decision lies with
12 Hugh Sawyer.

13 Not only was that notice not sent, but your Honor
14 will see, and as was in the certificate of counsel when you
15 go through the minutes and as was represented, the TCEH
16 board, including Mr. Sawyer and all of its conflicted
17 directors, were the ones who supported the bid procedures
18 and they complied with your Honor's ruling, although didn't
19 necessarily address the fiduciary issue when they had a
20 separate certification and a separate meeting that Mr.
21 Sawyer was on board. But be it clear, Mr. Sawyer did not
22 act for TCEH. He provided an approval which then the TCEH
23 board in the minutes ultimately adopted the resolutions on
24 the bid procedures.

25 The second remarkable thing is that within three

1 days of having all these board meetings they produced to
2 your Honor fully written out, beautifully written board
3 minutes for EFH, EFIH, TCEH, EFCH and I guess EFCH Finance
4 that layout in great detail everything that was said and all
5 of the reasons why these bid procedures were the best bid
6 procedures for moving forward. Six months later we still
7 don't have the minutes for the board meetings, whichever
8 board meeting it was, when the debtors determined it was in
9 the best interests of the TCEH estate to support a sale of
10 Oncor. In other words I think a fair reading of the minutes
11 is if we're going to sell the assets this is the best way to
12 do so, but we still don't have an independent decision that
13 pursuing the Oncor sale, at least from the TCEH side, is in
14 the best interests of the TCEH estate.

15 In fact, I think TCEH creditors would have a lot
16 to say as to whether or not a tax free spin of TCEH is in
17 the best interests of TCEH or whether other structures,
18 including ones in which the tax is incurred, could benefit
19 TCEH.

20 The third remarkable thing when you go through the
21 minutes, and I'd ask your Honor to at least go through the
22 EFH board minutes, as I understand it just piecing it
23 together there was an EFH global meeting where everything
24 was explained and then they had telephonic meetings with
25 respect to the other boards. It was explained that the

1 reason for pursuing the bid procedures not only, surprising,
2 was it will foster plan negotiations, but also that it will
3 assist in completing the private letter ruling with the IRS.

4 Just to remind the Court, the private letter
5 ruling with the IRS is premised on the RSA. A tax free
6 disengagement of TCEH and EFCH, or the T side and the E
7 side, with no claims going over and full releases for
8 everybody involved.

9 So despite everything, people are still looking at
10 the RSA structure and people are going to be pursuing the
11 RSA structure unless and until someone steps forward and
12 stops that process. So, in the end several months later,
13 maybe even nine months later, we're just back to the same
14 process with people trying to move forward with a plan at
15 TCEH which is not a success, it is a disaster. It is a
16 turnover of all the assets to the first lien creditors.

17 And pre-staging a dispute you saw that there were
18 objections filed with respect to Greenhill and we're going
19 to try to resolve it. So for example, the independent
20 director has hired somebody and defined it a success for
21 TCEH that the assets are turned over to the first lien
22 lenders for--in full satisfaction of their claims with
23 nothing getting distributed. As long as it's not a Chapter
24 7 that plan results in a \$9.5 million success fees.

25 All told that kind of plan could expose TCEH to

1 \$77 million in financial advisor success fees. That is, the
2 TCEH estate has not a single dollar of distributable value
3 to unsecured creditors and its estate is entirely consumed
4 with the liens of the first lien lenders. So, all this to
5 say the state of the estate is we're back. We're going to
6 actively pursue the efforts along with the committee and
7 along with the second liens to maximize the value of the
8 actual assets in which TCEH has an interest and we're hoping
9 that we can get a fiduciary who does that without regard to
10 how that might affect another estate. It is not in our view
11 sufficient, as I said for your Honor before, to have someone
12 just point to a fiduciary out if everybody does the work and
13 convinces me that we should be doing something different
14 I'll exercise a fiduciary out we're entitled to a fiduciary
15 in the seat.

16 THE COURT: Thank you. Actually, let me hear from
17 the people on the phone before I--at this point.

18 GREG HOROWITZ: Thank you, your Honor. It's
19 Gregory Horowitz. Can I be heard?

20 THE COURT: Yes. Yes.

21 GREG HOROWITZ: Thank you. Gregory Horowitz from
22 Kramer Levin on behalf of the EFIH second lien trustee.
23 Your Honor, we had asked the debtors repeatedly if they
24 would provide us with a copy of the new bid procedures
25 order before they filed it and they had said that they

1 would. Notwithstanding that we never received a copy. We
2 never saw this until it was filed early this morning.

3 In the new--in the red line of the bid procedures
4 we were surprised to see a paragraph that purports to limit
5 communications between bidders and any other party solely to
6 communications with the committee representatives. That's
7 inconsistent with the agreement that we reached with the
8 debtors that was the basis for our having withdrawn our
9 objection to the bid procedures. The language we negotiated
10 is still in the order, your Honor. There is still language
11 that says that notwithstanding anything in any
12 confidentiality agreement, nothing in the confidentiality
13 agreement shall limit the right of any creditor to
14 communicate with potential bidders.

15 But in the bid procedures now there's a full
16 paragraph that's inconsistent with that. Had we seen that
17 ahead of time we would have pointed out that inconsistency
18 to the debtor and asked them to remove it. As it is we
19 think there is no basis to have that paragraph in there as
20 we noted when I got--as I noted when I got up during the bid
21 procedures hearing. If this kind of limitation had been in
22 place before your Honor we would not have been able to bring
23 NextEra to the table which has led to so much benefit for
24 the estate. So we would ask that that paragraph be struck
25 out before any order is entered.

1 THE COURT: Thank you. Anyone else on the phone?

2 MR. ADLERSTEIN: Your Honor, Jacob Adlerstein from
3 Paul Weiss. May I be heard?

4 THE COURT: Yes.

5 MR. ADLERSTEIN: Thank you, your Honor. Jacob
6 Adlerstein, Paul Weiss Riking on behalf of the ad hoc
7 committee of TCEH first lien creditors.

8 Just very briefly, I'm not going to respond to all
9 of the remarks that Mr. Shore made, but I'd just like to
10 reiterate to the Court that we continue to support approval
11 of the bid procedures and we're very pleased this morning to
12 see that the debtors have satisfied the conditions to
13 approval that your Honor outlined in your November ruling.

14 While we agree with some of the comments that have
15 been made by other parties in court that substantive plan
16 negotiations had commenced and remain ongoing and we're
17 hopeful that those will be fruitful, we also believe the
18 debtors can and should pursue the Oncor auction process on a
19 (indiscernible) track with those plan negotiations and we
20 expect that they will do so. We think that's in the best
21 interests of all the debtor stakeholders. So we support
22 approval of the bid procedures and we're hopeful that those
23 plan negotiations will continue.

24 THE COURT: Thank you. All right, Mr. Hessler?

25 MR. HESSLER: Good morning, your Honor. For the

1 record Steve Hessler of Kirkland & Ellis on behalf of the
2 debtors. Two relatively quick points, your Honor, and then
3 Mr. Walper of Munger Tolles also I believe wants to be heard
4 as well.

5 First, your Honor, in response to Mr. Shore's
6 comments, as we said at the outset the bid procedures order
7 is not on the agenda for today and so we are not intending
8 to argue the bidding procedures motion before your Honor
9 this morning, particularly given the language in the opinion
10 of your Honor's November 3rd ruling.

11 That said, we are not going to have another
12 hearing on the merits of the decision. We're going to put
13 together a submission, provide it to your Honor and if your
14 Honor has questions or concerns about the comprehensiveness
15 or propriety of that submission that you will inform the
16 parties. So, we await either the entry of the order or
17 otherwise hearing from your Honor.

18 I will note as we attempted to set forth in
19 detail, not just in the certification of counsel, but all
20 the materials that were otherwise attached, we read
21 extremely closely and complied what we believe very, very
22 carefully with your Honor's conditional ruling and said I am
23 conditionally approving the bidding procedures provided the
24 debtors satisfy the following steps and I won't go through
25 all of the steps, but we do endeavor in the certification of

1 counsel to indicate how, at very careful and great length,
2 we satisfied each of those steps so we look forward to
3 hearing from your Honor with regard to the review of the
4 submission.

5 My second point with regard to Mr. Horowitz's
6 comment, one just quick correction for the record. We did
7 not promise to circulate the order to all of the parties of
8 the case in advance one, because it wasn't required by your
9 Court's ruling and two, you know, again taking from the
10 order itself or the ruling itself, the number of sort of
11 cooks in the kitchen here would have made that a very
12 untenable negotiation. We did negotiate at extraordinary
13 lengths with both of the committees, as your Honor directed
14 us to do so, and we are pleased that we received an order--
15 that we ended up with an order that both of the official
16 committees can consent to its entry.

17 All of that being said, the concern that Mr.
18 Horowitz raises, we did resolve the objection of the EFI
19 seconds with some language that involved consents in the
20 NDAs that were being signed over the summer and early fall
21 and lifting--there was a consent right in there that the
22 debtors had to consent for bidders to be able to talk to
23 creditors. So we did lift that language to resolve or we
24 lifted that consent right with some language that we added
25 in the order. That language remains in the order so we have

1 not touched the language that satisfied their objection.

2 As the hearing was started Mr. Horowitz and his
3 colleagues did send us some emails that are pointing to some
4 new language in the procedures that we added at the request
5 of the EFH official committee that arguably creates an
6 inconsistency. I actually--I think they can be read in
7 concert. That being said, as soon as this hearing is over
8 we'll confer with Mr. Horowitz and his colleagues and to the
9 extent that we need to put a fix in there to make sure that
10 there's no inconsistency of course we'll endeavor to do so,
11 your Honor.

12 THE COURT: Okay.

13 MR. HESSLER: And we'll inform the Court
14 accordingly.

15 THE COURT: Thank you.

16 MR. HESSLER: Thank you, your Honor.

17 THE COURT: Anyone else before--?

18 MR. PRIMACK: Your Honor, David Primack, McElroy,
19 Deutsch, Mulvaney & Carpenter LLP on behalf of the TCEH
20 debtors. I'd like to introduce Mr. Walper who will be
21 speaking on our behalf and we'll be filing pro hoc motions.

22 THE COURT: Okay. You need to keep your voice up.
23 I can't hear you.

24 MR. PRIMACK: I'm sorry. We'll be filing pro hoc
25 motions for Mr. Walper as soon as we can.

1 THE COURT: All right, thank you.

2 Thank you, your Honor. Just very briefly, Thomas
3 Walper, Munger Tolles & Olson representing TCEH for--as
4 directed by Mr. Hugh Sawyer for actual conflicts.

5 I just want to respond only very briefly to some
6 of the comments made by my dear colleague, Mr. Shore. Let
7 me represent to the Court that Mr. Sawyer has acted with the
8 utmost due care with respect to a decision on the bid
9 procedures, has acted independently, been advised both by
10 Munger Tolles as well as by Greenhill and has made the
11 independent determination with respect to the bid procedures
12 and then reported it back to the larger TCEH board which
13 then made the decision as well.

14 I don't want to go into deep detail, but of course
15 in connection with future submissions as necessary we'd be
16 delighted to do so.

17 THE COURT: All right, thank you.

18 MR. PRIMACK: Thank you.

19 THE COURT: Okay. Well, thank you very much for
20 your comments. I will take them all into consideration when
21 I look at the certification of counsel and, as I said at the
22 hearing and ruling back in, was it November, I--we're not
23 going to sort of re-argue the hearing we had I think four
24 days and I did make some condi--I did conditionally approve
25 subject to some caveats that needed to be complied with and

1 I'm going to review the certification of counsel with that
2 ruling in mind, but also with the comments that I heard
3 today in mind and enter an order if I deem it appropriate
4 and raise any issues if I deem it appropriate.

5 I'm not quite sure what to do given the issue Mr.
6 Horowitz has raised and the fact that, as Mr. Hessler said,
7 they're going to have comments. Should I wait for the
8 communication before entering an order?

9 MR. HESSLER: Yes, your Honor. But to the extent
10 helpful, I believe we can get back to the Court within the
11 matter of an hour or two.

12 THE COURT: Okay. All right.

13 MR. HESSLER: It's a pretty discrete issue.

14 THE COURT: All right. Okay. All right, very
15 good, thank you. I'll await that then one way or the other.
16 Why don't we turn to the actual hearing which I believe,
17 given everything I've seen--well, there may be an open issue
18 with the Office of the U.S. Trustee. So, I don't know
19 exactly how you want to proceed. I know we go to agenda
20 item--where is it, 13 which sort of starts the catalog. I
21 will say that I did, as reflected in the amended agenda,
22 sign orders approving the employment or the retention of
23 Montgomery, McCracken and Kurtzman Carson and AlixPartners.
24 In addition, earlier today Guggenheim. I don't know if
25 that's on the docket yet. Okay, so I did sign those.

1 MR. GLUECHSTEIN: And your Honor, if I may, Brian
2 Gluechstein from Sullivan & Cromwell. Since you were
3 cataloging, and we appreciate you entering the orders on
4 behalf of the other EFC committee professionals, I think the
5 only item remaining outstanding with respect to the EFH
6 committee retentions where the order was not entered ahead
7 of the hearing today is agenda item 19 and that's the
8 retention of my firm Sullivan & Cromwell as the counsel to
9 the EFH committee.

10 The application seeks retention of Sullivan &
11 Cromwell nunc pro tunc to November 5th 2014. The
12 application was submitted along with documentation in
13 support of the application in the form of a declaration from
14 Mabel Brown, the chair of the EFH committee as well as a
15 declaration and supplemental declaration of Andrew
16 Dietderich of Sullivan & Cromwell.

17 We received no objections to the retention. We
18 did receive some comments from the United States Trustee
19 which we have worked through with them. Mr. Dietderich's
20 supplemental declaration that was filed on the docket this
21 morning was filed to address comments from the U.S. Trustee
22 related to disclosure of additional information related to
23 certain entities on the interested parties list. Subject to
24 any questions from the Court, we would respectfully request
25 that the Court enter that order as well and that would

1 conclude the EFH retentions.

2 THE COURT: I did see the affidavit and looked at
3 that on the conflicts, although it's not on the amended
4 agenda, but I know it's been a circulating process or
5 evolving process. Has there been any change to the
6 retention order or just the filing of the--?

7 MR. GLUECHSTEIN: There has been no change to the
8 order, your Honor. There was just additional disclosure
9 requested by the U.S. Trustee.

10 THE COURT: Okay. Any further comment in
11 connection with the retention of Sullivan & Crowell?

12 MS. SCHWARTZ: Your Honor, Andrea Schwartz of the
13 U.S. Trustee. We have no objection.

14 THE COURT: Okay.

15 MR. GLUECHSTEIN: Your Honor, I have a copy of the
16 form of order if you'd like me to hand off--

17 THE COURT: That would be excellent. I'm looking
18 for it now, but the copy I have is--

19 MR. GLUECHSTEIN: I have it right here.

20 THE COURT: --double sided, so.

21 MR. GLUECHSTEIN: Thank you, your Honor.

22 THE COURT: Thank you. I'll sign that order. So-
23 -

24 MR. SASSOWER: Okay. Your Honor, so my retention
25 application is not up today thankfully, but to give the rest

1 of the hearing a little bit of structure I think what we
2 have left is Munger for TCEH, Proskauer for EFH, Cravath for
3 EFIH and their respective Delaware co-counsels.

4 THE COURT: Right.

5 MR. SASSOWER: As well as Greenhill for TCEH and
6 Goldin for EFIH. There have been no objections filed to any
7 of those applications and so they are uncontested, but last
8 night the U.S. Trustee filed a statement and I believe Ms.
9 Schwartz would like to be heard on that statement.

10 THE COURT: Okay, thank you.

11 MS. SCHWARTZ: Good morning, your Honor. For the
12 record, Andrea Schwartz and Richard Schepacarter for the
13 United States Trustee, Andrew Vera, acting U.S. Trustee.

14 Your Honor, thank you for giving me an opportunity
15 to be heard today. As is the usual and customary process of
16 the U.S. Trustee, when retentions are filed we very promptly
17 engage with the applicants and their counsel to review their
18 applications, discuss issues, discuss disclosures, request
19 additional supplementation, changes to the orders, etcetera
20 and I can report to the Court that each of the conflicts
21 counsel and conflicts advisors have been extremely
22 responsive to the U.S. Trustee. We've had ongoing
23 discussions. There has been supplemental declarations
24 filed.

25 Mr. Sassower accurately stated that we did not in

1 fact file and objection and we do not oppose the retention
2 in principle of any of the conflicts counsel or the
3 conflicts advisors. We have one issue, your Honor, that we
4 really would seek the Court's assistance with respect to.

5 As your Honor is aware, from the outset of these
6 cases there has been looming over the cases different views
7 with respect to the qualification of one law firm to
8 represent each of the various entities with respect to a
9 host of issues. At the outset of the case we engaged in
10 very lengthy discussions with Kirkland & Ellis with regard
11 to those issues. You might recall, your Honor, that there
12 were deposition notices served on Mr. Sassower or the firm,
13 30(b)(6) etcetera all about the retention and we came up
14 with what we thought was a very reasonable and appropriate
15 and a process that complied with the law and set forth a
16 good pathway forward for when under the Third Circuit an
17 actual conflict arose.

18 Kirkland & Ellis followed that procedure. There
19 was also a protocol that was setup with the other creditors.
20 We're now at that point, your Honor, when, as your Honor
21 knows, in the November 3rd ruling your Honor stated as part
22 of your Honor's comments that your Honor did not find--did
23 not agree with the testimony of the certain independent
24 directors that there was only a potential conflict of
25 interest and not an actual conflict of interest.

1 As a result of that, your Honor, Kirkland filed
2 their notice. There is additional conflicts counsel that is
3 seeking to be retained.

4 The issue, your Honor, that we think is important
5 for the Court to assist and actually weigh in on now is the
6 scope of the retention of conflicts counsel. We have been
7 in ongoing and evolving discussions with each of the
8 attorneys for conflicts counsel and we asked them, we would
9 like you to please identify the conflict matters on which
10 you are going to be retained and each of them worked
11 together, because they thought it was important for purposes
12 of symmetry that they have the same scope of services with
13 respect to the conflicts issues.

14 We are not comfortable with and don't think it's
15 appropriate at this point in time in the case, your Honor,
16 for conflicts counsel to not identify one matter on which
17 they are to be engaged. To the contrary, your Honor, not
18 only did they say that A, they're going to be engaged to
19 advise the independent directors as to what is an actual
20 conflict, but they also say that they're going to represent
21 the indepen--at the direction of the independent director
22 for that entity the conflict matter and all matters "arising
23 from and related to the conflict matter".

24 Your Honor, that language is extremely broad and
25 really any service could fall within that scope. So, the

1 question comes, and we've had open discussions with each of
2 the attorneys on this issue, the question comes well why not
3 kick the can down the road, judge, and just let the fee
4 committee deal with it? Let's see what happens as the fees
5 are getting incurred and we have a mechanism in place that
6 the Court has already said that the Court is going to rely
7 heavily on, why not just wait until that process is going
8 with respect to the different counsel?

9 We believe, your Honor, that that would not be the
10 best approach and let me share with you a little bit of the
11 reasoning why. First of all, your Honor, for the first
12 three months of these cases the fees have been approximately
13 \$65 million. There are over 30 professionals that have been
14 retained with the Court's approval or have applied for
15 retention. That is a huge number of professionals, a huge
16 number of applications and a huge amount of fees.

17 My statements are not a characterization of the
18 reasonableness of those fees, it's just that that's what
19 we're dealing with here and, your Honor, it is not uncommon,
20 in fact it's in many cases, where conflicts counsel comes in
21 and the Court is very mindful as part of the role of the
22 Court to ensure the economical administration of the cases,
23 the Court sets parameters on the scope of the different
24 retentions. And here one of the things that--response that
25 we've received has been that the counsels say they cannot

1 identify the conflict matters and we do not agree with that,
2 your Honor.

3 I think at this point they certainly can identify
4 the conflict matters on which they're to be engaged and I
5 think, your Honor, it not only benefits the estate, but it
6 benefits the professionals as well. Shouldn't, your Honor,
7 be a heads up to the professionals that this is where our
8 range of our services are going to fall and to the extent
9 that we're not careful we don't want to overlap or duplicate
10 the services of main bankruptcy counsel with whom we are in
11 current discussions with concerning the scope of their
12 continued retention? But shouldn't there be some measure at
13 this point that everyone's on notice this is what we're
14 doing, even in more general terms than arising from or
15 related to a conflict matter. There is no identification of
16 a conflict matter.

17 For example, how about representing EFIH or TCEH
18 with respect to the bid procedures motion? That's clearly a
19 conflict matter. They clearly have been involved with it.
20 Certainly that could be identified. And, your Honor, I
21 have--there have been courts, and perhaps your Honor has
22 done this as well, but conflicts counsel identifies the
23 matters that they're going to be retained on and to the
24 extent an additional conflict matter arises they file a
25 supplemental notice with the Court, a notice to parties in

1 interest so that parties can be heard if there's some
2 concern that the debtors or the estate is going to be
3 incurring fees that may not be warranted, may not be
4 reasonable and so forth.

5 So, your Honor, our sole issue at this point is
6 that we come up with a workable measure by which everyone
7 can be on notice as to where their role is going to be so
8 that, your Honor, we don't get into a situation where
9 there's no description and then you have fees that are
10 either incurred unnecessarily or that they exceed the
11 reasonableness that your Honor will ultimately determine.

12 In addition, your Honor, another benefit would be
13 that there's some information or advice available to the
14 independent directors so that they know that if they have an
15 issue relating to one particular concern which counsel
16 they're supposed to be seeking their guidance from. I mean,
17 frankly, your Honor, I think this is a very complicated
18 case. I think that there are overlapping issues. There
19 certainly--I think it could be completely reasonable that an
20 independent director, no matter how he or she exercises
21 their fiduciary duties, could use guidance as to wait a
22 second, we have all these attorneys in the case, we have all
23 these financial advisors, who am I supposed to be
24 communicating with? Who am I supposed to be taking
25 direction from?

1 Your Honor, so with that I think that at this
2 point the Court should in fact require the parties to better
3 define the scope of the conflict matter and not approve
4 language that improves arising from or related to the
5 conflicts matter. I really think, your Honor, that the fee
6 committee is meeting once a month. We attend the meetings.
7 There's a ton of work that has to be done and why get
8 involved at the point, your Honor, when applications are
9 coming up that then the estate has to incur the cost of
10 litigation over objections? I mean it's very costly.

11 And so for the economical efficiency and
12 administration of the cases, your Honor, we respectfully
13 request that the Court require the parties to identify the
14 conflicts matters without prejudice to their ability to file
15 supplemental notices regarding additional conflicts matters.

16 THE COURT: Okay.

17 MS. SCHWARTZ: Thank you.

18 THE COURT: Thank you. Would anyone like to
19 respond? I'd appreciate a response.

20 MR. DEMMY: Good morning, your Honor. John Demmy
21 of Stevens & Lee. We're here on item 23, our retention
22 application. I would like to introduce Rich Levin of
23 Cravath, Swaine & Moore. He's here on Cravath's retention
24 application, it is item 13, and by him standing here next to
25 me I think he would like to address the Court or would like

1 to take the Court's invitation to do so.

2 THE COURT: Okay. Thank you.

3 MR. LEVIN: Thank you, your Honor. Richard Levin,
4 Cravath, Swaine & Moore as conflicts matter counsel for
5 Energy Futures Intermediate Holding Company LLC.

6 Because the United States Trustee has not filed an
7 objection to, and I'll speak to Cravath's application, but
8 the language in all of the three counsel are the same so it
9 may apply equally to them assuming the other two counsel
10 adopt the views. Since the U.S. Trustee has not filed an
11 objection to the application we ask that the order be
12 entered as submitted with one correction. That is we did
13 have some agreement with the U.S. Trustee on some changes to
14 other provisions in the order that did not relate to this
15 specific issue and I just notice on the agenda that that
16 revised order had not been previously filed so we will
17 submit that after the hearing depending on the Court's
18 ruling.

19 But I want to note that the U.S. Trustee's Office
20 said that they would welcome disclosure even in general
21 terms of what the conflict matters are because the language
22 in paragraph 11 of the Cravath supplemental declaration, the
23 same language in different paragraphs of the other two
24 declarations, was too general. For example, Ms. Schwartz
25 said even discussing the bidding procedures, which is a

1 conflict matter. So with that I would prefer to paragraph
2 12, the very next paragraph of my supplemental declaration
3 which reads, "Based on Cravath's initial investigation to
4 date, which is ongoing and incomplete, conflicts matters
5 likely will include without limitation intercompany claims
6 between EFIH and its estate on the one hand and any other
7 debtor and its estate on the other hand whether addressed
8 through litigation or through settlement either outside of a
9 plan or under a plan and to the extent involving a conflict
10 matter, any sale or bidding procedures including without
11 limitation the selection of a stalking horse bidder and
12 determination of a winning bidder in any sale and will
13 include other matters as determined by the disinterested
14 manager."

15 So, I think we responded and provided in the
16 record exactly what the U.S. Trustee requested at the
17 lectern here today. If you have any other questions, your
18 Honor, I'd be happy to answer them.

19 THE COURT: I do not. Thank you.

20 MR. LEVIN: Thank you.

21 THE COURT: Mr.

22 MR. CLAUDER: Good morning, your Honor. David
23 Clauder of O'Kelly Ernst & Bielli, Delaware, counsel for
24 Energy Future Holdings Corp with Proskauer Rose, items 14
25 and 15 on the agenda are both of our firms' retention

1 applications. Both Mr. Marwil, Mr. Thomas of Proskauer Rose
2 are in attendance. I think Mr. Thomas would like to address
3 the Court and you've previously entered orders submitting
4 both of them pro hac vice.

5 THE COURT: Very good. Thank you.

6 MR. THOMAS: Good morning, your Honor.

7 THE COURT: Good morning.

8 MR. THOMAS: Mark Thomas of Proskauer. My
9 partner, Mr. Marwil, is here who submitted his declaration.
10 We agree--well, let me back up. We are counsel to EFH, the
11 ultimate parent debtor reporting to Don Evans and Billy
12 Williamson, the disinterested directors.

13 Mr. Marwil's second supplemental declaration,
14 docket number 3200 paragraph 10, has the language that Mr.
15 Levin quoted regarding the identified conflict matters to
16 date. We think any other proposals at this stage of this
17 matter are sort of unworkable and just make work and we
18 don't believe it's appropriate. The U.S. Trustee said they
19 have no objection. The application should be granted and we
20 understand the risks we have if our fees are deemed
21 duplicative. Thank you, your Honor.

22 THE COURT: Thank you. Anyone else?

23 MR. PRIMACK: Your Honor, David Primack again,
24 McElroy, Deutsch, Mulvaney & Carpenter. I'd like to
25 introduce Todd Rosen from Munger Tolles who will speak on

1 behalf of the TCEH debtor.

2 THE COURT: Okay. Thank you.

3 MR. ROSEN: Good morning, your Honor. I'll be
4 brief. Just to reiterate, the Munger Tolles application on
5 behalf of the TCEH debtors under the direction of the
6 independent manager Hugh Sawyer also includes the language
7 and based on that we've also asked that the Munger Tolles
8 application be approved on the basis submitted to the Court.

9 THE COURT: Okay. Thank you.

10 MR. ROSEN: Your Honor, we're also here on the
11 Greenhill application. Should I address that at this point?

12 THE COURT: No, let's deal with--we'll deal with
13 Greenhill in a minute. All right, Ms. Schwartz, do you have
14 any reply?

15 MS. SCHWARTZ: Thank you, your Honor. With
16 respect to the language in paragraph 11, which does in fact
17 say that any matter arising from or related to a conflict
18 matter, your Honor, we believe that is too broad. It can be
19 used to modify the additionally very broad language in
20 paragraph 12.

21 The idea--I'm a little bit taken by the comment of
22 make work because I can really tell you, your Honor, we've
23 thought very carefully about it and I've gone through the
24 fee committee process in another case. Reviewing fees,
25 filing objections, negotiating fees is part of the bread and

1 butter of the U.S. Trustee's program, the statutory charge,
2 etcetera.

3 The idea here is not to have additional
4 litigation, additional costs, additional review. Your
5 Honor, this is a case where you have, as I said, you have 32
6 professionals and the idea was to streamline it and to make
7 sure, as counsel had stated, that they understand the risk.
8 I mean, yes, they have a risk if they perform services that
9 are not reasonable and the Court ultimately determines that
10 after discussions with the fee committee, etcetera, but
11 that's not the purpose, your Honor, of our statement today.

12 The purpose is that there should be some clear
13 delineation here and that including that very broad language
14 opens up to any service that can possibly fall within
15 arising from or related to a conflict matter. So, your
16 Honor, I mean, we don't object to their retention in
17 principle, we agree. And I just want to say one other thing
18 too, your Honor. I think your Honor is aware that the U.S.
19 Trustee program spends a lot of time with the professionals
20 to go through their applications and does so on a rolling
21 basis. So, the fact that we may have one issue at the end
22 of the day, I mean, your Honor, you've had 32 applications
23 come before you. I think we've worked out almost every
24 issue or that retention application was withdrawn. We
25 really take it seriously our charge to be able to

1 efficiently and economically resolve retention issues and we
2 come to the Court very judiciously to ask for the Court's
3 assistance when we think it's absolutely necessary.

4 THE COURT: Thank you. Well, I'm very mindful and
5 always concerned with duplicate effort and I'm also mindful
6 of not unfairly back loading the question of whether
7 duplicate effort has happened or have been approved on the
8 front end at the fee hearing level or at the fee application
9 level. That is a difficult task. It's always difficult in
10 reviewing fee applications to parse out exactly what was
11 done, exactly whether that was duplicative of other things
12 that have been done by other counsel. It requires comparing
13 the applications. It's an extremely labor intensive process
14 and an inefficient way to parse out responsibilities between
15 professional firms that can be more efficiently parsed out
16 at the front end.

17 It is also true that in many instances when
18 conflict counsel is retained it is both efficient and easy
19 to delineate on the front end what those conflicts are and
20 as a result parse out responsibilities in a way to ensure on
21 the front end that there's not going to be a duplication of
22 effort.

23 For example, debtor's counsel might have a
24 conflict with a litigation opponent that is sufficiently
25 material that it can't be avoided and conflict counsel is

1 retained to pursue the litigation. That's easy and it is
2 dealt with and should be dealt with at the front end.

3 This is a much more difficult situation. I think
4 there are counsel in the room who would take the position
5 that the case is inherently conflicted and that it touches
6 every aspect of the negotiation of a plan and the operation
7 of the case going forward. Indeed, if we go back to the
8 very beginning of the case there was an objection to joint
9 administration based on a fundamental disagreement with the
10 concept that you could actually run the case on a
11 consolidated basis and that touches on this idea that
12 Kirkland & Ellis, as lead counsel to the debtors as a whole,
13 is somehow conflicted and that was part of the negotiation
14 that occurred between Kirkland, the debtors and the Office
15 of the U.S. Trustee to their retention in the first place
16 which gave rise to this idea of if there is a conflict we
17 identify it, etcetera.

18 What's happened in connection with the independent
19 directors has sort of come in to a certain extent through
20 the back door of the process by which the debtors were
21 seeking bid procedures in connection with the Oncor sale and
22 the Court was put into a position of having to make a
23 ruling, which I stand by, that in connection with that
24 litigation--litigation is the wrong word--with that process
25 there was an actual conflict and that the independent

1 directors needed to act specifically in connection with that
2 sale. I have a certification of counsel that indicates--
3 which I again have reviewed only briefly--which indicates
4 exactly how those directors and independent directors on
5 those boards have indeed acted in consultation with counsel
6 whose retention is before the Court to deal with that.
7 That's obviously a very specific example and one that's
8 easily delineated and appropriate on the front end and has
9 been identified both practically through the submission and
10 the work that's been done and the submission of the
11 certification as well as identified, as Mr. Levin quoted
12 perhaps more generally, but with some specificity in
13 referencing the fact that we're talking about a sale.

14 Okay. I understand all that and I think that's
15 been dealt with in the context and consistently with the
16 statement that the Office of the U.S. Trustee has put in
17 place. I think the statement goes sort of a step further
18 and says I want more specificity with any kind of conflict
19 matter that might arise that the independent directors or
20 the corporations on an independent basis I guess more
21 specifically need to act.

22 I disagree there and I'm not going to require any
23 further specificity be provided because this is an ongoing
24 process and it involves a broad range of activities that
25 might come into play and require independent advice and

1 action by conflicts counsel. We have issues in connection
2 with the tax free spend. We have issues in connection with
3 ongoing discovery. We have issues in connection with plan
4 negotiations. We have issues in connection with the Oncor
5 sale. We have issues that might arise in the context of
6 other sales. I don't know how the case is going to proceed.

7 I think that the retention of conflict counsel at
8 this sort of amorphous mission statement is appropriate
9 because I don't know where the case is going to go in the
10 months ahead. I know it's going to go somewhere and I know
11 there's going to be a lot of action and there's going to be
12 a lot of consideration and possibly, in all likelihood,
13 litigation on at least some aspects of the case going
14 forward and I think that requiring a more specific
15 identification of the issues now and as they arise is both
16 inefficient, unfair and perhaps even prejudicial in tipping
17 the hand of the activities that counsel might be involved
18 with.

19 So, while I appreciate the invitation to limit the
20 scope of the retention, I decline that invitation and think
21 it's inappropriate in the context of this case to shoe horn
22 counsel into a more narrow identification of the issues
23 they're going to be dealing with. I don't think this is
24 back loading it on the fee committee. The reality is that
25 duplication is probably inevitable in this case. Hopefully

1 it will be limited as much as possible. There are a ton of
2 professionals retained. This perhaps the most complex
3 capital structure I have ever run up against in my career,
4 certainly the largest case I've run up against in my career
5 and while size isn't necessarily in direct correlation with
6 how much it's going to cost and professionals, I think the
7 combination of the size of the case, but really the capital
8 structure of this company creates challenges that are
9 expensive to deal with hence the reality of how it's going
10 to be.

11 So, it's not an objection, it's a statement. I
12 certainly appreciate it. I decline the invitation that's in
13 connection with the statement. I think that the resolution
14 that has been proposed by the retention professionals is
15 appropriate. To the extent it's an objection it's overruled
16 and that's all I'll say in connection with that.

17 So, parsing through the applications it sounds
18 like there have been revisions probably to some orders if
19 not all the orders and they haven't been submitted. It
20 sounds like the best way to do that would be to submit them
21 through certification in red lines, but if they're minor I
22 can look at them now.

23 MR. LEVIN: They are minor. I could hand it up.
24 But, you know, there's--actually the one I have has a
25 slight--a further comment from the U.S. Trustee which is not

1 reflected. So, for Cravath we will submit it under
2 certification of counsel. I'm not sure that there are any
3 problems with any of the others. Do you want to turn to the
4 financial advisors at this point or do you want to--?

5 THE COURT: Let's parse through the lawyers and
6 then we'll turn to the financial advisors.

7 MR. LEVIN: I was up here so I--

8 THE COURT: Okay. No, I understand that. So
9 Cravath I'll get under certification. Again, in connection
10 with these that are not objected to and are subject to
11 amendments that arise from comments and negotiations I will
12 approve them subject to actually seeing the orders as
13 they're submitted with black lines that indicate the
14 changes. So, Cravath will be approved subject to receiving
15 a certification.

16 It just might make some sense if I just go through
17 the agenda in order so we don't lose tough. Next is
18 Proskauer.

19 MR. CLAUDER: Your Honor, on Thursday, and it
20 should have made it in the agenda binder, we did file our
21 clean and red lines of the orders that were negotiated with
22 the U.S. Trustee. I have those both for you. They are
23 minor changes to both orders.

24 THE COURT: Yeah. Let me see that. I see you did
25 file that and it did make it in the agenda, but I haven't

1 reviewed them.

2 MR. CLAUDER: May I approach?

3 THE COURT: Yes. Your firm? Let me just look at
4 the black line here. I've signed the Proskauer order and I
5 signed the O'Kelly order.

6 MR. CLAUDER: Thank you, your Honor.

7 THE COURT: That leaves us with Munger.

8 MR. ROSEN: Yes, your Honor. Similar to
9 Proskauer, last Thursday we filed a new revised order along
10 with a black line reflecting mainly changes from some
11 comments we got from the U.S. Trustee and I have copies here
12 if the Court would like.

13 THE COURT: Yeah.

14 MR. ROSEN: But we'd ask that they be entered
15 today.

16 THE COURT: All right, please approach. All
17 right. Okay, thank you. Please disable the audio functions
18 on your smart phones. What was the issue with Andrea
19 Weintraub?

20 MR. ROSEN: Miss Weintraub was an associate at
21 Kirkland & Ellis for approximately two years and she did
22 some limited work for the debtors and in an abundance of
23 caution we thought prior to having Miss Weintraub work on
24 the case we implemented a screen and disclosed the limited
25 work that she did while at K&E and we wanted to see if there

1 was going to be any concerns with her working on behalf of
2 the TCH debtors at Munger Tolles. Not having received any
3 we'd like to have her work on the case and remove the
4 screen. I just wanted to be very transparent about that.

5 THE COURT: Okay. That's fine. All right, I
6 signed the Munger order.

7 MR. ROSEN: Thank you, your Honor.

8 THE COURT: You're welcome. We'll skip Greenhill
9 for now. I've already signed 18, 19, 20, 21, 22. That
10 leaves Mr. Demmy for Stephens & Lee and I didn't see a
11 revised order.

12 MR. DEMMY: There was not. Your Honor, John Demmy
13 for Stevens & Lee. There was not a revised order filed. I
14 have a clean and revised. I think the changes are very
15 minor. I could hand that up to your Honor to take a look at
16 right now.

17 THE COURT: Thank you.

18 MR. DEMMY: Your Honor, except for the minor
19 change on the first page the only other change is on page
20 four of the comparison I believe.

21 THE COURT: Any objection? All right, I'll sign
22 this order.

23 MR. DEMMY: Thank you, your Honor.

24 THE COURT: I think that leaves Greenhill and
25 Goldin so let's deal with that.

1 MR. LEVIN: Goldin may be a bit simpler, your
2 Honor. Richard Levin for Cravath--for Goldin as conflicts
3 matter financial advisor to EFIH. Your Honor, we submitted
4 a revised proposed order yesterday.

5 THE COURT: I did see that.

6 MR. LEVIN: It's on the agenda. I think it is
7 agreeable to the U.S. Trustee's Office. It was as a result
8 of negotiations with that office. We'd asked that it be
9 signed.

10 THE COURT: All right. I did review that black
11 line before the hearing so I have no questions so I'll sign
12 the clean order.

13 MR. LEVIN: Thank you.

14 THE COURT: Do you have a copy handy or I can dig
15 it out?

16 MR. LEVIN: No, I'll bring it up, your Honor.

17 THE COURT: Okay.

18 MR. ROSEN: Your Honor, Todd Rosen.

19 THE COURT: Yes, you may approach. Yeah, just the
20 one is fine. Oh, this is--this says revised proposed order
21 on it. It should just say order, but if there are no
22 changes I'll just strike that part of it. No further
23 changes.

24 MR. LEVIN: No further change.

25 THE COURT: I signed that order, thank you. And I

1 understand Greenhill is resolved, right?

2 MR. ROSEN: It is resolved, your Honor. A revised
3 form of order was filed with the black line yesterday. The
4 resolution is the TCEH debtors are not seeking today to go
5 forward for approval of the transaction fee. It's subject
6 to some further negotiation and giving parties in interest
7 10 days' notice prior to moving forward for approval.

8 THE COURT: Okay. I did see that. I did review
9 that certification. Do you have a clean copy with you.

10 MR. ROSEN: I do, your Honor.

11 THE COURT: I can--yeah, thanks. It's just easier
12 than digging it out of the three binders that I have--four
13 binders that I have in front of me. Thank you. Mr.
14 Schepacarter.

15 MR. SCHEPACARTER: Thank you, your Honor. Good
16 morning. Rich Schepacarter for the United States Trustee.
17 I just wanted to indicate that we reviewed the proposed form
18 of order as revised. I just wanted to indicate on paragraph
19 seven it talks about giving parties in interest 10 days'
20 notice. I just want to make it clear that the U.S. Trustee
21 would be included in that 10 day notice period with respect
22 to the transaction fee.

23 THE COURT: Any problem with that?

24 MR. ROSEN: No problems, your Honor.

25 MR. SCHEPACARTER: That's all I had on that, your

1 Honor.

2 THE COURT: Thank you. Give me a minute here.
3 Just give me a few moments so I can get my paper--my paper
4 keeping correct. Yes sir, sorry.

5 MR. GOREN: Thank you, your Honor. Todd Goren,
6 Morrison & Forster on behalf of the TCEH committee. We did
7 file an objection to Greenhill's retention on Friday. Our
8 primary concern is with the transaction fee and I think you
9 really articulated that concern in talking about the need
10 for conflicts counsel to provide additional disclosures.
11 The application originally sought approval of a \$9.5 million
12 transaction fee and, as you noted, there's a lot of
13 uncertainty as to how this case is going to proceed. There
14 remains uncertainty about what exactly the conflicts
15 professionals are going to be handling, how that
16 responsibility is going to be allocated among them and the
17 existing professionals and given that uncertainly along with
18 the uncertainty of what the case is ultimately going to look
19 like, are we going to have a plan that just turns everything
20 over to the TCEH seniors as was contemplated in the RSA. We
21 were very concerned with simply allowing a \$9.5 million fee
22 to be approved at the outset now, an additional \$9.5 million
23 fee.

24 So, over the weekend we negotiated with Greenhill
25 to allow the retention application to be approved today, but

1 reserving all aspects of the transaction fee for a later
2 date and we'll continue to work with Greenhill and see if we
3 can come up with a consensual resolution, and the debtors to
4 see if we can come up with a consensual resolution and if
5 not it will be set for hearing on two weeks' notice, but
6 we'll continue to work out--see if we can work out a
7 resolution.

8 THE COURT: Okay, thank you. Okay, I've signed
9 all the orders I have. I think the only open one is
10 Cravath. I'll wait that under certification. I will review
11 the certification of counsel in connection with the bid
12 procedures, but I will--even if I don't have any questions
13 I'll await further action until I hear further in connection
14 with the open issue with Mr. Horowitz. If I have any
15 questions or comments obviously I'll contact counsel and
16 we'll figure out how to deal with those. Anything else for
17 today?

18 MR. GOREN: Not today. Thank you, your Honor.

19 THE COURT: Ms. Schwartz?

20 MS. SCHWARTZ: Yes, I just want to say thank you
21 again, your Honor, for considering our statement today.

22 THE COURT: Of course. All right, thank you.
23 We're adjourned.

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C E R T I F I C A T I O N

I certify that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext
330 Old Country Road
Suite 300
Mineola, NY 11501

Date: January 14, 2015

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