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EFH Judge Strikes NextEra's Bid Proposal From Ch. 11

By **Matt Chiappardi**

Law360, Wilmington (November 19, 2015, 10:04 PM ET) -- The Delaware bankruptcy judge presiding over Energy Future Holdings Corp.'s massive Chapter 11 case on Thursday ordered a statement from NextEra Energy Inc. that expressed renewed interest in buying nondebtor subsidiary Oncor Electric Delivery Co. LLC stricken from the court record, ruling that it didn't belong on the docket.

During EFH's weeks long Chapter 11 plan confirmation hearing in Wilmington, U.S. Bankruptcy Judge Christopher S. Sontchi granted a motion to strike, put forward by noteholders that back the power giant's strategy to rework some $42 billion in debt, a statement NextEra filed Wednesday that it is prepared to consummate an alternative transaction to the one on the table.

The noteholders argued that the statement amounts to a late objection to EFH's plan — which centers on a deal backed by a consortium led by Hunt Consolidated Inc. to take over Oncor and includes the tax-free spinoff of EFH subsidiary Texas Competitive Electric Holdings Co. LLC reckoned to satisfy roughly $25 billion in claims — and that to allow it to stay on the record would not only be unfair to others who missed the protest deadline but prejudicial to the power giant as it tries to see its Chapter 11 plan approved.

Judge Sontchi ordered the entire document removed from the court record, saying the docket was not the place for statements.

“Those types of statements, to the extent they are appropriate, could have been filed as an objection,” the judge said from the bench. “Those witnesses could have been cross-examined.”

NextEra said it filed the statement that sparked the issue to clear up a record drawn from witness testimony it says paints a picture that there was no feasible alternative to the restructuring deal before the court.

NextEra claims it remains fully prepared to offer a competitive bid for Oncor, one that would “provide full recovery” for creditors on the so-called E-side of the case, which had mounted the main opposition to the plan when they started to question whether they'd be fully paid.

The massive EFH case breaks down into two silos — the E-side owed by EFH unit Energy Future Intermediate Holding Co. LLC and its parent, and the T-side owed by TCEH, much of which backs the restructuring deal Judge Sontchi is considering.

It was NextEra that helped cause the first disruption to the path of the volatile case, moving EFH in July 2014 to scrap the restructuring deal it had entered Chapter 11 with when it learned of keen market interest for its stake in Oncor.

After several iterations, including a seemingly popular one that involved a bankruptcy auction for EFH's 80 percent stake in Oncor believed to fetch up to $18 billion, creditors coalesced around the Hunt deal.

But many E-side creditors started to resist the deal for reasons including the lack of a breakup fee in the transaction, allowing Hunt to walk away with no penalty, and their doubt over whether EFH's insistence they are unimpaired is actually true.

The E-side creditors' opposition case included claims some of EFH's equity holders improperly pushed independent directors toward the deal in order to score valuable liability releases, something the objectors claim could violate bankruptcy's priority rule.

The objectors also question whether the debtor's assessment they were unimpaired, and thus didn't get to vote on the plan, is true, and if Judge Sontchi rules in their favor it could void the restructuring strategy.

Some of the opposition was dulled last week when EFH announced a deal with Fidelity Management & Research Co., which holds huge chunk of bond debt on the E-side.

Whether a peace deal can become global in the case remains to be seen, but if the Fidelity agreement sticks it leaves only a small fraction of capital structure opposed to the plan.

Phase one of EFH's confirmation hearing is set to continue in Wilmington on Monday, with closing arguments expected to occur before the Thanksgiving holiday.

Dallas-based EFH and dozens of affiliates sought court protection in April 2014, kicking off one of the largest Chapter 11 cases in U.S. history, and the proceedings have since grown to be ranked among one of the more expensive bankruptcies, with professional fees already set to top $200 million, not counting the confirmation hearing.

EFH is represented by Edward O. Sassower, Stephen E. Hessler, Brian E. Schartz, James H.M. Sprayregen, Marc Kieselstein, Chad J. Husnick, Steven N. Serajeddini and Andrew McGaan of Kirkland & Ellis LLP, and Mark D. Collins, Daniel J. DeFranceschi and Jason M. Madron of Richards Layton & Finger PA.

The E-side committee is represented by Natalie D. Ramsey, Mark B. Sheppard, Mark A. Fink and Sidney S. Liebesman of Montgomery McCracken Walker & Rhoads LLP, and Andrew G. Dietderich, Steven L. Holley, Robert J. Giuffra Jr. and Brian D. Glueckstein ofSullivan & Cromwell LLP.

The case is In re: Energy Future Holdings Corp., case number 1:14-bk-10979, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by Jonathan Randles. Editing by Aaron Pelc.