Memorandum

To: ISDA Americas Determinations Committee (the "DC")

Date: February 25, 2013

Re: Energy Future Holdings Corp.

1. Question Presented:

Has a Succession Event occurred with respect to Energy Future Holdings Corp. (the "Question Presented")?

2. Overview:

A Succession Event is deemed to have occurred under the 2003 ISDA Credit Derivatives Definitions if (1) a Successor entity has succeeded to at least 25% of the debt obligations of a Reference Entity without that Reference Entity remaining an obligor and (2) in the context of a debt exchange between those two entities, the succession occurs in connection with a broader corporate event, such as a transfer of assets or liabilities, merger, or other similar event. The analysis in this memorandum will show that, in our view, these conditions have been met, and therefore a Succession Event has occurred. In summary:

- In satisfaction of the first condition, EFH (as the Reference Entity) and EFIH (as the Successor) conducted four related exchange offers in a span of only a few weeks pursuant to which EFIH has succeeded to a significant amount of EFH's debt as to which EFH is no longer an obligor (we refer to these exchanges below as the "Recent Debt Exchanges").

- In satisfaction of the second condition, the Recent Debt Exchanges and related transactions resulted in EFH's outstanding debt being reduced from in excess of $8 billion to less than $2 billion, with EFIH becoming the sole obligor to a significant amount of that debt, clearly constituting a major debt reorganization for this company. In connection therewith, EFH transferred an amount of cash estimated at approximately $150 million to EFIH, and EFIH transferred approximately $6.5 billion of EFH bonds to EFH. Additionally, as detailed in the next bullet point, EFH eliminated a substantial contingent liability (cross default).

- In further satisfaction of the second condition, through the Recent Debt Exchanges and the related consent solicitations, EFH was able to achieve the Effective TCEH Cross Default Elimination, which represents a virtual de-merger of TCEH from EFH. Notably, a bankruptcy of TCEH is now unlikely to trigger EFH credit default swap contracts as a result of this elimination.

- Previous transactions (cited herein) have been treated as Succession Events in circumstances that were less compelling than those relating to the Recent Debt Exchanges.

Therefore, the succession of EFIH to EFH's debt through the Recent Debt Exchanges, when coupled with the comprehensive debt reorganization, significant transfers of assets and liabilities, and the Effective TCEH Cross Default Elimination, should be deemed a Succession Event.

Any capitalized terms not defined in this section are defined later in this memorandum or in the ISDA Definitions, as noted.

3. Background:

<u>Entities</u>

I. Energy Future Holdings Corp. ("<u>EFH</u>"), the "Reference Entity."
II. Energy Future Intermediate Holding Company LLC ("<u>EFIH</u>"), a direct, wholly owned subsidiary of EFH
III. EFIH Finance Inc. ("<u>EFIH Finance</u>"), a direct, wholly owned subsidiary of EFIH.

<u>December 5, 2012 (December 5 Private Exchange)</u>

On December 5, 2012, EFIH and EFIH Finance (together with EFIH, the "Co-Issuers") completed a private debt exchange transaction (the "December 5 Private Exchange"). Pursuant to the December 5 Private Exchange, the Co-Issuers issued approximately $1.145 billion aggregate principal amount of 11.25%/12.25% Senior Toggle Notes due 2018 (the "New EFIH 2018 Notes") in exchange for (1) approximately **$234 million** aggregate principal amount of 5.55% Series P Senior Notes due November 15, 2014 of EFH, (2) approximately **$510 million** aggregate principal amount of 6.50% Series Q Senior Notes due November 15, 2024 of EFH, (3) approximately **$453 million** aggregate principal amount of 6.55% Series R Senior Notes due November 15, 2034 of EFH, (4) approximately **$94 million** aggregate principal amount of 10.875% Senior Notes due 2017 of EFH (the "2017 Cash Pay Notes"), and (5) approximately **$313 million** aggregate principal amount of 11.250%/12% Senior Toggle Notes due 2017 of EFH (the "2017 Toggle Notes," and together with the 2017 Cash Pay Notes, the "2017 Senior Notes"). Source: December 5, 2012 8-K: www.sec.gov/Archives/edgar/data/1023291/000119312512491858/d447839d8k.htm (See "Introductory Note" on page 2)

<u>December 19, 2012 (December 19 Private Exchange)</u>

On December 19, 2012, EFIH and EFIH Finance completed a private debt exchange transaction (the "December 19 Private Exchange"). Pursuant to the December 19 Private Exchange, the Co-Issuers issued $159 million aggregate principal amount of New EFIH 2018 Notes in exchange for (1) **$38.5 million** aggregate principal amount of 2017 Cash Pay Notes and (2) **$118.9 million** aggregate principal amount of 2017 Toggle Notes. Source: December 19, 2012 8-K: www.sec.gov/Archives/edgar/data/1023291/000119312512513296/d457416d8k.htm (See "Item 1.01 – Private Debt Exchange")

<u>January 29, 2013 (January 29 First Lien Exchange)</u>

On December 21, 2012 (two days after the consummation of the December 19 Private Exchange), EFIH and EFIH Finance launched two public exchange offers. On January 29, 2013, EFIH and EFIH Finance completed an exchange offer (the "January 29 First Lien Exchange") pursuant to which the Co-Issuers issued $1.302 billion of 10% Senior Secured Notes due 2020 in exchange for (1) **$113 million** of 9.75% Senior Secured Notes due 2019 of EFH ("EFH 9.75% Notes"), (2) **$1.058 billion** of 10% Senior Secured Notes due 2020 of EFH ("EFH 10% Notes"), and (3) **$139.1 million** of 9.75% Senior Secured Notes due 2019 of EFIH. Source: January 25, 2013 8-K: www.sec.gov/Archives/edgar/data/1023291/000119312513029295/d474858d8k.htm (See "Table 1 – First Lien Exchange Offers" on page 2)

<u>January 29, 2013 (January 29 Unsecured Exchange)</u>

On January 29, 2013, EFIH and EFIH Finance completed an exchange offer (the "January 29 Unsecured

Exchange") pursuant to which the Co-Issuers issued $63.9 million of New EFIH 2018 Notes in exchange for (1) **$30.9 million** aggregate principal amount of 2017 Cash Pay Notes and (2) **$33.4 million** aggregate principal amount of 2017 Toggle Notes. Source: January 25, 2013 8-K: www.sec.gov/Archives/edgar/data/1023291/000119312513029295/d474858d8k.htm (See "Table 2 – Unsecured Exchange Offers" on page 2)

We refer to the December 5, 2012 Private Exchange, the December 19 Private Exchange, the January 29 First Lien Exchange, and the January 29 Unsecured Exchange collectively as the "Recent Debt Exchanges."

Cancellation of Debt

- All **$94 million** of 2017 Cash Pay Notes and all **$313 million** of 2017 Toggle Notes received by EFIH in the December 5 Private Exchange were distributed to EFH and cancelled.

- All **$38.5 million** of 2017 Cash Pay Notes and all **$118.9 million** of 2017 Toggle Notes received by EFIH in the December 19 Private Exchange were distributed to EFH and cancelled.

- All **$30.9 million** of 2017 Cash Pay Notes and all **$33.4 million** of 2017 Toggle Notes received by EFIH in the January 29 Unsecured Exchange were distributed to EFH and cancelled.

- All **$113 million** of EFH 9.75% Notes and all **$1.058 billion** of EFH 10% Notes received by EFIH in the January 29 First Lien Exchange were distributed to EFH and cancelled.

- $4.55 billion of 2017 Senior Notes that EFIH held prior to the Recent Debt Exchanges was distributed to EFH and cancelled contemporaneously with the Recent Debt Exchanges.

- In total, $6.518 billion principal amount of EFH debt that EFIH received in the Recent Debt Exchanges and prior exchanges was transferred from EFIH to EFH and cancelled by EFH contemporaneously with the Recent Debt Exchanges.

- **Thus, in connection with the Recent Debt Exchanges and debt cancellations, the aggregate principal amount of EFH debt outstanding was dramatically reduced from over $8 billion to below $2 billion (of which only $677 million is held by non-affiliates)**.

Source: 2012 10-K: www.sec.gov/Archives/edgar/data/1023291/000102329113000003/efh-12312012x10k.htm (See the last paragraph on page 125)

Transfer of Assets in Connection with Recent Debt Exchanges

According to the December 21, 2012 Offering Memorandum and Consent Solicitation Statement (the "Statement") for the First Lien Exchange Offer, "***in connection with the liability management program of EFH and its subsidiaries, including the December 2012 Private Exchanges, the [January 29 Unsecured Exchange] and [January 29 First Lien Exchange], EFH Corp. expects to make capital contributions of up to $75 million to EFIH to protect against the risk of any potential cash shortfalls.***"[1] In fact, EFH disclosed on its February 19, 2013 earnings call (the "Earnings Call")[2] that it made *voluntary* payments to EFIH on account of accrued and unpaid interest for the "stub period" for the bonds being distributed to EFH for cancellation. We estimate this payment to be approximately $150 million, a figure consistent with EFH's guidance (the "Cash

[1] See page 4 of the Statement.
[2] See link to a recording of the Earnings Call: http://phx.corporate-ir.net/phoenix.zhtml?p=irol-eventDetails&c=102498&eventID=4896224

Transfer").[3]

Calculation of "Cash Transfer" Amount

Bond Description	**Principal ($mm)**	**Payment Frequency**	**Coupon Date**	**Assumed Cancellation Date***	**# of Days**	**Coupon**	**Interest Amount ($mm)**
EFH 10.875% Notes due 2017	1,754	S/A	11/1/2012	1/1/2013	61	10.875	32.33
EFH 11.25%/12% Toggle Notes due 2017	3,593	S/A	11/1/2012	1/1/2013	61	11.25	68.49
EFH 10% Notes due 2020 (1st Lien)	1,058	S/A	7/15/2012	1/1/2013	170	10	49.96
EFH 9.75% Notes due 2019 (1st Lien)	113	S/A	10/15/2012	1/1/2013	78	9.75	2.39
Cash Transfer Total							**153.17**

*Assumed cancellation date based on statement made in EFH's 2012 Annual Report on Form 10-K that cancellation of debt occurred "largely in early 2013."

In addition to the Cash Transfer, $6.518 billion principal amount of EFH debt that EFIH received in the Recent Debt Exchanges and prior exchanges was transferred from EFIH to EFH and cancelled by EFH in connection with the Recent Debt Exchanges. This, in and of itself, is a significant transfer of assets.

4. Results of the Recent Debt Exchanges:

The debt exchanged pursuant to the Recent Debt Exchanges represents significantly greater than 25% of the Relevant Obligations (i.e., between approximately 50% and greater than 80%, depending on the method of calculation, as discussed below).

Following the consummation of the Recent Debt Exchanges, EFH has approximately $677 million of debt outstanding (not including approximately $1.3 billion of EFH debt that will continue to be held by EFIH).

[3] See calculation of Cash Transfer Amount in the table above. We note that this was a *voluntary* payment, given that EFH could have received and cancelled the EFH bonds without making the Cash Transfer.

EFH Debt Table		
	30-Sep-12	Pro forma*
	($mm)	($mm)
EFH (Not Held By EFIH)		
5.55% due 2014	326	92
6.5% due 2024	740	230
6.55% due 2034	744	291
EFH 10.875% Notes due 2017	196	33
EFH 11.25%/12% Toggle Notes due 2017	464	26
EFH 9.75% Notes due 2020 (1st Lien)	115	2
EFH 10% Notes due 2020 (1st Lien)	1061	3
Total EFH Debt Not Held By EFIH	**3,646**	**677**
EFH (Held By EFIH)		
EFH 10.875% Notes due 2017	1591	0
EFH 11.25%/12.00% Toggle Notes due 2017	2951	0
5.55% due 2014	45	279
6.5% due 2024	6	516
6.55% due 2034	3	456
Total EFH Debt Held By EFIH	**4,596**	**1,251**
EFH - Total Obligor Debt	**8,242**	**1,928**

*Pro forma for Recent Debt Exchanges and related cancellation of debt
Source: 2012 10-K: www.sec.gov/Archives/edgar/data/1023291/000102329113000003/efh-12312012x10k.htm (see pages 123-125)

5. Analysis:

Definition of Succession Event

Under the 2003 ISDA Credit Derivatives Definitions (the "ISDA Definitions"), in order to have a Successor an entity must succeed to at least 25 percent of the Relevant Obligations of the Reference Entity by way of a Succession Event. "Succession Event" is defined as an event such as a merger, consolidation, amalgamation, transfer of assets or liabilities, demerger, spin-off or other similar event in which an entity succeeds to the obligations of another entity, whether by operation of law or pursuant to any agreement. Notwithstanding the foregoing, "Succession Event" shall not include an event in which the holders of obligations of the Reference Entity exchange such obligations for the obligations of another entity, unless such exchange occurs in connection with a merger, consolidation, amalgamation, transfer of assets or liabilities, demerger, spin-off or other similar event.

Application of ISDA Definitions

We ask the DC to consider and evaluate the following factors with respect to the Question Presented as a

General Interest Question[4]:

- The Recent Debt Exchanges and related transactions represent a recapitalization of EFH and should be considered a significant reorganization event for EFH that should qualify as a Succession Event. **The outstanding debt of EFH has been dramatically reduced from over $8 billion to under $2 billion (of which only $677 million is held by non-affiliates).** At the same time, EFIH debt increased by approximately $3 billion, all of which was issued in connection with the Recent Debt Exchanges. In fact, EFIH in essence is the financing vehicle that has been used to refinance all but $677 million of EFH debt. Notably, over 70% of EFIH's currently outstanding debt was issued to recapitalize EFH. EFH has not issued new debt for nearly three years. Further, the EFH debt exchanged and cancelled in connection with the Recent Debt Exchanges contained cross defaults to a bankruptcy event of EFH's subsidiary, Texas Competitive Electric Holdings Company LLC ("TCEH"), and the EFIH bonds issued in the Recent Debt Exchanges do not have such a cross default. As a result, the amount of EFH debt with cross default provisions to a TCEH bankruptcy has been reduced from over $6.5 billion to approximately $60 million[5] (the "Effective TCEH Cross Default Elimination"). Contemporaneously with the Recent Debt Exchanges, EFH made the Cash Transfer to EFIH. Further, in connection with the Recent Debt Exchanges, EFIH transferred $6.518 billion principal amount of EFH debt to EFH.

- The four separate exchanges comprising the Recent Debt Exchanges should be considered as a singular event. In addition to the fact that the January 29 First Lien Exchange and January 29 Unsecured Exchange were announced and conducted simultaneously, and the December 5 Private Exchange and the December 19 Private Exchange were completed in the same month in which the latter two Recent Debt Exchanges were announced, **the Statement referred to all four Recent Debt Exchanges as part of the liability management program of EFH and its subsidiaries**.

- We calculate EFH's Relevant Obligations outstanding and owned by third parties as approximately $3.65 billion prior to the Recent Debt Exchanges.[6] In the Recent Debt Exchanges, approximately $3 billion principal amount of Relevant Obligations was exchanged for EFIH debt, of which approximately $1.8 billion was distributed to EFH and cancelled. The $3 billion of Relevant Obligations exchanged in the Recent Debt Exchanges represents approximately **82 percent** of EFH's Relevant Obligations outstanding and owned by third parties prior to the Recent Debt Exchanges (i.e., approximately $3 billion out of the $3.65 billion of Relevant Obligations outstanding prior to the Recent Debt Exchanges). This calculation considers the approximately $1.3 billion of EFH debt that EFIH continues to hold in a custody account to be no longer outstanding. We believe that this is the proper calculation to assess whether a Succession Event has occurred, given the reduction in EFH debt owned by third parties, the record of prior EFH debt cancellations, and the stripping of protective covenants out of the EFH debt indentures. However, even if one considers the approximately $1.3 billion of EFH debt that EFIH continues to hold in a custody account to be outstanding, the $1.8 billion of Relevant Obligations exchanged for EFIH debt and cancelled in the Recent Debt Exchanges represents **approximately 50 percent** of EFH's Relevant Obligations outstanding prior to the Recent Debt Exchanges (i.e., approximately $1.8 billion out of the $3.65 billion of Relevant Obligations outstanding and owned by third parties prior to the Recent Debt Exchanges). **In either case, the transfer of EFH obligations to EFIH significantly exceeds the 25% required threshold in the ISDA Definitions.**

[4] Calculations used in this analysis are based on our internal review and should be independently verified by the DC.
[5] This approximately $60 million of EFH debt with cross defaults to a TCEH bankruptcy that remains outstanding is currently callable, and thus EFH may fully eliminate cross defaults to a TCEH bankruptcy at its option.
[6] This amount does not include approximately $4.55 billion of 2017 Senior Notes acquired by EFIH in prior exchanges and cancelled contemporaneously with the Recent Debt Exchanges.

- As disclosed on the Earnings Call, EFH made the Cash Transfer to EFIH. This payment to EFIH should not be considered a de minimis amount, and there is no requirement in the ISDA Definitions that the transferred assets bear any specific proportion to the amount of debt transferred. Further, in connection with the Recent Debt Exchanges, EFIH transferred $6.518 billion principal amount of EFH debt owned by EFIH to EFH, which, in and of itself, is a significant transfer of assets.

- In connection with the First Lien Exchange, EFH solicited consents to amendments of the indentures for the notes of EFH that were not exchanged as part of the First Lien Exchange that provide for the elimination of substantially all of the restrictive covenants under such indentures, elimination of certain events of default (including the Effective TCEH Cross Default Elimination) and provisions relating to defeasance and collateral and security, modification of covenants regarding mergers and consolidations and modification or elimination of certain other provisions, including the release of collateral and guaranties. EFH disclosed that the requisite consents to such amendments were obtained.

- Previous transactions pre-dating the establishment of the DC have been treated as Succession Events in circumstances that were less compelling than those relating to EFH. These transactions include:

    - Kelda Group Limited – where a transfer of 54% of Relevant Obligations was deemed a Succession Event as per the Markit Historical Succession Event review, because the 54% transfer represented a "significant reorganisation of debt within the Kelda group" even though the transactions "did not involve any merger" or other similar event. Source: https://www.markit.com/news/Kelda%20Summary%20Circulated.pdf

    - Scottish Power Limited – where a transfer of 79% of Relevant Obligations was deemed a Succession Event as per the Markit Historical Succession Event review, because the 79% transfer represented a "significant reorganisation of debt within the Iberdola group " even though the transactions "did not involve any merger" or other similar event. Source: https://www.markit.com/news/Scottish%20Power%20Summary%20Final.pdf

    - BAA Limited– where greater than 75% of Relevant Obligations was transferred via exchange and deemed a Succession Event as per the Markit Historical Succession Event review, because it was deemed a "significant reorganization of debt." Source: https://www.markit.com/news/BAA%20-%20Linklaters%20Legal%20Summary_29-Jan-09.pdf

    Each of these determinations occurred before the establishment of the DC, but in each case the DC reviewed these events as "Historical Succession Events" and resolved and agreed that they qualified as Succession Events. Source: Historical Succession Events

    The prior Succession Event request for EFH that was denied in 2010 is not a binding precedent, and the facts and circumstances relating to it differ significantly from those of the current request. **The two requests are distinguishable given that (i) the percentage of debt exchanged pursuant to the Recent Debt Exchanges is *greater* than in 2010, and (ii) the EFH debt exchanged in 2010 was *not* cancelled at that time, unlike the debt exchanged as part of the Recent Debt Exchanges (except for a portion of the debt exchanged in the December 5 Private Exchange, which continues to be held by EFIH in a custody account).**

- Following the Recent Debt Exchanges, less than $2 billion principal amount of EFH debt remains outstanding, of which approximately $677 million is owned by non-affiliates. If the DC is to conclude that the Recent Debt Exchanges have *not* resulted in a Succession Event, it may lead to the illogical outcome that (1) a subsequent transaction with respect to as little as $170 million of EFH debt (i.e., 25% of the remaining $677 million of EFH third-party debt) could lead to a Succession Event *or* (2) a subsequent transaction with respect to as little as $677 million of EFH debt that is also not deemed to be a Succession Event could lead to an "Orphaning" of EFH credit default swaps (of which there is outstanding approximately $11 billion of gross notional exposure of EFH as a Reference Entity according to DTCC data). Either outcome could be detrimental to the credit default swaps market. In other words, the occurrence of the Recent Debt Exchanges and related transactions (not past EFH exchanges and not potential future ones) **is the major debt reorganization event for EFH and should be treated as a Succession Event**.