

Junior Creditors Will Be Key To Energy Future's Ch. 11

By **Maria Chutchian**

Law360, New York (April 29, 2014, 6:52 PM ET) -- Energy Future Holdings Inc.'s much-anticipated bankruptcy filing is among the largest ever seen, but bankruptcy experts say that unless things turn ugly with subordinated debtholders, the company should meet its goal of exiting Chapter 11 in nine months.

EFH CEO John Young said Tuesday that he expects the company to confirm its proposed reorganization plan within that time frame and complete its restructuring within 11 months. Thanks to the substantial progress EFH achieved during out-of-court talks in the months leading up to the filing, attorneys say that's a reasonable goal, but only if the company is able to placate unhappy second-lien holders.

The indenture trustee for a group of those debtholders submitted one of the first filings in the company's Delaware bankruptcy docket on Tuesday, accusing EFH of "historic and ongoing mismanagement," "disabling conflicts of interest affecting management" and "potential efforts by the debtors' senior management, for the benefit of senior lenders, to artificially depress enterprise value for restructuring purposes" at the expense of the second-lien holders.

The trustee asked U.S. Bankruptcy Judge Christopher S. Sontchi for permission to probe into EFH's activities, accusing the company of ignoring "key operational imperatives" and piling on unnecessary debt to benefit its owners — private equity firms KKR & Co. LP, TPG Capital LP and Goldman Sachs Capital Partners — which acquired EFH in 2007 through the largest leveraged buyout on record.

The second-lien holders also argue that the case should be transferred from Delaware to Texas, a debate that will likely be hotly contested, according to Christopher Ward, vice-chair of Polsinelli PC's bankruptcy practice.

"It is quite possible that they could have the case confirmed in nine months, but it will require the cooperation of creditors at all levels. With the motion to transfer, that cooperation may not exist right now," said Eugene Geekie, a partner at Arnstein & Lehr LLP.

Delaware, like the Southern District of New York, is generally known for being debtor-friendly and more familiar with prepackaged and prearranged plans than other districts are. The second-lien holders note that EFH's operations are concentrated in Texas and accuse the company of filing in Delaware because it's more beneficial to senior lenders and management.

Whether the second-lien holders succeed in transferring the case is anybody's guess, but it's not unheard of: Just last summer, Patriot Coal Corp.'s Chapter 11 case was moved from Delaware to Missouri, where the company's headquarters are located.

"That'll be at the forefront of the case. Most of the parties are on board with the structure of the plan being proposed, so [the issue is] really which jurisdiction is going to oversee the approval process of that plan," Ward said.

Issues could arise among other creditor constituencies as well. A committee of unsecured

creditors has not yet been formed, but assuming one is created, it will likely demand a say in any proposed plan, according to Seth Lieberman, a partner in Pryor Cashman LLP's bankruptcy, reorganization and creditors' rights group.

"In a case of this magnitude, with this much at stake, it certainly can go relatively quickly. It can be an 11-month process. But oftentimes the more that's at stake, the more parties, for better or worse, may be incentivized to dig in their heels a little more, which at times can lead to delay," he added.

Moreover, there's no guarantee that the judge will go for the proposed plan, which hasn't even been filed yet. Large corporations that enter bankruptcy with an idea of how things will go don't always see that vision played out. Residential Capital LLC, for example, entered bankruptcy in May 2012 with a prearranged plan that was ultimately ditched when certain creditors balked.

With this in mind, attorneys said, there's a chance that the case could end up looking vastly different from how it appears now, especially depending on the amount of interest it garners from potential acquirers.

"I'm sure there are plenty of interested buyers for the company or parts of the company, especially the Oncor [Electric Delivery Co. LLC] operation," said Sidney Scheinberg, a shareholder at Godwin Lewis PC.

EFH's tremendous \$49.7 billion debt makes it the largest energy company to ever seek bankruptcy, outdoing even Enron Corp.'s historic 2001 downfall. The company, like much of the rest of the energy industry, was brought down by misplaced bets on the price of oil and gas.

The company proposes spinning off subsidiary Texas Competitive Electric Holdings Co. LLC, parent of power giants Luminant and TXU Energy, whose first-lien lenders would swap about \$23 billion in exchange for all the equity in the reorganized TCEH.

EFH also hopes to allow subsidiary Energy Future Intermediate Holding Co. LLC to trim its debt load by about \$2.5 billion. EFIH is the holding company for Oncor, which is not involved in the bankruptcy proceedings.

"There's just a lot on the table. They think they've got a prepackaged case, but there could be some group that comes in and squawks. And the judge may not just rubber-stamp everything," Scheinberg said. "But the odds of it happening in Delaware are probably greater than anywhere else."

--Editing by Jeremy Barker and Edrienne Su.