

Public Utility Commission of Texas

Memorandum

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PUBLIC UTILITY COMMISSION
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TO: Chairman Donna L. Nelson
Commissioner Brandy Marty Marquez

FROM: Commissioner Kenneth W. Anderson, Jr. *KWA w/ permission*

DATE: March 1, 2016

RE: **Open Meeting of March 3, 2016, Project No. 45188; Agenda Item No. 12 – Joint Report and Application of Oncor Electric Delivery Company LLC, Ovation Acquisition I, LLC, Ovation Acquisition II, LLC, and Shary Holdings, LLC for Regulatory Approvals Pursuant to PURA §§ 14.101, 37.154, 39.262(i)-(m), and 39.915**

The applicants¹ in this proceeding have proposed a transaction that involves the complex restructuring of Oncor Electric Delivery Company LLC (Oncor), the state's largest transmission and distribution utility, as part of the resolution of the chapter 11 bankruptcy proceeding of Energy Future Holdings Corp. (EFH) and almost all of its direct and indirect subsidiaries. The sponsors of this transaction are affiliates of Hunt Consolidated, Inc. (Hunt Affiliates), certain current creditors of EFH and two of its principal subsidiaries—Texas Competitive Electric Holdings, LLC (TCEH) and Energy Futures Intermediate Holdings (EFIH)—as well as certain other investors. EFIH owns indirectly approximately 80% of the equity of Oncor, which was not included in EFH's bankruptcy proceeding.

The applicants propose to separate Oncor into two entities, a company that will own nearly all of Oncor's tangible electric delivery assets (Oncor AssetCo) and a company that will lease and operate those assets (OEDC) to deliver electricity to wholesale and retail customers within the Electricity Reliability Council of Texas, Inc. (ERCOT) region. Both of these entities are to be organized as Delaware limited liability companies that will elect to be non-taxable flow-through entities. If the Commission approves this application, the participating former creditors of EFIH and TCEH and certain other investors (including the Hunt Affiliates) would own Oncor AssetCo, which would be managed by Hunt Affiliates. OEDC would be owned by the Hunt Affiliates. Ovation Acquisition I LLC (OV1), which would become the ultimate owner (through multiple intermediaries including Reorganized EFIH) of Oncor AssetCo, intends to convert into a Delaware corporation and elect to be taxed as a real estate investment trust (REIT). As a REIT, OV1 would be required to distribute to its stockholders at least 90% of its taxable income, for which it could take an offsetting deduction. According to record evidence, OV1 intends to distribute to its stockholders dividends equal to at least 100% of its taxable income, thus avoiding paying any federal income tax.

¹ Collectively, the applicants in this proceeding are Oncor Electric Delivery Company LLC, Ovation Acquisition I, LLC (OV1), Ovation Acquisition II, LLC, and Shary Holdings, LLC. The term "Purchasers" in this memo refers to OV1, Ovation Acquisition II, LLC, and Shary Holdings, LLC. As used in this memo, "Reorganized EFIH" means EFIH as reorganized by the restructuring contemplated by the transaction.

In this contested proceeding the applicants have the burden of proof² and this Commission's obligation is to evaluate the proposed transaction to determine whether it is in the public interest.³ In carrying out this duty, we must consider the factors identified in the Public Regulatory Utility Act (PURA),⁴ including weighing the risks, costs and benefits associated with the Purchasers' proposal. Based on the record evidence presented, including testimony presented at the hearing on the merits, the arguments made in post-hearing briefs as well as the further amended commitments made after the hearing on the merits and responses to the amended commitments,⁵ I see real benefits associated with the transaction, including maintaining local control of Oncor by the Hunt Affiliates, an organization with a first-rate business reputation in Texas. Our approval would also provide resolution to the difficult and costly bankruptcy of EFH and its operating subsidiaries. But by its very structure, the proposed transaction carries clear risks and costs that could significantly and adversely affect Oncor's customers. Because of these costs and risks I would find that the transaction meets PURA's public interest standard only if the Applicants accept the conditions I set out below in this memorandum.

I. EFIH Debt

When EFH filed for bankruptcy it had debt of over \$9.6 billion not counting debt attributable to its competitive entities; approximately \$1.929 billion at EFH and approximately \$7.709 billion at EFIH. The vast majority of the debt at EFIH was incurred after the 2007 buyout of TXU Corp. (TXU) and its operating subsidiaries by Kohlberg Kravis Roberts & Co., Goldman Sachs Capital Partners, and Texas Pacific Group.⁶ The Purchasers now propose to pay off this debt in part with new debt and equity. Whatever the technicalities, this debt clearly was not incurred to provide capital assets used and useful in Oncor's business and thus neither principal nor interest may ever be included in its electric delivery rates.⁷ Purchasers propose that immediately after the closing approximately \$5.4 billion dollars of such debt will remain above newly organized Oncor AssetCo at Reorganized EFIH (Legacy Buyout Debt). Purchasers gently suggest (with no binding commitments) that they will endeavor to reduce the Legacy Buyout Debt to \$3.5 billion within 12 months or so.

I believe that much of the difficulty in reaching a consensus around this transaction has its roots in the creation and continuing existence post-closing of the Legacy Buyout Debt at Reorganized EFIH. Whether the Legacy Buyout Debt is at the high or low range, it will continue to weigh down Oncor AssetCo's credit rating and require significant annual interest payments.

² Public Utility Regulatory Act, Tex. Util. Code Ann. § 39.003 (West 2007) (PURA).

³ PURA §§ 14.101, 39.262, 39.915.

⁴ *Id.*

⁵ See *Joint Report and Application of Oncor Electric Delivery Company LLC, Ovation Acquisition I, LLC, Ovation Acquisition II, LLC, and Shary Holdings, LLC for Regulatory Approvals Pursuant to PURA §§ 14.101, 37.154, 39.262(i)-(m), and 39.915*, Docket No. 45188, Purchasers' Revised Proposed Regulatory Commitments (Jan. 21, 2016) and Purchasers' Response to Commissioners' Questions (Feb. 19, 2016).

⁶ The TXU merger transaction closed on October 10, 2007 and was approved by this Commission in April of 2008. *Joint Report and Application of Oncor Electric Delivery Company and Texas Energy Future Holdings Limited Partnership Pursuant to PURA § 14.101*, Docket No. 34077, Order on Rehearing (Apr. 24, 2008).

⁷ *Matters Pertaining to or Arising Out of the Chapter 11 Bankruptcy of Energy Future Holdings*, Memorandum of Commissioner Kenneth W. Anderson, Jr. at 2 note 8, Project 42750 (Aug. 20, 2015).

Indeed, I infer it is this continuing annual cash obligation that at least in part accounts for Purchasers' inability to offer significant compromises with respect to the concerns raised by Staff, the intervenors and members of the Commission. Speaking solely for myself, I continue to be very concerned and the continued existence of the Legacy Buyout Debt colors my decision with respect to the conditions I will insist upon as part of any final order approving Purchasers' application.

Given my concerns about the Legacy Buyout Debt, I appreciate the Purchasers commitment to include an acknowledgement in all debt instruments issued by OV1 and EFIH stating that Oncor AssetCo and Oncor Electric Delivery Holdings Co (Oncor Holdings) will have no liability for OV1 or EFIH debt. I would add clarifying language to this commitment as set forth as condition D.1 in section IV of this memo.

*II. Major Open Issues Arising from 'Purchasers' Response to Commissioners' Questions'*⁸

Federal Income Tax Expense Issue:

Purchasers ask for certain assurances around the post-closing federal income tax expense treatment for rate purposes of the Oncor entities. They seek assurance from this Commission that OEDC and Oncor AssetCo will continue to be treated "in the same manner as [the Commission] does for all other investor-owned utilities with regard to the standard federal income tax allowance included in a utilities cost of service...."⁹ Putting aside the significant issue of our legal obligation to consider federal income tax expenses in base rate-case proceedings in the context of formulating "just and reasonable rates,"¹⁰ Purchasers are asking this Commission to prejudge the decisions that may come from the recently announced project to examine the treatment of federal income tax expenses. This I cannot and will not do. Furthermore, making a decision about the status and amount of the federal income tax expense for any particular utility is an exercise best undertaken with facts fully developed in a full base rate-case proceeding. What I am prepared to do is to acknowledge that Oncor's current rates will remain in place, unchanged until the next base rate-case proceeding is completed.

⁸ *Joint Report and Application of Oncor Electric Delivery Company LLC, Ovation Acquisition I, LLC, Ovation Acquisition II, LLC, and Shary Holdings, LLC for Regulatory Approvals Pursuant to PURA §§ 14.101, 37.154, 39.262(i)-(m), and 39.915*, Docket No. 45188, Purchasers' Response to Commissioners' Questions (Feb. 19, 2016).

⁹ *Id.* at 8.

¹⁰ PURA § 36.003. In addition, the Purchasers' request cannot be granted because of the practical inability of this Commission to bind a future commission's determination in base rate-case proceedings in the absence of a properly adopted rule.

Oncor AssetCo – OEDC Leases

Purchasers' attempt to preclude the Commission from modifying a lease "in any way that is inconsistent with maintaining REIT status"¹¹ is inconsistent with PURA and the Commission's legal obligation to determine just and reasonable rates. The leases will be tariffs and as such are subject to the full authority of the Commission to set as it determines. While I am willing to have Commission Staff develop an expedited, limited scope proceeding to approve such leases, parties with standing must be permitted to participate (subject to the limited scope) and I can accept no limitation on the Commission's authority and legal obligation to determine and set just and reasonable rates as required by PURA.¹² I hope Purchasers keep in mind that both the Commission and its Staff have a history of acting reasonably and expeditiously in proceedings and are always mindful of its obligation to protect the financial integrity of Texas regulated utilities as well as their ratepayers.

Oncor AssetCo Credit Rating and Dividends

Maintaining Oncor AssetCo's investment grade credit rating is vital. To even be discussing the possibility that Purchasers will be unable to accomplish this would put ratepayers at risk and itself render the transaction not in the public interest in my opinion. Therefore, if the Purchasers are unable or unwilling to commit to this requirement unequivocally, then this Commissioner must insist upon a requirement that no dividends or other upstream payments may be made to Reorganized EFIH or OV1 at any time when Oncor AssetCo lacks an investment grade credit rating from at least two of the three largest credit rating agencies. This restriction will not be subject to any REIT status or tax payment limitation, but will be absolute and automatic unless waived by the Commission.

Purchasers' "Additional Benefits to Oncor's Customers"

While I sincerely appreciate Purchasers' rate credit proffer, this Commissioner finds these sorts of offers problematic for several reasons. First, I have a personal problem with applicants being "encouraged" to cough-up money to buy peace in change of control proceedings. While it may be standard operating procedure in certain other jurisdictions, I have always found it to be offensive. A transaction should stand upon its own merits and be approved or denied as such. Regulatory agencies should not hold up approvals in exchange for one-time payments. These sorts of payments are of limited use or long-term benefit to ratepayers. Ultimately, they simply raise the purchase price and put more pressure upon the new owners to extract from ratepayers more value some other way later. Also, the Purchasers' commitment to seek a 55/45 capital structure would actually cost ratepayers significant money if approved. Finally, depreciation schedules should be based upon useful life. In any base rate-case proceeding, such rates will be set by the Commission. If Oncor's current depreciation and amortization rates need to be adjusted,

¹¹ *Joint Report and Application of Oncor Electric Delivery Company LLC, Ovation Acquisition I, LLC, Ovation Acquisition II, LLC, and Shary Holdings, LLC for Regulatory Approvals Pursuant to PURA §§ 14.101, 37.154, 39.262(i)-(m), and 39.915, Docket No. 45188, Purchasers' Response to Commissioners' Questions (Feb. 19, 2016).*

¹² PURA § 36.003.

they can and will be modified based upon the evidence developed in the case. I would decline to accept the Purchasers' good faith offers.

III. Consolidated Ratemaking for Oncor AssetCo and OEDC

The Purchasers have proposed that Oncor AssetCo and OEDC be unified for ratemaking purposes in a proceeding where the books and records of both entities would be combined to set rates for utility customers.¹³ The Purchasers have not offered specific details on how they will present financial records for the utilities on a combined basis, however, PURA does not support a rate-setting mechanism in which two separate utilities combine financial records or pool assets and expenses to determine rates. Instead, PURA establishes that rates must be computed on a per-utility basis:

In establishing *an electric utility's* rates, the regulatory authority shall establish *the utility's* overall revenues at an amount that will permit *the utility* a reasonable opportunity to earn a reasonable return on *the utility's* invested capital used and useful in providing service to the public in excess of *the utility's* reasonable and necessary operating expenses.¹⁴

Oncor AssetCo and OEDC will be separate electric utilities, each owning and operating distinct facilities. To satisfy PURA, the Commission must evaluate each utility on an individual basis to ensure that each utility has an opportunity to earn a reasonable return on that utility's invested capital used and useful in providing service. In my view, the Commission cannot determine a rate for service based on a fictitious set of books and records that combines assets and expenses of two utilities. Even so, I do believe that the Commission can meaningfully evaluate the separate books and records of Oncor AssetCo and OEDC in a single, consolidated proceeding and compute a rate for the customers of Oncor AssetCo and OEDC in that proceeding. If the transaction is approved, the Commission will need to explore and develop methods to achieve segregated analysis of Oncor AssetCo and OEDC for cost of service proceedings as well as other interim rate proceedings.

IV. Conditions of Approval

As I have stated before, my primary focus in this case concerns the risks that the structure of the transaction presents to Oncor ratepayers.¹⁵ I have also expressed concern about Oncor's ongoing financial integrity and the need to preserve ring-fence protections that allow the company to provide continuous and reliable service regardless of the pressures on OV1 and Reorganized EFIH flowing from the REIT status or the Legacy Buyout Debt.¹⁶ Having had the opportunity to consider all of the record evidence and evaluate the terms of the proposed transaction, I would

¹³ Supplemental Direct Testimony of Ralph G. Goodlet, Jr. at 6 (Oct. 26, 2015).

¹⁴ PURA § 36.051 (emphasis added).

¹⁵ *Matters Pertaining to or Arising Out of the Chapter 11 Bankruptcy of Energy Future Holdings*, Memorandum of Commissioner Kenneth W. Anderson, Jr. at 3, Project 42750 (Aug. 20, 2015).

¹⁶ *Matters Pertaining to or Arising Out of the Chapter 11 Bankruptcy of Energy Future Holdings*, Memorandum of Commissioner Kenneth W. Anderson, Jr., Project 42750 (Sep. 24, 2015).

impose the following conditions before finding that the transaction meets PURA's public interest standard. These conditions would be in addition to the commitments that the Purchasers have advanced in this case.¹⁷ To the extent that any conditions in this memorandum differ or conflict with the commitments advanced by Purchasers, the conditions in this memorandum would control.

A. Governance Conditions

OEDC. I would not require an independent board of directors at OEDC. If we lack confidence in the Hunt Affiliates and their owners, we should not approve the transaction. If we do approve the transaction, then I see no reason to impose an additional layer of cost and bureaucracy. Hunt Affiliates will own and control 100% of the equity of OEDC. The Commission knows who to hold responsible for any problems, failures or other shortcomings. While I understand and appreciate the arguments to the contrary, on balance, I prefer this clear line of responsibility.

Oncor AssetCo. One of the concerns associated with the proposed restructuring of Oncor is that OV1's REIT status coupled with the debt service requirements of the Legacy Buyout Debt creates inherent conflicts with Oncor AssetCo, which is OV1's and Reorganized EFIH's sole source of revenue. I resolve that conflict by finding that Oncor AssetCo's financial integrity must trump the needs of OV1 and Reorganized EFIH. I believe this requires governance restrictions to protect the financial integrity of both Oncor AssetCo and OEDC. Accordingly, I would impose the following governance conditions:

1. Both Oncor AssetCo and Oncor Holdings must have a board of directors comprised of at least seven persons. A majority of Oncor AssetCo's board members and Oncor Holdings board members must qualify as "independent" in all material respects in accordance with the rules and regulations of the New York Stock Exchange (which are set forth in Section 303A of the NYSE Listed Company Manual) from Reorganized EFIH and OV1. The directors of Oncor AssetCo and Oncor Holdings must not include any members of the board of OV1.
2. As long as any material amount of debt exists at Reorganized EFIH or OV1 or any other intervening entity above Oncor AssetCo or Oncor Holdings, a majority of the board of directors of Oncor AssetCo and Oncor Holdings must be comprised of "Disinterested Directors." A "Disinterested Director" must be (a) independent as defined by the NYSE, (b) have no current or previous material relationships with Oncor AssetCo, EFIH, OV1 or their respective affiliates within the previous 10 years, and (c) have no material relationships with the Hunt Affiliates, OEDC or their respective affiliates.

¹⁷ See *Joint Report and Application of Oncor Electric Delivery Company LLC, Ovation Acquisition I, LLC, Ovation Acquisition II, LLC, and Shary Holdings, LLC for Regulatory Approvals Pursuant to PURA §§ 14.101, 37.154, 39.262(i)-(m), and 39.915*, Docket No. 45188, Purchasers' Revised Proposed Regulatory Commitments (Jan. 21, 2016) and Purchasers' Response to Commissioners' Questions (Feb. 19, 2016).

3. With respect to each company, and as long as any material amount of debt exists at Reorganized EFIH or OV1 or any other intervening entity above Oncor AssetCo or Oncor Holdings, the concurrence of a majority of the Disinterested Directors shall be required for Oncor AssetCo or Oncor Holdings to (a) declare any dividend or make any other distribution and in so doing shall act to ensure that sufficient capital is available to fund Oncor AssetCo's and OEDC's operations; (b) enter into any material transaction or series of related transactions with any affiliate; (c) approve the sale or purchase of any assets not in the ordinary course of business; (d) merge, acquire or be sold to any third party; (e) file for bankruptcy, or otherwise avail itself of any federal or state law relating to insolvency, restructuring or reorganization; and (f) enter into any other transaction or series of transactions exceeding ten million dollars which are out of the ordinary course of business.
4. As long as any material amount of debt exists at Reorganized EFIH or OV1, Oncor Holdings, and Oncor AssetCo must have staggered board terms such that no more than one-third of each entity's board of directors may be replaced in any single year.

B. Regulatory Conditions

1. Oncor AssetCo's distributions will be reduced or suspended if either: (1) the combined leverage of OEDC, Oncor AssetCo and Oncor Holdings exceeds the maximum regulatory debt-to-equity ratio established by the Commission or (2) if a majority of the Independent or Disinterested Directors decide that it is in the best interest of Oncor AssetCo to retain such amounts to meet expected future requirements, taking into account contribution commitments from Oncor AssetCo's parent companies.
2. Oncor AssetCo must submit an application for a certificate of convenience and necessity (CCN) as soon as practicable after issuance of the order approving the transaction in this docket. Such CCN must cover the lease of assets to OEDC and its lighting service territory. OEDC's CCN must be amended to recognize that it no longer has authority to provide street lighting service in the territory served by Oncor AssetCo.
3. Oncor AssetCo, Oncor Holdings, OEDC, Shary Holdings, LLC, OV1, OV2, EFIH, and Hunt Utility Services are affiliates under PURA and subject to PURA provisions and rules governing affiliate transactions. The foregoing list shall not be deemed to be exclusive of other entities related to Hunt Consolidated, Inc.
4. The Commission will determine Oncor AssetCo's and OEDC return on equity based on a comparison group of investment grade rated electric utilities regardless of the actual debt ratings of the entities.
5. Except as otherwise provided in the order approving the transaction in this docket, the ring-fenced entities must be independent and operate with other entities on an arm's-length basis to prevent each entity from incurring an obligation of related parties or claims by outside claimants. Protections must include:

- a. Non-consolidation opinions for each of the ring-fenced entities to prevent consolidation into related parties during a bankruptcy or liquidation proceeding;
 - b. A commitment by Oncor AssetCo, OEDC, and Oncor Holdings to not provide any guarantees, act as a co-borrower, pledge any assets or otherwise obligate themselves on the behalf of other affiliates except entities within the ring-fence.
6. Oncor AssetCo and OEDC must maintain a combined debt-to-equity ratio established by the Commission in rate proceedings. The calculation of the ratio shall not include goodwill.
 7. Oncor AssetCo must maintain an investment grade rating. During any time Oncor AssetCo's entity rating is not maintained as investment grade by at least two of Standard & Poor's, Moody's, or Fitch credit rating agencies, Oncor AssetCo shall not make any distributions, dividends or other upstream payments to Reorganized EFIH or OV1. If, at any time from the date of closing the merger through December 31, 2020, Oncor AssetCo's entity rating is not maintained as investment grade by Standard & Poor's, Moody's, or Fitch credit rating agencies, Oncor AssetCo and OEDC shall not use the lower credit rating as a justification for a higher regulatory return on equity.
 8. Each of Oncor AssetCo and OEDC will maintain accurate, appropriate, detailed books, financial records, and accounts separate and distinct from those of any other entity.
 9. None of the fees and expenses or any incremental borrowing costs of OEDC related to any extension of credit from Oncor AssetCo will be borne by OEDC's customers.
 10. Oncor AssetCo's and OEDC's debt will be limited so that the regulatory debt-to-equity ratio for the entities on a combined basis excluding inter-company transactions (as determined by the Commission) is at or below the assumed debt-to-equity ratio established from time to time by the Commission for ratemaking purposes.

C. Reliability Conditions

1. For a period of five years, OEDC's SAIDI and SAIFI benchmarks should be calculated based on the performance standards applicable to Oncor for years 2011, 2013, and 2014. OEDC's SAIDI benchmark should be 96.30667 and its SAIFI benchmark should be 0.94000.

D. Other Conditions

1. All debt instruments issued by OV1 or Reorganized EFIH, including without limitation all purchase agreements, trust indentures, notes, and security and pledge agreements, will contain an express acknowledgement in which the debt holders and their respective successors and assigns acknowledge that neither Oncor AssetCo nor Oncor Holdings will

be liable for any principal, interest, premium or penalty arising out of or relating to such debt. The acknowledgement must state that such debt holders may not exercise any right to foreclose on any equity of Reorganized EFIH or OV1 or otherwise attempt to control Oncor Holdings or Oncor AssetCo, whether by directing the voting of such equity or otherwise exercising any control over any such entities without first obtaining approval for the change of control from the Public Utility Commission of Texas.

2. Oncor AssetCo and Oncor Holdings shall each provide advance notice of its corporate separateness from Oncor Holdings, OEDC, Reorganized EFIH, and OV1 to lenders on all new debt and will obtain an acknowledgement of the separateness and non-petition covenants in all new debt instruments, including any debt instruments used in connection with financing the transaction.
3. OEDC shall provide advance notice of its corporate separateness from Oncor Holdings, Oncor AssetCo, Reorganized EFIH, and OV1 to lenders (other than Oncor AssetCo) on all new debt and will obtain an acknowledgement of the separateness and non-petition covenants in all new debt instruments, including any debt instruments used in connection with financing the transaction.
4. Under the leases between Oncor AssetCo and OEDC, if OEDC identifies a Footprint Project in its CapEx Budget (as those terms are defined in the leases) then OEDC must have the sole discretion to decide what capital budget is required to meet the obligation to fund the Footprint Project.
5. Oncor AssetCo's obligation to fund capital projects shall remain in effect if OEDC is unable to meet lease obligations. OEDC's rental payment obligations shall not impair OEDC's financial stability or obligations under PURA.
6. Neither Oncor AssetCo nor OEDC shall own, operate or construct capital assets outside of ERCOT without the prior approval of the Commission. Oncor Holdings shall not own, operate or construct, or hold any interest in any entity that owns, operates or constructs any capital assets outside of ERCOT without the prior approval of the Commission.
7. Oncor AssetCo and OEDC shall maintain headquarters and management in Dallas County, Texas or any of the counties adjacent thereto.
8. The organizational documents of OV1, Oncor AssetCo, Reorganized EFIH, Oncor Holdings, and OEDC and any modifications to those documents must be consistent with any order approving the transaction.
9. Purchasers shall commit that ratepayers will be held harmless for any costs related to or caused by the transaction, including any incremental costs that may or will be incurred as the result of the transaction or the transaction's structure after the transaction is

consummated. Such costs shall not be included in rate base, cost of capital or operating expenses in future ratemaking proceedings.

10. Purchasers shall commit that ratepayers will be held harmless for any incremental Texas Margin Tax because of the restructuring of Oncor into two separate utilities. Such costs shall not be included in rate base, cost of capital, or operating expenses in future ratemaking proceedings.
11. Purchasers shall commit that ratepayers will be held harmless for any incremental costs related to the Oncor AssetCo and OEDC separate lines of credit and for the costs of an OEDC contingency reserve. Such costs shall not be included in rate base, cost of capital or operating expenses in future ratemaking proceedings.
12. Purchasers shall commit that ratepayers will be held harmless for any costs related to the terms of the transfer of the CCNs and other assets by Oncor AssetCo to OEDC by removing all effects of the book gain and tax gains from the revenue requirement, including any effects of a stepped-up basis on OEDC's books and the effects of the Accumulated Deferred Income Taxes (ADIT) that was eliminated on Oncor AssetCo's books. Such costs shall not be included in rate base, cost of capital, or operating expenses in future ratemaking proceedings. Further, the lost ADIT shall be included as a subtraction from rate base in future ratemaking proceedings.
13. Purchasers shall commit that ratepayers will be held harmless for any incremental costs related to the separate ownership and management of Oncor AssetCo and OEDC, including, but not limited to, the costs of Hunt Utility Services reflected in any agreements between Oncor AssetCo, Oncor Holdings and OEDC. Such costs shall not be included in rate base, cost of capital, or operating expenses in future ratemaking proceedings. In addition, the Oncor AssetCo and OEDC shall bear the burden of proof to show that no costs incurred because of the transaction will be included in the revenue requirement recovered through rates.
14. Purchasers shall commit that ratepayers will be held harmless for any costs of goodwill. Such costs shall not be included in rate base, cost of capital, or operating expenses in future ratemaking proceedings.
15. Until the transaction closes, Applicants must agree to request approval from the Commission of any modifications or additions to the approved commitments in this case by other regulatory bodies.
16. Applicants must agree to request approval from the Commission of any modification to the transaction resulting from the private letter ruling obtained from the Internal Revenue Service (IRS) regarding REIT treatment. In addition, Applicants must notify the Commission if the IRS declines to issue a private letter ruling.

17. The terms of all leases after the initial lease may not exceed three years in order to provide more flexibility in adjusting the amount of rent payments than would be available in longer leases and minimize liquidity risks related to timing issues.
18. Rental payments between OEDC and OncorAssetCo must be omitted from the determination of cash working capital in future rate cases.
19. Oncor AssetCo and OEDC must fund a study in consultation with Commission Staff to determine any additional net benefits to ratepayers or operational synergies that may be derived from the relationship that will exist between the sister companies or the possible future combination of Oncor AssetCo and OEDC with Sharyland Distribution & Transmission Services, LP and Sharyland Utilities, LP.

I look forward to discussing these issues at the open meeting.