

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:

ENERGY FUTURE HOLDINGS CORP,
et al.,

Debtors.

NEXTERA ENERGY, INC.,

Appellant,

v.

C. A. No. 17-1546-RGA

ENERGY FUTURE HOLDINGS CORP.,
ELLIOTT ASSOCIATES, L.P., et al.,

Bankruptcy Case No. 14-10979
ADV No. 17-50942 (CSS)
BAP No. 17-41

Appellees.

RECOMMENDATION

At Wilmington this **20th** day of **November, 2017**.

WHEREAS, pursuant to paragraph 2(a) of the Procedures to Govern
Mediation of Appeals from the United States Bankruptcy Court for this District dated
September 11, 2012, the court conducted an initial review, which included information
from counsel, to determine the appropriateness of mediation in this matter;

WHEREAS, the present appeal involves a decision rendered on a motion
for reconsideration issued on October 18, 2017. The appeal was filed in this court on
October 31, 2017.

WHEREAS, consistent with the Oral Order entered in this court on
November 6, 2017, counsel advised in a joint letter dated November 17, 2017 of the

following. On November 10, 2017, the parties jointly certified to the Bankruptcy Court that a direct appeal of the Reconsideration Order to the Third Circuit Court of Appeals was appropriate. The Bankruptcy Court certified the present appeal for direct consideration by the Third Circuit on November 14, 2017. This certification was transmitted to the Third Circuit on the same date. Appellant will be filing its petition with the Third Circuit requesting that court to authorize a direct appeal and order expedited briefing on the appeal.

The parties further advised should the Third Circuit decline to authorize a direct appeal, that they intend to request an expedited appeal and propose a similar briefing schedule in this court that was proposed to the Third Circuit

THEREFORE, IT IS RECOMMENDED that, pursuant to paragraph 2(a) of the Procedures to Govern Mediation of Appeals from the United States Bankruptcy Court, that this matter be withdrawn from the mandatory referral for mediation for the reasons noted herein. It is not expected objections will be filed to this Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), FED. R. CIV. P. 72(a) and D. DEL. LR 72.1 in light of the parties' joint request to have this matter removed from mandatory mediation.

Local counsel are obligated to inform out-of-state counsel of this Order.

/s/ Mary Pat Thyng
Chief U.S. Magistrate Judge Mary Pat Thyng