

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MARYLAND
Greenbelt Division**

In re:	§	
	§	
NATIONAL ENERGY & GAS TRANSMISSION, <i>et al.</i>,	§	Case No. 03-30459 (PJM) (Jointly Administered)
	§	
Debtors.	§	Chapter 11
	§	

**OBJECTION OF NEGT ENERGY TRADING – POWER, L.P. TO MOTION OF
NATIONAL ENERGY & GAS TRANSMISSION, INC. TO ENFORCE SUBROGATION
RIGHTS AGAINST NEGT ENERGY TRADING POWER, L.P. ON ACCOUNT OF
GUARANTEE PAYMENT TO LIBERTY ELECTRIC POWER LLC**

NEGT Energy Trading – Power, L.P. (“ET Power”) files this objection to the Motion of National Energy & Gas Transmission, Inc. (“NEGT”) to Enforce Subrogation Rights against NEGT Energy Trading Power, L.P. on Account of Guarantee Payment to Liberty Electric Power LLC (“Liberty”) (the “Motion”) and in support thereof, states as follows:

Preliminary Statement

1. NEGT is prohibited by waivers contained in two guaranties issued to Liberty from asserting the purported subrogation rights that are the subject of the Motion. NEGT has contractually waived the benefit of the guaranty issued to Liberty by Gas Transmission Northwest Corporation (“GTN”). In addition, NEGT and GTN are contractually precluded from stepping into the shoes of Liberty because Liberty’s claims have not been paid in full. Even if NEGT’s claims were not barred by the contractual waivers, NEGT would not be able to establish the requirements for subrogation. Fundamentally, a party is subrogated to a creditor’s claim when the party (i) was liable with the debtor on the debt, and (ii) satisfies that debt in its entirety. NEGT’s Motion fails to establish those widely accepted requirements for subrogation, in that no entity that was liable on the debt to Liberty satisfied any of that debt. NEGT cannot establish

either (1) that NEGТ or GTN paid the claim asserted by Liberty against GTN, or (2) that NEGТ was liable with GTN on that claim. Because NEGТ has waived the rights it purports to assert and has failed to demonstrate the necessary elements of a claim for subrogation, the Motion is without merit and must be denied.

Factual Background

2. On July 8, 2003 (the “Petition Date”), NEGТ, ET Power and several of their affiliates (collectively, the “Debtors”) filed voluntary petitions for protection under chapter 11 of the Bankruptcy Code. By order of this Court, the Debtors’ bankruptcy cases are jointly administered in the above-captioned proceeding.

3. ET Power and Liberty were parties to that certain Tolling Agreement (the “Tolling Agreement”) dated April 14, 2000. Both NEGТ and GTN, NEGТ’s non-debtor affiliate, furnished guaranties of ET Power’s payment obligations to Liberty under the Tolling Agreement. As of the Petition Date, the aggregate liability of NEGТ and GTN under each of the guaranties was capped at the amount of \$140 million.

4. Under the terms of the guaranty furnished by NEGТ, a copy of which is attached as Exhibit A (the “NEGТ Guaranty”), NEGТ agreed, among other things, to waive the benefit of the guaranty furnished to Liberty by GTN, a copy of which is attached as Exhibit B (the “GTN Guaranty”). Section 4 of the NEGТ Guaranty provides, in pertinent part, that, NEGТ “... unconditionally agrees that it hereby waives (i) any and all rights ... to have the benefit of any ... other guaranty ... now or hereafter held by [Liberty] for the obligations guaranteed by [NEGТ] hereunder....”

5. NEGТ and GTN also agreed, under the terms of section 9 of their respective guarantees that they each waived “... any rights of subrogation or reimbursement from [ET

Power] ... with respect to the payment of any Obligation ... to [Liberty] ... until the time that all Obligations^[1] owing to [Liberty] are fully and indefeasibly paid to [Liberty].”

6. Liberty, the Debtors and GTN engaged in protracted litigation concerning ET Power’s rejection of the Tolling Agreement and Liberty’s resulting claims for damages arising from the breach. After an arbitration proceeding and related litigation before this Court, Liberty obtained a judgment against ET Power in the amount of \$162,725,436.59 (the “Judgment Amount”).

7. On May 13, 2004, before the conclusion of the Liberty litigation, the Court entered its Order Pursuant to Sections 105(a), 363 and 1146(c) of the Bankruptcy Code and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure: (I) Authorizing and Approving Stock Purchase Agreement and Related Agreements; and (II) Authorizing Consummation of the Transactions Contemplated Therein (the “Sale Order”). Pursuant to the Sale Order, NEGT, GTN and GTN Holdings LLC (collectively, the “Seller Parties”) consummated the sale of GTN to TransCanada American Investments Ltd. (“TransCanada”).

8. As part of the sale of GTN, the Seller Parties, the Buyer and GTN entered into a Post-Closing Escrow Agreement (the “Escrow Agreement”) dated November 1, 2004, with JPMorgan Chase Bank as escrow agent (the “Escrow Agent”). A copy of the Escrow Agreement is attached as Exhibit C.

¹ “Obligations” is defined in both guaranties to mean “... all amounts payable by [ET Power] under the [Tolling] Agreement ..., including without limitation, Tolling Fees, Termination Payment, liquidated damages, indemnity obligations, and damage awards arising by reason of [ET Power’s] breach of its performance obligations under the [Tolling] Agreement, or otherwise....” NEGT Guaranty, § 1; GTN Guaranty, § 1.

9. Pursuant to the Escrow Agreement, TransCanada transferred \$241 million (the “Escrow Amount”) to the Escrow Agreement on November 1, 2004. *See* Escrow Agreement, § 1(a).

10. Subsequently, the Escrow Agent paid Liberty \$140 million (the “Escrow Payment”), pursuant to the terms of the Escrow Agreement, leaving \$22,725,436.59, the difference between the Escrow Payment and the Judgment Amount, unpaid.

11. On April 18, 2008, the Court entered an Order Granting Request of Liberty Electric Power, L.L.C. for Pro Rata Distributions of up to \$5,428,046 on Its Allowed Claim (the “Distribution Order”). In the Distribution Order, the Court noted that the amount of Liberty’s allowed claim remained \$145,428,046. In light of the Escrow Payment, however, the Court ordered ET Power to make *pro rata* distributions to Liberty up to the aggregate amount of \$5,428,046.

12. On January 6, 2009, the Court entered an order approving the Stipulation Approving Settlement of Liberty Electric Power, LLC’s Allowed Claim (the “Stipulation”). In the Stipulation, the Debtors and Liberty agreed that ET Power would pay Liberty \$5,156,643.70 (the “Settlement Payment”) to settle Liberty’s \$5,428,045.82 claim.²

Legal Argument

13. When ET Power made its distribution to Liberty of \$5,156,643.70, ET Power’s obligation to pay the balance of the Judgment Amount was discharged and the aggregate obligation of NEGТ and GTN under their respective guaranties was capped at \$140 million.

² The portion of the Judgment Amount that reflected interest accrued after the date of the filing of ET Power’s bankruptcy petition was ultimately disallowed as a claim against ET Power’s estate in bankruptcy. Thus, the interest obligation has not been satisfied, but Liberty cannot collect it from the ET Power estate. Because of the Stipulation, the maximum claim amount to which NEGТ could be subrogated (if it were able to qualify for subrogation rights) is \$5,156,643.70.

Thus, it is clear beyond dispute that ET Power's obligations to Liberty have not been, and never will be, paid in full.

14. The party seeking subrogation "bears the burden of proof on all issues regarding subrogation." *Acordia of W. Va., Inc. v. Scharffenberger (In re Allegheny Health, Edu. & Research Found.)*, 322 B.R. 737, 740 (Bankr. W.D. Pa. 2005) (internal citations omitted). Moreover, the standard imposed on the moving party is high. *See Universal Title Ins. Co. v. United States*, 942 F.2d 1311, 1315 (8th Cir. 1991) (stating "equity of the party seeking subrogation must be clear and substantial, and superior to other claimants").

15. NEGT has not met its burden of proof in the Motion, and the Court should deny the relief requested. First, NEGT explicitly waived its right to assert the subrogation claim advanced in the Motion. Second, NEGT cannot establish the necessary elements of its claim that it should be subrogated to Liberty's claim against ET Power.

A. NEGT Contractually Waived Any Right It May Otherwise Have Had to a Subrogation Claim

1. *NEGT Waived the Right to Assert a Claim Based on a Payment Made Under the GTN Guaranty.*

16. In the Motion, NEGT contends that it is entitled to assert subrogation rights transferred to it by GTN and/or TransCanada. A number of defects with that argument (generally, that neither GTN nor TransCanada had any subrogation rights to transfer) are detailed below. More important, however, is the fact that even if GTN or TransCanada had assigned to NEGT an enforceable subrogation claim, NEGT explicitly waived its right to assert such a claim against ET Power.

17. The NEGT Guaranty states: "[NEGT] unconditionally guarantees that it hereby waives any and all rights ... to have the benefit of any ... other guaranty ... now or hereafter

held by [Liberty] for the obligations guaranteed by [NEGT] hereunder, or to enforce any remedy which [Liberty] now has or hereafter may have against [ET Power].” NEGТ Guaranty, § 4.

18. NEGТ’s argument in the Motion is based on NEGТ’s assertion of subrogation rights under the GTN Guaranty. The above-quoted language in the NEGТ Guaranty makes it clear that NEGТ may not claim the benefit of subrogation rights arising as a result of payments made pursuant to the GTN Guaranty.

19. Under the NEGТ Guaranty, NEGТ is entitled to assert subrogation rights on its own behalf.³ See NEGТ Guaranty, § 9. However, those rights arise only upon “payment of any Obligation **by [NEGT]** to [Liberty].” *Id.* (emphasis added).

20. In other words, Section 9 of the NEGТ Guaranty specifically addresses the circumstances under which NEGТ may assert subrogation rights – when NEGТ is the party that pays ET Power’s obligations to Liberty. Section 4 of the NEGТ Guaranty makes it clear, however, that NEGТ may not assert subrogation rights that arise from another guaranty, such as the GTN Guaranty. Even if NEGТ could establish that GTN paid Liberty under the terms of the GTN Guaranty (and it cannot), NEGТ has waived the right to take assignment of that claim and assert it against ET Power.

21. NEGТ expends considerable effort in attempting to fashion an argument why it should be allowed to assert subrogation rights assigned to it by GTN and/or TransCanada. All of those contentions are rendered moot, however, by NEGТ’s execution of a contract through which it waived any right it might otherwise have to assert such a claim.

³ NEGТ has, however, waived its subrogation rights until all of ET Power’s obligations to Liberty under the Tolling Agreement have been paid in full. See ¶ 22 through ¶ 24 below.

2. *NEGT and GTN Waived Any Right of Subrogation or Reimbursement From ET Power Until Liberty Has Been Paid In Full*

22. Under the terms of Section 9 of their respective guaranties, NEGТ and GTN each waived “... any right of subrogation or reimbursement from [ET Power] ... with respect to the payment of any Obligation ... to [Liberty] ... until the time that all Obligations owing to [Liberty] are fully and indefeasibly paid to [Liberty].” NEGТ Guaranty, § 9; GTN Guaranty, § 9 (emphasis added). Thus, the claims NEGТ asserts in the Motion are indisputably barred unless ET Power’s obligations to Liberty under the Tolling Agreement have been “fully and indefeasibly” paid.

23. ET Power’s obligations to Liberty were the subject of protracted litigation that culminated in the entry of a judgment against ET Power in the amount of \$162,725,436.59. A portion of the judgment was paid with funds placed in escrow by TransCanada, and Liberty has received a distribution from the ET Power bankruptcy estate for \$5,156,643.70. Nevertheless, a substantial portion of the Judgment Amount, more than \$17 million, has not been, and will not be, paid.

24. NEGТ’s explicit contractual waiver of “any right of subrogation or reimbursement” from ET Power under the Guaranty until Liberty has been fully paid presents an indisputable bar to the claims asserted by NEGТ in the Motion.

B. NEGT Cannot Meet the Statutory Requirements for Subrogation

25. In the Motion, apparently attempting to avoid the provisions of the two guaranties, NEGТ specifically elects to pursue subrogation under section 509(a) of the Bankruptcy Code. That statute states, in pertinent part: “an entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment.” 11 U.S.C. § 509(a).

Looking simply at the statutory language, there are two prerequisites to subrogation: (i) that the entity seeking subrogation “is liable with the debtor on or ... has secured the claim of [] a creditor against the debtor,” and (ii) that it “pays such claim.” *Id.*

26. In the Motion, NEGТ asserts that it satisfies both criteria (i) because GTN “was liable with ET Power for a substantial portion of Liberty’s Allowed Claim,” and “... the \$140,000,000 was paid pursuant to GTN’s guarantee of ET Power’s obligations to Liberty...” Motion, ¶ 22 (emphasis added). The language is curious. NEGТ refers to the GTN Guaranty but NEGТ does not claim, and could not claim, that GTN paid Liberty, even though the payment was made to discharge GTN’s obligations under the GTN Guaranty. Instead, NEGТ appears to contend that NEGТ should be viewed as having paid the claim asserted against GTN because the money that went to Liberty would otherwise eventually have flowed to NEGТ as part of the proceeds of the GTN sale.⁴ In fact, it was TransCanada, not NEGТ, that paid the claim,⁵ but even if NEGТ were viewed as having paid the claim, that would not result in NEGТ being subrogated to Liberty’s claim.

27. The language of section 509(a) is unambiguous in its requirement that the party asserting subrogation rights must be a party that was liable on the relevant claim. It is undisputed that NEGТ was not liable on the claim that was satisfied with the Escrow Payment, *i.e.*, the claim under the GTN Guaranty. “The plain meaning of legislation should be conclusive, except in ‘rare cases in which the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.’” *United States v. Ron Pair Enters., Inc.*,

⁴ As it happens, the premise for NEGТ’s apparent argument is missing because any funds remaining in the escrow would have flowed to GTN Holdings LLC, not to NEGТ. Escrow Agreement, § 1(b).

⁵ As discussed below, the Escrow Agreement itself explicitly forecloses NEGТ’s argument. “In no event shall any portion of the Escrow Amount be deemed to be property of [NEGТ]’s or its subsidiaries bankruptcy estates unless and until it is released to [GTN Holdings LLC] in accordance with the terms of this Agreement.” *Id.*; ¶ 20, *infra*.

489 U.S. 235, 242 (1989) (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982) (internal punctuation omitted)). *See also Williford v. Armstrong World Indus., Inc.*, 715 F.2d 124, 127 (4th Cir. 1983) (concluding clear and unambiguous statute “is not subject to judicial interference for any purpose”). The literal application of the statutory language produces a perfectly logical result that is well within the intentions of the drafters. Accordingly, this is not a “rare case” that calls for such an exception. The fact that NEGТ was not liable on the claim prevents NEGТ from being subrogated under section 509(a).

28. If, however, NEGТ claims that it is asserting a subrogation claim it received via assignment from GTN, that claim would also fail because GTN did not pay the claim for which GTN was liable. Consistent with the unambiguous statutory language, case law supports the proposition that the party seeking subrogation must have been both a co-debtor on the relevant claim and the party that paid the relevant claim. *See In re Celotex Corp.*, 372 F.3d 1318, 1321 (11th Cir. 2006) (stating “[e]ligible parties are subrogated to the extent *they* pay the claim”) (emphasis added); *In re Hamada*, 291 F.3d 645, 650 (9th Cir. 2002) (statute “was designed to describe rights available to a limited class of creditors, namely true *co-debtors who have actually paid* a debtor’s obligations”) (emphasis added); *In re Slamans*, 69 F.3d 468, 473 (10th Cir. 1995); *In re Flamingo 55 Inc.*, 2006 WL 2432764, *7 (D. Nev. Aug. 21, 2006) (“a co-debtor’s right of subrogation arises only when and to the extent that the co-debtor pays the assured creditor”); *In re Topgallant Lines, Inc.*, 154 B.R. 368, 381 (S.D. Ga. 1993) (“[t]he party paying the debt may exercise all rights and remedies which the creditor possessed against the party that should have paid the debt”). *See also* H.R. Rep. No. 95-595, 95th Cong., 1st Sess. (1977), p. 358 U.S.C.C.A.N. at 5963, 6314 (“The right that applies in a particular situation will depend on ... how the payment was made *by the codebtor* to the creditor”) (emphasis added). Liberty was paid

by TransCanada as part of a transaction in which TransCanada acquired ownership of GTN from GTN Holdings LLC. GTN did not pay the claim and did not, therefore, possess a right of subrogation it could assign to NEGТ.

29. NEGТ asserts only that “\$140,000,000 was paid *pursuant* to GTN’s guarantee.” Motion, ¶ 23 (emphasis added). That deliberately ambiguous assertion is insufficient to meet the clear requirements for subrogation, under either the unambiguous statutory language or the corresponding case law. To qualify for subrogation rights, NEGТ must establish that either (i) NEGТ was liable on the claim and NEGТ paid the claim, or (ii) some other entity that was liable to Liberty paid the claim and properly assigned its rights to NEGТ. NEGТ cannot meet that burden of proof.⁶

30. As it happens, it was TransCanada, not NEGТ or GTN, that paid the claim. As detailed above, GTN had a \$140 million guaranty obligation to Liberty. TransCanada knew that GTN had the guaranty obligation to Liberty when TransCanada agreed to buy GTN. TransCanada, not NEGТ (which was not obligated on the GTN Guaranty), wanted to ensure that GTN’s obligation to Liberty would be retired. Thus, it was TransCanada’s money that went to Liberty, and it was therefore TransCanada (via the Escrow Agent), not NEGТ, that made the payment.

31. The Escrow Agreement makes very clear that the funds in escrow that were ultimately paid to Liberty never belonged to NEGТ. The Escrow Agreement unequivocally states: “In no event shall any portion of the Escrow Amount be deemed to be property of [NEGТ]’s or its subsidiaries bankruptcy estates unless and until it is released to [GTN Holdings

⁶ Moreover, as demonstrated above, when NEGТ signed the NEGТ Guaranty, it waived whatever right it might otherwise have had to take assignment of another guarantor’s claim and assert it against ET Power.

LLC] in accordance with the terms of this Agreement.” Escrow Agreement, § 1(b). Because the funds were never so released, they never belonged to NEGТ.

32. The entity that actually paid the claim was the Escrow Agent, with funds supplied by TransCanada – not NEGТ, and not GTN. Even if NEGТ had paid the claim, it would not be subrogated because NEGТ was not liable on the claim. Apparently recognizing that dilemma, NEGТ asserts that GTN assigned its subrogation rights to NEGТ, but that assertion has no legal relevance because GTN had no such subrogation rights – GTN did not pay the claim.

33. NEGТ also asserts that TransCanada assigned its subrogation rights to NEGТ, but that assertion also has no legal relevance because TransCanada was never liable with ET Power on the claim. Like GTN, TransCanada never had any subrogation rights that it could assign. In essence, prior to assignment, GTN could meet half of the requirements for subrogation and TransCanada could meet the other half. The Motion attempts to blend GTN and TransCanada together to create an amalgamated fiction that would qualify as a subrogee that could assign its rights to NEGТ.⁷

34. NEGТ seems to suggest that it should be treated as having made the payment to Liberty because it was entitled to any funds remaining in the escrow account, but it had no ownership interest in the money paid to Liberty.⁸ Courts agree that legal title to property in escrow does not pass until all terms of the underlying escrow agreement are satisfied. *See, e.g., Lowry v. Comm’r of Internal Revenue*, 171 Fed. Appx. 6, 7 (9th Cir. 2006); *Wilson v. United Sav. of Texas*, 792 F.2d 502, 504 (5th Cir. 1986); *Perry v. Stewart Title Co.*, 756 F.2d 1197, 1209 (5th Cir. 1985); *Ocean Shore Ry. Co. v. United States*, 489 F.2d 532, 534 (9th Cir. 1973); *In re*

⁷ Once again, as noted above, NEGТ waived the right to assert the mythical TransCanada GTN claim.

⁸ In fact, as is discussed below, the funds remaining in the escrow were to be released to GTN Holdings LLC, not to NEGТ.

Jazzland, Inc., 322 B.R. 610, 617 (Bankr. E.D. La. 2005) (quoting Thomas M. Byrne, *Escrows and Bankruptcy*, 48 Bus. Law. 716, 762 (Feb. 1993)). *See also* Escrow Agreement, § 1(b).

35. As noted above, NEGT furnished its own guaranty to Liberty in connection with the Tolling Agreement. Implicitly acknowledging that it did not pay Liberty, NEGT pursues subrogation rights only with respect to the GTN Guaranty and not with respect to the NEGT Guaranty. NEGT and GTN could each accurately claim that it was a surety with respect to Liberty's claim against ET Power. Neither NEGT nor GTN, however, can accurately contend that it was the entity that paid Liberty to extinguish that claim. Therefore, regardless of whether NEGT were to make a direct argument for subrogation under the NEGT Guaranty or an indirect argument for subrogation under the assignment of rights in connection with the GTN Guaranty, the result would be the same: NEGT does not qualify for subrogation rights under section 509(a) because the guarantor in either case was not the entity that paid Liberty.

C. Equitable Subrogation Is Also Inappropriate

36. Apparently aware of the lack of merit in its purported claim under Bankruptcy Code section 509(a), NEGT advances the argument that it is entitled to equitable subrogation. That argument also fails, not only because NEGT has waived the right to assert it, but also for the same reason that NEGT's argument under section 509(a) fails. Indeed, ET Power submits that the concept of equitable subrogation is codified in section 509(a), and that NEGT's alternative argument is therefore redundant.⁹

⁹ *See, e.g., Chateaugay*, 89 F.3d at 947; *In re Robbins Int'l, Inc.*, 275 B.R. 456, 470 (S.D.N.Y. 2002). ET Power recognizes, however, that this Court may be guided by the contrary ruling from the U.S. District Court for the District of Maryland. *See Wetzler v. Cantor*, 202 B.R. 573 (D. Md. 1996). ET Power submits that to the extent *Wetzler* differs from *Chateaugay* and *Robbins*, it was wrongly decided.

1. *NEGT Waived the Right to Assert a Claim for Equitable Subrogation*

37. As discussed above, when NEGТ signed the NEGТ Guaranty, it contractually waived the right to assert subrogated claims or claims for reimbursement against ET Power until Liberty has been paid in full. Liberty has not been, and will not be, paid in full. As a result, NEGТ's claim for equitable subrogation of Liberty's claim against ET Power is contractually barred.

2. *NEGT Cannot Qualify for Equitable Subrogation Because NEGТ Did Not Pay Liberty's Claim*

38. Just as section 509(a) requires that the party seeking subrogation be the party that paid the underlying claim, so too does the jurisprudence concerning equitable subrogation. Throughout the case law, a similar five-part test is repeated as the standard for application for equitable subrogation: "(1) the claimant must have made payment to protect his own interests; (2) the claimant must not have been a volunteer; (3) the payment must satisfy a debt for which the claimant was not primarily liable; (4) the entire debt must have been paid; and (5) subrogation must not cause injustice to the rights of others." *Mar-Kay Plastics, Inc. v. Reid Plastics, Inc. (In re Mar-Kay Plastics, Inc.)*, 234 B.R. 473, 483 (Bankr. W.D. Mo. 1999) (citing *In re Hagen*, 147 B.R. 166, 168 (Bankr. N.D. Iowa 1992)).

39. In light of the standard articulated in *Mar-Kay*, NEGТ cannot meet its burden of proof with regard to equitable subrogation. Neither NEGТ nor GTN was the party that made the payment. Accordingly, NEGТ cannot satisfy the first prong of the *Mar-Kay* test.

40. Substantially identical requirements are commonplace throughout the relevant case law. See *Harleysville Worcester Mut. Ins. Co. v. Bank of Am., N.A.*, 370 B.R. 517, 527 (S.D.N.Y. 2007) ("one compelled to pay a debt which ought to have been paid by another is entitled to exercise all the remedies which the creditor possessed against that other") (internal

quotations omitted); *Bartholomew v. General Elec. Capital Corp. (In re Tricord Sys., Inc.)*, 2005 WL 901531, * 4 (D. Minn. Apr. 15, 2005) (“party claiming equitable subrogation must establish ... the payment was made by the subrogee”); *Berliner Handels-Und Frank-Furter Bank v. East Texas Steel Facilities, Inc.*, 2000 WL 340281, *3 (N.D. Tex. Mar. 31, 2000) (“the claimant must have made payment”); *Allegheny Health*, 322 B.R. at 740; *M&T Elec. Contractors, Inc. v. Capital Lighting & Supply, Inc. (In re M&T Elec. Contractors, Inc.)*, 267 B.R. 434, 457 (Bankr. D.D.C. 2001); *Mar-Kay Plastics*, 234 B.R. at 483 (“right of subrogation accrues to a person who has paid the debt or obligation for which another is primarily responsible”).

41. This Court has also articulated a similar rule. See *In re Wetzler*, 192 B.R. 109, 114 (Bankr. D. Md. 1996). In *Wetzler*, the Court quoted the Restatement to state: “Where the duty of the principal to the creditor is fully satisfied the surety *to the extent that he has contributed to this satisfaction* is subrogated.” *Id.* at 114 (quoting Restatement of Security § 141 (1941 & Supp. 1995)) (emphasis added). To use the Restatement’s language, neither NEGТ nor GTN made any contribution to the satisfaction of Liberty’s claim. Accordingly, equitable subrogation is not available to NEGТ.

42. In the Motion, NEGТ frames its equitable subrogation argument in terms of New York law. New York law also requires the party seeking subrogation to have been the payor of the relevant claim. See, e.g., *Salzman, supra*. “Where a judgment has been entered against the surety and the principal, the surety can be subrogated to the rights of the judgment creditor only after the surety has satisfied the judgment.” 63 N.Y. Jr. 2d, *Guaranty and Suretyship*, § 426. See also *Chemical Bank v. Meltzer*, 93 N.Y. 2d 296, 304 (N.Y. 1999); *Citizens’ Trust Co. of Utica v. R. Prescott & Son*, 227 N.Y.S. 514, 519 (N.Y. Sup. Ct. 1927).

43. Even if the Court were to view the escrow agreement as effecting some form of payment by a party other than TransCanada or the Escrow Agent (which ET Power disputes), the terms of the Escrow Agreement make clear that GTN Holdings LLC (“Holdings”) is the party to whom the escrowed funds would have flowed had the Escrow Agent not paid Liberty.¹⁰ Even if the funds were ever so released to Holdings, Holdings was not co-liable with ET Power to Liberty. Only NEGT and GTN were co-liable, but as discussed, they never made any payment to Liberty.¹¹ The undisputed facts will simply not support NEGT’s apparent argument that NEGT or GTN should be treated as though they paid Liberty.

2. *If the Court Finds that NEGT Made the Payment, It Did So As a Volunteer and Not to Protect Its Own Interests*

44. As quoted above, the *Mar-Kay Plastics* test requires that “the claimant must have made payment to protect his own interests [and] the claimant must not have been a volunteer.” Even if NEGT were the party that made the payment to Liberty, then it would nevertheless be unable to satisfy those two additional requirements.

45. The entity that actually paid Liberty was the Escrow Agent. Moreover, the underlying facts show that the entity actually responsible for the Escrow Payment was TransCanada, not NEGT. If, however, the Court were to characterize the payment as having been made by the seller of GTN, that entity under the Escrow Agreement was Holdings. Finally, if that payment could somehow be attributed to NEGT, despite the fact that funds remaining in

¹⁰ “In no event shall any portion of the Escrow Amount be deemed to be property of [NEGT]’s or its subsidiaries bankruptcy estates unless and until it is released to [GTN Holdings LLC] in accordance with the terms of this Agreement.” Escrow Agreement, § 1(b).

¹¹ Similarly, the assignee of the purported assignment of subrogation rights was Holdings. See Escrow Agreement, § 7. Again, there is no identity between the party holding the alleged subrogation rights (Holdings) and the party that had the payment obligations (either NEGT or GTN).

the escrow would have flowed to Holdings and not to NEGТ, then the facts are clear that NEGТ was no more than a volunteer in making such a “payment.”

46. The burden rests on NEGТ to establish that it was acting to protect its own interests and not acting as a volunteer. NEGТ has made no showing with respect to either criterion.

47. In fact, NEGТ cannot show that it was “compelled” to agree that the funds would be paid from the escrow. See *Harleyville Worcester*, 370 B.R. at 527. There is no reason to think that the transaction with TransCanada was not freely negotiated in all its terms. To the extent that the Court accepts NEGТ’s apparent, but erroneous, assertion that it funded the escrow, it did so as a volunteer. Accordingly, NEGТ cannot meet the requirements of the *Mar-Kay Plastics* test.

Summary: NEGТ Has No Enforceable Subrogation Claim to Assert

48. Taken as a whole, the facts leave NEGТ with no viable subrogation claim against ET Power. If NEGТ wishes to proceed under the assignment of TransCanada’s purported rights, it cannot assert any claim against ET Power because TransCanada was not a co-debtor on ET Power’s obligation to Liberty. If NEGТ wishes to proceed under the assignment of GTN’s rights, it cannot assert any claim against ET Power because it has waived its rights, and because GTN never paid any amount to Liberty. NEGТ does not suggest that it proceeds under the NEGТ Guaranty, but if it did so, then it could not assert any claim against ET Power because, under the explicit language of the NEGТ Guaranty, NEGТ waived its rights until the Judgment Amount is paid in full, and because NEGТ never paid any amount to Liberty.

49. Instead, the Motion attempts to cobble together the partial rights held by GTN, TransCanada, Holdings and NEGТ, in hopes that the aggregate of those rights may result in a

proper subrogation claim for NEGТ. Not only does such an effort violate the requirements of section 509(a) and the case law, but it is also prohibited under the express language of the NEGТ Guaranty.

WHEREFORE, ET Power respectfully asks this Court to (i) deny the Motion, and (ii) grant ET Power such further relief as the Court deems just.

Dated: Washington, DC
April 20, 2009

SUTHERLAND ASBILL & BRENNAN LLP

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Paul B. Turner (*pro hac vice*)
909 Fannin Street, Suite 2200
Houston, Texas 77010
Tel: (713) 470-6100
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COUNSEL FOR NEGТ ENERGY
TRADING – POWER, L.P.

Certificate of Service

I hereby certify that the foregoing *Objection to the Motion of National Energy & Gas Transmission, Inc. to Enforce Subrogation Rights against NEGT Energy Trading Power, L.P. on Account of Guarantee Payment to Liberty Electric Power LLC* was duly served upon the parties on the Official Service List in accordance with the Local and Federal Rules of Bankruptcy Procedure, this 20th day of April, 2009.

/s/ Mark Sherrill
Mark D. Sherrill

GUARANTEE

GUARANTEE dated as of February 6, 2001 by PG&E National Energy Group, Inc., a Delaware corporation (the "NEG Guarantor"), in favor of Liberty Electric Power, LLC, a Delaware limited liability company (hereafter the "Guaranteed Party").

WHEREAS, Guaranteed Party and PG&E Energy Trading - Power, L.P., a Delaware limited partnership and a wholly-owned indirect subsidiary of the NEG Guarantor ("Subsidiary"), have entered into that certain Tolling Agreement dated April 14, 2000 (as amended, the "Agreement");

WHEREAS, pursuant to the terms of the Agreement, PG&E Corporation (the "Original Guarantor"), a parent company of the Subsidiary, provided a guarantee (the "Original Guarantee") for the benefit of the Guaranteed Party on April 24, 2000;

WHEREAS, Subsidiary desires (i) to provide a guarantee of the NEG Guarantor and a guarantee of PG&E Gas Transmission, Northwest Corporation (the "GTN Guarantor") for the benefit of the Guaranteed Party and (ii) to obtain the release and discharge of the Original Guarantor from the Original Guarantee;

WHEREAS, concurrently with the execution and delivery of this Guarantee, (i) the GTN Guarantor and the Guaranteed Party are executing and delivering a guarantee of the GTN Guarantor for the benefit of the Guaranteed Party (the "GTN Guarantee") and (ii) the Guaranteed Party is releasing and discharging the Original Guarantor from any and all liabilities and obligations under the Original Guarantee.

NOW, THEREFORE, NEG Guarantor agrees as follows:

1. Guarantee. Subject to the terms herein, the NEG Guarantor absolutely, unconditionally and irrevocably guarantees to the Guaranteed Party, its successors and assigns, as primary obligor and not merely as surety, the prompt payment when due, in accordance with the terms of the Agreement, of all amounts payable by Subsidiary under the Agreement and any amendments thereto, including without limitation, Tolling Fees, Termination Payment, liquidated damages, indemnity obligations, and damage awards arising by reason of Subsidiary's breach of its performance obligations under the Agreement or otherwise (collectively, the "Obligations"). The obligation to make payments under this Guarantee is a guarantee of payment and not of collection. If Subsidiary fails to pay any Obligation, NEG Guarantor will pay such Obligation directly for Guaranteed Party's benefit within five (5) Business Days from Guaranteed Party's demand therefor in accordance with the provisions hereof. Capitalized terms used and not defined herein shall have meaning given such terms in the Agreement.

2. Extent of Liability & Term. NEG Guarantor's liability under this Guarantee is limited to the aggregate of US\$150,000,000, as reduced (i) pursuant to Section 8.1(b) of the Agreement and (ii) by any amounts paid by the GTN Guarantor pursuant to the GTN Guarantee and not returned to the GTN Guarantor by or on behalf of the Guaranteed Party (the "Guarantee Cap"). NEG Guarantor shall not be obligated to monitor the amount of Subsidiary's Obligations to Guaranteed Party, and Guaranteed

LIBERTY

Party will bear the risk that the aggregate amount of the Obligations exceeds the Guarantee Cap and only payments made by NEG Guarantor pursuant to a demand for payment in accordance with Section 7 hereof shall reduce the amount of the Guarantee Cap. No payments will be made hereunder unless and until a Payment Demand has been issued by the Guaranteed Party in accordance with Section 7 hereof. Except as the same comprise Obligations under the Agreement, NEG Guarantor shall not be liable hereunder for special, consequential, exemplary, tort or other damages. NEG Guarantor agrees to pay all out-of-pocket expenses (including the reasonable fees and expenses of Guaranteed Party's counsel) incurred for the enforcement of the rights of Guaranteed Party hereunder, provided, that NEG Guarantor shall not be liable for any such expenses if no payment under this Guarantee is due and such payments shall be subject to the Guarantee Cap.

3. Nature of Guarantee. The NEG Guarantor's obligations hereunder with respect to any Obligation shall not be affected by the existence, validity, enforceability, perfection, or extent of any collateral for such Obligations. The Guaranteed Party shall not be obligated to file any claim relating to the Obligations owing to it if Subsidiary becomes subject to a bankruptcy, reorganization or similar proceeding and the failure of the Guaranteed Party to so file shall not affect the NEG Guarantor's obligations hereunder. If any payment to the Guaranteed Party with respect to any Obligations is rescinded or must otherwise be returned for any reason whatsoever, the NEG Guarantor shall remain liable hereunder with respect to such Obligations as if such payment had not been made. The Guaranteed Party agrees that the NEG Guarantor shall not be in default hereunder, and the Guaranteed Party shall have no remedies against the NEG Guarantor hereunder, if (a) a Payment Demand (as defined below) has been made hereunder and has not been satisfied, (b) a Payment Demand (as defined in the GTN Guarantee) has been made under the GTN Guarantee in respect of such unsatisfied Payment Demand hereunder, and (c) the GTN Guarantor has satisfied in full such Payment Demand under the GTN Guarantee.

4. Enforcement. The NEG Guarantor hereby agrees that this Guarantee may be enforced by the Guaranteed Party (or its assigns) without first resorting to any action against the Subsidiary, or exhausting any other remedies against the Subsidiary, and without protest, presentment, notice or demand whatsoever. NEG Guarantor hereby waives any rights it may have to require any such prior protest, presentment, notice, demand, enforcement or exhaustion of remedies. Without limiting the generality of the foregoing, NEG Guarantor unconditionally agrees that it hereby waives (i) any and all rights to be subrogated to the position of Subsidiary or to have the benefit of any lien, security interest or other guaranty, if any, now or hereafter held by the Guaranteed Party for the obligations guaranteed by NEG Guarantor hereunder or to enforce any remedy which the Guaranteed Party now has or hereafter may have against Subsidiary, GTN Guarantor or any other person, (ii) any acceptance of this Guarantee, (iii) any set-offs or counterclaims against the Guaranteed Party which would otherwise impair the Guaranteed Party's rights against Subsidiary, (iv) any notice of the disposition of any collateral security, if any, and any right to object to the commercial reasonableness of the disposition of any such collateral security, if any, and (v) any requirement of diligence on the part of anyone. NEG Guarantor further agrees that none of the following acts, omissions or occurrences shall diminish or impair the liability of NEG Guarantor in any

respect (all of which acts, omissions or occurrences may be done without notice to NEG Guarantor of any kind): (i) any extension, modification, indulgence, compromise, settlement or variation of any of the terms of the Agreement, (ii) the discharge or release of any obligations of Subsidiary or GTN Guarantor by reason of bankruptcy or insolvency laws, (iii) the acceptance or release by the Guaranteed Party of any collateral security or other guaranty or any settlement, compromise or extension with respect to any collateral security or other guaranty (including the GTN Guarantee), and (iv) to the extent permitted by law, any release or discharge, by operation of law, of NEG Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guarantee.

5. NEG Guarantor to Maintain its Corporate Existence. The NEG Guarantor agrees that during the term of this Guarantee, it will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or permit one or more corporations (other than one or more subsidiaries of the NEG Guarantor) to consolidate with or merge into it; provided, that the NEG Guarantor may, without violating the agreement contained in this Section, consolidate with or merge into another corporation, or permit one or more corporations to consolidate with or merge into it (other than one or more subsidiaries of the NEG Guarantor), or sell or otherwise transfer to another corporation all or substantially all of its assets as an entirety, provided, (a) the surviving, resulting or transferee corporation, as the case may be, (i) is subject to service of process in the State of Pennsylvania and (ii), if not the NEG Guarantor, assumes in writing all of the obligations of the NEG Guarantor under this Guarantee; (b) such substitute guarantor executes a guarantee agreement in substantially the form of this Guarantee and provides the Guaranteed Party with an opinion of counsel to the substitute guarantor addressed and reasonably acceptable to the Guaranteed Party to the effect that such corporate guarantee agreement has been duly authorized by such substitute guarantor and constitutes the legal, valid and binding obligation of such substitute guarantor, enforceable against such substitute guarantor in accordance with its terms (subject to limitations on the enforcement thereof by bankruptcy, insolvency and other similar laws affecting the rights of creditors generally and to the application of principles of equity); and (c) the senior unsecured long term debt rating of such substitute guarantor is rated not less than Baa2 (or its then equivalent) by Moody's or BBB (or its then equivalent) by S&P or such substitute guarantor is acceptable to the Guaranteed Party. Upon satisfaction of the requirements set forth in this Section 5, this Guarantee shall be deemed automatically and immediately released by the Guaranteed Party.

6. Substitutions of Guarantee. In addition to the rights of substitution provided for in Section 5 hereof, the NEG Guarantor may at any time substitute as the NEG Guarantor for all or a portion of the Guarantee Cap an irrevocable letter of credit and in form and substance satisfactory to the Guaranteed Party issued by United States Bank or United States Branch of a foreign bank that is and remains rated "A" or better by Moody's and S&P. Upon the satisfaction of the requirements set forth in this Section 6, the NEG Guarantor's obligations with respect to that portion of the Guarantee Cap assumed by a substitute guarantor or letter of credit provider shall be deemed automatically and immediately released by the Guaranteed Party.

7. Demands and Notice. If Subsidiary fails to pay any Obligations, and Guaranteed Party elects to exercise its rights under this Guarantee, Guaranteed Party shall make a written demand on NEG Guarantor (a "Payment Demand"). A Payment Demand shall identify the amount and the basis of the demand and shall contain a statement that Guaranteed Party is calling upon NEG Guarantor under this Guarantee. A Payment Demand conforming to the foregoing requirements shall be sufficient notice to NEG Guarantor to pay under this Guarantee. Notices under this Guarantee shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, (ii) on the next business day if served by facsimile transmission when sender has machine confirmation that facsimile was transmitted to the correct fax number listed below, and (iii) four business days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of same in accordance with this Section 7.

To NEG Guarantor:
PG&E National Energy Group, Inc.
7500 Old Georgetown Rd.
Bethesda, MD 20814-6161
Attn.: General Counsel
Fax: 301-280-6900

To Subsidiary:
PG&E Energy Trading-Power, L.P.
7500 Old Georgetown Road
Bethesda, MD 20814-6161
Attn.: Chief Financial Officer
Fax: 301-280-6900

To Guaranteed Party:
Liberty Electric Power, LLC
c/o Orion Power Holdings, Inc.
7 East Redwood Street, 10th Floor
Baltimore, Maryland 21202
Attention: General Counsel
Fax: (410) 234-0994

8. Consent to Modifications, Waivers. The Guaranteed Party and Subsidiary may mutually agree to modify the Agreement, extend the time of payment or otherwise modify the terms of payment of any of the Obligations, without in any way impairing or affecting this Guarantee. The Guaranteed Party may resort to the NEG Guarantor for payment of any of the Obligations, whether or not the Guaranteed Party shall have resorted to any collateral security, or shall have proceeded against Subsidiary, GTN Guarantor or any other obligor principally or secondarily obligated with respect to any of the Obligations. NEG Guarantor hereby waives notice of acceptance of this Guarantee, and also presentment, protest and notice of protest or dishonor of any evidences of indebtedness hereby guaranteed.

9. Subrogation. NEG Guarantor waives any rights of subrogation or reimbursement from Subsidiary or GTN Guarantor that may accrue to NEG Guarantor with respect to the payment of any Obligation by NEG Guarantor to Guaranteed Party under this Guarantee until the time that all Obligations owing to the Guaranteed Party are fully and indefeasibly paid to Guaranteed Party. Upon such full and indefeasible payment of all the Obligations owing to the Guaranteed Party, NEG Guarantor shall be

subrogated to the rights of the Guaranteed Party against Subsidiary, and the Guaranteed Party agrees to take at NEG Guarantor's expense such steps as NEG Guarantor may reasonably request to implement such subrogation.

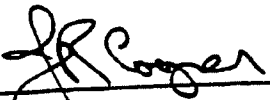
10. Consent to Collateral Assignment. NEG Guarantor acknowledges that Guaranteed Party may borrow funds from one or more Lenders for the development, construction, operation or maintenance of the Facility and hereby consents to Guaranteed Party's assignment of this Guarantee to Liberty Electric PA, LLC, the sole member of Liberty Electric Power, LLC and to any Lender as security for Guaranteed Party's obligations to the Lender(s). In addition, NEG Guarantor consents to assignment by such Lender(s) of this Guarantee in connection with the exercise of remedies available to such Lender(s) under its agreements for financing with Guaranteed Party. Except as provided in this Section 10, this Guarantee may not be assigned without the prior written consent of the other party, and any purported assignment without such consent shall be null and void.

11. Representations and Warranties. NEG Guarantor hereby represents and warrants that, as of the date hereof, (i) it is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, (ii) the execution, delivery and performance by NEG Guarantor of this Guarantee are within its corporate powers, have been duly authorized by all necessary corporate action and do not violate NEG Guarantor's charter or by-laws or any law, order or contractual restriction binding on NEG Guarantor, (iii) this Guarantee constitutes NEG Guarantor's legal, valid and binding obligation, enforceable against it in accordance with its terms (except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws, affecting enforcement of creditors' rights in general and general principles of equity), and (iv) after giving effect to this Agreement and the transactions contemplated hereby, (a) it is not insolvent or will not be rendered insolvent, as such term is used and defined in the United States Bankruptcy Code and other applicable laws, (b) it will not have unreasonably small capital to engage in its business, and (c) it is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature.

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12. Miscellaneous. No provision of this Guarantee may be amended or waived except by a written instrument executed by NEG Guarantor and Guaranteed Party. This Guarantee shall bind and benefit the successors and permitted assigns of NEG Guarantor and Guaranteed Party. This Guarantee shall be construed in accordance with the laws of the State of New York, excluding its choice of law provisions.

PG&E NATIONAL ENERGY GROUP, INC.

By: 
Name: John R. Cooper
Title: Senior Vice President

Agreed and Accepted:

LIBERTY ELECTRIC POWER, LLC

By: Liberty Electric PA, LLC, its sole Member

By: Mid-Atlantic Liberty Corporation,
a Member Manager

By: _____
Name:
Title:

12. Miscellaneous. No provision of this Guarantee may be amended or waived except by a written instrument executed by NEG Guarantor and Guaranteed Party. This Guarantee shall bind and benefit the successors and permitted assigns of NEG Guarantor and Guaranteed Party. This Guarantee shall be construed in accordance with the laws of the State of New York, excluding its choice of law provisions.

PG&E NATIONAL ENERGY GROUP, INC.

By: _____
Name:
Title:

Agreed and Accepted:

LIBERTY ELECTRIC POWER, LLC

By: Liberty Electric PA, LLC, its sole Member

By: Mid-Atlantic Liberty Corporation,
a Member Manager

By: Jack A. Fusco
Name: Jack A. Fusco
Title: President & CEO

GUARANTEE

GUARANTEE dated as of February 6, 2001 by PG&E Gas Transmission, Northwest Corporation, a California corporation (the "GTN Guarantor"), in favor of Liberty Electric Power, LLC, a Delaware limited liability company (hereafter the "Guaranteed Party").

WHEREAS, Guaranteed Party and PG&E Energy Trading - Power, L.P., a Delaware limited partnership and an affiliate of the GTN Guarantor ("Affiliate"), have entered into that certain Tolling Agreement dated April 14, 2000 (as amended, the "Agreement");

WHEREAS, pursuant to the terms of the Agreement, PG&E Corporation (the "Original Guarantor"), a parent company of the Affiliate, provided a guarantee (the "Original Guarantee") for the benefit of the Guaranteed Party on April 24, 2000;

WHEREAS, Affiliate desires (i) to provide a guarantee of the GTN Guarantor and a guarantee of PG&E National Energy Group, Inc. (the "NEG Guarantor") for the benefit of the Guaranteed Party and (ii) to obtain the release and discharge of the Original Guarantor from the Original Guarantee;

WHEREAS, concurrently with the execution and delivery of this Guarantee, (i) the NEG Guarantor and the Guaranteed Party are executing and delivering a guarantee of the NEG Guarantor for the benefit of the Guaranteed Party (the "NEG Guarantee") and (ii) the Guaranteed Party is releasing and discharging the Original Guarantor from any and all liabilities and obligations under the Original Guarantee.

NOW, THEREFORE, GTN Guarantor agrees as follows:

1. Guarantee. Subject to the terms herein, the GTN Guarantor absolutely, unconditionally and irrevocably guarantees to the Guaranteed Party, its successors and assigns, as primary obligor and not merely as surety, the prompt payment when due, in accordance with the terms of the Agreement, of all amounts payable by Affiliate under the Agreement and any amendments thereto, including without limitation, Tolling Fees, Termination Payment, liquidated damages, indemnity obligations, and damage awards arising by reason of Affiliate's breach of its performance obligations under the Agreement or otherwise (collectively, the "Obligations"). The obligation to make payments under this Guarantee is a guarantee of payment and not of collection. If Affiliate fails to pay any Obligation, GTN Guarantor will pay such Obligation directly for Guaranteed Party's benefit on the terms and subject to the conditions set forth in Section 7. Capitalized terms used and not defined herein shall have meaning given such terms in the Agreement.

2. Extent of Liability & Term. GTN Guarantor's liability under this Guarantee is limited to the aggregate of US\$150,000,000, as reduced (i) pursuant to Section 8.1(b) of the Agreement and (ii) by any amounts paid by the NEG Guarantor pursuant to the NEG Guarantee and not returned to the NEG Guarantor by or on behalf of

the Guaranteed Party (the "Guarantee Cap"). GTN Guarantor shall not be obligated to monitor the amount of Affiliate's Obligations to Guaranteed Party, and Guaranteed Party will bear the risk that the aggregate amount of the Obligations exceeds the Guarantee Cap and only payments made by GTN Guarantor pursuant to a demand for payment in accordance with Section 7 hereof shall reduce the amount of the Guarantee Cap. No payments will be made hereunder unless and until a Payment Demand has been issued by the Guaranteed Party in accordance with Section 7 hereof. Except as the same comprise Obligations under the Agreement, GTN Guarantor shall not be liable hereunder for special, consequential, exemplary, tort or other damages. GTN Guarantor agrees to pay all out-of-pocket expenses (including the reasonable fees and expenses of Guaranteed Party's counsel) incurred for the enforcement of the rights of Guaranteed Party hereunder, provided, that GTN Guarantor shall not be liable for any such expenses if no payment under this Guarantee is due and such payments shall be subject to the Guarantee Cap.

3. Nature of Guarantee. The GTN Guarantor's obligations hereunder with respect to any Obligation shall not be affected by the existence, validity, enforceability, perfection, or extent of any collateral for such Obligations. The Guaranteed Party shall not be obligated to file any claim relating to the Obligations owing to it if Affiliate becomes subject to a bankruptcy, reorganization or similar proceeding and the failure of the Guaranteed Party to so file shall not affect the GTN Guarantor's obligations hereunder. If any payment to the Guaranteed Party with respect to any Obligations is rescinded or must otherwise be returned for any reason whatsoever, the GTN Guarantor shall remain liable hereunder with respect to such Obligations as if such payment had not been made.

4. Enforcement. Except as expressly provided in Section 7, the GTN Guarantor hereby agrees that this Guarantee may be enforced by the Guaranteed Party (or its assigns) without first resorting to any action against the Affiliate or NEG Guarantor, or exhausting any other remedies against the Affiliate or NEG Guarantor, and without protest, presentment, notice or demand whatsoever. The GTN Guarantor hereby waives any rights it may have to require any such prior protest, presentment, notice, demand, enforcement or exhaustion of remedies. Without limiting the generality of the foregoing, GTN Guarantor unconditionally agrees that it hereby waives (i) any and all rights to be subrogated to the position of Affiliate or to have the benefit of any lien, security interest or other guaranty, if any, now or hereafter held by the Guaranteed Party for the obligations guaranteed by GTN Guarantor hereunder or to enforce any remedy which the Guaranteed Party now has or hereafter may have against Affiliate, NEG Guarantor or any other person, (ii) any acceptance of this Guarantee, (iii) any set-offs or counterclaims against the Guaranteed Party which would otherwise impair the Guaranteed Party's rights against Affiliate, (iv) any notice of the disposition of any collateral security, if any, and any right to object to the commercial reasonableness of the disposition of any such collateral security, if any, and (v) any requirement of diligence on the part of anyone. GTN Guarantor further agrees that none of the following acts, omissions or occurrences shall diminish or impair the liability of GTN Guarantor in any respect (all of which acts, omissions or occurrences may be done without notice to GTN Guarantor of any kind): (i) any extension, modification, indulgence, compromise, settlement or variation of any of the terms of the Agreement, (ii) the discharge or release of any obligations of Affiliate or

NEG Guarantor by reason of bankruptcy or insolvency laws, (iii) the acceptance or release by the Guaranteed Party of any collateral security or other guaranty or any settlement, compromise or extension with respect to any collateral security or other guaranty (including the NEG Guarantee), and (iv) to the extent permitted by law, any release or discharge, by operation of law, of GTN Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guarantee.

5. GTN Guarantor to Maintain its Corporate Existence. The GTN Guarantor agrees that during the term of this Guarantee, it will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or permit one or more corporations (other than one or more subsidiaries of the GTN Guarantor) to consolidate with or merge into it; provided, that the GTN Guarantor may, without violating the agreement contained in this Section, consolidate with or merge into another corporation, or permit one or more corporations to consolidate with or merge into it (other than one or more subsidiaries of the GTN Guarantor), or sell or otherwise transfer to another corporation all or substantially all of its assets as an entirety, provided, (a) the surviving, resulting or transferee corporation, as the case may be, (i) is subject to service of process in the State of Pennsylvania and (ii), if not the GTN Guarantor, assumes in writing all of the obligations of the GTN Guarantor under this Guarantee; (b) such substitute guarantor executes a guarantee agreement in substantially the form of this Guarantee and provides the Guaranteed Party with an opinion of counsel to the substitute guarantor addressed and reasonably acceptable to the Guaranteed Party to the effect that such corporate guarantee agreement has been duly authorized by such substitute guarantor and constitutes the legal, valid and binding obligation of such substitute guarantor, enforceable against such substitute guarantor in accordance with its terms (subject to limitations on the enforcement thereof by bankruptcy, insolvency and other similar laws affecting the rights of creditors generally and to the application of principles of equity); and (c) the senior unsecured long term debt rating of such substitute guarantor is rated not less than Baa2 (or its then equivalent) by Moody's or BBB (or its then equivalent) by S&P or such substitute guarantor is acceptable to the Guaranteed Party. Upon satisfaction of the requirements set forth in this Section 5, this Guarantee shall be deemed automatically and immediately released by the Guaranteed Party.

6. Substitutions of Guarantee. In addition to the rights of substitution provided for in Section 5 hereof, the GTN Guarantor may at any time substitute as the GTN Guarantor for all or a portion of the Guarantee Cap an irrevocable letter of credit and in form and substance satisfactory to the Guaranteed Party issued by United States Bank or United States Branch of a foreign bank that is and remains rated "A" or better by Moody's and S&P. Upon the satisfaction of the requirements set forth in this Section 6, the GTN Guarantor's obligations with respect to that portion of the Guarantee Cap assumed by a substitute guarantor or letter of credit provider shall be deemed automatically and immediately released by the Guaranteed Party.

7. Demands and Notice. If Affiliate fails to pay any Obligations and Guaranteed Party elects to exercise its rights under this Guarantee, Guaranteed Party shall make a written demand on GTN Guarantor (a "Payment Demand"); provided that the

Guaranteed Party may exercise its rights under this Guarantee without having made a Payment Demand on NEG Guarantor if the Guaranteed Party is unable to make such Payment Demand under the NEG Guarantee as a result of any order or decree of a court of competent jurisdiction in connection with a bankruptcy or similar proceeding with respect to the NEG Guarantor. Subject to the proviso in the preceding sentence, a Payment Demand under this Guarantee may not be made before, and the GTN Guarantor's obligation to make payment hereunder shall only become due on the first Business Day after, the date which is five Business Days after Guaranteed Party shall have made a Payment Demand on NEG Guarantor under the NEG Guarantee, provided that the Guaranteed Party shall have simultaneously therewith submitted a copy of such Payment Demand under the NEG Guarantee to the GTN Guarantor. For purposes of this Guarantee, "Business Day" means any day on which Federal Reserve member banks in New York City, New York are open for business. A Payment Demand shall identify the amount and the basis of the demand and shall contain a statement that (i) Guaranteed Party is calling upon GTN Guarantor under this Guarantee, (ii) at least five Business Days have elapsed since Guaranteed Party made a Payment Demand on NEG Guarantor under the NEG Guarantee, unless the Guaranteed Party is unable to make a Payment Demand under the NEG Guarantee as described above, and (iii) the Payment Demand under the NEG Guarantee remains unpaid and setting forth the amount unpaid, unless the Guaranteed Party is unable to make a Payment Demand under the NEG Guarantee as described above. A Payment Demand conforming to the foregoing requirements shall be sufficient notice to GTN Guarantor to pay under this Guarantee. Notices under this Guarantee shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, (ii) on the next business day if served by facsimile transmission when sender has machine confirmation that facsimile was transmitted to the correct fax number listed below, and (iii) four business days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of same in accordance with this Section 7.

To GTN Guarantor:
 PG&E Gas Transmission, Northwest Corporation
 7500 Old Georgetown Road
 Bethesda, MD 20814-6161
 Attn.: General Counsel
 Fax: 301-280-6900

To Affiliate:
 PG&E Energy Trading-Power, L.P.
 7500 Old Georgetown Road
 Bethesda, MD 20814-6161
 Attn.: Chief Financial Officer
 Fax: 301-280-6900

To Guaranteed Party:
 Liberty Electric Power, LLC
 c/o Orion Power Holdings, Inc.
 7 East Redwood Street, 10th Floor
 Baltimore, Maryland 21202
 Attention: General Counsel
 Fax: (410) 234-0994

8. Consent to Modifications, Waivers. The Guaranteed Party and Affiliate may mutually agree to modify the Agreement, extend the time of payment or otherwise

modify the terms of payment of any of the Obligations, without in any way impairing or affecting this Guarantee. The Guaranteed Party may resort to the GTN Guarantor for payment of any of the Obligations, whether or not the Guaranteed Party shall have resorted to any collateral security, or shall have proceeded against Affiliate or any other obligor principally or secondarily obligated with respect to any of the Obligations. GTN Guarantor hereby waives notice of acceptance of this Guarantee, and also presentment, protest and notice of protest or dishonor of any evidences of indebtedness hereby guaranteed.

9. Subrogation. GTN Guarantor waives any rights of subrogation or reimbursement from Affiliate or NEG Guarantor that may accrue to GTN Guarantor with respect to the payment of any Obligation by GTN Guarantor to Guaranteed Party under this Guarantee until the time that all Obligations owing to the Guaranteed Party are fully and indefeasibly paid to Guaranteed Party. Upon such full and indefeasible payment of all the Obligations owing to the Guaranteed Party, GTN Guarantor shall be subrogated to the rights of the Guaranteed Party against Affiliate or NEG Guarantor, and the Guaranteed Party agrees to take at GTN Guarantor's expense such steps as GTN Guarantor may reasonably request to implement such subrogation.

10. Consent to Collateral Assignment. GTN Guarantor acknowledges that Guaranteed Party may borrow funds from one or more Lenders for the development, construction, operation or maintenance of the Facility and hereby consents to Guaranteed Party's assignment of this Guarantee to Liberty Electric PA, LLC, the sole member of Liberty Electric Power, LLC and to any Lender as security for Guaranteed Party's obligations to the Lender(s). In addition, GTN Guarantor consents to assignment by such Lender(s) of this Guarantee in connection with the exercise of remedies available to such Lender(s) under its agreements for financing with Guaranteed Party. Except as provided in this Section 10, this Guarantee may not be assigned without the prior written consent of the other party, and any purported assignment without such consent shall be null and void.


11. Representations and Warranties. GTN Guarantor hereby represents and warrants that, as of the date hereof, (i) it is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, (ii) the execution, delivery and performance by GTN Guarantor of this Guarantee are within its corporate powers, have been duly authorized by all necessary corporate action and do not violate GTN Guarantor's charter or by-laws or any law, order or contractual restriction binding on GTN Guarantor, (iii) this Guarantee constitutes GTN Guarantor's legal, valid and binding obligation, enforceable against it in accordance with its terms (except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws, affecting enforcement of creditors' rights in general and general principles of equity), (iv) Affiliate has paid, or caused the payment of, certain fees to the GTN Guarantor, constituting reasonably equivalent value, in exchange for the issuance of this Guarantee and (v) after giving effect to this Agreement and the transactions contemplated hereby, (a) it is not insolvent or will not be rendered insolvent, as such term is used and defined in the United States Bankruptcy Code and other applicable laws, (b) it will not

have unreasonably small capital to engage in its business, and (c) it is able to pay its debts and other liabilities, contingent obligations and other commitments as they mature.

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12. Miscellaneous. No provision of this Guarantee may be amended or waived except by a written instrument executed by GTN Guarantor and Guaranteed Party. This Guarantee shall bind and benefit the successors and permitted assigns of GTN Guarantor and Guaranteed Party. This Guarantee shall be construed in accordance with the laws of the State of New York, excluding its choice of law provisions.

PG&E GAS TRANSMISSION, NORTHWEST CORPORATION

By: 
Name: John R. Cooper
Title: Chief Financial Officer and Treasurer

Agreed and Accepted:

LIBERTY ELECTRIC POWER, LLC

By: Liberty Electric PA, LLC, its sole member

By: Mid-Atlantic Liberty Corporation,
a Member Manager

By: _____
Name: _____
Title: _____

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FILE NO. 4184-2

12. Miscellaneous. No provision of this Guarantee may be amended or waived except by a written instrument executed by GTN Guarantor and Guaranteed Party. This Guarantee shall bind and benefit the successors and permitted assigns of GTN Guarantor and Guaranteed Party. This Guarantee shall be construed in accordance with the laws of the State of New York, excluding its choice of law provisions.

PG&E GAS TRANSMISSION, NORTHWEST CORPORATION

By: _____
Name:
Title:

Agreed and Accepted:

LIBERTY ELECTRIC POWER, LLC

By: Liberty Electric PA, LLC, its sole member

By: Mid-Atlantic Liberty Corporation,
a Member Manager

By: Jack A. Fusco
Name: Jack A. Fusco
Title: President & CEO

Execution Version

POST-CLOSING ESCROW AGREEMENT

This Post-Closing Escrow Agreement (this "Agreement"), dated as of November 1, 2004, is by and among National Energy & Gas Transmission, Inc., a Delaware corporation ("Parent"), Gas Transmission Corporation, a Delaware corporation ("GTC"), GTN Holdings LLC, a Delaware limited liability company ("Seller" and, together with Parent and GTC, the "Seller Parties"), TransCanada American Investments Ltd., a Delaware corporation ("Buyer"), Gas Transmission Northwest Corporation, a California corporation (the "Company"), and JPMorgan Chase Bank, as escrow agent (the "Escrow Agent").

WHEREAS, Buyer, TransCanada Corporation, a corporation organized under the laws of Canada, and TransCanada PipeLine USA Ltd., a Nevada corporation, have entered into a Stock Purchase Agreement, dated as of February 24, 2004, as amended (the "Purchase Agreement"), with the Seller Parties, for the purchase of all of the issued and outstanding shares of capital stock of the Company (capitalized terms used herein and not otherwise defined herein have the meaning assigned to such terms in the Purchase Agreement);

WHEREAS, pursuant to Section 2.2(a) of the Purchase Agreement, Buyer is required to transfer at the Closing \$241,000,000 (the "Escrow Amount") by confirmed wire transfer of immediately available funds to the Escrow Agent;

WHEREAS, the Escrow Amount is intended to cover certain obligations of the Acquired Companies in connection with the Covered Guarantees (as defined in the Purchase Agreement), each of which is listed on Schedule A together with the Full Face Amount as set forth on Schedule 4.19(a) of the Purchase Agreement, as amended through and including the date hereof; and

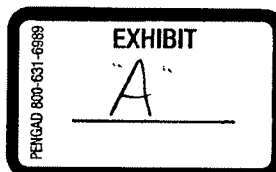
WHEREAS, Buyer and the Seller Parties desire that the Escrow Agent hold the Escrow Amount as provided in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Establishment of Escrow.

(a) On the date hereof, Buyer shall wire transfer in immediately available funds to the Escrow Agent an amount equal to the Escrow Amount in accordance with Section 2.2(a) of the Purchase Agreement.

(b) The Escrow Agent hereby agrees to act as escrow agent and to hold, safeguard and disburse the Escrow Amount pursuant to the terms and conditions hereof. For all purposes hereof, "Escrow Amount" shall be the initial Escrow Amount (x) as reduced by (i) any



payments made or funds released from time to time to Recipients (as defined below) and/or Seller pursuant to Section 3(b), Section 3(c) or Section 3(d), (ii) any payments made or funds released from time to time to Recipients and/or the Company pursuant to Section 3(c) or Section 3(d), and (iii) any losses on investments in excess of the income and interest earned prior to termination of this Agreement and (y) as increased by any Supplemental Deposits (as defined below) made pursuant to Section 3(d). For all purposes under this Agreement, with respect to payments to be made, or funds released, to the Company, the Company shall have the right to direct the Escrow Agent to make such payments or release such funds to any designee of the Company; provided that it shall have provided the Escrow Agent with reasonable advance written notice of such direction (including appropriate wiring instructions for such designee). The Escrow Amount shall not include any income or interest on the Escrow Amount in excess of the losses on investments prior to the termination of this Agreement, which excess shall be the property of Seller and paid pursuant to Section 2. In no event shall any portion of the Escrow Amount be deemed to be property of Parent's or its subsidiaries' bankruptcy estates unless and until it is released to Seller in accordance with the terms of this Agreement; provided, however, Seller shall pay all income, withholding and any other taxes imposed on or measured by income, to the extent attributable to the Escrow Amount or to interest or earnings thereon and shall file, or cause to be filed, all tax and information returns applicable thereto.

2. Investment of Escrow Amount. The Escrow Amount shall be invested and reinvested by the Escrow Agent through a separate account in the JPMorgan Prime Money Market Fund, as fully described in the Prospectus for the JPMorgan Money Market Funds, dated December 29, 2003. Buyer and the Seller Parties hereby reserve the right to direct the Escrow Agent, upon joint written directions from Buyer and Seller, to invest and reinvest the Escrow Amount, from time to time, as directed. In no event shall the Escrow Agent use all or any portion of the Escrow Amount to offset any amounts that may be owed to the Escrow Agent or any of its affiliates, as a result of any other transaction, agreement or claim, by the parties to this Agreement or by their affiliates. The Escrow Agent shall only have the right to liquidate any investments held in order to provide funds necessary to make required payments under this Agreement. Any income and interest on the Escrow Amount in excess of the losses on investments prior to the termination of this Agreement shall be paid to Seller at such time as the Full Face Amount of each Covered Guarantee has been reduced to zero.

3. Release of the Escrow Amount and Portions Thereof to Recipients, Seller or the Company.

(a) General. The Escrow Agent shall hold the Escrow Amount in its possession until instructed to deliver the Escrow Amount (or any specified portion thereof) in accordance with (i) joint written instructions from Seller and Buyer; (ii) a Section 3(b) Notice (as defined below) provided unilaterally by the Seller Parties; (iii) a Section 3(c) Notice (as defined below) provided unilaterally by Buyer; (iv) a Section 3(d) Notice (as defined below) provided unilaterally by Buyer; or (v) a Relevant Order (as defined below). The Escrow Agent shall be authorized to act on any document reasonably believed to be genuine and to be signed by the proper party or parties, and, subject to Section 6 of this Agreement, will incur no liability in so acting.

★ (b) Releases Pursuant to Unilateral Instructions of the Seller Parties. Subject to the provisions of this Section 3(b), the Escrow Agent shall release all or a portion of the Escrow Amount to one or more third parties (including, without limitation, the debtors in the Bankruptcy Cases, the obligations of which are secured by any Covered Guarantee (the "ET Debtors"), any trust or other disbursement account established for the benefit of the creditors of the ET Debtors, and any beneficiary under a Covered Guarantee) (each such third party, a "Recipient") and/or Seller upon receipt of a Section 3(b) Notice. A "Section 3(b) Notice" means unilateral written instructions delivered by the Seller Parties to the Escrow Agent, in substantially the form of Exhibit C, specifying the following: (1) that, subject only to the receipt by a Recipient or Recipients of the stated Payment Amount (as defined below), if applicable, (A) a Preference Release Event (as defined below) has or, subject only to the receipt by such Recipients of the stated Payment Amount, will occur with respect to the DTE-Georgetown Guarantee, (B) both a Preference Release Event and a Termination Release Event (as defined below) have or, subject only to the receipt by such Recipients of the stated Payment Amount, will occur with respect to the Liberty Guarantee, or (C) a Termination Release Event has or, subject only to the receipt by such Recipients of the stated Payment Amount, will occur with respect to an Other Guarantee; (2) the specific Covered Guarantee subject to such Termination Release Event and/or Preference Release Event; (3) the Full Face Amount of such Covered Guarantee as of the date such instructions are delivered; (4) the portion of the Escrow Amount, if any, to be released to such Recipients in respect of such Covered Guarantee, which shall not in any event be more than the Full Face Amount of such Covered Guarantee as of such date (the "Payment Amount"); provided, however, that if no amount is so payable to a Recipient, the instructions shall specify such Payment Amount to be zero; (5) wiring instructions, if any, to direct any Payment Amount to be paid to any Recipient entitled to receive the same in accordance with the terms of the Covered Guarantee or the settlement or other resolution of the same, as determined by the Seller Parties in their sole discretion; and (6) the Section 3(b) Difference Amount (as defined below) or the Interim Disbursement Amount (as defined below), if any, to be released to Seller. A copy of any Section 3(b) Notice shall be delivered to Buyer simultaneously with the delivery of such Section 3(b) Notice to the Escrow Agent and such copy shall be accompanied by true, accurate and complete copies of the applicable release, discharge, written settlement, judicial determination, arbitration decision, certified Order and any other document or supporting information as Buyer may deem necessary, in its reasonable discretion, to evidence the Preference Release Event and/or Termination Release Event.

The "Full Face Amount" of a Covered Guarantee as of any date means the full face amount set forth opposite such Covered Guarantee on Schedule A less the sum of all amounts with respect to such Covered Guarantee that have been released from the Escrow Amount prior to such date, whether to Recipients, Seller or the Company. The Full Face Amount of each then-remaining Covered Guarantee shall be reduced proportionately each time that an Excess Cost Amount is released from the Escrow Amount. Buyer and/or the Seller Parties shall be responsible for calculating the Full Face Amount of a Covered Guarantee as of any date.

A "Preference Release Event" means, with respect to the DTE-Georgetown Guarantee or the Liberty Guarantee, any of the following: (i) the occurrence of the effective date under a plan of reorganization or liquidation ("ET Plan") for each of the ET Debtors that provides for the (A) payment in full of all allowed claims filed by unsecured creditors of the ET Debtors in their

Bankruptcy Cases and/or (B) waiver by each ET Debtor and its estate of any rights to recover or avoid preferential transfers under Section 547 of the Bankruptcy Code related to such Covered Guarantee; (ii) the expiration of the relevant statute of limitations period with respect to any action to avoid or recover a preferential transfer under Section 547 of the Bankruptcy Code that may be brought by any ET Debtor or its estate with respect to any amount paid with respect to the underlying obligations that are or were secured by such Covered Guarantee; (iii) an irrevocable and unconditional release in full (by written release and discharge, written settlement, judicial determination, arbitration or otherwise) by each ET Debtor and its estate of all rights to recover or avoid preferential transfers under Section 547 of the Bankruptcy Code that may be brought with respect to any amount paid or payable with respect to the underlying obligations that are or were secured by such Covered Guarantee; or (iv) the occurrence of an interim, periodic or final distribution to holders of allowed general unsecured claims under the ET Plan, provided the ET Plan (A) provides that any and all claims held by any Acquired Company against the ET Debtors that arise as a result of the recovery of an avoided transfer or transfers under Section 547 of the Bankruptcy Code resulting from the payment of any debt secured by any Covered Guarantee are allowable as general unsecured claims and not subject to subordination, (B) requires that such claims be treated and satisfied in the same manner as allowed general secured claims against the ET Debtors, and (C) provides for adequate distribution reserves with respect to such claims of the Acquired Companies that may be allowed after the effective date of the ET Plan.

A "Termination Release Event" means, with respect to the Liberty Guarantee or an Other Guarantee, an irrevocable and unconditional release in full (by written release and discharge, written settlement, judicial determination, arbitration or otherwise) of the Acquired Companies from any liability under such Covered Guarantee pursuant to which each Acquired Company is fully and finally released and, as a result, will have no further obligations under such Covered Guarantee.

The Escrow Agent has no duty to determine the Full Face Amount of any Covered Guarantee or if a Preference Release Event or Termination Release Event has occurred and shall be entitled to rely upon the representations made by Buyer and/or the Seller Parties with respect thereto.

If, within ten (10) business days after receipt by the Escrow Agent and Buyer of a Section 3(b) Notice:

(i) the Escrow Agent shall not have received a written objection to such Section 3(b) Notice from Buyer, then the Escrow Agent shall promptly, but in no event later than the next following business day, (A) release the relevant Payment Amount, if any, to the Recipient in accordance with such instructions, (B) in the case of a Termination Release Event or any Preference Release Event specified in clauses (i) through (iii) of the definition thereof, release to Seller the difference, if any, between (1) the Payment Amount and (2) the Full Face Amount of such Covered Guarantee (such difference, the "Section 3(b) Difference Amount"), (C) in the case of a Preference Release Event specified in clause (iv) of the definition thereof, release to Seller an amount equal to the product of (1) the Full Face Amount of such Covered Guarantee *less*

the Payment Amount and (2) the percentage distribution then made to holders of allowed general unsecured claims under the ET Plan (such amount, the "Interim Disbursement Amount"), and (D) in the case of each of (A) through (C) hereof, notify Buyer in writing of the release of such amounts; or

(ii) the Escrow Agent shall have received a written objection to such Section 3(b) Notice from Buyer (a copy of which objection shall be sent simultaneously to the Seller Parties) (a "Buyer Objection Notice"), in substantially the form of Exhibit D, then such Payment Amount, Section 3(b) Difference Amount and Interim Disbursement Amount, as the case may be, shall be deemed to be a "Buyer Disputed Payment" and the Escrow Agent shall only release such amounts upon the receipt by the Escrow Agent of (x) joint written instructions from Buyer and the Seller Parties, or (y) a Final Determination (as defined below) with respect to such Buyer Disputed Payment, in which case the Escrow Agent shall release (A) to the relevant Recipients, the Payment Amount, if any, provided in such Final Determination and (B) to Seller, the Section 3(b) Difference Amount, if any, or the Interim Disbursement Amount, if any, provided in such Final Determination.

(c) Releases Pursuant to Unilateral Instructions of Buyer. Subject to the provisions of this Section 3(c), the Escrow Agent shall release all or a portion of the Escrow Amount to the Company and/or, if applicable, Seller upon receipt of a Section 3(c) Notice. A "Section 3(c) Notice," in substantially the form of Exhibit E, means unilateral written instructions delivered by Buyer to the Escrow Agent, with a copy delivered simultaneously to the Seller Parties, specifying the following: (1) that Buyer has provided to Parent notice of the initial communication relating to a Covered Guarantee in accordance with Section 7.18(c) of the Purchase Agreement; (2) that within five (5) business days from the receipt of such notice Parent either (x) has not responded to such notice or (y) has instructed Buyer in writing (which written communication shall be provided to the Escrow Agent) that it will not pursue a Guarantee Settlement Action (as defined in the Purchase Agreement) in connection with such Covered Guarantee; (3) that any Acquired Company irrevocably paid to a Recipient an amount (a "Company Payment Amount") in connection with the obligations that are or were secured by such Covered Guarantee, which Company Payment Amount shall not exceed the Full Face Amount of such Covered Guarantee (such amount, the "Reimbursement Amount"); and (4) the Section 3(c) Difference Amount (as defined below), if applicable, to be released to Seller. A "Section 3(c) Notice" shall also include unilateral written instructions delivered by Buyer to the Escrow Agent, with a copy delivered simultaneously to the Seller Parties, specifying that the Acquired Companies have incurred Company Stay/Appeal Costs in excess (the amount of such excess, the "Excess Costs Amount") of the Supplement Deposit(s) made by the Seller Parties with respect to a Relevant Order.

If, within ten (10) business days after receipt by the Escrow Agent and the Seller Parties of a Section 3(c) Notice:

(i) the Escrow Agent shall not have received a written objection to such Section 3(c) Notice from the Seller Parties, then the Escrow Agent shall promptly, but in no event later than the next following business day, release the Reimbursement Amount

or the Excess Costs Amount, as the case may be, to the Company in accordance with such instructions, and notify the Seller Parties in writing of the release of such amount; or

(ii) the Escrow Agent shall have received a written objection to such Section 3(c) Notice from the Seller Parties (a copy of which objection shall be sent simultaneously to Buyer) (a "Seller 3(c) Objection Notice"), in substantially the form of Exhibit F, then such Reimbursement Amount or Excess Costs Amount, as the case may be, shall be deemed to be a "Seller Disputed Payment" and the Escrow Agent shall only release such Reimbursement Amount or Excess Costs Amount to the Company and/or, if applicable, Seller, as the case may be, upon the receipt by the Escrow Agent of (x) joint written instructions from Buyer and the Seller Parties or (y) a Final Determination with respect to such Seller Disputed Payment.

If a Reimbursement Amount is released to the Company pursuant to this Section 3(c) and (A) the applicable Covered Guarantee is the DTE-Georgetown Guarantee and the related Company Payment Amount constituted a Preference Release Event, (B) the applicable Covered Guarantee is the Liberty Guarantee and the related Company Payment Amount constituted both a Preference Release Event and a Termination Release Event, or (C) the applicable Covered Guarantee is an Other Guarantee and the related Company Payment Amount constituted a Termination Release Event, then the Escrow Agent shall release to Seller the difference, if any, between (1) the Reimbursement Amount and (2) the Full Face Amount of such Covered Guarantee as of such date, as provided in Exhibit E.

(d) Release upon Relevant Order. If the Escrow Agent shall have received, either from the Seller Parties or from Buyer, (which party shall have simultaneously delivered a copy to each other party hereto), a notice substantially in the form of Exhibit G accompanied by a certified copy of a final decision of any Governmental Entity (as defined in the Purchase Agreement) of competent jurisdiction (a "Relevant Order"), instructing any Acquired Company to pay any amount to one or more Recipients (A) under any Covered Guarantee or (B) pursuant to a finding that an Acquired Company, DTE Georgetown, LLC or Liberty Electric Power, LLC has received a preferential transfer within the meaning of Section 547 of the Bankruptcy Code that is recoverable from an Acquired Company under Section 550 of the Bankruptcy Code, including in either case any interest, fine, penalty, award, damages or other amount in addition to any amount due under such Covered Guarantee or with respect to such preferential transfer, then, unless the Escrow Agent is not permitted to release such amount pursuant to the penultimate sentence of this paragraph, the Escrow Agent shall release on the 11th day (or the next following business day, if such 11th day is not a business day) after the date on which such Relevant Order is entered all or a portion of the Escrow Amount to such Recipients designated in such Relevant Order (or, if Buyer can provide the information provided in the Section 3(c) Notice, to the Company). The Seller Parties or Buyer shall provide the Escrow Agent with the notice substantially in the form of Exhibit G within a reasonable time of their receipt of a Relevant Order, and such notice shall indicate that date on which the Escrow Agent shall release any funds directed to be released. The Seller Parties shall have the right, in their sole discretion subject to the terms of this Section 3(d), to elect to pursue a stay or appeal of a Relevant Order (such election, a "Stay/Appeal Election"); provided, however, that the Seller Parties' right to make a Stay/Appeal Election in respect of a Relevant Order is conditioned upon the Seller Parties having

(A)(i) provided written notice of such Stay/Appeal Election, substantially in the form of Exhibit H, to each of Buyer, the Company and the Escrow Agent within ten (10) days after the date on which such Relevant Order is entered, and (ii) agreed in writing to post any bond required in connection with such stay or appeal and to indemnify each Acquired Company against any costs, expenses, fines, penalties, interest, award, damages or other amount in excess of that provided for in such Relevant Order reasonably incurred by such Acquired Company in connection with, or as a result of, the pursuit by the Seller Parties of the stay or appeal of such Relevant Order ("Company Stay/Appeal Costs") and (B) supplemented the Escrow Amount by the deposit from time to time (each, a "Supplemental Deposit") of amounts determined by Buyer in its reasonable discretion (which discretion may include consideration of the Escrow Amount then remaining hereunder relative to the Full Face Amounts of the Guarantees secured hereby as of the date of such Stay/Appeal Election) sufficient to secure the Seller Parties' indemnification obligations in respect of such Stay/Appeal Election. The Seller Parties shall promptly deliver to Buyer a certified copy of the applicable stay Order related to any Relevant Order with respect to which the Seller Parties delivered a Stay/Appeal Election. In the event that the Seller Parties make a timely Stay/Appeal Election, the Escrow Agent shall not release any amounts from the Escrow Amount with respect to the applicable Relevant Order pending a final resolution or abandonment of such stay or appeal effort by the Seller Parties unless, notwithstanding such efforts by the Seller Parties, the Company shall deliver written instructions to the Escrow Agent in substantially the form of Exhibit I stating that the Company is nevertheless required pursuant to the terms of such Relevant Order to make a payment. Subject to the provisions of the following sentence, the Escrow Agent shall release all or a portion of the Supplemental Deposits to the Company upon receipt of a written notice from Buyer (with a copy sent simultaneously to the Seller Parties) setting forth in reasonable detail the Company Stay/Appeal Costs incurred (the "Company Stay/Appeal Amount") by any Acquired Company (a "Section 3(d) Notice"), in substantially the form of Exhibit J.

If, within ten (10) business days after receipt by the Escrow Agent and the Seller Parties of a Section 3(d) Notice:

(i) the Escrow Agent shall not have received a written objection to such Section 3(d) Notice from the Seller Parties, then the Escrow Agent shall promptly, but in no event later than the next following business day, (A) release the relevant Company Stay/Appeal Amount to the Company in accordance with such instructions, and (B) release to Seller the difference, if any, between (1) the Company Stay/Appeal Amount and (2) the Supplemental Deposit(s) made with respect to such Stay/Appeal Election; or

(ii) the Escrow Agent shall have received a written objection to such Section 3(d) Notice from the Seller Parties (a copy of which objection shall be sent simultaneously to Buyer) (a "Seller 3(d) Objection Notice", and together with any Seller 3(c) Objection Notice, a "Seller Objection Notice"), in substantially the Form of Exhibit K, then such Company Stay/Appeal Amount shall be deemed to be a "Seller Disputed Payment" and the Escrow Agent shall only release the amounts specified in the Section 3(d) Notice to the Company and/or, if applicable, Seller, as the case may be, upon the receipt by the Escrow Agent of (x) joint written instructions from Buyer and the Seller Parties or (y) a Final Determination with respect to such Seller Disputed Payment.

If the applicable Covered Guarantee is the DTE-Georgetown Guarantee and a Preference Release Event shall have occurred as a result of a Relevant Order, then the Escrow Agent shall also release to Seller the difference, if any, between (A) all amounts paid to Recipients and/or the Company pursuant to the Relevant Order with respect to the DTE-Georgetown Guarantee and (B) the Full Face Amount with respect to the DTE-Georgetown Guarantee as of such date.

If the applicable Covered Guarantee is the Liberty Guarantee and both a Termination Release Event and a Preference Release Event shall have occurred as a result of a Relevant Order, then the Escrow Agent shall also release to Seller the difference, if any, between (A) all amounts paid to Recipients and/or the Company pursuant to the Relevant Order with respect to the Liberty Guarantee and (B) the Full Face Amount with respect to the Liberty Guarantee as of such date.

If the applicable Covered Guarantee is an Other Guarantee and a Termination Release Event shall have occurred as a result of a Relevant Order, then the Escrow Agent shall also release to Seller the difference, if any, between (A) all amounts paid to Recipients and/or the Company pursuant to the Relevant Order with respect such Other Guarantee and (B) the Full Face Amount with respect to such Other Guarantee as of such date.

4. Final Determination. If Buyer or the Seller Parties shall have delivered a timely Buyer Objection Notice or Seller Objection Notice, as the case may be, then Buyer and the Seller Parties shall use good faith efforts to reach written agreement within 20 days thereafter as to the Buyer Disputed Payment or the Seller Disputed Payment, as the case may be. If the Buyer Disputed Payment or the Seller Disputed Payment shall not have been resolved within such 20-day period, then determination of the Buyer Disputed Payment or the Seller Disputed Payment shall be submitted by the parties to binding arbitration by an independent nationally recognized accounting firm without any material financial relationship to any party, as mutually selected by Buyer and the Seller Parties within ten (10) days after the end of such 20-day period. The fees and expenses of such arbitration shall be borne 50% by the Seller Parties, on the one hand, and 50% by Buyer, on the other hand. The determination of any Buyer Disputed Payment or Seller Disputed Payment by such arbitration shall be final and binding upon Buyer and the Seller Parties. Any final resolution of a Buyer Disputed Payment or Seller Disputed Payment pursuant to the terms of this Section 4 shall be a "Final Determination" and written notice of such Final Determination shall be given to the Escrow Agent by the Seller Parties and Buyer immediately upon resolution thereof.

5. Termination of Escrow; Resignation or Removal of Escrow Agent. This Agreement shall terminate at such time as there is no longer any Escrow Amount. The provisions of Sections 6 and 7 shall survive a termination of this Agreement or the removal or resignation of the Escrow Agent. Upon the resignation of the Escrow Agent, the parties hereto shall consent to the appointment of a mutually acceptable successor escrow agent. The Escrow Agent shall not be removed without the consent of Buyer and the Seller Parties to such removal and the appointment of a successor escrow agent by Buyer and the Seller Parties. Any reference hereunder to the Escrow Agent shall, following the appointment of a successor escrow agent pursuant to this Section 5, be deemed to refer to such successor escrow agent as if such successor

escrow agent were an original signatory hereto (provided that such successor escrow agent shall not have any liability with respect to actions of its predecessor(s) hereunder).

6. Indemnity. The Seller Parties and Buyer shall indemnify and hold the Escrow Agent harmless against any loss, claim, damage, liability, or expense incurred in connection with any action, suit, proceeding, claim or alleged liability arising from this Agreement; provided, however, that the Escrow Agent shall not be so indemnified or held harmless for its negligence or acts in bad faith by it or any of its agents or employees, nor for its breach of this Agreement. The Seller Parties and Buyer, to the extent permitted by applicable law, hereby waive any rights or claims against the Escrow Agent for special, indirect or consequential loss or damage of any kind (including, but not limited to, lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. The parties hereby grant the Escrow Agent a lien on, right of set-off against and security interest in the Escrow Amount for the payment of any claim for indemnification, compensation, expenses and amounts due hereunder.

7. Assignment of Subrogation Rights. ^{TCAL} Buyer and the ^{GTN Corp.} Company shall hereby assign to Seller ^{GTN LLC} (and Seller shall accept such assignments) any and all rights the Company or Buyer may have pursuant to which the Company or Buyer are subrogated to any rights of the Recipient against the primary obligor or the primary guarantor under any Guarantee in respect of any amounts paid to such Recipient out of the Escrow Amount in accordance with this Agreement.

8. Expenses. The Escrow Agent shall be entitled to be paid a fee for its services pursuant to the fee schedule attached as Exhibit A hereto and to be reimbursed for all reasonable, actual, out-of-pocket expenses incurred by the Escrow Agent in the administration of this Agreement (including reasonable legal costs incurred by the Escrow Agent). Such fees and expenses shall be shared equally by the Seller Parties, on the one hand, and Buyer, on the other hand. Any expenses incurred by any Seller Party or Buyer in connection with this Agreement shall be borne by the party incurring the expenses.

9. Notices. All notices and other communications required or permitted to be given or made hereunder shall be in writing and shall be deemed to have been duly given or made if (i) delivered personally, (ii) transmitted by first class registered or certified mail, postage prepaid, return receipt requested, (iii) delivered by prepaid overnight courier service, or (iv) delivered by confirmed telecopy or facsimile transmission to the parties at the following addresses (or at such other addresses as shall be specified by the parties by similar notice):

If to Buyer or the Company:

c/o TransCanada Corporation
TransCanada PipeLines Tower
450 First Street, S.W.

Calgary, Alberta T2P5H1

Attention: Albrecht W.A. Bellstedt, Q.C., Executive Vice President,
Law and General Counsel

Facsimile: (403) 920-2410

with a copy to:

Mayer, Brown, Rowe & Maw LLP
190 South LaSalle Street
Chicago, IL 60603
Attention: Marc F. Sperber, Esq.
Facsimile: (312) 701-7711

If to any Seller Party:

National Energy & Gas Transmission, Inc.
7600 Wisconsin Avenue
Bethesda, MD 20814, USA
Attention: Sanford L. Hartman
Facsimile: (301) 280-6319

with a copy to:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Attention: William H. Gump, Esq.
Jeffrey R. Poss, Esq.
Facsimile: (212) 728-8111

If to the Escrow Agent:

JPMorgan Chase Bank
4 New York Plaza, 21st Floor
New York, NY 10004
Attention: Joe Morales
Telephone: (212) 623-5078
Facsimile: (212) 623-6165

Notices shall be effective (i) if delivered personally or sent by courier service, upon actual receipt by the intended recipient, (ii) if mailed, upon the earlier of five days after deposit in the mail or the date of delivery as shown by the return receipt therefore, or (iii) if sent by telecopy or facsimile transmission, when the answer back is received.

10. Duties of the Escrow Agent. The duties and responsibilities of the Escrow Agent shall be limited to those expressly set forth herein. The Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any agreement other than this Agreement and the Deposit Escrow Agreement. In the event that the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any party hereto which,

in its opinion, conflict with any of the provisions of this Escrow Agreement, it shall be entitled to refrain from taking any action and its sole obligation shall be to keep safely all property held in escrow until it shall be directed otherwise in writing by all of the other parties hereto, by a Final Determination or by a final order or judgment of a Governmental Entity of competent jurisdiction.

11. Assignment; Amendment. No party may assign its rights or obligations under this Agreement without the prior written consent of all other parties hereto and upon 30 days prior written notice to the Escrow Agent. This Agreement may not be amended except by a written agreement executed by each of the parties hereto.

12. Governing Law; Jurisdiction; Waiver of Jury Trial. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the laws of the State of New York, without giving effect to the principles of conflicts of laws thereof. Except for disputes with respect to Buyer Disputed Payments and Seller Disputed Payments, which shall be subject to resolution as contemplated by Section 4 hereof, the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes that may arise under this Agreement. Notwithstanding the foregoing, if the Bankruptcy Cases to which Parent is a party have closed, except for disputes with respect to Buyer Disputed Payments and Seller Disputed Payments, each of the parties irrevocably (i) submits to the jurisdiction of the courts of the State of New York and the federal courts of the United States located in New York, New York regarding any such claim or dispute; (ii) agrees that all claims and disputes shall be heard and determined in such courts; (iii) waives, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the venue of any such claim or dispute brought in such court or any defense of inconvenient forum for the maintenance of such claim or dispute; and (iv) agrees that a judgment in any claim or dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law. Each party hereby knowingly, voluntarily and intentionally waives any right it may have to a trial by jury in respect of litigation arising out of, under or in connection with this Agreement or the transactions contemplated hereby.

13. Miscellaneous. This Agreement and, with respect to Buyer and the Seller Parties, the Purchase Agreement and the Related Agreements embody the entire agreement and understanding of the parties concerning the Escrow Amount. The headings in this Agreement are intended solely for convenience or reference and shall be given no effect in the construction or interpretation of this Agreement. This Agreement shall bind and inure to the benefit of the parties hereto and their respective, heirs, personal representatives, successors and permitted assigns, and nothing in this Agreement is intended to or shall confer upon any other Person any rights or remedies.

14. Severability. If any provision of this Agreement is held by a court or other competent authority to be void or unenforceable, in whole or part, this Agreement shall continue to be valid as to the other provisions hereof and the remainder of the affected provision.

15. Counterparts. This Agreement may be executed in two or more counterparts (including by facsimile), and each such executed counterpart shall be, and shall be deemed to be, an

original, but all of which shall constitute, and shall be deemed to constitute, in the aggregate but one and the same instrument.

16. Security Procedures. In the event funds transfer instructions are given (other than in writing at the time of execution of this Agreement), whether in writing, by telecopier or otherwise, the Escrow Agent is authorized to seek confirmation of such instructions by telephone call-back to the person or persons designated on Exhibit B hereto, and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The persons and telephone numbers for call-backs may be changed only in a writing actually received and acknowledged by the Escrow Agent. The Escrow Agent and the beneficiary's bank in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by the Buyer or the Seller Parties to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank. The Escrow Agent may apply any of the escrowed funds for any payment order it executes using any such identifying number, even when its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank designated. The parties to this Agreement acknowledge that these security procedures are commercially reasonable.

17. TINs. Upon execution of this Agreement, the parties hereto shall provide the Escrow Agent with a fully executed W-8 or W-9 form. In addition, all interest or other income earned under this Agreement shall be allocated and/or paid as set forth herein and reported by the recipient to the Internal Revenue Service or any other taxing authority. Notwithstanding such written directions, the Escrow Agent shall report and, as required withhold any taxes as it determines may be required by any law or regulation in effect at the time of the distribution. In the event that any earnings remain undistributed at the end of any calendar year, the Escrow Agent shall report to the Internal Revenue Service or such other authority such earnings as it deems appropriate or as required by any applicable law or regulation or, to the extent consistent therewith, as directed in writing by Buyer and the Seller Parties. In addition, Escrow Agent shall withhold any taxes it deems appropriate and shall remit such taxes to the appropriate authorities.

[SIGNATURE PAGES FOLLOW]

To evidence their agreement, the parties have caused this Agreement to be executed on the date first written above.

GTN HOLDINGS LLC

By: P. Chrisman Iribre
Name: P. Chrisman Iribre
Title: President

GAS TRANSMISSION CORPORATION

By: P. Chrisman Iribre
Name: P. Chrisman Iribre
Title: President

**NATIONAL ENERGY & GAS
TRANSMISSION, INC.**

By: P. Chrisman Iribre
Name: P. CHRISMAN IRIBE
Title: EXECUTIVE VICE PRESIDENT

**TRANSCANADA AMERICAN
INVESTMENTS LTD.**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**JPMORGAN CHASE BANK
As Escrow Agent**

By: _____
Name: _____
Title: _____

To evidence their agreement, the parties have caused this Agreement to be executed on the date first written above.

GTN HOLDINGS LLC

By: _____
Name: _____
Title: _____

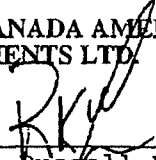
GAS TRANSMISSION CORPORATION

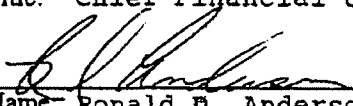
By: _____
Name: _____
Title: _____

**NATIONAL ENERGY & GAS
TRANSMISSION, INC.**

By: _____
Name: _____
Title: _____

**TRANSCANADA AMERICAN
INVESTMENTS LTD.**

By:  _____
Name: Russell K. Girling
Title: Chief Financial Officer

By:  _____
Name: Ronald D. Anderson
Title: Vice-President

**JPMORGAN CHASE BANK
As Escrow Agent**

By: _____
Name: _____
Title: _____

FROM

(THU) 10. 28' 04 11:38/ST. 11:38/NO. 4863517725 P 2

To evidence their agreement, the parties have caused this Agreement to be executed on the date first written above.

GTN HOLDINGS LLC

By: _____
Name:
Title:

GAS TRANSMISSION CORPORATION

By: _____
Name:
Title:

**NATIONAL ENERGY & GAS
TRANSMISSION, INC.**

By: _____
Name:
Title:

**TRANSCANADA AMERICAN
INVESTMENTS LTD.**

By: _____
Name:
Title:

By: _____
Name:
Title:

JPMORGAN CHASE BANK
As Escrow Agent

By: *John A. DeMeyer*
Name:
Title:

GAS TRANSMISSION
NORTHWEST CORPORATION

By: P. Chrisman Irite
Name: P. Chrisman Irite
Title: President

Exhibit A

\$3,500 per year without pro-ratio for partial years.

Exhibit B

**Telephone Number(s) for Call-Backs and
Person(s) Designated to Confirm Funds Transfer Instructions**

If to Buyer or the Company:

	<u>Name</u>	<u>Telephone Number</u>
1.	<u>Richard Blakemore</u>	<u>(403) 920-2515</u>
2.	<u>Donald Marchand</u>	<u>(403) 920-2525</u>
3.	<u>Ron Anderson</u>	<u>(403) 920-2299</u>

If to Seller Parties:

	<u>Name</u>	<u>Telephone Number</u>
1.	<u>Charles P. Hollands</u>	<u>(301) 280-6594</u>
2.	<u>John C. Barpoulis</u>	<u>(301) 280-6964</u>

Telephone call-backs shall be made to each Buyer and Seller Parties if joint instructions are required pursuant to this Agreement.

Exhibit C

Form of Section 3(b) Notice.

The undersigned hereby provide this Section 3(b) Notice in accordance with Section 3(b) of the Post-Closing Escrow Agreement, dated November __, 2004 by and among National Energy & Gas Transmission, Inc., Gas Transmission Corporation, GTN Holdings LLC, Gas Transmission Northwest Corporation, TransCanada American Investments Ltd. and JPMorgan Chase Bank (the "Post-Closing Escrow Agreement"), and hereby inform the Escrow Agent that:

Subject to the receipt of the payment amount by the Recipient set forth below:

- ☐ A Preference Release Event has or will occur with respect to the DTE-Georgetown Guarantee;
- ☐ Both a Preference Release Event and a Termination Release Event have or will occur with respect to the Liberty Guarantee; or
- ☐ A Termination Release Event has or will occur with respect to an Other Guarantee.

The specific Covered Guarantee subject to such Termination Release Event or Preference Release Event is Guarantee number __, as set forth on Schedule A.

The Full Face Amount of the specific Covered Guarantee as of the date hereof is \$_____.

Subject to the provisions of Section 3(b)(i) and (ii) of the Post-Closing Escrow Agreement, the Escrow Agent is hereby directed to release \$_____ to _____ (the Recipient).

The wiring instructions for such release are:

Subject to the provisions of Section 3(b)(i) and (ii) of the Post-Closing Escrow Agreement, the Escrow Agent is hereby directed to release \$_____, representing the Section 3(b) Difference Amount or the Interim Disbursement Amount, to Seller.

Exhibit D

Form of Buyer Objection Notice.

The undersigned hereby provides this Buyer Objection Notice in accordance with Section 3(b) of the Post-Closing Escrow Agreement, dated November __, 2004 by and among National Energy & Gas Transmission, Inc., Gas Transmission Corporation, GTN Holdings LLC, Gas Transmission Northwest Corporation, TransCanada American Investments Ltd. and JPMorgan Chase Bank (the "Post-Closing Escrow Agreement"), and hereby informs the Escrow Agent that:

In accordance with the provisions of Section 3(b) of the Post-Closing Escrow Agreement, Buyer hereby objects to Seller's Section 3(b) Notice, dated _____ with respect to Covered Guarantee number ____, as set forth on Schedule A.

The Escrow Agent is hereby precluded from releasing any funds pursuant to the Section 3(b) Notice, dated _____, unless and until the Escrow Agent receives joint written instructions from Buyer and Seller or a Final Determination, as defined in the Post-Closing Escrow Agreement.

Exhibit E

Form of Section 3(c) Notice.

The undersigned hereby provides this Section 3(c) Notice in accordance with Section 3(c) of the Post-Closing Escrow Agreement, dated November __, 2004 by and among National Energy & Gas Transmission, Inc., Gas Transmission Corporation, GTN Holdings LLC, Gas Transmission Northwest Corporation, TransCanada American Investments Ltd. and JPMorgan Chase Bank (the "Post-Closing Escrow Agreement"), and hereby informs the Escrow Agent that:

Buyer has provided Notice to Parent of the initial communication relating to Covered Guarantee number __, as set forth in Schedule A, in accordance with Section 7.18(c) of the Purchase Agreement.

Parent has

- ☐ not responded to such notice within 5 days, or
- ☐ instructed Buyer in writing (which is attached to these instructions) that it will not pursue a Guarantee Settlement Action.

The Recipient, as set forth in Covered Guarantee number __, as set forth on Schedule A, has been paid \$_____ by _____, which is an Acquired Company, as defined in the Purchase Agreement.

[Note: The preceding three paragraphs shall not be required for a Section 3(c) Notice covering only an Excess Costs Amount.]

Subject to the provisions of Section 3(c)(i) and (ii) of the Post-Closing Escrow Agreement, the Escrow Agent is hereby directed to release \$_____ (the Reimbursement Amount), to the Company.

In the event that the Reimbursement Amount is released, the Escrow Agent is hereby directed to release \$_____ (the Section 3(c) Difference Amount) to Seller.

Subject to the provisions of Section 3(c)(i) and (ii) of the Post-Closing Escrow Agreement, the Escrow Agent is hereby directed to release \$_____ (an Excess Costs Amount) to the Company.

Exhibit F

Form of Seller 3(c) Objection Notice.

The undersigned hereby provide this Section 3(c) Objection Notice in accordance with Section 3(c) of the Post-Closing Escrow Agreement, dated November __, 2004 by and among National Energy & Gas Transmission, Inc., Gas Transmission Corporation, GTN Holdings LLC, Gas Transmission Northwest Corporation, TransCanada American Investments Ltd. and JPMorgan Chase Bank (the "Post-Closing Escrow Agreement"), and hereby inform the Escrow Agent that:

In accordance with the provisions of Section 3(c) of the Post-Closing Escrow Agreement, the Seller Parties hereby object to Buyer's Section 3(c) Notice, dated _____ with respect to Covered Guarantee number _____, as set forth on Schedule A.

The Escrow Agent is hereby precluded from releasing any funds pursuant to the Section 3(c) Notice, dated _____, unless and until the Escrow Agent receives joint written instructions from Buyer and Seller or a Final Determination, as defined in the Post-Closing Escrow Agreement.

Exhibit G

Form of Instructions to Escrow Agent instructing the release of funds in accordance with Section 3(d) of the Post-Closing Escrow Agreement.

The undersigned, in accordance with Section 3(d) of the Post-Closing Escrow Agreement, dated November __, 2004 by and among National Energy & Gas Transmission, Inc., Gas Transmission Corporation, GTN Holdings LLC, Gas Transmission Northwest Corporation, TransCanada American Investments Ltd. and JPMorgan Chase Bank (the "Post-Closing Escrow Agreement"), hereby informs the Escrow Agent that:

A Relevant Order, as defined in the Post-Closing Escrow Agreement, with respect to Covered Guarantee number __, as set forth on Schedule A, has been entered by a Governmental Entity of competent jurisdiction, and a certified copy thereof is attached hereto.

The Post -Closing Escrow Agreement, the Escrow Agent is hereby directed to release \$_____ to _____ (the Recipient).

The wiring instructions for such release are:

The amount, if any, to be released to Seller is \$_____.

The amount, if any, to be released to Buyer is \$_____.

The Escrow Agent shall release funds pursuant to this notice on _____, which is 11 days after the date on which the Relevant Order was entered, unless the Escrow Agent receives a Stay/Appeal Election (as defined in the Post-Closing Escrow Agreement) from the Seller Parties prior to such date.

Exhibit H

Form of Stay/Appeal Election.

The undersigned, in accordance with Section 3(d) of the Post-Closing Escrow Agreement, dated November __, 2004 by and among National Energy & Gas Transmission, Inc., Gas Transmission Corporation, GTN Holdings LLC, Gas Transmission Northwest Corporation, TransCanada American Investments Ltd. and JPMorgan Chase Bank (the "Post-Closing Escrow Agreement"), hereby inform the Escrow Agent that:

In accordance with the provisions of Section 3(d) of the Post Closing Escrow Agreement, Seller hereby makes a Stay/Appeal Election.

The Escrow Agent is hereby precluded from releasing any funds as previously directed in the instructions, dated _____, issued pursuant to Section 3(d) with respect to Guarantee number _____, as set forth on Schedule A.

As required by Section 3(d), Seller hereby posts a Supplemental Deposit, in the amount of \$_____.

Such Supplemental Deposit shall be held by the Escrow Agent for the benefit of Buyer, and released in whole or in part to Buyer only upon the provision of a notice, substantially in the form of Exhibit J to the Post-Closing Escrow Agreement.

**AFFIRMED AS TO THE SUPPLEMENTAL
DEPOSIT AMOUNT:
TRANSCANADA AMERICAN
INVESTMENTS LTD.**

By: _____ Name:
Title:

By: _____ Name:
Title:

Exhibit I

Form of Notice to Be Delivered by Buyer pursuant to Section 3(d) after a Stay/Appeal Election.

The undersigned, in accordance with Section 3(d) of the Post-Closing Escrow Agreement, dated November __, 2004 by and among National Energy & Gas Transmission, Inc., Gas Transmission Corporation, GTN Holdings LLC, Gas Transmission Northwest Corporation, TransCanada American Investments Ltd. and JPMorgan Chase Bank (the "Post-Closing Escrow Agreement"), hereby informs the Escrow Agent that:

The Seller Parties timely made a Stay/Appeal Election on _____ with respect to the Relevant Order delivered to the Escrow Agent on _____ by [Buyer/Seller]. Notwithstanding the Seller Parties' efforts to obtain a stay of such Relevant Order, an Acquired Company is nevertheless required to pay \$____, pursuant to the terms of such Relevant Order.

In accordance with Section 3(d) of the Post-Closing Escrow Agreement, the Escrow Agent is hereby directed to release \$ _____ to _____, as provided in the Relevant Order.

The wiring instructions for such release are:

The amount, if any, to be released to Seller is \$ _____

The amount, if any, to be released to Buyer is \$ _____

Exhibit J

Form of Section 3(d) Notice.

The undersigned hereby provides this Section 3(d) Notice in accordance with Section 3(d) of the Post-Closing Escrow Agreement, dated November __, 2004 by and among National Energy & Gas Transmission, Inc., Gas Transmission Corporation, GTN Holdings LLC, Gas Transmission Northwest Corporation, TransCanada American Investments Ltd. and JPMorgan Chase Bank (the "Post-Closing Escrow Agreement"), and hereby provides notice to the Escrow Agent that:

In accordance with the provisions of Section 3(d), the Escrow Agent is hereby directed to release to the Company \$_____, to be deducted from the Supplemental Deposit deposited by Seller in connection with the Notice dated _____, and as provided for by Seller with respect to Covered Guarantee number____, as set forth on Schedule A.

The amount, if any, to be released to Seller is \$_____.

Exhibit K

Form of Seller 3(d) Objection Notice.

The undersigned hereby provide this Seller 3(d) Objection Notice in accordance with Section 3(d) of the Post-Closing Escrow Agreement, dated November __, 2004 by and among National Energy & Gas Transmission, Inc., Gas Transmission Corporation, GTN Holdings LLC, Gas Transmission Northwest Corporation, TransCanada American Investments Ltd. and JPMorgan Chase Bank (the "Post-Closing Escrow Agreement"), and hereby inform the Escrow Agent that:

In accordance with the provisions of Section 3(d) of the Post Closing Escrow Agreement, Seller hereby objects to Buyer's Section 3(d) Notice dated _____ with respect to Covered Guarantee number ____, as set forth on Schedule A.

The Escrow Agent is hereby precluded from releasing any funds pursuant to Buyer's instructions, dated _____, unless and until the Escrow Agent receives joint written instructions from Buyer and Seller or a Final Determination with respect to such Seller Disputed Amount, as defined in the Post-Closing Escrow Agreement.

SCHEDULE A

1. Guarantee by PG&E Energy Trading Holdings Corporation, PG&E National Energy Group, Inc., and the Company, in favor of BP Energy Company, BP Amoco Corporation, BP Canada Energy Marketing Corporation and BP Canada Energy Company, dated March 26, 2001 and amended by the First Amendment dated July 22, 2002. Full Face Amount of Guarantee \$40,000,000.
2. Guarantee by PG&E Corporation, in favor of El Paso Natural Gas Company, Tennessee Gas Pipeline Company, Midwestern Gas Transmission Company, Mohave Pipeline Company, El Paso Field Services, dated April 26, 1999, as amended by the First Amendment to the Guarantee, dated April 26, 1999. Assigned to the Company in the Assignment and Assumption Agreement between the Company and PG&E Corporation, dated December 28, 2000. Full Face Amount of Guarantee \$12,000,000.
3. Guarantee by PG&E Corporation, in favor of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company, dated August 31, 2000, as amended by the Second Amendment, dated March 1, 2002. Assigned to the Company in the Assignment and Assumption Agreement, between the Company and PG&E Corporation, dated January 19, 2001. Full Face Amount of Guarantee \$5,000,000.
4. Guarantee by the Company in favor of Liberty Electric Power, LLC, dated February 6, 2001. Consent and Agreement between the Company, Liberty Electric Power, LLC and The Chase Manhattan Bank, dated February 6, 2001. Full Face Amount of Guarantee \$140,000,000.
5. Guarantee by PG&E Corporation, in favor of Southern Company Energy Marketing L.P. (name change to: Mirant Americas Energy Marketing LP), dated January 23, 1999, as amended by the First Amendment, dated January 5, 2001. Assigned to the Company in the Assignment and Assumption Agreement, between PG&E Corporation and the Company, dated December 28, 2000. Full Face Amount of Guarantee \$20,000,000.
6. Guarantee originally executed by PG&E in favor of DTE Georgetown, LLC, dated May 24, 2000, which was assigned to the Company on January 19, 2001. Full Face Amount of Guarantee \$24,000,000.