

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

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

**DECLARATION OF CHARLES GOLDSTEIN**

BALTIMORE, MARYLAND

Pursuant to 28 U.S.C. § 1746, Charles Goldstein states as follows:

1. I am the Plan Administrator of NEGT Energy Trading – Power, L.P. (“ET Power”).
2. ET Power is the former indirect subsidiary of National Energy & Gas Transmission, Inc. (“NEGT”).
3. NEGT filed a motion (the “Motion”) to initiate a contested matter (the “Contested Matter”) in the above-captioned bankruptcy proceedings. In the Motion, NEGT asserted subrogation rights with regard to a claim originally asserted by Liberty Electric Power LLC (“Liberty”) against ET Power. ET Power filed an objection to the Motion. I make this Declaration in support of ET Power’s motion for summary judgment filed in the Contested Matter.
4. On July 8, 2003, NEGT, ET Power and certain of their affiliates filed petitions for relief under chapter 11 of the U.S. Bankruptcy Code.
5. Until May 13, 2004, when the Court entered its Order authorizing the sale of Gas

Transmission Northwest Corp. (“GTN”) to TransCanada American Investments Ltd. (“TransCanada”), GTN was a non-debtor affiliate of NEGТ and ET Power.

6. PG&E Corporation (“PGE”) was the ultimate parent of NEGТ and ET Power until NEGТ’s plan of reorganization became effective.
7. ET Power’s defenses to the Motion relate to a Tolling Agreement (the “Tolling Agreement”) between ET Power and Liberty and certain guaranties (collectively, the “Guaranties”) furnished in support of the parties’ payment obligations under the Tolling Agreement.
8. I am familiar with the Guaranties and the facts and circumstances related to the litigation in connection with the Tolling Agreement. I have personal knowledge of the facts stated in this Declaration.
9. The Tolling Agreement was dated April 14, 2000. A true and correct copy of the Tolling Agreement is attached as Exhibit A.
10. PGE executed a guaranty (the “PGE Guaranty”) dated April 24, 2000, in which it guaranteed ET Power’s payment obligations to Liberty under the Tolling Agreement. A true and correct copy of the PGE Guaranty is attached as Exhibit B.
11. Columbia Energy Group executed a guaranty (the “Columbia Guaranty”) dated April 24, 2000, in which it guaranteed Liberty’s obligations to ET Power under the Tolling Agreement. A true and correct copy of the Columbia Guaranty is attached as Exhibit C.
12. On February 6, 2001, NEGТ and GTN each furnished a guaranty of ET Power’s payment obligations to Liberty (“the NEGТ Guaranty” and “GTN Guaranty,”

respectively) under the Tolling Agreement. A true and correct copy of the NEGТ Guaranty is attached as Exhibit D. A true and correct copy of the GTN Guaranty is attached as Exhibit E.

13. After it filed its petition under Chapter 11 of the Bankruptcy Code, ET Power engaged in litigation with Liberty concerning ET Power's rejection of the Tolling Agreement and Liberty's resulting claims for damages arising from the breach. An arbitration proceeding resulted in an award for Liberty against ET Power in the amount of \$162,725,436.59.
14. NEGТ, GTN Holdings LLC, TransCanada and GTN entered into a Post-Closing Escrow Agreement with JP Morgan Chase Bank as escrow agent (the "Escrow Agent"). TransCanada transferred a portion of the GTN purchase price (\$241 million) to the Escrow Agent on November 1, 2004. A true and correct copy of the Post-Closing Escrow Agreement is attached as Exhibit F.
15. Subsequent to the execution of the Post-Closing Escrow Agreement, the Escrow Agent paid Liberty \$140 million.
16. This Declaration is based upon my personal knowledge of the facts and circumstances relating to the books and records of ET Power and the matters related to litigation involving ET Power after I became Plan Administrator.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 5, 2010.

/s/ Charles Goldstein  
Charles Goldstein

C. Kyle

---

**TOLLING AGREEMENT**

**by and among**

**LIBERTY ELECTRIC POWER, LLC**

**and -**

**PG&E ENERGY TRADING - POWER, L.P.**

April 14, 2000

---

# TABLE OF CONTENTS

ARTICLE I: TERM .....	1
ARTICLE II: PURCHASE AND SALE OF CAPACITY AND TOLLING OPERATIONS .....	2
ARTICLE III: TOLLING OPERATIONS .....	3
ARTICLE IV: GAS SUPPLY .....	12
ARTICLE V: METERING .....	14
ARTICLE VI: TOLLING FEES.....	16
ARTICLE VII: BILLING AND PAYMENT .....	19
ARTICLE VIII: SECURITY .....	21
ARTICLE IX: ELECTRIC TRANSMISSION ARRANGEMENTS.....	22
ARTICLE X: CONDITIONS PRECEDENT .....	23
ARTICLE XI: REPRESENTATIONS AND WARRANTIES .....	23
ARTICLE XII: TITLE AND RISK OF LOSS .....	24
ARTICLE XIII: ADDITIONAL COVENANTS.....	25
ARTICLE XIV: DEFAULT AND REMEDIES.....	28
ARTICLE XV: LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES.....	31
ARTICLE XVI: INDEMNIFICATION .....	32
ARTICLE XVII: ASSIGNMENT AND SUCCESSION .....	34
ARTICLE XVIII: FORCE MAJEURE .....	35
ARTICLE XIX: TAXES.....	37
ARTICLE XX: DISPUTE RESOLUTION .....	39
ARTICLE XXI: NOTICES.....	42
ARTICLE XXI: MISCELLANEOUS .....	43

PG&E Energy Trading – Power, L.P., and any other company referenced herein which uses the PG&E name or logo are not the same company as Pacific Gas and Electric Company, the California utility. These companies are not regulated by the California Public Utilities Commission, and customers do not have to buy products from these companies in order to continue to receive quality regulated services from the utility.

### **TOLLING AGREEMENT**

This Tolling Agreement (this "Tolling Agreement") is made and entered into as of this 14<sup>th</sup> day of April, 2000 by and between Liberty Electric Power, LLC ("LEP") a Delaware limited liability company, having an office at 13880 Dulles Corner Lane, Herndon, Virginia 20171-4600, and PG&E Energy Trading-Power, L.P. ("PGET") a Delaware limited partnership, having an office at 7500 Old Georgetown Road, 14th Floor, Bethesda, Maryland 20814-6161. Each of LEP and PGET may also be referred to individually as "Party" or collectively as "Parties." The definitions set forth in Exhibit A shall apply to this Tolling Agreement inclusive of each Exhibit and Schedule hereto.

WHEREAS, LEP is developing a combined cycle Gas-fueled generating plant of approximately 530 megawatts net capacity in the Borough of Eddystone, Pennsylvania consisting of two General Electric Frame 7FA combustion turbines with two heat recovery steam generators with duct firing capability, and one steam turbine and auxiliary and appurtenant systems (the "Facility"); and

WHEREAS, LEP intends to operate or cause the Facility to be operated in order to provide Tolling Operations to PGET during the term hereof;

WHEREAS, PGET desires to utilize the Facility for processing of Gas into Power and therefore would arrange for delivery of sufficient Gas for such purpose; and

WHEREAS, PGET and LEP desire, under appropriate circumstances, that LEP shall have the right, but not the obligation, to provide Capacity and/or Energy to PGET from sources other than the Facility.

NOW THEREFORE, in consideration of the representations, covenants and agreements contained in this Tolling Agreement, the Parties agree as follows:

### **ARTICLE I: TERM**

Section 1.1. Term. This Tolling Agreement shall be effective upon execution by both Parties and shall remain in effect throughout the Contract Term, subject to Section 10.1. This Tolling Agreement shall terminate automatically at the end of the Contract Term and neither PGET nor LEP shall have any further liability or obligation to the other hereunder, except for obligations or duties that accrued prior to such termination.

Section 1.2. Extension. PGET may, in its sole discretion, by Notice to LEP prior to September 30, 2014, extend the Contract Term until September 30, 2018, unless the Contract

Term has been extended due to Force Majeure pursuant to Section 13.1(c)(i), in which case PGET may, in its sole discretion, by Notice to LEP prior to September 30, 2015, extend the Contract Term until September 30, 2019.

## ARTICLE II: PURCHASE AND SALE OF CAPACITY AND TOLLING OPERATIONS

Section 2.1. Capacity. Subject to and in accordance with the terms and conditions herein, during the period from the Commencement Date to the end of the Contract Term LEP shall sell and make available to PGET, and PGET shall purchase and pay for, first priority access to the Net Dependable Capacity of the Facility or, if LEP chooses, equivalent Replacement Power.

Section 2.2. Tolling Operations. Subject to and in accordance with the terms and conditions herein, during the period from the Commencement Date to the end of the Contract Term LEP shall perform for PGET, and PGET shall purchase and pay for, Tolling Operations.

Section 2.3. Non-Exclusive Nature of Agreement. The relationship between PGET and LEP with respect to the Facility, its Capacity and the Tolling Operations during the period from the Commencement Date through the end of the Contract Term is non-exclusive. As long as PGET is not in default of this Tolling Agreement, and unless and except to the extent required by Law or PJM Requirements or pursuant to the Replacement Power provisions of Section 3.4(d), LEP during the period from the Commencement Date to the end of the Contract Term shall provide to PGET first priority access to the Power, Tolling Operations and Scheduling and Dispatch of the Facility. Subject to the foregoing and the provisions of this Tolling Agreement, LEP may offer, sell or make available any Power, perform Tolling Operations or Dispatch the Facility to or for any person other than PGET; provided, however, that the use of Power by LEP for the station electrical load of the Facility and the offering, selling, making available or otherwise marketing of the Facility, its Power and Tolling Operations for sale after the end of the Contract Term are not subject to PGET's first priority access and are permitted.

Section 2.4. Right of First Offer. LEP grants to PGET a right of first offer throughout the Contract Term for the purchase of Power and Tolling Operations from any additional generating Capacity LEP decides to construct at the Facility site. In the event LEP decides to construct additional generating Capacity at the Facility site, LEP shall provide Notice to PGET of such decision. LEP's Notice shall include sufficient information with respect to such additional generating capacity necessary for evaluation of such opportunity by PGET. PGET shall respond to LEP by Notice indicating whether PGET intends to exercise its right of first offer and, in the event PGET elects to exercise its right to first offer, providing the material terms of PGET's offer, no later than thirty (30) days following LEP's Notice to PGET. Following such Notice by PGET, LEP shall have thirty (30) days to evaluate PGET's offer and respond to PGET by Notice either rejecting PGET's offer, accepting PGET's offer or electing to enter into exclusive good faith negotiations with PGET regarding a definitive agreement. In the event LEP elects to enter into negotiations with PGET, such negotiations shall remain exclusive until a

definitive agreement is reached or until terminated by mutual agreement of the Parties; provided, however, that either Party may, in its sole discretion, terminate the negotiations if a definitive agreement is not executed by the Parties within sixty (60) days from the date of LEP's response.

### ARTICLE III: TOLLING OPERATIONS

Section 3.1. Delivery of Power. Beginning on the Commencement Date and continuing through the Contract Term, LEP will Dispatch the Facility and deliver Power to PGET at the Electricity Delivery Point in accordance with Schedules and Dispatch orders of PGET, provided such Schedules and Dispatch orders are properly given and in accordance herewith, and PGET shall accept such Power at the Electricity Delivery Point.

Section 3.2. Capacity. (a) The Design Capacity of the Facility, with and without duct firing, is set forth in Schedule 3.2(a). Prior to the Commencement Date, and during the period beginning September 1 and ending December 31 in each Contract Year of the Contract Term (other than the last Contract Year), LEP shall provide to PGET a new Schedule 3.2(a) that, in addition to the Facility's Design Capacity, sets out the Facility's Net Dependable Capacity, not to exceed 110% of Design Capacity, and Net Maximum Base Capacity, for the first Contract Year or the Contract Year commencing on the following January 1, as the case may be. The Net Dependable Capacity and Net Maximum Base Capacity for each Contract Year shall be initially determined by the results of a Net Dependable Capacity Test and a Net Maximum Base Capacity Test, respectively. For purposes of determining Net Dependable Capacity and Net Maximum Base Capacity pursuant to this Section 3.2(a), LEP may, in its sole discretion, during the periods specified above, (i) discontinue prior to completion any Net Dependable Capacity Test or Net Maximum Base Capacity Test, and (ii) conduct more than one Net Dependable Capacity Test and/or Net Maximum Base Capacity Test. Except where it is infeasible to do so, each Net Dependable Capacity Test and Net Maximum Base Capacity Test, as the case may be, conducted pursuant to this Section 3.2(a) or Section 3.2(b) shall be conducted during a period or periods when PGET has Dispatched the Facility at full Net Dependable Capacity or Net Maximum Base Capacity, as applicable; provided that LEP shall have the right to request that PGET Schedule the Facility to the extent necessary to conduct a Net Dependable Capacity Test or Net Maximum Base Capacity Test, as the case may be, which request shall not be unreasonably denied by PGET subject to LEP's payment of Incremental Test Costs. If LEP desires to conduct Capacity testing pursuant to this Section 3.2(a) during periods when PGET has not Scheduled and Dispatched the Facility other than as a result of LEP's request, or testing requires operation of the Facility at a higher level of operation than that at which PGET has otherwise Dispatched the Facility, (i) LEP shall so notify PGET, (ii) PGET shall Schedule and Dispatch the Facility at the higher level required to the extent permitted by PJM Requirements and market the Energy to be produced during each such Capacity test, and (iii) LEP shall bear the Incremental Test Costs associated with any such Capacity test. In the event LEP conducts a test of Net Maximum Base Capacity during a period in which PGET Dispatches the Facility at a higher level of output, LEP shall abandon such test, provided PGET shall bear the same costs of Dispatch as if such test has not

been started (e.g. will pay for a Start-up if one would have been required to meet PGET's Dispatch order absent the abandoned test).

(b) Subsequent to the initial determination of Net Dependable Capacity and Net Maximum Base Capacity for each Contract Year in accordance with Section 3.2(a), either Party shall have the right to have performed up to four Net Dependable Capacity Tests and Net Maximum Base Capacity Tests in each Contract Year. Each such request shall be submitted to the other Party at least five Business Days prior to the requested date for the performance of such test(s) and both Parties may be present to monitor the test. In accordance with Section 3.2(a), LEP shall bear the Incremental Test Costs related to any additional Capacity test it requests pursuant to this Section 3.2(b) that is not conducted during periods when PGET has Dispatched the Facility, or requires operation of the Facility at a higher level of operation than that at which PGET has Dispatched the Facility. PGET shall be deemed to have Scheduled and Dispatched the Facility at levels necessary to conduct any additional Capacity testing requested by PGET pursuant to this Section 3.2(b) and shall bear all costs and receive all revenues associated with operations necessary for such test. Upon the completion of each Net Dependable Capacity Test and Net Base Maximum Capacity Test conducted pursuant to this Section 3.2(b), the Net Dependable Capacity and/or the Net Base Maximum Capacity so determined shall become the Net Dependable Capacity and/or Net Maximum Base Capacity for purposes of this Tolling Agreement effective on the first day of the month following the month in which any such additional Capacity testing has been completed, and Schedule 3.2(a) shall be amended accordingly.

Section 3.3. Ancillary Services. Subject to the parameters set forth in Sections 3.4(a) and 3.4(c), LEP shall provide to PGET all Ancillary Services from the Facility that the Facility is capable of providing at no cost in addition to the Tolling Fees; provided that LEP shall not be required to expend money to enable the Facility to provide more or different Ancillary Services than it is capable of providing on the Commencement Date. Any Gas required by LEP to provide Ancillary Services shall be provided by PGET pursuant to Section 4.2(a). As of the Commencement Date, LEP shall have installed on all generating units Automatic Generator Control equipment, at its cost, capable of providing regulation and frequency response service and other Ancillary Services in a manner consistent with PJM Requirements and capable of being controlled by PJM from a location chosen by PJM in accordance with PJM Requirements. LEP will at PJM's direction operate the generating units with Automatic Generator Control equipment in service.

Section 3.4. Scheduling and Dispatch of Power by PGET. (a) PGET, through its Authorized Representatives, shall have the right to Schedule and will be responsible for Scheduling the amount of Energy, Capacity or Ancillary Services it desires to receive from LEP and shall have the right to Dispatch the Facility up to the total of the Net Dependable Capacity, adjusted for ambient conditions. PGET will Schedule and Dispatch the Facility in accordance with the engineering parameters set forth in Schedule 3.4(a). Subject to the confidentiality provisions of Section 22.8(b), on or before the fifteenth day of each month, PGET shall provide to LEP's Project Manager a non-binding forecast of the Power PGET estimates it will Schedule

from the Facility during the following month to be used solely by LEP's Project Manager for purposes of planning Facility operations and Outages. PGET shall provide its preliminary hourly Schedule for Capacity, Energy and Ancillary Services to LEP no later than 12:00 noon Eastern Prevailing Time on the day prior to the delivery day unless LEP agrees otherwise or to the extent PJM Requirements require otherwise or, in the event that a different day-ahead Scheduling procedure is required in order for LEP to reasonably comply with PJM Requirements, including Scheduling and Dispatch procedures, by such other time as the Parties mutually agree. PGET shall not Schedule or Dispatch Power during Scheduled Outages or events of Force Majeure in amounts in excess of the Capacity plus available Replacement Power set forth in LEP's then effective Availability Notice(s). PGET shall not Schedule or Dispatch the Facility to operate at a level lower than its minimum output in any hour (65% of the Net Maximum Base Capacity), unless it directs a Shutdown. PGET will have the right to make, and LEP will permit, intraday Schedule changes consistent with Accepted Electrical Practices. PGET may Dispatch on a real-time basis pursuant to the engineering parameters set forth in Schedule 3.4(a). LEP and PGET shall mutually develop written Operating Procedures (the "Operating Procedures") prior to June 30, 2001. Such Operating Procedures shall include, but not be limited to, procedures for Scheduling and Dispatch and methods of day-to-day communications; provided that failure to agree on such procedures shall not relieve either of the Parties of its obligations to make payments or to deliver or receive Gas or Power hereunder.

(b) LEP shall provide Availability Notices to PGET to be utilized by PGET in Scheduling and Dispatching the Facility. Such Availability Notices shall provide for each hour the Capacity available for Scheduling and Dispatch by PGET in light of PGET's forecast provided pursuant to Section 3.4(a) and anticipated ambient temperature and humidity, Scheduled Outages and, to the extent known by LEP, Forced Outage and Force Majeure events. LEP shall also include in its Availability Notices any Replacement Power it is making available for Scheduling and Dispatch by PGET provided that the amount of Capacity made available from Replacement Power will not exceed Capacity of the Facility that is not available due to Forced Outages. LEP shall provide an Availability Notice each time the Availability of the Facility changes. Capacity will be deemed available for Scheduling and Dispatch by PGET to the extent set forth in the most recent Availability Notice delivered to PGET by LEP.

(c) PGET shall provide LEP with advance Notice of not less than the Start-up Notification Period prior to the time LEP is required to initiate a Cold Start, Warm Start or Hot Start Scheduled by PGET. PGET shall have the right to Schedule up to a maximum of 180 Start-ups of the Facility in each Contract Year, except that (i) during the first Contract Year, which begins on the Commencement Date and ends on the following December 31, PGET shall have the right to Schedule up to a maximum of 145 Start-ups, or up to a maximum of 130 Start-ups if the Commencement Date occurs on June 1 of the first Contract Year, and (ii) during the last Contract Year, which begins on the last January 1 of the Contract Term and ends on the following September 30, PGET shall have the right to Schedule up to a maximum of 125 Start-ups. The foregoing numbers of Start-ups afforded to PGET shall not be reduced due to LEP's activities pursuant to Section 3.11. The Parties may mutually agree to a greater number of Start-ups at a price to be determined pursuant to good faith negotiations in light of the Facility's

maintenance schedule and pursuant to vendor guidelines. LEP shall initiate the Start-up of the Facility as soon as practicable after being notified of a Start-up by PGET. PGET will provide LEP with Gas necessary for each Start-up Scheduled by PGET following a Shutdown Scheduled by PGET, for the first Start-up Scheduled by PGET on or after the Commencement Date, for each Start-up Scheduled by PGET following a Scheduled Outage or an event of Force Majeure and to the extent necessary to start a single combustion turbine when a ramp up Scheduled by PGET requires LEP to operate the Facility's second combustion turbine, to an amount as applicable, adjusted for ambient conditions, in accordance with Schedule 3.4(c) ("Start-up Gas").

(d) LEP may at any time pursuant to a Schedule or Dispatch by PGET provide all or a portion of the requested Capacity and/or Net Electric Energy to the Electricity Delivery Point or Alternate Delivery Point(s) from a source not part of the Facility, provided that LEP shall also provide Ancillary Services during any time that LEP provides Power from a source other than the Facility solely due to its activities under Section 3.11 ("Replacement Power"). LEP shall bear the cost of delivering Replacement Power to PGET at the Electricity Delivery Point or Alternate Delivery Point. In the event Replacement Power is delivered to an Alternate Delivery Point, other than PECO Energy Company's Eddystone 230 kV Substation, LEP will also reimburse PGET for all incremental transmission expenses incurred by PGET as a result of its election to allow LEP to deliver Replacement Power at such Alternate Delivery Point. For Replacement Power delivered to PGET, PGET shall pay LEP the Tolling Fees as if the Replacement Power were produced at the Facility and pay LEP an amount equivalent to the cost of Gas for quantities not delivered to the Facility as a result of Replacement Power calculated as the product of (i) the Gas that would have been consumed to generate all Power at the Facility as Scheduled by PGET on the basis of the Facility Heat Rates, less any Gas used to generate a portion of the Power Scheduled by PGET at the Facility based on the Facility Heat Rates applicable to such portion, and (ii) the Gas Index Price.

(e) LEP agrees to provide confirmation to PJM of PGET's Schedule. Notwithstanding any other provision of this Section 3.4, however, LEP may alter, cancel, or refuse to confirm any Schedule to the extent, and only the extent, the Facility is unavailable to meet such Schedule due to a Scheduled Outage, Forced Outage or Force Majeure or if required to do so in order to reasonably conform with PJM Scheduling or Dispatch procedures.

(f) Each Party consents to the recording of all telephone conversations between its Authorized Representatives and the Authorized Representatives of the other Party. Any such recordings and any other evidence may be introduced to prove any oral elements of any agreement between the Parties, provided that all objections to admissibility on grounds of relevancy and materiality are preserved.

(g) Each Party shall, in accordance with Article XXI, designate in writing to the other Party the persons authorized to nominate and/or agree to a Schedule or Dispatch order for the delivery or acceptance of Gas or Power or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities ("Authorized

Representatives"). Each Party may change its designation of Authorized Representatives by providing Notice.

Section 3.5. (a) Heat Rate. The Facility Heat Rates are as stated in a Heat Rate curve in tabular form, as set forth in Schedule 3.5.

(b) In the event that in any hour after the completion of Start-up and prior to Shutdown of the Facility, the Facility's operating performance, expressed in Btus of Gas consumed per kWh of Net Electric Energy, shall be at a Heat Rate greater than the Guaranteed Heat Rate, LEP shall pay PGET an amount equivalent to the product of the quantity of Gas (expressed in MMBtu's) consumed in such hour as a result of operation at a level in excess of the Guaranteed Heat Rate and the Gas Index Price.

(c) All payments pursuant to this Section 3.5 shall be invoiced pursuant to Section 7.1 and paid monthly in arrears.

Section 3.6. (a) Scheduled Outages. Schedule 3.6 sets forth in respect of each generating unit the length of its anticipated major maintenance cycle and the maximum number of Scheduled Outage hours per each year. On or before the Commencement Date and thereafter each October 15 of the Contract Term, PGET shall provide LEP with its preferred timing for Scheduled Outages for the next Contract Year. On or before the Commencement Date and thereafter each November 15 of the Contract Term, LEP will provide PGET with a forecast of the beginning date and duration of all Scheduled Outages for the next Contract Year. LEP shall use commercially reasonable efforts not to deviate such forecast. If necessary, LEP shall coordinate Scheduled Outages with PJM. LEP shall perform all scheduled major maintenance during the periods of October through November and March 15 through May 15, unless otherwise required by vendors' warranty specifications and requirements or otherwise mutually agreed by the Parties or required by PJM. On or before each September 1 and February 1 of the Contract Term, LEP will confirm the Scheduled Outages (if any) planned to occur during the next October through November and March 15 through May 15 respectively. Each forecast or notification provided under this Section 3.6 shall describe the duration of, estimated Capacity affected by, and maintenance to be performed during said Scheduled Outages. LEP will accommodate requests from PGET made anytime up to one day prior to the start of a Scheduled Outage to adjust the timing of the Scheduled Outage if such adjustment will not have an adverse financial affect on LEP and is not inconsistent with vendors' warranty specifications and requirements, PJM Requirements, or the availability of necessary labor, parts and equipment. PGET and LEP will cooperate in good faith to accommodate reasonable requests from LEP to adjust the timing of the Scheduled Outages, provided that PGET shall have no obligation to agree to adjustments as to timing that will have an adverse effect on PGET. Only Outages scheduled pursuant to this Section 3.6(a) shall be considered Scheduled Outages.

(b) Forced Outages. Except as excused by Force Majeure or breach by PGET or due to a Scheduled Outage, the Facility will be deemed to incur a Forced Outage in each hour if, and to the extent, there exists (i) any unplanned component failure (including delayed Start-up or

(start-up failure) or other condition that prevents the timely Start-up of the Facility or prevents the Facility from being able to generate at its full range of output between its minimum and maximum Capacity or that requires the Facility to be removed from service or curtailed, or (ii) a positive difference between (A) the then applicable Net Dependable Capacity and (B) the lesser of (1) the Capacity declared by LEP to be available from the Facility in the then-effective Availability Notice (exclusive of Replacement Power) and (2) the maximum Capacity level integrated over the hour at which the Facility is able to operate in such hour, reliably and continually, upon failing to respond in full to a Dispatch order from PGET; provided that the such Capacity levels shall be adjusted for ambient conditions. In the event a portion of the Capacity of the Facility is affected by a Forced Outage, LEP may elect to declare a greater portion of the Facility as subject to the Forced Outage in its Availability Notice. LEP shall notify PGET's Authorized Representatives by telephone or facsimile as soon as possible but in any event not later than one hour after the occurrence of any Forced Outages.

**Section 3.7. Operation of the Facility and PJM Requirements.** Each Party shall at all times during the Contract Term, in connection with the exercise of its rights and performance of its obligations hereunder, adhere to the provisions of this Tolling Agreement, the Operating Procedures, Accepted Electrical Practices and applicable Law and, without limiting the foregoing, to the applicable operating policies, criteria and/or guidelines of the NERC, PJM Requirements, and any other regional or subregional operational and reliability requirements; provided that any capital expenditure or increase in expenses for operations and maintenance required for compliance with a Change in Law shall be governed by Section 3.12. Any order issued by PJM in accordance with the PJM Requirements that requires LEP to start-up or shutdown or otherwise affects the operation of the Facility shall be treated under this Tolling Agreement as if such direction had been issued by PGET, and PGET shall supply Gas as required for LEP to comply with such PJM order, and PGET shall be entitled to all revenues from sales resulting from such PJM order and LEP shall be entitled to payment in accordance with Article VI; provided that, if the Parties have previously agreed as to the manner to be employed for compliance with such a PJM order, LEP will comply with the PJM order in the manner agreed. In the event that a Party receives notice of a change or proposed change to the PJM Requirements that would require a Party to take or refrain from taking an action that would be inconsistent with such Party's rights and/or obligations hereunder, the Party receiving notice will promptly provide Notice to the other Party to the extent practicable that such PJM Requirement conflicts with the rights and/or obligations of a Party under this Tolling Agreement and the Parties agree to promptly meet and negotiate in good faith an agreement as to how compliance shall be established and maintained, attempting in all events to restore or maintain for each Party as nearly as possible, its respective rights, obligations and benefits under this Tolling Agreement; provided that such compliance shall not result in significant economic impact to the Parties and; provided further that failure of the Parties to reach such an agreement shall not result in termination of this Tolling Agreement or relieve any Party of its obligations to make payments in accordance with this Tolling Agreement. Subject to such agreement, if any exists at the time, or in the absence of such agreement, LEP and PGET shall each abide by the PJM Requirements and shall deviate (except for the payment of money for which there shall be

(no deviation) from the provisions of this Tolling Agreement to the minimum extent necessary in order to comply with such PJM Requirements.

Section 3.8. Quality of Energy. All Energy delivered to the Electricity Delivery Point or Alternate Delivery Point(s) hereunder will be three-phase, 60 Hertz, alternating current, at a voltage acceptable to the Transmission Provider or such other specifications in effect at the time of delivery of the PJM, regional reliability council or other authority responsible for the safety and reliability of the electric grid with authority over the Electricity Delivery Point or Alternate Delivery Point(s).

Section 3.9. Pre-Commencement Power. (a) Prior to the Commencement Date, during the testing and commissioning of the Facility, LEP will offer to deliver and sell to PGET on a daily basis and PGET may in its sole discretion elect to purchase from LEP any Pre-Commencement Power generated at the Facility on such day. LEP will offer such Pre-Commencement Power to PGET by 9:00 a.m. Eastern Prevailing Time on the Business Day prior to delivery. PGET will accept or decline to purchase all such Pre-Commencement Power from LEP by providing return Notice to LEP by 10:00 a.m. Eastern Prevailing Time on the same day. For any day that PGET declines to purchase, or fails to respond to LEP's offer on a timely basis, LEP may sell Pre-Commencement Power to any third party or on the PJM grid and shall be entitled to the revenues therefrom. With respect to such operations, PGET shall not have the right to Schedule or Dispatch Facility operations except in accordance with this paragraph, the Tolling Fees shall not apply, and the rate at which LEP proposes to sell such Pre-Commencement Power shall be stated in LEP's prior-day offer of such Pre-Commencement Power. LEP shall be under no obligation to perform in accordance with the Guaranteed Commercial Availability Factors set forth in Section 6.5 during this period.

(b) Prior to the Commencement Date, LEP may declare to PGET, at LEP's sole discretion that the Facility is ready to commence commercial operations early and that LEP is prepared to provide Tolling Operations from the stated commercial operation date until the day prior to the Commencement Date. LEP may declare that the Facility is ready for commercial operation by providing to PGET not less than 5 Business Days Notice of the date on which the Facility will be ready for commercial operations (the "Early Commencement Date"). The Early Commencement Date shall not occur (i) prior to November 15, 2001, (ii) later than March 31, 2002, (iii) until such time as a Capacity of at least 95% of Design Capacity has been established pursuant to testing done in accordance with Section 3.2, and (iv) until LEP has made all improvements necessary to allow a minimum of 585 MW to be delivered to the Electricity Delivery Point from the Facility. For each day beginning on the Early Commencement Date and ending on March 31, 2002 (the "Early Commencement Period"), PGET shall pay LEP \$101.60 per MW-day for each MW of the Net Dependable Capacity reduced by the percentage by which the Facility's actual Availability is less than 96%, such actual Availability to be calculated for each day for the hours ending 8:00:00 and 23:00:00 using the Actual Annual Commercial Availability formula set forth in Section 6.5(g), applied on a daily basis as the summation for the aforesaid hours. In addition, PGET shall pay LEP a variable payment of \$2.20 per MWh delivered by LEP to the Electricity Delivery Point and \$5,000 for each Start-up Scheduled by

PGET during the Early Commencement Period. The foregoing payments shall be made monthly in arrears in accordance with the timing provisions of Section 7.2. PGET shall be entitled to a number of Start-ups during the Early Commencement equal to one-half Start-up per day of the Early Commencement Period, rounded up to the nearest whole number if applicable. PGET may Schedule additional Start-ups during the Early Commencement Period; however, PGET's maximum number of Start-ups for the first Contract Year, pursuant to Section 3.4(c), shall be reduced by such number of additional Start-ups. During the Early Commencement Period, PGET shall have the right to Schedule and Dispatch the Facility in accordance with this Article III. LEP shall provide PGET first priority access to Power from the Facility pursuant to such Scheduling and Dispatch on an as-available basis and LEP shall be under no obligation during the Early Commencement Period to perform in accordance with the Guaranteed Commercial Availability Factor set forth in Section 6.5 during this period.

Section 3.10. Technical Inspection. -LEP agrees to maintain and to make available to PGET records, including those under the control of LEP or the Facility operator and any relevant records otherwise within LEP's control or ability to obtain, necessary to verify Net Dependable Capacity, testing, Availability, Force Majeure and any other rights and obligations hereunder. Further, LEP agrees that PGET representatives may visit the Facility during Regular Business Hours, with twenty-four (24) hours advance Notice or, in the event of an emergency, at any time with two (2) hours advance Notice.

Section 3.11. Marketing of Capacity, Associated Energy and Ancillary Services by LEP. LEP shall have the right to market the Facility's Power subject to this Section 3.11.

(a) LEP may market the Power from the Facility in any month that PGET declares to LEP that it will not use the Capacity of the Facility or when LEP has provided PGET with Replacement Power as described in Section 3.4(d). PGET shall make such declaration by Notice to LEP not less than five Business Days prior to the start of any month in which PGET will not use the Capacity of the Facility. Except pursuant to Section 3.11(b), LEP shall not market the Capacity of the Facility during any month for which PGET does not make such declaration by providing such Notice to LEP of its intent not to use the Capacity.

(b) In months for which PGET has not declared to LEP its intention not to use the Capacity of the Facility, subject to PGET's rights to receive Capacity, Energy, Ancillary Services and Tolling Operations from the Facility, LEP shall have the right to sell any Energy that the Facility is capable of generating and Ancillary Services that the Facility is capable of providing that are not Scheduled or Dispatched by PGET hereunder; provided that any such sales shall be interruptible subject to PGET's real-time intraday Scheduling rights pursuant to Section 3.4.

(c) PGET shall deliver and LEP shall purchase and accept at the Gas Delivery Point all Gas necessary for the generation of Energy at the Facility pursuant to this Section 3.11 at the Gas Index Price. Procedures for Scheduling of Gas for LEP's requirements under this Section 3.11 shall be set forth in the Operating Procedures.

(d) LEP may not market any Capacity, Energy or Ancillary Services from the Facility unless the Capacity necessary to provide such service was declared by LEP to be available to PGET pursuant to an Availability Notice issued in accordance with Section 3.4(b).

**Section 3.12. Capital Expenditure Required by Change in Law.** (a) In the event of a Change in Law that affects this Tolling Agreement by requiring capital improvement of the Facility, and/or increased expenses for operation and maintenance of the Facility, to maintain the capabilities of the Facility for performance hereunder in compliance with the Change in Law, the Parties shall work together to ensure that such improvements are promptly made, and that the cost of compliance is equitably shared between the Parties in accordance with the provisions of this Section 3.12. The Parties recognize that sharing of the cost of compliance should take into account, among other things, the mutual benefits of compliance with a Change in Law that accrue to the Parties from enhancing the Facility, the benefit to LEP of increasing the value of the Facility beyond the term of this Tolling Agreement and the potential for recovery of all or a portion of the costs of compliance from third parties.

(b) Either Party shall promptly provide Notice to the other Party upon learning of a Change in Law that might reasonably be expected to impact either Party's rights and/or obligations hereunder. Following such Notice, LEP shall estimate the annual after tax-impact of capital improvements and/or changes in expenses for operations and maintenance required for compliance with such Change in Law. For Changes in Law that result in an estimated annual after-tax impact of \$100,000 or less, LEP shall provide Notice to PGET of LEP's estimate and shall promptly comply with the Change in Law at its sole expense. If the annual estimated after-tax impact of compliance with the Change in Law is greater than \$100,000, LEP shall provide Notice to PGET of LEP's proposal for compliance with the Change in Law, including its estimate of the annual after-tax impact of such compliance, and its proposal for sharing the cost of compliance between PGET and LEP. LEP's proposal for the sharing of the cost of compliance shall be in the form of adjustments to the Tolling Fees and shall reflect, without limitation, the following factors: the accounting treatment afforded the capital expenditures or increased expenses for operations and maintenance (including depreciation and/or taxation); the ability of the Parties to recover certain costs from third parties (including, for PGET, from purchasers of Power); the treatment of such costs at similar facilities in PJM; and the remainder of the Contract Term (including the possible Extension Term) in proportion to the economic life of any capital improvement. In the alternative, if consistent with compliance with the Change in Law, LEP may propose not to make capital improvements and/or incur increased expenses for operations and maintenance by proposing a corresponding reduction in the Tolling Fees paid by PGET to reflect diminished capabilities of the Facility (e.g., reduced hours of operation or reduced scheduling flexibility). Following receipt of LEP's Notice of its proposal for compliance and cost sharing, PGET shall review LEP's proposal and promptly respond to LEP by Notice providing PGET's comments and counter proposal, if any. If necessary, the Parties shall enter into good faith negotiations toward a mutually agreeable arrangement for compliance and cost sharing.

(c) If the Parties are unable to achieve an agreement regarding compliance with a Change in Law, the matter shall be resolved pursuant to the dispute resolution procedures set forth in Article XX; provided that (i) the Arbitration Panel, if any, shall be composed of persons with expertise in accounting, the independent power industry and power marketing necessary to consider the issues of compliance with the Change in Law and cost sharing, (ii) such Arbitration Panel shall have the power to employ accounting experts if necessary and in its sole discretion to evaluate the Parties' proposals; and (iii) the Arbitration Panel's decision shall consider the factors in Section 3.12(b) for cost sharing.

#### ARTICLE IV: GAS SUPPLY

Section 4.1 Delivery of Gas. Beginning on the Commencement Date and subject to this Article IV, PGET will have the right and obligation to deliver Gas in the quantities specified in Section 4.2 to the Gas Delivery Point and LEP shall have the obligation to receive such Gas delivered by PGET to perform Tolling Operations unless excused by Scheduled Outage, Forced Outage or Force Majeure.

Section 4.2 Gas Quantity and Price for LEP's Requirements. PGET shall cause to be delivered to the Gas Delivery Point the following quantities of Gas:

(a) PGET shall deliver or cause to be delivered at the Gas Delivery Point all quantities of Gas required by LEP to generate Power Scheduled or Dispatched by PGET from the Facility pursuant to Section 3.4, including Gas required for ramping down during each Shutdown Scheduled by PGET and Energy associated with Ancillary Services, as calculated using the Facility Heat Rates specified in Schedule 3.5 and Start-up Gas pursuant to Section 3.4(c).

(b) PGET shall sell and deliver or cause to be delivered and LEP shall purchase and accept at the Gas Delivery Point all of LEP's requirements for Gas for use at the Facility in excess of the quantities described in Section 4.2(a) including LEP's requirements pursuant to Section 3.11 and for Start-up Gas for Forced Outages. The purchase price for all Gas delivered and received pursuant to this Section 4.2(b) shall be the Gas Index Price.

Section 4.3 PGET's Firm Transportation Agreement. (a) On or before May 1, 2000, PGET shall enter into an agreement with TETCO in form and substance acceptable to LEP for the firm transportation of 84,000 MMBtu per day of Gas from TETCO Eagle to the Facility at the Gas Delivery Point at a minimum delivery pressure of 500 psig for a term of twenty-five (25) years beginning December 1, 2001 and ending November 30, 2026 ("PGET's Firm Transportation Agreement").

(b) Effective as of the date of expiration or termination of this Tolling Agreement, for any reason, PGET will assign PGET's Firm Transportation Agreement to LEP and LEP will

cept such assignment in accordance with the terms of PGET's Firm Transportation Agreement. LEP agrees to comply with all reasonable requirements of TETCO for such assignment, including, without limitation, posting security at the time of assignment in a form and amount acceptable to TETCO. LEP shall take all commercially reasonable actions to ensure that PGET's Firm Transportation Agreement is assignable to LEP throughout the Contract Term. Any outstanding rights and obligations of PGET shall be satisfied by PGET as of the effective date of assignment.

(c) PGET shall contract for, at its sole discretion, and bear the cost of Gas transportation and/or supply sufficient to meet its obligations under this Tolling Agreement, from upstream sources of supply and on upstream pipelines to the TETCO Eagle receipt point(s).

Section 4.4 Quality of Gas. Quality of Gas delivered by PGET shall be as specified in the delivering pipeline's tariff pursuant to PGET's Firm Transportation Agreement.

Section 4.5 Delivery Pressure. PGET shall contract with TETCO for TETCO to construct improvements to its pipeline system between TETCO Eagle and the Gas Delivery Point which have an engineering design capability of delivering Gas in the quantities specified herein to the Gas Delivery Point at a minimum pressure of 500 psig. However, if TETCO is or becomes unable to deliver Gas to the Gas Delivery Point at a minimum pressure of 500 psig, then PGET shall pursue such remedies as it deems reasonable, in its sole discretion, which may include installing, maintaining and operating, or causing to be installed, maintained and operated, compression equipment at the Facility capable of meeting the pressure requirements of the Facility, if practicable. LEP agrees to reasonably cooperate with such installation and otherwise work with PGET in its efforts to resolve delivery pressure problems; provided that LEP shall not be required to incur any costs related to such resolution unless reimbursed, or caused to be reimbursed, by PGET. At the termination of this Tolling Agreement, any equipment installed by PGET that is on the Facility site shall, at the option of LEP, either be removed by PGET within 30 days at its sole expense or be purchased by LEP at its depreciated book value. Any inability by PGET to deliver Gas in the quantities, or of the quality or at the pressure specified above will not serve to reduce the Facility's Actual Annual Commercial Availability or to relieve PGET from its obligations to make Fixed Payments, except to the extent otherwise in accordance with Article XVIII.

Section 4.6 Pipeline Imbalance Charges. The Parties shall use commercially reasonable efforts to avoid imposition by any pipeline transporting Gas to the Facility of an imbalance charge. If, during any month, PGET receives an invoice from a pipeline transporter that includes an imbalance charge, the Parties shall use their best efforts to determine promptly the validity as well as the cause of such imbalance charge. As between the Parties, PGET shall pay all pipeline imbalance charges, except to the extent the Parties determine that such imbalance charge was imposed as a result of LEP's failure to meet its obligations under this Tolling Agreement, LEP's operation of the Facility for its purposes and not under or pursuant to the direction of PGET or the occurrence of one or more Forced Outages, then LEP shall reimburse PGET for such imbalance charge paid by PGET.

**Section 4.7 Pre-Commencement Gas.** If requested by LEP, PGET will deliver Gas to LEP at the Gas Delivery Point at the quantity, quality and delivery pressure specified in this Article IV for use in testing or operating the Facility prior to the Early Commencement Date or the Commencement Date as follows: (i) during the month of September 2001, on an as-available interruptible basis at TETCO's tariff rate for interruptible service; (ii) during the months of October and November 2001, on a firm basis, at a 100% load factor volumetric rate using the rates in PGET's Firm Transportation Agreement and (iii) beginning December 1, 2001, on a firm basis pursuant to PGET's Firm Transportation Agreement. PGET shall make arrangements with TETCO to have completed the construction of facilities necessary to provide transportation of such Gas at the quantity, quality and delivery pressure specified in this Article IV commencing September 1, 2001. The price paid by LEP to PGET for such Gas shall be the Gas Index Price.

## **ARTICLE V: METERING**

**Section 5.1. Electricity.** (a) Net Electric Energy delivered by LEP shall be metered at the Electricity Delivery Point on a continuous real-time basis. The Electric Metering Equipment shall be used to determine conclusively, subject to Section 5.8, the amount of Net Electric Energy delivered by LEP at the Electricity Delivery Point.

(b) LEP shall be responsible for performing, or causing to be performed, and shall bear all costs and expenses of the installation, maintenance, testing and initial calibration of the Electric Metering Equipment and the maintenance and testing of the electrical facilities and Protective Apparatus, including any transmission equipment and related facilities, necessary to interconnect the Facility at the Electricity Delivery Point to the relevant electrical system. All Electric Metering Equipment must operate materially in conformance with each and every applicable requirement of the interconnected Transmission Provider. PGET shall have the right to receive data in electronic form in real time on a continuous basis from each generating unit, and LEP undertakes to install at each generating unit one (1) electric meter which is capable of providing such data to PGET's reasonable satisfaction. Such installation shall be completed, and the delivery of such data shall be commenced, prior to the Commencement Date. LEP shall bear the cost of delivery to LEP of data from such meters. PGET shall bear the cost of the delivery to PGET, the Transmission Provider and PJM, as applicable, of data from such meters.

**Section 5.2. Gas.** (a) Gas delivered by PGET to LEP shall be metered at the Gas Delivery Point on a continuous real-time basis. The delivery pipeline(s) revenue meter(s) shall be used to determine conclusively the quantity of Gas delivered at the Gas Delivery Point. The delivering pipeline(s) chromatographs shall be used to determine conclusively, subject to Section 5.8, the Btu content of all Gas delivered at the Gas Delivery Point.

(b) LEP shall be responsible for performing, or causing to be performed, and shall bear all costs and expenses of the installation, maintenance, repair, testing and initial calibration of the Gas Metering Equipment (to the extent not otherwise installed, maintained, tested and

calibrated by the delivery pipeline(s) or supplier of Gas to the Facility). PGET and LEP shall have the right to receive data in electronic form in real time on a continuous basis from the Gas Delivery Point. Such installation shall be completed, and the delivery of such data shall be commenced, prior to the Commencement Date. LEP shall bear the cost of the delivery to LEP of data from such meters. PGET shall bear the cost of the delivery to PGET of data from such meters.

Section 5.3. Check Meters. PGET may at its option and expense install and operate one or more check meters to check LEP's meters. Such check meters shall be for check purposes and shall not be used in the measurement of Gas or Net Electric Energy for the purposes of this Tolling Agreement except as provided in Section 5.8 hereof. The check meters shall be subject at all reasonable times to inspection and examination by LEP or its designee. The installation and operation thereof shall however, be done (or caused to be done) by PGET at its expense in accordance with Accepted Electrical Practices for electric check metering equipment and good industry practices for Gas check metering equipment. LEP shall grant to PGET at no cost or expense the right to install such check meters at the Electricity Delivery Point and the Gas Delivery Point and the right to access such check meters at reasonable times as requested by PGET if such check meters are located on LEP's premises.

Section 5.4. Change in Measurement Method. If, at any time during the Contract Term a new method or technique is developed with respect to electricity or Gas measurement, or the determination of the factors used in electricity or Gas measurement, such new method or technique may be substituted for the method set forth in this Article V when, in the opinion of the Parties, employing such new method or technique is advisable, and they so agree in writing.

Section 5.5. Industry Standards. All Electric Metering Equipment and Gas Metering Equipment, whether owned by LEP or by a third party, shall be operated, maintained and tested by and/or on behalf of LEP in accordance with Accepted Electrical Practices, in the case of the Electric Metering Equipment, and in accordance with AGA and ANSI standards in the case of the Gas Metering Equipment.

Section 5.6. Access. Each Party shall have the right to receive reasonable advance Notice with respect to, and to be present at the time of, any installing, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of Electric Metering Equipment and Gas Metering Equipment irrespective of whether such Electric Metering Equipment or Gas Metering Equipment is owned or operated by LEP or by a third party. The records from such Electric Metering Equipment and Gas Metering Equipment shall be the property of LEP, but upon reasonable advance Notice, LEP shall make available to PGET all data, records and charts relating to the Electric Metering Equipment and Gas Metering Equipment, together with measurements and calculations therefrom, for inspection and verification.

Section 5.7. Installations. Any installations, maintenance, repair, inspections, cleaning, changing, testing or calibration of Electric Metering Equipment and Gas Metering Equipment shall be scheduled by LEP; provided, however, that installation, maintenance, repair, inspections,

cleaning, changing, testing or calibration which will or could affect deliveries of Gas or Net Electric Energy shall not be made without the prior written consent of PGET, which shall not be unreasonably withheld or delayed, and shall be scheduled to the extent possible to coincide with periods of Outages of the Facility or during the months of April, October and November. Any installations of check meters by PGET shall be scheduled by PGET; provided, however, that the installation shall not unreasonably interfere with the construction, operation and maintenance of the Facility by LEP or its contractor(s).

Section 5.8. Calibration. LEP at its sole cost and expense shall inspect and calibrate, or cause to be inspected, all Electric Metering Equipment and Gas Metering Equipment periodically, but not less frequently than annually or as required by the Transmission Provider or PGET's Firm Transportation Agreement. Correction shall be made when any test shall show a measurement error of more than (i) in the case of Gas Metering Equipment, two percent (2%) or such lower percentage as may be established by applicable tariff of the delivery pipeline(s), or (ii) in the case of Electric Metering Equipment, per PJM Requirements. Correction to amounts billed and/or paid shall be made for the period during which the measurement instruments were in error, first, by using the registration of PGET's check meter, if installed, or second, if no check meter is installed, or if the period cannot be ascertained, correction shall be made for one-half (1/2) of the period elapsed since the last test date; and the measuring instrument shall be adjusted immediately to measure accurately.

Section 5.9. Records. The Parties shall, for five (5) years or such longer period as may be required by FERC or the Transmission Provider, each keep and maintain accurate and detailed records relating to the Facility's hourly deliveries of Net Electric Energy and Gas consumption. Such records shall be made available for inspection by either Party during normal business hours upon reasonable Notice.

## ARTICLE VI: TOLLING FEES

Section 6.1. Fixed Payment. For each calendar month following the Commencement Date, PGET shall pay LEP an amount equal to \$8.30 per kW-month of Net Dependable Capacity through September 30, 2016, or September 30, 2017 if the Contract Term is extended due to Force Majeure pursuant to Section 13.1(c)(i), and \$10.50 per kW-month of Net Dependable Capacity for the Extension Term ("Base Fixed Amount"), subject to the adjustments for guaranteed availability set forth in Section 6.5 (the adjusted Base Fixed Amount hereinafter the "Fixed Payment"). PGET shall pay a prorated portion of the Fixed Payment for any partial calendar month of commercial operations during the Contract Term. The Parties acknowledge and agree that the provision of Ancillary Services from the Facility to PGET (for its own use or resale) is included and compensated for by the Fixed Payment described in this Section 6.1 and the Variable Payment described in Section 6.2.

Section 6.2. Variable Payment. For each calendar month following the Commencement Date, PGET shall pay LEP an amount equal to \$2.20 per MWh of Energy

delivered to the Electricity Delivery Point ("Variable Payment"). The Variable Payment shall escalate on each January 1 during the Contract Term, beginning with January 1, 2003, by the percentage change in the GDP-IPD as of such January 1 and the GDP-IPD as of the preceding January 1.

**Section 6.3. Start-up Payment.** Each calendar month following the Commencement Date, up to the maximum number of Start-ups for each Contract Year specified in Section 3.4(c), PGET shall pay LEP \$5,000.00 for each Start-up of the Facility Scheduled by PGET following a Shutdown Scheduled by PGET through September 30, 2016, or September 30, 2017 if the Contract Year is extended due to Force Majeure pursuant to Section 13.1(c)(i), and \$10,000 for each Start-up of the Facility Scheduled by PGET following a Shutdown Scheduled by PGET during the Extension Term (the "Start-up Payment"). PGET shall also pay LEP \$5,000 for the initial Start-up Scheduled by PGET to occur on or after the Commencement Date. In the event the Parties agree to permit Start-Ups in excess of the numbers per Contract Year set forth in Section 3.4(c) and establish a price applicable to such Start-Ups, PGET shall pay LEP for each such additional start-up that occurs during the calendar month.

**Section 6.4 Timing.** PGET shall pay the Tolling Fees monthly in arrears beginning in the calendar month following that in which the Commencement Date occurs.

**Section 6.5. Guaranteed Availability.** (a) The Base Fixed Amount will be adjusted, upward or downward, on the basis of the actual Availability of the Facility during specified time periods during each Contract Year (each an "Availability Period") using the criteria set forth in this Section 6.5. Said adjustments will be made to the Base Fixed Amount for the following calendar year (the "Adjustment Period") or by lump sum payment to the extent Adjustment Periods, or portions thereof, occur after the end of the Contract Term. The Fixed Payment will be adjusted in relation to the Facility's Actual Annual Commercial Availability during each Availability Period compared to certain levels of guaranteed availability for each Availability Period (each a "Guaranteed Commercial Availability Factor"), as set forth below. Adjustments to the Base Fixed Amount provided for in Sections 6.5(d), (e) and (f) are cumulative and shall be calculated to three decimal places, provided that the Fixed Payments for any Adjustment Period shall not be reduced below zero.

(b) The On-Peak Availability Period consists of all the On-Peak Hours in each Contract Year. The Guaranteed Commercial Availability Factor for the On-Peak Availability Period shall be 96%.

(c) The Off-Peak Availability Period consists of all the Off-Peak Hours in each Contract Year. The Guaranteed Commercial Availability Factor for the Off-Peak Availability Period shall be 90%.

(d) In the event that LEP fails to achieve the Guaranteed Commercial Availability Factor for the On-Peak Availability Period in a Contract Year, the Base Fixed Amount for each month of the Adjustment Period shall be reduced by the percentage which is (i) one and one-half

(1½) times the difference of (x) the Guaranteed Commercial Availability Factor of 96% minus (y) the greater of 60% or the Actual Annual Commercial Availability for the On-Peak Availability Period, plus (ii) if the Actual Annual Commercial Availability for the On-Peak Availability Period is less than 60%, 60% less the Actual Annual Commercial Availability for the On-Peak Availability Period; provided that if the Actual Annual Commercial Availability for the On-Peak Availability Period is less than 40%, the Fixed Payment for the Adjustment Period shall be reduced to zero.

(e) In the event that LEP fails to achieve the Guaranteed Commercial Availability Factor for the Off-Peak Availability Period in a Contract Year, the Base Fixed Amount for each month of the Adjustment Period shall be reduced by the percentage which is (i) one-half (½) times the difference of (x) the Guaranteed Commercial Availability Factor of 90% minus (y) the greater of 60% or the Actual Annual Commercial Availability for the Off-Peak Availability Period, plus (ii) if the Actual Annual Commercial Availability for the Off-Peak Availability Period is less than 60%, 60% less the Actual Annual Commercial Availability for the Off-Peak Availability Period

(f) In the event that LEP exceeds the Guaranteed Commercial Availability Factor in the On-Peak Availability Period in a Contract Year, the Base Fixed Amount for each month in the Adjustment Period shall be increased by the percentage which is (i) the Actual Annual Commercial Availability for the On-Peak Availability Period minus the On-Peak Guaranteed Commercial Availability Factor of 96%, up to an increase of one percent, plus (ii) if the Actual Annual Commercial Availability for the On-Peak Availability Period exceeds 97%, by two times the portion of the Actual Annual Commercial Availability for the On-Peak Availability Period in excess of 97%; provided that the maximum Fixed Payment in any month of an Adjustment Period is 107% of the Base Fixed Amount.

(g) The Actual Annual Commercial Availability for each Availability Period will be calculated on the basis of the applicable hours in the Availability Period as follows:

$$AACA = \frac{\sum_{hours} [(CMWh - (FOMWh - RP)) \times PJMLMP]}{\sum_{hours} [CMWh \times PJMLMP]} \times 100\%$$

Provided that (FOMWh – RP) shall not be less than zero (0) in any hour,  
and where:

AACA = Actual Annual Commercial Availability

CMWh = The contract MWh of Energy the Facility is capable of producing during each hour of the Availability Period calculated for each hour based on the Net Dependable Capacity at ambient conditions, excluding Energy from Capacity subject to (i) Scheduled Outage, (ii) Force Majeure events, and (iii) breaches by PGET.

FOMWh = Forced Outage MWh -- The Energy LEP is unable to deliver during such hour due to Forced Outage.

RP = Replacement Power delivered to PGET during such hour plus that additional amount declared available in the Availability Notice for such hour, if any.

PJMLMP = The PJM hourly Locational Marginal Price at the Electricity Delivery Point for the applicable hour.

In the event that the foregoing calculation results in an Actual Annual Commercial Availability greater than 96% for the On-Peak Availability Period, the calculation shall be performed again with RP set equal to zero (0) for purposes of Section 6.5(f) only. For the first and last Contract Years, which each may include less than twelve months, the Availability for the months of those calendar years that are before the Commencement Date or after the end of the Contract Term shall be included in the above calculation with an assumed Availability equal to the applicable Guaranteed Commercial Availability Factor.

(h) If LEP fails to maintain an Actual Annual Commercial Availability of 40% or more for any three (3) On-Peak Availability Periods, LEP shall be in default of this Tolling Agreement and PGET may pursue the remedies provided under Article XIV of this Tolling Agreement.

(i) For the final two Contract Years of the Contract Term, all or a portion of the Adjustment Period is beyond the end of the Contract Term. For such Adjustment Periods, a lump sum adjustment amount shall be calculated as the product of (i) the applicable Base Fixed Amount, (ii) the adjustment percentages determined pursuant to (d), (e) and (f) above, (iii) the Net Dependable Capacity for the last month of the Contract Term, and (iv) the number of months of the Adjustment Period that are beyond the end of the Contract Term. The lump sum adjustment so calculated will be paid no later than December 31 immediately following the end of the Contract Term.

Section 6.6. Commencement Payment. PGET will pay LEP \$1,250,000 by wire transfer on the Commencement Date.

## ARTICLE VII: BILLING AND PAYMENT

Section 7.1. Billing. The accounting period under this Tolling Agreement shall be one calendar month. On or before the tenth day following the end of each calendar month of this Tolling Agreement following the Commencement Date and as required prior thereto, LEP shall deliver to PGET an invoice detailing Power delivered to PGET and Gas purchased by LEP in accordance with Section 4.2(b). In such invoice LEP will set forth all charges to PGET pursuant

to this Tolling Agreement including the Tolling Fees pursuant to Article VI, any Taxes that PGET has an obligation to pay pursuant to Article XIX, and credits for amounts owed to PGET by LEP for Gas purchased or used by LEP pursuant to Article IV. The invoice shall indicate the net amount owed by one Party to the other Party. LEP will also provide its calculations of Actual Annual Commercial Availability for the accounting period with such invoice. In addition to providing PGET a paper copy of the invoice, if requested by PGET, LEP will provide PGET a copy of the invoice and all supporting information on electronic media, to the extent LEP has the invoice and supporting information on electronic media at the time of such request by PGET. If the electronic media copy of the invoice and/or supporting information is prepared using spreadsheets or other analytical computer software, the electronic media copy of the invoice will be provided in the original software file format with all formulas and calculations intact. LEP will adjust subsequent month invoices for any corrections in measurement, Tolling Fees, Taxes, or other charges hereunder of which either of the Parties later becomes aware. Such adjustments on behalf of a Party will only be made if such Party brings the adjustment to the attention of the other Party within twelve months after the event causing the need for adjustment.

**Section 7.2. Payment.** The Party owing the other Party shall render payment to such other Party by wire transfer payment, or other acceptable method agreed to by the Parties, of the net amount due as set forth in the invoice described in Section 7.1, by the later of (i) the twentieth calendar day of the month following the month for which charges are invoiced, and (ii) ten days after PGET's receipt of LEP's invoice rendered pursuant to Section 7.1. If the day on which payment is due is not a Business Day, the payment will be due on the following Business Day. Payment shall be made by wire transfer to the other Party's account as provided for in Article XXI. Failure to make such payment when due shall result in a late charge on the unpaid balance that shall accrue on each calendar day from the due date at the Interest Rate. Except with respect to a Termination Payment pursuant to Section 14.2(a), if a Party in good faith disputes any part of any invoice, such Party shall make payment of the undisputed amount invoiced and shall provide to the invoicing Party on or before the payment due date a written explanation of the basis for the dispute. If any amount disputed is determined to be due, the invoiced Party shall pay such disputed amount within two days of such determination, along with interest accrued at the Interest Rate from the date that, but for the dispute, payment was to have been made until the date paid.

**Section 7.3. Audit.** Each Party has the right with reasonable prior Notice, at its sole expense, to examine the records of the other Party during Regular Business Hours to the extent reasonably necessary to verify the accuracy of any invoice, or calculations provided with or supporting such invoice, rendered to such Party pursuant to this Tolling Agreement. If any such examination reveals any inaccuracy in any invoice, or calculations provided with or supporting such invoice, the necessary adjustments in such invoice, or calculations provided with or supporting such invoice, and the payments made pursuant to such inaccurate invoice, or calculations provided with or supporting such invoice, shall be adjusted in the next invoice; provided, however, that the party asserting the need for such adjustment brought it to the attention of the other Party within twelve months after the event causing the need for adjustment. This Section 7.3 shall survive any termination of this Tolling Agreement for a period of one year

From the date on which the last invoice is rendered such Party pursuant to this Tolling Agreement.

Section 7.4. Netting. If PGET and LEP are each required to pay an amount to the other on the same day pursuant to this Tolling Agreement which amounts are not in dispute, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed. Notwithstanding the foregoing, each Party reserves to itself the remedies and defenses set forth in this Tolling Agreement. In addition, neither Party shall have any right to setoff any amounts due to the other Party by any amount that the other Party disputes is owed or owing to the other Party.

Section 7.5. Termination Payment. If a Termination Payment is due from one Party to the other Party in accordance with Section 14.2, within ten (10) Business Days of the Early Termination Date, a special invoice shall be submitted by the Non-Defaulting Party to the Defaulting Party with supporting documentation required to demonstrate the calculation of the Termination Payment, and the Defaulting Party shall pay such invoice in accordance with Section 14.2. The Defaulting Party shall be entitled to audit the records of the other Party, at its expense using an independent auditor acceptable to the Non-Defaulting Party, to verify the calculation of the Termination Payment and to review any other documentation on which the Termination Payment was based.

## ARTICLE VIII: SECURITY

Section 8.1. Performance Security. Each of LEP and PGET shall provide security to the other for the performance of their respective obligations under this Tolling Agreement as set forth in this Article VIII.

(a) Within three Business Days of the fulfillment and satisfaction of the condition precedent set forth in Section 10.1(a), but not later than May 1, 2000, LEP will provide PGET as security for LEP's performance under this Tolling Agreement either an irrevocable revolving letter of credit or a guaranty of such performance issued by Columbia Energy Group, or such substitute guarantor as provided in the guarantee in the form attached hereto as Exhibit B or otherwise in form and substance reasonably acceptable to PGET, in each case with a face amount of \$5 million, and to be increased to a face amount of \$35 million on the Commencement Date ("LEP's Security Amount"). LEP's Security Amount shall be reduced by \$5 million on April 1 of each year, beginning with the 10<sup>th</sup> Contract Year of this Tolling Agreement or 11<sup>th</sup> Contract Year if the term of this Tolling Agreement is extended due to Force Majeure pursuant to Section 13.1(c)(i). If PGET elects to extend the term of this Tolling Agreement pursuant to Section 1.2, LEP's Security Amount shall be increased from its then effective level by \$10 million as of PGET's Notice to LEP electing to so extend and shall decrease by \$5 million on each April 1 following such Notice for the remainder of the Contract Term so extended.

(b) Within three Business Days of the fulfillment and satisfaction of the condition precedent set forth in Section 10.1(a), but not later than May 1, 2000, PGET shall provide LEP as security for PGET's performance under this Tolling Agreement either an irrevocable revolving letter of credit or a guaranty of such performance issued by PG&E Corporation in the form attached hereto as Exhibit C or otherwise in form and substance reasonably acceptable to LEP, in each case in face amount of \$150 million ("PGET's Security Amount"). PGET's Security Amount shall be reduced by \$10 million on April 1 of each year, beginning with the 2<sup>nd</sup> Contract Year of this Tolling Agreement or 3<sup>rd</sup> Contract year if the term of this Tolling Agreement is extended due to Force Majeure pursuant to Section 13.1(c)(i). If PGET elects to extend the term of this Tolling Agreement pursuant to Section 1.2, PGET's Security Amount shall be increased from its then effective level by \$20 million as of PGET's Notice to LEP electing to so extend and shall decrease by \$10 million on each April 1 following such Notice for the remainder of the Contract Term so extended.

(c) An irrevocable revolving letter of credit used for any portion of LEP's Security Amount or PGET's Security Amount pursuant to this Section 8.1 shall be issued by a United States bank or United States branch of a foreign bank that is and remains rated "A2" or better by Moody's or "A" by S&P.

Section 8.2. Financial Information. Upon request, each Party shall deliver to the other Party a copy of the annual report containing audited consolidated financial statements of such Party's guarantor(s) certified by independent certified public accountants or other interim reports that may be available. In all cases the statements shall be for the most recent accounting period and prepared in accordance with GAAP or such other principles then in effect; provided that, should any such statements not be available due to a delay in preparation or certification, such delay shall not be considered a default so long as the Party providing the statements diligently pursues their preparation, certification and delivery.

## **ARTICLE IX: ELECTRIC TRANSMISSION ARRANGEMENTS**

Section 9.1. Electric Transmission Arrangements and Other Costs. LEP shall arrange, and be responsible for providing, securing and installing equipment necessary for, the firm delivery of no less than 585 MWh per hour from the Facility to the Electricity Delivery Point. Unless otherwise agreed herein, LEP shall be responsible for all costs and charges imposed on or associated with the delivery of Power to the Electricity Delivery Point under this Tolling Agreement, including control area services provided in connection with the delivery of the Power to PGET at the Electricity Delivery Point, and for imbalance charges assessed due to deliveries of Power of less than or more than the Power Dispatched by PGET (except Pre-Commencement Power) and environmental costs associated with operation of the Facility, including emission allowances imposed on or in respect of Power generated at the Facility. PGET shall arrange and be responsible for transmission service at and after the Electricity Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to accept Power at and from the Electricity Delivery Point. Unless otherwise agreed

herein, PGET shall be responsible for all costs or charges imposed on or associated with the transmission service at and after the Electricity Delivery Point under this Tolling Agreement, including control area services, and other Ancillary Services required by the Transmission Providers' tariff or otherwise to be provided to the transmission customer and imposed on or in respect of that Power after the delivery of the Power to PGET at the Electricity Delivery Point.

#### **ARTICLE X: CONDITIONS PRECEDENT**

Section 10.1. Conditions Precedent to PGET's Obligations. The obligations of PGET under this Tolling Agreement are subject to the fulfillment and satisfaction of each of the following conditions:

- (a) Approval of this Tolling Agreement by the Board of Directors of PG&E Corporation; and
- (b) Execution by PGET with TETCO of (i) a binding precedent agreement for construction of facilities necessary to serve the Facility and (ii) PGET's Firm Transportation Agreement as those agreements are described in Sections 4.3, 4.5 and 4.7.

PGET shall utilize commercially reasonable efforts to satisfy the condition precedent set forth in Section 10.1(b) of this Tolling Agreement on or before May 1, 2000. Inability of PGET to satisfy either of the above conditions precedent, on or before May 1, 2000 shall result in termination of this Tolling Agreement without further liability or obligation hereunder by either Party.

#### **ARTICLE XI: REPRESENTATIONS AND WARRANTIES**

Section 11.1. General. On the date of this Tolling Agreement, except as provided in and subject to Article X, each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Tolling Agreement;
- (b) it has all Regulatory Approvals which are required on the date hereof and will take all commercially reasonable actions to, and can reasonably expect to, obtain all other Regulatory Approvals on or before the dates required;
- (c) the execution, delivery and performance of this Tolling Agreement are within its corporate or partnership powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it;

(d) this Tolling Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject only to any Equitable Defenses;

(e) there are no Bankruptcy Proceedings pending or being contemplated by it or, to its knowledge, threatened against it;

(f) there are no Legal Proceedings pending or to its knowledge threatened against it that materially adversely affect its ability to perform its obligations under this Tolling Agreement; and

(g) it has available to it the knowledge and experience in financial matters and the electric industry that enable it to evaluate the merits and risks of entering into this Tolling Agreement.

Section 11.2. Power Liens and Encumbrances. The Power delivered by LEP at the Electricity Delivery Point or Alternate Delivery Point(s) will be free and clear of all liens, claims or encumbrances arising by, through or under LEP.

Section 11.3. Gas Liens and Encumbrances. The Gas delivered by PGET at the Gas Delivery Point shall be free and clear of all liens, claims or encumbrances arising by, through or under PGET.

Section 11.4. DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET OUT HEREIN, NEITHER LEP NOR PGET MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER AND EXPRESSLY DISCLAIM ANY IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **ARTICLE XII: TITLE AND RISK OF LOSS**

Section 12.1. Title and Risk of Loss With Respect to Power. With respect to this Tolling Agreement, as between the Parties, LEP shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of Power prior to the Electricity Delivery Point or Alternate Delivery Point(s), and PGET shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of Power at and after the Electricity Delivery Point or Alternative Delivery Point(s). Title to and risk of loss related to Power shall transfer from LEP to PGET at the Electricity Delivery Point or Alternate Delivery Point(s); provided, however, that no Party shall have any obligation under this Article XII or Article XVI with regard to Taxes, the entire obligation of any Party with respect to Taxes being fully set forth under Article XIX.

Section 12.2. Title and Risk of Loss With Respect to Gas. With respect to this Tolling Agreement, as between the Parties, PGET shall be deemed to be in exclusive control (and

responsible for any damages or injury caused thereby) of Gas prior to the Gas Delivery Point, and LEP shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of Gas at and after the Gas Delivery Point. Title to and risk of loss related to Gas shall transfer from PGET to LEP at the Gas Delivery Point; provided, however, that no Party shall have any obligation under this Article XII or Article XVI with regard to Taxes, the entire obligation of any Party with respect to Taxes being fully set forth under Article XIX.

### ARTICLE XIII: ADDITIONAL COVENANTS

Section 13.1 LEP Pre-Commencement Milestones. LEP covenants that certain events will occur no later than specific dates as follows:

(a) LEP covenants that it will issue a limited notice to proceed to the construction contractor for the Facility sufficient to meet the scheduled Commencement Date on or before May 1, 2000.

(b) LEP covenants that it will issue full notice to proceed to the construction contractor for the Facility on or before December 31, 2000. In the event LEP fails to issue such full notice on or before December 31, 2000, LEP shall have the option of (i) terminating this Tolling Agreement by payment to PGET no later than January 10, 2001 of \$3 million as liquidated damages and not as a penalty, or (ii) continuing this Tolling Agreement by making a payment to PGET no later than January 10, 2001 of \$2 million as liquidated damages and not as a penalty. In the event LEP chooses to continue with this Tolling Agreement by making the aforesaid liquidated damages payment to PGET, PGET shall return \$1.6 million of such liquidated damages to LEP not later than 10 days following the Commencement Date if the Commencement Date occurs on or before the later of June 1, 2002 or the end of the TETCO Delay Period.

(c) In the event that the Commencement Date has not occurred on or before June 1, 2002:

(i) If such delay is due to an event of Force Majeure, the Contract Term will be extended to end on September 30, 2017 and PGET shall have the right to terminate subject to and in accordance with the provisions of Section 18.1(c)(ii).

(ii) (A) If the delay in Commencement Date is not due to Force Majeure or the TETCO Delay Period extending beyond June 1, 2002, or a result of a breach of this Tolling Agreement by PGET, LEP shall pay PGET as liquidated damages, and not as a penalty, \$18,000 per day beginning on the later of June 1, 2002 and the day after the end of the TETCO Delay Period and ending on the earlier of the day before the Commencement Date and August 31, 2002. LEP shall also pay any charges under PGET's Firm Transportation Agreement from the

later of June 1, 2002 and the day after the TETCO Delay Period until the earlier of the day before the Commencement Date and August 31, 2002.

(B) Unless the TETCO Delay Period extends beyond September 1, 2002 or the Commencement Date is delayed due to a breach of this Tolling Agreement by PGET or Force Majeure, if the Commencement Date has not occurred by September 1, 2002, then the Commencement Date shall not occur until June 1, 2003 at the earliest and LEP shall take assignment of PGET's Firm Transmission Agreement effective as of September 1, 2002. LEP shall reassign PGET's Firm Transmission Agreement to PGET effective as of the Commencement Date. LEP shall have the right to market the Capacity, Energy and Ancillary Services from the Facility from September 1, 2002 through the Commencement Date and shall be entitled to the revenues therefrom.

(C) Unless the TETCO Delay Period extends beyond June 1, 2003 or the Commencement Date is delayed due to a breach of this Tolling Agreement by PGET or Force Majeure, if the Commencement Date does not occur on June 1, 2003, LEP shall pay PGET as liquidated damages, and not as a penalty, \$19,000 per day beginning on the earlier of June 1, 2003 or the day after the end of the TETCO Delay Period and ending on the earlier of the day before the Commencement Date and August 31, 2003.

(D) Unless the TETCO Delay Period extends beyond September 1, 2003 or the Commencement Date is delayed due to a breach of this Tolling Agreement by PGET or Force Majeure, if the Commencement Date has not occurred by September 1, 2003, then the Commencement Date shall not occur until June 1, 2004 at the earliest.

(E) Unless the TETCO Delay Period extends beyond June 1, 2004 or the Commencement Date is delayed due to a breach of this Tolling Agreement by PGET or Force Majeure, if the Commencement Date does not occur on June 1, 2004, LEP shall pay PGET the Termination Payment calculated pursuant to Section 14.2 as liquidated damages, and not as penalty, and this Tolling Agreement will terminate without further liability or obligation hereunder by either Party except for obligations accrued prior to June 1, 2004. If, due to a breach of this Tolling Agreement by PGET, the Commencement Date does not occur on June 1, 2004, PGET shall pay LEP the Termination Payment calculated pursuant to Section 14.2 as liquidated damages, and not as penalty, and this Tolling Agreement will terminate without further liability or obligation hereunder by either Party except for obligations accrued prior to June 1, 2004. If the Commencement Date does not occur on June 1, 2004 due to Force Majeure or the TETCO Delay Period extending beyond June 1, 2004, this Tolling Agreement will terminate without further liability or obligation hereunder by either Party except for obligations accrued prior to June 1, 2004.

**Section 13.2. PGET Covenant Regarding Construction of TETCO Facilities.** PGET covenants that the construction of facilities by TETCO necessary for the delivery of Gas to the Gas Delivery Point pursuant to and in accordance with Section 4.7 will be completed on or before September 1, 2001. If the completion of such facilities is delayed beyond September 1,

2001, PGET shall pay LEP as liquidated damages, and not as a penalty, \$42,000 per day beginning on April 1, 2002 and continuing until the earlier of (i) the day before the Commencement Date, (ii) the last day of the TETCO Delay Period, or (iii) May 31, 2002. Such payments will be made in twelve equal installments as follows: PGET shall pay LEP one-twelfth of the total of such payments added to LEP's routine monthly invoices pursuant to Section 7.1 prepared for each of the twelve month beginning with the month in which the Commencement Date occurs. In lieu of a portion or all of such payments, by mutual agreement the Parties may elect for PGET to pay LEP's costs to expedite the Commencement Date following a delay by TETCO in constructing certain facilities. Upon its receipt from TETCO, PGET shall provide to LEP documentation regarding TETCO's permitting and construction requirements, including a comprehensive permitting and construction schedule, a site plan for the construction of the pipeline, and a list of property owners from whom TETCO plans to obtain rights-of-way or purchase property. PGET shall make good faith efforts to obtain such documentation from TETCO, but shall be under no obligation to provide any documentation regarding such construction or permitting unless TETCO supplies such documentation to PGET. PGET shall notify LEP promptly upon its receipt of information indicating that the completion of the TETCO facilities will be later than September 1, 2001.

Section 13.3. Construction Progress Reports. LEP covenants that it will provide to PGET proof of execution of the engineering, procurement and construction contract for the Facility not later than May 1, 2000. LEP further covenants that it will provide to PGET progress reports of the construction of the Facility at least once per calendar quarter until the Commencement Date; provided that LEP will immediately inform PGET of any change in the construction schedule of the Facility that can reasonably be expected to delay the Commencement Date.

Section 13.4. Capacity Resource and Firm Transmission Rights. LEP covenants that, as of the Commencement Date, the Facility will be constructed and capable of operating in the manner necessary for the Facility to qualify as a Capacity Resource on the PJM system. Each Party covenants to take those actions within its control that are necessary or reasonably required, at all times from the Commencement Date through the end of the Contract Term, to cause the Facility to qualify as a Capacity Resource on PJM; provided, however, that subsequent to the Commencement Date, LEP shall not be required to make any material change to the Facility and/or make capital investments to cause the Facility to continue to qualify as a Capacity Resource on PJM, except on terms and conditions mutually agreed upon with PGET, nor shall LEP's refusal to make any such material change and/or expend such capital be deemed a breach of this Tolling Agreement and provided that LEP and PGET shall not be excused from their respective obligations to comply with applicable Laws, subject to Section 3.12. LEP agrees to provide Notice to PGET of the opportunity to make, and to make, any elections regarding all firm transmission rights associated with the Capacity of the Facility it may have in accordance with PGET's directions, and to assign, transfer or otherwise make available to PGET, at all times beginning with the Commencement Date and for periods thereafter for the Contract Term, whatever rights and obligations associated with such firm transmission rights LEP may have. The rights conferred on PGET hereunder with respect to firm transmission rights apply only to

those firm transmission rights associated with the Capacity of the Facility and not to such other firm transmission rights as LEP may acquire by purchase or due to its payment for upgrades to the PJM transmission system. PGET covenants to hold LEP harmless from all cost and liabilities associated with the possession and use of whatever firm transmission rights LEP may assign, transfer or otherwise make available to PGET.

Section 13.5. Electrical Interconnection. On or before the Commencement Date, LEP shall make all improvements necessary to allow a minimum of 585 MW to be delivered to the Electricity Delivery Point from the Facility. LEP further covenants to maintain such Energy delivery interconnection facility capability throughout the Contract Term.

Section 13.6. Gas Interconnection. On or before the Commencement Date, LEP shall construct and make operable, or cause to be constructed and made operable, all facilities necessary for the delivery of Gas from the Gas Delivery Point to the Facility of the appropriate quality, quantity and pressure, and compatible with PGET's Firm Transportation Agreement, each as specified in Article IV.

Section 13.7. Insurance. LEP shall carry customary business insurance policies at its expense.

Section 13.8. Environmental Law. Subject to Section 3.12, each Party covenants that it will take all commercially reasonable efforts to comply with all environmental Law applicable to such Party in performing its obligations under this Tolling Agreement the noncompliance of which would have a materially adverse effect on the rights or obligations of either Party under this Tolling Agreement.

Section 13.9. Facility EWG Status. Each Party covenants that it will take no action contradictory to LEP's status as an EWG so long as such status is required to effect this Tolling Agreement.

Section 13.10. Continuing Representations. Each Party covenants that it will cause each of the representations and warranties set forth in Article XI, except Section 11.1(e) and (f), to be true and correct throughout the Contract Term.

#### ARTICLE XIV: DEFAULT AND REMEDIES

Section 14.1. Events of Default. An "Event of Default" shall mean with respect to a Party ("Defaulting Party"):

(a) the failure by the Defaulting Party to make, when due, any payment required pursuant to this Tolling Agreement, if such failure is not remedied within ten (10) Business Days after written Notice of such failure is given to the Defaulting Party by the other Party ("Non-Defaulting Party");

(b) any representation or warranty made by the Defaulting Party herein shall at any time prove to have been false or misleading in any material respect when made;

(c) the failure by the Defaulting Party to materially perform any covenant set forth in this Tolling Agreement (other than the events that are otherwise specifically covered in this Section 14.1 as a separate Event of Default and other than specific events for which damages have been specified), provided that such failure is not excused by Force Majeure or cured within thirty (30) Business Days after written Notice thereof to the Defaulting Party or, to the extent such failure cannot be cured in 30 Business Days, the time reasonably necessary to effect cure if actions necessary to cure are commenced and diligently pursued within 30 days;

(d) for LEP, failure to maintain an Actual Annual Commercial Availability above the default threshold set forth in Section 6.5(h);

(e) the Defaulting Party shall be subject to a Bankruptcy Proceeding;

(f) in the event a Party has posted security pursuant to Article VIII hereof in the form of a guarantee, the failure by the guarantor of the Defaulting Party to perform any covenant set forth in the guarantee, any representation or warranty made by such guarantor shall prove to have been false or misleading in any material respect when made or when deemed to be repeated, or the guarantee shall expire or be terminated while the Defaulting Party has any remaining obligations under this Tolling Agreement, provided such failure is not cured by the posting of replacement security in accordance with Section 8.1 within ten (10) Business Days after actual receipt of Notice thereof to the Defaulting Party;

(g) the guarantor of the Defaulting Party shall be subject to a Bankruptcy Proceeding;

(h) the occurrence of a Material Adverse Change with respect to the Defaulting Party, provided such failure is not cured by the posting of replacement security in accordance with Section 8.1 within ten (10) Business Days after actual receipt of Notice thereof to the Defaulting Party; or

(i) for LEP, inability to provide Power from the Facility for a period of twelve (12) consecutive months, without regard as to whether Replacement Power is provided during such time, unless LEP's inability is due to actions of or failure to act by PGET or rebuilding of the Facility which cannot reasonably be completed within twelve (12) months in which case LEP shall not be in default of this Tolling Agreement unless and until its inability to provide Power from the Facility exceeds the time reasonably necessary for rebuilding, not to exceed twenty-four (24) consecutive months, without regard as to whether Replacement Power is provided during such time.

#### Section 14.2. Remedies upon an Event of Default.

(a) If an Event of Default occurs at any time during the Contract Term, the Non-Defaulting Party may, for so long as the Event of Default is continuing, (i) establish a date (which date shall be between five (5) and ten (10) Business Days after the Non-Defaulting Party delivers Notice) ("Early Termination Date") on which this Tolling Agreement shall terminate and (ii) immediately cease performance and/or withhold any payments due in respect of this Tolling Agreement; provided, however, upon the occurrence of any Event of Default listed in item (e) of Section 14.1 as it may apply to any Party, this Tolling Agreement shall automatically terminate, without Notice, and without any other action by either Party as if an Early Termination Date had been established immediately prior to such event. If an Early Termination Date has been established, the Non-Defaulting Party shall in good faith calculate its Gains, Losses and Costs resulting from the termination of this Tolling Agreement, and shall provide such calculation to the other Party pursuant to Section 7.5. The Gains, Losses and Costs shall be determined by comparing the value of quantities and prices for delivered Gas and Power under this Tolling Agreement for the remainder of the Contract Term had it not been terminated to the equivalent quantities and relevant market prices for the remaining Contract Term (had it not been terminated) either quoted by a bona fide third-party offer or which are reasonably expected to be available in the market under a replacement contract for this Tolling Agreement or equivalent contracts for the sale and purchase of Power and Gas. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Energy futures contracts, quotations from leading dealers in Energy and Gas swap contracts and other bona fide third party offers, all adjusted for the length of the remaining Contract Term (had it not been terminated) and differences in locational basis. Neither Party shall be required to enter into replacement transactions in order to determine the Termination Payment. The Non-Defaulting Party shall aggregate such Gains, Losses and Costs into a single net amount ("Termination Payment") and notify the Defaulting Party. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within fifteen (15) Business Days of receipt of such Notice, pay the net amount to the Non-Defaulting Party, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Tolling Agreement, the Non-Defaulting Party may retain such Gains. If the Defaulting Party disagrees with the calculation of the Termination Payment, the issue shall be submitted to dispute resolution in accordance with the dispute resolution procedures set forth in Article XX and the resulting Termination Payment shall be due and payable within three (3) Business Days after the award.

(b) As used herein with respect to each Party: (i) "Costs" shall mean, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any agreement pursuant to which it has hedged its obligations or entering into new agreements which replace this Tolling Agreement, and attorneys' fees, if any, incurred in connection with enforcing its rights under this Tolling Agreement; (ii) "Gains" shall mean, an amount equal to the economic benefit determined on a mark to market basis (exclusive of Costs), if any, to it resulting from the termination of its obligations with respect to this Tolling Agreement; and (iii) "Losses" shall mean, an amount equal to the economic loss determined on a mark to market basis (exclusive of Costs), if any, to it resulting from the termination of its

obligations with respect to this Tolling Agreement. In no event, however, shall a Party's Gains, Losses or Costs include any penalties, ratcheted demand or similar charges. At the time for payment of any amount due under this Section 14.2, each Party shall pay to the other Party all additional amounts payable by it pursuant to this Tolling Agreement, but all such amounts shall be netted and aggregated in accordance with Section 7.4 along with any Termination Payment payable hereunder.

(c) Notwithstanding any other provision of this Tolling Agreement, if PGET or LEP fails to pay to the other Party any amounts when due, the aggrieved Party, in addition to any other rights and remedies under this Tolling Agreement, shall have the right to (i) suspend performance, following five Business Days written Notice to the other Party, until such amounts plus interest at the Interest Rate have been paid and/or (ii) exercise any remedy available at law or in equity to enforce payment of such amount plus interest at the Interest Rate. A Party's right to damages or other relief from a breach commences as of the first day of the breach and accrues thereafter until cured, without regard as to whether such breach results in an Event of Default or termination, and following the expiration of any applicable cure period, each Party shall have all rights and remedies available at law and equity, all of which rights and remedies shall be cumulative and nonexclusive subject to and to the extent permitted by law and Section 15.1; provided, however, that no right shall be pursued before the expiration of any applicable cure period.

Section 14.3. Regulatory Changes. Subject to Section 22.5, if a Party's activities hereunder become subject to regulation of any kind whatsoever under any Law to a greater or different extent than that existing on the execution date of this Tolling Agreement (the "Newly Regulated Party") and such regulation renders this Tolling Agreement wholly illegal or unenforceable, then either Party shall at such time have the right to declare an Early Termination Date by providing Notice to the other Party, which Notice shall become effective on the earlier of seven (7) days after delivery or the date on which performance of the rights and obligations under this Tolling Agreement become illegal or unenforceable.

## **ARTICLE XV: LIMITATION OF REMEDIES, LIABILITY, AND DAMAGES**

Section 15.1. Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT EXCEPT AS PROVIDED IN SECTION 22.8, THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS TOLLING AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE

THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

Section 15.2. Duty to Mitigate. Notwithstanding any other provision of this Tolling Agreement, each Party has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance.

Section 15.3. UCC. Except as otherwise provided for herein, the provisions of the Uniform Commercial Code ("UCC") of the State of New York shall govern this Tolling Agreement and Power and Gas shall each be deemed to be a "good" for purposes of the UCC.

## ARTICLE XVI: INDEMNIFICATION

Section 16.1. Indemnification. (a) LEP hereby agrees to indemnify, defend and hold harmless PGET, its agents, servants, partners, officers, directors and employees of each (collectively, "PGET Indemnitees"), from and against any and all losses, claims, damages or liabilities to third parties (including reasonable attorneys' fees actually incurred and including, without limitation, penalties or fines imposed by governmental authorities) relating to Power to be delivered by LEP under this Tolling Agreement until such Power has been delivered to PGET at the Electricity Delivery Point or the Alternate Delivery Point(s) including, without limitation, the loss or claims for loss or damage to property, except to the extent caused by the fraud, negligence or the willful misconduct or breach of obligation under this Tolling Agreement of the PGET Indemnitees and provided that LEP shall be promptly notified in writing of any such claim or suit brought against any such PGET Indemnatee and shall be permitted, upon accepting financial responsibility, to control a defense against or settlement (other than any defense or settlement involving criminal liability or admission of guilt or responsibility by such PGET Indemnatee) of such claim or suit through counsel of its choice. The foregoing notwithstanding, LEP's obligations under this Tolling Agreement towards any PGET Indemnatee are conditioned

upon such PGET Indemnatee providing such cooperation as LEP may reasonably request in connection with its defense or settlement of the claim or suit against such PGET Indemnatee.

(b) In addition, LEP hereby agrees to indemnify, defend and hold harmless PGET Indemnitees, from and against any and all losses, claims, damages or liabilities to third parties (including reasonable attorneys' fees actually incurred and including, without limitation, penalties or fines imposed by government authorities) relating to Gas under this Tolling Agreement at and after the Gas Delivery Point, including, without limitation, the loss or claims for loss or damage to property, except to the extent caused by the fraud, negligence or the willful misconduct or breach of obligation under this Tolling Agreement of the PGET Indemnitees and provided that LEP shall be promptly notified in writing of any such claim or suit brought against any such PGET Indemnatee and shall be permitted, upon accepting financial responsibility, to control a defense against or settlement (other than any defense or settlement involving criminal liability or admission of guilt or responsibility by such PGET Indemnatee) of such claim or suit through counsel of its choice. The foregoing notwithstanding, LEP's obligations under this Tolling Agreement towards any PGET Indemnatee are conditioned upon such PGET Indemnatee providing such cooperation as LEP may reasonably request in connection with its defense or settlement of the claim or suit against such PGET Indemnatee.

(c) PGET hereby agrees to indemnify, defend and hold harmless LEP, its agents, servants, partners, officers, directors and employees of each (collectively, "LEP Indemnitees"), from and against any and all losses, claims, damages or liabilities to third parties (including reasonable attorneys' fees actually incurred and including, without limitation, penalties or fines imposed by governmental authorities) relating to Power received under this Tolling Agreement by PGET at and after the Electricity Delivery Point or the Alternate Delivery Point(s), including, without limitation, the loss or claims for loss or damage to property, except to the extent caused by the fraud, negligence or the willful misconduct or breach of obligation under this Tolling Agreement of the LEP Indemnitees and provided that PGET shall be promptly notified in writing of any such claim or suit brought against any such LEP Indemnatee and shall be permitted, upon accepting financial responsibility, to control a defense against or settlement (other than any defense or settlement involving criminal liability or admission of guilt or responsibility by such LEP Indemnatee) of such claim or suit through counsel of its choice. The foregoing notwithstanding, PGET's obligations under this Tolling Agreement towards any LEP Indemnatee are conditioned upon such LEP Indemnatee providing such cooperation as PGET may reasonably request in connection with its defense or settlement of the claim or suit against such LEP Indemnatee.

(d) In addition, PGET hereby agrees to indemnify, defend and hold harmless LEP Indemnitees from and against any and all losses, claims, damages or liabilities to third parties (including reasonable attorneys' fees actually incurred and including, without limitation, penalties or fines imposed by governmental authorities) relating to Gas under this Tolling Agreement until such Gas has been delivered to the Gas Delivery Point, including, without limitation, the loss or claims for loss or damage to property, except to the extent caused by the fraud, negligence or the willful misconduct or breach of obligation under this Tolling Agreement

of the LEP Indemnitees and provided that PGET shall be promptly notified in writing of any such claim or suit brought against any such LEP Indemnatee and shall be permitted, upon accepting financial responsibility, to control a defense against or settlement (other than any defense or settlement involving criminal liability or admission of guilt or responsibility by such LEP Indemnatee) of such claim or suit through counsel of its choice. The foregoing notwithstanding, PGET's obligations under this Tolling Agreement towards any LEP Indemnatee are conditioned upon such LEP Indemnatee providing such cooperation as PGET may reasonably request in connection with its defense or settlement of the claim or suit against such LEP Indemnatee.

## ARTICLE XVII: ASSIGNMENT AND SUCCESSION

Section 17.1. Assignment. Neither Party shall assign this Tolling Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Upon any assignment made in compliance with this Article XVII, this Tolling Agreement shall inure to and be binding upon the successors and assigns of the party to which it is assigned. Notwithstanding the foregoing, either Party may, without the need for consent from (but with Notice to) the other Party (and without relieving itself from liability hereunder), (a) transfer, pledge or assign this Tolling Agreement or the accounts, revenues or proceeds hereof as security for or in connection with any financing with financial institutions or other financial arrangements; (b) transfer or assign this Tolling Agreement to an Affiliate of such Party provided that such assignee has substantially equivalent financial capability as the assignor; or (c) transfer or assign this Tolling Agreement to any person or entity succeeding to all or substantially all of the assets of such assignor; provided, however, in the case of clauses (b) and (c), that any such assignee shall agree to be bound by the terms and conditions hereof and the security provided on behalf of the assigning Party pursuant to Article VIII shall not be released unless replaced by a security deemed by the non-assigning Party, in its reasonable judgment, to be satisfactory. Notwithstanding the foregoing, each Party shall have the right to refuse consent to any proposed assignment of the other Party's obligations hereunder pursuant to clauses (b) and (c) unless the assigning Party can demonstrate to the other Party's reasonable satisfaction that the proposed assignee possesses the financial and technical capabilities to perform the assigning Party's obligations, either by proven track record or otherwise. Notwithstanding the foregoing, PGET shall have the right to refuse consent to any assignment that would require PGET or any of its affiliates, including but not limited to PG&E Corporation to post any additional security or provide other financial assurances.

Section 17.2. Consent to Assignment. In connection with any assignment contemplated under clause (a) of Section 17.1, the Party not effecting such transfer, pledge or assignment shall, and shall cause its guarantor to, execute and deliver a consent to assignment or consent and agreement, opinions of counsel and certificates of officers with respect to the representations and warranties made by such Party herein or guarantor in its guarantee, and such other documents or instruments reasonably requested by the assigning Party's financial institutions in connection therewith or otherwise necessary to effectuate such assignment in accordance with Law; provided that neither Party is obligated to agree to amend or modify this Tolling Agreement in a

manner that alters the substantive rights of such Party hereunder in any material respect. PGET's agreement under this Article XVII to consent to assignment is explicitly conditioned on its satisfaction that such rights are preserved and enforceable. PGET and LEP agree to cooperate in good faith with respect to other requests of LEP's Lenders but agree that each will work to preserve their agreement as negotiated. The Party effecting such transfer, pledge or assignment shall reimburse the other Party for such other Party's expenses in excess of \$10,000 incurred as a direct result of the review, registration, preparation and execution, of such consent to assignment, consent and agreement or other documents and instruments (to the extent deemed necessary in the sole discretion of the non-assigning Party), including fees of outside counsel.

### ARTICLE XVIII: FORCE MAJEURE

Section 18.1. Force Majeure. (a) The term "Force Majeure" shall mean causes beyond the reasonable control of, and without the fault or negligence (including failure to comply with Accepted Electrical Practices) of the Party claiming Force Majeure, including, but not limited to, acts of God; strikes and other labor disturbances; earthquake; storm; fire; lightning; epidemic; war; riot or civil disturbance; sabotage; the inability of a Party to obtain from any jurisdictional governmental body, after making timely application therefor and diligent prosecution of such application, any permit, exemption, exception or approval necessary for the lawful performance by such Party of any of its obligations under this Tolling Agreement; and without limiting the applicability of the above, but subject to the exclusions set out below, (i) any failure of generation equipment not caused by or resulting from LEP's failure to operate and maintain the Facility in accordance with Accepted Electrical Practices or (ii) a physical event affecting a Gas transportation facility from TETCO Eagle to the Gas Delivery Point or electric transmission or distribution facility on PECO's Line 220-46 between Eddystone and MacDade, including the Eddystone and MacDade substations, that prevents, respectively, transportation and delivery of Gas to the Gas Delivery Point or transmission of Energy from the Electricity Delivery Point which prevents operation of the Facility to provide Tolling Operations and, because the physical event to the Gas transportation facility or electric transmission or distribution facility is physical in nature, is incapable of being remedied solely by a change in contractual arrangements for Gas supply, Gas transportation or electricity transmission, as applicable, including a change to a different counterparty than that with whom such arrangements exist at the time of Force Majeure; which, in any of the foregoing cases, by exercise of due foresight the affected Party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it is unable to overcome. Notwithstanding the foregoing, under no circumstances shall Force Majeure include any of the following: (i) any reduction, curtailment or interruption of generation or operation of the Facility, whether in whole or in part, which reduction, curtailment or interruption is caused by or arises (x) from the negligence or willful misconduct of the affected Party or any third party vendor or supplier to the Facility of materials, equipment, supplies or services; or (y) as a result of the failure of the affected Party to exercise its rights or perform its duties hereunder in accordance with Accepted Electrical Practices; (ii) changes in market conditions that affect the cost of or demand for Power

or Gas; (iii) any PJM constraint affecting the transmission of energy by PGET from the Electricity Delivery Point; (iv) derating of the Facility, unless such derating is due to a Force Majeure event; (v) change in Law subject to the provisions of Section 14.3; (vi) failure of a Party to obtain and maintain the approvals necessary to sell Power at market-based rates; or (vii) failure of PGET to timely provide pre-Commencement Gas pursuant to Section 4.7.

(b) The Party whose performance under this Tolling Agreement is affected by an event of Force Majeure shall (i) give the other Party Notice of the occurrence of such Force Majeure event as soon as possible, and (ii) use all commercially reasonable efforts to remedy the cause(s) and effect(s) of such Force Majeure event with all reasonable dispatch. The affected Party shall not be obligated to undertake unreasonable or uneconomic costs or burdens, including the settlement of strikes or labor disturbances on terms other than are acceptable to such Party in its sole discretion, in order to overcome the effects of the Force Majeure and reinstate full performance of its Tolling Agreement obligation.

(c) (i) If, by reason of an event of Force Majeure, either Party is rendered unable, in whole or in part, to perform its obligations under the Tolling Agreement, subject to the provisions of this Article XVIII, such Party shall be excused from such performance to the extent it is prevented by, and during the continuance of the impact of, such Force Majeure, provided that (i) the payment or crediting of money due or accrued hereunder for performance rendered prior to the Force Majeure shall not be excused or delayed by an event of Force Majeure and (ii) PGET shall continue to be liable to make Fixed Payments in relation to the period from a Party's claim of Force Majeure through the earlier of the forty-fifth day thereafter and the end of the period in which performance is prevented by such Force Majeure and such Fixed Payments are payable on the same schedule otherwise provided herein except that if the Tolling Agreement is terminated during such 45-day period, all rights and obligations of both Parties will cease to accrue on the termination date. The rights and obligations of the Parties hereunder shall be suspended after 45 days following a Party's claim of Force Majeure unless that Party has made arrangements to keep the other Party whole or performance has resumed in full. Either Party has the option, but not the obligation to secure Business Interruption Insurance or use other means (e.g., Replacement Power, continued payment of Tolling Fees) to keep the other Party whole during a Party's claim of Force Majeure.

(ii) As soon as practicable following a Force Majeure event, but in any event within seven (7) days of a Force Majeure event other than a catastrophic event, and within thirty (30) days of a catastrophic event, the Party claiming Force Majeure shall provide Notice to the other Party of actions it proposes to take with regard to the Force Majeure. Such Notice shall contain the Party's proposed course of action to overcome the Force Majeure and any proposal of the Party to keep the other Party whole while the Force Majeure is in effect. Such Notice may, in the event of catastrophic failure which, after consultation with insurers or LEP's Lenders, as applicable, the affected Party determines would be uneconomic or infeasible to remedy, include a Notice of termination, which will be deemed to have taken effect retroactively to the date upon which the affected Party ceased performance due to the Force Majeure. In the event of a catastrophic failure, if the initial Notice identifies a proposed remedy, but the affected Party later

determines that remedying the Force Majeure (as planned or otherwise) is uneconomic or infeasible, the affected Party shall promptly issue a second Notice, specifying termination, and the termination date will be deemed to have taken effect retroactively to the date upon which the Party ceased performance due to Force Majeure. If a Party is unable to perform its obligations under this Tolling Agreement because of Force Majeure for twelve (12) consecutive months following the initial thirty (30) days of a Force Majeure event, or the actual time reasonably estimated for rebuilding, not to exceed twenty-four (24) consecutive months in the event of rebuilding which cannot be completed in twelve months, the other Party may terminate this Tolling Agreement by rendering Notice, which termination shall become effective as of the date Notice is rendered. In the event of a termination under this Section 18.1(c)(ii), neither Party shall be liable to the other Party for the Termination Payment, but the terminating Party shall be liable to the other for payments, or compensation for performance, as applicable, rendered after the termination date for performance not received and each Party will remain liable for any obligations incurred prior to such termination.

## ARTICLE XIX: TAXES

Section 19.1. (a) Taxes - Power. LEP is liable for and shall pay, or cause to be paid, or reimburse PGET if PGET has paid, all Taxes applicable to Power prior to the Electricity Delivery Point or Alternate Delivery Point. If PGET is required to remit such Tax, the amount shall be deducted from any sums due to LEP. PGET is liable for and shall pay, cause to be paid, reimburse LEP if LEP has paid, or pay to LEP if LEP is required by Law to pay to a taxing or other governmental authority, or to any other entity, all Taxes applicable to Power at and from the Electricity Delivery Point or Alternate Delivery Point(s) including (i) any Taxes imposed or collected by a taxing authority with jurisdiction over PGET, and (ii) any Taxes imposed on the delivery or sale of Power to PGET, on PGET's possession, transportation, consumption use, sale or other disposition of the Power.

(b) Taxes - Gas. PGET is liable for and shall pay, or cause to be paid, or reimburse LEP if LEP has paid, all Taxes applicable to Gas prior to the Gas Delivery Point. If LEP is required to remit such Tax, the amount shall be deducted from any sums due to PGET. LEP is liable for and shall pay, cause to be paid, reimburse PGET if PGET has paid, or pay to PGET if PGET is required by Law to pay to a taxing or other governmental authority, or to any other entity, all Taxes applicable to Gas at and from the Gas Delivery Point including (i) any Taxes imposed or collected by a taxing authority with jurisdiction over LEP, and (ii) any Taxes imposed on the delivery or sale of Gas to LEP, on LEP's possession, transportation, consumption use, sale or other disposition of the Gas.

Section 19.2. New Taxes. Notwithstanding the provisions of Section 19.1, if any New Tax is imposed on the conversion of Gas into Energy, at the Facility, PGET shall be liable for and shall pay, cause to be paid or reimburse LEP if LEP has paid such New Tax. Liability for any other New Tax shall be shared between the Parties in accordance with Section 3.12.

Section 19.3. Documentation Supporting the Exemptions and Deductions. (a) If PGET asserts that an exemption or deduction from Taxes applies, or if LEP requests in writing that PGET provide documentation in support of the application of an exemption or deduction, LEP shall claim the exemption or deduction only after PGET has timely provided to LEP all documents required by Law in order for the exemption or deduction to apply; provided, however, that LEP shall have no duty or obligation: (i) to request such documentation, or (ii) to file a claim for refund of any Taxes for any prior period. LEP's failure to request such documentation shall not alter the rights and obligations of the Parties under this Article XVIII.

(b) If LEP asserts that an exemption or deduction from Taxes applies, or if PGET requests in writing that LEP provide documentation in support of the application of an exemption or deduction, PGET shall claim the exemption or deduction only after LEP has timely provided to PGET all documents required by Law in order for the exemption or deduction to apply; provided, however, that PGET shall have no duty or obligation: (i) to request such documentation; or (ii) to file a claim for refund of any Taxes for any prior period. PGET's failure to request such documentation shall not alter the rights and obligations of the Parties under this Article XIX.

Section 19.4. Tax Contests. For purposes of this Section 19.4, the Party obligated to pay or make reimbursement for any Taxes under this Article XIX shall be referred to as the "Taxpayer," and the Party not so obligated under this Article XIX shall be referred to as the "Other Party." If the Other Party receives a written notice from a taxing authority regarding any Taxes that, if sustained by the taxing authority, would result in a Taxpayer obligation under this Article XIX to pay or make reimbursement for such Taxes (a "Tax Claim"), the Other Party shall notify Taxpayer of such Tax Claim in writing within ten (10) Business Days of the Other Party's receipt thereof, and shall furnish promptly to Taxpayer copies of the Tax Claim and all other applicable writings received from the taxing authority; provided, however, that the failure so to notify or furnish such materials to Taxpayer shall not affect Taxpayer's liability under this Article XIX except to the extent that such failure materially and adversely impacts the contest of such Tax Claim. At Taxpayer's timely written request, the Other Party shall in good faith contest the Tax Claim (including pursuing all appeals, except that no appeal to the United States Supreme Court shall be required); provided, however, that the failure of, or adverse determination with respect to, any contest shall not affect Taxpayer's liability under this Article XIX. Notwithstanding the foregoing, the Other Party shall not be required to contest any Tax Claim unless (i) it is not legally permissible for the Taxpayer to contest the Tax Claim; (ii) the amount of such Tax Claim exceeds \$25,000; (iii) Taxpayer provides to the Other Party, in a timely manner, a written opinion of tax counsel, selected by Taxpayer and acceptable to the Other Party, which opinion shall be furnished at Taxpayer's sole expense, to the effect that there is a reasonable basis for contesting such claim; (iv) Taxpayer provides to the Other Party a written statement acknowledging Taxpayer's liability to pay the Taxes if the contest is adversely determined in whole or in part; and (v) no Event of Default by Taxpayer has occurred and is continuing. The other Party shall control all matters related to any contest under this Section 19.4, including, without limitation, decisions regarding whether any matter shall be contested by resisting payment of the Taxes or by paying such amounts and seeking refund thereof. If the

Other Party elects to pay the Taxes and seek a refund thereof, Taxpayer shall advance to the Other Party, on an interest-free basis, sufficient funds to pay the Taxes. The Other Party shall keep the Taxpayer informed with respect to any contest and shall (i) permit Taxpayer to participate in any conferences and meetings with the taxing authority relating to the Tax Claim; (ii) consult with Taxpayer as to all material decisions relevant to any contest and consider, in good faith, suggestions, made by Taxpayer; and (iii) timely furnish to Taxpayer, and permit Taxpayer to review and offer comments on, the portion of all significant written materials to be submitted in connection with any contest relating to the Tax Claim and consider, in good faith, any Taxpayer comments. The Other Party shall not compromise any Tax Claim to gain advantage with respect to the resolution of unrelated claims involving the Other Party. The Other Party shall not be required to contest a Tax Claim under this Section 19.4 if the Other Party (i) waives in writing Taxpayer's obligation to pay, or make reimbursement for, any Taxes in respect of such Tax Claim, and (ii) pays to Taxpayer any amount previously paid or advanced by Taxpayer pursuant to this Article XIX with respect to such Tax Claim or the contest of such claim (including any fees and expenses described in the following sentence of this Section 19.4). All reasonable fees and expenses incurred in relation to a contest under this Section 19.4, including reasonable attorneys', accountants', and investigatory fees incurred by Taxpayer and the Other Party shall be paid by Taxpayer.

19.5 Nature of this Tolling Agreement. The Parties intend that this Tolling Agreement shall be subject to Tax as a purchase and sale of Gas and Energy and not as a lease or servicing agreement.

## ARTICLE XX: DISPUTE RESOLUTION

Section 20.1. Arbitration. (a) Both Parties understand and appreciate that their long term mutual interests will be best served by affecting a rapid and fair resolution of any claims or disputes which may arise under this Tolling Agreement or from any dispute concerning Tolling Agreement terms. Therefore, both Parties agree to use their best efforts to resolve all such disputes as rapidly as possible on a fair and equitable basis. Toward this end both Parties agree to develop and follow a process of presenting, rapidly assessing, and settling claims and other disputes on a fair and equitable basis. This process shall consist of (1) presentation of the claim by the claiming Party in writing, with supporting documentation, if any, and a specification of the amounts due or other remedies which if provided by the other Party would resolve the claiming Party's claim, which is to be delivered in accordance with Article XXI; (2) response by the other Party to the claiming Party's written presentation of its claim, in writing, accepting, rejecting or setting forth a counter proposal to the claiming Party's claim, along with any written explanation or supporting documentation the other Party elects to provide, which is to be delivered in accordance with Article XXI within seven (7) Business Days of receipt of the claiming Party's presentation of its claim; and (3) a meeting of the Parties' managers or other persons with knowledge of the dispute within two Business Days of receipt by the claiming Party of the other Party's written response. Matters that are within the exclusive jurisdiction of FERC are not subject to this Article XX.

(b) If any dispute or claim arising under this Tolling Agreement cannot be readily resolved by the Parties pursuant to the process referenced in subsection (a), the Parties agree to refer the matter to a panel consisting of one (1) senior executive of each Party, with authority to decide or resolve the matter in dispute, for review and resolution. A copy of the Tolling Agreement terms, relevant facts, areas of disagreement, and concise summary of the basis for each side's contentions will be provided to both executives who shall review the same, confer, and attempt to reach a mutual resolution of the issue. The senior executives shall attempt to meet and resolve the dispute within thirty (30) days of the meeting of the Parties' managers referenced in subsection (a).

(c) If the Parties are unable to resolve a dispute as provided in Subsections (a) and (b), then the following provisions shall apply:

(1) The dispute shall at the request of either Party upon written Notice to that effect to the other Party ("Demand"), be finally settled by binding arbitration in accordance with the Commercial Arbitration rules (the "Rules") of the American Arbitration Association ("AAA") then in effect, except as modified herein. The Demand must include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief accompanied by all relevant documents supporting the Demand.

(2) Arbitrations shall be held in the headquarters cities of the Parties (which as of the date hereof are Herndon, Virginia for LEP and Bethesda, Maryland for PGET but may be changed by Notice in the event the headquarters change) alternating locations between sessions or meetings with the arbitrator(s) and beginning, for each arbitrated dispute, with the headquarters city of the Party not bringing the arbitrated dispute. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1 *et seq.* The arbitration proceedings shall be conducted, and the award shall be rendered, in the English language.

(3) A dispute will be determined by a panel of three (3) arbitrators.

(4) Appointment of Arbitrators.

(i) Payment Disputes. With regard to disputes solely involving payments hereunder, each Party shall select one arbitrator within ten (10) days of its receipt of the Demand, or, if such Party to the dispute fails to make such selection within such ten (10) days of the receipt of the Demand, the AAA shall make such appointment within five (5) days thereafter. Within five (5) days of their appointment, the two arbitrators thus appointed shall select the third arbitrator, who shall act as chairman of the panel. If the two arbitrators fail to agree on a third arbitrator within five (5) days of their selection, the AAA shall make such appointment within five (5) days thereafter. The panel shall be instructed that time is of the essence in the arbitration proceeding. The

panel shall schedule the hearing within ten (10) days after its appointment, and it shall render its judgment or award within thirty (30) days of the hearing.

(ii) Other Disputes. For all other disputes, including those which include a dispute regarding a payment and at least one other matter, each Party may select one arbitrator, or if such Party to the dispute fails to make such selection within thirty (30) days from the receipt of the Demand, the AAA shall make such appointment. The two arbitrators thus appointed shall select the third arbitrator, who shall act as the chairman of the panel. If the two arbitrators fail to agree on a third arbitrator within thirty (30) days of the selection of the second arbitrator, the AAA shall make such appointment.

(5) The award shall be in writing (stating the award and the reasons therefor) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy between the Parties regarding any claims, counterclaims, issues, or accountings presented to the arbitral panel. The panel shall be limited to selecting only one of the two proposals submitted by the Parties. Judgment upon any award may be entered in any court having jurisdiction. For purposes of a pre-arbitral injunction, pre-arbitral attachment or other order in aid of arbitration proceedings, the Parties hereby agree to submit to the jurisdiction of the United States federal courts located in, and the local courts of, the State in which the Facility is located. Each of the Parties irrevocably waives, to the fullest extent permitted by law, any objection it may now or hereafter have to the jurisdiction of such courts or the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. Each of the Parties hereby consents to service of process by registered mail at its address set forth herein and agrees that its submission to jurisdiction and its consent to service of process by mail is made for the express benefit of the other Party.

(6) This Tolling Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

(7) Any monetary award shall be made and payable in U.S. dollars without deduction or set off and the arbitral panel shall be authorized in its discretion to grant pre-award and post-award interest at commercial rates.

(8) Unless otherwise ordered by the arbitrators, each Party shall bear its own costs and fees, including attorneys' fees and expenses. The Parties expressly agree that the arbitrators shall have no power to consider or award any form of damages barred by Section 15.1, or any other multiple or enhanced damages, whether statutory or common law.

(9) This agreement to arbitrate shall be binding upon the successors, assigns and any trustee or received of each Party.

(10) The Parties, to the fullest extent permitted by law, hereby irrevocably waive and exclude any rights of application or appeal or rights to state a special case for the opinion of the courts or any other recourse to the court system other than to enforce the

agreement to arbitrate pursuant to this Article XX for attachment or other order in aid of arbitration proceedings or to enforce the award of the arbitral panel.

(11) EACH PARTY UNDERSTANDS THAT IT WILL NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE WHICH IS COVERED BY THE ARBITRATION PROVISION.

#### ARTICLE XXI: NOTICES

Section 21.1. Notices. Any notice, request, demand, statement or payment provided for in this Tolling Agreement shall be in writing and shall be made as specified below; provided, however, that notices of interruption may be provided verbally, effective immediately and confirmed in writing and, provided further, that any Scheduling shall be done pursuant to the Operating Procedures. Invoices may be sent by facsimile. A notice sent by facsimile transmission will be recognized and shall be deemed received on the Business Day on which such notice was transmitted if received before close of business (and if received after close of business, on the next Business Day) and a notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party unless it confirms a prior verbal communication, in which case any such notice shall be deemed received on the day sent.

To PGET:

##### Notices & Correspondence:

PG&E Energy Trading-Power, L.P.  
7500 Old Georgetown Road  
Bethesda, Maryland 20814-6161  
Attn: Senior Vice President  
Telephone: (301) 280-6600  
Fax: (301) 280-6601

##### Payments & Invoices:

PG&E Energy Trading-Power, L.P.  
7500 Old Georgetown Road  
Bethesda, Maryland 20814-6161  
Attn: Director, Power Accounting  
Telephone: (301) 280-6600  
Fax: (301) 280-6601 or 280-6604

with a copy to:

Vice President  
and General Counsel  
PG&E Energy Trading-Power, L.P.  
7500 Old Georgetown Road  
Bethesda, Maryland 20814-6161  
Telephone: (301) 280-6600  
Fax: (301) 280-6601

##### Payments by Wire Transfer:

Boston Safe Deposit and Trust Company  
Account Title: PG&E Energy Trading-Power, L.P.  
Account Number: 145513  
ABA Number: 011 001 234

**To LEP:**

**Notices & Correspondence:**

Liberty Electric Power, LLC  
13880 Dulles Corner Lane  
Herndon, Virginia 20171-4600  
Attn: Vice President and General Counsel  
Telephone: (703) 561-6788  
Fax: (703) 561-7303

**Invoices:**

Liberty Electric Power, LLC  
13880 Dulles Corner Lane  
Herndon, Virginia 20171-4600  
Attn: CFO and Treasurer  
Telephone: (703) 561-6544  
Fax: (703) 561-7305

**Payments by Wire Transfer:**

PNC Bank, N.A.  

---

Account Title: Liberty Electric Power, LLC  
ABA # 043 000 096  
Account: 10-0845-0975

From time to time either Party may change the foregoing addresses by sending Notice of such change in accordance with this Section.

**ARTICLE XXII: MISCELLANEOUS**

Section 22.1. Entirety. This Tolling Agreement, including all Exhibits and Schedules hereto constitutes the entire agreement between the Parties relating to the subject matter of such agreement.

Section 22.2. Governing Law. INCLUDING ANY COUNTERCLAIMS AND CROSS CLAIMS ASSERTED IN SUCH ACTION, THIS TOLLING AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE LAWS OF SUCH STATE REQUIRING THE APPLICATION OF THE LAWS OF ANOTHER STATE.

Section 22.3. Non-Waiver. No waiver by either Party of any one or more defaults or breaches by the other in the performance of any of the provisions of this Tolling Agreement shall be construed as a waiver of any other default or breach whether of a like kind or different nature.

Section 22.4. Survival. All indemnity rights, audit rights, and obligations with respect to Taxes, the Termination Payment or other payments due as of the termination date shall survive the termination of this Tolling Agreement.

Section 22.5. Severability. Except as otherwise stated herein, any provision, article or section declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over the Parties, or deemed unlawful because of a statutory change, but not rendering the Tolling Agreement as a whole illegal or unenforceable, will not otherwise affect the remaining lawful obligations that arise under this Tolling Agreement.

Section 22.6. Headings. The headings herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Tolling Agreement.

Section 22.7. No Partnership or Joint Venture. This Tolling Agreement does not establish and should not be construed as establishing any partnership or joint venture by and between the Parties, and neither Party shall have any duties, obligations or liabilities arising under such a relationship. This Tolling Agreement shall not impart any rights enforceable by any third-party (other than a permitted successor or assignee bound by this Tolling Agreement). The Parties acknowledge and agree that LEP is not in any way affiliated with PGET and that LEP is an independent contractor hired by PGET solely to perform the activities set forth herein.

Section 22.8. Confidentiality. (a) Without prior written consent, which shall not be unreasonably withheld or delayed, neither Party shall disclose the terms of this Tolling Agreement to a third party (other than such Party's and its Affiliates' employees, officers, directors, partners, lenders, potential lenders, potential equity investors, counsel, accountants, financial advisors or consultants) except in order to comply with any applicable Law; provided, however, that each Party shall notify the other Party of any proceeding of which it is aware that may result in such disclosure, and the Party subject to such proceeding shall use reasonable efforts to prevent or limit the disclosure. A breach of this Section 22.8(a) shall not give rise to the right to suspend or terminate this Tolling Agreement.

(b) PGET's monthly non-binding forecast of the Power it estimates it will Schedule from the Facility, provided to LEP pursuant to Section 3.4(a), shall be used only by LEP's Project Manager for purposes of planning Facility operations and Outages. LEP's Project Manager shall keep such forecasts strictly confidential and not disclose the forecasts or any portion of the contents thereof to anyone, including other LEP employees, except for those LEP employees that have a need to know such information for purposes of planning Facility operations and Outages; provided that in no circumstance, notwithstanding any other provision of this Tolling Agreement, will such information be shared with any person engaged in the marketing of Power.

(c) The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the confidentiality obligations set forth in this Section 22.8; provided, however, that all monetary damages shall be limited to actual direct damages and shall not include consequential damages.

Section 22.9. No Third-Party Benefits. Nothing in this Tolling Agreement, express or implied, shall be construed to create any interest, beneficial or otherwise, for any third party.

Section 22.10. Amendment. This Tolling Agreement may not be amended or modified except by a written instrument signed by both Parties.

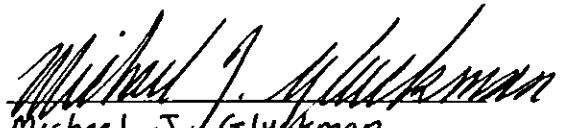
Section 22.11. Non-Recourse. Except with respect to the obligations set forth in Article VIII of this Tolling Agreement, the obligations of each Party under this Tolling Agreement are special obligations of each Party and do not constitute obligations of (and no recourse shall be had with respect thereto) of any partner of a Party, or any shareholder, partner, member, officer or director of any such partner and no action shall be brought or maintained against any such partner, or any shareholder, partner, member, officer or director or any thereof.

Section 22.12. Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary to effect the purpose and intent of this Tolling Agreement. PGET understands that LEP intends to arrange limited recourse financing for the Facility, and PGET agrees to support and cooperate with LEP's financing efforts, subject to Article XVII.

IN WITNESS WHEREOF, the Parties hereto have caused this Tolling Agreement to be executed as of the date first above written.

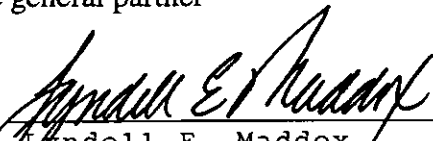
LIBERTY ELECTRIC POWER, LLC

By: Columbia Electric Liberty Corporation,  
its Member Manager

By:   
Name: Michael J. Gluckman  
Title: President & CEO

PG&E ENERGY TRADING-POWER, L.P.

By: PG&E Energy Trading-Power Holdings  
Corporation,  
its sole general partner

By:   
Name: Lyndell E. Maddox  
Title: President and CEO

## EXHIBIT A: DEFINITIONS

All references to Articles and Sections are to those set forth in this Tolling Agreement. Reference to any document means such document as amended from time to time and reference to any Party includes any permitted successor or assignee thereof. The term "including" shall not be considered in limitation, and shall mean, "including but not limited to." The following terms, whether used in the singular or plural, shall be defined as follows:

*"Accepted Electrical Practices"* means those practices, methods and acts engaged in or approved by a significant portion of the power industry during the relevant time period, or any of the practices, methods and acts which, in exercise of reasonable judgment in light of the facts known at the time a decision is made, that could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Accepted Electrical Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

*"Actual Annual Commercial Availability"* has the meaning set forth in Section 6.5(g).

*"Adjustment Period"* has the meaning set forth in Section 6.5(a).

*"Affiliate"* means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

*"Alternate Delivery Point"* means PECO Energy Company's Eddystone 230 kV Substation or such other location(s), other than the Electricity Delivery Point, determined from time-to-time by reasonable mutual agreement of the Parties for the delivery of Replacement Power.

*"Ancillary Services"* shall include all services identified in Schedule 3.4(a) and any and all similar or related services capable of being provided by the Facility at the time requested, to the extent commonly sold or salable (or used or usable) in the electric power generation industry from time to time. The definition of Ancillary Services shall be interpreted broadly to include all other such services currently recognized in the electric industry and later developed by the industry; provided that LEP shall not be required to expend money to enable the Facility to provide more or different Ancillary Services than it is capable of providing on the Commencement Date.

*"Authorized Representatives"* has the meaning set forth in Section 3.4(g).

*"Automatic Generator Control"* means a service using communications equipment which automatically allows adjustment to Energy generation from a control area.

*"Availability"* means the number of MW of Capacity which the Facility is capable of using to generate Energy in an hour.

*"Availability Notice"* means a Notice stating the Availability per hour of the Facility pursuant to the Contract Capacity Table and (except during periods of Shutdown) not to be less than the Facility's minimum load delivered to PGET by LEP and effective until delivery of a subsequent Availability Notice.

*"Availability Period"* has the meaning set forth in Section 6.5(a).

*"Bankruptcy Proceeding"* means with respect to a Party or entity, such Party or entity (i) makes a general arrangement or assignment (other than an assignment undertaken in connection with a financing) for the benefit of creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar Law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed for sixty (60) days after such filing; (iii) otherwise becomes bankrupt or insolvent (however evidenced) or (iv) is unable to pay its debts as they fall due.

*"Base Fixed Amount"* has the meaning set forth in Section 6.1.

*"Btu"* means British thermal unit, which is the quantity of thermal energy necessary to increase the temperature of one pound of water by one degree Fahrenheit.

*"Business Day"* means any day on which Federal Reserve member banks in New York City, New York are open for business.

*"Capacity"* means the ability of generating equipment to produce Energy, measured in megawatts.

*"Capacity Resource"* has the meaning ascribed to it by PJM, as such meaning may change from time-to-time.

*"Change in Law"* means (i) any Laws that are enacted or released and effective after the date of this Tolling Agreement or (ii) any Law, or interpretation thereof, enacted, released or promulgated, and effective after the date of this Tolling Agreement resulting in the new or different application of a preexisting Law; provided that a New Tax resulting from a Change in Law shall be subject to Section 19.2.

*"Claims"* means all claims or actions, threatened or filed, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees

and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed during the Contract Term or after the termination of this Tolling Agreement.

*"Cold Start"* means the Start-up of a generating unit after its breaker(s) has been open for at least 48 hours.

*"Commencement Date"* means 00:00:00 hours Eastern Prevailing Time on the later of April 1, 2002 or the date on which LEP declares that the Facility will be available for commercial operation for delivery of Power to PGET, which declaration shall not occur until (i) such time as a Capacity of at least 95% of Design Capacity has been established pursuant to testing done in accordance with Section 3.2 and (ii) LEP has made all improvements necessary to allow a minimum of 585 MW to be delivered to the Electricity Delivery Point from the Facility.

*"Contract Capacity Table"* means the table set forth at Schedule 3.2(b) showing the range of Facility capability under typical operating conditions, which is to be updated upon each change in the Net Dependable Capacity or Maximum Base Capacity from the prior month pursuant to the performance testing requirements of Section 3.2.

*"Contract Term"* means the period of time commencing on the date of execution of this Tolling Agreement by both Parties and ending on September 30, 2016, unless and until (i) earlier terminated by mutual agreement of the Parties or pursuant to Articles XIII, XIV or XVIII, (ii) extended due to Force Majeure pursuant to Section 13.1(c)(i), or (iii) extended pursuant to Section 1.2.

*"Contract Year"* means each twelve month (or shorter) period during the Contract Term beginning on the Commencement Date or, for subsequent years, the first day of January and ending the following December 31, or September 30 for the last Contract Year; provided that if the Contract Term is extended pursuant to Section 1.2, the number of Contract Years shall be expanded in accordance with the extended Contract Term as specified therein.

*"Costs"* has the meaning set forth in Section 14.2(b).

*"Defaulting Party"* has the meaning set forth in Section 14.1.

*"Demand"* shall have the meaning set forth in Section 20.1(c)(1).

*"Design Capacity"* means the Capacity performance that the Facility was engineered to achieve under optimal conditions, which is specifically described in Schedule 3.2(a).

*"Dispatch"* means the physical control, ability to physically control, or direction for the physical control of the generation of Net Electric Energy or Ancillary Services from the Facility.

*"Dispatch Period"* means a period of time during which PGET has Dispatched delivery of Net Electric Energy or Ancillary Services from the Facility. A Dispatch Period may continue for more than one calendar day.

*"Early Commencement Date"* has the meaning set forth in Section 3.9(b).

*"Early Commencement Period"* has the meaning set forth in Section 3.9(b).

*"Early Termination Date"* has the meaning set forth in Section 14.2(a).

*"Eastern Prevailing Time"* means local time in Philadelphia, Pennsylvania.

*"Electric Metering Equipment"* means electric meters and associated equipment including, without limitation, metering transformers and meters for measuring kilowatt-hours and reactive volt-ampere hours, including check meters, if any, utilized in determining the amount of Net Electric Energy or Ancillary Services delivered or provided by LEP at the Electricity Delivery Point, but shall not include any check meters that PGET may install, own and maintain or cause to be installed, owned and maintained.

*"Electricity Delivery Point"* means the location of the Electric Metering Equipment at the PJM LMP Bus of the proposed LEP 230 kV substation as described in Schedule A-1.

*"Energy"* means electricity (measured in kilowatt-hours or megawatt-hours, as the case may be).

*"Equitable Defenses"* means any bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

*"Event of Default"* has the meaning set forth in Section 14.1.

*"EWG"* means an exempt wholesale generator as defined in the Public Utility Holding Company Act of 1935, as amended, Section 32 (15 U.S.C. § 79z-5a) and Part 365 of FERC's rules and regulations (18 C.F.R. Part 365).

*"Extension Term"* means the two-year period from October 1, 2016 through September 30, 2018 unless the term of this Tolling Agreement is extended due to Force Majeure pursuant to Section 13.1(c)(i) in which case the Extension Term will be the two-year period from October 1, 2017 through September 30, 2019.

*"Facility"* has the meaning set forth in the Preamble.

*"Facility Heat Rate"* means the Heat Rate for the Facility at various operating conditions as set forth in Schedule 3.5, as adjusted for load and ambient conditions.

*"FERC"* means the Federal Energy Regulatory Commission.

*"Fixed Payment"* has the meaning set forth in Section 6.1.

*"Force Majeure"* has the meaning set forth in Article XVIII.

*"Forced Outage"* has the meaning set forth in Section 3.6(b).

*"GAAP"* means generally accepted accounting principles in the United States, consistently applied.

*"Gains"* has the meaning set forth in Section 14.2(b).

*"Gas"* means natural gas.

*"Gas Delivery Point"* means the outlet flange of the TETCO Gas Metering Equipment at the Facility.

*"Gas Metering Equipment"* means Gas meters and associated equipment, including check meters, if any, utilized in determining the amount of Gas consumed by the Facility, but shall not include any check meters that PGET may install, own and maintain.

*"Gas Index Price"* means the TETCO M-3 daily midpoint, as published in *Gas Daily* or its successor publication, plus the variable cost of transportation of Gas, including fuel reimbursement, from the TETCO Eagle interconnection to the Facility and plus any incremental charges imposed by TETCO as a result of providing Gas to LEP pursuant to Section 4.7. For Gas used by LEP for marketing of Power from the Facility pursuant to Section 3.11, LEP shall also pay PGET an amount equivalent to the 100% load factor demand charge under the PGET Firm Transportation Agreement. In addition, LEP shall pay half of any non-volumetric Gas transportation demand charges incurred by PGET under the PGET Firm Transportation Agreement for any time prior to the Commencement Date or Early Commencement Date, if applicable.

*"GDP-IPD"* means the annualized Gross Domestic Product - Implicit Price Deflator prepared by the Bureau of Economic Analysis at the U.S. Commerce Department, or substitute index by mutual agreement of the Parties if the GDP-IPD is discontinued.

*"Guaranteed Commercial Availability Factor"* has the meaning set forth in Section 6.5.

*"Guaranteed Heat Rate"* means 105% of the Facility Heat Rate at the applicable operating conditions.

*"Heat Rate"* means the thermal quantity of Gas needed to generate one kilowatt hour of Energy delivered to the Electricity Delivery Point, including Gas used to generate Energy consumed by the station electrical load, expressed in Btu per kWh on a HHV basis.

*"Higher Heating Value" or "HHV"* means the total heat content, expressed in Btus per cubic foot (Btu/ft<sup>3</sup>), produced by the complete combustion of 1 cubic foot of natural gas at a temperature of 60° Fahrenheit with the natural gas free of water vapor and at a pressure of 14.73 pounds per square inch absolute with the products of combustion to be cooled to the initial temperature of the natural gas and the water formed by the combustion reaction condensed to the liquid state.

*"Hot Start"* means the Start-up of a generating unit after its breaker(s) has been open for no more than eight (8) hours.

*"Incremental Test Costs"* means the cost, or incremental cost associated with generating Power in excess of Power Scheduled by PGET, as applicable, of conducting a Capacity test, including the cost of Gas (or incremental Gas, as applicable) consumed at the Gas Index Price, less the surplus revenue (or incremental surplus revenue, as applicable), if any, from the Energy generated (or incremental Energy generated, as applicable) during each Capacity test, calculated at the PJMLMP.

*"Interest Rate"* means the lesser of the Prime Rate plus two percent and the maximum lawful rate permitted by applicable Law.

*"kW"* means kilowatt.

*"kWh"* means kilowatt-hour.

*"Law"* means any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination by a court, regulatory agency or governmental authority of competent jurisdiction.

*"Legal Proceedings"* means any suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority.

*"LEP"* means Liberty Electric Power, LLC.

*"LEP Indemnitees"* has the meaning set forth in Section 16.1(c).

*"LEP's Lenders"* means the persons (or any agent of, or trustee for, such persons) who agree to provide any financing (including, but not limited to construction, interim and long-term debt and/or equity financing and/or refinancing and/or credit support) for the Facility on terms and conditions acceptable to LEP in its sole discretion.

*"LEP's Security Amount"* has the meaning set forth in Section 8.1(a).

*"Losses"* has the meaning set forth in Section 14.2(b).

*"Material Adverse Change"* means (i) with respect to LEP the long-term, senior unsecured debt of any of its guarantors is rated by S&P below "BBB" or by Moody's below "Baa2" and (ii) with respect to PGET, the long-term senior unsecured debt of PG&E Corporation is rated by S&P below "BBB" or by Moody's below "Baa2."

*"Moody's"* means Moody's Investor Services, Inc. or its successor.

*"MMBtu's"* means one million British thermal units.

*"MW"* means megawatt.

*"MWh"* means megawatt-hour (one MWh equals 1,000 kWh).

*"NERC"* means the North American Electric Reliability Council, the North American Electric Reliability Organization, or any successor to either.

*"Net Dependable Capacity"* means the maximum MW output of the Facility with duct firing at 85 degrees Fahrenheit and 60% relative humidity, less Capacity needed to generate Energy consumed at the Facility for normal operations.

*"Net Dependable Capacity Test"* means a minimum four hour test of the Facility conducted in accordance with PJM Requirements applicable to Capacity Resources and the Operating Procedures to determine the Capacity of the Facility with duct firing at, or corrected to, 85 degrees Fahrenheit and 60% relative humidity, net of Capacity required for Energy consumed at the Facility for normal operations.

*"Net Electric Energy"* means the total Energy output of the Facility less Energy consumed at the Facility for normal operations.

*"Net Maximum Base Capacity"* means the maximum MW output of the Facility without duct firing at 85 degrees Fahrenheit and 60% relative humidity, less Capacity needed to generate Energy consumed at the Facility for normal operations.

*"Net Maximum Base Capacity Test"* means a minimum four hour test of the Facility conducted in accordance with PJM Requirements and the Operating Procedures to determine the Capacity of the Facility without duct firing at, or corrected to, 85 degrees Fahrenheit and 60% relative humidity, net of Capacity required for Energy consumed at the Facility for normal operations.

*"New Taxes"* means (i) any Taxes that are both enacted and effective after the date of this Tolling Agreement, or (ii) any Law, or interpretation thereof, enacted, released or promulgated, and effective after the date of this Tolling Agreement resulting in the application of any Taxes to a new or different class of parties.

*"Newly Regulated Party"* has the meaning set forth in Section 14.3.

*"Non-Defaulting Party"* has the meaning set forth in Section 14.1.

*"Notice"* means communication from one Party to the other Party which shall conform to the requirements of Article XXI.

*"Off-Peak Availability Period"* has the meaning set forth in Section 6.5(c).

*"Off-Peak Hours"* means all hours other than On-Peak Hours.

*"On-Peak Availability Period"* has the meaning set forth in Section 6.5(b).

*"On-Peak Hours"* means hours ending 8:00:00 and 23:00:00 Eastern Prevailing Time, Monday through Friday excluding NERC holidays.

*"Operating Procedures"* has the meaning set forth in Section 3.4.

*"Other Party"* has the meaning set forth in Section 19.4.

*"Outage"* means a Scheduled Outage, Forced Outage or Force Majeure that prevents operation of all or part of the Facility.

*"Party"* or *"Parties"* have the definitions set forth in the preamble of this Tolling Agreement.

*"PGET"* means PG&E Energy Trading-Power, L.P.

*"PGET Indemnitees"* has the meaning set forth in Section 16.1(a).

*"PGET's Firm Transportation Agreement"* has the meaning set forth in Section 4.3.

*"PGET's Security Amount"* has the meaning set forth in Section 8.1(b).

*"PJM"* means PJM Interconnection, LLC, PJM ISO, or successor entity to either, which administers the Pennsylvania-New Jersey-Maryland power pool or provides transmission service within the area recognized by the power industry as PJM.

*"PJMLMP"* means the average of the real-time and day ahead hourly PJM locational marginal prices at the Electricity Delivery Point for the applicable hour. To the extent that PJM does not implement the two settlement system, the Parties agree to use the real-time hourly locational marginal price published by PJM.

*"PJM Operating Agreement"* means the amended and restated Operating Agreement of the PJM, as revised and approved by the FERC from time to time, or its successor document.

*"PJM Requirements"* means the then applicable and valid obligations, rules and regulations as defined and set forth in the PJM Operating Agreement, the PJM Reliability Assurance Agreement, the PJM Open Access Transmission Tariff and/or similar agreements, policies and guidelines.

*"Power"* means all of the generation-related products and services to be provided by LEP to PG&E under this Tolling Agreement including Capacity, Energy and Ancillary Services.

*"Pre-Commencement Power"* means Power generated at the Facility and delivered to the Electrical Delivery Point prior to the earlier of the Early Commencement Date, if any, or the Commencement Date.

*"Prime Rate"* means, for any date, the prime rate reported in *The Wall Street Journal's* "Money Rates" column (or any similar column published in *The Wall Street Journal* in replacement thereof) for the immediately preceding Business Day. In the event *The Wall Street Journal* ceases to report the prime rate, the "Prime Rate" for purposes of this Tolling Agreement shall be the prevailing prime rate (or base rate) charged by major banks in the United States of America.

*"Project Manager"* is an employee of LEP or one or more of its owners whose responsibilities relate to the management of only the Facility and its operations.

*"Protective Apparatus"* means such equipment and apparatus, including, but not limited to, protective relays, circuit breakers and the like, necessary or appropriate to isolate the Facility from the electrical system to which it is connected consistent with Accepted Electrical Practices and PECO Energy Company's Requirements for Parallel Operation of Generation as filed with the Pennsylvania Public Utility Commission ("PaPUC") under Section 57.37 of the PaPUC's Rules and Regulations.

*"Regular Business Hours"* means 9:00 a.m. through 5:00 p.m. Eastern Prevailing Time on Business Days.

*"Regulatory Approvals"* means all state and federal regulatory authorizations, consents, or approvals required for a Party's performance of this Tolling Agreement, whether or not specifically identified by the Parties at the time they entered into this Tolling Agreement.

*"Replacement Power"* has the meaning set forth in Section 3.4(d).

*"Rules"* shall have the meaning set forth in Section 20.1(c)(1).

*"S&P"* means Standards & Poor's Rating Group (a division of McGraw-Hill) or its successor.

*"Schedule"* or *"Scheduling"* or *"Scheduled"* means communicating with and confirming that a particular amount of Gas or Energy, Capacity and/or Ancillary Services is to be delivered or received and providing all information as may be necessary to cause such delivery or receipt to occur.

*"Scheduled Outage"* means any outage of the Facility for which PGET is notified in advance pursuant to Section 3.6 that fully or partially curtails Power output.

*"Shutdown"* means Dispatch of the Facility to zero pursuant to a directive of PGET or at the beginning of a period for which the Facility's Capacity is not required by PGET.

*"Start-up"* means the action of bringing the Facility from Shutdown to synchronization at its minimum load and the unconditional release for ramping to the Dispatch Capacity level.

*"Start-up Gas"* has the meaning set forth in Section 3.4(c).

*"Start-up Notification Period"* means the period of time required by LEP between the notification of LEP by PGET and the initiation of Start-up. Such period of time will initially be set as two (2) hours, unless PJM procedures require a shorter period, and may be revised by mutual agreement of the Parties from time to time to reflect actual operating experience.

*"Start-up Payment"* has the meaning set forth in Section 6.3.

*"Taxpayer"* has the meaning set forth in Section 19.4.

*"Tax Claim"* has the meaning set forth in Section 19.4.

*"Taxes"* means any and all ad valorem, property, occupation, severance, generation, first use, conversion, Btu or Energy, transmission, utility, gross receipts, privilege, sales, use, consumption, excise, lease, transaction and other taxes or New Taxes, governmental charges, surcharges, licenses, fees, permits and assessments, or increases therein, and any interest or penalties on such taxes, new taxes, charges, licenses, fees, permits and assessments, other than taxes based on net income or net worth.

*"Termination Payment"* has the meaning set forth in Section 14.2(a).

*"TETCO"* means Texan Eastern Transmission Corporation.

*"TETCO Delay Period"* means a period of time beginning on April 1, 2002 and ending the number of days later, if any, by which construction of facilities by TETCO delays delivery of pre-commencement Gas (pursuant to Section 4.7) to the Facility beyond September 1, 2001.

*"TETCO Eagle"* means the TETCO pipeline interconnect point between TETCO's mainline system and TETCO's Philadelphia lateral in Chester, Pennsylvania commonly referred to by the interstate Gas pipeline industry as Eagle.

*"Tolling Agreement"* has the meaning set forth in the preamble of this Tolling Agreement.

*"Tolling Fees"* means the Fixed Payment, Variable Payment and Start-up Payment all as set forth in Article VI.

*"Tolling Operations"* means the process whereby PGET delivers Gas to the Facility at the Gas Delivery Point, the Gas is converted into Power at the Facility and the converted Gas is redelivered to PGET as Power at the Electricity Delivery Point.

*"Transmission Providers"* means the entity or entities transmitting Power on behalf of LEP or PGET to or from the Electricity Delivery Point or Alternate Delivery Point(s).

*"Variable Payment"* has the meaning set forth in Section 6.2.

*"Warm Start"* means the Start-up of a generating unit after its breaker(s) has been open for more than eight (8) but less than 48 hours.

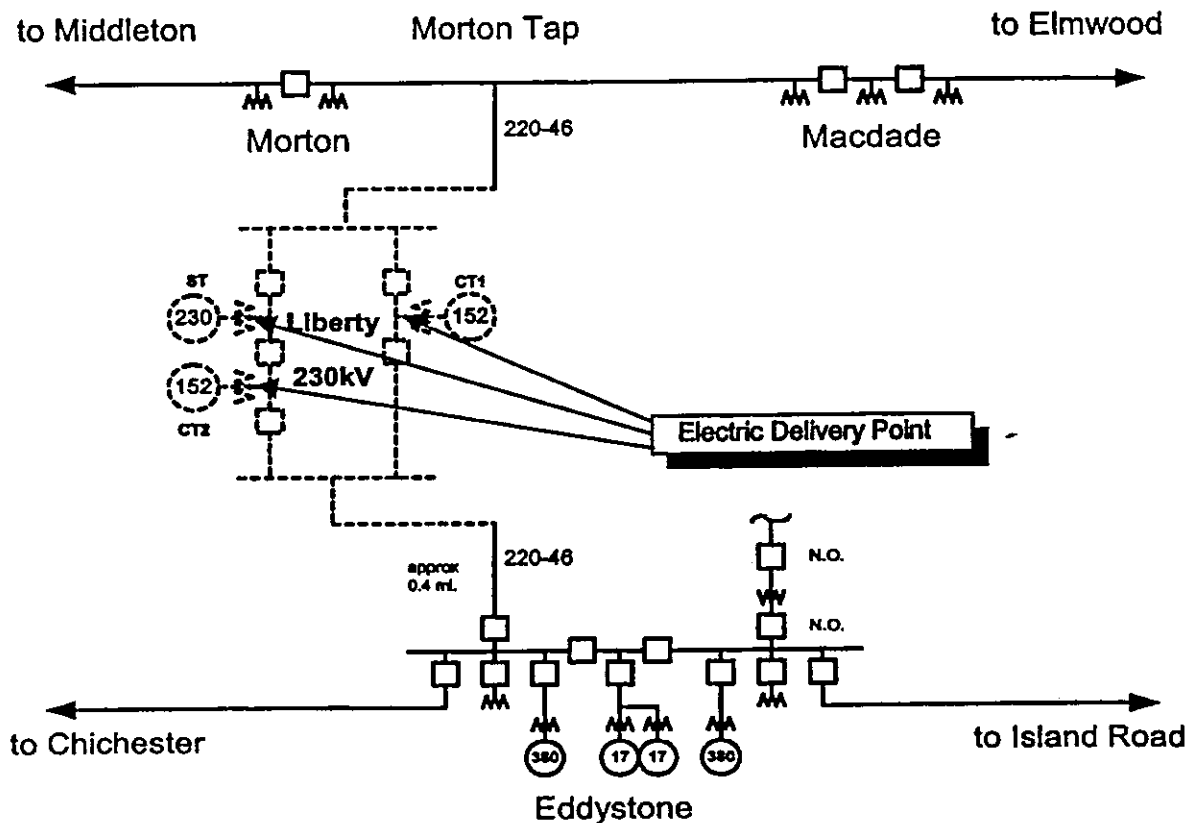
## **SCHEDULES**

Schedule A-1	Technical description of the Electricity Delivery Point
Schedule 3.2(a)	Design Capacity of the Facility including performance curve
Schedule 3.4(a)	Engineering parameters for Scheduled and real-time Dispatch of Energy, Capacity and Ancillary Services
Schedule 3.4(c)	Gas required for Start-up
Schedule 3.5	Facility Heat Rates
Schedule 3.6	Major maintenance cycle by unit and maximum Scheduled Outage hours for the Facility per year

## SCHEDULE A-1 ELECTRIC DELIVERY POINT

**Electric Delivery Point** The Electric Delivery Point will be on the 230-kV electrical bus at the proposed Liberty substation, immediately adjacent to the step-up transformers on the PECO line (i.e., high-voltage) side. (See one-line diagram provided below.)

**Interconnection Point** The Facility will interconnect with the PECO Energy 230-kV electric transmission system on the existing Eddystone-MacDade 230-kV transmission line (i.e., Line 220-46, see electrical one-line below). The PECO right-of-way shared by two 230-kV transmission lines and one 138-kV transmission line crosses the Facility Site. These lines are 220-46 (Eddystone - MacDade) and 220-36 (Eddystone - Chichester) and 130-41 (Eddystone - Woodlyn). The interconnection plan would include a new 230-kV ring bus substation, adjacent to the 220-46 line right-of-way, which will be constructed by Liberty. The existing 230-kV 220-46 line will be cut approximately 0.4 miles from Eddystone station and both ends attached to the new bus at that location.



**Note:**

**(1) The Electric Delivery Point and interconnection parameters are subject to certain rights, policies and procedures that may from time to time be exercised or changed by the PJM ISO or PECO.**

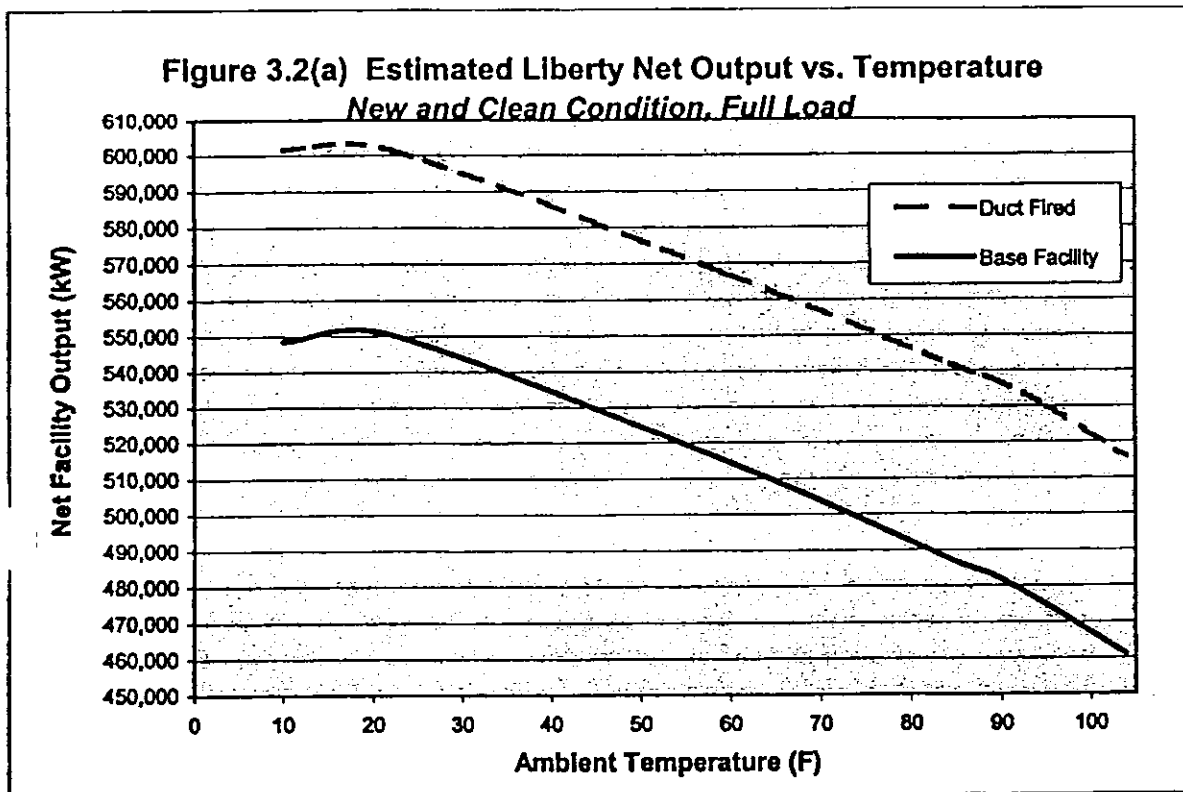
**SCHEDULE 3.2 (a) DESIGN CAPACITY OF THE FACILITY****DESIGN CAPACITY DATA**

		<b><u>Base Facility (No Duct Firing)</u></b>	<b><u>Facility with Duct Firing Operating</u></b>
<b>Ambient Conditions</b>	Temperature	59° F	59° F
	Relative Humidity	60%	60%
<b><i>Evaporative CT Inlet Coolers Operating</i></b>			
Net Design Capacity	kW	515,500	567,700
<b><i>Evaporative CT Inlet Coolers Not Operating</i></b>			
Net Design Capacity	kW	508,000	561,000

**Notes:**

- (1) If ambient conditions are such that the evaporative coolers can not run during the test, then facility performance will be measured relative to the "Coolers Not Operating" parameters. Likewise if the coolers are able to run during the test, then facility performance will be measured relative to the "Coolers Operating" parameters.
- (2) All data are at new and clean conditions, full-load operation.
- (3) All data are net of Facility auxiliary loads, including step-up transformer losses.

## SCHEDULE 3.2 (a) Continued

ESTIMATED DESIGN CAPACITY CURVENotes:

- (1) Figure 3.2(a) is representative of the effect of ambient conditions on Facility output. Actual correction curves will be provided subsequent to the completion of plant engineering.
- (2) Relative humidity assumptions for Figure 3.2(a) are based on the mean coincident wet bulb temperature corresponding to the dry bulb data point.

**SCHEDULE 3.4 (a) PARAMETERS FOR DISPATCH AND ANCILLARY SERVICES****1. START-UP PARAMETERS**

	<u>Elapsed Time Since Last Shutdown</u>	<u>Estimated Time to Full Load (Minutes)</u>
<b><i>Base Block (515 MW nominal)</i></b>		
Hot Start	Less than 8 hours	90
Warm Start	8 to 48 hours	180
Cold Start	Greater than 48 hours	300
<b><i>Duct Firing Block (52 MW nominal)</i></b>		
Function of ST Rotor Temperature		8 - 20

**Notes:**

- (1) Time to base load begins from initiation of start sequence. Notification provisions also apply.
- (2) Duct firing time assumes base block already operating at full load. "ST" refers to steam turbine.  
Duct firing ramp rate depends on ST rotor temperature when duct firing is initiated.  
Approximately 4 minutes are required to translate fuel energy into first incremental ST shaft power.
- (3) Start-up times are estimates. Actual times are dictated by various CT, STG, and HRSG control systems based on component temperatures, pressures and manufacturers' algorithms.  
(See attached start-up curves for GE CTG and Toshiba STG.)

**SCHEDULE 3.4 (a) Continued**

2. RAMP RATES	Approximate Ramp Rate (MW/min)
<i>Base Block (515 MW nominal)</i>	
Operating between minimum and maximum Facility load	17
<i>Duct Firing Block (52 MW nominal)</i>	
Operating between minimum and maximum DF load	13

**Notes:**

- (1) Assumes all components have operated long enough to be considered in "hot" status.
- (2) Ramp rates do not necessarily apply during start-up or shut-down sequences.
- (3) Ramp rates are only estimates. Actual rates are dictated by various CT, STG, and HRSG control system set points based on component temperatures, pressures and manufacturers' algorithms. (See attached vendor start-up curves in Figures 3.4(a)1 through 3.4(a)6.)

**J. DISPATCH PARAMETERS**

Maximum Starts per Year	180
Minimum Notice to Initiate Start	2 hours
Minimum Run Time (i.e., breaker closure)	6 hours
Minimum Time Between Runs (i.e., breaker open to start initiation)	6 hours

**Notes:**

- (1) A "start" is defined as a successful start of one or both CTs with the STG reaching desired load.

## **SCHEDULE 3.4 (a) Continued**

### **4. REACTIVE CONTROL AND VOLTAGE REGULATION**

Liberty shall respond to power factor or VAR set points prescribed by PGET, or at PGET's option, PJM. Liberty shall at all times operate the Facility in accordance with:

- (a) the Generator Reactive Capability Curves (attached Figures 3.4(a)7 and 3.4(a)8)
- (b) manufacturers' and turnkey contractor's recommended operating procedures
- (c) Accepted Electrical Practices
- (d) Facility permits and licenses

Any Facility de-rating to deliver reactive power at PGET or PJM's request shall not count against Liberty in availability calculations.

### **5. BLACK START CAPABILITY**

Not Provided

### **6. AUTOMATIC GENERATOR CONTROL**

Liberty shall provide Automatic Generator Control ("AGC") capability for load control of the Duct Firing Block (52 MW nominal). Control can be transferred to PJM once the Facility has completed its start sequence and is in stable operation at desired initial load. The intent of this AGC capability is to enable the Duct Firing Block to be able to qualify as Operating/Spinning Reserves under the PJM tariffs. Liberty shall also provide AGC for the purpose of providing to PJM the ability to modulate Facility output within  $\pm 5$  MW of a particular load setpoint (not to exceed full load).

**SCHEDULE 3.4 (a) Continued****7. LOAD FOLLOWING**

LEP shall respond to load set points provided by PGET or PJM, or other parties by mutual agreement. Response time and load range shall be subject to equipment capabilities and Accepted Electrical Practices.

**Facility Turndown Capability**

Percent of  
Base Load  
(i.e. 2 Unit)  
MW Output

Turndown from 2-CT Full Load to 2-CT Part Load

65%

**Notes:**

- (1) Environmental permits limit each CT to operation at no less than 50% load.
- (2) Turndown is measured from base block MW (i.e., without duct firing).

Figure 3.4(a)1 Typical CT Hotstart

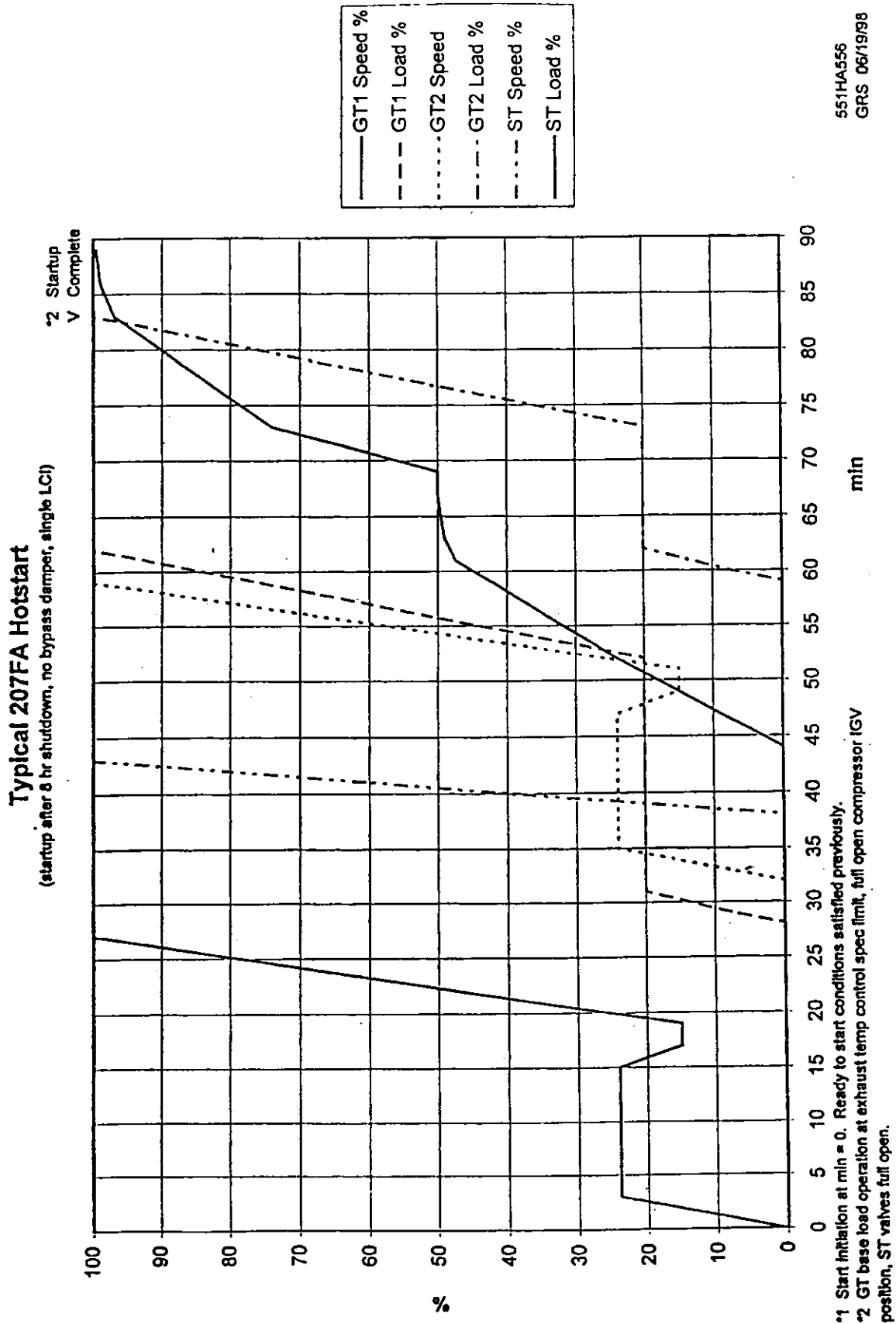


Figure 3.4(a)2 Typical CT Warmstart

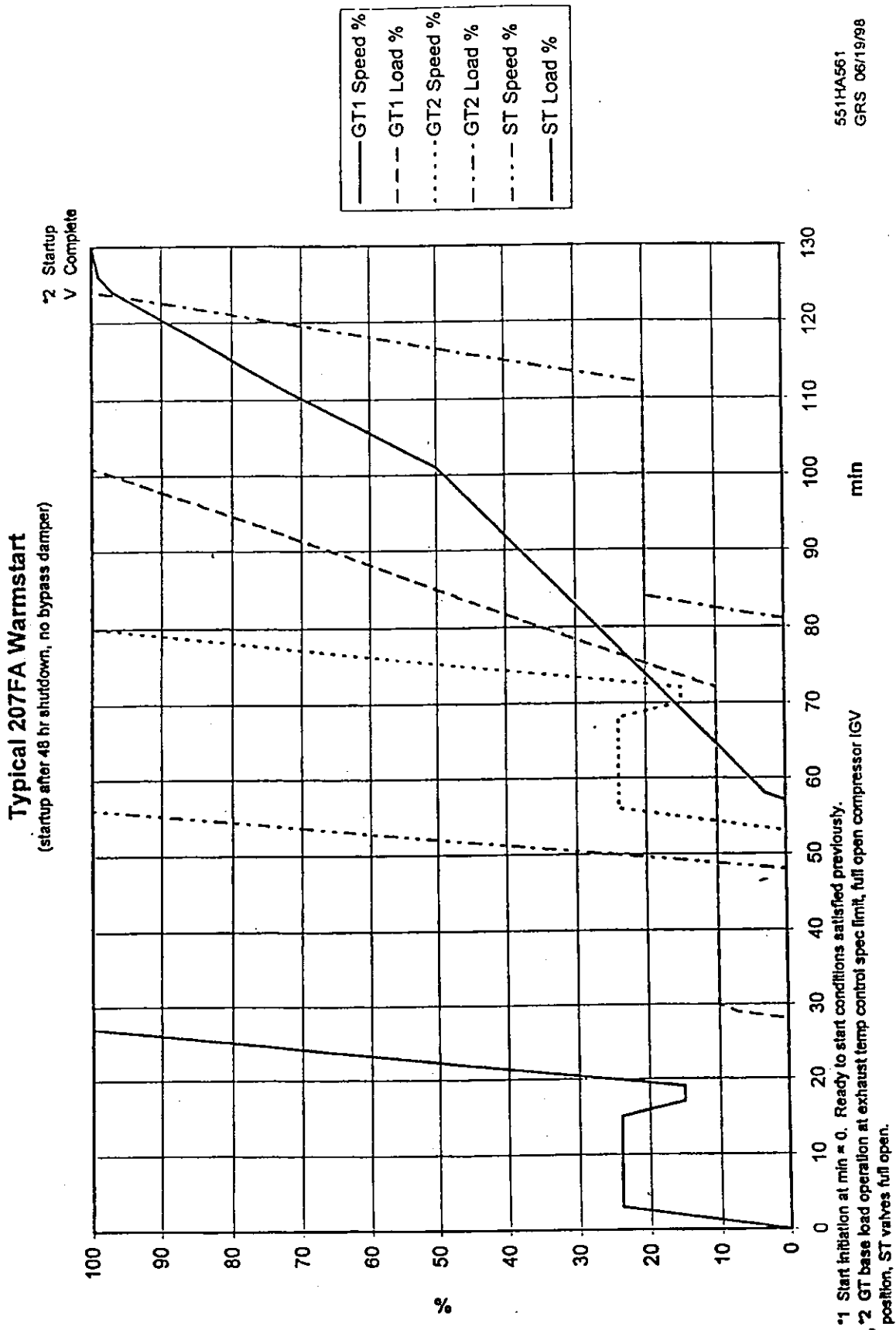


Figure 3.4(a)3 Typical CT Coldstart

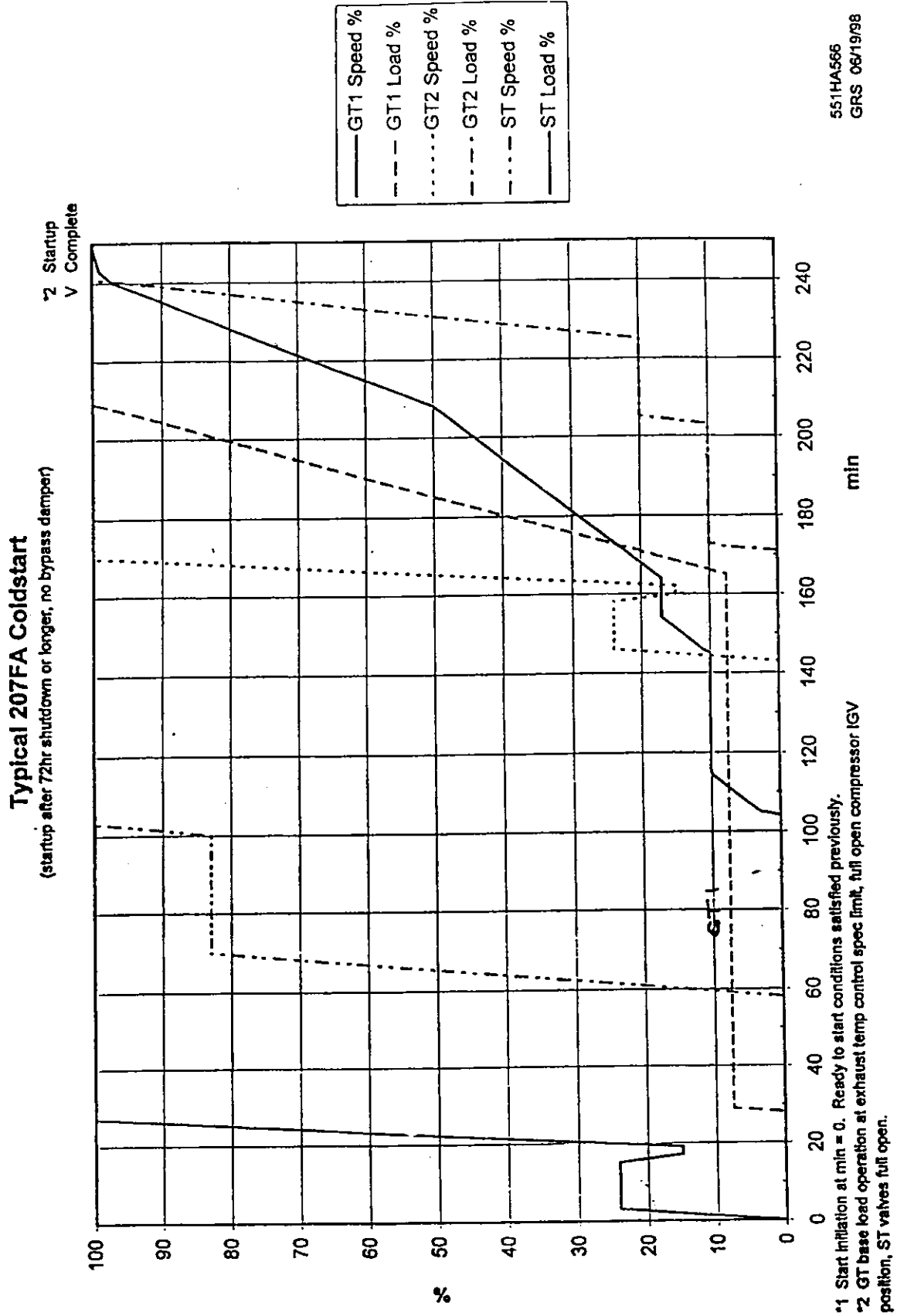


Figure 3.4(a)4 Typical STG Hotstart

## STARTUP CURVE

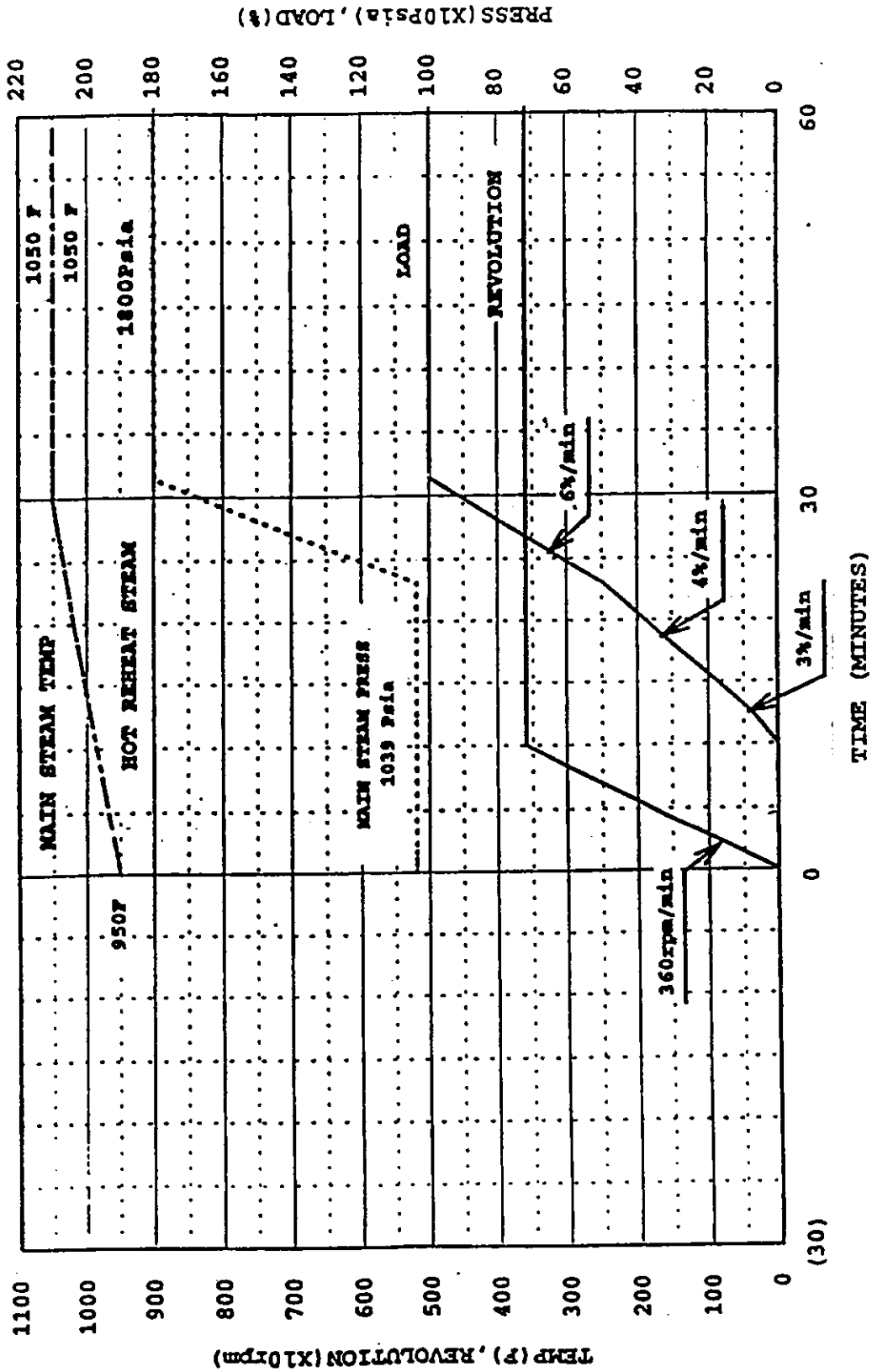


Figure 3.4(a)5 Typical STG Warmstart

## STARTUP CURVE

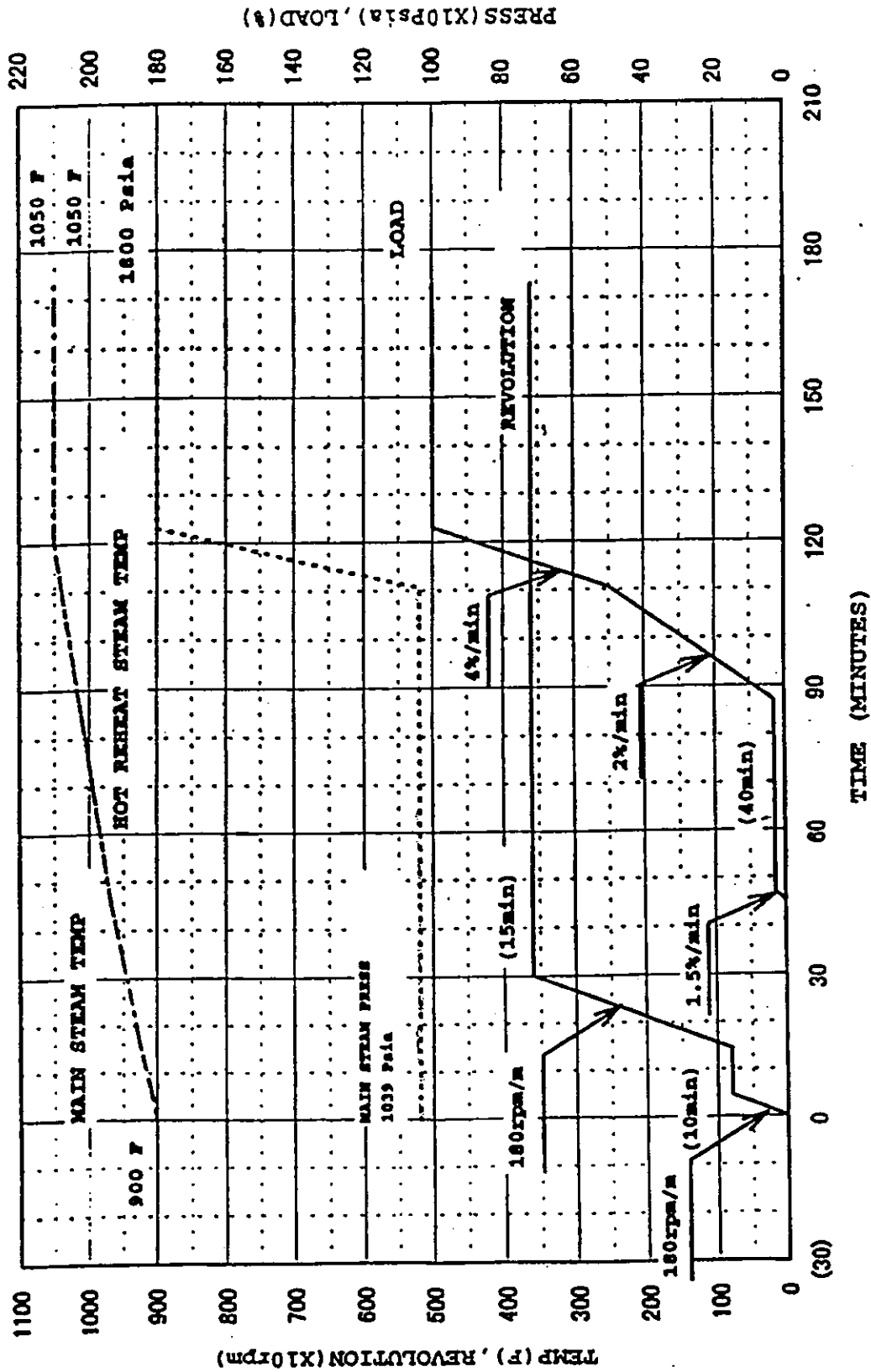


Figure 3.4(a)6 Typical STG Coldstart

## STARTUP CURVE

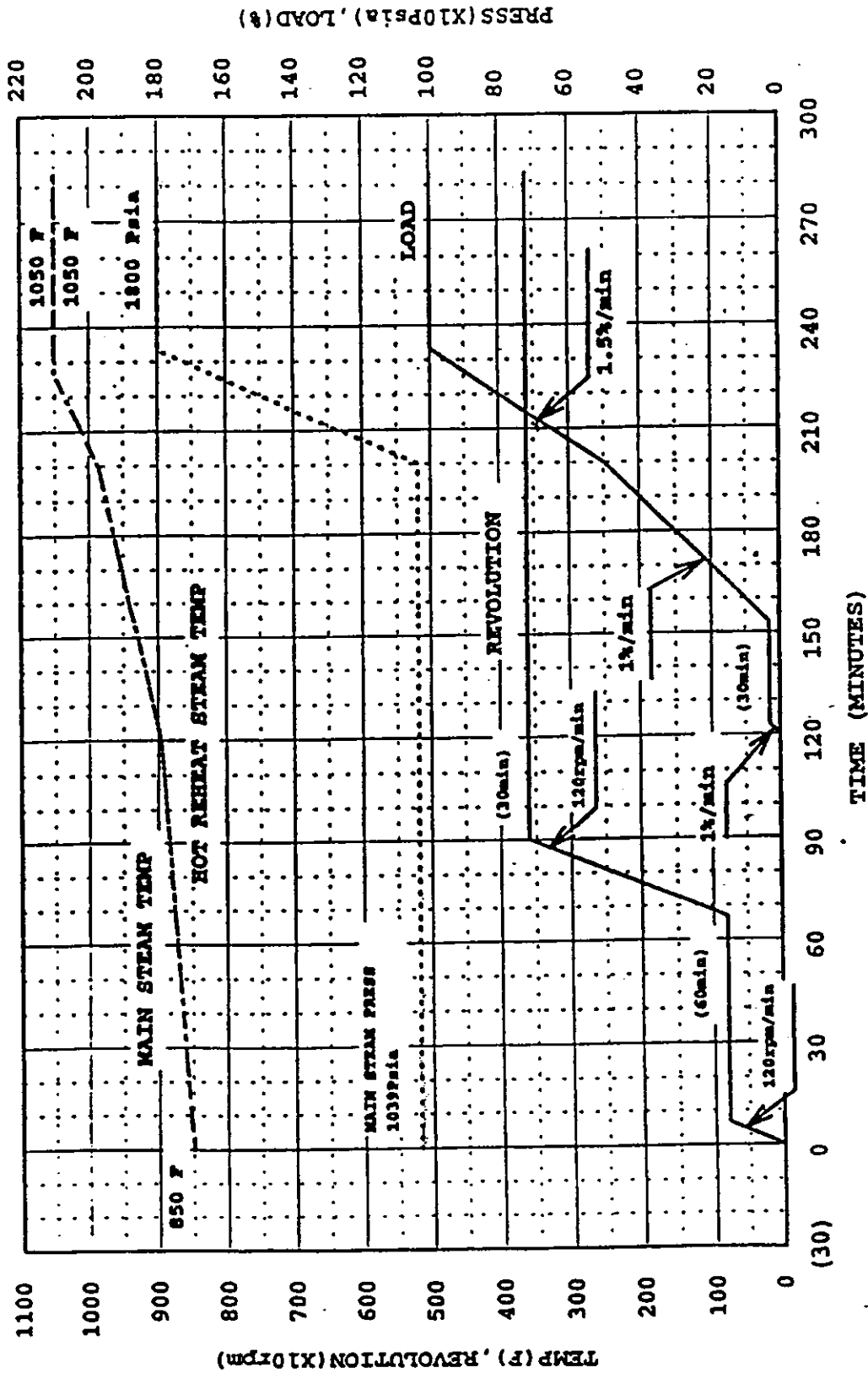


Figure 3.4(a)7 CT Estimated Reactive Capability Curves

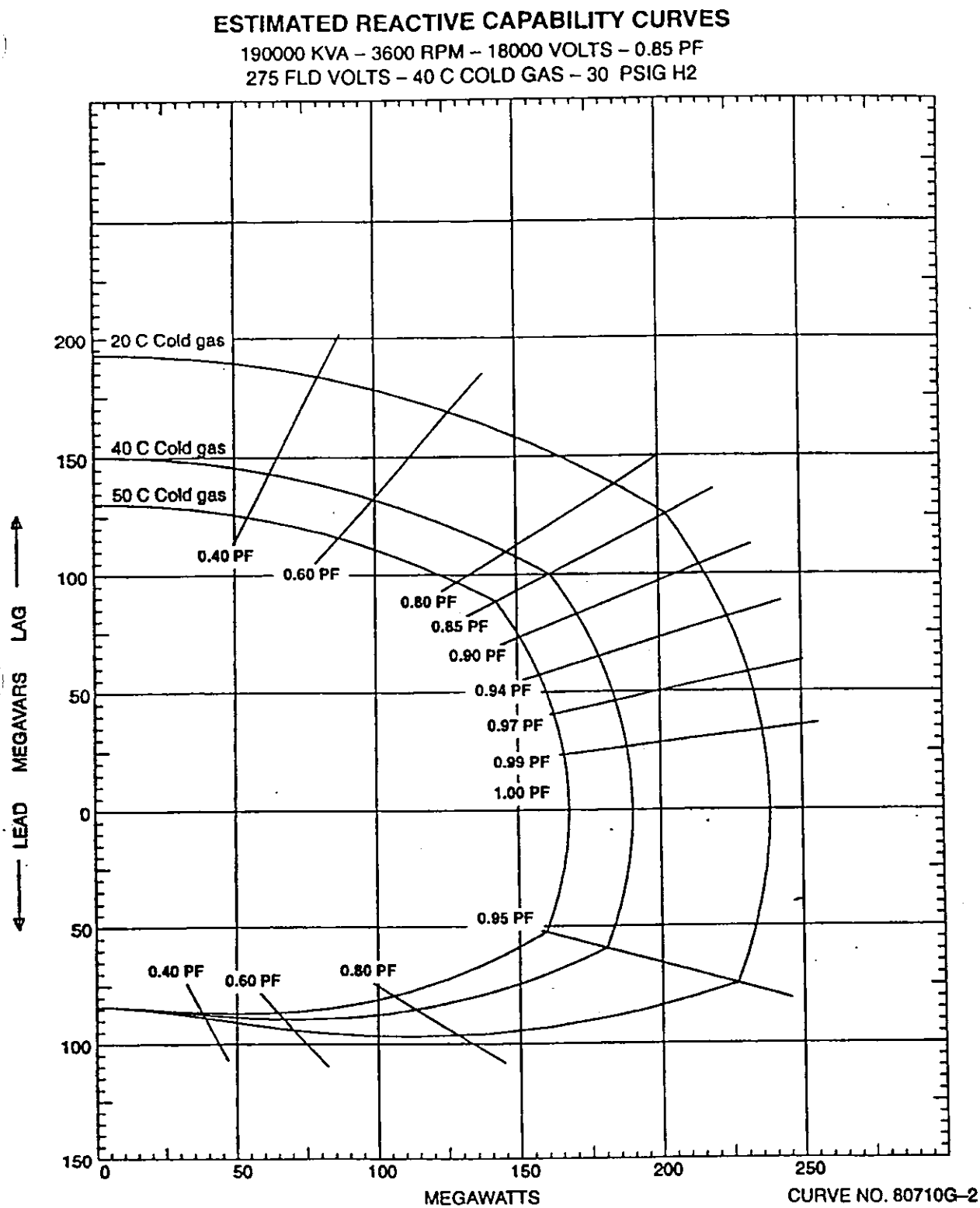
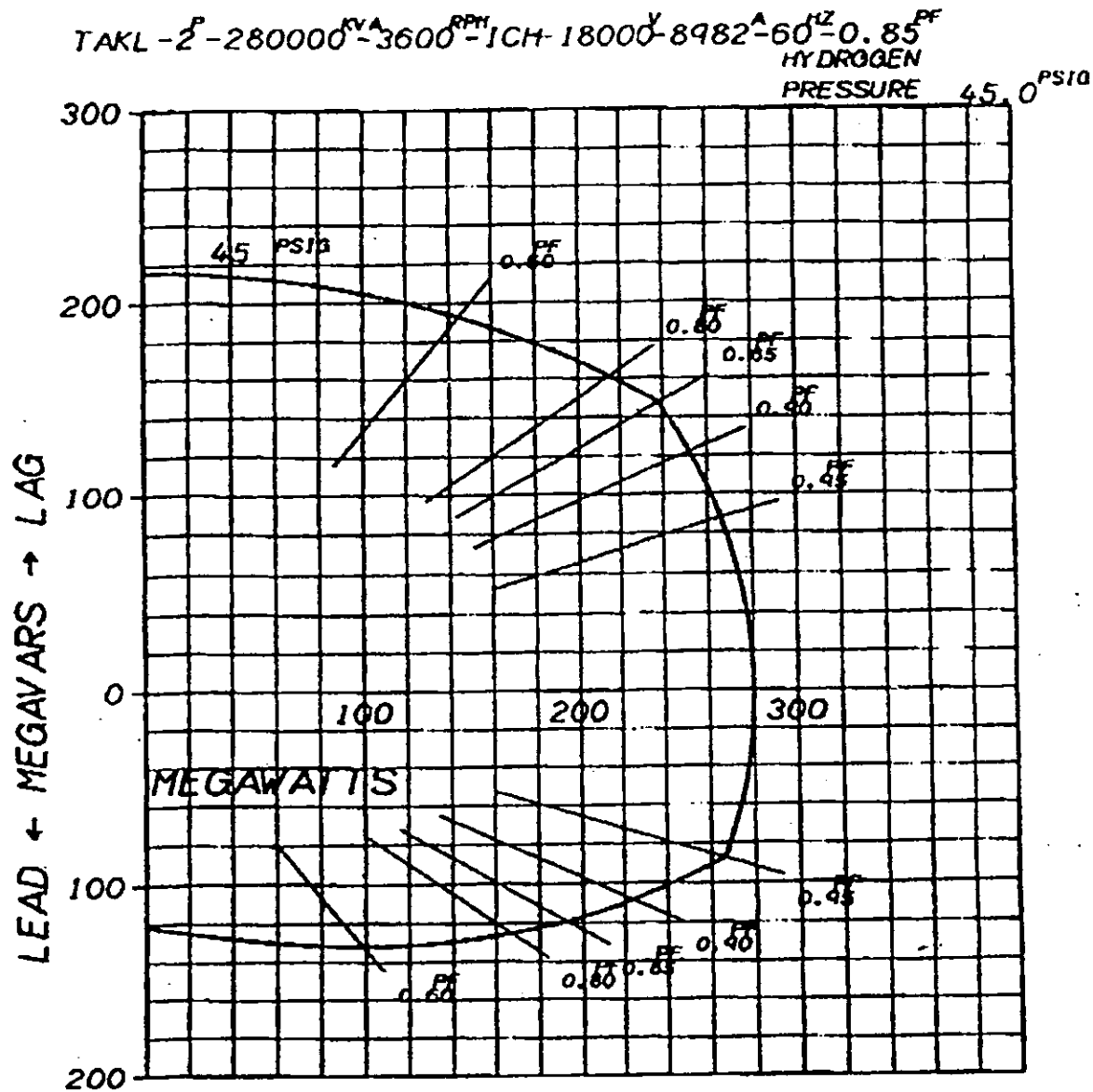


Figure 3.4(a)8 STG Estimated Reactive Capability Curves

## ESTIMATED REACTIVE CAPABILITY CURVES



**SCHEDULE 3.4 (c) GAS REQUIRED FOR STARTUP**

		<u>Estimated Gas Requirement</u>	
		<u>Start of Both (2) CTs and STG (MMBtu)</u>	<u>1 CT Restart with Other CT @ Full Load (MMBtu)</u>
	<u>Elapsed Time Since Last Shutdown</u>		
<b><i>Base Block (515 MW nominal)</i></b>			
Hot Start	Less than 8 hours	1,600	500
Warm Start	8 to 48 hours	2,600	700
Cold Start	Greater than 48 hours	4,200	1,000

**Notes:**

Fuel requirement data are estimates. Actual fuel requirements are dictated by various CT, STG, and HRSG control systems based on component temperatures, pressures and manufacturers' algorithms.

- (2) Data reflect ambient conditions at 59F, 60% relative humidity.
- (3) No duct firing fuel is included.

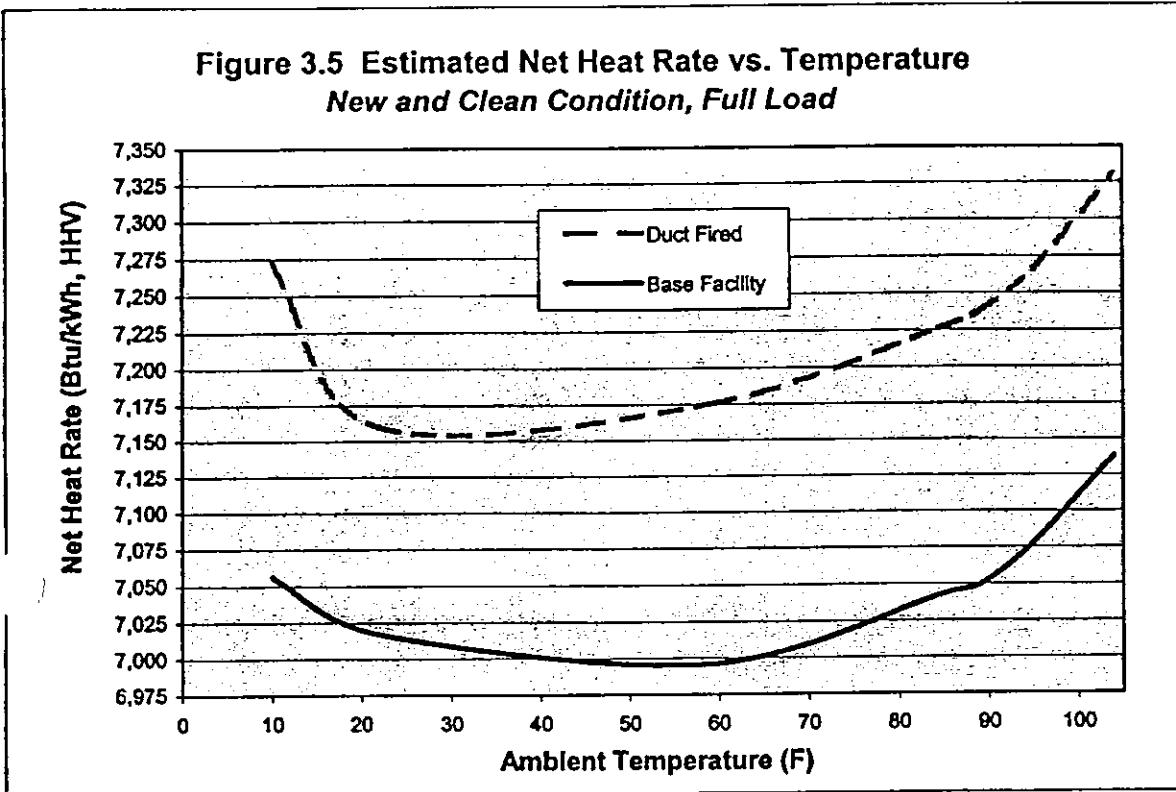
**SCHEDULE 3.5 VENDOR'S GUARANTEED HEAT RATES****DESIGN HEAT RATE DATA**

		<b>Base Facility (No Duct Firing)</b>	<b>Facility with Duct Firing Operating</b>
<b>Ambient Conditions</b>	Temperature	59° F	59° F
	Relative Humidity	60%	60%
<b><i>Evaporative CT Inlet Coolers Operating</i></b>			
Net Design Heat Rate	Btu/kWh HHV	6,996	7,175
<b><i>Evaporative CT Inlet Coolers Not Operating</i></b>			
Net Design Heat Rate	Btu/kWh HHV	6,987	7,166
Incremental Heat Rate for Duct Firing	Btu/kWh HHV	NA	8,943

**Notes:**

- (1) If ambient conditions are such that the evaporative coolers can not run during the test, then facility performance will be measured relative to the "Coolers Not Operating" parameters. Likewise if the coolers are able to run during the test, then facility performance will be measured relative to the "Coolers Operating" parameters.
- (2) All data are at new and clean conditions, full load operation.
- (3) All data are net of Facility auxiliary loads, including step-up transformer losses.
- (4) Contractual heat rate shall be the prevailing equivalent heat rate of the Facility not to exceed 105% of the Vendor's Guaranteed Heat Rate at conditions specified above.

## SCHEDULE 3.5 Continued

ESTIMATED DESIGN HEAT RATE CURVENotes:

- (1) Figure 2 is representative of the effect of ambient conditions on Facility heat rate. Actual correction curves will be provided after the EPC contractor completes plant engineering.
- (2) Relative humidity assumptions for Figure 3.5 are based on the mean coincident wet bulb temperature corresponding to the dry bulb data point.

**SCHEDULE 3.6 EXPECTED SCHEDULED MAINTENANCE**

Operating Year	Estimated Equivalent Operating Hours	Estimated Cumulative Equivalent Operating Hours	Inspections: CT Unit 1	Inspections: CT Unit 2	Inspections: Steam Turbine	CT 1 Estimated Outage Time Required (Days)	CT 2 Estimated Outage Time Required (Days)	STG Estimated Outage Time Required (Days)
1 2002	5,256	5,256	Combustor	Combustor		5	5	
2 2003	7,008	12,264	Combustor	Combustor		7	7	
3 2004	7,008	19,272	Combustor	Combustor		7	7	
4 2005	7,008	26,280	Hot Path	Hot Path		21	21	
5 2006	7,008	33,288	Combustor	Combustor	Complete	5	5	28
6 2007	7,008	40,296	Combustor	Combustor		7	7	
7 2008	7,008	47,304	Major	Combustor		21	7	
8 2009	7,008	54,312	Combustor	Major	Simple	5	21	14
9 2010	7,008	61,320	Combustor	Combustor		7	5	
10 2011	7,008	68,328	Combustor	Combustor		7	7	
11 2012	7,008	75,336	Hot Path	Hot Path	Complete	21	21	28
12 2013	7,008	82,344	Combustor	Combustor		5	5	
13 2014	7,008	89,352	Combustor	Combustor		7	7	
14 2015	7,008	96,360	Major	Major	Simple	21	21	14
15 2016	7,008	103,368	Combustor	Combustor		5	5	
						151	151	84

**Notes:**

- (1) Estimated annual equivalent operating hours are based on 80% assumed annual capacity factor.
- (2) Actual maintenance schedule will depend on factors such as dispatch, starts, equipment performance, component availability, and vendor recommendations.
- (3) Steam turbine and CT outages can be concurrent.
- (4) Facility is not designed for CTs to operate without operational steam turbine.

## GUARANTEE

GUARANTEE dated as of April 24, 2000 by PG&E Corporation, a California corporation (the "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 ("Affiliate"), an affiliate of Guarantor, have entered into that certain Tolling Agreement dated April 14, 2000 (the "Agreement").

NOW, THEREFORE, in consideration of Guaranteed Party entering into the Agreement with Affiliate, Guarantor agrees as follows:

1. Guarantee. Subject to the terms herein, the 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, 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. Guarantor's liability under this Guarantee is limited to the aggregate of US\$150,000,000, as reduced pursuant to Section 8.1(b) of the Agreement (the "Guarantee Cap"). 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 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, Guarantor shall not be liable hereunder for special, consequential, exemplary, tort or other damages. 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 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 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 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 Guarantor shall remain liable hereunder with respect to such Obligations as if such payment had not been made.

4. Enforcement. The 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 exhausting any other remedies against the Affiliate, and without protest, presentment, notice or demand whatsoever. 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, 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 Guarantor hereunder or to enforce any remedy which the Guaranteed Party now has or hereafter may have against Affiliate 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. Guarantor further agrees that none of the following acts, omissions or occurrences shall diminish or impair the liability of Guarantor in any respect (all of which acts, omissions or occurrences may be done without notice to 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, 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, and (iv) to the extent permitted by law, any release or discharge, by operation of law, of Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guarantee.

5. Guarantor to Maintain its Corporate Existence. The 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 Guarantor) to consolidate with or merge into it; provided, that the 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 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 Guarantor, assumes in writing all of the obligations of the 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 Guarantor may at any time substitute as the 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 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 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 Guarantor under this Guarantee. A Payment Demand conforming to the foregoing requirements shall be sufficient notice to 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 Guarantor:**  
**PG&E Corporation**  
**One Market, Spear Tower, Suite 2400**  
**San Francisco, CA 94105**  
**Attn: Gabriel Togneri, Asst. Treasurer**  
**fax: (415) 267-7265**

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

**To Guaranteed Party:**  
**Liberty Electric Power, LLC**  
**c/o Columbia Electric Corporation**  
**13880 Dulles Corner Lane**  
**Herndon, Virginia 20171**  
**Attn: President**  
**fax: (703) 561-7305**

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 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. 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. Guarantor waives any rights of subrogation or reimbursement from Affiliate that may accrue to Guarantor with respect to the payment of any Obligation by 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, Guarantor shall be subrogated to the rights of the Guaranteed Party against Affiliate, and the Guaranteed Party agrees to take at Guarantor's expense such steps as Guarantor may reasonably request to implement such subrogation.

10. Consent to Collateral Assignment. 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, 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. Guarantor hereby represents and warrants that (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 Guarantor of this Guarantee are within its corporate powers, have been duly authorized by all necessary corporate action and do not violate Guarantor's charter or by-laws or any law, order or contractual restriction binding on Guarantor, and (iii) this Guarantee constitutes 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).

12. Miscellaneous. No provision of this Guarantee may be amended or waived except by a written instrument executed by Guarantor and Guaranteed Party. This Guarantee shall bind and benefit the successors and permitted assigns of 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 CORPORATION

By: Gabriel Togneri  
Gabriel Togneri, Assistant Treasurer

Approved as to Form  
Doreen D. Hulemann  
Attorney

*Agreed and Accepted:*

LIBERTY ELECTRIC POWER, LLC

By: M. Gluckman  
Name: Michael J. Gluckman  
Title: President

## GUARANTEE

GUARANTEE dated as of April ~~14~~<sup>24</sup>, 2000 by Columbia Energy Group, a Delaware corporation (the "Guarantor"), in favor of PG&E Energy Trading-Power, L.P., a Delaware limited partnership (hereafter the "Guaranteed Party").

WHEREAS, Guaranteed Party and Liberty Electric Power, LLC, a Delaware limited liability company ("Affiliate"), an affiliate of Guarantor, have entered into that certain Tolling Agreement dated as of April 14, 2000 (the "Agreement").

NOW, THEREFORE, in consideration of Guaranteed Party entering into the Agreement with Affiliate, Guarantor agrees as follows:

1. Guarantee. Subject to the terms herein, the 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, payments for Gas, 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, 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. Guarantor's liability under this Guarantee is limited to the aggregate of five million dollars (\$5,000,000) through the Commencement Date and then thirty-five million dollars (\$35,000,000) as of the Commencement Date, as reduced pursuant to Section 8.1(a) of the Agreement (the "Guarantee Cap"). 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 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, Guarantor shall not be liable hereunder for special, consequential, exemplary, tort or other damages. 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 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 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 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 Guarantor shall remain liable hereunder with respect to such Obligations as if such payment had not been made.

4. **Enforcement.** The 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 exhausting any other remedies against the Affiliate, and without protest, presentment, notice or demand whatsoever. 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, 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 Guarantor hereunder or to enforce any remedy which the Guaranteed Party now has or hereafter may have against Affiliate 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. Guarantor further agrees that none of the following acts, omissions or occurrences shall diminish or impair the liability of Guarantor in any respect (all of which acts, omissions or occurrences may be done without notice to 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, 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, and (iv) to the extent permitted by law, any release or discharge, by operation of law, of Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guarantee.

5. **Guarantor to Maintain its Corporate Existence.** The 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 Guarantor) to consolidate with or merge into it; *provided*, that the 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 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 Guarantor, assumes in writing all of the obligations of the 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 Guarantor may at any time substitute as the guarantor for all or a portion of the Guarantee Cap (a) any entity (i) to which the Guarantor has directly or indirectly sold at least fifty percent (50%) of its interest in the Affiliate, (ii) which has by merger, consolidation, sale, or otherwise become the direct or indirect owner of a majority of the Affiliate's equity or all or substantially all of the Affiliate's assets, or (iii) which is the direct or indirect owner of all of the equity of such Affiliate, provided that 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 by S&P or shall otherwise be acceptable to the Guaranteed Party and such substitute guarantor has delivered to the Guaranteed Party (x) a new corporate guarantee agreement in substantially the form of the Guarantee and (y) an opinion of counsel to the effect that the new corporate guarantee agreement has been duly authorized, executed, and delivered by such substituted guarantor and constitutes the valid and legally binding obligation of such substituted guarantor enforceable in accordance with its terms, subject to applicable bankruptcy, moratorium, and similar laws and general principles of equity; or (b) 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 "A2" or better by Moody's and "A" by S&P. Upon the satisfaction of the requirements set forth in this Section 6, the 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 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 Guarantor under this Guarantee. A Payment Demand conforming to the foregoing requirements shall be sufficient notice to 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 Guarantor:  
Columbia Electric Corporation  
13880 Dulles Corner Lane  
Herndon, Virginia 20171  
Attn: Treasury Department  
fax: (703) 561-7320

To Affiliate:  
Liberty Electric Power, LLC  
c/o Columbia Electric Corporation  
13880 Dulles Corner Lane  
Herndon, Virginia 20171  
Attn: President  
fax: (703) 561-7305

To Guaranteed Party:  
PG&E Energy Trading-Power, L.P.  
7500 Old Georgetown Road  
Bethesda, Maryland 20814-6161  
Attn: Chief Financial Officer  
fax: 301-280-6601

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 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. 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.

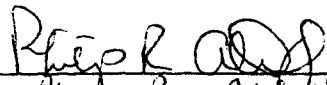
9. Subrogation. Guarantor waives any rights of subrogation or reimbursement from Affiliate that may accrue to Guarantor with respect to the payment of any Obligation by Guarantor to Guaranteed Party under this Guarantee until the time that all Obligations owing to the Guaranteed Party are fully and indefeasibly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

10. Representations and Warranties. Guarantor hereby represents and warrants that (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 Guarantor of this Guarantee are within its corporate powers, have been duly authorized by all necessary corporate action and do not violate Guarantor's charter or by-laws or any law, order or contractual restriction binding on Guarantor, and (iii) this Guarantee constitutes 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).

11. Assignment. Except as otherwise provided in this Guarantee, 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.

12. Miscellaneous. No provision of this Guarantee may be amended or waived except by a written instrument executed by Guarantor and Guaranteed Party. This Guarantee shall bind and benefit the successors and permitted assigns of 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.

**COLUMBIA ENERGY GROUP**

By:   
Name: Philip R. Aldridge  
Title: Treasurer

Agreed and Accepted:

**PG&E ENERGY TRADING-POWER, L.P**

By:   
Name: LYNDELL E. MADDOX  
Title: PRESIDENT & CEO

## 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

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.

[Remainder of Page Intentionally Left Blank]

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:

FEB-08-2001 THU 03:49 PM ORION POWER HOLDINGS

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.

[Remainder of Page Intentionally Left Blank]

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: \_\_\_\_\_

FEB-08-2001 THU 03:52 PM ORION POWER HOLDINGS

FILE NO. 410270007

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

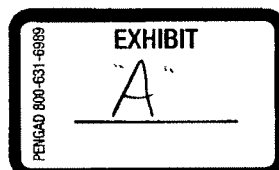
WHEREAS, Buyer and the Seller Parties desire that the Escrow Agent hold the Escrow Amount as provided in this Agreement.

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 11<sup>th</sup> day (or the next following business day, if such 11<sup>th</sup> 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. Buyer and the <sup>TCAIL</sup> <sup>GTN Corp.</sup> <sup>GTN LLC</sup> Company shall hereby assign to Seller (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, 21<sup>st</sup> 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 IRIBRE  
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: \_\_\_\_\_

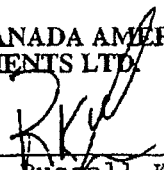
GAS TRANSMISSION CORPORATION

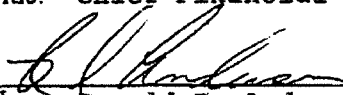
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NATIONAL ENERGY & GAS  
TRANSMISSION, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TRANSCANADA AMERICAN  
INVESTMENTS LTD.

By:  \_\_\_\_\_  
Name: Russell K. Girling  
Title: Chief Financial Officer

By:  \_\_\_\_\_  
Name: Ronald B. 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 C. DeWane*  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GAS TRANSMISSION  
NORTHWEST CORPORATION**

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

Exhibit A

\$3,500 per year without pro-ration 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.