

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

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

**MOTION OF NEGТ ENERGY TRADING – POWER, L.P.  
FOR SUMMARY JUDGMENT PURSUANT TO FED. R. CIV. P. 56(b)**

NEGТ Energy Trading – Power, L.P. (“ET Power”) files this Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56(b) (the “Motion”) and in support thereof, states as follows:

**Factual Background**

1. ET Power is a former indirect subsidiary of National Energy & Gas Transmission, Inc. (“NEGТ”). (Goldstein Declaration, ¶ 2.)
2. On July 8, 2003, NEGТ, ET Power and several of their affiliated filed voluntary petitions for protection under chapter 11 of the Bankruptcy Code. (Goldstein Declaration, ¶ 4.)
3. ET Power and Liberty Electric Power, LLC (“Liberty”) were parties to that certain Tolling Agreement (the “Tolling Agreement”) dated April 14, 2000. (Goldstein Declaration, ¶ 9, Exh. A.)
4. Both NEGТ and Gas Transmission Northwest Corp. (“GTN”) furnished guaranties of ET Power’s payment obligations to Liberty under the Tolling Agreement. (Goldstein Declaration, ¶ 12, Exhs. D, E.) At all times relevant to this dispute, the aggregate liability of NEGТ and GTN under each of the guaranties was capped at the amount of \$140

million. (Goldstein Declaration, Exh. D, § 2; Exh. E, § 2.)

5. Section 4 of the guaranty furnished to Liberty by NEGТ states that NEGТ “... unconditionally agrees that it hereby waives (i) any and all rights... to have the benefit of any other guaranty... now or hereafter held by [Liberty] for the obligations guaranteed by [NEGТ] hereunder...” (Goldstein Declaration, Exh. D, § 4.)

### **Procedural History**

6. On March 9, 2009, NEGТ filed a Motion to Enforce Subrogation Rights against NEGТ Energy Trading Power, L.P. on Account of Guarantee Payment to Liberty Electric Power LLC (the “Subrogation Motion”).

7. On April 20, 2009, ET filed its objection (the “Objection”) to the Subrogation Motion.

8. On January 15, 2010, ET Power filed a Notice of Partial Withdrawal, in which it withdrew the arguments asserted in the Objection that NEGТ and/or GTN was not the party that paid Liberty.

### **Relief Requested**

9. ET Power moves for entry of summary judgment in its favor on the Subrogation Motion and Objection, pursuant to Rule 56(b) of the Federal Rules of Civil Procedure, as made applicable to this contested matter by Rule 7056 and Rule 9014(c) of the Federal Rules of Bankruptcy Procedure.

10. Pursuant to Local Rule 9013-1(b), a memorandum of law (the “Memorandum”) in support of this Motion is being filed contemporaneously with the Motion. The Memorandum sets forth a full set of relevant facts and the bases for the relief requested in this Motion. This Motion and the Memorandum rely on the Declaration of Charles Goldstein (the “Goldstein

Declaration”), also filed contemporaneously with the Motion.

11. This Motion is supported by the Goldstein Declaration and the documents attached as exhibits thereto.

WHEREFORE, ET Power respectfully requests that the Court (a) enter summary judgment for ET Power on all claims asserted by NEGTE in the Subrogation Motion, (b) overrule the Subrogation Motion, and (c) grant ET Power such further relief as the Court deems just.

Dated: February 5, 2010  
Washington, DC

SUTHERLAND ASBILL & BRENNAN LLP

By: /s/ Richard G. Murphy, Jr.

Richard G. Murphy, Jr. (*pro hac vice*)  
Thomas R. Bundy, III (Bar No. 15265)  
Mark D. Sherrill (*pro hac vice*)  
1275 Pennsylvania Avenue, NW  
Washington, DC 20004  
Tel: (202) 383-0100  
Fax: (202) 637-3593

Paul B. Turner (*pro hac vice*)  
Two Houston Center  
909 Fannin, Suite 2200  
Houston, Texas 77010  
Tel: (713) 470-6100  
Fax: (713) 654-1301

COUNSEL FOR NEGTE ENERGY  
TRADING –POWER, L.P.

**Certificate of Service**

I hereby certify that on this 5th day of February, 2010, I caused a true and correct copy of this Motion for Summary Judgment Pursuant to Rule 56 of the Federal Rules of Civil Procedure to be served upon all parties in interest, in accordance with the Local and Federal Rules of Civil Procedure, including by electronic mail upon counsel for National Energy & Gas Transmission, Inc.

/s/ Mark Sherrill  
Mark D. Sherrill