

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Greenbelt Division)**

**In re:**

**NATIONAL ENERGY & GAS  
TRANSMISSION, INC. (f/k/a PG&E  
NATIONAL ENERGY GROUP, INC.), et  
al.**

**Debtors.**

\*

\* Case No.: 03-30459 (PM) and 03-30461 (PM)  
through 03-30464 (PM) and 03-30686 (PM)  
\* through 03-30687 (PM)  
Chapter 11

\*

(Jointly Administered under  
\* Case No.: 03-30459 (PM))

\* \* \* \* \*

**JOINT MOTION PURSUANT TO FEDERAL RULE OF  
BANKRUPTCY PROCEDURE 9019 FOR ENTRY OF AN ORDER APPROVING  
SETTLEMENT AGREEMENT AND GENERAL RELEASE OF INTERCOMPANY  
CLAIMS BY AND BETWEEN NATIONAL ENERGY & GAS TRANSMISSION, INC.,  
NEGT ENERGY TRADING – POWER, L.P. AND RELATED AFFILIATES**

**TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

National Energy & Gas Transmission, Inc. (“NEGT”); NEGTEnergy Trading – Power, L.P. (“ET Power”) and NEGTEnergy Trading Holdings Corporation (“ET Holdings”), through their undersigned counsel, hereby file this *Joint Motion Pursuant to Federal Rule of Bankruptcy Procedure 9019 for Entry of an Order Approving Settlement Agreement And General Release of Claims By And Between National Energy & Gas Transmission, Inc., NEGTEnergy Trading – Power, L.P. and Related Affiliates* (the “Motion”). In support of this Motion, NEGTEnergy Trading, ET Power and ET Holdings respectfully state as follows:

**JOINT MOTION PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019  
FOR ENTRY OF AN ORDER APPROVING SETTLEMENT AGREEMENT AND GENERAL RELEASE  
OF INTERCOMPANY CLAIMS BY AND BETWEEN NATIONAL ENERGY & GAS TRANSMISSION,  
INC., NEGTEnergy TRADING – POWER, L.P. AND RELATED AFFILIATES**

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### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicate for the relief sought herein is section 105 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### **The Bankruptcy Cases**

4. On July 8, 2003 (the “Petition Date”), each of the Initial Debtors,<sup>1</sup> including NEGTE, ET Power and ET Holdings, filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. By order dated July 8, 2003, the Initial Debtors’ cases were consolidated for procedural purposes. On July 29, 2003, each of the Quantum Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. By order dated August 7, 2003, the Quantum Debtors’ cases were consolidated with the Initial Debtors’ cases for procedural purposes.

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<sup>1</sup> The Debtors are the following entities: (i) NEGTE, (ii) ET Holdings, (iii) NEGTE Energy Trading - Gas Corporation f/k/a PG&E Energy Trading - Gas Corporation (“ET Gas”), (iv) NEGTE ET Investments Corporation f/k/a PG&E ET Investments Corporation (“ET Inv.”), (v) ET Power (together with ET Holdings, ET Gas and ET Inv., the “ET Debtors,” and collectively with NEGTE, the “Initial Debtors”) and (vi) Energy Services Ventures, Inc. f/k/a PG&E Energy Services Ventures, Inc. (“ESV”) and (vii) Quantum Ventures (together with ESV, the “Quantum Debtors”).

5. By order dated May 3, 2004, this Court confirmed NEGТ's *Modified Third Amended Plan of Reorganization* (the "NEGТ Plan"). The NEGТ Plan became effective on October 29, 2004.

6. By order entered on April 19, 2005, this Court confirmed the *First Amended Plan of Liquidation for the ET Debtors and the Quantum Debtors* (the "ET Plan"). The ET Plan became effective on May 2, 2005.

### **The Settlement Agreement**

7. After years of protracted litigation and arms-length settlement negotiations relating to a wide variety of complex and complicated matters often involving numerous third parties, NEGТ, ET Power, ET Holdings, and the related subsidiaries of ET Power and ET Holdings (collectively, the "ET Parties" and together with NEGТ, the "Parties") have reached a global settlement resolving all outstanding issues concerning or otherwise relating to the Parties and the winding up of their respective bankruptcy estates, which settlement is evidenced by that certain *Settlement Agreement and Mutual General Releases* (along with its related exhibits and/or attachments, the "Settlement Agreement").<sup>2</sup>

8. Among other things, the Settlement Agreement acknowledges and reaffirms various prior settlements between the Parties and resolves the pending disputes relating to Liberty Electric Power, LLC ("Liberty"), Southaven Power, LLC ("Southaven"), and the so-

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<sup>2</sup> A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit A**. All capitalized terms used herein but not defined shall have the meaning ascribed in the Settlement Agreement.

called “Trader Claims” litigation, as referenced and incorporated in the Settlement Agreement.<sup>3</sup> These numerous intercompany claims and disputes between the Parties are significant, totaling in excess of hundreds of millions of dollars.

9. Key provisions of the Settlement Agreement include resolution of all remaining inter-company claims, issues and disputes, and to ratify and further implement certain previous settlements, including the following: claims and disputes related to Liberty; Portland General Electric Company; City of Seattle, acting by and through City Light Department; Southaven; Trader Claims; Tolling Professional Fees (as defined in the Settlement Agreement); Caledonia Generating, LLC; Vermont Public Power Supply Authority and SPCP Group, LLC, as agent for Silver Point Capital Fund, L.P. and Silver Point Capital Offshore Fund, Ltd.; DTE Georgetown LLC; Madison Windpower, LLC; PG&E Dispersed Generating Company, LLC; Spencer Station Generating Company, L.P.; NEG Services claims; Letter of Credit Claim (ET Gas), and Letter of Credit Claim (ET Power) and any other inter-company claims previously allowed by the Bankruptcy Court (with the exception of inter-company claims among the ET Debtors).<sup>4</sup> Such resolution includes agreements regarding NEG’s subrogation rights and agreements regarding offsetting amounts owed between the Parties. In addition, and importantly, NEG agrees that its final distribution from the bankruptcy estates of ET Power and ET Holdings will be reduced by a

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<sup>3</sup> These three matters are currently pending at Docket Nos. 4221, 4222, 4224, 4225, 4226, 4228 and 4242 (Liberty); 4200 and 4204 (Southaven); and 4198 and 4205 (Trader Claims). All three matters were previously scheduled for hearing on March 31, 2010.

<sup>4</sup> To be clear, the Settlement Agreement does not in any way modify or affect the rights of any third parties to the underlying resolved claims (including, but not limited to, those mentioned in the foregoing paragraph).

total of \$3,000,000, which amount shall be available for distribution to the remaining Class 6 creditors of ET Power, except for NEGТ.<sup>5</sup>

### **RELIEF REQUESTED**

10. By this Motion, and pursuant to Bankruptcy Code § 105 and Bankruptcy Rule 9019(a), NEGТ, ET Power and ET Holdings respectfully request the entry of an order approving the Settlement Agreement and authorizing the Parties to take whatever actions necessary to implement the settlement set forth therein.

11. As required by Bankruptcy Rule 9019, and as described below, NEGТ, ET Power and ET Holdings submit that the Settlement Agreement should be authorized and approved because (i) it is in the best interest of the Parties, their estates and their creditors, (ii) it represents the sound business judgment of the Parties, and (iii) it is fair and reasonable under the circumstances.

12. Section 105(a) of the Bankruptcy Code provides, in pertinent part, that “[t]he court may issue any order . . . necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” In turn, Rule 9019(a) provides that “[o]n motion by the [debtor-in-possession] and after notice and a hearing, the court may approve a compromise or settlement.” FED. R. BANKR. P. 9019(a). “[T]he decision whether to approve a compromise under Rule 9019 is committed to the sound discretion of the Court, which must determine if the compromise [or

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<sup>5</sup> The Parties agree that the terms of the Settlement Agreement control and that the foregoing paragraph is provided simply for the Court’s convenience, in order to give the Court a brief overview of the more detailed provisions set forth at length in the Settlement Agreement.

settlement] is fair, reasonable, and in the interest of the estate.” *In re Louise’s, Inc.*, 211 B.R. 798, 801 (D. Del. 1997).

13. Bankruptcy Rule 9019 thus empowers bankruptcy courts to approve compromises and settlements if they are fair and equitable and in the best interests of the estate. *See In re Marvel Entertainment Group, Inc.*, 222 B.R. 243 (D. Del. 1998) (holding that proposed settlement was in the best interest of the estate); *Official Comm. of Unsec. Creditors of W. Pac. Airlines, Inc. v. W. Pac. Airlines, Inc. (In re W. Pac. Airlines, Inc.)*, 219 B.R. 575, 579 (D.Colo.1998) (affirming the bankruptcy court’s approval of a debtor’s settlement agreement). In fact, settlements and compromises are “a normal part of the process of reorganization.” *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968) (quoting *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106, 130 (1939)). Accordingly, the Court is authorized to approve the Settlement Agreement.

14. Factors the Court should consider when evaluating a settlement under Bankruptcy Rule 9019 include: (i) the probability of success in the litigation; (ii) the complexity, expense and likely duration of the litigation; (iii) all other factors relevant to making a full and fair assessment of the wisdom of the proposed compromise; and (iv) whether the proposed compromise is fair and equitable to the debtors, their creditors, and other parties in interest. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) (stating that “[t]o minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy” and citing criteria set forth above in determination of reasonableness of particular settlements) (internal quotation

marks and citation omitted); *Official Committee of Unsecured Creditors v. White Plains Joint Venture*, 1994 U.S. App. LEXIS 1282 \*10 (4th Cir. January 26, 1994) (compromises are favored in bankruptcy). Basic to the process of evaluating proposed settlements, then, is “the need to compare the terms of the compromise with the likely rewards of litigation.” *TMT Trailer Ferry*, 390 U.S. at 425.

15. Further, substantial deference is frequently given to a trustee’s or debtor in possession’s settlement recommendation. *See, e.g., In re Int’l Distribution Centers, Inc.*, 103 B.R. 420, 423 (S.D.N.Y. 1989) (“A court may give weight to the trustee’s informed judgment that a compromise is fair and equitable.”); *In re Check Reporting Services, Inc.*, 137 B.R. 653, 658 (Bankr. W.D. Mich. 1992) (court has a duty to determine whether settlements are reasonable before approving them, but may place a certain amount of reliance upon the trustee). As a result, a court need only ascertain that the debtor’s business judgment is informed and reasonable.

16. NEGT, ET Power and ET Holdings assert that in the present case, the Settlement Agreement represents an appropriate exercise of the Parties’ business judgment and that the Settlement Agreement is fair, equitable and in the best interests of both Parties’ estates and creditors. The Settlement Agreement is the product of arms-length negotiation between the Parties and represents a good faith compromise of numerous, very complex issues raised and resolved by the Parties. Indeed, the settlement embodies an assessment by the Parties of each entity’s ability to prevail at trial on litigation related to many of the issues (i.e. Liberty, Southaven, Trader Claims, etc.) resolved in the Settlement Agreement – which litigation is a certainty if the Settlement Agreement is not approved – balanced against the extensive cost

outlays that would be required to bring these issues to trial and the general uncertainty involved with any litigation. Further, approval of the Settlement Agreement will spare the Parties substantial administrative expenses and delay that would result from resolving these differences and claims in an adversarial context, rather than through a settlement. As a result, by streamlining such resolution, administrative costs are kept to a minimum to the ultimate benefit of the Parties' creditors, whose recoveries are thereby enhanced.

17. For these reasons, the Parties believe that the proposed Settlement Agreement represents a fair and reasonable resolution of the respective disputes, which falls well within the range of reasonableness and is in the best interests of each of the Parties, their creditors and their estates. Accordingly, NEGТ, ET Power and ET Holdings respectfully request that the Court (i) approve the Settlement Agreement and (ii) direct the Parties to take all actions and execute all documents necessary to implement the Settlement Agreement.

### **WAIVER OF MEMORANDUM OF LAW**

Pursuant to Local Bankruptcy Rule 9013-2 for the District of Maryland, NEGТ, ET Power and ET Holdings hereby state that, unless otherwise requested by the Court, no separate memorandum of law will be filed because no novel issues of law are presented herein, and NEGТ, ET Power and ET Holdings intend to rely solely on the instant Motion.

### **PRAYER**

**WHEREFORE**, NEGТ, ET Power and ET Holdings respectfully request that the Court enter an order, substantially in the form annexed hereto, (i) approving the Settlement Agreement and the general releases between the Parties set forth therein and (ii) directing the Parties to take



all actions and execute all documents necessary to implement the Settlement Agreement. NEGT, ET Power and ET Holdings further request that the Court grant them such other and further relief to which they may be justly entitled.

Dated: April 2, 2010

**VINSON & ELKINS LLP**

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ENERGY GAS TRANSMISSION, INC.**

and

**JOINT MOTION PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019  
FOR ENTRY OF AN ORDER APPROVING SETTLEMENT AGREEMENT AND GENERAL RELEASE  
OF INTERCOMPANY CLAIMS BY AND BETWEEN NATIONAL ENERGY & GAS TRANSMISSION,  
INC., NEGT ENERGY TRADING – POWER, L.P. AND RELATED SUBSIDIARIES**

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**SUTHERLAND ASBILL & BRENNAN LLP**

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ENERGY TRADING HOLDINGS  
CORPORATION**

**CERTIFICATE OF SERVICE**

I hereby certify that, on April 2, 2010, a copy of the foregoing pleading was (i) filed with the Court for the United States Bankruptcy Court of the District of Maryland by using the CM/ECF system; (ii) served electronically by the Court's CM/ECF system on all parties registered to receive electronic noticing in this case; and (iii) served by first class U.S. mail, postage prepaid, to the parties listed on the attached Service List.

/s/ Tonya M. Ramsey  
One of Counsel

**EXECUTION COPY**

**SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE**

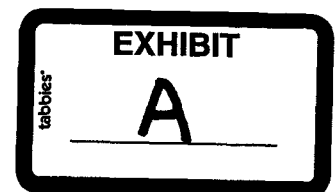
This Settlement Agreement and Mutual General Release ("**Settlement Agreement**") is entered into as of March 30, 2010, by and among: (i) National Energy & Gas Transmission, Inc. ("**NEGT**"); and (ii) NEGT Energy Trading - Power, L.P. ("**ET Power**"); NEGT Energy Trading Holdings Corporation ("**ET Holdings**"); NEGT Energy Trading – Gas Corporation ("**ET Gas**"); NEGT ET Investments Corporation ("**ET Investments**") and NEGT International, Inc., ("**ET International**") (collectively, ET Power, ET Holdings, ET Gas, ET Investments and ET International are referred to as the "**ET Parties**," and with NEGT, the "**Parties**"). The execution date of this Settlement Agreement is the latest date on which a Party hereto signs this Settlement Agreement ("**Execution Date**"). The Parties hereby stipulate and agree to the following terms and conditions:

**RECITALS**

WHEREAS, on July 8, 2003 (the "**Petition Date**"), NEGT and ET Power, along with various other affiliates, each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Maryland, Greenbelt Division ("**Bankruptcy Court**"), commencing the bankruptcy cases jointly administered under case no. 03-30459 (collectively, the "**Bankruptcy Case**").

WHEREAS, on May 3, 2004, the Bankruptcy Court confirmed NEGT's Modified Third Amended Plan of Reorganization (the "**NEGT Plan**"), and such plan became effective on October 29, 2004. On April 19, 2005, the Bankruptcy Court confirmed the First Amended Plan of Liquidation for the ET Debtors and the Quantum Debtors (the "**ET Plan**"), and such plan became effective on May 2, 2005.

WHEREAS, the Parties have various inter-company issues and disputes. During the pendency of these bankruptcy cases, the Parties have from time to time entered into inter-



company settlement agreements with the approval of the Bankruptcy Court to resolve certain (but not all) of the claims, issues and disputes.

WHEREAS, subject to Bankruptcy Court approval, the Parties now wish to resolve all remaining inter-company claims, issues and disputes, and to ratify and further implement certain previous settlements, including claims and disputes related to Liberty Electric Power LLC (**"Liberty"**); Portland General Electric Company (**"Portland General"**); City of Seattle, acting by and through City Light Department (**"City of Seattle"**); Southaven Power LLC (**"Southaven"**), the claims of certain former ET Holdings employees (**"Trader Claims"**); Tolling Professional Fees (as defined below); Caledonia Generating, LLC (**"Caledonia"**); Vermont Public Power Supply Authority and SPCP Group, LLC, as agent for Silver Point Capital Fund, L.P. and Silver Point Capital Offshore Fund, Ltd. (**"VPPSA"**); DTE Georgetown LLC (**"DTE"**); Madison Windpower, LLC; PG&E Dispersed Generating Company, LLC; Spencer Station Generating Company, L.P.; NEG Services claims; Letter of Credit Claim (ET Gas), and Letter of Credit Claim (ET Power) and any other inter-company claims previously allowed by the Bankruptcy Court (collectively, the **"Aggregate NEG T Claims"**).

#### **Liberty Electric LLC**

WHEREAS, Liberty and ET Power were parties to that certain Tolling Agreement dated April 14, 2000 (as amended, the **"Liberty Tolling Agreement"**). In connection with the Liberty Tolling Agreement, Liberty procured a limited guaranty of payment from NEG T (the **"NEG T Guarantee"**) and Gas Transmission Northwest Corporation (**"GTN"**) (the **"GTN Guarantee"**) and collectively with the NEG T Guarantee, the **"Guarantees"**). Pursuant to the Guarantees, NEG T and GTN each partially guaranteed ET Power's payment obligations to Liberty under the Liberty Tolling Agreement. The Guarantees were subject to a cap on potential liability that was \$140,000,000 as of the Petition Date and any payments made on account of one guarantee would

apply to reduce the maximum potential liability under the other guarantee. The Liberty Tolling Agreement was rejected pursuant to Order of the Bankruptcy Court dated August 11, 2003 (Docket Nos. 35 and 250).

WHEREAS, various litigation and arbitration proceedings were initiated with respect to the Liberty Tolling Agreement. During the course of the arbitration, NEGТ caused 100 percent of the common stock of GTN to be sold to a third party, and a portion of the purchase price was placed in escrow to cover GTN's potential guarantee obligations (the "**GTN Escrow**").

WHEREAS, in a Memorandum of Decision entered June 27, 2005 and by Order entered August 10, 2005, the Bankruptcy Court, *inter alia*, ruled that Liberty held an allowed claim under Proof of Claim No 323 against ET Power in the amount of \$145,428,046 (Docket Nos. 48 and 51, Adv. Pro. 03-03104) (the "**Liberty Allowed Claim**").

WHEREAS, on May 18, 2005, pursuant to that certain Order in Respect of Motions Filed by Liberty Electric Power, L.L.C. Seeking: (I) Confirmation of Arbitration Award; and (II) Dismissal of Adversary Proceeding and Objection to Claims (Docket No. 43, Adv. Pro. 03-03104), \$140,000,000 was paid to Liberty from the GTN Escrow.

WHEREAS, numerous disputes subsequently arose regarding the Liberty Allowed Claim. Ultimately, NEGТ, ET Power and Liberty entered into a Stipulation Approving Settlement of Liberty Electric Power, LLC's Allowed Claim (the "**Liberty Stipulation**"). The Liberty Stipulation provided that in full and final satisfaction of Liberty's Allowed Claim, Liberty would receive a cash distribution from ET Power in the amount of \$5,156,643.70. On January 6, 2009, the Bankruptcy Court entered its Order Approving Motion for Entry of an Order Authorizing and Approving Settlement of Liberty Electric Power, LLC's Allowed Claim (Docket No. 4157) thereby approving the Liberty Stipulation. Pursuant to the Liberty

Stipulation, ET Power paid Liberty the \$5,156,644 to satisfy a pre-petition claim asserted by Liberty.

WHEREAS, NEGT has asserted the right to be subrogated to Liberty's allowed general unsecured claim against ET Power (the "**Liberty Subrogation Claim**"). On March 9, 2009, NEGT filed the Motion of National Energy & Gas Transmission, Inc. to Enforce Subrogation Rights Against NEGT Energy Trading – Power, L.P. on Account of Guarantee Payment to Liberty Electric Power LLC (Docket No. 4161) (the "**Liberty Subrogation Motion**"). On April 20, 2009, ET Power filed an objection to the Liberty Subrogation Motion (Docket No. 4184).

#### **Portland General Electric Company**

WHEREAS, on March 4, 2005, ET Power and NEGT filed that certain Motion for Order Authorizing and Approving Stipulation Resolving Claims of Portland General Electric Company (Docket No. 2806) (the "**Portland Motion**"). The Portland Motion sought approval of that certain Stipulation Resolving the Claims of Portland General entered into by and among ET Power, NEGT and Portland General (the "**Portland Stipulation**"). On April 8, 2005, the Bankruptcy Court entered its Order Approving Stipulation Resolving Claims of Portland General Electric Company (Docket No. 2948).

WHEREAS, pursuant to the Portland Stipulation: (i) Proof of Claim No. 212 was allowed as a general unsecured claim against ET Power in the amount of \$901,700; and (ii) Proof of Claim No. 213 was allowed as a general unsecured claim against NEGT in the amount of \$901,700, provided that the maximum collective distribution to Portland General would be \$901,700. Through February 28, 2010, NEGT has paid \$515,679 and ET Power has paid \$386,021 to Portland General. NEGT has asserted the right to be subrogated to Portland General's allowed general unsecured claim against ET Power (the "**Portland Subrogation Claim**").

**City Of Seattle**

WHEREAS, on March 31, 2005, ET Power, ET Holdings and NEGТ filed their Notice of Settlement Between NEGТ Energy Trading Holdings Corporation, NEGТ Energy Trading - Power, L.P., and National Energy & Gas Transmission Inc., and City of Seattle, Acting By and Through City Light Department (Docket No. 2909), along with the related Settlement Agreement and Mutual Release dated March 28, 2005 (the “**City of Seattle Settlement Agreement**”). Pursuant to the City of Seattle Settlement Agreement, City of Seattle was given an allowed general unsecured claim against each of ET Power and NEGТ in the amount of \$310,100, up to a maximum recovery of \$310,100. Through February 28, 2010, NEGТ has paid City of Seattle \$177,287 and ET Power has paid \$132,813. NEGТ has asserted the right to be subrogated to the City of Seattle’s allowed general unsecured claim against ET Power (the “**City of Seattle Subrogation Claim**”).

**Southaven Power LLC**

WHEREAS, on January 7, 2004, Southaven filed Proof of Claim No. 135, asserting a general unsecured claim against ET Power in the amount of \$500,000,000. Pursuant to that certain Order Granting In Part and Denying In Part Motion of NEGТ Energy Trading – Power, L.P. for Order Authorizing Plan Distribution to Southaven Power, LLC (Docket No. 4099), Southaven has an allowed general unsecured claim against ET Power in the amount of \$303,786,220.59 (the “**Southaven Net Allowed Claim**”). Pursuant to that certain Order Confirming Arbitral Awards and Allowing Southaven Proofs of Claim (Docket No. 3984), Southaven has an allowed general unsecured claim against NEGТ in the amount of \$176,209,004.

WHEREAS, on August 21, 2009, NEGТ filed its Motion to Enforce Subrogation Rights Against NEGТ Energy Trading – Power, L.P. on Account of Guarantee Payment to Southaven



Power, LLC (Docket No. 4200) (the “**Southaven Subrogation Motion**”). ET Power filed its Objection to Motion of National Energy & Transmission, Inc. to Enforce Subrogation Rights Against NEGT Energy Trading Power, L.P. on Account of Guarantee Payment to Southaven Power, LLC on September 25, 2009 (Docket No. 4204).

WHEREAS, as of February 28, 2010, NEGT has paid Southaven \$101,398,552 and ET Power has paid \$136,703,799 on account of the Southaven Net Allowed Claim. NEGT has asserted the right to be subrogated to the Southaven Net Allowed Claim against ET Power (the “**Southaven Subrogation Claim**”), once Southaven has been paid in full.

#### **Trader Claims and Tolling Professional Fees**

WHEREAS, in 2003, certain former ET Holdings’ employees each filed a complaint for damages in the Circuit Court for Montgomery County, Maryland.<sup>1</sup> The employees also filed claims in NEGT’s and ET Holdings’ respective bankruptcy cases. NEGT and ET Holdings filed timely objections to these claims (these claims together with the state court cases are collectively referred to as the “**Trader Claims**”). On May 15, 2007, NEGT, ET Holdings, and the employees entered into a settlement agreement (the “**Trader Claims Settlement Agreement**”) resolving all issues relating to the Trader Claims.<sup>2</sup> Also on May 15, 2007, in conjunction with the Trader Claims Settlement Agreement, NEGT and ET Holdings entered into an inter-company settlement agreement (the “**Trader Inter-Company Agreement**”) establishing relative

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<sup>1</sup> Specifically, these actions included *Mirick v. PG&E Energy Trading Holdings Corporation, et al.*, Civil Action No. 241891-V; *Hoffman v. PG&E Energy Trading Holdings Corporation, et al.*, Civil Action No. 241890-V; and *Vallieres v. PG&E Energy Trading Holdings Corporation, et al.*, Civil Action No. 242888-V.

<sup>2</sup> In efforts to maintain confidentiality provisions set forth in the Trader Claims Settlement Agreement, specifics regarding the remainder of the various terms of the Trader Claims Settlement Agreement are not set forth herein.

percentages of liability as between the two entities, if any, in relation to amounts due under the Trader Claims Settlement Agreement.

WHEREAS, on June 27, 2007, the Bankruptcy Court entered its Order Granting Debtors' Motion for Order Approving Settlement Agreement and General Release By and Among Adam Hoffman, Adam Mirick, Benoit Vallieres, NEGT Energy Trading Holdings Corporation and National Energy & Gas Transmission, Inc. (Docket No. 4024), approving the Trader Claims Settlement Agreement. Although the Trader Inter-Company Agreement was also executed two years ago, the Parties inadvertently failed to seek the Bankruptcy Court's approval of such agreement. As a result, on August 21, 2009, NEGT filed its Motion Pursuant to Federal Rule of Bankruptcy Procedure 9019 For Entry of an Order Approving Settlement Agreement and General Release of Claims by and Among National Energy & Gas Transmission, Inc. and Energy Trading Holdings Corporation Relating To Trader Claims (Docket No. 4198) (the "**Trader Claims Motion**"). The Trader Claims Motion seeks approval of the Trader Inter-Company Agreement and payment of amounts owed to NEGT under such agreement.

WHEREAS, on September 25, 2009, ET Power filed its Limited Objection of NEGT Energy Trading Holdings Corp. to Motion Pursuant to Federal Rule of Bankruptcy Procedure 9019 for Entry of an Order Approving Settlement and General Release of Claims by and among National Energy & Gas Transmission, Inc. and Energy Trading Holdings Corp. (Docket No. 4205) (the "**ET Power Limited Objection**"). The ET Power Limited Objection requested that NEGT pay 30 percent of certain professional fees incurred related to various tolling arbitrations (the "**Tolling Professional Fees**") by allowing ET Power to offset the amounts owed to NEGT under the Trader Inter-Company Agreement against the Tolling Professional Fees.

**Caledonia Generating, LLC**

WHEREAS, on November 22, 2005, ET Power and NEGT filed that certain Debtors' Motion for Order Approving: (I) Settlement Agreement by and Among NEGT Energy Trading – Power L.P., National Energy & Gas Transmission, Inc., Caledonia Generating, LLC and General Electric Capital Corporation; and (II) Related Inter-Company Agreement, (Docket No. 3498) (the “**Caledonia Settlement Motion**”). The Caledonia Settlement Motion sought approval of (i) that certain settlement agreement dated October 17, 2005 between ET Power, NEGT, Caledonia and General Electric Capital Corporation (the “**Caledonia Settlement Agreement**”) and (ii) that certain inter-company settlement agreement dated November 22, 2005 between ET Power and NEGT (the “**Caledonia Inter-Company Agreement**”).

WHEREAS, on December 20, 2005, the Bankruptcy Court entered its Order Approving: (I) Settlement Agreement by and Among NEGT Energy Trading – Power L.P., National Energy & Gas Transmission, Inc., Caledonia Generating, LLC and General Electric Capital Corporation; and (II) Related Inter-Company Agreement, approving these agreements (Docket No. 3540).

**Vermont Public Power Supply Authority**

WHEREAS, on November 18, 2008, ET Power and NEGT filed their Motion for Entry Motion for Entry of an Order (I) Authorizing and approving Settlement Agreement Among National Energy & Gas Transmission, Inc., NEGT Energy Trading – Power, L.P., Vermont Public Power Supply Authority and SPCP Group, L.L.C.; and (II) Authorizing and Approving Inter-Company Settlement Agreement Between National Energy & Gas Transmission, Inc. and NEGT Energy Trading – Power, L.P. (Docket No. 4144) (the “**Vermont Power Settlement Motion**”). The Vermont Power Settlement Motion sought approval of (i) that certain settlement agreement dated November 11, 2008 between ET Power, NEGT, and Vermont Public Power Supply Authority (the “**Vermont Power Settlement Agreement**”) and (ii) that certain inter-

Company settlement agreement dated October 24, 2008 between ET Power and NEGТ (the **“Vermont Power Inter-Company Agreement”**).

WHEREAS, on December 10, 2008, the Bankruptcy Court entered its Order (I) Authorizing and approving Settlement Agreement Among National Energy & Gas Transmission, Inc., NEGТ Energy Trading – Power, L.P., Vermont Public Power Supply Authority and SPCP Group, L.L.C.; and (II) Authorizing and Approving Inter-Company Settlement Agreement Between National Energy & Gas Transmission, Inc. and NEGТ Energy Trading – Power, L.P., which approved the Vermont Power Settlement Agreement and the Vermont Power Inter-Company Agreement (Docket No. 4152).

#### **DTE Georgetown LLC**

WHEREAS, on August 15, 2006, ET Power and NEGТ filed their Joint Motion To Approve Settlement Agreement Among NEGТ Energy Trading – Power, LP, DTE Georgetown, LP, National Energy & Gas Transmission, Inc., Charles R. Goldstein as Plan Administrator for the Bankruptcy Estate of NEGТ Energy Trading – Power, LP (Docket No. 3796) (the **“DTE Settlement Motion”**). The DTE Settlement Motion sought approval of that certain settlement agreement and release dated June 19, 2006 among ET Power, NEGТ, and DTE Georgetown, L.P., Charles Goldstein as Plan Administrator and the Estate (the **“DTE Settlement Agreement”**) (Docket No 3844-1).

WHEREAS, on September 25, 2006, the Bankruptcy Court entered its Order Approving Settlement Agreement Among NEGТ Energy Trading – Power, LP, DTE Georgetown, LP, National Energy & Gas Transmission, Inc., Charles R. Goldstein as Plan Administrator for the Bankruptcy Estate of NEGТ Energy Trading – Power, LP, which approved the DTE Settlement Agreement (Docket No. 3848).

**Other Allowed Claims**

WHEREAS, as set forth in Debtors' Motion for Order Approving Omnibus Intercompany Claims Reconciliation and Settlements Pursuant to Bankruptcy Code Sections 105, 363 and 502 and Bankruptcy Rule 9019 ("**Omnibus Motion**") (Docket No. 2348) and as approved by the Bankruptcy Court's Order Approving Omnibus Intercompany Claims Reconciliation and Settlements Pursuant to Bankruptcy Code Sections 105, 363 and 502 and Bankruptcy Rule 9019 (Docket No. 2495), NEGT holds the following allowed general unsecured claims:

- (a) Madison Windpower, L.L.C. claim of \$75,031 against ET Power;
- (b) PG&E Dispersed Generating Co. claim of \$138,340 against ET Power;
- (c) Spencer Station Generating Co. claim of \$10,159,231 against ET Power; and
- (d) NEG Services claim of \$171,962 against ET Holdings.

WHEREAS, pursuant to the Omnibus Motion and corresponding Order, referenced above, NEGT was granted an allowed general unsecured claim against ET Power in the amount of \$34,784,535 on account of claims arising under certain letters of credit ("**Letter of Credit Claim (ET Power)**"); provided, however, NEGT cannot recover more from ET Power than actually paid by NEGT in connection with the relevant letter of credit. Similarly, NEGT was granted an allowed general unsecured claim against ET Gas in the amount of \$66,397,793 on account of claims arising under certain letters of credit and taxes ("**Letter of Credit Claim (ET Gas)**"); provided, however, NEGT cannot recover more from ET Gas than actually paid by NEGT in connection with the relevant letter of credit and taxes.

**NOW, THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. *Baseline Payment.* NEGT and the ET Parties agree that within 20 days (the **"Resolutions Period"**) after the Execution Date of this Settlement Agreement, the Board of Directors of the ET Parties shall consider and adopt all resolutions approving the ET Parties' inter-company transfers necessary to effectuate the payments required herein (the **"Resolutions"**). Within 15 days after the Bankruptcy Court approves this Settlement Agreement (the **"Baseline Payment Period,"** and collectively with the Resolutions Period, the **"Payment Period"**), ET Holdings and ET Power collectively shall transfer to NEGT an initial wire payment of not less than \$172,000,000 (the **"Baseline Payment"**) in furtherance of the payments provided for in this Settlement Agreement.

Account Name:	NEGT, Inc.
Account Number:	5600-30
Bank:	Bank of New York Mellon
ACH:	021000018
Bank Address:	135 Santilli Hwy., Everett, MA 02149

This Settlement Agreement must be approved by the Bankruptcy Court and the Baseline Payment must be received by NEGT on or before June 1, 2010 or this Settlement Agreement is null and void.

2. *Subrogation Claims.* NEGT shall be entitled to payment from ET Power on account of the following subrogation claims and in the manner described below:

- (a) *Liberty.* In determining the amount owed by ET Power to NEGT as a result of the Liberty Subrogation Claim, the Parties will multiply \$145,156,644 by the Class 6 Rate<sup>3</sup> (the **"ET Power-Liberty Payment"**) and ET Power shall pay NEGT the difference between the ET Power-Liberty Payment and the amount actually paid to Liberty by ET Power (*i.e.*, \$5,156,644) (that difference is the **"NEGT-Liberty**

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<sup>3</sup> As used herein, the "Class 6 Rate" shall mean, at any time, the then existing recovery rate to holders of Class 6 Allowed Claims under the ET Plan.

**Subrogation Claim Amount”**),<sup>4</sup> subject to the Distribution Holdback on account of the Liberty claims, as discussed in Paragraph 8, below. Within 10 days after NEGТ receives the Baseline Payment, NEGТ will withdraw the pending Liberty Subrogation Motion.

- (b) *Portland General*. In determining the amount owed by ET Power to NEGТ as a result of the Portland Subrogation Claim, the Parties will multiply \$901,700 by the Class 6 Rate (the “**ET Power-Portland Payment**”) and ET Power shall pay NEGТ the difference between the ET Power-Portland Payment and the amount actually paid to Portland General by ET Power (*i.e.*, \$386,021) (that difference is the “**NEGТ- Portland Subrogation Claim Amount**”).<sup>5</sup>
- (c) *City of Seattle*. In determining the amount owed by ET Power to NEGТ as a result of the City of Seattle Subrogation Claim, the Parties will multiply \$310,100 by the Class 6 Rate (the “**ET Power-Seattle Payment**”) and ET Power shall pay NEGТ the difference between the ET Power-Seattle Payment and the amount actually paid to the City of Seattle by ET Power (*i.e.*, \$132,813) (that difference is the “**NEGТ-City of Seattle Subrogation Claim Amount**”).<sup>6</sup>

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<sup>4</sup> The Parties agree to the method of calculation related to the NEGТ-Liberty Subrogation Claim Amount as set forth in Exhibit 1, page 1. For illustration purposes, assuming a Class 6 Rate of 70.02 percent, ET Power would owe NEGТ \$96,482,038. The Parties acknowledge that the final recovery rate to holders of Class 6 Allowed Claims under the ET Plan may differ from the 70.02 percent used in Exhibit 1.

<sup>5</sup> The Parties agree to the method of calculation related to the NEGТ- Portland Subrogation Claim Amount as set forth in Exhibit 1, page 1. For illustration purposes, assuming a Class 6 Rate of 70.02 percent, ET Power would owe NEGТ \$245,349. The Parties acknowledge that the final recovery rate to holders of Class 6 Allowed Claims under the ET Plan may differ from the 70.02 used in Exhibit 1.

<sup>6</sup> The Parties agree to the method of calculation related to the NEGТ-City of Seattle Subrogation Claim Amount as set forth in Exhibit 1, page 1. For illustration purposes, assuming a Class 6



(d) *Southaven.*

- (1) Within the Payment Period, ET Power shall distribute an additional \$65,683,870 to Southaven (the “**Southaven Payment**”), which distribution will result in the Southaven Net Allowed Claim being paid in full.
- (2) To determine the amount owed by ET Power to NEGТ as a result of the Southaven Subrogation Claim, after ET Power makes the Southaven Payment as required by subparagraph (1) above, the Parties will multiply \$303,786,211 by the Class 6 Rate (the “**ET Power-Southaven Payment**”) and ET Power shall pay NEGТ the difference between the ET Power-Southaven Payment and the amount actually paid to Southaven by ET Power (currently estimated to be \$202,387,669) (that difference will be the “**NEGТ-Southaven Subrogation Claim Amount**”).<sup>7</sup>
- (3) Within 10 days after the ET Power makes (i) the Baseline Payment and (ii) the distribution to Southaven as required under subparagraph (1) above, NEGТ will withdraw the pending Southaven Subrogation Motion.

3. *Trader Claims and Tolling Professional Fees.* ET Power may offset the Tolling Professional Fees against the amounts owed to NEGТ under the Trader Inter-Company

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Rate of 70.02 percent, ET Power would owe NEGТ \$84,319. The Parties acknowledge that the final recovery rate to holders of Class 6 Allowed Claims under the ET Plan may differ from the 70.02 percent used in Exhibit 1.

<sup>7</sup> The Parties agree to the method of calculation related to the NEGТ-Southaven Subrogation Claim Amount as set forth in Exhibit 1, page 1. For illustration purposes, assuming ET Power makes the expected payment to Southaven of \$202,387,669 and a Class 6 Rate of 70.02 percent, ET Power would owe NEGТ \$10,323,443. The Parties acknowledge that the final recovery rate to holders of Class 6 Allowed Claims under the ET Plan may differ from the 70.02 percent used in Exhibit 1.



Agreement.<sup>8</sup> As a result, ET Power agrees to pay NEGT \$258,167 within the Payment Period, in satisfaction of the Trader Claims and Tolling Professional Fees. Within 10 days after the receipt of such funds, NEGT will withdraw the pending Trader Claims Motion.

4. *Ratification of Existing Agreements.* The Parties ratify the following agreements and agree to perform all obligations in accordance with the terms of such agreements listed below:

- (a) the Caledonia Inter-Company Agreement;<sup>9</sup>
- (b) the Vermont Power Inter-Company Agreement;<sup>10</sup> and
- (c) the DTE Settlement Agreement.<sup>11</sup>

5. *Other Allowed Claims.* The ET Parties shall make all necessary distributions concerning the claims related to Madison Windpower, LLC; PG&E Dispersed Generating Company, LLC; Spencer Station Generating Company, L.P.; NEG Services claim; Letter of Credit Claim (ET Gas), and Letter of Credit Claim (ET Power), as referenced above. These

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<sup>8</sup> Due to the confidentiality provisions in the Trader Claims Settlement Agreement, the exact amounts related to the Tolling Professional Fees is not included in this document.

<sup>9</sup> The Parties agree to the method of calculation related to Caledonia Inter-Company Agreement as set forth in Exhibit 1, page 1. For illustration purposes, assuming a Class 6 Rate of 70.02 percent, ET Power would owe NEGT \$60,529,019. The Parties acknowledge that the final recovery rate to holders of Class 6 Allowed Claims under the ET Plan may differ from the 70.02 percent used in Exhibit 1.

<sup>10</sup> The Parties agree to the method of calculation related to Vermont Power Inter-Company Agreement as set forth in Exhibit 1, page 1. For illustration purposes, assuming a Class 6 Rate of 70.02 percent, ET Power would owe NEGT \$508,804. The Parties acknowledge that the final recovery rate to holders of Class 6 Allowed Claims under the ET Plan may differ from the 70.02 percent used in Exhibit 1.

<sup>11</sup> The Parties agree to the method of calculation related to DTE Settlement Agreement as set forth in Exhibit 1, page 3. For illustration purposes, assuming a Class 6 Rate of 70.02 percent, ET Power would owe NEGT \$4,364,360. The Parties acknowledge that the final recovery rate to holders of Class 6 Allowed Claims under the ET Plan may differ from the 70.02 percent used in Exhibit 1.

payments shall be calculated according to the method of calculation outlined in Exhibit 1, page 2, which is attached for illustration purposes and which contains certain assumptions regarding the applicable recovery rates under the ET Plan, which could change in the future. Moreover, such payments shall be subject to any applicable limits on recovery, and less amounts, if any, paid by the ET Parties on such matters.

6. *Recalculation.* After ET Power has made the Baseline Payment, referenced in Paragraph 1 above, the Parties agree to recalculate additional disbursements on a monthly basis, taking into account any applicable offsets, the amounts, if any, owed by the ET Parties to NEGТ and the amounts, if any, owed by NEGТ to the ET Parties. Such calculations shall be computed as provided herein and as illustrated in Exhibit 1, and shall be made as of the last day of each calendar month, starting with June 30, 2010. Such calculations shall be exchanged by the Parties no later than the 5<sup>th</sup> business day of the following month, and remittances owed shall be made by the applicable Party or Parties no later than the 10<sup>th</sup> business day of that following month, until such time as final payments have been made. All such calculations shall account for previous distributions made by any Party to the other Party, and credit shall be given for any payments previously made by a Party, either as part of the Baseline Payment or through the monthly true-up process set forth in this paragraph or otherwise.

7. *Offset.* To avoid the unnecessary transfer of funds, the Parties agree that amounts NEGТ owes to ET Holdings on its general unsecured allowed claim of \$47,627,000 and to ET Investments on its general unsecured allowed claim of \$71,521,000 shall be offset against amounts ET Power is required to pay NEGТ under this Settlement Agreement. Pursuant to the ET Plan, approximately 97 percent of any amounts received by ET Holdings and its subsidiary, ET Investments, will flow to the ET Power Estate. And, because NEGТ controls approximately

92 percent of the claims against ET Power, the Parties agree that NEGТ will retain that portion of the future distributions by NEGТ to the ET Parties, using an “offset factor” of 88.87%, until NEGТ and/or the ET Parties have received their appropriate payments under the respective NEGТ and ET Plans.

8. *Final Distribution.* Notwithstanding anything else contained herein, ET Power shall retain \$3,000,000 (the “**Distribution Holdback**”) from its final distribution(s) to NEGТ, which ET Power can then distribute to holders of allowed unsecured claims against ET Power other than the Aggregate NEGТ Claims.

9. *Releases.* Subject to an order by the Bankruptcy Court approving this Settlement Agreement and upon payment of all amounts owed pursuant to this Settlement Agreement and any other intercompany settlement agreements approved by the Bankruptcy Court (the “**Effective Date**”), the Parties agree to the following:

- (a) The ET Parties for themselves, their successor and assigns, hereby waive, release and forever discharge NEGТ and each of its past, present and future affiliates, subsidiaries, officers, directors, partners, members, employees, agents, and professionals (collectively, including NEGТ, the “**NEGТ Released Parties**”) from any and all claims, obligations, demands, actions, causes of action and liabilities, of whatsoever kind and nature, however acquired; provided, however, that the ET Parties are not releasing the NEGТ Released Parties from any of the obligations under this Settlement Agreement or any other settlement agreement approved by the Bankruptcy Court; provided further, however, that nothing contained herein is intended to provide for any inter-company release among ET Holdings and its subsidiaries.

- (b) NEGТ, for itself, its successor and assigns, hereby waives, releases and forever discharges the ET Parties and each of their past, present and future affiliates, subsidiaries, officers, directors, partners, members, employees, agents, and professionals (collectively, including the ET Parties, the “**ET Released Parties**”) from any and all claims, obligations, demands, actions, causes of action and liabilities, of whatsoever kind and nature, however acquired; provided, however, NEGТ is not releasing the ET Released Parties from any of their obligations under this Settlement Agreement or any other settlement agreement approved by the Bankruptcy Court.
- (c) Notwithstanding the foregoing, nothing contained herein shall be interpreted to provide a waiver, release or discharge of any person or entity with regard to claims, obligations, demands, actions, causes of action or liabilities in connection with those certain regulatory proceedings before the Federal Energy Regulatory Commission (including the Refund Proceeding, FERC Docket No. EL00-95) involving Energy Services Ventures, Inc. and its role as assignee of certain assets from California Polar Power Broker, LLC.

10. Each person who executes this Settlement Agreement represents that, subject to Bankruptcy Court approval of this Settlement Agreement, he or she is duly authorized to execute this Settlement Agreement on behalf of the respective Parties to this Settlement Agreement.

11. *Representations and Warranties.* The Parties hereby represent and warrant as follows:

- (a) Each Party is a limited liability corporation, a limited partnership or a corporation, duly organized, validly existing and in good standing under the laws of its jurisdiction of

its formation. Each Party has all necessary power and authority to execute, deliver and perform its obligations under this Settlement Agreement as contemplated by its formation agreements, by-laws, or other charter, organizational, or governing documents (collectively, the "Governing Documents").

(b) The execution, delivery and performance of this Settlement Agreement by each Party (a) are within each Party's powers, (b) have been duly authorized by all necessary action on its behalf and all necessary consents or approvals have been obtained and are in full force and effect, and (c) do not violate any of the terms and conditions of (i) its Governing Documents, (ii) any Applicable Law, or (iii) any contracts to which it is a party.

(c) This Settlement Agreement has been duly executed and delivered on behalf of each Party and constitutes a legal, valid and binding obligation of each Party enforceable against it in accordance with its terms.

12. *Covenant Not to Take Any Action in Breach of Settlement Agreement.* Each Party agrees not to take any actions from and including the Effective Date that will result, whether directly or indirectly, in the breach of the Parties' representations, warranties, agreements, covenants or obligations contained in this Settlement Agreement.

13. *Governing Law/Jurisdiction.*

THIS SETTLEMENT AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER WILL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MARYLAND, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD REQUIRE THE APPLICATION OF LAWS OF ANOTHER JURISDICTION. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE BANKRUPTCY COURT SHALL HAVE THE EXCLUSIVE JURISDICTION OVER THIS SETTLEMENT AGREEMENT AND THAT ANY CLAIMS ARISING OUT OF OR RELATED IN ANY MANNER TO THIS SETTLEMENT AGREEMENT SHALL BE PROPERLY BROUGHT ONLY BEFORE THE BANKRUPTCY COURT. IF AND TO THE EXTENT THAT THE BANKRUPTCY CASE IS CLOSED OR

DISMISSED, THE COURTS OF THE STATE OF MARYLAND AND THE UNITED STATES DISTRICT COURT LOCATED IN MARYLAND SHALL HAVE NON-EXCLUSIVE JURISDICTION OVER THIS SETTLEMENT AGREEMENT AND ANY SUCH CLAIMS.

14. *Entire Agreement.* This Settlement Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and there are no agreements, understandings, representations or warranties between the Parties other than those set forth or referred to herein.

15. *Successors and Assigns.* This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

16. *No Admission of Liability.* This Settlement Agreement is not an admission of any liability but is a compromise and the settlement and this Settlement Agreement shall not be treated as an admission of liability. All communications (whether oral or in writing) between and/or among the Parties, their counsel and/or their respective representatives relating to, concerning or in connection with this Settlement Agreement, the negotiations thereof, and information exchanged between the Parties shall be governed and protected in accordance with the Federal Rule of Evidence 408 to the fullest extent permitted by law.

17. *No Assignment of Claims.* Each of the Parties represents and warrants that it is the only person who, to its knowledge, has any interest in any relevant claims released hereby and that none of such claims, nor any part thereof, have been assigned, granted or transferred in any way to any other person.

18. *Attorneys' Fees.* Each Party shall be responsible for the payment of its own costs and expenses (including reasonable attorneys' fees) in connection with the matters referred to in this Settlement Agreement. Nevertheless, in any action or proceeding to enforce this Settlement

Agreement, the prevailing Party shall be entitled to payment of its reasonable costs and expenses (including reasonable attorneys' fees).

19. *Unknown Claims.* All rights under Section 1542 of the California Civil Code, or any analogous state or federal law, are hereby expressly WAIVED, if applicable, with respect to any of the claims, injuries, or damages described in the Releases in Section 9. Section 1542 of the California Civil Code reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

20. *Counterparts.* This Settlement Agreement may be executed in counterparts, by either an original signature or signature transmitted by facsimile transmission or other similar process and each copy so executed shall be deemed to be an original and all copies so executed shall constitute one and the same agreement.

**National Energy & Gas Transmission, Inc.**


By: 

Name: Brian Cejka


Title: Chief Financial Officer

**NEGT Energy Trading - Power, L.P.**

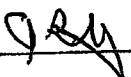
By: NEGTEnergyTrading Holdings  
Corporation, its sole general partner

By:   
Name: CHARLES GOLDSTEIN  
Title: PLAN ADMINISTRATOR

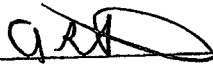
**NEGT Energy Trading Holdings  
Corporation**

By:   
Name: CHARLES GOLDSTEIN  
Title: PLAN ADMINISTRATOR

**NEGT Energy Trading - Gas Corporation**

By:   
Name: CHARLES GOLDSTEIN  
Title: PLAN ADMINISTRATOR

**NEGT ET Investments Corporation**

By:   
Name: CHARLES GOLDSTEIN  
Title: PLAN ADMINISTRATOR



NEGT International, Inc.

By: 

Name: CHARLES GOLDSTEIN

Title PRESIDENT + TREASURER

US 327704v.1

**NEGT - ET Intercompany Settlement**  
**Exhibit 1**  
**Illustrative Recoveries Under Subrogation Claims**

Description	Reference	Caledonia Generating	City of Seattle (Mike Slinowitz)	Portland General	SPCP Group (Vermont Power)	Southaven Power	Liberty Electric
<b>Claim Summary</b>							
Allowed Claim Against NEGT	(a)	\$ 250,000,000	\$ 310,100	\$ 901,700	\$ 5,000,000	\$ 176,209,004	\$ 140,000,000
Allowed Claim Against ET Power	(b)	375,000,000	310,100	901,700	7,900,000	303,786,221	145,156,644
Allowed Claim # in ET Power Case (per ET Records)		223	660	212	1	135	1000
Distribution Limit to non-NEGT Party	(c)	275,000,000	310,100	901,700	7,900,000	303,786,221	145,156,644
NEGT Subrogation Claim Amount Against ET Power	(d)	275,000,000	310,100	901,700	7,900,000	303,786,221	145,156,644
<b>Total Expected Payments to non-NEGT Party</b>							
Actual Payments by NEGT (through 2-28-10)		142,974,019	177,287	515,679	2,877,224	101,398,552	140,000,000
Additional Payments to be Made by NEGT		-	-	-	-	-	-
Total Expected Payments by NEGT	(e)	142,974,019	177,287	515,679	2,877,224	101,398,552	140,000,000
<b>Actual Payments by ET Power (through 2-28-10)</b>							
Additional Payments to be Made by ET Power		132,025,981	132,813	386,021	3,555,000	136,703,799	5,156,644
Total Expected Payments by ET Power	(f)	132,025,981	132,813	386,021	1,467,776	65,683,870	5,156,644
<b>Total Expected Payments to non-NEGT Party</b>							
	=(e)-(f)	275,000,000	310,100	901,700	7,900,000	303,786,221	145,156,644
<b>Calculation of NEGT Subrogation Recovery</b>							
NEGT Subrogation Claim Against ET Power	(d)	275,000,000	310,100	901,700	7,900,000	303,786,221	145,156,644
Claim Recovery % for ET Power Creditors	(g)	70.02%	70.02%	70.02%	70.02%	70.02%	70.02%
Total Payment Due on Subrogation Claim	(h)=(d)*(g)	192,555,000	217,132	631,370	5,531,580	212,711,112	101,638,682
Less: Maximum ET Power Payment Credit	=(f)	(132,025,981)	(132,813)	(386,021)	(5,022,776)	(202,387,669)	(5,156,644)
Total Amount Due to NEGT from ET Power	=(h)-(f)	\$ 60,529,019	\$ 84,319	\$ 245,349	\$ 508,804	\$ 10,323,443	\$ 96,482,038

**Notes:**

1. This analysis is for illustrative purposes only to reflect the flow of funds from ET Power to NEGT under the Intercompany Settlement and based on the assumed ET Power recovery rates (70% in this example). The actual payments from ET Power pursuant to the Intercompany Settlement may vary based on the final recovery rates of the ET Power estate.
2. The offsets permitted to ET Power against NEGT's Subrogation Claims (as reflected in (f) herein) are limited to the amounts actually paid to the counterparty for the respective claim. For the avoidance of doubt, such offsets are limited to the amounts included herein and may not include any other payments made to the counterparty.

**NEGT - ET Intercompany Settlement**  
**Exhibit 1 (continued)**  
**Illustrative Recoveries Under Other Allowed Claims**

Description	Notes	PG&E		Spencer		NEG Services	ET Gas
		Madison Windpower	ET Power LC Claim	Dispersed Generating Company	Station Generating Company		
Claim Summary							
Allowed Claim Against ET Power		\$ 75,031	\$ 34,784,535	\$ 138,340	\$ 10,159,231	\$ -	-
Allowed Claim Against ET Gas		-	-	-	-	-	-
Allowed Claim Against ET Holdings		-	-	-	-	171,962	66,397,793
Allowed Claim # in ET Case (per ET Records)		10002	696	10001	10000	10003	N/A
Calculation of NEG1 Recovery							
NEGT Allowed Claim Against ET		75,031	34,784,535	138,340	10,159,231	171,962	66,397,793
Claim Recovery % at Respective ET Case		70.02%	70.02%	70.02%	70.02%	45.98%	100.00%
Total Payment Due on Subrogation Claim		52,537	24,356,131	96,866	7,113,494	79,068	66,397,793
Less: Amounts Previously Paid by ET							
Less: Other Offsets to Claim Payments	(1) (2)	(33,764)	(15,650,036)	(62,253)	(4,571,654)	(55,888)	(50,178,086)
Total Amount Due to NEG1 from ET		\$ 18,773	\$ 6,959,911	\$ 34,613	\$ 2,541,840	\$ 23,180	\$ 3,080,080
Recovery to NEG1 Letter of Credit Issuer		65.00%					

**Notes:**

- (1) NEG1 Recoveries under the ET Power Letter of Credit claim are limited to the actual distributions made by NEG1. For the purposes of this example, it is assumed that NEG1's Plan of Reorganization provides a 65% recovery to the letter of credit issuer.
- (2) The claim against ET Gas is comprised of two components, including \$28.8 million for taxes and \$37.5 million for letter of credit issued under the NEG1 Credit Agreement. ET Gas has already fully repaid NEG1 for the portion of the claim related to taxes. The amounts included in this analysis represents reimbursements of letters of credit issued by NEG1 for the benefit of ET Power. Pursuant to the Intercompany Agreement, recoveries to NEG1 from ET Power are limited to the actual amount paid by NEG1 to the letter of credit issuer. For the purpose of this example, it is assumed that NEG1's Plan of Reorganization provides a 65% recovery to the letter of credit issuer.

**NEGT - ET Intercompany Settlement**  
**Exhibit 1 (continued)**  
**Illustrative Recoveries Under DTE Georgetown Settlement**

<u>Incremental Recovery Factor</u>	
Hypothetical Claim Recovery % at ET Power	70.02%
Baseline Recovery % for Settlement	50.00%
Incremental Recovery	20.02%
Conversion Rate	100
Incremental Recovery Factor	20.02
<u>Payments Due from ET Power</u>	
Incremental Recovery Factor	20.02
Settlement Amount	\$ 218,000
Payment Due from ET Power to NEG	\$ 4,364,360

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Greenbelt Division)**

**In re:**

**NATIONAL ENERGY & GAS  
TRANSMISSION, INC. (f/k/a PG&E  
NATIONAL ENERGY GROUP, INC.), et  
al.**

**Debtors.**

\*

\* Case No.: 03-30459 (PM) and 03-30461 (PM)  
through 03-30464 (PM) and 03-30686 (PM)  
\* through 03-30687 (PM)  
Chapter 11

\*

(Jointly Administered under  
\* Case No.: 03-30459 (PM))

\* \* \* \* \*

**NOTICE OF JOINT MOTION PURSUANT TO FEDERAL RULE OF  
BANKRUPTCY PROCEDURE 9019 FOR ENTRY OF AN ORDER APPROVING  
SETTLEMENT AGREEMENT AND GENERAL RELEASE OF INTERCOMPANY  
CLAIMS BY AND BETWEEN NATIONAL ENERGY & GAS TRANSMISSION, INC.,  
NEGT ENERGY TRADING – POWER, L.P. AND RELATED AFFILIATES**

PLEASE TAKE NOTICE that on April 2, 2010, National Energy & Gas Transmission, Inc. (“NEGT”), NEGT Energy Trading – Power, L.P. (“ET Power”) and NEGT Energy Trading Holdings Corporation (“ET Holdings”) filed the following motion:

*Joint Motion Pursuant to Federal Rule of Bankruptcy Procedure 9019 for Entry of an Order Approving Settlement Agreement And General Release of Claims By And Between National Energy & Gas Transmission, Inc., NEGT Energy Trading – Power, L.P. and Related Affiliates*

**PLEASE TAKE FURTHER NOTICE THAT A HEARING WILL BE CONDUCTED ON THE MATTER ON MAY 13, 2010 AT 10:30 A.M. IN COURTROOM 3-D OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF MARYLAND, 6500 CHERRYWOOD LANE, GREENBELT, MARYLAND 20770. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY STATING YOUR OBJECTION AND ALL FACTS AND LAW YOU BELIEVE SUPPORT YOUR OBJECTION. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT ON OR BEFORE APRIL 23, 2010 SAID DATE BEING TWENTY-ONE (21) DAYS FROM THE DATE THIS NOTICE WAS SERVED, AS INDICATED ON THE CERTIFICATE OF SERVICE AT THE END OF THIS NOTICE. IN ADDITION TO FILING YOUR RESPONSE WITH THE CLERK, YOU MUST SERVE A COPY OF THE YOUR RESPONSE ON THE PERSON WHO SENT YOU THIS PLEADING AND TO THE PARTIES ON THE SERVICE LIST. ABSENT A TIMELY OBJECTION, THE COURT MAY TREAT THIS PLEADING AS**

**UNOPPOSED AND GRANT THE RELIEF REQUESTED WITH OR WITHOUT A HEARING.**

**VINSON & ELKINS L.L.P.**

/s/ Tonya M. Ramsey

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William E. Lawler, III  
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**SPECIAL COUNSEL FOR NATIONAL  
ENERGY GAS TRANSMISSION, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that, on April 2, 2010, a copy of the foregoing *Notice of Joint Motion Pursuant to Federal Rule of Bankruptcy Procedure 9019 for Entry of an Order Approving Settlement Agreement And General Release of Claims By And Between National Energy & Gas Transmission, Inc., NEGT Energy Trading – Power, L.P. and Related Affiliates* was (i) filed with the Court for the United States Bankruptcy Court of the District of Maryland by using the CM/ECF system; (ii) served electronically by the Court's CM/ECF system on all parties registered to receive electronic noticing in this case; and (iii) served by first class U.S. mail, postage prepaid, to the parties listed on the attached Service List.

/s/ Tonya M. Ramsey  
One of Counsel

US 295583v.1

**Case No. 03-30459 Service List**

Charles R. Goldstein Plan Administrator Protiviti, Inc. One East Pratt Street, Suite 800 Baltimore MD 21202	102562:NAT500-64000	Rick Murphy Mark Sherrill Sutherland, Asbill & Brennan LLP 1275 Pennsylvania Avenue NW Washington DC 20004	102562:NAT500-64000
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Ronald S. Liebman Dewey & LeBoeuf LLP 1101 New York Avenue NW Washington DC 20005-4213	102562:NAT500-64000	Societe Generale Attn: Nina Ross, Director, Asset Recovery 1221 Avenue of the Americas New York NY 10020	102562:NAT500-64000
Louis J. Ebert Gebhardt & Smith LLP 401 East Pratt Street, 9 <sup>th</sup> Floor Baltimore MD 21202	102562:NAT500-64000	Shelley C. Chapman Robin Spigel Willkie Farr & Gallagher 787 Seventh Avenue New York NY 10019-6099	102562:NAT500-64000
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**Case No. 03-30459 Service List**

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Jeffrey L. Tarkenton Erik D. Bolog Womble Carlyle Sandridge & Rice, PLLC 1401 Eye Street, N.W., Suite 700 Washington, D.C. 20005	102562:NAT500-64000	Paul Turner Sutherland, Asbill & Brennan LLP 2 Houston Center 909 Fannin, Suite 2200 Houston, Texas 77010	102562:NAT500-64000
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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(Greenbelt Division)**

**In re:**

\*

**NATIONAL ENERGY & GAS  
TRANSMISSION, INC. (f/k/a PG&E  
NATIONAL ENERGY GROUP, INC.), *et  
al.***

\* Case No.: 03-30459 (PM) and 03-30461 (PM)  
through 03-30464 (PM) and 03-30686 (PM)  
\* through 03-30687 (PM)  
Chapter 11

\*

**Debtors.**

(Jointly Administered under  
\* Case No.: 03-30459 (PM))

\* \* \* \* \*

**ORDER GRANTING DEBTORS' JOINT MOTION PURSUANT TO FEDERAL RULE  
OF BANKRUPTCY PROCEDURE 9019 FOR ENTRY OF AN ORDER APPROVING  
SETTLEMENT AGREEMENT AND GENERAL RELEASE OF INTERCOMPANY  
CLAIMS BY AND BETWEEN NATIONAL ENERGY & GAS TRANSMISSION, INC.,  
NEGT ENERGY TRADING – POWER, L.P. AND RELATED AFFILIATES**

Upon consideration of the *Joint Motion Pursuant to Federal Rule of Bankruptcy  
Procedure 9019 for Entry of an Order Approving Settlement Agreement And General Release of  
Intercompany Claims By And Between National Energy & Gas Transmission, Inc., NEGT  
Energy Trading – Power, L.P. and Related Affiliates* (the “Motion”), and upon due and proper  
notice in accordance with FED. R. BANKR. P. 2002(a) and (h) and Local Rule 2002-1 and an  
opportunity for a hearing, no objections having been filed, and the Court having determined that

the relief requested in the Motion is fair, equitable and in the best interest of the bankruptcy estates of National Energy & Gas Transmission, Inc., NEGT Energy Trading Holdings Corporation and NEGT Energy Trading – Power, L.P. and their creditors; it is therefore, by the United States Bankruptcy Court for the District of Maryland, hereby

**ORDERED**, that each of the capitalized terms not defined herein shall have the meanings ascribed to them in the Motion; and it is further

**ORDERED**, that the Motion should be, and it hereby is, GRANTED in its entirety; and it is further

**ORDERED**, that the settlement as set forth in the Settlement Agreement dated as of March 30, 2010 by and among the Parties, which was filed as Exhibit A to the Motion, should be, and hereby is, authorized and approved in all respects; and it is further

**ORDERED**, that the Parties are authorized and directed to take all actions and execute all documents necessary to implement the settlement approved therein; and it is further

**ORDERED**, that this Court shall maintain jurisdiction over this matter.

**END OF ORDER**

cc:

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