

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

**In re:** \*  
  
**NATIONAL ENERGY & GAS** \* Case No.: 03-30459 (PM) and 03-30461 (PM)  
**TRANSMISSION, INC. (f/k/a PG&E** \* through 03-30464 (PM) and 03-30686 (PM)  
**NATIONAL ENERGY GROUP, INC.),** \* through 03-30687 (PM)  
*et al.* \* Chapter 11  
  
\*  
**Debtors.** \* (Jointly Administered under  
\* Case No.: 03-30459 (PM))

\* \* \* \* \*  
\*

**January 20, 2005**

**DISCLOSURE STATEMENT FOR JOINT PLAN OF LIQUIDATION FOR THE  
ENERGY TRADING DEBTORS AND THE QUANTUM DEBTORS**

<b><u>IMPORTANT DATES</u></b>	
Date by which Objections to Confirmation of the Plan Must Be Filed and Served:	_____, 2005 at _____ (EDT)
Date by which Ballots Must Be Received:	_____, 2005 at _____ (EDT)
Hearing on Confirmation of the Plan:	_____, 2005 at _____ (EDT)

**WILLKIE FARR & GALLAGHER LLP**  
787 Seventh Avenue  
New York, New York 10019-6099  
(212) 728-8000

**WHITEFORD, TAYLOR & PRESTON L.L.P.**  
Seven Saint Paul Street, Suite 1400  
Baltimore, Maryland 21202  
(410) 347-8700

**Co-Counsel for the Debtors and Debtors in  
Possession,  
National Energy & Gas Transmission, Inc. et al.**

**[THIS PROPOSED DISCLOSURE STATEMENT HAS NOT YET BEEN APPROVED BY THE BANKRUPTCY COURT. THUS, THE FILING AND DISSEMINATION OF THIS PROPOSED DISCLOSURE STATEMENT SHOULD NOT BE CONSTRUED AS AN AUTHORIZED SOLICITATION OF VOTES ON THE DEBTORS' PLAN OF REORGANIZATION UNDER 11 U.S.C. § 1125 OR OTHERWISE.]**

## **PRELIMINARY NOTES**

**THIS DISCLOSURE STATEMENT ADDRESSES THE PLAN OF LIQUIDATION OF THE ET DEBTORS AND THE QUANTUM DEBTORS (COLLECTIVELY, THE “DEBTORS”). THE ET DEBTORS CONSIST OF: (I) NEGT ENERGY TRADING HOLDINGS CORPORATION f/k/a PG&E ENERGY TRADING HOLDINGS CORPORATION; (II) NEGT ENERGY TRADING - GAS CORPORATION f/k/a PG&E ENERGY TRADING - GAS CORPORATION; (III) NEGT ET INVESTMENTS CORPORATION f/k/a PG&E ET INVESTMENTS CORPORATION; AND (IV) NEGT ENERGY TRADING - POWER, L.P. f/k/a PG&E ENERGY TRADING - POWER, L.P. THE QUANTUM DEBTORS CONSIST OF: (I) ENERGY SERVICES VENTURES, INC. f/k/a PG&E ENERGY SERVICES VENTURES, INC.; AND (II) QUANTUM VENTURES.**

**ON JULY 8, 2003, THE ET DEBTORS AND THEIR PARENT, NATIONAL ENERGY & GAS TRANSMISSION, INC. f/k/a PG&E NATIONAL ENERGY GROUP, INC. (“NEGT”), FILED FOR CHAPTER 11 PROTECTION. ON THAT DATE, USGEN NEW ENGLAND, INC. (“USGEN NE”), A SUBSIDIARY OF NEGT, ALSO FILED FOR CHAPTER 11 PROTECTION AND IS SUBJECT TO A SEPARATELY ADMINISTERED CHAPTER 11 PROCEEDING. ON JULY 29, 2003, THE QUANTUM DEBTORS, ALSO SUBSIDIARIES OF NEGT, FILED FOR CHAPTER 11 PROTECTION. ANNEXED AS APPENDIX 1 TO THE DISCLOSURE STATEMENT IS THE PROPOSED JOINT PLAN OF LIQUIDATION FOR THE ET DEBTORS AND THE QUANTUM DEBTORS (THE “PLAN”). THE PLAN PROVIDES THE PROPOSED METHOD OF LIQUIDATION OF THE ASSETS OF THE DEBTORS AND THE DISTRIBUTIONS CREDITORS AND SHAREHOLDERS OF THE DEBTORS WOULD RECEIVE IN THE DEBTORS’ CHAPTER 11 CASES.**

**PLEASE NOTE THAT THE PLAN ADDRESSES ONLY THE LIQUIDATION OF THE ASSETS OF THE ET DEBTORS AND THE QUANTUM DEBTORS. THE PLAN DOES NOT ADDRESS THE REORGANIZATION OR LIQUIDATION OF NEGT OR USGEN NE.**

**PLEASE REFER TO THE PLAN (OR, WHERE INDICATED, CERTAIN MOTIONS FILED WITH THE BANKRUPTCY COURT) FOR DEFINITIONS OF THE CAPITALIZED TERMS USED IN THIS DISCLOSURE STATEMENT.**

**CREDITORS OF THE DEBTORS GENERALLY ARE ENTITLED TO VOTE ON THE PLAN. THE DISCLOSURE STATEMENT IS BEING SENT TO YOU TO PROVIDE THE INFORMATION NECESSARY FOR YOU TO MAKE AN INFORMED VOTE ON WHETHER TO ACCEPT OR REJECT THE PLAN. THE NEXT FEW PAGES OF THE DISCLOSURE STATEMENT INCLUDE A SUMMARY OF THE PLAN, INCLUDING PROPOSED DISTRIBUTIONS TO CREDITORS UNDER THE PLAN. NONETHELESS, ALL**

**CREDITORS ARE ENCOURAGED TO READ THE ENTIRE DISCLOSURE STATEMENT BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.**

**THE DEBTORS AND THE ET COMMITTEE SUPPORT THE PLAN AND URGE ALL HOLDERS OF CLAIMS IN CLASSES 1, 3, 4, 5, 6, and 7 TO VOTE TO ACCEPT THE PLAN BY RETURNING THEIR BALLOTS SO THAT THEY ARE RECEIVED BY NEG T BALLOTING CENTER, c/o BANKRUPTCY SERVICES LLC, 757 THIRD AVENUE, NEW YORK, NEW YORK 10017, BY 4:00 P.M. (EASTERN DAYLIGHT TIME) ON \_\_\_\_\_, 2005.**

**THE DEBTORS BELIEVE THAT THE SUMMARIES CONTAINED IN THE DISCLOSURE STATEMENT ARE FAIR AND ACCURATE. THE SUMMARIES OF THE FINANCIAL INFORMATION AND OF THE DOCUMENTS WHICH ARE ATTACHED HERETO (INCLUDING THE PLAN) OR INCORPORATED BY REFERENCE ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THOSE DOCUMENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THE DISCLOSURE STATEMENT AND THE PLAN OR ANY DOCUMENTS ATTACHED HERETO OR INCORPORATED HEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS, AS THE CASE MAY BE, SHALL CONTROL.**

**THE DISCLOSURE STATEMENT CONTAINS THE ONLY INFORMATION AND REPRESENTATIONS APPROVED FOR USE IN SUCH SOLICITATION. CREDITORS SHOULD NOT RELY ON ANY INFORMATION, REPRESENTATIONS OR INDUCEMENTS MADE TO OBTAIN ACCEPTANCE OF THE PLAN THAT ARE OTHER THAN, OR INCONSISTENT WITH, THE INFORMATION CONTAINED HEREIN AND IN THE PLAN.**

**THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT ARE MADE SOLELY AS OF THE DATE HEREOF. DELIVERY OF THE DISCLOSURE STATEMENT DOES NOT IMPLY THAT THE INFORMATION CONTAINED HEREIN WILL BE CORRECT AT ANY SUBSEQUENT TIME.**

**THE BANKRUPTCY COURT'S APPROVAL OF THE DISCLOSURE STATEMENT CONSTITUTES NEITHER A GUARANTY OF THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED HEREIN NOR AN ENDORSEMENT OF THE MERITS OF THE PLAN BY THE BANKRUPTCY COURT.**

**THE DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE, NOT FEDERAL OR STATE SECURITIES LAWS OR OTHER NONBANKRUPTCY LAW. ENTITIES HOLDING, TRADING IN OR OTHERWISE PURCHASING,**

**SELLING OR TRANSFERRING CLAIMS AGAINST THE DEBTORS SHOULD EVALUATE THE DISCLOSURE STATEMENT IN LIGHT OF THE PURPOSE FOR WHICH IT WAS PREPARED. THE SECURITIES AND EXCHANGE COMMISSION HAS NOT APPROVED, DISAPPROVED OR PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED IN THE DISCLOSURE STATEMENT.**

**THE DISCLOSURE STATEMENT SHALL NOT BE CONSTRUED TO BE CONCLUSIVE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN UPON HOLDERS OF CLAIMS AGAINST THE DEBTORS. THE DISCLOSURE STATEMENT SHALL BE CONSIDERED TO BE A SETTLEMENT DOCUMENT PURSUANT TO FEDERAL RULE OF EVIDENCE 408. YOU MUST COMPLY WITH ALL LAWS AND REGULATIONS APPLICABLE TO YOU IN FORCE IN ANY JURISDICTION AND MUST OBTAIN ANY CONSENT, APPROVAL OR PERMISSION REQUIRED TO BE OBTAINED BY YOU UNDER THE LAWS AND REGULATIONS APPLICABLE TO YOU IN FORCE IN ANY JURISDICTION TO WHICH YOU ARE SUBJECT, AND THE DEBTORS, THEIR DIRECTORS AND THEIR ADVISORS SHALL NOT HAVE ANY RESPONSIBILITY THEREFOR.**

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**APPENDICES TO DISCLOSURE STATEMENT**

**Appendix 1 Plan of Liquidation for the ET Debtors and the Quantum Debtors**

## ARTICLE I.

### INTRODUCTION

On July 8, 2003, NEGT Energy Trading Holdings Corporation f/k/a PG&E Energy Trading Holdings Corporation (“ET Holdings”), NEGT Energy Trading - Gas Corporation f/k/a PG&E Energy Trading - Gas Corporation (“ET Gas”), NEGT ET Investments Corporation f/k/a PG&E ET Investments Corporation (“ET Investments”) and NEGT Energy Trading - Power, L.P. f/k/a PG&E Energy Trading - Power, L.P. (“ET Power,” and collectively with ET Holdings, ET Gas and ET Investments, the “ET Debtors”), each filed a chapter 11 petition with the United States Bankruptcy Court for the District of Maryland, Greenbelt Division (the “Bankruptcy Court”). On July 8, 2003, National Energy & Gas Transmission, Inc. (“NEGT”), the ET Debtors’ beneficial owner, also filed a chapter 11 petition with the Bankruptcy Court.<sup>1</sup> On July 29, 2003, two other indirect NEGT subsidiaries, Energy Services Ventures, Inc. f/k/a PG&E Energy Services Ventures, Inc. (“ESV”), and Quantum Ventures (“Quantum,” and together with ESV, the “Quantum Debtors,” and collectively with the ET Debtors, the “Debtors”)<sup>2</sup> each filed its own chapter 11 case in the Bankruptcy Court. The chapter 11 cases of the ET Debtors, the Quantum Debtors and NEGT were consolidated for procedural purposes only and are being jointly administered.

The Bankruptcy Court confirmed NEGT’s plan of reorganization on May 3, 2004, and such plan became effective on October 29, 2004. The Debtors have worked with the Official Committee of Unsecured Creditors for the ET Debtors (the “ET Committee”) to formulate the Plan of Liquidation for the ET Debtors and the Quantum Debtors (the “Plan”),<sup>3</sup> a copy of which is annexed hereto as Appendix 1. Unless defined in the Disclosure Statement, each capitalized term used in the Disclosure Statement has the definition ascribed to such term in the Plan. **PLEASE NOTE THAT THE PLAN DOES NOT ADDRESS THE REORGANIZATION OR LIQUIDATION OF NEGT OR USGEN NE.**

#### A. Purpose of the Disclosure Statement

The Disclosure Statement is intended to aid creditors in making an informed judgment regarding acceptance or rejection of the Plan. If you have any questions regarding the Plan, the Debtors urge you to contact their counsel, Willkie Farr

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<sup>1</sup> On July 8, 2003, US Gen New England, Inc. (“USGen NE”) also filed a chapter 11 petition with the Bankruptcy Court and is the subject of a separately administered chapter 11 case in the Bankruptcy Court.

<sup>2</sup> The Debtors and their estates from and after the Effective Date are sometimes referred to herein as the “Liquidating Debtors.”

<sup>3</sup> The ET Committee was not involved in the formulation of that portion of the Plan dealing with the Quantum Debtors.

& Gallagher LLP, 787 Seventh Avenue, New York, NY 10019-6099, (212) 728-8000 (Attn: Steven Wilamowsky, Esq. or Jessica S. Etra, Esq.).

[While the Bankruptcy Court has approved the Disclosure Statement as containing “adequate information” to enable you to vote on the Plan, the Bankruptcy Court’s approval of the Disclosure Statement does not constitute approval or disapproval of the Plan.] The Bankruptcy Court will consider approval of the Plan only after completion of voting on the Plan.

**B. Voting on the Plan**

**THE DEBTORS AND THE ET COMMITTEE SUPPORT THE PLAN AND URGE YOU TO VOTE TO ACCEPT THE PLAN.**

**1. Eligibility to Vote**

The Plan classifies Claims and Interests in the following classes:

<u>Class</u>	<u>Description</u>
Class 1	Secured Claims
Class 2	Priority Claims
Class 3	General Unsecured Claims Against ET Gas
Class 4	General Unsecured Claims against ET Investments
Class 5	General Unsecured Claims against ET Holdings
Class 6	General Unsecured Claims against ET Power
Class 7	General Unsecured Claims against ESV
Class 8	General Unsecured Claims against Quantum
Class 9	Subordinated Claims
Class 10	Interests in ET Gas
Class 11	Interests in ET Investments
Class 12	Interests in ET Holdings, ET Power, ESV and Quantum

Only Classes that are both impaired and eligible to receive a distribution are entitled to vote. Voting instructions are described in Article V below. Under the Plan, holders of Claims in Classes 1, 3, 4, 5, 6 and 7 are entitled to vote.<sup>4</sup> Holders of

<sup>4</sup> Claims in Classes 3 and 4 are treated as Impaired under the Plan and are being provided the opportunity to vote to accept or reject the Plan. However, the Debtors believe that, under

Claims in Class 2 are conclusively presumed to have accepted the Plan because they are unimpaired. Holders of Interests in Classes 10 and 11 are conclusively presumed to have accepted the Plan because ET Holdings, a Debtor and a proponent of the Plan, is the holder of all such Interests. Holders of Claims in Classes 8 and 9 and of Interests in Class 12 are deemed to have rejected the Plan because they are not eligible to receive a distribution.

## **2. Voting Procedures**

Parties that are entitled to vote on the Plan will receive with the Disclosure Statement a Bankruptcy Court approved ballot (a “Ballot”) and a notice setting forth, among other things, the time frame within which acceptances and rejections of the Plan must be received (collectively, the “Solicitation Package”). If you believe you are entitled to vote, but did not receive a Solicitation Package, contact the Debtors’ Balloting Agent, Bankruptcy Services, LLC, 757 Third Avenue, 3rd Floor, New York, NY 10150-5014, (646) 282-2500 (Attn: Tirzah Gordon).

## **3. Vote Solicitation**

The process of soliciting votes on the Plan must be in accordance with the following restriction:

**CREDITORS SHOULD NOT RELY ON ANY REPRESENTATIONS CONCERNING THE DEBTORS, THEIR ASSETS OR THEIR PAST AND FUTURE OPERATIONS, EXCEPT THOSE CONTAINED IN THE DISCLOSURE STATEMENT OR OTHERWISE AUTHORIZED BY THE BANKRUPTCY COURT.**

If you believe your vote is being solicited outside the judicially approved and statutorily defined disclosure requirements and voting procedures, please immediately contact the Debtors’ counsel, Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019-6099, (212) 728-8000 (Attn: Steven Wilamowsky, Esq. or Jessica S. Etra, Esq.).

## **4. Acceptance of Plan**

Under the Bankruptcy Code, an impaired class of claims entitled to vote has accepted a plan if, of those voting, the holders of two-thirds (2/3) in dollar amount, and more than one-half (1/2) in number, of claims accept.

## **5. Hearing on Confirmation of Plan**

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applicable law, Claims in Classes 3 and 4 likely are not Impaired under the Plan. Accordingly, in the event that Class 3 or Class 4 votes to reject the Plan, the Debtors reserve the right to contend that such Class is Unimpaired and that, therefore, such Class should be deemed to have accepted the Plan.

The Bankruptcy Court has scheduled a hearing to consider confirmation (*i.e.*, approval) of the Plan on \_\_\_\_\_, 2005, at \_\_\_\_\_ (Eastern Daylight Time), in Courtroom 3D of the United States Bankruptcy Court, 6500 Cherrywood Lane, Greenbelt, Maryland 20770. The Confirmation Hearing may be adjourned from time to time without further notice other than by announcement in the Bankruptcy Court on the scheduled hearing date.

### **C. General Overview**

**The Plan is a plan of liquidation that contemplates the complete liquidation of the assets of the Debtors and distribution of all proceeds. The Debtors are in the process of winding down their operations and, to the extent possible, settling remaining claims and contracts. Under the Plan, each of the existing boards of directors of the several Debtors will be reconstituted to be a two-person board comprised of one director appointed by the ET Committee and one director appointed by the ET Debtors' stockholder.<sup>5</sup>**

**It should be noted that the formulae for calculating distributions to unsecured creditors vary as among the several Debtors. Several factors account for these variances. First, the Debtors believe that, as of the Effective Date, ET Gas and ET Investments will have sufficient funds to pay their respective general unsecured creditors in full. Accordingly, the Plan provides for payment in full of all Allowed General Unsecured Claims against ET Gas and ET Investments plus Pendency Interest at the Federal Judgment Rate. Second, unlike the other ET Debtors, ET Power is not a corporation, but a limited partnership. Accordingly, under applicable non-bankruptcy law, creditors of ET Power have recourse to the assets of ET Power's general partner, ET Holdings. Thus, every claim asserted against ET Power, in effect, becomes a claim against ET Holdings as well. In addition, under 11 U.S.C. § 1129(a)(7)(A)(ii), the Bankruptcy Court may confirm a plan of reorganization only if each class of creditors will receive under the proposed plan an amount that is not less than such creditors would receive if the debtor were liquidated under a chapter 7 bankruptcy case. For chapter 7 cases, 11 U.S.C. § 723(c) provides that, if both a limited partnership and its general partner have filed for bankruptcy protection, as is the case of ET Holdings and ET Power, then the trustee of the limited partnership would have a claim against the estate of the general partner for the full amount of all claims of the creditors of the limited partnership. The Plan is structured to recognize such a claim and therefore comply with the confirmation requirements of the Bankruptcy Code, with the net effect of somewhat increasing percentage recoveries on Claims against ET Power, while**

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<sup>5</sup> ET Power is a Delaware limited partnership rather than a corporation. Accordingly, it does not have a Board of Directors and is controlled by its sole general partner, ET Holdings. Likewise, after the Effective Date, ET Power will not have its own Board of Directors; all actions to be taken by the Plan Administrator on behalf of ET Power that otherwise would require board approval would need to be authorized by the Board of Directors of ET Holdings, acting as ET Power's sole general partner.

**concomitantly reducing percentage recoveries on Claims asserted solely against ET Holdings. Under the Plan, holders of Unsecured Claims against ET Power, ET Holdings, ESV and Quantum will not be paid in full and, accordingly, such holders will not receive Pendency Interest.**

**D. Summary of Creditor Recoveries**

The following chart summarizes the proposed distributions under the Plan:

<u>CLASS</u>	<u>TYPE OF CLAIM OR INTEREST</u>	<u>DEBTORS' ESTIMATES OF ALLOWED CLAIMS<sup>6</sup></u>	<u>APPROXIMATE PERCENTAGE RECOVERY RANGES BASED ON THE DEBTORS' ESTIMATES OF ALLOWED CLAIMS</u>
Unclassified	Administrative Claims	\$3,100,000	100%
Unclassified	Fee Claims	\$2,400,000	100%
Unclassified	Priority Tax Claims	\$150,000	100%
1	Secured Claims	\$25,000,000	100% (reinstatement or pay in full)
2	Priority Claims	\$0	100%
3	General Unsecured Claims against ET Gas	\$90,000,000	100% of Allowed Claim plus Pendency Interest <sup>7</sup>
4	General Unsecured Claims against ET Investments	\$1,000	100% of Allowed Claim plus Pendency Interest

<sup>6</sup> Generally, the aggregate Claims asserted against the Debtors exceed the total amount of Allowed Claims estimated by the Debtors because, among other things, certain Claims: (a) were filed after the Bar Date; (b) were filed in duplicate; (c) were superseded by subsequent amendments to previously filed Claims; (d) may allege an obligation of an entity other than the Debtors; (e) may assert contingent Claims against the Debtors; (f) may include postpetition interest and other disallowed amounts; (g) may be invalid or subject to setoff or recoupment; or (h) are being resolved as part of settlement agreements that are in the process of being documented and presented to the Bankruptcy Court for approval. **THEREFORE, THE ACTUAL AGGREGATE AMOUNT OF ALLOWED CLAIMS STILL MAY DIFFER SIGNIFICANTLY FROM THE DEBTORS' ESTIMATES.**

<sup>7</sup> Pendency Interest is calculated at the federal judgment rate as of the Petition Date, 1.08%.

<u>CLASS</u>	<u>TYPE OF CLAIM OR INTEREST</u>	<u>DEBTORS' ESTIMATES OF ALLOWED CLAIMS<sup>6</sup></u>	<u>APPROXIMATE PERCENTAGE RECOVERY RANGES BASED ON THE DEBTORS' ESTIMATES OF ALLOWED CLAIMS</u>
5	General Unsecured Claims against ET Holdings	See section II.G.9.c	See section II.G.9.c
6	General Unsecured Claims against ET Power	See section II.G.9.c	See section II.G.9.c
7	General Unsecured Claims against ESV	\$23,000,000	7%
8	General Unsecured Claims against Quantum	\$6,400,000	None
9	Subordinated Claims	\$0	None
10	Interests in ET Gas	N/A	N/A
11	Interests in ET Investments	N/A	N/A
12	Interests in ET Holdings, ET Power, ESV and Quantum	N/A	N/A

The outcome of the Tolling Arbitrations (defined in section II.G.9.c hereof) likely will be the single most decisive factor in determining the percentage recoveries to creditors of ET Power (Class 6) and ET Holdings (Class 5). If the Debtors prevail entirely in the Tolling Arbitrations, then the percentage recovery for holders of Allowed Class 5 Claims likely will range from 90% to 100% and the percentage recovery for holders of Allowed Class 6 Claims also likely will range from 90% to 100%. Conversely, if the Debtors are entirely unsuccessful in the Tolling Arbitrations, then the percentage recovery for holders of Allowed Class 5 Claims likely will range from 25% to 30% and the percentage recovery for holders of Allowed Class 6 Claims likely will range from 35% to 45%. For a more complete discussion of the Tolling Arbitrations, please refer to section II.G.9.c hereof.

## **ARTICLE II.**

## **BACKGROUND ON CERTAIN EVENTS LEADING TO, AND CERTAIN KEY DEVELOPMENTS DURING, THE CHAPTER 11 CASES**

### **A. NEG T**

The Debtors are beneficially owned by NEG T. NEG T was incorporated on December 18, 1998 as a wholly owned subsidiary of PG&E Corporation. As a result of NEG T's emergence from bankruptcy and the cancellation of its common stock, PG&E Corporation is no longer NEG T's parent corporation. NEG T is a holding company, and has operated its businesses only through its wholly owned subsidiaries. Prior to the Petition Date, NEG T's principal lines of business were gas transmission, power generation and wholesale energy marketing and trading.

In its gas transmission business segment, NEG T owned, operated and developed natural gas pipeline facilities. On February 24, 2004, NEG T and certain of its non-debtor subsidiaries entered into a stock purchase agreement with TransCanada Corporation, TransCanada Pipeline USA Ltd. and TransCanada American Investments Ltd. (collectively, "TransCanada"), whereby the parties agreed that all of the issued and outstanding shares of Gas Transmission Northwest Corporation would be sold to TransCanada American Investments Ltd. for a total consideration of approximately \$1.7 billion. By order dated May 13, 2004, the Bankruptcy Court approved the sale of NEG T's interests in its gas transmission business to TransCanada. The sale was consummated on November 1, 2004.

In addition, in November 2003, NEG T initiated a competitive sale process for its portfolio of ownership interests in certain electric generation assets and operations<sup>8</sup> (the "IPP Portfolio Sale"). By order dated August 10, 2004, the Bankruptcy Court approved the procedures governing the sale process. An auction was held on September 14, 2004 pursuant to the approved bidding procedures, and GS Power Holding II LLC emerged as the winning bidder. In an order dated September 23, 2004, the Bankruptcy Court approved the IPP Portfolio Sale to GS Power Holding II LLC, a wholly owned subsidiary of The Goldman Sachs Group, Inc., for aggregate consideration of \$656 million, subject to certain post-closing adjustments. The IPP Portfolio Sale is expected to close during the first quarter of 2005.

By order dated May 3, 2004, the Bankruptcy Court approved NEG T's third amended plan of reorganization (the "NEG T Plan"). The NEG T Plan became effective on October 29, 2004.

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<sup>8</sup> National Energy Power Company, LLC, f/k/a PG&E Generating Power Group, LLC ("NEG T Power") and National Energy Generating Company, LLC are direct wholly owned subsidiaries of NEG T Energy Company, LLC, f/k/a PG&E Generating Company, LLC. Plains End, LLC ("Plains End") is an indirect wholly owned subsidiary of NEG T Energy. Madison Windpower LLC ("Madison"), is an indirect wholly owned subsidiary of NEG T Energy. All of the issued and outstanding equity interests of each of NEG T Power, Plains End and Madison comprise the "IPP Portfolio" referred to herein.



## **B. The ET Debtors**

### The ET Debtors' Businesses

For a period of time ending prior to the Petition Date, the ET Debtors engaged in the marketing and trading of electrical energy, capacity and ancillary services, fuel and fuel services (such as gas pipeline transportation and storage), emission credits and other energy related products through various markets across North America, including the over-the-counter and futures markets. The ET Debtors' energy marketing and trading operations managed the supply of fuel for, and the sale of electric output from, NEGT-owned and controlled merchant generating facilities, in addition to engaging in trading for its own account. The ET Debtors also evaluated and implemented structured transactions, including management of third party energy assets, tolling arrangements, management of the requirements of aggregated customer load through full requirement contracts, restructured independent power producer contracts, and the purchase and sale of gas transportation. In the second half of 2002, NEGT elected to wind down its energy trading and marketing operations. In mid-2003, certain of the trading related services that were provided in support of NEGT's independent power producers and its merchant facilities were moved outside the ET Holdings company structure and placed directly in the power generation business segment. Since that time, the activities of the ET Debtors have been limited to those necessary to complete the wind-down of their operations, including termination of energy trading contracts and other agreements, reconciliation of claims, and liquidation of their assets. Certain claims running between the ET Debtors and USGen NE have been settled as part of a Mutual Release agreement approved by the Bankruptcy Court. See section II.G.6 hereof.

### Tolling Contracts

Prior to the Petition Date, the ET Debtors entered into various tolling contracts (the "Tolling Agreements"). Pursuant to the Tolling Agreements, the ET Debtors have the right, but not the obligation, to provide fuel to a generating facility and then to take the electricity generated thereby. In exchange for the right to use the facility to convert its fuel into electricity, the ET Debtors paid the facility owner a predetermined fee – a tolling fee – on a periodic basis. The ET Debtors were therefore able to: (i) operate the facility using their own fuel; and (ii) control the related electricity generation output without incurring the capital expense of owning the generating facility.

### Trading Contracts

In the ordinary course of business, the ET Debtors also entered into various physical commodity forward contracts and derivative contracts (collectively, the "Trading Contracts"). The physical commodity contracts provided for the delivery or receipt of energy commodities. As a general matter, derivative contracts are financial contracts whose values are based on, or "derived" from, the price of a traditional security such as a stock or bond, an asset such as a commodity, an interest rate, or a market index. In the case of energy derivatives, the financial contracts typically are based on an index

price of an energy commodity or the comparative difference between two indices based on energy commodities. The ET Debtors' businesses were, by their nature, sensitive to fluctuations in energy and energy-related commodities prices, interest rates and foreign currency exchange rates. The ET Debtors entered into derivative contracts to reduce the risks associated with such fluctuations. Derivative contracts can take a number of different forms, including futures contracts, swap contracts, option contracts or combinations of the foregoing.

In certain circumstances, the ET Debtors' counterparties to the Trading Contracts required that the ET Debtors' performance obligations under the Trading Contracts be secured by NEGТ guarantees, cash collateral, letters of credit or pledges of certain of the ET Debtors' assets to the counterparty where the Debtors' obligations to the counterparty under outstanding Trading Contracts exceeded a predetermined threshold.

### **C. The Quantum Debtors**

#### Quantum

Quantum was incorporated on March 21, 1994 and is now a wholly owned indirect subsidiary of NEGТ. Quantum is a holding company, which owns and manages two subsidiaries: (i) ESV; and (ii) Barakat & Chamberlain, Inc. Quantum has few creditors and no significant assets, other than its interest in its subsidiaries, which, as of June 30, 2003, had a negative value. In connection with the Quantum Debtors' chapter 11 filing, the Company (defined below) determined that it would be best to liquidate Quantum's business through a chapter 11 filing. Pursuant to the Plan, Quantum will be dissolved as of the Effective Date.

#### ESV

ESV was formed in April of 2000<sup>9</sup> to manage the residual assets and liabilities remaining after Quantum Ventures, ESV's current parent, agreed to sell the stock of PG&E Energy Services Corporation ("Energy Services"), and much of Energy Services's business (principally that portion involving retail gas and electricity commodities) to Enron Energy Marketing Corp. ("Enron"). An additional part of the Energy Services business (principally its "value added" business, which focused on the construction and maintenance of energy-related equipment) was subsequently sold to Chevron USA, Inc. (together with the sale to Enron, the "Energy Services Sales"). Specifically, ESV was formed to assume the remaining contracts (the "Remaining Contracts") not conveyed in the Energy Services Sales and to provide transition services related to the Energy Services Sales.

The Remaining Contracts consisted of contracts with two wineries in California, the Robert Mondavi Corporation ("Mondavi") and Canandaigua Wine

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<sup>9</sup> ESV was then known as PG&E Energy Services, LLC, and became PG&E Energy Services, Inc. in July 2000. On October 2, 2003, its name was changed to Energy Services Ventures, Inc.

Company, Inc. f/k/a Canandaigua West, Inc. (“Canandaigua”). These contracts provided that ESV was to construct, operate, maintain and supply power to the substations for the wineries. The substations reduced incoming voltage to a lower voltage usable by the wineries. This process allowed Mondavi and Canandaigua to benefit from the lower prices charged for higher-voltage deliveries. On July 29, 2003, ESV filed a motion to reject the Remaining Contracts, which motion was approved by the Bankruptcy Court at the August 27, 2004 omnibus hearing.

Barakat & Chamberlain, Inc.

In June 1997, Energy Services acquired Barakat and Chamberlain, Inc. (“BCI”), a consulting firm (the “BCI Purchase”). BCI, a non-debtor subsidiary of Quantum, is currently inactive. In connection with the BCI Purchase, BCI issued certain promissory notes to BCI’s former shareholders (the “BCI Notes”) and agreed to pay interest on deferred compensation obligations every month through May 2007. The BCI Notes and deferred compensation obligations are to be paid in full in June 2007. BCI’s rights and obligations under the BCI Notes and deferred compensation agreements were assigned to ESV.<sup>10</sup> ESV defaulted on the BCI Notes. Claims against ESV relating to the BCI Notes total \$2,946,206.80.

**D. Summary of Prepetition Indebtedness**

Certain of the ET Debtors are parties to a letter of credit agreement, dated as of November 13, 1998, with JP Morgan Chase Bank f/k/a The Chase Manhattan Bank (the “JP Morgan Chase Facility”), in the face amount of \$35 million.<sup>11</sup> Additionally, certain of the ET Debtors are parties to a letter of credit agreement, dated as of November 13, 1998, with the Bank of Montreal (the “Bank of Montreal Facility”), in the face amount of \$19 million.<sup>12</sup>

The Debtors are not party to any bank credit facilities and are not borrowers or guarantors under any bond or note issuances.

**E. Certain Events Leading to the Debtors’ Chapter 11 Filings**

In 2002, energy markets experienced several significant adverse changes, including:

- Contractions and instability of energy markets;

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<sup>10</sup> PG&E Corporation guaranteed these obligations.

<sup>11</sup> Currently, the total amount outstanding under the JP Morgan Chase Facility is \$9.4 million.

<sup>12</sup> The total amount outstanding under the Bank of Montreal Facility remains at \$19 million.

- A significant decline in generation margins (or “spark spreads”) caused by excess supply and reduced demand in most regions of the United States;
- Loss of confidence in energy companies due to increased scrutiny by regulators, elected officials and investors as a result of a number of financial scandals unrelated to the ET Debtors; and
- Significant financial distress and liquidity problems among market participants.

NEGT and its subsidiaries (collectively, the “Company”) were significantly impacted by these adverse changes in 2002. By the second half of 2002, most of the Company’s debt instruments, which had carried investment grade credit ratings, were downgraded to below investment grade rating. The downgrade had an immediate adverse affect on the ET Debtors. As a direct consequence of the downgrade, many contract counterparties demanded cash collateral to secure the ET Debtors’ contingent obligations thereunder. Meanwhile, the downgrade also limited the ET Debtors’ access to the cash necessary to meet those collateral calls. Moreover, the widespread and well-publicized collapse of the energy trading industry eliminated any real hope that the ET Debtors’ trading operations would become profitable in the foreseeable future.

Beginning in 2002, the Company attempted to restructure its debt obligations and other commitments. The Company sought to sell or transfer certain assets, and to reduce significantly energy trading operations in an ongoing effort to raise cash and reduce debt.

#### **F. The Debtors’ Boards of Directors**

The following individuals currently sit on each of the ET Debtors’ Boards of Directors: (i) Robert W. Barron, President of each of the ET Debtors; and (ii) Sanford L. Hartman, Vice President, General Counsel and Assistant Secretary of each of the ET Debtors.<sup>13</sup> The following individuals currently sit on Quantum’s Board of Directors: (i) P. Chrisman Iribe, President of Quantum; and (ii) Sanford L. Hartman, Vice President and Assistant Secretary of Quantum. The following individuals currently sit on ESV’s Board of Directors: (i) P. Chrisman Iribe, President of ESV; (ii) John C. Barpoulis, Vice President and Treasurer of ESV; and (iii) Sanford L. Hartman, Vice President and Assistant Secretary of ESV.

#### **G. Overview of the Chapter 11 Cases**

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<sup>13</sup> Although ET Power does not have its own officers and directors, all actions are taken through its sole general partner, ET Holdings.

On July 8, 2003, NEGТ and each of the ET Debtors filed a voluntary chapter 11 petition with the Bankruptcy Court. The Quantum Debtors each filed a chapter 11 petition in the Bankruptcy Court on July 29, 2003. The chapter 11 cases of NEGТ, the ET Debtors and the Quantum Debtors were consolidated for procedural purposes only and are being jointly administered. The Debtors have continued in possession of their properties and in the management of their businesses as debtors in possession.

#### **1. The ET Committee**

On July 17, 2003, the United States Trustee for Region Four (Greenbelt Office) (the “United States Trustee”) appointed an interim official committee of unsecured creditors in the ET Debtors’ cases.<sup>14</sup> The ET Committee is comprised of the following members: (i) CL Power Sales Ten, LLC, a counterparty to a Trading Contract; (ii) Ira Block, a former ET employee; and (iii) Southaven Power, LLC, a counterparty to a Tolling Agreement. Pursuant to a letter agreement dated December 10, 2003, counsel to the ET Committee agreed to not disclose to the ET Committee any material identified by the ET Debtors as “sensitive settlement information” without prior approval from the ET Debtors. In addition, counsel to the ET Committee agreed not to share confidential information with a specific member of the ET Committee when the information in question relates to an asserted or unasserted claim by or against such member.

#### **2. First Day Pleadings and Orders**

The Debtors obtained critical “first day” relief to allow the Debtors’ businesses to continue to the extent necessary to liquidate their assets efficiently. Motions, applications and other pleadings filed by the Debtors in furtherance of this goal and approved by the Bankruptcy Court included the following:<sup>15</sup>

First Day Affidavit. The Debtors filed an affidavit of John C. Barpoulis, the Vice President and Treasurer of NEGТ and the ET Debtors, that summarized the Debtors’ history, the circumstances that precipitated the chapter 11 filings and the justification for the relief sought in the other first-day pleadings.

Cash Management Motion. In the absence of special relief from the Bankruptcy Court, under applicable provisions of the bankruptcy laws, the Debtors would have been required to transfer all of their cash to new bank accounts that the Debtors would have been required to establish, and mark all checks sent by the Debtors

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<sup>14</sup> On the same date, separate official creditors’ committees were appointed: (a) for NEGТ; and (b) in the separately administered chapter 11 case of USGen NE. On August 4, 2003, the United States Trustee, in accordance with the Bankruptcy Court’s directive, also appointed an official noteholders’ committee in the NEGТ case.

<sup>15</sup> Although the “first day” papers were filed prior to the filing of the Quantum Debtors’ chapter 11 petitions, by order dated August 7, 2003, the Bankruptcy Court made certain “first day” papers applicable to the Quantum Debtors.

with the legend “debtor-in-possession.” In addition, the Debtors would have been required to maintain their liquid assets only in accounts supported by a bond, or backed by the full faith and credit of the United States. In large chapter 11 cases, compliance with these rules generally is expensive and/or impracticable, and does not advance each respective rule’s underlying purpose. Accordingly, the Debtors obtained the Bankruptcy Court’s authorization to maintain the Debtors’ pre-bankruptcy cash management practices and investment policy, subject to the Debtors’ obligation to strictly delineate between pre- and post-Petition Date transactions and obligations.

Employee Motion. In order to maintain the uninterrupted operation of their businesses, minimize administrative expenses and maintain employee morale, the Debtors obtained authority from the Bankruptcy Court to continue, uninterrupted, their pre-petition personnel policies and payroll procedures, pursuant to which the Debtors pay various employer-affiliates for the services provided by such affiliates’ employees.

Retention Applications. The Debtors obtained orders of the Bankruptcy Court authorizing them to retain attorneys, accountants and financial advisors.

Ordinary Course Professionals Motion. In addition to the professionals referred to above, the Debtors have other professionals to perform discrete functions not directly related to the chapter 11 cases, and/or for relatively *de minimis* fees (“Ordinary Course Professionals”). Rather than burden the Bankruptcy Court and the Ordinary Course Professionals by requiring full-scale retention applications, the Debtors obtained approval of a streamlined procedure that is commonly employed in the Bankruptcy Court with respect to Ordinary Course Professionals.

Interim Compensation Motion. Consistent with local procedure, the Debtors obtained approval of interim compensation procedures for professionals which, in general, allow professionals to bill and receive payment on a monthly basis, subject to a “holdback” that is not released to the professionals until the approval of interim fee applications, which are filed with the Bankruptcy Court three times per calendar year.

Retention of Bankruptcy Services, LLC. In cases the size of the Debtors’, the Bankruptcy Court generally will require the Debtors to retain an outside claims agent to administer and process the filing of claims against the Debtors. Often, the same claims agent also assists in the transmission of notices to creditors and other parties in interest. Accordingly, the Debtors received authority to retain Bankruptcy Services, LLC as their claims and notice agent.

### **3. Change of Name and Corporate Logo**

Prior to and in anticipation of the commencement of their respective chapter 11 cases, the Company began a process of complete separation from PG&E Corporation. As part of this separation process, some of the Debtors sought to remove references to “PG&E” from their names and make certain other modifications to their

names in connection therewith.<sup>16</sup> The name changes signified the beginning of a new stage for the Company and its employees and became an important step in announcing the Company's intention to separate formally and legally from PG&E Corporation. After the approval of each of the Debtors' respective boards of directors, the Debtors filed a motion, pursuant to section 105(a) of the Bankruptcy Code, seeking an order from the Bankruptcy Court authorizing the Debtors to change their respective names and logotypes, and modify case captions accordingly. On October 2, 2003, the motion was granted.

#### **4. Key Employee Retention Plans**

On or about August 19, 2003, the ET Debtors and USGen NE filed a motion to approve an amended and restated retention plan (the "Initial Retention Plan") to provide a retention bonus for eligible employees performing services for the ET Debtors, NEGT or USGen NE if they remain employed throughout the restructuring of the respective Debtor, NEGT or USGen NE, as applicable. The Court approved the Initial Retention Plan on September 25, 2003.

Pursuant to the Initial Retention Plan, eligible employees are entitled to receive a bonus ("Bonus"), and an additional 15% or 25% of the Bonus depending on when the effective date of the chapter 11 plan for the entity for which the employee provides services occurs, provided that his/her employment continues through certain specified payment dates. Assuming all eligible employees are terminated, the ET Debtors' maximum liability will be approximately \$1,500,000.

In June 2004, the Company determined that additional retention incentives were needed to retain and motivate key employees (*i.e.*, employees who are crucial to the wind down and sale of the Company's business lines). Accordingly, the Company created the NEGT Services Company, LLC Key Employee Retention Plan (the "NEGT Services Retention Plan"), which applies to, among others, six key employees of NEGT Services Company, LLC ("NEGT Services") who are critical to the successful liquidation of the ET Debtors. The NEGT Services Retention Plan provides for both guaranteed and discretionary bonuses for such employees. In an order dated July 23, 2004, this Court authorized the ET Debtors to reimburse NEGT Services for payments made on behalf of the ET Debtors pursuant to the NEGT Services Retention Plan.<sup>17</sup> Assuming all eligible employees remain until their expected termination dates, the ET Debtors' maximum liability under the NEGT Services Retention Plan is approximately \$550,000.

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<sup>16</sup> Quantum Ventures does not have "PG&E" in its name and therefore did not make any changes thereto.

<sup>17</sup> On July 15, 2004, NEGT also filed a motion to approve its Phase II Key Employee Retention Plan, which provides for bonuses for employees who are assisting with the wind down and sale of the gas pipelines and the independent power producers. The motion was granted by the Bankruptcy Court on September 7, 2004.

**5. Prepetition Tax Sharing Agreement with PG&E Corporation and Related Settlement Agreements**

Since its formation in 1998, NEGТ and its subsidiaries, including the Debtors (other than ET Power, which is not a taxpayer), have been included in the consolidated tax return of PG&E Corporation. For certain of the years before 2001, PG&E Corporation made payments to NEGТ commensurate with the tax savings achieved through the incorporation of NEGТ's losses and tax credits in PG&E Corporation's consolidated federal tax return for those years. In tax year 2001, NEGТ paid to PG&E Corporation the amount of its federal tax liability.

NEGТ contended that the foregoing arrangements and the documentation pursuant to which they were implemented gave rise to an enforceable tax sharing agreement between PG&E Corporation and NEGТ giving rise to significant claims against PG&E Corporation. PG&E Corporation vigorously disputed NEGТ's allegations. On November 12, 2002, PG&E Corporation notified NEGТ of PG&E Corporation's position that to the extent that a tax sharing agreement existed and had not been terminated previously, it was terminated effective immediately. On December 24, 2002, NEGТ sent a letter to PG&E Corporation reserving all rights against PG&E Corporation with respect to such tax sharing agreement.

In August 2003, NEGТ commenced Adversary Proceeding No. 03-1249 (the "Tax Litigation") against PG&E Corporation. On April 22, 2004, the United States District Court for the District of Maryland (the "District Court") withdrew the reference of the Tax Litigation. On August 30, 2004, NEGТ filed a motion to approve a settlement agreement with PG&E Corporation respecting, among other things, the Tax Litigation (the "NEGТ/PG&E Corporation Settlement"). In an order dated September 23, 2004, the Bankruptcy Court approved the NEGТ/PG&E Corporation Settlement.

In connection with the NEGТ/PG&E Corporation Settlement, the Debtors and NEGТ entered into a settlement agreement regarding various tax matters and claims related thereto (the "Liquidating Debtors/NEGТ Settlement"). In an order dated October 8, 2004, the Bankruptcy Court approved the Liquidating Debtors/NEGТ Settlement. A summary of the key terms of the Liquidating Debtors/NEGТ Settlement is as follows:

- From and after the Effective Date of the NEGТ Plan, the Debtors (other than ET Power) will be a part of NEGТ's consolidated tax group;
- In settlement of all claims between and among the Debtors and NEGТ arising prior to the Petition Date, and related to the recognition of tax benefits or burdens generated by, or the use of tax attributes of, the Debtors, the respective Debtors and NEGТ shall recognize the claims in the amounts set forth in the Liquidating Debtors/NEGТ Settlement, and



subject to any rights of recoupment or offset, such claims shall be allowed as general unsecured claims in the applicable Debtor's chapter 11 case;<sup>18</sup>

- For all periods beginning on and following the Petition Date, the Debtors shall have no claims against NEGT related to the recognition of tax benefits or burdens generated by, or the use of tax attributes of, the Debtors;
- For all periods beginning on and following the Petition Date, NEGT shall have no claims against the Debtors related to the recognition of tax benefits or burdens generated by, or the use of tax attributes of, the Debtors;
- The Debtors shall each be separately liable for any and all income taxes that are due and payable: (i) separately by any such entity and for which tax returns are filed in the name of such entity; and (ii) by any unitary or other combined group which consists solely of some or all of the Debtors;
- The Debtors will execute the mutual release with PG&E Corporation;
- NEGT is entitled to retain all amounts recovered from PG&E Corporation in connection with the NEGT/PG&E Corporation Settlement for the benefit of NEGT's creditors;
- NEGT shall satisfy that certain note (the "Hold Co. Note") dated September 30, 2001 by and between NEGT and NEGT Energy Company, LLC ("NEGT Energy") in the form of an equity contribution to NEGT Energy and NEGT will waive all rights of recovery with respect to such note;
- Neither Enterprises nor NEGT shall challenge the amount, validity or priority of that certain note by and between PG&E Enterprises, Inc. n/k/a NEGT Enterprises, Inc. and USGen Power Services, L.P. n/k/a NEGT Energy Trading - Power, L.P., and Enterprises confirms its existing payment obligation under, and the continued enforceability of, the Enterprise Note;
- NEGT shall have an allowed general unsecured claim against ET Gas in the amount of \$37,541,293.09<sup>19</sup> on account of claims arising under certain

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<sup>18</sup> The settlement of claims under the Liquidating Debtors/NEGT Settlement was incorporated into a subsequent intercompany settlement agreement. See section II.G.6.

<sup>19</sup> This amount was initially listed as \$38,779,751 in the Liquidating Debtors/NEGT Settlement, however, a revised number of \$37,541,293.09 was ultimately incorporated into the subsequent intercompany settlement agreement.

letters of credit issued for the benefit of ET Gas by JP Morgan Chase Bank (“Chase”) pursuant to that certain Amended and Restated Credit Agreement dated August 22, 2001; provided, however, that NEGТ shall not recover more from ET Gas than any amount actually paid to Chase (or any party succeeding to Chase’s claim) in connection with such letters of credit;

- NEGТ shall have an allowed general unsecured claim against ET Power in the amount of \$34,784,535<sup>20</sup> on account of claims arising under certain letters of credit issued for the benefit of ET Power by Chase pursuant to that certain Amended and Restated Credit Agreement dated August 22, 2001 between NEGТ and Chase; provided, however, that NEGТ shall not recover more from ET Power than any amount actually paid to Chase (or any party succeeding to Chase’s claim) in connection with such letters of credit; and
- NEGТ shall have an allowed general unsecured claim against each of the ET Debtors, other than ET Investments, in the amount of any actual payment made by NEGТ to Chase (or any party succeeding to Chase’s claim) in connection with that certain \$35,000,000 credit agreement, dated as of November 13, 1998, among NEGТ Energy Trading - Gas Corporation, NEGТ Energy Trading, Canada Corporation, NEGТ Energy Trading Power Holdings Corporation, NEGТ Energy Trading - Power, L.P. and The Chase Manhattan Bank (now known as JPMorgan Chase Bank), as amended, modified or supplemented; provided, however, that NEGТ shall not recover more, in the aggregate, from whatever source, than any amount actually paid by NEGТ to Chase (or any party succeeding to Chase’s claim).

## 6. Claims Resolution

The Bankruptcy Court fixed January 9, 2004, as the last date for filing claims against the Debtors (the “Bar Date”). The total amount of timely filed asserted claims against the ET Debtors, excluding claims, if any, by certain insiders and certain intercompany claimants not required to file claims on or before the Bar Date, is approximately \$1,150,389,760. The total amount of timely filed asserted claims against the Quantum Debtors, excluding claims, if any, by certain insiders and certain intercompany claimants not required to file claims on or before the Bar Date, is approximately \$18,505,377.45. The Debtors are in the process of reviewing and objecting to various claims. In July 2004, the Debtors filed their first set of omnibus objections pursuant to which they have objected to: (i) late-filed claims; (ii) unsupported claims; (iii) duplicative claims; and (iv) claims filed against the wrong legal entity.

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<sup>20</sup> This amount was initially listed as \$34,777,854 in the Liquidating Debtors/NEGТ Settlement, however, a revised number of \$34,784,535 was ultimately incorporated into the subsequent intercompany settlement agreement.

Pursuant to various orders dated October 27, 2004, this Court expunged 19 claims filed against the Debtors. In addition, the Debtors have filed various individual objections to claims filed in these cases. Certain of those objections have been sustained, while others have been consensually resolved or remain pending. The Debtors continue to review claims filed in these cases and will file additional objections at such time as they deem appropriate.

#### Intercompany Claims

The Debtors, NEGTEC, USGen NE (collectively, the “Affiliated Debtors”), and NEGTEC’s non-Debtor subsidiaries that were not required to file proofs of claim in advance of the Bar Date (the “Controlled Subs”) have a number of intercompany claims running between and among them which in the aggregate totals hundreds of millions of dollars. In order to resolve prepetition obligations between the Controlled Subs, the Affiliated Debtors filed a motion, pursuant to Bankruptcy Code sections 502 and 363 and Bankruptcy Rule 9019, which: (i) proposed a settlement for the majority of intercompany claims; and (ii) requested that a bar date be set for the filing of certain intercompany claims (the “Original 9019 Motion”). By order dated June 18, 2004, the intercompany bar date was set at July 27, 2004 and the settlement portion of the motion was adjourned until a later hearing date. In light of various developments in these cases, the Debtors determined that the settlements set forth in the Original 9019 Motion needed to be substantially modified. Accordingly, the Affiliated Debtors withdrew the Original 9019 Motion. The Debtors and NEGTEC subsequently filed a motion to approve a revised settlement respecting intercompany claims (the “Revised 9019 Motion”) which did not cover claims filed by or against USGen NE. The revised settlement incorporated the claims allowed under prior settlements, including the Liquidating Debtors/NEGTEC Settlement. By Order dated December 20, 2004, the Bankruptcy Court approved the Revised 9019 Motion.

One of the intercompany claims allowed under the order approving the Revised 9019 Motion is a claim for \$175,458,921 by ET Holdings against ET Power (the “Holdings Claim”). As discussed in section I.C, ET Power’s creditors have claims against ET Holdings equal to the amount of claims against ET Power by virtue of ET Holdings’s status as general partner of ET Power (the “Partnership Claim”). The Debtors and the ET Committee have agreed that the Holdings Claim and the Partnership Claim should be offset against each other in determining the gross amount of the claim to be asserted against ET Holdings on behalf of the creditors of ET Power. This offset accounts for the deduction of \$175,458,921 contained in the definition of “Pro Rata” in section 1.60 of the Plan.

On July 3, 2003, USGen NE and ET Power entered into a mutual release agreement (the “Mutual Release”), pursuant to which the respective claims of USGen NE and ET Power under: (i) the master electric agreement between USGen NE and ET Power; and (ii) the series of master contracts pursuant to which USGen NE and ET Power would buy and sell various commodities, were netted out and reduced to a sum certain. By order dated May 13, 2004, the Bankruptcy Court approved the Mutual

Release and granted ET Power a general unsecured claim against USGen NE in the amount of \$81,886,746.

## 7. The Settlement Protocol

Recognizing the unique status of certain Trading Contracts in the financial and commodity markets (collectively, “Safe Harbor Contracts”), the Bankruptcy Code now contains certain so-called “safe harbor” provisions (contained in sections 555, 556, 559 and 560 thereof) regarding such Trading Contracts to which a debtor in possession is a party. These provisions generally permit non-debtor counterparties to Safe Harbor Contracts to exercise certain rights and remedies not generally available to other contract counterparties in a bankruptcy case. Among the “safe harbor” rights and protections under the Bankruptcy Code are provisions that: (a) allow the non-debtor party to terminate, liquidate and apply collateral held under a Safe Harbor Contract upon a bankruptcy of the other party, notwithstanding section 365(e)(1) of the Bankruptcy Code; (b) protect prepetition payments made under a Safe Harbor Contract by the debtor to the non-debtor party from the avoidance powers of a trustee or debtor in possession except in particular cases of actual intent to defraud other creditors; and (c) permit the non-debtor party to set off mutual debts and claims against the debtor under a Safe Harbor Contract without the need to obtain relief from the automatic stay, so long as such Safe Harbor Contracts allow for such setoff.<sup>21</sup>

By order dated November 17, 2003, the Bankruptcy Court authorized and approved specified procedures for the settlement of Trading Contract termination claims (the “Settlement Protocol”). Pursuant to the Settlement Protocol, the ET Debtors advise the ET Committee of potential settlement agreements with counterparties relating to termination payments owed under Trading Contracts. The Settlement Protocol requires that, prior to entering into any such settlement agreement, the ET Debtors submit such proposed settlement agreement to the ET Committee.<sup>22</sup> The ET Committee has ten (10) business days to approve or disapprove the settlement.

If the ET Committee approves a particular proposed settlement or does not disapprove it in writing during the ten-business-day period, the ET Debtors file a notice of the settlement with the Court (the “Settlement Notice”). If a net payment is due *to* the ET Debtors under a particular proposed settlement, such payment is collected by the ET Debtors and the appropriate releases are entered into among the ET Debtors and the counterparty. If a net payment is due *from* the ET Debtors, no payment is made immediately (exclusive of any portion of such claim that first arose postpetition), but the counterparty may have a liquidated claim in the actual amount of any such net payment payable to such counterparty.

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<sup>21</sup> These provisions are contained in sections 362(b)(6), (7) and (17); 546(e), (f) and (g); 548(d)(2)(B),(C), and (D); 553(e)(1); 555, 556, 559 and 560 of the Bankruptcy Code.

<sup>22</sup> If NEGT has exposure under a Trading Contract (*i.e.*, a guaranty or other obligation), the ET Debtors also submit the proposed settlement to the official committee in the NEGT case as well.

## **8. Mediation Protocol**

On December 3, 2003, the ET Debtors filed a motion to approve procedures (the “Mediation Protocol”) for the mediation of disputes arising under, among other things, the Trading Contracts and the Tolling Agreements (collectively, the “ET Agreements”). The Mediation Protocol was approved by Order dated January 7, 2004. Under the Mediation Protocol, objections to claims and adversary proceedings (*i.e.*, lawsuits filed in the Bankruptcy Court) arising under the ET Agreements are stayed for a period of time so that the parties may attempt to consensually resolve their disputes with the aid of a court-approved mediator. To the extent NEGT has exposure with respect to any trading guarantees, it may participate in the Mediation Protocol.

## **9. Tolling Agreement Disputes**

As of the Petition Date, ET Power was the non-owner party to three separate Tolling Agreements (see Article II.B above) with the following parties: (i) Liberty Electric Power, LLC (“Liberty”); (ii) Southaven Power, LLC (“Southaven”); and (iii) Caledonia Generating, LLC (“Caledonia”). These Tolling Agreements were long-term contracts, with terms varying from approximately 15 to 25 years. The tolling fee paid by ET Power to each plant owner was fixed and specified by contract, subject to an escalation clause tied in part to inflation. Given the expected growth in demand for electricity in the long term, the Tolling Agreements were projected to be profitable for the ET Debtors in later years. In the short term, however, a decline in electricity demand and prices, coupled with an increase in fuel prices, made the Tolling Agreements unprofitable or otherwise not useful to ET Power. The monthly payments under the Tolling Agreements represented an enormous drain on the cash flow of the ET Debtors. On the Petition Date, the Debtors filed a motion to reject the Tolling Agreements, which motion was approved by the Bankruptcy Court by orders dated August 4, 2003 and August 6, 2003.

### **a. Liberty**

ET Power and Liberty entered into a Tolling Agreement (the “Liberty Agreement”) on or about April 14, 2000. Under the Liberty Agreement, ET Power had the right but not the obligation to call on the use of the generating facility (*i.e.*, provide fuel to the plant and take the resultant electricity and capacity). In exchange, ET Power was obligated under the Liberty Agreement to make monthly payments, or tolling fees, based on a contractually-based pricing formula. By guarantee dated February 6, 2001, Gas Transmission Northwest Corporation (“GTNC”), one of NEGT’s non-debtor subsidiaries, guaranteed ET Power’s obligations under the Liberty Agreement. In addition, by guarantee dated February 6, 2001, NEGT also guaranteed ET Power’s obligations under the Liberty Agreement. As noted above, the Bankruptcy Court approved the Debtors’ motion to reject the Liberty Agreement.

In a letter dated July 30, 2003, Liberty stated that ET Power owed Liberty \$176,770,704 for the forward value of the Liberty Agreement, plus certain additional amounts, as a termination payment for the rejection of the Liberty Agreement. In

addition, on September 11, 2003, Liberty filed two suits against GTNC in the United States District Court in Texas. In the first suit, Liberty seeks GTNC's payment of \$140 million under the guarantee associated with Liberty's purported rejection damages. In the second suit, Liberty seeks \$5.4 million from GTNC under the Liberty guarantee related to tolling payments that ET Power allegedly failed to make prior to ET Power's bankruptcy filing.

On September 23, 2003, ET Power provided Liberty with its calculation of the termination payment. Also on September 23, 2003, ET Power, NEGТ and GTNC filed an adversary proceeding (the "Adversary Proceeding") against Liberty, seeking declaratory relief, injunctive relief and damages from Liberty for failure to make payments under the Liberty Agreement.

The Bankruptcy Court subsequently ruled that: (i) it would refer the Adversary Proceeding to mandatory mediation, and that during such mediation period the Adversary Proceeding would be stayed; *but* (ii) if the mediation failed, the dispute would proceed to arbitration pursuant to the terms of the Liberty Agreement. The parties did not reach a settlement during the mediation and currently are arbitrating the dispute.

On October 15, 2004, the parties submitted their "baseball arbitration" offers.<sup>23</sup> Liberty's baseball arbitration offer was \$167.4 million and ET Power's baseball arbitration offer was \$78 million. The hearings took place in November and December 2004. Revised offers were submitted to the arbitration panel at the close of the hearings. Liberty's revised baseball arbitration offer was approximately \$145 million and ET Power's revised baseball arbitration offer was approximately \$95 million. The parties expect that the dispute will be resolved sometime during the first quarter of 2005.

**b. Southaven/Caledonia**

ET Power entered into separate Tolling Agreements (collectively, the "Agreements") with Southaven and Caledonia, dated as of June 1, 2000 and September 20, 2000, respectively. Pursuant to the Agreements, Southaven and Caledonia were to deliver and sell to ET Power, and ET Power was to purchase, all of the electrical capacity, ancillary services, fuel conversion services and various other products from electric generating facilities in Mississippi. NEGТ guaranteed ET Power's obligations under the Agreements.

On November 12, 2002, ET Power notified Southaven and Caledonia of an event of default as a result of their failure to meet certain requirements respecting the ability of the facility to inject output into the applicable control area. ET Power contended that Southaven and Caledonia were not able to cure their defaults within the period specified in the Agreements and, accordingly, on February 4, 2003, ET Power provided notice to Southaven and Caledonia of its termination of the Agreements.

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<sup>23</sup> In a baseball arbitration, each party, prior to the arbitration, submits a proposed award amount to the arbitrator. The arbitrator must then choose one of the proposed offers as the final award.

On February 7, 2003, Southaven and Caledonia filed emergency petitions against ET Power in the Circuit Court for Montgomery County, Maryland (the “State Court Action”) to compel arbitration or, in the alternative, for a temporary restraining order. On March 3, 2003, Southaven and Caledonia obtained an order requiring ET Power to continue to perform its obligations under the Agreements. ET Power filed an appeal and, on March 24, 2003, ET Power commenced arbitration proceedings against Southaven and Caledonia. The arbitration and the State Court Action were stayed as of the Petition Date.

The Agreements provide for damages in the event of material breach (*i.e.*, a termination payment), subject to a \$500 million cap. Determination of the termination payment is based on a formula that takes into account a number of factors, including such market conditions as the price of power and the price of fuel. Because of changes in market conditions over time, it is difficult to precisely quantify the amount of any potential termination payment.

On August 26, 2004, ET Power and NEGTE filed a motion to approve a stipulation with Southaven and Caledonia (the “Tolling Stipulation”), pursuant to which the parties agreed to proceed to arbitration in order to resolve the tolling disputes. In an order dated September 27, 2004, the Bankruptcy Court approved the Tolling Stipulation. Arbitrators have been selected, and the initial pre-hearing conference has been scheduled for February 22, 2005.

**c. Impact on Creditor Recoveries**

The outcome of the arbitrations against Liberty, Southaven and Caledonia (collectively, the “Tolling Arbitrations”) likely will be the single most decisive factor in determining the percentage recoveries to creditors of ET Power (Class 6) and ET Holdings (Class 5). As noted above, the Liberty arbitrator will select one of the parties’ baseball arbitration offers. The Southaven and Caledonia arbitrations will not be structured as baseball arbitrations and, accordingly, the arbitrators will be free to make their own determinations as to the amount of damages. Southaven filed a proof of claim against ET Power in the amount of \$500 million. Caledonia filed an unliquidated proof of claim against ET Power. The Debtors vigorously contest these claims and believe that they do not owe any damages to Southaven or Caledonia. Among other things, the Debtors believe that Southaven and Caledonia breached the agreements well before the commencement of the Chapter 11 Cases and, therefore, the agreements were validly terminated by ET Power prior to the Petition Date. Due to the sensitive nature of the ongoing litigation and the importance of maintaining confidentiality of the Debtors’ internal litigation analyses, the Debtors cannot provide any prediction regarding the likely outcomes of the arbitrations with Southaven and Caledonia.

If the Debtors prevail entirely in the Tolling Arbitrations (*i.e.*, ET Power’s baseball arbitration offer is selected and the Southaven/Caledonia arbitrators determine that Southaven and Caledonia are not entitled to damages), then the percentage recovery for holders of Allowed Class 5 Claims likely will range from 90% to 100% and the percentage recovery for holders of Allowed Class 6 Claims likely will range from 90% to

100%. Conversely, if the Debtors are entirely unsuccessful in the Tolling Arbitrations (*i.e.*, Liberty’s baseball arbitration offer is selected and the Southaven/Caledonia arbitrators determine that ET Power must satisfy the asserted claims<sup>24</sup> in full), then the percentage recovery for holders of Allowed Class 5 Claims likely will range from 25% to 30% and the percentage recovery for holders of Allowed Class 6 Claims likely will range from 35% to 45%.

## 10. Employee Litigation

Six former employees of ET Holdings have contested claims pending against ET Holdings for bonus payments allegedly due them. These six employees are: Judith Tanselle, Matthew Vincent, Matthew Schweider, Adam Hoffman, Adam Mirick and Benoit Vallieres. In each case, ET Holdings has denied that the former employees are entitled to any additional bonus payments. Four of the former employees (Tanselle, Hoffman, Mirick and Vallieres) also have made claims for deferred compensation. The underlying deferred compensation claims are not contested, but entitlement to any additional damages under the Maryland Wage Payment Act is contested.

Three of the six former employees, Tanselle, Vincent and Schwieder, are pursuing their claims as part of a single case in the Circuit Court for Montgomery County, Maryland. *Tanselle v. PG&E Energy Trading Holdings, Corp. et al.*, Civil Docket No. 242876-V (the “State Court Action”). This case had been removed to the United States Bankruptcy Court for the District of Maryland, but was remanded to state court in February 2004. The other three former employees, Hoffman, Mirick and Vallieres, filed separate proofs of claim in the Maryland bankruptcy court after that court stayed their state court claims. *In re: National Energy & Gas Transmission, Inc. (f/k/a PG&E National Energy Group, Inc.), et al.*, jointly administered under Docket No. 03-30459 (PM) (the “Bankruptcy Court Action”).<sup>25</sup>

The three former employees’ claims proceeding in the State Court Action, and Hoffman’s claim proceeding in the Bankruptcy Court Action are in the midst of discovery. Mirick’s and Vallieres’ claims were recently consolidated with Hoffman’s claim, yet no additional discovery on their respective claims has yet begun.

## 11. FERC Proceedings

On July 25, 2001, the Federal Energy Regulatory Commission (“FERC”) ordered that refunds may be due from sellers, including ET Power, who engaged in sales

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<sup>24</sup> As noted above, Caledonia filed an unliquidated claim. For purposes of this discussion, the Debtors assumed that Caledonia’s asserted claim is \$500 million (the amount of the cap under the agreement).

<sup>25</sup> A seventh former employee recently filed a late amendment to a proof of claim against ET Holdings in which he asserts that he, too, is entitled to additional bonus payments. ET Holdings intends to object to this claim on numerous grounds.



transactions of power in the California spot markets between October 2, 2000 and June 20, 2001 (the “Refund Period”). *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange, et al.*, Docket No. EL00-95 (the “California Refund Proceeding”). In the proceeding, FERC established a methodology based on mitigated market clearing prices to determine what refunds and payments were due for the Refund Period resulting from power sales at market prices that exceed prices determined by FERC in the California Refund Proceeding.

A FERC Administrative Law Judge (“ALJ”) held hearings and, on December 12, 2002, issued proposed findings regarding refunds. The ALJ’s proposed findings suggested that ET Power owed net refunds to the California Independent System Operator Corporation (the “ISO”) of \$9,558,304 (excluding interest) but is owed \$6,042,977 net (excluding interest) by the California Power Exchange Corporation (the “PX”).

On March 26, 2003, FERC adopted the ALJ’s proposed findings of fact in large part. FERC largely affirmed the ALJ’s decision (including allowing parties to offset amounts due to and due from each of the ISO and PX), with one notable exception: FERC adopted its staff’s recommendation on the appropriate natural gas price element of the market mitigation methodology used in part to determine just and reasonable power prices, which generally decreases the mitigated market prices that the ALJ determined. Therefore, refunds owed by ET Power for power sales to the ISO and PX likely will increase. FERC deferred determining the final amounts owed and owing until after it made its final decisions on requests for rehearing of its March 26, 2003 order.

On October 16, 2003, FERC issued an order on rehearing affirming the March 26, 2003 order in large part and directing the ISO and the PX to re-run the settlements and submit the results to FERC within five months. The October 16, 2003 and subsequent orders reiterated that sellers will have an opportunity to demonstrate that their overall costs would not be recovered using the market mitigated prices and that the revised refund therefore would result in losing money on their sales to the ISO/PX. The ISO has since advised FERC that the filing on who owes what to whom will not be provided until February 2005. A joint motion was filed on October 21, 2004 requesting an expedited schedule for clarification of the cost filing issue. Parties, including ET Power, have filed comments on the proper cost recovery methodology. Multiple parties have filed petitions for review of orders issued in this proceeding in the Ninth Circuit Court of Appeals, which currently are pending.

A separate (but similar) proceeding relating to potential refund liability for spot power sales in the Pacific Northwest during the period December 25, 2000 through June 25, 2001 also was brought at FERC (the “Pacific Northwest Refund Proceeding”). *Puget Sound Energy, Inc. v. All Jurisdictional Sellers*, Docket No. EL01-10. ET Power engaged in some sales covered by the proceeding, but on June 25, 2003, FERC issued an order denying refunds and terminating the matter without further proceedings. Multiple parties have filed petitions for review of orders issued in this proceeding in the Ninth Circuit Court of Appeals, which currently are pending.

The Ninth Circuit Court of Appeals also recently addressed the appeal of FERC's decision not to impose refunds for the pre-Refund Period (January 1, 2000 to June 20, 2001) based on certain parties' alleged failure to file transaction-specific data for power sales to the ISO, PX, and CDWR/CERS. *State of California ex rel. Bill Lockyer*, Docket No. EL02-71. In its order issued September 9, 2004, the Ninth Circuit did not order refunds, but remanded the case to FERC for a refund proceeding to consider remedial options. ET Power made power sales to the ISO, PX and CDWR/CERS during the referenced time period.

### FERC Investigations

On February 13, 2002, FERC directed its staff to conduct an investigation to determine whether any entity manipulated short-term prices for electric energy or natural gas in the West, or otherwise influenced wholesale electric prices in the West. *Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*, Docket No. PA02-2. FERC staff issued numerous data requests relating to various power trading strategies, including activities engaged in by Enron entities alleged to have constituted manipulative behavior. ET Power timely responded to FERC's data requests.

In addition, on November 20, 2002, FERC authorized wholesale sellers of electricity in California and in the Pacific Northwest to conduct additional discovery into alleged market manipulation by sellers during the western power crisis of 2000 and 2001. The massive discovery which ensued became known as the "100 Days of Discovery." The discovery period ended on February 28, 2003. ET Power received and responded to discovery requests. Certain parties filed supplemental alleged evidence of market manipulation on March 3, 2003. ET Power and others filed responses on March 20, 2003. FERC indicated in its March 26, 2003 Order that review of the additional allegations was ongoing, and that depending on the outcome of FERC's review, FERC might initiate additional enforcement actions against entities found to have engaged in market manipulation.

## **12. California Actions**

### Snohomish

On July 15, 2002, ET Holdings was named (and later served) in an action filed by the Public Utility District No. 1 of Snohomish County ("Snohomish"). *Pub. Util. Dist. No. 1 of Snohomish County v. Dynegy Power Marketing, et al.*, U.S. District Court for the Central District of California, Case No. 02-5553. Snohomish alleged that the defendants (numerous sellers of electricity) manipulated the deregulated California electricity market. Snohomish sought, based on various legal theories (e.g., state antitrust, and unfair and fraudulent business practices), among other remedies, disgorgement, restitution, injunctive relief, and treble damages. Snohomish also claimed that defendants failed to file their rates in advance with FERC, which failure was allegedly a violation of the Federal Power Act.

On August 28, 2002, the Judicial Panel on Multidistrict Litigation entered a conditional order transferring the Snohomish case to the Southern District of California before Judge Whaley. The panel determined that the Snohomish case involved common questions of law and fact with the actions currently captioned as *In Re California Wholesale Electricity Antitrust Litigation*, MDL 1405. On September 12, 2002, all defendants except one filed a motion to dismiss Snohomish's complaint based on the filed-rate doctrine and federal preemption, and the other defendant filed a separate motion to dismiss and to strike the complaint. On October 11, 2002, the Judicial Panel entered a final order transferring the Snohomish case to the Southern District of California before Judge Whaley. On January 7, 2003, Judge Whaley granted the defendants' motion to dismiss in the entirety. Snohomish appealed to the Ninth Circuit Court of Appeals. On September 10, 2004, the Ninth Circuit Court of Appeals affirmed the dismissal on the grounds that FERC has exclusive jurisdiction over interstate sales of wholesale electricity and continues to engage in regulatory activity. *Pub. Util. Dist. No. 1 of Snohomish County v. Dynegy Power Mkts., Inc.*, No. 03-55191, 2004 WL 2021424 (9<sup>th</sup> Cir. Sept. 10, 2004).

#### Millar

ET Power was named, along with multiple other defendants, in a proceeding brought by James A. Millar, individually and on behalf of the general public and as a representative taxpayer against energy suppliers and other unnamed sellers of electricity in the California markets. Millar filed the complaint, *Millar v. Allegheny Energy Supply, LLC*, Case No. 407 867 in San Francisco Superior Court on May 13, 2002. In his complaint, Millar asserts that the defendants violated state laws against unfair and fraudulent business practices by entering into certain long-term energy contracts with the California Department of Water Resources. Millar claims that the contracts were made under circumstances that resulted in excessively high and unfair prices and, as a result, refunds should be made to the extent that the prices in the contracts were excessive. In addition, Millar seeks, among other remedies, an order enjoining enforcement of the allegedly unfair terms and conditions of the long-term contracts, declaratory relief, and attorneys' fees. The litigation has recently been remanded to state court and is still at the pre-trial stage.

FERC previously dismissed the complaints involving the long-term contracts that comprise the subject matter of Millar's Complaint. *Public Util. Comm'n v. Allegheny Energy Supply Co., LLC, et al.*, Docket No. EL02-60-000 and *California Elec. Oversight Board v. Sellers of Energy and Capacity Under Long-Term Contracts with the Calif. Dep't of Water Resources*, Docket No. EL02-62-000. Appeals of the orders currently are pending in the Ninth Circuit Court of Appeals.

#### California Wholesale Electricity Antitrust Litigation, MDL 1405

ET Power, and one or more of its affiliates, have been named, along with multiple other defendants, in four putative class action lawsuits against generators, marketers and other unnamed sellers of electricity in California markets. These cases are:

(1) *Pier 23 Restaurant v. PG& Energy Trading Holdings Corp., et al.*, removed on February 26, 2001 to the United States District Court, Northern District of California; (2) *Hendricks v. Dynegy Power Marketing, Inc., PG&E Energy Trading Holding Corp., et al.*, removed on December 20, 2000, to the United States District Court, Southern District of California; (3) *Sweetwater Authority v. Dynegy Inc., PG&E Energy Trading Holdings Corp., et al.*, removed on March 5, 2001, to the United States District Court, Southern District of California; and (4) *People of the State of California ex rel. Herrera v. Dynegy Power Marketing, Inc., PG&E Energy Trading Holdings Corp., et al.*, removed on February 21, 2001, to the United States District Court, Northern District of California. The suits allege violation by the defendants of state antitrust laws and state laws against unfair and unlawful business practices. They seek, among other remedies, disgorgement of alleged unlawful profits for sales of electricity beginning around 1999 or 2000, restitution, injunctive relief, and attorneys' fees. The cases were originally brought in California state courts located in San Diego and San Francisco and following a series of procedural rulings by various state and federal courts, they were assigned to Judge Sammartino of the San Diego Superior Court.

In May, 2002, a number of other parties were named as cross-defendants in this proceeding by a number of the defendants. One of these cross-defendants, British Columbia Hydro, removed these actions to the federal district court for the Southern District of California (Docket Nos. 02 CV 0990-RHW; 02 CV 10001-RHW) on May 21, 2002. In September, the Court granted plaintiffs' motion to remand as well as the cross-defendants' motion to dismiss the cross-complaint. Various of the defendants have appealed the remand and dismissal orders in the federal courts. The actions have not yet been returned to Judge Sammartino in state court.

The Debtors generally are confident in the merit of their defenses in the various pending California and FERC proceedings described above. To the extent that the Debtors are found liable for substantial sums in connection with those proceedings, recoveries of general unsecured creditors of ET Power and ET Holdings may be reduced by several percentage points.

### **ARTICLE III.**

#### **THE DEBTORS' PLAN OF LIQUIDATION**

THE FOLLOWING IS A SUMMARY OF CERTAIN PROVISIONS OF THE PLAN AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN, A COPY OF WHICH IS ANNEXED TO THE DISCLOSURE STATEMENT AS APPENDIX 1. IN CERTAIN RESPECTS, THE PLAN DEALS WITH SOPHISTICATED LEGAL CONCEPTS. THEREFORE, YOU MAY WISH TO CONSULT WITH COUNSEL BEFORE VOTING ON THE PLAN.

##### **A. Classification and Treatment of Claims and Interests**

Under the Plan, Claims are classified and treated as discussed below. For ease of reference, estimates assume an Effective Date for the Plan of January 1, 2005. The actual Effective Date may vary from that date.

**1. Administrative Claims (Unclassified)**

Description. Administrative Claims are Claims that arose after the Petition Date and were incurred during the Debtors' chapter 11 proceedings. The Debtors estimate that on the Effective Date, Administrative Claims will aggregate approximately \$3,100,000, consisting primarily of approximately \$550,000 for employee retention payments, approximately \$450,000 for severance payments, and approximately \$2,100,000 for other administrative claims. Additionally, the Debtors will remain obligated to pay postpetition Claims incurred by the Debtors in the ordinary course of its business.

Treatment. Each holder of an Allowed Administrative Claim shall receive: (i) to the extent not already paid, Cash on the later of the Effective Date and the first Business Day after the date that is thirty (30) calendar days after the date on which such Administrative Claim becomes an Allowed Administrative Claim in the full amount of such Allowed Administrative Claim; (ii) to the extent not yet due and payable, payment in accordance with the terms and conditions of the particular transaction giving rise to the Administrative Claim; (iii) to the extent such Claims are Administrative Claims of the United States Trustee for fees pursuant to 28 U.S.C. § 1930(a)(6), Cash in accordance with the applicable schedule for payment of such fees; or (iv) treatment on such other terms as may be mutually agreed upon in writing between the holder of such Allowed Administrative Claim and the relevant Debtor, prior to the Effective Date, or the Plan Administrator, on or after the Effective Date; *provided, however*, that interim and/or final payment of Allowed Administrative Claims approved by the Bankruptcy Court shall be paid at the time of and in accordance with such Bankruptcy Court approval.

Administrative Bar Date. Under the Plan, requests for payment of Administrative Claims that have arisen or will arise in the period from the Petition Date through the Effective Date, inclusive, must be filed and served pursuant to the procedures set forth in the Confirmation Order and/or notice of entry of the Confirmation Order, no later than forty-five (45) days after the Effective Date (unless an earlier date is set by the Bankruptcy Court). No Administrative Claim request need be filed for the allowance of any: (a) Fee Claims; or (b) fees of the United States Trustee arising under 28 U.S.C. § 1930. Any Entities that are required to but fail to file such an Administrative Claim request on or before the Administrative Bar Date shall be forever barred from asserting such Administrative Claim against the Debtors, the Liquidating Debtors, or the Plan Administrator or any of their respective property, officers, or directors and the holder thereof shall be enjoined from commencing or continuing any action, employment of process or act to collect, offset or recover such Administrative Claim.

**2. Fee Claims (Unclassified)**

Description. A Fee Claim is any Claim against the Debtors of a professional person employed under section 327 or 1103 of the Bankruptcy Code or of an indenture trustee seeking compensation or reimbursement of expenses by the Bankruptcy Court in accordance with sections 328, 330 and/or 331 of the Bankruptcy Code, and/or which is entitled to priority pursuant to section 503(b)(2), 503(b)(3)(F), 503(b)(4) or 503(b)(5) of the Bankruptcy Code. The Debtors estimate that on the Effective Date, Fee Claims will aggregate approximately \$2,400,000.

Treatment. Each holder of an Allowed Fee Claim shall receive, in Cash, to the extent not already paid, the amounts allowed by the Bankruptcy Court: (a) on or as soon as practicable following the date upon which the Bankruptcy Court order allowing such Allowed Fee Claim is issued; or (b) upon such other terms as may be mutually agreed upon between the holder of such Allowed Fee Claim on one hand, and the relevant Debtors on the other hand. Any and all parties requesting allowance and/or payment of a Fee Claim for any period ending on or before the Effective Date must file and serve final applications therefor no later than forty-five (45) days after the Effective Date.

### **3. Priority Tax Claims (Unclassified)**

Description. A Priority Tax Claim is any unsecured Claim, to the extent entitled to priority in payment under section 507(a)(8) of the Bankruptcy Code. The Debtors project that the Priority Tax Claims will approximate \$150,000.

Treatment. On the later of the Effective Date or as soon as reasonably practicable thereafter and thirty (30) Business Days after the date on which a Priority Tax Claim becomes an Allowed Claim, such Claim shall be paid in full, in Cash; *provided, however,* that each Debtor shall have the option, exercisable upon written notice to the relevant Priority Tax Claim holder sent prior to the Effective Date, to pay any Priority Tax Claim over a period not longer than six (6) years from the date of assessment of the applicable tax, with interest on the unpaid portion payable annually in arrears at the rate of interest ordered by the Bankruptcy Court (or agreed to by the holder of the Claim and the relevant Debtor).

### **4. Class 1 - Secured Claims (Impaired)**

Description. A Secured Claim is any Claim, or portion thereof, asserted against any of the Debtors to the extent such claim constitutes a secured Claim pursuant to sections 506 or 1111(b) of the Bankruptcy Code. Class 1 consists of all Secured Claims, with each such Claim secured by different collateral to be a separate subclass for voting and distribution purposes. The Debtors project that the Secured Claims will approximate \$25,000,000.

Voting. Class 1 Claims are Impaired under the Plan and entitled to vote to accept or reject the Plan.

Treatment. At the election of the Debtors or the Plan Administrator, as applicable, on or before the later of the Effective Date or as soon as reasonably

practicable thereafter and thirty (30) Business Days after the date on which a Class 1 Claim becomes an Allowed Claim, such Claim shall be satisfied in full by either:

- (i) reinstating the Claim, that is, leaving unaltered the legal, equitable, and contractual rights respecting such Claim in accordance with section 1124 of the Bankruptcy Code, including: (A) curing all pre- and post-petition defaults other than defaults relating to the insolvency or financial condition of the Debtors or its status as a debtor under the Bankruptcy Code; and (B) reinstating the maturity date of the Claim;
- (ii) paying such Claim in full, in Cash, in an amount equal to such Allowed Class 1 Claim on the Effective Date or as soon as reasonably practicable thereafter; or
- (iii) transferring title to the property securing such Allowed Class 1 Claim to the holder of such Claim. Within thirty (30) days after mailing by the Plan Administrator of notice of the election of this option (iii), the holder of an Allowed Class 1 Claim shall be entitled to amend in writing or file a proof of claim for any unsecured deficiency Claim respecting such Claim (to the extent such holder has recourse to a Debtor respecting such Class 1 Claim, and provided the holder has timely filed a proof of claim respecting such Class 1 Claim or whose Class 1 Claim was listed in the Schedules as nondisputed, noncontingent, and liquidated). To the extent, if any, allowed, such deficiency claim shall be treated in Class 3, Class 4, Class 5, Class 6 or Class 7, as appropriate.

**5. Class 2 - Priority Claims (Unimpaired)**

Description. A Priority Claim is any Claim to the extent entitled to priority in payment pursuant to section 507(a)(8) of the Bankruptcy Code, other than an Administrative Claim, a Fee Claim, or a Priority Tax Claim. Class 2 consists of Priority Claims against the Debtors. Class 2 is not Impaired. The Debtors estimate that Allowed Class 2 Claims will aggregate \$0.

Voting. Class 2 Claims are Unimpaired and conclusively presumed to accept the Plan. For this reason, Class 2 Claims are not entitled to vote on the Plan.

Treatment. On the later of the Effective Date or as soon as reasonably practicable thereafter and thirty (30) days after the date on which a Class 2 Claim becomes an Allowed Claim, such Claim shall be paid in full in Cash.

**6. Class 3 - General Unsecured Claims against ET Gas (Impaired for Voting Purposes)**

Description. A General Unsecured Claim is any Claim against the Debtors, other than a Secured Claim, Administrative Claim, Fee Claim, Priority Claim, Priority Tax Claim or Subordinated Claim. Class 3 contains all General Unsecured Claims against ET Gas. Class 3 is Impaired. The Debtors estimate that aggregate Allowed Class 3 Claims will aggregate approximately \$90,000,000.

Voting. Class 3 Claims are treated as Impaired under the Plan and are being provided the opportunity to vote to accept or reject the Plan. However, the Debtors believe that, under applicable law, Class 3 Claims likely are not Impaired under the Plan. Accordingly, in the event that Class 3 votes to reject the Plan, the Debtors reserve the right to contend that such Class is Unimpaired and that, therefore, Class 3 should be deemed to have accepted the Plan.

Treatment. On the later of the Effective Date or as soon as reasonably practicable thereafter and thirty (30) Business Days after the date on which a Class 3 Claim becomes an Allowed Class 3 Claim, in full settlement, satisfaction, and payment of all Allowed Class 3 Claims, each holder of an Allowed Class 3 Claim shall receive Cash in an amount equal to one hundred (100) percent of its Allowed Class 3 Claim plus Pendency Interest (1.08% *per annum*, running between the Petition Date and the Effective Date).

**7. Class 4 - General Unsecured Claims against ET Investments (Impaired for Voting Purposes)**

Description. Class 4 contains all General Unsecured Claims against ET Investments. Class 4 is Impaired. The Debtors estimate that aggregate Allowed Class 4 Claims will aggregate approximately \$1,000.

Voting. Class 4 Claims are treated as Impaired under the Plan and are being provided the opportunity to vote to accept or reject the Plan. However, the Debtors believe that, under applicable law, Class 4 Claims likely are not Impaired under the Plan. Accordingly, in the event that Class 4 votes to reject the Plan, the Debtors reserve the right to contend that such Class is Unimpaired and that, therefore, Class 4 should be deemed to have accepted the Plan.

Treatment. On the later of the Effective Date or as soon as reasonably practicable thereafter and thirty (30) Business Days after the date on which a Class 4 Claim becomes an Allowed Class 4 Claim, in full settlement, satisfaction, and payment of all Allowed Class 4 Claims, each holder of an Allowed Class 4 Claim shall receive Cash in an amount equal to one hundred (100) percent of its Allowed Class 4 Claim plus Pendency Interest (1.08% *per annum*, running between the Petition Date and the Effective Date).

**8. Class 5 - General Unsecured Claims against ET Holdings (Impaired)**

Description. Class 5 contains all General Unsecured Claims against ET Holdings. Class 5 is Impaired. The Debtors estimate that aggregate Allowed Class 5 Claims will aggregate approximately \$350,000,000, exclusive of claims arising as a result



of ET Holdings's status as a general partner of ET Power, or on account of any Claims arising from guaranties by ET Holdings of obligations of ET Power.

Voting. Class 5 Claims are Impaired under the Plan and entitled to vote to accept or reject the Plan.

Treatment. On the later of each Distribution Date or as soon as reasonably practicable thereafter and thirty (30) Business Days after the date on which a Class 5 Claim becomes an Allowed Class 5 Claim, in full settlement, satisfaction, and payment of all Allowed Class 5 General Unsecured Claims, each holder of an Allowed Class 5 Claim shall receive its Pro Rata share of Class 5 Available Cash.

**9. Class 6 - General Unsecured Claims against ET Power (Impaired)**

Description. Class 6 contains all General Unsecured Claims against ET Power. Class 6 is Impaired. The Debtors estimate that aggregate Allowed Class 6 Claims will aggregate approximately \$345,000,000, exclusive of any claims for damages under the Tolling Agreements. See section II.G.9.c.

Voting. Class 6 Claims are Impaired under the Plan and entitled to vote to accept or reject the Plan.

Treatment. On the later of each Distribution Date or as soon as reasonably practicable thereafter and thirty (30) Business Days after the date on which a Class 6 Claim becomes an Allowed Class 6 Claim, in full settlement, satisfaction, and payment of all Allowed Class 6 General Unsecured Claims, each holder of an Allowed Class 6 Claim shall receive its Pro Rata share of Class 6 Available Cash, as well as its corresponding ratable share of the Remaining Available Class 5 Cash.

**10. Class 7 - General Unsecured Claims against ESV (Impaired)**

Description. Class 7 contains all General Unsecured Claims against ESV. Class 7 is Impaired. The Debtors estimate that aggregate Allowed Class 7 Claims will aggregate approximately \$23,000,000.

Voting. Class 7 Claims are Impaired under the Plan and entitled to vote to accept or reject the Plan.

Treatment. On the later of each Distribution Date or as soon as reasonably practicable thereafter and thirty (30) Business Days after the date on which a Class 7 Claim becomes an Allowed Class 7 Claim, in full settlement, satisfaction, and payment of all Allowed Class 7 General Unsecured Claims, each holder of an Allowed Class 7 Claim shall receive its Pro Rata share of Class 7 Available Cash.

**11. Class 8 - General Unsecured Claims against Quantum (Impaired)**

Description. Class 8 contains all General Unsecured Claims against Quantum. Class 8 is Impaired. The Debtors estimate that aggregate Allowed Class 8 Claims will aggregate \$6,400,000.

Voting. Class 8 Claims are Impaired under the Plan and deemed to reject the Plan. For this reason, holders of Class 8 Claims are not entitled to vote on the Plan.

Treatment. Holders of Class 8 Claims shall receive no distribution under the Plan.

**12. Class 9 - Subordinated Claims (Impaired)**

Description. A Subordinated Claim is a Claim asserted against any of the Debtors subject to subordination pursuant to section 510 of the Bankruptcy Code. The Debtors estimate that Allowed Class 9 Claims will aggregate \$0.

Voting. Class 9 Claims are Impaired under the Plan and deemed to reject the Plan. For this reason, holders of Class 9 Claims are not entitled to vote on the Plan.

Treatment. Holders of Class 9 Claims shall receive no distribution under the Plan.

**13. Class 10 - Interests in ET Gas (Impaired)**

Description. Class 10 consists of all Interests in ET Gas.

Voting. As ET Holdings, a Debtor and a proponent of the Plan, is the holder of all Interests in ET Gas, Class 10 is deemed to accept the Plan.

Treatment. Holders of Class 10 Interests shall receive all Class 3 Available Cash remaining after all Class 3 Allowed Claims have been paid in full with Pendency Interest under the Plan and all Disputed Claims in Class 3 have been reserved for. Such Interests shall be retained until the dissolution of the respective Liquidating Debtors in accordance with the terms of the Plan, upon which dissolution the respective Interests shall be deemed canceled.

**14. Class 11 - Interests in ET Investments (Impaired)**

Description. Class 11 consists of all Interests in ET Investments.

Voting. As ET Holdings, a Debtor and a proponent of the Plan, is the holder of all Interests in ET Investments, Class 11 is deemed to accept the Plan.

Treatment. Holders of Class 11 Interests shall receive all Class 4 Available Cash remaining after all Class 4 Allowed Claims have been paid in full with Pendency Interest under the Plan and all Disputed Claims in Class 4 have been reserved for. Such Interests shall be retained until the dissolution of the respective Liquidating

Debtors in accordance with the terms of the Plan, upon which dissolution the respective Interests shall be deemed canceled.

**15. Class 12 - Interests in ET Holdings, ET Power, ESV and Quantum (Impaired)**

Description. Class 12 consists of Interests in ET Holdings, ET Power, Quantum, and ESV.

Voting. Class 12 Claims are Impaired and deemed to have rejected the Plan. For this reason, holders of Class 12 Interests are not entitled to vote on the Plan

Treatment. Subject to section 8.5 of the Plan, holders of Class 12 Interests shall receive no distribution under the Plan. Such Interests shall be retained until the dissolution of the respective Liquidating Debtors in accordance with the terms of the Plan, upon which dissolution the respective Interests will be canceled.

**B. Means of Plan Implementation**

**1. Dissolution of Quantum.**

Prior to the Effective Date, Quantum shall file appropriate certificates of dissolution with the appropriate governmental authorities under applicable law. Any assets of Quantum in existence as of the Effective Date shall be distributed in accordance with the rules of absolute priority.

**2. Funding**

The funds to be distributed pursuant to the Plan and the Debtors' ongoing capital expenditure and working capital needs will come from the Debtors' existing cash reserves. As of July 31, 2004, the cash balances for each of the Debtors were as follows: (i) \$207,715,000 for ET Holdings; (ii) \$62,908,000 for ET Gas;<sup>26</sup> (iii) \$82,966,000 for ET Power; (iv) \$31,000 for ET Investments; (v) \$0 for Quantum; and (vi) \$1,883,484.22 for ESV.

**3. Directors and Officers**

Immediately prior to the Effective Date, the authority, power and incumbency of the persons then acting as directors and officers of the Debtors shall be terminated and such directors and officers shall be deemed to have resigned.

**4. Post-Effective Date Management of the Liquidating Debtors.**

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<sup>26</sup> ET Gas's current cash balance is less than the amount required to fulfill its payment obligations under the Plan. However, ET Gas also has an Allowed Claim against ET Holdings that will result in a cash recovery to ET Gas sufficient to make up that shortfall. See Plan Section 8.1.

On the Effective Date, each of the Boards of Directors will be comprised of: (i) the ET Director; and (ii) the Committee Director. The ET Director and the Committee Director may be removed from office by and in the sole and absolute discretion of the stockholders of the respective ET Debtors (in the case of the ET Director) or the ET Committee (in the case of the Committee Director). A resulting vacancy shall be filled by a replacement director elected by the stockholders of the respective ET Debtors (in the case of the ET Director) or by the ET Committee (in the case of the Committee Director).

#### **5. Quorum and Voting.**

The presence of both the ET Director and the Committee Director shall constitute a quorum for the transaction of business and any action by any of the Boards of Directors shall require the unanimous vote or consent of both directors. In the event that the ET Director and the Committee Director are unable to agree upon and approve a particular action, they shall attempt to resolve the deadlock in the following manner: (i) the two directors shall use all reasonable, good faith efforts to select, as expeditiously as possible, a Third-Party Expert; and (ii) the Third-Party Expert shall, at the expense of the Liquidating Debtors, take such time and make such efforts as are necessary and appropriate in his or her judgment to understand the proposed action under consideration and make a recommendation in resolution of the deadlock. Any such recommendation shall be made in writing and shall set forth the reasons therefor. Each of the directors shall vote for or against the proposed action based on such recommendation, except that: (x) the applicable Board of Directors, by the unanimous vote or consent of the ET Director and the Committee Director, may decide against taking the proposed action, notwithstanding such recommendation by the Third-Party Expert; and (y) the ET Director or the Committee Director shall not be required to provide any such vote if such director believes, after consultation with counsel, that such vote could authorize actions not consistent with applicable law or could constitute a violation of the fiduciary duties of such director. In such event, the ET Director or the Committee Director, as the case may be, may decide against authorizing the proposed action. The Third-Party Expert shall not under any circumstances be deemed to be a director of the Liquidating Debtors but, for purposes of assisting in the resolution of the deadlock, shall make a recommendation that he or she believes to be in the best interests of the Liquidating Debtors and appropriate for action by the applicable Board of Directors, taking into account the provisions of the Plan and applicable law.

#### **6. Board Approval Required for Certain Transactions.**

Unless otherwise ordered by the Bankruptcy Court, the Liquidating Debtors shall not satisfy, settle or consent to the allowance of any Designated Disputed Claim by a creditor against a Liquidating Debtor unless the satisfaction, settlement or allowance of such Designated Disputed Claim shall have been approved by the applicable Board of Directors.

#### **7. The Plan Administrator**

The Plan Administrator shall at all times serve at the direction of the Boards of Directors and in accordance with the terms of the Plan. Without limiting the foregoing, the Plan Administrator shall have the primary duties of:

- (i) negotiating settlements with creditors;
- (ii) compromising or settling all Claims;
- (iii) making all Distributions of Cash pursuant to the Plan to holders of Allowed Claims entitled to receive Cash under the Plan, subject to approval of the applicable Board of Directors;
- (iv) objecting to Claims;
- (v) investing cash in a reasonable and prudent manner;
- (vi) entering into any agreement or executing any document required by or consistent with the Plan and perform all of the Liquidating Debtors' obligations thereunder;
- (vii) purchasing or creating and carrying all insurance policies and paying all insurance premiums and costs it deems necessary or advisable;
- (viii) prosecuting Avoidance Actions;
- (ix) implementing and/or enforcing all provisions of the Plan;
- (x) at a time to be determined by the Boards of Directors, causing the dissolution of the Liquidating Debtors and seeking entry of a final decree of the Bankruptcy Court closing the Chapter 11 Cases;
- (xi) advising the Boards of Directors with regard to the foregoing; and
- (xii) taking and performing such other actions and duties as are necessary or appropriate to implement the Plan pursuant to its terms and the terms of the Confirmation Order.

**8. Resignation, Death or Removal of Plan Administrator.**

The Plan Administrator may resign at any time subject to the terms and conditions of the Plan Administrator Agreement. The initial Plan Administrator shall serve for the term indicated in the Plan Administrator Agreement. The Plan Administrator may be removed from office with or without cause by the Boards of Directors, subject to the terms of the Plan Administrator Agreement. Following completion of the initial Plan Administrator's term, or in the event of the death, resignation, or removal of the Plan Administrator that occurs prior to the dissolution of the Liquidating Debtors pursuant to the Plan, the Boards of Directors shall appoint a new Plan Administrator. The appointment of the successor Plan Administrator (or any successor thereto) shall be subject to approval of the Bankruptcy Court, and shall be on terms and conditions to be approved by the Bankruptcy Court. No successor Plan Administrator hereunder shall in any event have any liability or responsibility for the acts or omissions of any of his or her predecessors.

**9. Retention and Enforcement of Causes of Action**

Except as expressly provided in the Plan, on the Effective Date, the Debtors' rights in respect of existing and potential Avoidance Actions shall be preserved and become property of the Liquidating Debtors. On the Effective Date, the Liquidating Debtors shall be authorized and empowered to commence and prosecute any and all causes of action that could have been asserted by the Debtors. **All Avoidance Actions shall survive confirmation and the commencement or prosecution of avoidance actions shall not be barred or limited by any estoppel, whether judicial, equitable, or otherwise.**

No later than twenty (20) days before the commencement of the Confirmation Hearing, the Debtors will file with the Bankruptcy Court a schedule of potential parties that may be subject to Avoidance Actions, specifically excluding parties already subject to such actions as of such date.

**10. Post-Confirmation Role of the ET Committee**

As of the Effective Date, the duties of the ET Committee shall terminate except as to: (i) any appeal or motion for reconsideration of the Confirmation Order; (ii) objections to Fee Claims; and (iii) the removal of the Committee Director and the appointment of a replacement Committee Director.

The ET Committees' professionals shall receive from the ET Debtors reasonable compensation for their services. Post-Effective Date fees and expenses of the ET Committees' professionals (reasonably incurred in connection with the ET Committees' limited post-Effective Date functions described in the immediately preceding paragraph) shall be paid by the ET Debtors and need not be approved by the Bankruptcy Court unless objected to by the ET Debtors.

**11. Procedures for Distributions Under the Plan**

All distributions of Cash pursuant to the Plan shall be made by the Plan Administrator or a duly appointed disbursing agent to the holders of Allowed Claims entitled to receive Cash under the Plan. All distributions of Cash under the Plan may be made either by check or by wire transfer, at the option of the Plan Administrator or, if applicable, the disbursing agent. Except as otherwise provided in the Plan, all distributions of Cash shall be made on the later of the Effective Date (or, in the case of Available Cash, on the Initial Distribution Date and each subsequent Distribution Date) or the Business Day which is thirty (30) days after the date upon which such Claim becomes an Allowed Claim, or as soon thereafter as practicable.

All distributions of Cash pursuant to the Plan shall be made by the Plan Administrator or a duly appointed disbursing agent to the holders of Allowed Claims entitled to receive Cash under the Plan. All distributions of Cash under the Plan may be made either by check or by wire transfer, at the option of the Plan Administrator or, if applicable, the disbursing agent. Except as otherwise provided in the Plan, all distributions of Cash shall be made on the later of the Effective Date (or, in the case of

Available Cash, on the Initial Distribution Date and each subsequent Distribution Date) or the Business Day which is thirty (30) days after the date upon which such Claim becomes an Allowed Claim, or as soon thereafter as practicable.

The Plan Administrator shall hold in reserve for the benefit of each holder of a Disputed Claim, Cash in an amount required by order of the Bankruptcy Court (including, with limitation, any Claims Estimation Order) or, in the absence of such order, Cash equal to the Distributions which would have been made to the holder of such Disputed Claim, as if its Claim were an Allowed Claim in the liquidated amount, if any, asserted on the Effective Date. Once a Disputed Claim has become an Allowed Claim, the holder thereof shall receive the applicable Distribution on the later of the next Distribution Date or the Business Day which is thirty (30) days after the date upon which such Claim becomes an Allowed Claim, or as soon thereafter as practicable.

Delivery of Distributions. Subject to Bankruptcy Rule 9010, all distributions to any holder of an Allowed Claim shall be made at the address set forth on the Schedules filed with the Bankruptcy Court or on the books and records of the Liquidating Debtors or their agents, unless the Debtors or the Plan Administrator, as applicable, have been notified in writing of a change of address, including, without limitation, by the filing of a proof of claim or Administrative Claim request that contains an address for a holder of a Claim different from the address reflected on such Schedule(s) for such holder.

### **C. Certain Risk Factors**

#### **1. Parties-in-interest may object to the Debtors' classification of Claims.**

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class. The Debtors believe that the classification of claims and interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, it cannot be assured that the Bankruptcy Court will reach the same conclusion.

#### **2. The Debtors may not be able to secure confirmation of the Plan.**

It cannot be assured that the Debtors will be able to obtain the requisite acceptances to confirm the Plan. Even if the requisite acceptances are received, the Bankruptcy Court may not confirm the Plan. A non-accepting creditor of the Debtors might challenge the balloting procedures and results as not being in compliance with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determined that the Disclosure Statement and the balloting procedures and results were appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for confirmation had not been met. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation and requires, among other things, a finding by the Bankruptcy Court that: (i) the confirmation of the Plan is not likely to be followed by a liquidation or a need for further financial reorganization; and

(ii) the value of distributions to non-accepting holders of claims and interests within a particular class under the Plan will not be less than the value of distributions such holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. While it cannot be assured that the Bankruptcy Court will conclude that these requirements have been met, the Debtors believe that the Plan will not be followed by a need for further liquidation (inasmuch as the plan already contemplates a liquidation) and that non-accepting holders within each class under the Plan will receive distributions at least as great as they would have received following a liquidation under chapter 7 of the Bankruptcy Code when taking into consideration all administrative claims and the costs and uncertainty associated with any such chapter 7 case.

If the Plan is not confirmed, it is unclear whether a liquidation of the Debtors could be implemented through chapter 11 and what distribution holders of Claims ultimately would receive with respect to their Claims. If an alternative liquidation under chapter 11 could not be agreed to, it is likely that the Debtors would have to liquidate their assets under chapter 7, in which case it is likely that holders of Claims would receive substantially less favorable treatment than they would receive under the Plan due, among other things, to the substantial overlay of administrative and other expenses associated with the appointment of a chapter 7 trustee.

**3. Certain events may cause the dilution of distributions to holders of Allowed Claims in Classes 5, 6 and 7.**

Distributions to be made to holders of Allowed Claims in Classes 5, 6 and 7 may be diluted as the projected creditor recovery analysis does not include estimates for any contingent, disputed and/or unliquidated claims in such Classes (to the extent any such claims become Allowed Claims, the total aggregate amount of Allowed Claims in Classes 5, 6 and 7 will be increased while the total Cash or other property to be distributed to such Classes will remain the same). Additionally, certain unresolved matters may have a substantial impact on distributions to Classes 5 and 6. Of significance, the disputes regarding the Tolling Agreements are currently being arbitrated. The outcome of the arbitrations of the Tolling Agreement disputes have the potential to significantly dilute the recoveries of holders of Allowed Claims in Classes 5 and 6. See section II.G.9.c.

**4. Certain events may cause delay in distributions to holders of Allowed Claims in Classes 5, 6 and 7.**

Distributions to be made to holders of Allowed Claims in Classes 5, 6 and 7, including the final distribution under the Plan, may be delayed pending resolution of Disputed Claims which may be substantial and/or complicated. In addition, any distribution made in respect of holders of Allowed Claims in Classes 5, 6 and 7 on the Initial Distribution Date may be significantly less than the final distribution to be received by the holders of such Allowed Claims in Classes 5, 6 and 7 over the periodic distribution dates and the Final Distribution Date.



**D. Effect of Plan on Claims and Interests**

**1. Release of the Debtors, their Professionals and Certain of the Debtors' Directors and Officers**

AS OF THE CONFIRMATION DATE, BUT SUBJECT TO THE OCCURRENCE OF THE EFFECTIVE DATE, NONE OF: (i) THE PLAN ADMINISTRATOR, THE DEBTORS, THE LIQUIDATING DEBTORS, THEIR SUCCESSORS AND ASSIGNS; (ii) PRESENT DIRECTORS AND OFFICERS; (iii) FORMER DIRECTORS AND OFFICERS WHO HELD SUCH POSITION WITH THE DEBTORS AS OF OR SINCE THE PETITION DATE; AND (iv) AGENTS, ATTORNEYS, ADVISORS, FINANCIAL ADVISORS, INVESTMENT BANKERS AND EMPLOYEES OF THE DEBTORS, SHALL HAVE OR INCUR ANY LIABILITY TO ANY ENTITY FOR ANY CLAIM, OBLIGATION, RIGHT, CAUSE OF ACTION OR LIABILITY (INCLUDING, BUT NOT LIMITED TO, ANY CLAIMS ARISING OUT OF ANY ALLEGED FIDUCIARY OR OTHER DUTY AND THE AVOIDANCE OF PREFERENCES OR FRAUDULENT CONVEYANCES), WHETHER KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, BASED IN WHOLE OR IN PART ON ANY ACT OR OMISSION, TRANSACTION OR OCCURRENCE FROM THE BEGINNING OF TIME THROUGH THE EFFECTIVE DATE IN ANY WAY RELATING TO THE DEBTORS; AND ALL CLAIMS BASED UPON OR ARISING OUT OF SUCH ACTIONS OR OMISSIONS SHALL BE FOREVER WAIVED AND RELEASED; *provided, however,* THAT THIS SECTION SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY ENTITY THAT OTHERWISE WOULD RESULT FROM ANY ACTION OR OMISSION TO THE EXTENT THAT SUCH ACTION OR OMISSION IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED WILLFUL MISCONDUCT.

THE RELEASE DESCRIBED ABOVE SHALL BE ENFORCEABLE AS A MATTER OF CONTRACT AGAINST ANY HOLDER OF A CLAIM TIMELY NOTIFIED OF THE PROVISIONS OF THE PLAN. CLAIMANTS OF THE DEBTORS SHALL BE ENJOINED FROM COMMENCING OR CONTINUING ANY ACTION, EMPLOYMENT OF PROCESS OR ACT TO COLLECT, OFFSET OR RECOVER ANY CLAIM THAT IS RELEASED AS PROVIDED HEREIN.

The Debtors believe that the releases described above provided to third parties under the Plan are necessary, appropriate and in compliance with applicable bankruptcy law. The release provision protects those officers, directors and employees of the Debtors and the professionals retained by them who elected to continue to serve the Debtors and their creditors during these chapter 11 cases with protection from specious lawsuits. These officers, directors and employees have made a substantial contribution to these chapter 11 cases by steering the Debtors towards a reorganization supported by the ET Committee. The releases and exculpation are particularly important because the Plan provides for the assumption of indemnification obligations by the Liquidating Debtors to further protect these persons. Failing to grant the releases or exculpation would be

inconsistent with the goals of maximizing value and equality of treatment for all similarly situated creditors.

For clarity, the releases only apply to officers, directors and employees of the Debtors in their capacity as an officer, director or employee of the Debtors. For instance, an officer of one of the Debtors who is also an officer of NEGTEC and USGen NE is not being released from any action taken in his capacity as an officer of NEGTEC or USGen NE, as applicable. Nothing in the Plan releases or limits claims of NEGTEC, USGen NE, or any of the Debtors' non-Debtor subsidiaries or affiliates has against their respective officers, directors, agents or employees.

## **2. Survival of Certain Indemnification Obligations**

The obligations of the Debtors to indemnify individuals who serve or served after the Petition Date as the Debtors' respective directors, officers, agents, employees, representatives, and others, including (without limitation) professional persons retained by the Debtors, pursuant to the Debtors' respective certificates of incorporation, by-laws, applicable statutes and preconfirmation agreements in respect of all present and future actions, suits and proceedings against any of such officers, directors, agents, employees, representatives, and others, including (without limitation) professional persons retained by the Debtors, based upon any act or omission related to service with, for or on behalf of the Debtors on or before the Effective Date as such obligations were in effect at the time of any such act or omission, shall not be discharged or impaired by confirmation or consummation of this Plan, but shall survive unaffected by the releases contemplated by this Plan and shall be performed and honored by the Plan Administrator regardless of such confirmation and consummation.

## **3. Objections to Claims**

The Bankruptcy Court fixed January 9, 2004, as the last date for filing Claims against the Debtors; *provided, however*, that holders of non-ordinary course Administrative Claims that have arisen or will arise in the period from July 8, 2003 through the Effective Date shall have forty-five (45) days after the Effective Date to file their Claims. Unless otherwise ordered by the Bankruptcy Court or provided in the Plan, all objections to Claims must be filed with the Bankruptcy Court and served on the applicable claimant on or before one and twenty (120) days after the later of the Effective Date and the date a Claim is filed.

## **4. Limitations on Liability Regarding Chapter 11 Activities**

NONE OF THE DEBTORS, THE LIQUIDATING DEBTORS, THE PLAN ADMINISTRATOR, THE ET COMMITTEE, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, MEMBERS OR AGENTS (EACH ACTING IN SUCH CAPACITY), OR ANY PROFESSIONAL PERSONS EMPLOYED BY ANY OF THEM WILL HAVE OR INCUR ANY LIABILITY TO ANY ENTITY FOR ANY ACTION TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH OR RELATED TO THE FORMULATION, PREPARATION,

DISSEMINATION, IMPLEMENTATION, CONFIRMATION, OR CONSUMMATION OF THE PLAN, THE DISCLOSURE STATEMENT, ANY CONTRACT, RELEASE, OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO, OR ANY OTHER ACTION TAKEN OR OMITTED TO BE TAKEN IN CONNECTION WITH THE PLAN OR THE CHAPTER 11 CASES, AND ALL CLAIMS BASED UPON OR ARISING OUT OF SUCH ACTIONS OR OMISSIONS WILL BE FOREVER WAIVED AND RELEASED; *provided, however*, THAT NOTHING HEREIN SHALL AFFECT THE LIABILITY OF ANY ENTITY THAT OTHERWISE WOULD RESULT FROM ANY ACTION OR OMISSION TO THE EXTENT THAT SUCH ACTION OR OMISSION IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED WILLFUL MISCONDUCT.

**E. Executory Contracts and Unexpired Leases**

**1. Rejection**

Leases and Contracts to be Rejected. On the Confirmation Date, but subject to the occurrence of the Effective Date, the Debtors, pursuant to section 365 of the Bankruptcy Code, shall reject all of their executory contracts and unexpired leases except those that: (i) are the subject of motions to assume or reject pending on the Confirmation Date; (ii) were assumed or rejected before the Confirmation Date; (iii) are listed on Schedule 6.2 annexed to the Plan; or (iv) become the subject of a dispute over the amount or manner of cure and for which the Debtors make a motion, at any time, to reject such contract or lease based upon the existence of such dispute; *provided, however*, that the Debtors shall not be required to assume or reject any executory contract or unexpired lease with any party that is a debtor under the Bankruptcy Code unless and until such contract or lease has been assumed or rejected by such other party. The entry by the Bankruptcy Court on or after the Confirmation Date of an order authorizing the rejection of an executory contract or unexpired lease shall result in such rejection being a prepetition breach, as of the Petition Date, under sections 365(g) and 502(g) of the Bankruptcy Code.

Deadline to File Rejection Damage Claims. Each Entity who is a party to a contract or lease rejected under the Plan must file with the Bankruptcy Court and serve on the Liquidating Debtors, not later than thirty (30) days after the Effective Date, a proof of claim for damages alleged to arise from the rejection of the applicable contract or lease or be forever barred from filing a Claim, or sharing in distributions under the Plan, related to such alleged rejection damages.

**2. Assumption**

Leases and Contracts to be Assumed. Annexed to the Plan as Schedule 6.2 is a list of the Executory Contracts deemed to be assumed by the Debtors under the Plan as of the Confirmation Date, but subject to the occurrence of the Effective Date, pursuant to section 365 of the Bankruptcy Code, and the cure amounts necessary for such assumptions.

Deadline to Object to Cure Amounts. If prior to the Confirmation Hearing or such other date as the Bankruptcy Court may fix, a party to such an executory contract or unexpired lease listed on Schedule 6.2 to the Plan fails to file with the Bankruptcy Court and serve upon the attorneys for the Debtors an objection to the applicable cure amount listed on such Schedule, then such party shall be forever barred from asserting any additional or other amounts against the Debtors respecting such cure amount.

Method of Cure. At the election of the Liquidating Debtors, any monetary defaults under each executory contract and unexpired lease to be assumed under the Plan shall be satisfied pursuant to section 365(b)(1) of the Bankruptcy Code, in one of the following ways: (a) by payment of the default amount in Cash within forty-five (45) days after the Effective Date or such longer period ordered by the Bankruptcy Court; or (b) on such other terms as may be agreed to by the parties to such executory contract or unexpired lease. If a dispute occurs regarding: (x) the cure amount; (y) the ability of the Liquidating Debtors to provide adequate assurance of future performance under the contract or lease to be assumed; or (z) any other matter pertaining to assumption, then the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving assumption. Notwithstanding anything herein to the contrary, the Debtors shall retain their right to reject any executory contract or unexpired lease that is subject to a dispute concerning amounts necessary to cure any defaults, until thirty (30) days following entry of a Final Order establishing the cure amount.

**F. Conditions**

**1. Conditions to Confirmation**

The following is a condition precedent to confirmation of the Plan:

- a. The Bankruptcy Court shall have entered the Confirmation Order.

**2. Conditions to Effective Date**

The Plan may not be consummated unless each of the conditions set forth below has been satisfied:

- a. The Confirmation Order shall have been entered and not be the subject of any judicial stay.
- b. The Debtors shall have sufficient funds on hand to satisfy due and outstanding Administrative Claims, Fee Claims, Priority Tax Claims and Priority Claims.

**3. Effect of Nonoccurrence of the Conditions to Effective Date**

If each of the conditions to the occurrence of the Effective Date has not been satisfied on or before the first Business Day that is more than 179 days after the Confirmation Date (or by such later date as the Debtors propose and the Bankruptcy

Court approves, after notice and a hearing), upon motion by any party in interest, the Confirmation Order may be vacated by the Bankruptcy Court; provided, however, that notwithstanding the filing of such a motion, the Confirmation Order shall not be vacated if each of the conditions to the Effective Date is satisfied before the Bankruptcy Court enters an order granting the relief requested in such motion. If the Confirmation Order is vacated pursuant to this section, then the Plan shall be null and void in all respects, and nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims against, liens on property of the Debtors; or (b) prejudice in any manner the rights of the Debtors, including (without limitation) the right to seek further extensions of the exclusivity periods under section 1121(d) of the Bankruptcy Code, which exclusivity periods shall be deemed to have been extended to the date twenty (20) days after the date of entry of any order vacating the Confirmation Order, subject to the rights of any party to seek to shorten the exclusivity periods after notice and hearing.

**G. Administrative Provisions**

**1. Retention of Jurisdiction**

Notwithstanding confirmation of the Plan or occurrence of the Effective Date, the Bankruptcy Court will retain jurisdiction over the Liquidating Debtors after the Effective Date as and to the extent specified in the Plan.

**2. Plan Amendments**

The Debtors may make any non-material modifications to the Plan at any time prior to the Effective Date. After the Effective Date, the Plan Administrator may institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, or to address such matters as may be necessary to carry out the purposes and effects of the Plan.

**3. Revocation of the Plan**

The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date.

**4. Continuation of Injunctions and Stays**

Unless otherwise provided in the Plan, the Confirmation Order, or any other order of the Bankruptcy Court, all injunctions or stays ordered in the Debtors' chapter 11 cases, pursuant to section 105 of the Bankruptcy Code or otherwise, and extant on the Confirmation Date, will remain in full force and effect unless or until subsequently modified or terminated.

**ARTICLE IV.**

**CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Plan to the Debtors and holders of Allowed Claims in Classes 3, 4, 5, 6, and 7. The following summary does not address the U.S. federal income tax consequences to holders of any type of Claim or Interest other than Allowed Claims in Classes 3, 4, 5, 6, and 7.

This summary is based upon the Internal Revenue Code of 1986, as amended (the "Tax Code"), existing and proposed regulations thereunder, current administrative rulings, and judicial decisions as in effect on the date hereof, all of which are subject to change, possibly retroactively. No rulings or determinations by the Internal Revenue Service have been obtained or sought by the Debtors with respect to the Plan. This discussion does not purport to address the federal income tax consequences of the Plan to particular classes of taxpayers (such as foreign persons, S corporations, mutual funds, small business investment companies, regulated investment companies, broker-dealers, insurance companies, tax-exempt organizations and financial institutions) or the state, local or foreign income and other tax consequences of the Plan.

NO REPRESENTATIONS ARE MADE REGARDING THE PARTICULAR TAX CONSEQUENCES OF THE PLAN TO ANY HOLDER OF A CLAIM OR INTEREST. EACH HOLDER OF A CLAIM OR INTEREST IS STRONGLY URGED TO CONSULT A TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS DESCRIBED HEREIN AND IN THE PLAN.

**A. Federal Income Tax Consequences to Holders of Claims and Interests**

Holders of Allowed Claims in Classes 3, 4, 5, 6, and 7 will generally recognize ordinary income to the extent that the amount of Cash received (or to be received) under the Plan is attributable to interest that accrued on a Claim but was not previously paid by the Debtors or included in income by holders of the Allowed Claims in Classes 3, 4, 5, 6, or 7, as applicable. Holders previously required to include in their gross income any accrued but unpaid interest on a Allowed Claims in Classes 3, 4, 5, 6, and 7 may be entitled to recognize a deductible loss to the extent such interest is not satisfied under the Plan. Holders of Allowed Claims in Classes 3, 4, 5, 6, and 7 will generally recognize gain or loss equal to the difference between the holder's adjusted basis in its Claim and the amount realized by the holder pursuant to the Plan that is not attributable to accrued but unpaid interest. The amount realized will equal the Cash received (or to be received).

The character of any gain or loss that is recognized will depend upon a number of factors, including the status of the holder, the nature of the Claim in its hands, whether the Claim was purchased at a discount, whether and to what extent the Creditor has previously claimed a bad debt deduction with respect to the Claim, and the Creditor's holding period of the Claim. If the Claim in the Creditor's hands is a capital asset, the gain or loss realized will generally be characterized as a capital gain or loss. If the Creditor is a non-corporate taxpayer, such gain or loss will constitute long-term capital

gain or loss if the Creditor held such Claim for longer than one year or short-term capital gain or loss if the Creditor held such Claim for less than one year.

A holder of an Allowed Claim who receives, in respect of its Claim, an amount that is less than its tax basis in such Claim may be entitled to a bad debt deduction if either: (a) the holder is a corporation; or (b) the Claim constituted (i) a debt created or acquired (as the case may be) in connection with a trade or business of the holder or (ii) a debt the loss from the worthlessness of which is incurred in the holder's trade or business. A holder that has previously recognized a loss or deduction in respect of its Claim may be required to include in its gross income (as ordinary income) any amounts received under the Plan to the extent such amounts exceed the holder's adjusted basis in such Claim.

A holder of an Allowed Claim may be subject to backup withholding with respect to payments made pursuant to the Plan unless such holder: (a) is a corporation or is otherwise exempt from backup withholding and, when required, demonstrates this fact; or (b) provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the holder is not subject to backup withholding because of failure to report all dividend and interest income. Any amount withheld under these rules will be credited against the holder's federal income tax liability. Holders of Claims may be required to establish an exemption from backup withholding or to make arrangements with regard to payment thereof.

## **B. Federal Income Tax Consequences to the Debtors**

Under the Tax Code, a taxpayer generally must include in gross income the amount of any cancellation of debt income ("COD income") realized during the taxable year. There is an exception to this general rule, however, if the cancellation occurs in a case under the Bankruptcy Code, but only if the taxpayer is under the jurisdiction of the Bankruptcy Court and the cancellation is granted by the court or is pursuant to a plan approved by the court. Also, no COD income is realized from the discharge of indebtedness to the extent that payment of the liability would have given rise to a deduction.

Section 108 of the Tax Code requires the amount of COD income so excluded from gross income to be applied to reduce certain tax attributes of the taxpayer. The tax attributes that may be subject to reduction include the taxpayer's net operating losses and net operating loss carryovers (collectively, "NOLs"), certain tax credits and most tax credit carryovers, capital losses and capital loss carryovers, tax basis in assets, and foreign tax credit carryovers. Attribute reduction is calculated only after the tax for the year of discharge has been determined.

Some of the Debtors will recognize COD income. Under the rules described above, such income will be excluded from income because the cancellation will occur in a bankruptcy case. Accordingly, under the rules described above some of the tax attributes of the Debtors may be reduced.

The Debtors have agreed pursuant to the Liquidating Debtors/NEGT Settlement to join the consolidated federal income tax group of which NEGT is the common parent. If the Debtors generate net taxable income, such income will be included on the federal income tax return filed by the NEGT group, and the Debtors will not be required to make any payments to the NEGT group in respect of such income. Similarly, if the Debtors generate taxable losses, such losses will be included on the NEGT group's federal income tax return, and the Debtors will not be reimbursed for the use of such losses.

**C. Importance of Obtaining Professional Tax Assistance**

The foregoing is intended to be only a summary of certain of the United States federal income tax consequences of the Plan and is not a substitute for careful tax planning with a tax professional. Holders of Claims are strongly urged to consult with their own tax advisors regarding the federal, state, local and foreign income and other tax consequences of the Plan.

**THE FOREGOING DISCUSSION OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TAX ADVICE. ACCORDINGLY, HOLDERS OF CLAIMS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE TAX CONSEQUENCES OF THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX LAWS.**

**ARTICLE V.**

**PLAN ACCEPTANCE AND CONFIRMATION**

**A. Confirmation of the Plan**

Confirmation of the Plan requires satisfaction of section 1129 of the Bankruptcy Code. Among other things, section 1129 requires that: (1) each class of impaired Claims accepts the Plan or be subject to a "cramdown"; (2) the Plan be in the "best interests" of any dissenting creditor or equity holder; and (3) the Plan be feasible. Each of these requirements is addressed below.

**B. Voting Requirements**

**1. Acceptance**

Each impaired class of Claims must accept the Plan or be subject to a "cramdown." A class is impaired under a plan unless, under the plan: (a) the applicable creditor's legal, equitable, and contractual rights are left unaltered and there has been no default respecting the applicable claim or interest (other than under a bankruptcy or financial condition clause); or (b) all defaults are cured, maturity dates are reinstated, the party is compensated for damages caused by the default (such as by paying reasonable attorneys' fees and collection costs) and the party's legal, equitable and contractual rights are left unaltered.



An unimpaired class is conclusively presumed to have accepted the Plan. The unimpaired class under the Plan is Class 2. In addition, as ET Holdings, a Debtor and a proponent of the Plan, is the holder of all Interests in ET Gas and ET Investments, Classes 10 and 11 are deemed to have accepted the Plan.

An impaired class that receives no distribution is automatically deemed to have rejected the Plan. Classes 8, 9 and 12 shall receive no distributions under the Plan and, accordingly, shall be deemed to have rejected the Plan.

Votes on the Plan, therefore, are being solicited only from impaired classes that would receive or retain distributions or property under the Plan. Classes 1, 3, 4, 5, 6 and 7 are the only such impaired Classes.<sup>27</sup>

An impaired class of Claims has accepted a plan if, of those voting, the holders of two thirds (2/3) in dollar amount, and more than one-half (1/2) in number, of Claims authorized to vote accept. The Debtors and the ET Committee each believe the Plan to be in the best interest of holders of General Unsecured Claims and therefore recommend that holders of Claims in Classes 1, 3, 4, 5, 6 and 7 vote to accept the Plan.

## **2. Deadline**

To be counted, your Ballot must be received by BSI no later than 4:00 p.m. (Eastern Daylight Time) on \_\_\_\_\_, 2005, at the address set forth on the enclosed self-addressed envelope.

## **3. Eligibility**

If you filed multiple claims against the Debtors, you may receive more than one Ballot. The delivery of Ballots does not constitute an admission by the Debtors that the recipients of such Ballots hold Claims that have been allowed for distribution or voting purposes. In addition, the fact that a party does not receive a Ballot is no indication as to whether or not that party does or does not have valid claims against NEGT or USGen NE, who are not included in the Plan. The Debtors reserve their right to object to any Claim.

Pursuant to an order, dated \_\_\_\_\_, the Bankruptcy Court established the following rules for allowance of Claims for purposes of voting on the Plan:

- a. To the extent a proof of claim has been timely filed as a liquidated, non-contingent Claim in an amount greater than zero dollars, then

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<sup>27</sup> Claims in Classes 3 and 4 are treated as Impaired under the Plan and are being provided the opportunity to vote to accept or reject the Plan. However, the Debtors believe that, under applicable law, Claims in Classes 3 and 4 likely are not Impaired under the Plan. Accordingly, in the event that Class 3 or Class 4 votes to reject the Plan, the Debtors reserve the right to contend that such Class is Unimpaired and that, therefore, such Class should be deemed to have accepted the Plan.

the holder thereof shall be entitled to vote in the amount specified in such Claim (regardless of the scheduled amount of such Claim or whether such Claim is scheduled as contingent or unliquidated) unless such Claim is the subject of a pending objection filed no later than twenty (20) days prior to the Voting Deadline in which case such Claim shall be treated as a Disputed Claim for voting purposes, unless otherwise ordered by the Bankruptcy Court.

- b. If a Claim for which a proof of claim has been timely filed is, by its terms, wholly contingent or unliquidated, such holder shall be entitled, solely for voting purposes, to vote such Claim in an amount equal to one dollar, subject to the filing of an objection by such holder, as discussed more fully below. If a claim for which a proof of claim has been timely filed is marked as partially contingent or unliquidated, that portion that is liquidated and not contingent may be voted in the amount asserted.
- c. If a Claim is listed on the Schedules as a non-contingent, liquidated Claim in an amount greater than zero dollars and a proof of claim was not: (i) timely filed; or (ii) deemed timely filed by an order of the Bankruptcy Court prior to the Voting Deadline, then the holder of such Claim is entitled to vote in the amounts set forth in the Schedules, subject to any applicable limitations set forth below.
- d. If a Claim is listed on the Schedules as contingent, unliquidated, and/or disputed and a proof of claim was not: (i) timely filed; or (ii) deemed timely filed by an order of this Court prior to the Voting Deadline, unless the Liquidating Debtors have consented in writing, such Claim is disallowed for purposes of receiving notices regarding the Plan or voting on the Plan.
- e. In the event a Claim is a Disputed Claim for which there has been no ruling by the Bankruptcy Court as of the Voting Deadline, the disputed portion of such Claim shall not be counted for voting purposes and the related ballot, if any, shall not be counted, except to the extent and in the manner indicated in the Debtor's objection or unless otherwise ordered by the Bankruptcy Court.
- f. If a Claim has been estimated or otherwise allowed for voting purposes by order of the Bankruptcy Court, such Claim shall be temporarily allowed in the amount so estimated or allowed pursuant to such order for voting purposes only.
- g. If a Claim has been deemed Allowed (i.e., for distribution purposes) by a Final Order, then such Claim is allowed for voting purposes in the deemed allowed amount.

#### **4. Tabulation**

The Bankruptcy Court also established the following rules and standards for the tabulation of Ballots of creditors:

- a. Any ballot which is properly completed, executed, and timely returned to the Balloting Agent that does not indicate an acceptance or rejection of the Plan, or indicates both an acceptance and rejection of the Plan, will not be counted.
- b. Any ballot which is returned to the Balloting Agent indicating acceptance or rejection of the Plan, but which is unsigned or does not contain an original signature, will not be counted.
- c. Any ballot postmarked prior to the deadline for submission of ballots, but received afterward, will not be counted, unless otherwise ordered by the Bankruptcy Court.
- d. Whenever a holder of a Claim submits more than one ballot voting the same Claim prior to the deadline for receipt of ballots, except as otherwise directed by the Bankruptcy Court, the last such properly completed ballot sent and received prior to the voting deadline will be deemed to reflect the voter's intent and thus to supersede any prior ballots.
- e. A holder of a Claim that is entitled to vote must vote all of such Claim under the Plan either to accept or reject the Plan and may not split its vote with respect to such Claim. Accordingly, a ballot with respect to a Claim that partially rejects and partially accepts the Plan, or that indicates both a vote for and against the Plan, will not be counted.
- f. If a creditor simultaneously casts inconsistent duplicate ballots, with respect to the same Claim, such ballots will not be counted.
- g. Each creditor shall be deemed to have voted the full amount of its Claim.
- h. Any ballot received by the Balloting Agent by fax, e-mail or other electronic communication will not be counted.
- i. Unless otherwise ordered by the Bankruptcy Court, questions as to the validity, form, eligibility (including time of receipt), acceptance, and revocation or withdrawal of ballots shall be determined by the Balloting Agent and the Liquidating Debtors in their sole discretion, which determination will be final and binding.

#### **5. Cramdown**

If one class of impaired claims (without counting insiders' votes) accepts a plan or if all classes of claims are unimpaired, then the Bankruptcy Court may confirm a plan in the absence of acceptances by each class. The procedure used to confirm a plan despite the dissent of a class, commonly known as a "cramdown," is set forth in section 1129(b) of the Bankruptcy Code. A plan may be confirmed under the cramdown provisions if, in addition to satisfying the requirements of section 1129(a) of the Bankruptcy Code other than acceptance by all classes, the plan: "does not discriminate unfairly"; and is "fair and equitable" with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

As used by the Bankruptcy Code, the phrases "discriminate unfairly" and "fair and equitable" have narrow and specific meanings unique to bankruptcy law. A plan does not discriminate unfairly if claims or interests in different classes but with similar priorities and characteristics receive or retain property of similar value under a plan. By establishing separate classes for the holders of each type of claim and by treating each holder of a claim in each class identically, the Plan has been structured so as to meet the "unfair discrimination" test of section 1129(b) of the Bankruptcy Code.

The Bankruptcy Code sets forth different standards for establishing that a plan is "fair and equitable" with respect to a dissenting class, depending on whether the class is comprised of secured or unsecured claims or interests. In general, section 1129(b) of the Bankruptcy Code permits confirmation notwithstanding non-acceptance by an impaired class if: (i) the plan provides for each holder of a claim in such impaired class to receive a distribution on the effective date that has a value that is equal to or greater than the allowed amount of its claim; or (ii) such impaired class and all junior classes are treated in accordance with the "absolute priority" rule, which requires that the dissenting class be paid in full before a junior class may receive anything under the plan. In addition, case law surrounding section 1129(b) requires that no class senior to a non-accepting impaired class receives more than payment in full on its claims.

The Plan meets the foregoing requirements. The Plan does not discriminate between similarly situated Claims. Moreover, the Plan abides by the "absolute priority rule," in that no classes junior in priority to Classes 5, 6 and 7 (whose Claims are not being satisfied in full) is to receive any Distribution, while creditors in Classes 3 and 4 are to receive Cash on the Effective Date equal to the allowed amount of their Claims, plus Pendency Interest. Accordingly, the Debtors intend to seek to "cram down" the Plan against Classes 8, 9 and 12, which classes are deemed to have rejected the Plan.

### **C. Best Interests Test**

To confirm the Plan, the Bankruptcy Court must determine that the Plan is in the best interests of all individual dissenting creditors in each impaired class. The "best interests" test requires that the Plan provide each such holder with a recovery having a value at least equal to the value of the distribution each such holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. This test is based on liquidation values.

In these cases, the Debtors have liquidated, or are in the process of liquidating, substantially all of their assets. If these cases were to be converted to Chapter 7 cases, the Debtors' estates would incur the costs of payment of a statutorily allowed commission to the Chapter 7 trustee, as well as the costs of counsel and other professionals retained by the trustee. The Debtors believe such amount would exceed the amount of expenses that will be incurred in implementing the Plan and winding up the affairs of the Debtors. The estates would also be obligated to pay all unpaid expenses incurred by the Debtors during these cases (such as compensation for professionals) which are allowed in the Chapter 7 cases. In addition, there would be no certainty that the settlements described herein would be received. Accordingly, the Debtors believe that holders of Allowed Claims would receive substantially less than anticipated under the Plan if the Chapter 11 Cases were converted to Chapter 7 cases.

#### **D. Feasibility Requirement**

Under section 1129(a)(11) of the Bankruptcy Code, the Debtors must show that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successor to the Debtors (unless such liquidation or reorganization is proposed in the Plan). The Plan complies with this requirement because all of the Debtors' remaining assets will be distributed to creditors pursuant to the terms of the Plan and, provided the Plan is confirmed and consummated, the estates will no longer exist to be subject to future reorganization or liquidation.

#### **E. Alternatives to the Plan**

The Debtors believe that the Plan is the best alternative available to the Debtors' creditors, providing such creditors with the earliest and greatest possible values that can be realized on their respective Claims. The alternatives to confirmation are: (i) confirmation of an alternative plan or plans of liquidation; or (ii) liquidation of the Debtors' assets under chapter 7 of the Bankruptcy Code.

##### **1. Alternative Plans**

As the Debtors structured the Plan to maximize values, any alternative plan likely would result in reduced distributions to certain creditors. In addition, due to the time required to negotiate, draft and obtain approval of an alternative plan, alternatives to the Plan would lead to delayed distributions to creditors.

## 2. Liquidation

The Debtors believe that the value of distributions under the Plan will equal or exceed the value of distributions that would be available after liquidation of the Debtors under chapter 7 of the Bankruptcy Code. A liquidation under chapter 7 would require the Bankruptcy Court to appoint a trustee to conduct the liquidation of the Debtors. Such a trustee would have limited historical experience or knowledge of these chapter 11 cases or of the Debtors' records, assets or businesses. The fees charged by a chapter 7 trustee and any professionals hired by the chapter 7 trustee could impose substantial administrative costs on the Debtors' estates that would not be incurred under the Plan. Further, there is no assurance as to when distributions would occur in a chapter 7 liquidation.

Thus, the Debtors believe that confirmation of the Plan is preferable to the alternatives because the Plan should maximize value, ensure an expeditious resolution of these chapter 11 cases and provide for equitable distributions to the Debtors' creditors.

## ARTICLE VI.

### CONCLUSION

**THE DEBTORS AND THE ET COMMITTEE URGE ALL HOLDERS OF CLAIMS IN CLASSES 1, 3, 4, 5, 6, and 7 TO VOTE TO ACCEPT THE PLAN BY RETURNING THEIR BALLOTS SO THAT THEY ARE RECEIVED BY NEGT BALLOTING CENTER, c/o BANKRUPTCY SERVICES LLC, 757 THIRD AVENUE, NEW YORK, NEW YORK 10017, BY 4:00 P.M. (EASTERN DAYLIGHT TIME) ON \_\_\_\_\_, 2005.**

Respectfully submitted,

NEGT Energy Trading Holdings Corporation

By: R.W. Bann  
President

NEGT Energy Trading - Gas Corporation

By: R.W. Bann  
President

NEGT Energy Trading - Power, L.P.

By: NEGТ Energy Trading Holdings Corporation,  
its sole general partner

By: R.W. Bann  
President

NEGT ET Investments Corporation

By: R.W. Bann  
President

Quantum Ventures

By: \_\_\_\_\_  
President

Energy Services Ventures, Inc.

By: \_\_\_\_\_  
President

Respectfully submitted,

NEGT Energy Trading Holdings Corporation

By: \_\_\_\_\_  
President

NEGT Energy Trading - Gas Corporation

By: \_\_\_\_\_  
President

NEGT Energy Trading -- Power, L.P.

By: NEGT Energy Trading Holdings Corporation,  
its sole general partner

By: \_\_\_\_\_  
President

NEGT ET Investments Corporation

By: \_\_\_\_\_  
President

Quantum Ventures

By: P. Crispman Libe  
President

Energy Services Ventures, Inc.

By: P. Crispman Libe  
President