

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

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

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**DEBTOR NATIONAL ENERGY & GAS TRANSMISSION, INC.'S MOTION
FOR ORDER EXTENDING THE EXCLUSIVE PERIOD FOR THE DEBTOR
TO OBTAIN ACCEPTANCES FOR ITS PLAN OF REORGANIZATION
(The NEGT Debtor)**

National Energy & Gas Transmission, Inc. f/k/a/ PG&E National Energy Group, Inc. ("NEGT" or the "Debtor"), one of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), by undersigned counsel, files this motion (the "Motion") for entry of an order extending the exclusive period for the Debtor to obtain acceptances for its plan of reorganization.

Introductory Statement

1. By this Motion, the Debtor seeks an order pursuant to section 1121(d) of the Bankruptcy Code extending for approximately one hundred and twenty (120) days the 180-day period to solicit acceptances to its plan of reorganization (the "Exclusive Solicitation Period"). Specifically, the Debtor requests that the Exclusive Solicitation Period be extended to and including May 5, 2004.

Jurisdiction and Venue

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue lies properly in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157.

3. The relief sought by this Motion is based upon section 1121(d) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et. seq.* (the "Bankruptcy Code").

The Chapter 11 Cases

4. On July 8, 2003 (the "Petition Date"), each of the Initial Debtors¹ filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. By order dated July 8, 2003, the Initial Debtors' cases were consolidated for procedural purposes and are being jointly administered. On July 29, 2003, the July Debtors² filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. By order dated August 7, 2003, the July Debtors' cases were consolidated with the Initial Debtors' cases for procedural purposes only. The Debtors³ are operating their businesses and managing their properties and assets as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. On July 17, 2003, the United States Trustee for the District of Maryland (Greenbelt Division) (the "United States Trustee") appointed an official unsecured creditors' committee for the NEGT case (the "NEGT Creditors' Committee") and one for the ET Debtors' cases (the "ET Creditors' Committee"). On August 4, 2003, the United States Trustee appointed

¹ National Energy & Gas Transmission, Inc. f/k/a PG&E National Energy Group, Inc. ("NEGT"), 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 Inv."), NEGT Energy Trading - Power, L.P. f/k/a PG&E Energy Trading - Power, L.P. ("ET Power") are collectively referred to herein as the "Initial Debtors".

² NEGT Energy Services Ventures, Inc. f/k/a PG&E Energy Services Ventures, Inc. ("ESV") and Quantum Ventures ("Quantum") are collectively referred to herein as the "July Debtors".

³ The Initial Debtors and the July Debtors are collectively referred to herein as the "Debtors."

a second committee for the NEGT case consisting solely of note holders (the "Noteholders' Committee" and together with the NEGT Creditors' Committee, the "NEGT Committees"). Collectively, the ET Creditors' Committee, the NEGT Creditors' Committee, and the Noteholders' Committee are referred to as the "Committees". No trustee or examiner has been appointed in these chapter 11 cases.

The Debtors and Their Business Operations

A. NEGT

6. NEGT is primarily a holding company, which owns and manages, directly or indirectly, more than 190 subsidiaries (the "Subsidiaries," and collectively with NEGT, the "Company"). The Company is an integrated energy company with a strategic focus on power generation and natural gas transmission in North America.

7. NEGT was incorporated on December 18, 1998, as a wholly owned subsidiary of PG&E Corporation, which is not a Debtor.⁴ In January 2001, PG&E National Energy Group, LLC ("NEG LLC") was interposed between PG&E Corporation and NEGT.⁵ NEGT's principal Subsidiaries include: (a) PG&E Generating Company, LLC and its subsidiaries (collectively, "Gen LLC"); (b) ET Holdings and its subsidiaries (collectively, "ET"); and (c) PG&E Gas Transmission Corporation and its subsidiaries (collectively, "GTC"), which includes PG&E Gas Transmission, Northwest Corporation and its subsidiaries including North

⁴ Pacific Gas and Electric Company ("PG&E Co."), an affiliated entity of the Debtors, currently is a chapter 11 debtor in a chapter 11 case pending in the Northern District of California, San Francisco Division (the "California Bankruptcy Court").

⁵ Accordingly, PG&E Corporation owns 100% of NEG LLC, which, until recently, owned 100% of NEGT. Within the past few months, certain entities exercised options, resulting in NEG LLC owning 97% of NEGT, and various entities, primarily General Electric and Lehman Brothers, owning the other 3% of NEGT.

Baja Pipeline, LLC ("NBP") (collectively, "GTN").⁶ NEGT also has other less significant subsidiaries.

8. The Company has two reportable business segments: interstate pipeline operations ("Pipeline"), which comprises GTC (including GTN), and integrated energy and marketing activities ("Energy"), which comprises Gen LLC and ET. In the Pipeline business, the Company owns, operates and develops natural gas pipeline facilities, including the GTN pipeline and North Baja pipeline.

9. In the Energy business segment, the Company engages in the generation, transport, marketing and trading of electricity, various types of fuel (e.g. coal and natural gas) and other energy-related commodities throughout North America. As of December 31, 2002, the Company had ownership or leasehold interests in 27 operating generating facilities with a net generating capacity of 7,469 megawatts (MW). In addition, the Company had four facilities totaling 4,463 MW under construction.⁷ In the first quarter of 2003, the Company drastically reduced its marketing and trading operations.

NEGT's Prepetition Debt

10. NEGT's debt as of December 31, 2002, included: (a) approximately \$704 million outstanding on a revolving credit facility provided by JP Morgan Chase, as agent (the "Corporate Revolver"); (b) \$1.069 billion outstanding in respect of 10.375% senior subordinated notes due 2011 (the "Senior Notes"); and (c) various guarantees of debt and equity obligations

⁶ A schematic of the entities comprising the Company is annexed to the Affidavit of John C. Barpoulis in support of First-Day Motions.

⁷ The Company has agreed in principle to transfer these four facilities, in addition to two others in operation, to the secured lenders providing construction financing for these facilities.

owed by certain of NEGT's Subsidiaries, with maximum exposure of approximately \$1.165 billion⁸ (collectively, the "Guaranty Obligations"). NEGT has no secured indebtedness.⁹

B. The ET Debtors

11. The ET Debtors include four entities that are part of the Energy business that marketed and traded electricity, various fuels and other energy-related commodities. Historically, the ET Debtors have engaged in energy trading for two reasons. First, the ET Debtors purchased energy commodities from, and sold energy commodities to, their non-ET affiliates in furtherance of the Company's overall enterprise. By way of example, the ET Debtors might purchase coal or natural gas needed in the production of electricity by one of the Company's electric plants, and sell the electricity produced by that plant to third parties. Secondly, the ET Debtors had engaged in a proprietary trading business, which essentially sought to earn revenue by purchasing and selling energy commodities independently of any physical assets that the Company may have owned or operated. In this business activity, the ET Debtors would buy and sell electricity, coal, gas and other commodities with the expectation that many of these transactions would never go to physical delivery but would instead financially settle.

12. The ET Debtors' energy marketing and trading team has been responsible not just for managing the supply of fuel for, and the sale of electric output from, the Company's owned and controlled generating facilities and other trading positions. Additional functions have included evaluating and implementing structured transactions, including management of third

⁸ As of May 31, 2003, the debt and equity guaranty amount was approximately \$1.169 billion, and the aggregate amount of NEGT's guaranty obligations, including the debt and equity guaranty amount and guarantees relating to ET's tolling agreements of approximately \$600 million, was approximately \$2.9 billion.

⁹ While none of the obligations described in (a) through (c) above is secured, the primary obligations of GenHoldings, La Paloma and Lake Road, each a non-debtor Subsidiary, that underlie the Guaranty Obligations are secured by power plants and certain other assets owned by them. Similarly, the Turbine Revolver (defined below) is secured by a Subsidiary's interest in certain equipment.

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 fuel transportation (e.g. gas pipeline transportation).

13. As part of its overall restructuring efforts, the Company is in the process of winding down its energy trading and marketing operations. With respect to its proprietary trading business, the Company will no longer be engaged in that business in any form. In addition, services provided by the ET Debtors in support of the Company's physical assets -- primarily its generating facilities -- have been moved from the ET Debtors' operations to other parts of the Company. In some cases, these affiliate support services have been contracted for from independent third parties.

14. Accordingly, going forward, the functions of the ET Debtors will be limited to winding down their businesses and addressing the claims resulting from the termination of certain trading contracts and other agreements associated with the wind down of its operations.

C. Quantum and ESV

15. Quantum was incorporated in March 21, 1994, and is a wholly owned subsidiary of NEGT. Quantum is a holding company, which until recently owned and managed three subsidiaries. One subsidiary is in the process of being dissolved. One subsidiary is inactive. The remaining subsidiary is ESV and its operations are described below. Quantum has no significant creditors or assets, other than its interest in its subsidiaries, which, as of June 30, 2003, had a negative value.

16. ESV was formed in April of 2000¹⁰ to manage the residual assets and liabilities remaining after Quantum, ESV's current parent, agreed to sell the stock of PG&E Energy Services Corporation ("Energy Services"), and much of Energy Services' 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 contracts¹¹ not conveyed in the Energy Services Sales and to provide transition services related to the Energy Services Sales.¹² The Company determined that it would be best to liquidate ESV's and Quantum's businesses through a chapter 11 filing.

Events Leading Up to the Debtor's Chapter 11 Filing

17. As of December 31, 2002, the Company had total assets of approximately \$7.9 billion and total liabilities of approximately \$8.9 billion (book value). For the year ending December 31, 2002, the Company sustained a net loss of \$3.4 billion.¹³

18. On November 14, 2002, NEGT defaulted on the repayment of the \$431 million 364-day tranche of the Corporate Revolver. This default also constitutes a cross-default under (a) the \$273 million 2-year tranche of the Corporate Revolver, (b) the Senior Notes,

¹⁰ ESV was then known as PG&E Energy Services, LLC and became PG&E Energy Services, Inc. in July 2000.

¹¹ Three hybrid contracts (*i.e.*, contracts that required ESV both to construct and maintain energy related equipment and supply power thereto) remained after the Energy Services Sales, two of which are still in effect and are described below.

¹² Pursuant to the Energy Services Sales all contracts were assigned from Energy Services to ESV, thus, when referring to contracts, Energy Services and ESV are used interchangeably.

¹³ As of March 31, 2003, the Company had total assets of approximately \$7.6 billion and total liabilities of \$8.98 billion in liabilities (book value). For the quarter ending March 31, 2003, the Company sustained a net loss of \$.4 billion.

(c) NEGТ's guarantee of an approximately \$205 million revolving equipment loan facility provided by Societe Generale, as Agent, to PG&E National Energy Group Construction Company, LLC, a Subsidiary (the "Turbine Revolver"); and (d) its equity commitment guarantees for the (i) Gen Holdings Credit Facility (\$355 million outstanding), (ii) La Paloma credit facility (\$375 million outstanding) and (iii) Lake Road credit facility (\$230 million outstanding). In addition, on November 15, 2002, NEGТ failed to pay a \$52 million interest payment due under the Senior Notes.

19. Before July 31, 2002, all of the rated debt instruments of NEGТ and its affiliates carried investment-grade credit ratings as assigned by Standard & Poor's ("S&P") and Moody's Investors Service ("Moody's"). On July 31, 2002 and August 5, 2002, S&P and Moody's, respectively, downgraded NEGТ's credit ratings. On October 8, 2002, October 16, 2002, October 18, 2002 and November 13, 2002, Moody's further downgraded the senior unsecured debt rating, issuer rating and syndicated bank credit facilities of NEGТ. On October 11, 2002 and November 14, 2002, S&P further downgraded certain of NEGТ's debt facilities. Moody's and S&P also downgraded the credit rating of certain of NEGТ's Subsidiaries. The result of these downgrades has left all of NEGТ rated entities and debt instruments at below investment-grade.

20. The downgrade of NEGТ's credit ratings impacted various guarantees and financial arrangements that require NEGТ to maintain certain credit ratings. As a result of the ratings downgrades, NEGТ's counterparties have demanded or may demand that NEGТ provide additional security for performance in the form of cash, letters of credit, acceptable replacement guarantees or advanced funding of obligations.

21. Similarly, 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 has eliminated any real hope that the ET Debtors' trading operations will become profitable in the foreseeable future.

22. During the months prior to the Petition Date, NEGT explored various options to restructure its indebtedness and guarantee obligations. These options, included, without limitation, sales of assets and businesses, discussions with the various creditors regarding debt restructuring, and the reorganization of existing operations. The implementation of most of these options would have been subject to obtaining necessary third party approvals and would have required compliance with NEGT's other agreements and applicable laws and regulations. NEGT, therefore, engaged in active negotiations regarding global restructuring of its debt with the lenders under the Corporate Revolver (the "Prepetition Lenders"), the GenHoldings credit facility, the La Paloma and Lake Road credit facilities and the Turbine Revolver as well as representatives of the holders of the Senior Notes (the "Prepetition Bondholder Committee").

23. These efforts by NEGT to reduce debt or raise cash (e.g., through asset sales) failed to produce adequate sources of liquidity for NEGT to meet its obligations. NEGT had no access to the capital markets and lacks adequate liquid funds to fulfill its commitments as they matured. As of the Petition Date, NEGT and certain subsidiaries were in default on all or substantially all of their outstanding indebtedness and had no further availability under any credit

facilities. Nonetheless, through, among other things, the disposition and liquidation of selected assets and termination of certain unprofitable businesses, the Company may be restructured around its profitable pipeline business and its independent power producer assets. In order to achieve its restructuring goals while preserving value in the Company, the Debtors determined that restructuring NEGT's obligations and liquidating the ET Debtors could best be achieved through a chapter 11 filing.

The NEGT Plan of Reorganization

24. On the Petition Date, NEGT filed its Plan of Reorganization for PG&E National Energy Group, Inc. (the "NEGT Plan"). The NEGT Plan is a result of extensive pre-petition negotiations with major creditors and reflects an agreement in principle with major creditors respecting the restructuring.

25. Due to the activity and attention required for numerous business matters incident to the commencement of these cases, NEGT was unable to prepare a disclosure statement pursuant to § 1125 of the Bankruptcy Code for the NEGT Plan that could be filed contemporaneously with the NEGT Plan. Subsequent to the Petition Date, NEGT and its major creditor constituencies have been diverted from negotiating final terms of the proposed plan of reorganization and discussing information issues for NEGT to complete its disclosure statement due to, among other things, the sudden and unexpected litigation with PG&E Corporation over various tax issues involving hundreds of millions of dollars. Completion of a disclosure statement is, however, imminent.

Relief Requested

26. By this Motion, the Debtor seeks an Order pursuant to section 1121(d) of the Bankruptcy Code extending the Debtor's exclusive period to solicit acceptances of the NEGT

Plan to May 5, 2004, which constitutes a one hundred twenty (120) day extension of the exclusive period.

Legal Standards Regarding Exclusivity Periods

27. Section 1121(b) of the Bankruptcy Code provides for an initial period of 120 days after the commencement of a chapter 11 case during which a debtor has the exclusive right to propose and file a plan of reorganization (the “Exclusive Filing Period”). Section 1121(c)(3) of the Bankruptcy Code provides that if the debtor proposes and files a plan during the Exclusive Filing Period, then the debtor has until the 180th day after the chapter 11 case was commenced to solicit and obtain acceptances of its plan (the “Exclusive Solicitation Period”). During the Exclusive Solicitation Period, no party other than the debtor may file a proposed plan. 11 U.S.C. § 1121(c). Together, the Exclusive Filing Period and the Exclusive Solicitation Period are referred to as the “Exclusivity Periods”.

28. Section 1121(d) of the Bankruptcy Code allows a bankruptcy court to extend the Exclusivity Periods for cause:

On request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

11 U.S.C. § 1121(d).

29. The Bankruptcy Code does not specify the meaning of “cause” for an extension of the Exclusivity Periods. Instead, and by design, Congress gave the bankruptcy courts broad flexibility in determining whether cause exists to extend the Exclusivity Periods. *See* H.R. Rep. No. 595, 95th Cong., 1st Sess. 406 (1977), *reprinted in* 1978 U.S. Code Cong. & Admin. News 6362; In re Public Serv. Co. of New Hampshire, 88 B.R. 521, 534 (Bankr. D.N.H. 1988); Gaines v. Perkins, (In re Perkins), 71 B.R. 294, 297 (Bankr. W.D. Tenn. 1987) (“The

hallmark of [section 1121(d)] is flexibility”) (citation omitted).

30. The legislative history to section 1121 notes that “if an unusually large company were to seek reorganization under chapter 11, the court would probably need to extend the time in order to allow the debtor to reach an agreement.” H.R. Rep. No. 595, 95th Cong., 2d Sess. 231-32 (1978) (footnotes omitted). Indeed, the Maryland Bankruptcy Courts have routinely granted extensions in such cases. See, e.g., In re Sunterra Corporation, Case No. 00-5-6931-JS (Bankr. D. Md.) (debtor retained exclusivity for over 24 months); In re Frank’s Nursery & Crafts, Inc., Case No. 01-54215-JS (debtor retained exclusivity for 14 months); and In re Railworks Corporation, Case No. 01-6-4463-SD (Bankr. D. Md.) (debtor retained exclusivity for over 13 months). In fact, in each of these large Maryland Chapter 11 cases, the debtors maintained exclusivity for over a year and exclusivity only ended upon the successful confirmation of the respective debtors’ plans of reorganization.

31. “The legislative history also reveals that Congress intended that the granting of an extension would be based on a showing of some promise of probable success [of reorganization].” In re Hoffinger Industries, Inc., 292 B.R. 639, 643 (8th Circuit B.A.P. 2003) (citations omitted). Additionally, the legislative history indicates that extensions are appropriate where the debtor is proceeding in good faith but not where it seeks exclusivity as a “tactical measure” to pressure creditors into accepting an unsatisfactory plan. Id.

32. Over the years, numerous courts have attempted to itemize the list of factors that a court should take into consideration in evaluating a request to extend exclusivity. In the most recent review of the existing case law, the Eighth Circuit Bankruptcy Appellant Panel identified the following nine factors:

- a. The large size of the debtor and the consequent difficulty in formulating a plan of reorganization for a huge debtor with a complex financial structure;
- b. The need for the creditors' committee to negotiate with the debtor and the ability to prepare adequate information;
- c. The existence of good faith progress towards reorganization;
- d. The existence of an unresolved contingency;
- e. The fact that the debtor is paying bills as they become due;
- f. The length of previous extensions of exclusivity;
- g. Breakdowns in plan negotiations such that the continuation of the debtor's exclusivity period would result in the debtor having an unfair bargaining position over creditors;
- h. The debtor's failure to resolve fundamental reorganization matters essential to its survival;
- i. The gross mismanagement of the debtor.

In re Hoffinger Industries, Inc., 292 B.R. 639, 643-44 (8th Circuit B.A.P. 2003) (internal citations omitted). The above items “are only factors, not all of which are relevant in every case.” Id. “Nor is it simply a question of adding up the number of factors which weigh for and against an extension.” Id. Indeed, ultimately “it is within the discretion of the bankruptcy court to decide which factors are relevant and give the appropriate weight to each.” Id. A bankruptcy court's decision to extend a debtor's exclusive periods is based upon the facts and circumstances of each particular case. See, e.g., First American Bank of New York v. Southwest Gloves and Safety Equip., Inc., 64 B.R. 963, 965 (Bankr. D. Del. 1986); In re Texaco, Inc., 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987).

33. The debtor bears the burden of proof in establishing “cause.” This is not a heavy burden, but merely requires the debtor to show by a preponderance of the evidence that

cause exists. In other words, the debtor needs to show that in weighing all of the factors, the balance of considerations weighs, at least slightly, in favor of finding cause and granting the extension. Indeed, where, as here, the debtor has already filed a plan, “cause may be measured by a more lenient standard in the determination to grant an enlargement of time in which to gain acceptances to a filed plan.” In re Perkins, 71 B.R. 294, 299 (W.D. Tenn. 1987).

Good Cause Exists to Extend the Exclusive Solicitation Period

34. Under the facts and circumstances of the present case, good cause exists to grant the Debtor an extension of exclusivity. As set forth below, each of the nine factors identified in Hoffinger weighs in favor of granting the requested extension.

Factor One: The large size of the debtor and the consequent difficulty in formulating a plan of reorganization for a huge debtor with a complex financial structure

35. The Debtor is undertaking a large and complex restructuring. As of March 31, 2003, the Company comprised 190 subsidiaries of which NEGT is the parent with collective assets of approximately \$7.9 billion (book value) and liabilities of approximately \$8.98 billion (book value). NEGT has a Corporate Revolver debt of approximately \$700 million, over \$1 billion in publicly traded Senior Notes, and Guaranty Obligations on subsidiary financings with potential maximum exposure of approximately \$1.165 billion. By any measure, the Debtor is a very large business enterprise with a complex financial structure. This factor weighs in favor of granting the requested exclusivity extension.

Factor Two: The need for the creditors’ committee to negotiate with the debtor and the ability to prepare adequate information

36. The Debtor and the NEGT Committees need time to negotiate and prepare adequate information for the disclosure statement. As indicated above, while the Debtor has been able to engage in substantial pre-petition negotiation with unofficial committees of both bank debt

holders and note holders, the Debtor's ability to negotiate with the official committees was delayed due to litigation over the number and membership of the official committees herein. The number of creditors' committees and their membership was not final until August 4, 2003. Since that time, the NEGТ Committees have been taking steps to retain their professionals, some of whom have not yet been approved for employment by the Court. Accordingly, the Debtor and the Official Committees need additional time to continue negotiations with respect to finalizing support for NEGТ Plan and their positions with respect to the content and adequacy of a disclosure statement.

Factor Three: The existence of good faith progress towards reorganization

37. The Debtor should be granted an extension of exclusivity because it is making good faith progress towards reorganization. As the Court knows, on the Petition Date the Debtor submitted the NEGТ Plan, which had been negotiated by the Debtor in good faith for many months pre-petition with the major creditors in the case. The text of the NEGТ Plan clearly reveals that it is a highly complex, highly detailed and thoroughly prepared restructuring proposal. Moreover, the NEGТ Plan enjoys substantial support among the creditors. Accordingly, there is ample evidence that the Debtor is making good faith progress towards a reorganization.

Factor Four: The existence of an unresolved contingency

38. The Debtor should be granted an extension of exclusivity because of unresolved contingencies in the Debtor's case. As the Court knows, extremely significant litigation has arisen post-petition. On August 13, 2003, the Debtor filed its complaint against PG&E Corporation seeking to recover, among other things, claims and property and approximately \$350,000,000 in tax refunds that the Debtor and the NEGТ Committees believe were wrongfully misappropriated by PG&E Corporation. The Debtor's tax attributes and the

preservation of same have been a major issue since the inception of the case and indeed for many months before. The Debtor and major creditors' constituents contemplated that the status quo with respect to the various claims to the tax attributes would be maintained until post-confirmation, unless consensually resolved or publicly litigated before confirmation. However, as is now known, the Debtor's parent company, PG&E Corporation, upset that delicate balance by misappropriating the Debtor's tax losses. This tax litigation has dominated the recent weeks of the Debtor's reorganization efforts and may continue for some time. Accordingly, the existence of this new and significant litigation, and the array of unknown outcomes and impacts of same, constitute an unresolved contingency that further weighs in favor of granting the requested exclusivity extension.

Factor Five: The fact that the debtor is paying bills as they become due

39. The Debtor is continuing in the ordinary course of its business and is continuing to pay its post-petition obligations as and when they become due. This factor weighs in favor of granting the requested exclusivity extension.

Factor Six: The length of previous extensions of exclusivity

40. There have been no previous extensions of exclusivity. This is the first request for such an extension. Accordingly, this factor weighs heavily in favor of granting the requested extension.

Factor Seven: Breakdowns in plan negotiations such that the continuation of the debtor's exclusivity period would result in the debtor having an unfair bargaining position over creditors

41. There have been no breakdowns in plan negotiations such that continuation of the Debtor's exclusivity would result in the Debtor having an unfair bargaining position over creditors. Indeed, the NEGOT Plan already submitted was substantially negotiated pre-petition and

has been described as an agreement in principle among the Debtor and the major creditor constituents of its case. As such, in contrast to any breakdown in negotiations, the Debtor has achieved tremendous consensus with the unofficial creditor committees pre-petition and there is every reason to believe the Debtor will reach a consensus with the official NEGТ Committees post-petition. This factor also weighs heavily in favor of granting the requested extension.

Factor Eight: The debtor's failure to resolve fundamental reorganization matters essential to its survival

42. The Debtor has not failed to resolve matters fundamental to its survival. The Debtor has millions of dollars of unencumbered cash on hand. It is fully capable of meeting all of its operational expenses during these reorganization proceedings. There is no known issue outstanding which threatens the Debtor's survival. Indeed, the present tax litigation, the most important open issue in the case, while involving a devastating misappropriation of assets of the Debtor's estate, does not threaten the actual survival of the Debtor itself. Accordingly, this factor weighs in favor of granting the requested extension.

Factor Nine: Any gross mismanagement of the debtor.

43. The Debtor is operating in the ordinary course of business post-petition. The Debtor is proceeding to reduce expenses where possible and to coordinate reorganization efforts with the NEGТ Committees. The only misconduct alleged thus far in the case is against PG&E Corporation for its misappropriation of tax assets from the Debtor. This wrongful action was done by PG&E Corporation and does not constitute gross mismanagement by the Debtor but rather misconduct towards the Debtor by others. When the Debtor learned that it had been victimized by PG&E Corporation's misappropriation of its tax attributes, the Debtor promptly brought this matter to the Court's attention and commenced litigation against PG&E Corporation to remedy the wrongful action. This factor weighs in favor of granting the requested extension.

44. Each and every one of the factors traditionally considered by courts in determining cause for granting an extension of exclusivity weighs in favor of granting the requested extension. This is the Debtor's first request for an extension of the Exclusive Solicitation Period. Since the filing of these chapter 11 cases, the Debtor has taken great strides in stabilizing its operations, drafting and filing a plan and otherwise restructuring its businesses. The facts and circumstances demonstrate that good cause exists to grant the requested extension. Indeed, the basis for finding good cause is overwhelming.

Conclusion

WHEREFORE, the Debtors respectfully request entry of an order of this Court (i) extending for an additional one-hundred twenty (120) days the exclusive period during which only the Debtors may solicit acceptances to the NEGOT Plan, so that said exclusive period extends to and includes May 5, 2004; and (ii) granting the Debtors such other and further relief as this Court deems just and proper.

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CERTIFICATE OF SERVICE

I certify that on October 20, 2003, a copy of the foregoing pleading was served by first class mail, postage prepaid upon the parties on the attached Service List. The pleading as served upon the parties excluded a copy of the Service List in order to expedite copying and transmittal. Any party desiring a copy of the pleading with the Service List attached may contact the undersigned counsel or may review the original documents at the Clerk's Office.

/s/ Dennis J. Shaffer

Dennis J. Shaffer

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