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Transcript Document No. 3

EMPIRE STATE PIPELINE/EMPIRE PIPELINE, INC.

TO

FINGER LAKES REGIONAL TELECOMMUNICATIONS  
DEVELOPMENT CORPORATION

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HOST COMMUNITY BENEFIT AGREEMENT

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Relating to:  
Acquisition, Construction and Equipping a Natural Gas Pipeline Project  
Located in Ontario County, New York

Dated as of July 1, 2007

Ontario County Industrial Development Agency  
(Empire State Pipeline/Empire Pipeline, Inc. 2007 Facility)

## HOST COMMUNITY BENEFIT AGREEMENT

THIS HOST COMMUNITY BENEFIT AGREEMENT (this "Benefit Agreement"), dated as of July 1, 2007, by and between the FINGER LAKES REGIONAL TELECOMMUNICATIONS DEVELOPMENT CORPORATION, a not-for-profit local development corporation of the State of New York (the "State") with offices located at 70 Ontario Street, Canandaigua, New York 14424 (the "Corporation"), and EMPIRE STATE PIPELINE ("Empire"), a joint venture formed and existing under the laws of the State of New York, with offices at 6363 Main Street, Williamsville, New York 14221, and EMPIRE PIPELINE, INC. ("EPI"), a corporation duly organized and validly existing under the laws of the State of New York, with offices at 6363 Main Street, Williamsville, New York 14221, (Empire and EPI collectively, the "Company").

### WITNESSETH:

WHEREAS, the Company has submitted an application (the "Application"), to the Ontario County Industrial Development Agency (the "Agency"), requesting the Agency's assistance with a certain project (the "Project") consisting of: (i) the acquisition by the Agency of fee title to, leasehold or other interest in certain properties located throughout Ontario County, New York and the existing improvements located thereon (collectively the "Land"), (ii) the construction and equipping on the Land of a portion of the Company's 78.3 mile 24-inch diameter natural gas pipeline to be located approximately 4.85 miles in the Town of Victor, approximately 6.00 miles in the Town of Farmington, approximately 4.59 miles in the Town of Canandaigua, approximately 8.67 miles in the Town of Hopewell, approximately 1.39 miles in the Town of Gorham, and approximately 7.67 miles in the Town of Seneca, all in the County of Ontario and State of New York and traversing the Finger Lakes region through the counties of Genesee, Ontario, Yates, Schuyler, Chemung and Steuben, and terminating in Corning, New York (hereinafter referred to collectively as the "Improvements"), and (iii) the acquisition in and around the Improvements of certain items of equipment and other tangible personal property including pipes, valves, meters, fittings, and compressors (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); all in furtherance of providing natural gas service to users located or locating at or in areas surrounding the Land in said Counties; and

WHEREAS, on or about the date hereof, the Agency entered into a straight lease transaction, within the meaning of General Municipal Law Section 854(15) (the "Transaction"), in connection with the Project, such Transaction having included the execution and delivery by the Agency and the Company of a certain lease and assignment of easement agreement (the "Lease and Assignment of Easement Agreement") wherein a leasehold interest to the land, improvements and personal property constituting the Facility were leased to the Agency, along with a certain leaseback and assignment of easement agreement (the "Leaseback and Assignment of Easement Agreement") wherein the Agency and has leased said land, improvements and personal property back to the Company; and

WHEREAS, the Transaction also included the execution and delivery by the Agency and the Company of a certain Payment-in-lieu-of-Tax Agreement ("PILOT Agreement"), dated as of the date hereof, wherein the Company has agreed to make certain payments to the Agency for

the benefit of the County of Ontario (the "County"), the Towns of Victor, Farmington, Canandaigua, Hopewell, Gorham and Seneca (the "Towns") and the Victor Central, Canandaigua, Gorham Middlesex Central, Penn-Yan Central and Marcus Whitman Central School Districts (the "School Districts", and collectively with the County and the Towns, the "Affected Taxing Jurisdictions"); and

WHEREAS, pursuant to an approving resolution of the Agency, dated May 30, 2007 (the "Resolution"), the Agency approved the terms of the PILOT Agreement and related deviation from the Agency's Uniform Tax Exemption Policy ("UTEF") to induce the Company to undertake the Project in Ontario County which would result in significant construction jobs and related employment; and

WHEREAS, the Agency's approval of the terms of the PILOT Agreement within the Resolution was based upon the following contingency: "...as an incentive for the Agency to enter into the PILOT Agreement and approve the Deviation, the Company has agreed to make payments over the twenty-five year duration of the PILOT Agreement into an economic development fund for the benefit of [the Corporation] and the County which will help fund the construction of a planned fiber optic ring in full." (the "PILOT Contingency"); and

WHEREAS, the Corporation and the Company wish to memorialize the terms and conditions associated with the economic development fund (the "Fund") in order to satisfy the PILOT Contingency.

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

## ARTICLE I REPRESENTATIONS AND COVENANTS

### 1.1. Representations and Covenants of the Corporation.

The Corporation makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Corporation is a duly established and validly existing not-for-profit local development corporation, and, pursuant to and in accordance with the applicable provisions of Not-for-Profit Corporation Law Section 1411 (the "Act"), has the power to enter into the transactions contemplated by this Agreement. Based upon the representations of the Company contained herein and within documents executed and delivered by the Company in connection with the Transaction, the Corporation has the authority to take the actions contemplated herein under the Act.

(b) The Corporation has been duly authorized to execute and deliver this Benefit Agreement.

(c) The Corporation will administer the Fund for the purposes set forth herein, such purposes being allowable purposes set forth within the Act.

(d) Neither the execution and delivery of this Benefit Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Benefit Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the Corporation is a party or by which it is bound, or will constitute default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Corporation under the terms of any such instrument or agreement.

(e) The Corporation has been induced to enter into this Benefit Agreement by the undertaking of the Company, as agent of the Agency to acquire, construct, equip, repair and maintain the Facility and related jobs in Ontario County, New York.

## 1.2. Representations and Covenants of the Company.

The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) Empire is a joint venture between Empire State Pipeline Company, LLC (“Empire LLC”) and St. Clair Pipeline Company, LLC (“St. Clair LLC”). Both Empire LLC and St. Clair LLC are limited liability companies duly formed, validly existing and in good standing under the laws of the State; and EPI is a corporation duly organized, validly existing and in good standing under the laws of the State. Empire and EPI (collectively, the “Company” and as defined above), each has the authority to enter into this Benefit Agreement and each has duly authorized the execution and delivery of this Benefit Agreement.

(b) Neither the execution and delivery of this Benefit Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Benefit Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which either Empire or EPI is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of either the Empire or EPI under the terms of any such instrument or agreement.

(c) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body pending or, to the knowledge of the Company, threatened against or affecting the Company, to which the Company is a party, and in which an adverse result would materially diminish or adversely impact on the Company's ability to fulfill its obligations under this Benefit Agreement.

## ARTICLE II

### PAYEE/PAYMENT OF ANNUAL COMMUNITY BENEFIT FEE.

2.1 (i) *Payee.* For the term of this Benefit Agreement, the Company agrees to pay to the Corporation (Attn: Chief Executive Officer), an annual benefit fee (the "Annual Benefit Fee"), semi-annually, or before September 1 and December 1 of 2009, an amount correlating to one half of the Total Payment Amount, as set forth within Schedule A, hereto and then quarterly, on or before March 1, June 1, September 1 and December 1 of each calendar year thereafter, commencing on March 1, 2010 (each March 1, June 1, September 1 and December 1, a "Payment Date"), an amount correlating to one quarter of the Total Payment Amount, as set forth within Schedule A, hereto. The Company hereby agrees to pay all such amounts due pursuant to this Benefit Agreement on or before each Payment Date in accordance with the terms hereof.

(ii) *Payment of Annual Benefit Fee.* The Company, pursuant to the terms of this Benefit Agreement, shall remit to the Corporation an Annual Benefit Fee equal to an amount correlating to the Total Payment Amount, as set forth within Schedule A, hereto. The Company's failure to remit any Annual Benefit Fee due pursuant to this Benefit Agreement within thirty (30) days of the corresponding Payment Date shall require additional payment by the Company of a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such Annual Benefit Fee is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to ten percent (10%) per month.

(iii) *Use of Fund; Public Purposes.* The parties agree and acknowledge that payments made hereunder are to provide revenues for public purposes to be undertaken by the Corporation. The revenues paid by the Company to the Corporation, which shall be utilized at the sole and absolute discretion of the Corporation, are to be provided (i) in recognition for the Agency's approval of the terms of the PILOT Agreement and related PILOT Deviation; (ii) to facilitate future public utility expansion and development within the County, including, but not limited to, the construction of the fiber optic ring; and (iii) as a source of funding for prospective costs and expenses associated with and related to anticipated municipal services to be provided in furtherance of the Facility's presence within the County.

## ARTICLE III

### TRANSFER OF FACILITY; NO TERMINATION.

3.1 In the event that the Facility is transferred from the Agency to the Company (the Lease and Assignment of Easement and Leaseback and Assignment of Easement Agreements are terminated), and/or the PILOT Agreement terminates and the Facility is transferred back to the Company, this Benefit Agreement shall not terminate. The Company hereby acknowledges that this Benefit Agreement is an absolute, unconditional, obligation of the Company that cannot be terminated by the Company for any reason. This Benefit Agreement shall terminate upon the payment in full of all amounts due hereunder. Notwithstanding the foregoing, the Company may terminate this Benefit Agreement within ninety-eight (98) days of the execution and delivery hereof, if the Company does not receive a FERC order amending its certificate upon terms

satisfactory to Company and the Company terminates the Lease and Assignment of Easement Agreement, the Leaseback and Assignment of Easement Agreement and the PILOT Agreement in accordance with their terms. The parties hereto acknowledge that this Benefit Agreement was executed and delivered on July 26, 2007.

ARTICLE IV  
MISCELLANEOUS.

4.1 This Benefit Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

4.2 All notices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, as follows:

To the Corporation:

Finger Lakes Regional Telecommunications  
Development Corporation  
70 Ontario Street  
Canandaigua, New York 14424  
Attn: Chief Executive Officer

With a copy to:

Remington, Gifford, Williams & Colicchio, LLP  
183 East Main Street  
Rochester, New York 14604  
Attn: Jim Townsend, Esq.

To Corporation Counsel:

Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Attn: Shawn M. Griffin, Esq

To the Company:

Empire State Pipeline/Empire Pipeline, Inc.  
6363 Main Street  
Williamsville, New York 14221  
Attn: Ronald C. Kraemer, Vice President

To Company Counsel:

Keyser, Maloney & Winner LLP  
HSBC Bank Building, 2nd Floor  
150 Lake Street  
Elmira, New York 14901  
Attn: George H. Winner, Jr., Esq.

Phillips Lytle LLP  
437 Madison Avenue  
New York, New York 10022  
Attn: Milan K. Tyler, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

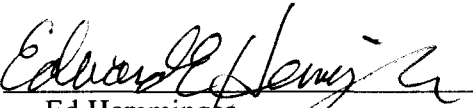
4.3 This Benefit Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in the County of Ontario, New York.

*(Remainder of Page Intentionally Left Blank)*



IN WITNESS WHEREOF, the parties hereto have executed this Benefit Agreement as of the day and year first above written.

FINGER LAKES REGIONAL  
TELECOMMUNICATIONS  
DEVELOPMENT CORPORATION

By:   
Ed Hemming  
Chief Executive Officer

EMPIRE STATE PIPELINE, A JOINT VENTURE

By: \_\_\_\_\_  
Ronald C. Kraemer  
Vice President

EMPIRE PIPELINE, INC.

By: \_\_\_\_\_  
Ronald C. Kraemer  
Vice President

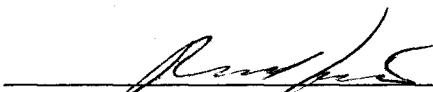
(Signature page to Benefit Agreement)

IN WITNESS WHEREOF, the parties hereto have executed this Benefit Agreement as of the day and year first above written.

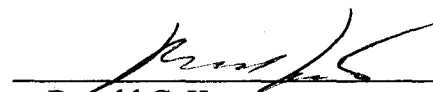
FINGER LAKES REGIONAL  
TELECOMMUNICATIONS  
DEVELOPMENT CORPORATION

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

EMPIRE STATE PIPELINE, A JOINT VENTURE

By:  \_\_\_\_\_ *AKM*  
Ronald C. Kraemer  
Vice President

EMPIRE PIPELINE, INC.

By:  \_\_\_\_\_ *AKM*  
Ronald C. Kraemer  
Vice President

(Signature page to Benefit Agreement)

**SCHEDULE A**

**HOST COMMUNITY BENEFIT AGREEMENT DATED AS OF JULY 1, 2007**

**BETWEEN**

**ONTARIO COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**EMPIRE STATE PIPELINE AND EMPIRE PIPELINE, INC.**

<b><u>Payment Year</u></b>	<b><u>Total Payment Amount</u></b>
Year 1	379,237
Year 2	379,237
Year 3	379,237
Year 4	379,237
Year 5	379,237
Year 6	379,237
Year 7	379,237
Year 8	379,237
Year 9	379,237
Year 10	379,237
Year 11	379,237
Year 12	379,237
Year 13	379,237
Year 14	379,237
Year 15	379,237
Year 16	379,237
Year 17	379,237
Year 18	379,237
Year 19	379,237
Year 20	379,237
Year 21	379,237
Year 22	379,237
Year 23	379,237
Year 24	379,237
Year 25	379,237

Semi-annual payments of the Total Payment Amount for Year 1 due on September 1 and December 1 of 2009 and thereafter quarterly payments of the Total Payment Amount due on each March 1, June 1, September 1 and December 1, commencing March 1, 2010

**B**

## GUARANTY

This Guaranty is made by National Fuel Gas Company, a New Jersey corporation (the "Guarantor"), in favor of Finger Lakes Regional Telecommunications Development Corp., a New York not-for-profit corporation (the "Creditor").

WHEREAS, Creditor is considering entering into a host community benefit agreement (the "Agreement"), with Guarantor's subsidiaries, Empire State Pipeline and Empire Pipeline, Inc. (collectively the "Debtor");

WHEREAS, Creditor is not willing to enter into such Agreement with Debtor unless Guarantor enters into this Guaranty, this execution and delivery of such Guaranty being a condition to Creditor entering into the Agreement; and

WHEREAS, Guarantor, as the parent corporation of Debtor and by virtue of its interest in and relationship with Debtor, deems it to be in Guarantor's best interest, based on sound business judgment, in that valuable benefits will be derived by Guarantor by virtue of the Agreement, to execute and deliver this Guaranty to Creditor.

NOW, THEREFORE, in order to induce Creditor to enter into the Agreement, and to satisfy such condition, and further, in order for Guarantor to obtain the benefits resulting from Creditor's performance pursuant to the Agreement, Guarantor desires to enter into this Guaranty and hereby agrees as follows:

1. Guaranty. Subject to the terms and conditions contained herein, Guarantor hereby unconditionally and absolutely guarantees the punctual payment when due of Debtor's payment obligations (including monetary damages) arising under the Agreement (such obligation is herein referred to as the "Payment Obligation"). The Guarantor's liability hereunder shall be and is specifically limited to the payment expressly required to be made in accordance with the Agreement and, except to the extent specifically provided hereunder, in no event shall the Guarantor be subject hereunder to consequential, exemplary, equitable, loss, punitive, tort, or any other damages or costs. Notwithstanding any other provision of this Guaranty, the liability of Guarantor to Creditor under this Guaranty (inclusive of the reasonable legal fees, costs, and other expenses incurred by Creditor in enforcing payment obligations under this Guaranty) shall not exceed Nine Million Five Hundred Thousand US Dollars (\$9,500,000 USD) in the aggregate at any time.
2. Demands and Notice. Any demand by the Creditor for payment (hereinafter referred to as a "Payment Demand") hereunder shall be in writing and shall state the amount Debtor has failed to pay, with a specific statement that Creditor is calling upon Guarantor to pay under this Guaranty. A Payment Demand shall be required with respect to a Payment Obligation before Guarantor is required to pay such Payment Obligation hereunder. Other than such Payment Demand, the

Guarantor expressly waives notice of acceptance of this Guaranty, presentment, notice of dishonor or nonpayment, protest and notice of protest.

3. Termination.

Notwithstanding anything to the contrary set forth herein, this Guaranty shall terminate upon the termination of the Agreement pursuant to its terms (the "Termination Date") and after the Termination Date, Guarantor shall have no liability hereunder except to the extent that the Payment Obligation incurred on or prior to the Termination Date has not been paid, resolved, settled or discharged in full.

4. Effect of Certain Events. Guarantor agrees that Guarantor's liability hereunder will not be released, reduced or impaired by the renewal, consolidation, extension, modification or amendment from time to time of the Agreement including, but not limited to, an extension of payment deadlines.

5. Notices. All notices and other communications about this Guaranty must be in writing, must be given by facsimile, hand delivery or overnight courier service and must be addressed or directed to the respective parties as follows (or as otherwise directed by written notice from the parties, from time to time):

If to the Creditor, to:

Finger Lakes Regional Telecommunications Development Corporation  
70 Ontario Street  
Canandaigua, New York 14424  
Attn: Chief Executive Officer

If to the Guarantor, to:


National Fuel Gas Company  
6363 Main Street  
Williamsville, New York 14221  
Facsimile No.: (716) 857-7206  
Attn: Legal Department

6. Reservation of Defenses. Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, counterclaims and other defenses to which Debtor is or may be entitled arising from or out of the Agreement, except for defenses arising out of bankruptcy, insolvency, dissolution or liquidation of the Debtor.

7. Amendment. No term or provision of this Guaranty shall be amended, modified, altered, waived, or supplemented except in a writing signed by the parties hereto.
8. Integration. This Guaranty is the entire and only agreement between the Guarantor and the Creditor with respect to the guaranty of the Payment Obligation of Debtor. All representations, warranties, agreements, or undertakings heretofore or contemporaneously made, which are not set forth herein, are superseded hereby.
9. Governing Law. This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to any principles of conflicts of laws thereof that would require application of the law of any other jurisdiction.
10. Assignment. This Guaranty shall be binding upon the Guarantor and upon its successors and assigns, and shall inure to the benefit of the Creditor and its successors and assigns, and shall apply to all successors and assigns of the Debtor. If the Guarantor no longer wholly-owns, directly, or indirectly the Debtor, the Guarantor may assign its rights and obligations hereunder, with the prior written consent of the Creditor, which consent shall not be unreasonably withheld, to the party that acquires the Debtor, in whole or in part, and that acknowledges and assumes all Payment Obligations hereunder, including those that exist or arise prior to such assignment, which the Guarantor did not already fulfill.

Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized officer effective as of the 26<sup>th</sup> day of July 2007.

By:

 JGH

Name: R. J. Tanski

Title: Treasurer