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We are analyzing all of these claims and intend to defend against them vigorously. We cannot predict with certainty whether we will incur any liability or to estimate the damages, if any, that might be incurred in connection with this lawsuit. We do not believe that any liability that we might incur as a result of this litigation would have a material adverse effect on our financial condition, results of operations or cash flows.

Triad Litigation. In March 2003, Triad Energy Resources Corp. and five other alleged representatives of two plaintiffs' classes filed a putative antitrust class action against NiSource Inc. and other defendants, including us, in federal district court. The plaintiffs purport to represent classes of purchasers, marketers, wholesalers, managers, sellers and shippers of natural gas that allegedly were damaged by an illegal gas scheme devised by three federally regulated interstate pipeline systems which are now owned by NiSource, and certain shippers on these pipelines. It alleges that the interstate pipelines provided preferential storage and transportation services to their own unregulated marketing affiliate, in violation of FERC regulations, and in return for percentages of the profits reaped by the marketing affiliate. The complaint also alleges that certain shippers, including us, having learned of the Columbia arrangements, demanded and received similar preferential storage and transportation services that were not available to all shippers.

Although this alleged scheme was the subject of an October 2000 FERC order, which required the Columbia companies to pay $27.5 million to certain customers of Columbia Gas and Columbia Gulf, plaintiffs claim that the FERC order did not remedy the competitive injury to plaintiffs caused by the scheme. The complaint seeks aggregate damages of approximately $1.716 billion, which under the federal antitrust laws, damages are subject to trebling. In October 2003, the court granted defendants' motion to dismiss for lack of jurisdiction and allowed time for the plaintiffs to amend their complaint. The plaintiffs have since filed a motion to voluntarily dismiss their complaint and indicated an intent to refile in a proper jurisdiction, although plaintiffs have not yet re-filed. We are analyzing these claims and intend to defend against them vigorously. We cannot predict with certainty whether we will incur any liability or to estimate the damages, if any, that we might incur in connection with this lawsuit.

Atlantigas Corp. Litigation. In November 2003, Atlantigas Corporation filed a suit similar to Triad in Maryland against us and several other defendants alleging certain conspiracies between natural gas shippers and storage facilities. The complaint seeks unspecified compensatory and punitive damages. In addition, we are alleged to have conspired with the other defendants to receive preferential natural gas storage and transportation services at off-tariff prices. Defendants are currently challenging plaintiff on the threshold issues of standing, statute of limitations and jurisdiction. These issues will be fully briefed in February 2004 and are expected to be resolved in the spring of 2004.

We are analyzing these claims and intend to defend against them vigorously. We cannot predict with certainty whether we will incur any liability or to estimate the damages, if any, that we might incur in connection with this lawsuit.

Maxus Litigation. In April 2001, in the case of *Natural Gas Clearinghouse v. Midgard Energy, formerly known as Maxus Exploration Co.*, the District Court of Potter County, Texas found DMS liable for failing to deliver processable "wet" gas to a Maxus processing plant and entered an adverse ruling in DMS's third party action against Transok Inc. for causing it to breach the processing contract. Following our appeal of the judgment, which in May 2003 was upheld in part, we filed an expedited writ with the Texas Supreme Court seeking further review. We have established a reserve in connection with this matter, although we do not believe that any liability we might incur would have a material adverse effect on our financial condition, results of operations and cash flows.

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Alleged Marketing Contract Defaults. We have posted collateral to support a substantial portion of our obligations in our customer risk management business, including our obligations under one of our power tolling arrangements. While we worked with various counterparties to provide mutually acceptable collateral or other adequate assurance under these contracts, we have not reached agreement with Sithe Independence and Sterlington/Quachita Power LLC regarding a mutually acceptable amount of collateral in support of our obligations under our power tolling arrangements with either of these two parties. Although we are current on all contract payments to these counterparties, we previously received a notice of default from each such party with regard to collateral. Despite receiving these notices, all parties are continuing to perform and we have fulfilled our economic commitments under these contracts. Our average annual capacity payments under these two arrangements approximate $75 million and $63 million, respectively, and the contracts extend through 2014 and 2012, respectively, with a five-year extension option for Sterlington. If these two parties were successfully to pursue claims that we defaulted on these contracts, they could declare a termination of their respective contracts, which provide for termination payments based on the agreed mark-to-market value of the contracts. Because of the effects of changes in commodity prices on the mark-to-market value of these contracts, as well as the likelihood that we would differ with our counterparties as to the estimated value of these contracts, we cannot predict with any degree of certainty the amounts of termination payments that could be required under these two contracts. Disputes relating to these two contracts, if resolved against us, could materially adversely affect our financial condition, results of operations and cash flows.

U.S. Attorney Investigations. The U.S. Attorney's office in Houston is continuing its investigation of our actions relating to Project Alpha and our gas trade reporting practices. We have produced documents and witnesses for interviews in connection with this investigation. Six of our natural gas traders were terminated in October 2002 for violating our Code of Business Conduct after an ongoing internal investigation conducted by our Audit and Compliance Committee in collaboration with independent counsel discovered that inaccurate information regarding natural gas trades had been reported to various energy industry publications. In January 2003, one of our former natural gas traders was indicted in Houston on three counts of knowingly causing the transmission of false trade reports used to calculate the index price of natural gas and four counts of wire fraud. In August 2003, however, several of these counts were dismissed as unconstitutional. Upon request by the U.S. Attorney's office for reconsideration of this ruling, the judge reinstated the dismissed counts. The case was originally set for trial in January 2004; however, both the U.S. Attorney's office and the defense have appealed the court's rulings regarding the dismissed and reinstated charges. The appeals are pending and a new trial date has not been set.

In June 2003, three former Dynegy employees were indicted on charges of conspiracy, securities fraud and mail and wire fraud related to the Project Alpha transaction. Subsequently, two of these former employees pleaded guilty to conspiracy to commit securities fraud and are scheduled to be sentenced in August 2004. Trial on the indictment against the third employee was held in November 2003, and the defendant was convicted on all charges and is scheduled to be sentenced in March 2004. We are cooperating fully with the U.S. Attorney's office in its continuing investigation of both of these matters and cannot predict the ultimate outcome of these investigations.

Additionally, the United States Attorney's office in the Northern District of California has issued a Grand Jury subpoena requesting information related to our activities in the California energy markets in November 2002. We have been, and intend to continue, cooperating fully with the U.S. Attorney's office in its investigation of these matters, including production of substantial documents responsive to the subpoena and other requests for information. We cannot predict the ultimate outcome of this investigation.

Nicor Energy Investigations. We own a 50% interest in Nicor Energy, a joint venture with Nicor Inc. that marketed retail gas and electricity in the Midwest. During the first quarter 2003, substantially all of the

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operations of Nicor Energy were sold, and are in the process of completing the liquidation of the company. We historically provided gas and electricity to Nicor Energy for resale to its retail customers; however, we ceased providing gas to Nicor Energy in March 2003 in connection with our exit from third-party marketing and trading and ceased providing electricity to Nicor Energy in the second quarter 2003 in connection with its assignment of our wholesale electricity contracts to the purchasers of its retail electricity business.

Nicor Inc. previously revealed irregularities in accounting at Nicor Energy. We reflected a $5.6 million pre-tax charge in the fourth quarter 2001 relating to our investment in Nicor Energy as a result of these matters.

In December 2003, the SEC filed a civil enforcement action against four former executives of Nicor Energy, charging the defendants with misstatement of Nicor Energy's financial statements and various violations of GAAP. Also in December, a federal grand jury convened by the U.S. Attorney for the Northern District of Illinois returned criminal indictments against three of the four former executives and a former outside counsel charging conspiracy, securities fraud and wire fraud. All three of the former Nicor employee defendants pled guilty to the criminal charges and, according to a recent statement by the Department of Justice, are cooperating with the investigation. We intend to cooperate fully with respect to these matters and cannot predict their ultimate outcomes.

Department of Labor Investigation. In August 2002, the U.S. Department of Labor commenced an official investigation pursuant to Section 504 of ERISA with respect to the benefit plans we maintain and our ERISA affiliates. We have cooperated with the Department of Labor throughout this investigation, which remains ongoing. As of this date, the investigation has focused on a review of plan documentation, plan reporting and disclosure, plan recordkeeping, plan investments and investment options, plan fiduciaries and third-party service providers, plan contributions and other operational aspects of the plans. We have not yet received the Department of Labor's definitive findings resulting from its investigation.

Other Commitments and Contingencies

In conducting our operations, we have routinely entered into long-term commodity purchase and sale commitments, as well as agreements that commit future cash flow to the lease or acquisition of assets used in our businesses. These commitments have been typically associated with commodity supply arrangements, capital projects, reservation charges associated with firm transmission, transportation, storage and leases for office space, equipment, plant sites, power generation assets and LPG vessel charters. The following describes the more significant commitments outstanding at December 31, 2003.

Purchase Obligations. We have routinely entered into contracts for the purchase and sale of electricity, some of which contain fixed capacity payments. Such obligations are generally payable on a ratable basis, the terms of which extend through September 2017. In return for such fixed capacity payments, we receive the right to generate electricity, which we then may re-market. These types of arrangements are referred to as tolling arrangements. Fixed payments associated with these arrangements totaled approximately $2.3 billion at December 31, 2003. This amount includes the capacity payments on our four remaining tolls as well as a cash obligation under a derivative contract related to the Sithe Independence tolling agreement.

We have other firm capacity payments related to storage and transportation of natural gas and transmission of electricity. Such arrangements are routinely used in the physical movement and storage of energy consistent with our business strategy. The total of such obligations was $573 million as of December 31, 2003.

We have $53 million of unconditional purchase obligations related to the purchase of power and gas. Additionally, pursuant to our prior capital asset expansion program we entered into purchase orders to acquire at

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least 14 gas-fired turbines, representing a capital commitment of approximately $479 million. Commitments under these purchase orders are generally payable consistent with the delivery schedule. Approximately 95% are scheduled to be delivered by the end of 2006. The purchase orders include milestone requirements by the manufacturer and provide us with the ability to cancel each discrete purchase order commitment in exchange for a fee, which escalates over time. At December 31, 2003, we could have paid approximately $48 million to cancel all 14 purchase orders. In February 2004, we terminated our conditional purchase obligation related to these gas fired turbines as part of a comprehensive settlement agreement with the manufacturer. No cash, other than $11 million previously paid to the manufacturer as a deposit, is expected to be provided as consideration for the termination.

Additionally, we have conditional purchase obligations associated with Illinois Power's long-term power purchase agreement with AmerGen. The agreement was entered into in connection with the sale of Illinois Power's Clinton nuclear generation facility in December 1999. Illinois Power is obligated to purchase a predetermined percentage of Clinton's electricity output through 2004 at fixed prices that exceed current and projected wholesale prices. At the time of the sale of the nuclear facility, a liability was recorded related to the above-market portion of this purchase agreement, which is being amortized through 2004, based on the expected energy to be purchased from AmerGen.

We also have conditional purchase obligations in the amount of $136 million related to our co-sourcing agreement with Accenture Ltd. This 10-year agreement may be cancelled after two years upon the payment of a termination fee.

Advance Agreement. In 1997, we received cash from a gas purchaser as an advance payment under our agreement to make future natural gas deliveries over a ten-year period. As a condition of the agreement, we entered into a natural gas swap with a third party under which we became a fixed-price payer on identical volumes to those to be delivered under the agreement at prices based on current market rates. The cash receipt is included as deferred revenue in other long-term liabilities on the consolidated balance sheets and is ratably reduced as gas is delivered to the purchaser under the terms of the agreement. The balance at December 31, 2003 was approximately $57 million. The agreement contains specified non-performance penalties that impact both parties and, as a condition precedent, we purchased a surety bond in support of our obligations under the agreement.

Other Minimum Commitments. We have a commitment to pay decommissioning costs of approximately $5 million in 2004 related to the sale of the Clinton nuclear facility in 1999. This sale occurred prior to our acquisition of Illinova in 2000; thus we were not involved with the sale. However, we assumed this decommissioning obligation in connection with our acquisition of Illinova. See Note 2—Accounting Policies—Asset Retirement Obligations beginning on page F-10 for further discussion of our accounting policies surrounding asset retirement obligations and Note 23—Subsequent Event beginning on page F-77 for a discussion of our pending sale of the stock of Illinois Power to Ameren.

Minimum commitments in connection with office space, equipment, plant sites and other leased assets, including the DNE sale-leaseback transaction discussed in Note 3—Discontinued Operations, Dispositions, Contract Terminations and Acquisitions—Acquisitions—DNE beginning on page F-22, at December 31, 2003, were as follows: 2004-$81 million; 2005-$81 million; 2006-$81 million; 2007-$127 million; 2008-$147 million; and beyond-$1.1 billion.

Rental payments made under the terms of these arrangements totaled $83 million in 2003, $139 million in 2002 and $132 million in 2001.

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We are party to two charter party agreements relating to VLGCs previously utilized in our global liquids business. The aggregate minimum base commitments of the charter party agreements are approximately $13 million each year for the years 2004 through 2007, and approximately $79 million through lease expiration. The charter party rates payable under the two charter party agreements float in accordance with market based rates for similar shipping services. The $13 million and $79 million numbers set forth above are based on the minimum obligations set forth in the two charter party agreements. The primary term of one charter is through August 2013 while the primary term of the second charter is through August 2014. On January 1, 2003, in connection with the sale of our global liquids business, we sub-chartered both VLGCs to a wholly owned subsidiary of Transammonia Inc. The terms of the sub-charters are identical to the terms of the original charter agreements. We are currently in negotiations with the owners of the VLGCs and their lenders to obtain a novation/release of the two charter party agreements and a release of our guarantees. Until such time as the novations/releases are granted, we continue to rely on the sub-charters with a subsidiary of Transammonia to satisfy the obligations of our two charter party agreements. To date, the subsidiary of Transammonia has complied with the terms of the sub-charter agreements.

Guarantees. As discussed in Note 2—Accounting Policies—Accounting Principles Adopted—FIN No. 45, beginning on page F-17, FIN No. 45 requires disclosure of information relating to guarantees issued. These guarantees include letters of credit, indemnities and other forms of guarantees provided by us to third parties.

At December 31, 2003, guarantees included letters of credits of $188 million and surety bonds totaling $80 million. $45 million of the $80 million in surety bonds were supported by collateral. All of the surety bonds expire in 2004; however, these bonds are generally renewed on a rolling twelve-month basis.

We have indemnified various parties against specific liabilities that third parties might incur in connection with acquisitions, divestitures and leasing arrangements that we enter into. These indemnities are contingent upon the other party incurring liabilities that are not recoverable from other third parties and reach a certain threshold.

In connection with the sale of Northern Natural, the Rough and Hornsea gas storage facilities and certain natural gas liquids assets, we have provided certain indemnities to third parties acquiring the assets. These indemnities relate to environmental, tax, employee and other representations provided by us. Maximum recourse under such indemnities under the Northern Natural, Rough and Hornsea storage facilities and the natural gas liquids assets total $209 million, £316 million (approximately $564 million at December 31, 2003), £130 million (approximately $232 million at December 31, 2003), and $28 million, respectively.

At December 31, 2003, we do not expect any of the indemnities provided to third parties to have a material impact on our financial statements. However, we may incur a liability under such indemnity in the future, and it may have a material adverse effect on our financial position, results of operations and cash flows.

Through one of our subsidiaries, we hold a 50% ownership interest in Nevada Cogeneration Associates #2. Nevada Cogeneration, in which our partner is a ChevronTexaco subsidiary, owns the Black Mountain power generation facility and has a power purchase agreement with a third party that extends through April 2023. In connection with the power purchase agreement, pursuant to which Nevada Cogeneration receives payments the amounts of which decrease over time, we agreed to guarantee 50% of certain payments that may be due to the purchaser under a mechanism designed to protect it from early termination of the agreement. At December 31, 2003, if an event of default had occurred under the terms of the mortgage on the facility entered into in connection with the power purchase agreement, we could have been required to pay the purchaser $39 million under the guarantee. In addition, while there is a question of interpretation regarding the existence of an obligation to make payments calculated under this mechanism upon the scheduled termination of the agreement, management does not expect that any such payments would be required.

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Note 18—Regulatory Issues

We are subject to regulation by various federal, state, local and foreign agencies, including extensive rules and regulations governing transportation, transmission and sale of energy commodities as well as the discharge of materials into the environment or otherwise relating to environmental protection. Compliance with these regulations requires general and administrative, capital and operating expenditures including those related to monitoring, pollution control equipment, emission fees and permitting at various operating facilities and remediation obligations. In addition, the U.S. Congress has before it a number of bills that could impact existing regulations or impose new regulations applicable to us and our subsidiaries. We cannot predict the outcome of these bills or other regulatory developments or the effects that they might have on our business.

Note 19—Capital Stock

At December 31, 2003, we had authorized capital stock consisting of 900,000,000 shares of Class A common stock, 360,000,000 shares of Class B common stock and 70,000,000 shares of preferred stock.

Preferred Stock. Our preferred stock may be issued from time to time in one or more series, the shares of each series to have such designations and powers, preferences, rights, qualifications, limitations and restrictions thereof as specified by our Board of Directors.

Please read Note 15—Redeemable Preferred Securities beginning on page F-48 for a discussion of the Series B Preferred Stock we issued to ChevronTexaco in November 2001, which was exchanged in August 2003, and the Series C convertible preferred stock we issued to CUSA in connection with such exchange.

Common Stock. At December 31, 2003, there were 377,241,183 shares of Class A and B common stock issued in the aggregate and 1,679,183 shares were held in treasury. During 2003, no quarterly cash dividend payments were made. During 2002, we paid quarterly cash dividends on our common stock of $0.075 per share for the first and second quarters and none thereafter, or $0.15 per share on an annual basis.

Pursuant to the terms of the Illinova acquisition, we split our common shares into two classes, Class A and Class B. All of the Class B common stock is owned by CUSA. Generally, holders of Class A and Class B common stock are entitled to one vote per share on all matters to be voted upon by the shareholders. Holders of Class A common stock may cumulate votes in connection with the election of directors. The election of directors and all other matters will be by a majority of shares represented and entitled to vote, except as otherwise provided by law. Holders of Class B common stock vote together with holders of Class A common stock as a single class on every matter acted upon by the shareholders except for the following matters:

- the holders of Class B common stock vote as a separate class for the election of up to three of our directors, while the holders of Class A common stock vote as a separate class for the remaining directors;
- any amendment to the special corporate governance rights associated with the Class B common stock must be approved by a majority of the directors elected by holders of Class B common stock and a majority of all of our directors or by a 66 2/3% of the outstanding shares of Class B common stock voting as a separate class, and the affirmative vote of a majority of the shares of Class A and Class B common stock, voting together as a single class; and
- any amendment to the provision of the Amended and Restated Articles of incorporation addressing the voting rights of holders of Class A and Class B common stock requires the approval of 66 2/3% of the outstanding shares of Class B common stock voting as a separate class, and the affirmative vote of a majority of the shares of Class A and Class B common stock, voting together as a single class.

Subject to the preferences of preferred stock, holders of Class A and Class B common stock have equal and ratable rights to dividends, when and if dividends are declared by the Board of Directors. Holders of Class A and

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Class B common stock are entitled to share ratably, as a single class, in all of our assets available for distribution to holders of shares of common stock upon the liquidation, dissolution or winding up of our affairs, after payment of our liabilities and any amounts to holders of preferred stock, if any.

A share of Class B common stock automatically converts into a share of Class A common stock if it is transferred to any person other than an affiliate of ChevronTexaco. Additionally, each share of Class B common stock automatically converts into a share of Class A common stock if the holders of all Class B common stock cease to own collectively 15% of our outstanding common stock. Conversely, any shares of Class A common stock acquired by ChevronTexaco or its affiliates will automatically convert into shares of Class B common stock, so long as ChevronTexaco and its affiliates continue to own 15% or more of the outstanding voting power of Dynegy.

Holders of Class A and Class B common stock generally are not entitled to preemptive rights, subscription rights, or redemption rights, except that Chevron is entitled to preemptive rights under the amended and restated shareholder agreement. The rights and preferences of holders of Class A common stock are subject to the rights of any series of preferred stock we may issue.

In January 2002, CUSA purchased approximately 10.4 million shares of Class B common stock in a private transaction, pursuant to the exercise of its preemptive rights under the shareholder agreement. The proceeds from this sale were approximately $205 million.

In December 2001, 27.5 million shares of Class A common stock were sold through a public offering resulting in proceeds of approximately $539 million, net of underwriting commission and expenses of approximately $32 million. Concurrent with the public offering, members of our senior management purchased approximately 1.2 million shares of Class A common stock from us in a private placement. The net proceeds from these equity sales were used to reduce indebtedness under DHI's revolving credit facility by approximately $539 million and the remainder of the proceeds were used for general operating purposes.

In March 2001, approximately 1.2 million shares of Class B common stock were sold to ChevronTexaco in a private transaction pursuant to the exercise of its preemptive rights under the shareholder agreement. The proceeds from this transaction were approximately $41 million.

Common stock activity for the three years ended December 31, 2003 was as follows:

	Class A Common Stock		Class B Common Stock	
	Shares	Amount	Shares	Amount
	(in millions)			
December 31, 2000	238	$2,152	85	$ 760
Common stock issued	28	564	1	41
Options exercised	3	57	—	—
401(k) plan and profit sharing	—	13	—	—
December 31, 2001	269	$2,786	86	$ 801
Common stock issued	—	—	10	205
Options exercised	3	22	—	—
401(k) plan and profit sharing	3	17	—	—
December 31, 2002	275	$2,825	96	$1,006
Options exercised	2	15	—	—
401(k) plan and profit sharing	3	8	—	—
December 31, 2003	280	$2,848	96	$1,006

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Treasury Stock. During 2002 and 2001, Class A common stock shares purchased from the open market and placed into treasury totaled 41,929 and 1,696,800, respectively. During 2002, 129,546 shares were issued out of treasury stock. There were no purchases or issuances of treasury stock in 2003.

Stock Options. As further discussed in Note 2—Accounting Policies—Employee Stock Options beginning on page F-14, we have nine stock option plans, all of which contain authorized shares of our Class A common stock. Each option granted is valued at an option price, which ranges from $0.88 per share to $57.95 per share at date of grant. A brief description of each plan is provided below:

- ***NGC Plan.*** Created early in our history and revised prior to Dynegy becoming a publicly traded company in 1996, this plan contains 13,651,802 authorized shares, has a 10-year term, and expires in May 2006. All option grants are vested.
- ***Employee Equity Plan.*** This plan expired in May 2002 and is the only plan in which we granted options below the fair market value of Class A common stock on the date of grant. This plan contains 20,358,802 authorized shares, and grants from this plan vest on the fifth anniversary from the date of the grant.
- ***Illinova Plan.*** Adopted by Illinova prior to the merger with Dynegy, this plan expired upon the merger date in February 2000 and contains 3,000,000 authorized shares. All option grants are vested.
- ***Extant Plan.*** Adopted by Extant prior to its acquisition by Dynegy, this plan expired in September 2000 and contains 202,577 authorized shares. Grants from this plan vest at 25% per year.
- ***UK Plan.*** This plan contains 276,000 authorized shares and has been terminated. All option grants are vested.
- ***Dynegy 1999 Long-Term Incentive Plan ("LTIP").*** This annual compensation plan contains 6,900,000 authorized shares, has a 10-year term and expires in 2009. All option grants are vested.
- ***Dynegy 2000 LTIP.*** This annual compensation plan, created for all employees upon the merger of Illinova and Dynegy, contains 10,000,000 authorized shares, has a 10-year term and expires in February 2010. Grants from this plan vest in equal annual installments over a three-year period.
- ***Dynegy 2001 Non-Executive LTIP.*** This plan is a broad-based plan and contains 10,000,000 authorized shares, has a ten-year term and expires in September 2011. Grants from this plan vest in equal annual installments over a three-year period.
- ***Dynegy 2002 LTIP.*** This annual compensation plan contains 10,000,000 authorized shares, has a 10-year term and expires in May 2012. Grants from this plan vest in equal annual installments over a three-year period.

All of our option plans cease vesting for employees who are terminated for cause. For voluntary and involuntary termination, disability, retirement or death, all of our option plans cease vesting, with the exception of the Employee Equity Plan, which contains partial vesting provisions for the events noted above, exclusive of voluntary terminations or retirement. Options awarded to our executive officers and others who participate in our Executive Severance Pay Plan vest immediately upon the occurrence of a change in control in accordance with the terms of the Second Supplemental Amendment to the Executive Severance Plan.

Compensation expense related to options granted totaled $4 million, $11 million and $13 million for the years ended December 31, 2003, 2002 and 2001, respectively. Of the total compensation expense recognized for the years ended December 31, 2002 and 2001, $2 million and $1 million, respectively, related to the extension of the exercise period and acceleration of vesting for various stock options associated with divestitures of certain operations and provisions of certain executive employment agreements. No accelerated compensation expense

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recognition occurred during the year ended December 31, 2003. Total options outstanding and exercisable for 2003, 2002 and 2001 were as follows:

	Year Ended December 31,					
	2003		2002		2001	
	Options	Weighted Average Exercise Price	Options	Weighted Average Exercise Price	Options	Weighted Average Exercise Price
	(options in thousands)					
Outstanding at beginning of period	28,082	$ 20.74	33,920	$ 21.39	21,264	$ 10.65
Granted	1,985	$ 1.78	2,284	$ 2.83	15,820	$ 34.14
Exercised	(1,958)	$ 2.87	(3,007)	$ 2.95	(2,543)	$ 8.77
Cancelled or expired	(10,482)	$ 23.98	(5,115)	$ 27.54	(621)	$ 30.26
Outstanding at end of period	17,627	$ 18.66	28,082	$ 20.74	33,920	$ 21.39
Exercisable at end of period	12,876	$ 21.28	17,620	$ 19.69	12,516	$ 10.11
Weighted average fair value of options granted during the period at market		$ 0.81		$ 1.22		$ 19.41

During the three-year period ended December 31, 2003, we granted no options at an exercise price less than market price on the date of grant.

Options outstanding as of December 31, 2003 are summarized below:

	Options Outstanding			Options Exercisable	
Range of Exercise Prices	Number of Options Outstanding at December 31, 2003	Weighted Average Remaining Contractual Life (Years)	Weighted Average Exercise Price	Number of Options Exercisable at December 31, 2003	Weighted Average Exercise Price
	(options in thousands)				
$0.88-$2.15	4,293	8.1	$ 1.32	1,118	$ 1.13
$2.16-$5.15	1,653	1.3	$ 4.19	1,592	$ 4.19
$5.16-$11.59	1,205	3.4	$ 9.73	1,181	$ 9.77
$11.60-$23.18	2,761	3.7	$ 15.50	2,756	$ 15.50
$23.19-$23.98	3,725	5.8	$ 23.78	2,980	$ 23.76
$23.99-$34.77	1,053	4.4	$ 33.93	875	$ 33.96
$34.78-$40.57	196	6.4	$ 37.61	165	$ 37.53
$40.58-$46.36	95	7.0	$ 43.95	77	$ 43.87
$46.37-$52.16	2,531	4.5	$ 47.23	2,020	$ 47.24
$52.17-$57.95	115	5.2	$ 56.01	112	$ 56.05
	17,627			12,876	

Pursuant to terms of the Illinova acquisition, certain vesting requirements on outstanding options were accelerated and the option shares and strike prices were subject to the exchange ratios applicable in the acquisition.

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Note 20—Employee Compensation, Savings and Pension Plans

Short-Term Incentive Plan. We maintain a discretionary incentive plan to provide employees with rewards for the achievement of corporate goals and individual, professional accomplishments. Specific awards are at the discretion of the Compensation and Human Resources Committee of the Board of Directors.

In addition, in 2003 we adopted the Mid-Term Incentive Performance Award Program. This program is limited to select employees who are eligible to receive cash compensation of up to 200% of their annual base salary, paid in installments over a two-year period, based on the performance of our Class A common stock during the last 30 trading days in 2004 and stock performance over the entire year in 2005. We account for this cash plan using variable plan accounting and recognized less than $1 million in compensation expense during 2003 associated with the plan.

401(k) Savings Plan. Our employees participate in four 401(k) savings plans, all of which meet the requirements of Section 401(k) of the Internal Revenue Code and are defined contribution plans subject to the provisions of ERISA. The following summarizes the plans:

- Dynegy Inc. 401(k) Savings Plan—this plan and the related trust fund are established and maintained for the exclusive benefit of participating employees in the United States and certain expatriates. All employees of certain entities are eligible to participate in the plan. Employee pre-tax contributions to the plan are matched 100%, up to a maximum of 5% of base pay, subject to IRS limitations. Vesting in our contributions is based on years of service at 25% per full year of service. We may also make discretionary contributions to employee accounts, subject to our performance. Matching and discretionary contributions are made in our common stock. During the years ended December 31, 2003, 2002 and 2001, we issued approximately 1.8 million, 2.7 million and 0.3 million shares, respectively, of our common stock to fund the plan. We discontinued the additional 5% profit sharing contribution to active employee accounts in 2001. However, in 2001, active employees who normally would have received the profit sharing contribution under the plan began participating in the pension plan described below. No discretionary contributions were made for 2002 or 2003;
- Illinois Power Company Incentive Savings Plan and Illinois Power Company Incentive Savings Plan for Employees Covered Under A Collective Bargaining Agreement—we match 50% of employee contributions to the plans, up to a maximum of 6% of compensation, subject to IRS limitations. Employees are immediately 100% vested in our contributions. Matching contributions to the plans are made in our common stock. During the years ended December 31, 2003, 2002 and 2001, we issued 1.2 million, 1.1 million and 72,700 shares, respectively, of our common stock to fund the plans; and
- Dynegy Northeast Generation, Inc. Savings Incentive Plan—this plan, which is for union employees, matches 24% of employee contributions up to 6% of base salary. For non-union employees, we match 50% of employee contributions up to 8% of base salary. Our guaranteed match is subject to a maximum of 6 or 8% of base pay, subject to IRS limitations. Employees are immediately 100% vested in our contributions. Matching contributions to this northeast plan are made in cash.

Similar plans are available to other employees resident in foreign countries and are subject to the laws of each country. During the years ended December 31, 2003, 2002 and 2001, we recognized aggregate costs related to these employee compensation plans of $8 million, $17 million and $27 million, respectively.

Pension and Other Post-Retirement Benefits.

We have various defined benefit pension plans and post-retirement benefit plans. All domestic employees participate in the pension plans, but only some of our domestic employees participate in the other post-retirement medical and life insurance benefit plans. We added a cash balance feature effective for 2001 and thereafter with

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respect to employees who would have otherwise received a profit sharing contribution under the Dynegy Inc. 401(k) Savings Plan (the contribution credit under such cash balance feature is generally 6% of base pay). We use a December 31 measurement date for all of our plans.

Obligations and Funded Status. The following tables contain information about the obligations and funded status of these plans on a combined basis:

	Pension Benefits		Other Benefits	
	2003	2002	2003	2002
	(in millions)			
Projected benefit obligation, beginning of the year	$ 626	$ 524	$ 161	$140
Service cost	21	19	5	3
Interest cost	39	38	11	10
Plan amendments	1	—	—	—
Actuarial (gain) loss	40	74	33	15
Special termination benefits	—	1	—	—
Curtailment (gain) loss	—	2	—	—
Participant contributions	—	—	1	1
Benefits paid	(34)	(32)	(9)	(8)
Projected benefit obligation, end of the year	$ 693	$ 626	$ 202	$161
Fair value of plan assets, beginning of the year	$ 501	$ 584	$ 67	$ 79
Actual return on plan assets	104	(52)	14	(11)
Employer contributions	—	1	6	6
Participant contributions	—	—	1	1
Benefits paid	(34)	(32)	(9)	(8)
Fair value of plan assets, end of the year	$ 571	$ 501	$ 79	$ 67
Funded status	$(122)	$(125)	$(123)	$ (94)
Unrecognized prior service costs	7	6	—	—
Unrecognized actuarial (gain) loss	267	288	103	84
Net amount recognized	$ 152	$ 169	$ (20)	$ (10)

Plan amendments of $1 million in 2003 relate to an amendment to increase the career average accrual formula to 2.40% from 2.20%.

Curtailment losses of $2 million during 2002 relate to the 2002 severance plans. Please see Note 4—Restructuring and Impairment Changes beginning on page F-22 for further discussion.

Amounts recognized in the consolidated balance sheets consist of:

	Pension Benefits		Other Benefits	
	December 31,		December 31,	
	2003	2002	2003	2002
	(in millions)			

Prepaid benefit cost	$ 122	$ 127	$—	$—
Accrued benefit liability	(65)	(68)	(20)	(10)
Intangible asset	5	6	—	—
Accumulated other comprehensive income	90	104	—	—
Net amount recognized	$ 152	$ 169	$ (20)	$ (10)

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The accumulated benefit obligation for all defined benefit pension plans was $615 million and $559 million at December 31, 2003 and 2002, respectively.

On December 31, 2003 and December 31, 2002, our annual measurement date, the accumulated benefit obligation related to certain of our pension plans exceeded the fair value of the pension plan assets. As a result, in accordance with SFAS No. 87, "Employers' Accounting for Pensions," we have recorded a minimum pension liability, with an offset to accumulated other comprehensive loss. The following summarizes information for pension plans with an accumulated benefit obligation in excess of plan assets:

	December 31,	
	2003	2002
	(in millions)	
Projected benefit obligation	$386	$352
Accumulated benefit obligation	336	309
Fair value of plan assets	273	243

The following summarizes the change to accumulated other comprehensive loss associated with the minimum pension liability:

	2003	2002	2001
	(in millions)		
Change in minimum liability included in other comprehensive income (net of tax benefit (expense) of $5 million, $38 million and zero, respectively)	$ (9)	$ 66	$—

Components of Net Periodic Benefit Cost. The components of net periodic benefit cost were:

	Pension Benefits			Other Benefits		
	2003	2002	2001	2003	2002	2001
	(in millions)					
Service cost benefits earned during period	$ 21	$ 19	$ 10	$ 5	$ 3	$ 2
Interest cost on projected benefit obligation	39	38	34	11	10	8
Expected return on plan assets	(53)	(59)	(57)	(6)	(7)	(7)
Amortization of prior service costs	1	1	—	—	—	—
Recognized net actuarial (gain)/loss	9	—	—	5	3	1
Net periodic benefit cost (income)	$ 17	$ (1)	$ (13)	$ 15	$ 9	$ 4
Additional early retirement window benefits	—	2	9	—	—	—
Additional cost due to curtailment	—	—	—	—	—	—
Total net periodic benefit cost (income)	$ 17	$ 1	$ (4)	$ 15	$ 9	$ 4

Assumptions. The following weighted average assumptions were used to determine benefit obligations:

	Pension Benefits		Other Benefits	
	December 31,		December 31,	
	2003	2002	2003	2002

Discount rate	6.00%	6.50%	6.00%	6.50%
Rate of compensation increase	4.50%	4.50%	4.50%	4.50%

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The following weighted average assumptions were used to determine net periodic benefit cost:

	Pension Benefits			Other Benefits		
	Year Ended December 31,			Year Ended December 31,		
	2003	2002	2001	2003	2002	2001
Discount rate	6.50%	7.50%	7.99%	6.50%	7.50%	8.00%
Expected return on plan assets	9.00%	9.50%	9.47%	9.00%	9.50%	9.50%
Rate of compensation increase	4.50%	4.50%	4.48%	4.50%	4.50%	4.50%

Our expected long-term rate of return on plan assets for the year ended December 31, 2004 will be 8.75%. This figure begins with a blend of asset class-level returns developed under a theoretical global capital asset pricing model methodology conducted by an outside consultant. In development of this figure, the historical relationships between equities and fixed income are preserved consistent with the widely accepted capital market principle that assets with higher volatility generate a greater return over the long-term. Current market factors such as inflation and interest rates are also incorporated in the assumptions. The figure also incorporates an upward adjustment reflecting the plan's use of active management and favorable past experience.

The following summarizes our assumed health care cost trend rates:

	December 31,	
	2003	2002
Health care cost trend rate assumed for next year	10.1%	9.44%
Ultimate trend rate	5.47%	5.47%
Year that the rate reaches the ultimate trend rate	2009	2009

Assumed health care cost trend rates have a significant effect on the amounts reported for the health care plans. The impact of a one percent increase/decrease in assumed health care cost trend rates is as follows:

	Increase	Decrease
	(in millions)	
Aggregate impact on service cost and interest cost	$ 3	$ 2
Impact on accumulated post-retirement benefit obligation	$ 26	$ 18

Plan Assets. We employ a total return investment approach whereby a mix of equities and fixed income investments are used to maximize the long-term return of plan assets for a prudent level of risk. The intent of this strategy is to minimize plan expenses by outperforming plan liabilities over the long run. Risk tolerance is established through careful consideration of plan liabilities, plan funded status, and corporate financial condition. The investment portfolio contains a diversified blend of equity and fixed income investments. Furthermore, equity investments are diversified across U.S. and non-U.S. stocks as well as growth, value, and small and large capitalization. Other assets such as real estate and private equity are used judiciously to enhance long-term returns while improving portfolio diversification.

Derivatives may be used to gain market exposure in an efficient and timely manner; however, derivatives may not be used to leverage the portfolio beyond the market value of the underlying investment. Investment risk is measured and monitored on an ongoing basis through quarterly investment portfolio reviews, periodic asset/liability studies, and annual liability measurement.

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Our pension plans weighted-average asset allocations by asset category were as follows:

	December 31, 2003	December 31, 2002
Equity securities	64%	59%
Debt securities	28%	30%
Real estate	5%	6%
Other	3%	4%
Cash	—	1%
Total	100%	100%

Equity securities did not include any of our common stock at December 31, 2003 or 2002.

Our other postretirement benefit plans weighted-average asset allocations by asset category were as follows:

	December 31, 2003	December 31, 2002
Equity securities	75%	74%
Debt securities	25%	26%
Total	100%	100%

Equity securities did not include any of our common stock at December 31, 2003 or 2002.

Contributions. We expect to contribute $8 million to our pension plans and $5 million to our other postretirement benefit plans in 2004. Under the terms of the sale of Illinois Power to Ameren, we will be required to accelerate certain of our 2005 cash funding requirements at closing.

Note 21—Segment Information

In 2002, we reported results for the following four business segments: WEN, DMS, T&D and DGC. Beginning January 1, 2003, we are reporting our operations in the following segments: GEN, NGL, REG and CRM. All corporate overhead included in other reported results was allocated to our four former reporting segments prior to January 1, 2003. Beginning January 1, 2003, all direct general and administrative expenses incurred by us on behalf of our subsidiaries are charged to the applicable subsidiary as incurred. In addition, all interest expense was allocated to our four former reporting segments prior to January 1, 2003. Other income (expense) items incurred by us on behalf of our subsidiaries are allocated directly to the four segments.

Prior to January 1, 2003, the GEN and CRM segments were operated together as an asset-based third-party marketing, trading and risk-management business, then referred to as the WEN segment. Most, but not all, of the WEN third-party purchase and sale contracts were held by a subsidiary which is currently included within the CRM segment. Under this previous business model, the net fair value of most of GEN's generation capacity, forward sales and related trading positions were sold to the CRM segment monthly at an internally determined transfer price. The internal transfer price was primarily comprised of the option value of generation capacity and executed forward sales contracts based on then-current forward prices of power and fuel. GEN intersegment revenues for the years ended December 31, 2002 and 2001 reflect this internal transfer price and do not represent amounts actually received for power sold to third parties. As such, the GEN intersegment revenues for the years

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ended December 31, 2002 and 2001 do not include the effect of intra-month market price volatility. The CRM segment recorded net unaffiliated revenue from these third-party contracts, together with all of its other third-party marketing and trading positions unrelated to the GEN segment.

In connection with our exit from the third-party marketing and trading business, individual contracts within the former WEN segment were identified on January 1, 2003 as either GEN contracts, as they were determined to be part of our continuing operations, or CRM contracts. Under this new business segment model, CRM continues to transact with third parties on behalf of GEN for contracts which were identified as GEN contracts, as well as new transactions executed on behalf of GEN but for which CRM is the legal party to the third-party purchase and sale contract. CRM continues to record net unaffiliated revenue from these third-party contracts, together with all of its other third-party marketing and trading positions unrelated to the GEN segment. However, rather than purchasing such capacity, forward sales and related trading positions from GEN at an internally determined transfer price, pricing between CRM and GEN is set at the actual amount received or paid for the purchases and sales to the third parties. Therefore, GEN intersegment revenues for the year ended December 31, 2003 include the effects of intra-month market price volatility and represent amounts actually received from or paid to third parties.

Prior to January 1, 2003, consolidated revenue associated with the retail power business represented energy trading activity that was recorded on a net basis. The GEN segment purchased from the CRM segment a portion of the physical power that was used to fill these retail power sales contracts. The revenues from retail power sales were presented gross in GEN unaffiliated revenues, with the corresponding power purchases from the CRM segment presented in GEN intersegment revenues. Beginning January 1, 2003, pursuant to the rescission of EITF Issue 98-10, retail power sales are presented gross in consolidated revenue. Any purchases of physical power by the GEN segment from the CRM segment are classified as cost of sales in the GEN segment and are presented in CRM intersegment revenues. These differences affect the comparability of the results for the years ended December 31, 2003, 2002 and 2001.

Revenues from third-party sales in which GEN is the legal party to the third-party sales contracts are presented gross in GEN unaffiliated revenues for the years ended December 31, 2003, 2002 and 2001.

Pursuant to EITF Issue 02-03, all gains and losses on third-party energy trading contracts in the CRM segment, whether realized or unrealized, are presented net in the consolidated statements of operations. For the purpose of the segment data presented below, intersegment transactions between CRM and our other segments are presented net in CRM intersegment revenues but are presented gross in the intersegment revenues of our other segments, as the activities of our other segments are not subject to the net presentation requirements contained in EITF Issue 02-03. If transactions between CRM and our other segments result in a net intersegment purchase by CRM, the net intersegment purchases and sales are presented as negative revenues in CRM intersegment revenues. In addition, intersegment hedging activities are presented net pursuant to SFAS No. 133.

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Prior to January 1, 2003, our natural gas liquids operations comprised our DMS segment. Beginning January 1, 2003, these operations comprise the NGL segment. Additionally, prior to January 1, 2003, we reported our Illinois Power utility operations and, for the first three quarters of 2002 prior to its sale, the operations of Northern Natural in our T&D segment. Beginning January 1, 2003, our Illinois Power utility operations comprise the REG segment. Results associated with the former DGC segment are included in discontinued operations in Other and Eliminations due to the sale of our communications businesses. Reportable segment information, including intercompany transactions accounted for at prevailing market rates, for the years ended December 31, 2003, 2002 and 2001 is presented below.

Dynegy's Segment Data for the Year Ended December 31, 2003
(in millions)

	GEN	NGL	REG	CRM	Other and Eliminations	Total
Unaffiliated revenues:						
Domestic	$ 354	$2,999	$1,542	$ 937	$ —	$ 5,832
Other	1	3	—	(49)	—	(45)
	355	3,002	1,542	888	—	5,787
Intersegment revenues	1,255	250	28	(1,015)	(518)	—
Total revenues	$1,610	$3,252	$1,570	$ (127)	$ (518)	$ 5,787
Depreciation and amortization	$ (188)	$ (81)	$ (121)	$ —	$ (64)	$ (454)
Goodwill impairment	—	—	(242)	—	—	(242)
Operating income (loss)	$ 194	$ 170	$ (40)	$ (385)	$ (246)	$ (307)
Earnings (losses) from unconsolidated investments	128	(2)	—	(2)	—	124
Other items, net	4	(17)	—	31	2	20
Interest expense						(509)
Loss from continuing operations before taxes						(672)
Income tax benefit						198
Loss from continuing operations						(474)
Loss on discontinued operations, net of taxes						(19)
Cumulative effect of change in accounting principles, net of taxes						40
Net loss						$ (453)
Identifiable assets:						
Domestic	$6,298	$1,770	$5,257	$ 2,264	$ (2,622)	$12,967
Other	49	1	—	246	30	326
Total	$6,347	$1,771	$5,257	$ 2,510	$ (2,592)	$13,293
Unconsolidated investments	$ 530	$ 82	$ —	$ —	$ —	$ 612
Capital expenditures and investments in unconsolidated affiliates	$ (154)	$ (51)	$ (126)	$ (2)	$ (5)	$ (338)

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Dynegy's Segment Data for the Year Ended December 31, 2002
(in millions)

	GEN	NGL	REG	CRM	Other and Eliminations	Total
Unaffiliated revenues:						
Domestic	$ 452	$2,530	$1,488	$ 308	$ —	$ 4,778
Other	6	723	—	(181)	—	548
	458	3,253	1,488	127	—	5,326
Intersegment revenues	920	165	33	(258)	(860)	—
Total revenues	$1,378	$3,418	$1,521	$ (131)	$ (860)	$ 5,326
Depreciation and amortization	$ (175)	$ (88)	$ (175)	$ (28)	$ —	$ (466)
Goodwill impairment	(549)	—	—	(348)	—	(897)
Impairment and other charges	(58)	(18)	(19)	(95)	—	(190)
Operating income (loss)	$ (401)	$ 77	$ 157	$ (974)	$ —	$ (1,141)
Earnings (losses) from unconsolidated investments	(71)	14	(2)	(21)	—	(80)
Other items, net	(20)	(34)	(4)	(49)	—	(107)
Interest expense						(297)
Loss from continuing operations before taxes						(1,625)
Income tax benefit						276
Loss from continuing operations						(1,349)
Loss on discontinued operations, net of taxes						(1,154)
Cumulative effect of change in accounting principles, net of taxes						(234)
Net loss						$ (2,737)
Identifiable assets:						
Domestic	$5,440	$2,088	$3,878	$6,309	$ 69	$17,784
Other	281	5	—	2,012	17	2,315
Total	$5,721	$2,093	$3,878	$8,321	$ 86	$20,099
Unconsolidated investments	$ 564	$ 102	$ —	$ 3	$ (1)	$ 668
Capital expenditures and investments in unconsolidated affiliates	$ (589)	$ (105)	$ (170)	$ (14)	$ (83)	$ (961)

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Dynegy's Segment Data for the Year Ended December 31, 2001
(in millions)

	GEN	NGL	REG	CRM	Other and Eliminations	Total
Unaffiliated revenues:						
Domestic	$ 491	$3,910	$1,593	$2,072	$ —	$ 8,066
Other	—	1,463	—	(405)	—	1,058
	491	5,373	1,593	1,667	—	9,124
Intersegment revenues	1,251	264	25	(842)	(698)	—
Total revenues	$ 1,742	$5,637	$1,618	$ 825	$ (698)	$ 9,124
Depreciation and amortization	$ (164)	$ (84)	$ (173)	$ (35)	$ —	$ (456)
Operating income	$ 390	$ 133	$ 180	$ 264	$ —	$ 967
Earnings (losses) from unconsolidated investments	202	13	—	(24)	—	191
Other items, net	(5)	(3)	2	(54)	—	(60)
Interest expense						(255)
Income from continuing operations before taxes						843
Income tax expense						(357)
Income from continuing operations						486
Loss on discontinued operations, net of taxes						(82)
Cumulative effect of change in accounting principles, net of taxes						2
Net income						$ 406
Identifiable assets:						
Domestic	$ 7,287	$2,308	$4,568	$6,910	$ 816	$21,889
Other	224	130	—	2,745	248	3,347
Total	$ 7,511	$2,438	$4,568	$9,655	$ 1,064	$25,236
Unconsolidated investments	$ 1,301	$ 422	$ 568	$ 47	$ 107	$ 2,445
Capital expenditures and investments in unconsolidated affiliates	$(2,191)	$ (391)	$ (701)	$ (305)	$ (496)	$ (4,084)

Note 22—Quarterly Financial Information (Unaudited)

The following is a summary of our unaudited quarterly financial information for the years ended December 31, 2003 and 2002:

	Quarter Ended			
	March 2003	June 2003	September 2003	December 2003
	(in millions, except per share data)			
Revenues	$1,879	$1,067	$ 1,385	$ 1,456

Operating income (loss)	187	(374)	101	(221)
Net income (loss) before cumulative effect of change in accounting principles	92	(290)	5	(300)
Net income (loss)	147	(290)	5	(315)
Net income (loss) per share before cumulative effect of change in accounting principles	0.02	(1.00)	3.17	(0.81)
Net income (loss) per share	$ 0.17	$ (1.00)	$ 3.17	$ (0.85)

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	Quarter Ended			
	March 2002	June 2002	September 2002	December 2002
	(in millions, except per share data)			
Revenues	$1,464	$1,304	$ 1,298	$ 1,260
Operating income (loss)	85	(143)	(882)	(201)
Net loss before cumulative effect of change in accounting principles	(13)	(561)	(1,651)	(278)
Net loss	(247)	(561)	(1,651)	(278)
Net loss per share before cumulative effect of change in accounting principles	(0.27)	(1.76)	(4.71)	(0.98)
Net loss per share	$(0.91)	$(1.76)	$ (4.71)	$ (0.98)

Note 23—Subsequent Event

In February 2004, we entered into a purchase agreement to sell all of the outstanding common and preferred shares of Illinois Power, which currently comprises our REG segment, owned by Illinova and our 20% interest in the Joppa power generation facility, to Ameren for $2.3 billion. By acquiring Illinois Power, Ameren will also effectively assume Illinois Power's debt and preferred stock obligations, estimated to approximate $1.8 billion at closing. Ameren will also pay us:

- approximately $400 million of cash to be received at closing, subject to working capital adjustments; and
- $100 million of cash to be placed in an escrow account and to be released to us on the sooner of December 31, 2010, the date on which DHI's senior unsecured debt achieves an investment grade rating from Standard & Poor's or Moody's Investor Services, Inc. or the occurrence of specified events relating to contingent environmental liabilities associated with Illinois Power's former generating facilities. During the time that funds remain in escrow, we are to receive quarterly payments equivalent to the net income and gain earned on such funds.

In addition, Illinois Power's $2.3 billion intercompany note receivable, which was established in connection with Illinois Power's transfer of its generation facilities prior to our merger with Illinova in 2000, will be eliminated in conjunction with the closing of the transaction.

The consummation of the sale, which is scheduled to be completed by the end of 2004, is conditioned on, among other things, the elimination of the intercompany note receivable and the receipt of all regulatory and other consents and approvals as specified in the purchase agreement, including approvals from the ICC, the FERC, the SEC and other governmental and regulatory agencies. Under our financing agreements, we are required, upon the closing of the sale, to use 75% of the net cash proceeds from the sale to repay the Junior Notes and 25% of such proceeds to reduce permanently or cash collateralize the commitments under our $1.1 billion revolving credit facility, subject to certain exceptions, to the extent the Junior Notes are repaid up to $100 million. If no Junior Notes are outstanding, we are required to use all of the net cash proceeds from the sale, subject to certain exceptions, to reduce the commitments under our revolver.

In a related agreement that is conditioned upon the closing of the transaction, we have contracted to sell 2,800 MWs of generating capacity and up to 11.5 million MWh of energy to Illinois Power at fixed prices for two years beginning in January 2005. We also agreed to sell 300 MWs of capacity in 2005 and 150 MWs of capacity in 2006 to Illinois Power at a fixed price with an option to purchase energy at market-based prices. The capacity, which is expected to be provided by our midwest generating facilities, will be used by Illinois Power to meet its customer demand. It is anticipated that this arrangement will be in place concurrently with the termination of our existing power purchase agreement with Illinois Power and the closing of the transaction.

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The execution of this agreement constituted a subsequent event of the type that, under GAAP, required us to consider the fair value indicated by the Ameren agreement in the assessment of our 2003 goodwill impairment charge. We originally reported in our 2003 year-end earnings release, based on the fair value indicated by the terminated Exelon transaction, a goodwill impairment charge of $153 million. After considering the fair value indicated by the Ameren agreement, which we entered into after the date of the earnings release, we increased the amount of our 2003 goodwill impairment charge to $242 million. In addition, in accordance with FAS 144, we will record a $15 million after-tax charge in the first quarter 2004 for the anticipated costs, including taxes associated with this transaction. Finally, an after-tax gain of approximately $80 million relating to our interest in Joppa is anticipated upon closing of the transaction.

Note 24—Liquidity

For the next 12 months, assuming continuation of the current commodity pricing environment, we expect that our operating cash flows will be insufficient to satisfy our capital expenditures, debt maturities, increased interest expenses and operating commitments. When combined with our cash on hand, proceeds from anticipated asset sales and capacity under our $1.1 billion revolving credit facility, however, we believe we have sufficient capital resources to discharge these obligations during this period. To further our deleveraging efforts, we also intend to explore other capital-raising activities, including potential public or private equity issuances. In addition, we will seek to renew or replace our $1.1 billion revolving credit facility, which is scheduled to mature on February 15, 2005. Our liquidity position will be materially adversely affected if we are unable to renew or replace this facility, with respect to which our ability to borrow and/or issue letters of credit could become increasingly important, on or before its scheduled maturity.

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DEFINITIONS

As used in this Form 10-K, the abbreviations listed below have the following meanings:

AMP	Automated mitigation procedure.
ARO	Asset retirement obligation.
Bcf/d	Billion cubic feet per day.
BGSL	BG Storage Limited.
Cal ISO	The California Independent System Operator.
Cal PX	The California Power Exchange.
CDWR	California Department of Water Resources.
CERCLA	The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
CFTC	Commodity Futures Trading Commission.
CRM	Our customer risk management business segment.
CUSA	Chevron U.S.A. Inc., a wholly-owned subsidiary of ChevronTexaco.
DGC	Dynegy Global Communications.
DGC-Asia	Dynegy Global Communications-Asia, our former Asian communications business.
DHI	Dynegy Holdings Inc., our primary financing subsidiary.
DMG	Dynegy Midwest Generation, Inc.
DMS	Dynegy Midstream Services.
DMT	Dynegy Marketing and Trade.
DNE	Dynegy Northeast Generation.
DPM	Dynegy Power Marketing Inc.
EBIT	A non-GAAP measure of Earnings Before Interest and Taxes. As an indicator of our segment operating performance, EBIT should not be considered an alternative to, or more meaningful than, net income or cash flows from operations as determined in accordance with GAAP.
EIOL	Energy Infrastructure Overseas Limited.
EITF	Emerging Issues Task Force.
EPA	Environmental Protection Agency.
ERCOT	Electric Reliability Council of Texas, Inc.
ERISA	The Employee Retirement Income Security Act of 1974, as amended.
EWG	Exempt Wholesale Generators.
FASB	Financial Accounting Standards Board.
FERC	Federal Energy Regulatory Commission.
FIN	FASB Interpretation.
Form 10-K/A	Amendment No. 1 to our Annual Report on Form 10-K for the year ended December 31, 2002, filed on July 25, 2003.
FPA	Federal Power Act of 1935, as amended.
FTC	U.S. Federal Trade Commission.
FUCOs	Foreign Utility Companies.
GAAP	Generally Accepted Accounting Principles of the United States of America.
GEN	Our power generation business segment.
GCF	Gulf Coast Fractionators.
HLPSA	Hazardous Liquid Pipeline Safety Act of 1979, as amended.
ICC	Illinois Commerce Commission.
ISO	Independent System Operator.
KWH	Kilowatt hour.
LNG	Liquefied natural gas.

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DYNEGY INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

LPG	Liquefied petroleum gas.
MBbls/d	Thousands of barrels per day.
Mcf	Thousand cubic feet.
MMBtu	Millions of British thermal units.
MMCFD	Million cubic feet per day.
MW	Megawatts.
MWh	Megawatt hour.
NERC	North American Electric Reliability Council.
NGA	Natural Gas Act of 1938, as amended.
NGL	Our natural gas liquids business segment.
NGPA	Natural Gas Policy Act of 1978, as amended.
NGPSA	Natural Gas Pipeline Safety Act of 1968, as amended.
NOV	Notice of Violation issued by the EPA.
NYDEC	New York Department of Environmental Conservation.
PUCT	Public Utility Commission of Texas.
PUHCA	The Public Utility Holding Company Act of 1935, as amended.
QFs	Qualifying Facilities.
RCRA	The Resource Conservation and Recovery Act of 1976, as amended.
REG	Our regulated energy delivery business segment.
RTO	Regional Transmission Organization.
SEC	U.S. Securities and Exchange Commission.
SFAS	Statement of Financial Accounting Standards.
T&D	Our former transmission and distribution energy delivery business segment.
VaR	Value at Risk.
VLGC	Very large gas carrier.
WECC	Western Electricity Coordinating Council.
WEN	Our former wholesale energy network business segment.
WTLPS	West Texas LPG Pipeline Limited Partnership, the owner of West Texas LPG Pipeline.

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Schedule I

DYNEGY INC.

CONDENSED BALANCE SHEETS OF THE REGISTRANT
(in millions)

	December 31, 2003	December 31, 2002
ASSETS		
Current Assets		
Cash and cash equivalents	$ 124	$ —
Accounts receivable	—	98
Intercompany accounts receivable	1,923	2,488
Prepayments and other current assets	1	4
Total Current Assets	2,048	2,590
Other Assets		
Investments in affiliates	3,769	3,458
Other long-term assets	10	1
Total Assets	$ 5,827	$ 6,049
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities		
Accounts payable	$ 8	$ —
Accrued liabilities and other current liabilities	2	—
Total Current Liabilities	10	—
Long-Term Debt	448	—
Intercompany long-term debt	2,243	2,244
Other liabilities	681	506
Total Liabilities	3,382	2,750
Commitments and Contingencies		
Redeemable Preferred Securities, redemption value of $400 and $1,500 at December 31, 2003 and December 31, 2002, respectively	400	1,212
Stockholders' Equity		
Class A Common Stock, no par value, 900,000,000 shares authorized at December 31, 2003 and December 31, 2002; 280,350,169 and 274,850,589 shares issued and outstanding at December 31, 2003 and December 31, 2002, respectively	2,848	2,825
Class B Common Stock, no par value, 360,000,000 shares authorized at December 31, 2003 and December 31, 2002; 96,891,014 shares issued and outstanding at December 31, 2003 and December 31, 2002	1,006	1,006
Additional paid-in capital	41	705
Subscriptions receivable	(8)	(12)
Accumulated other comprehensive loss, net of tax	(20)	(55)
Accumulated deficit	(1,754)	(2,314)
Treasury stock, at cost, 1,679,183 shares at December 31, 2003 and December 31, 2002	(68)	(68)
Total Stockholders' Equity	2,045	2,087
Total Liabilities and Stockholders' Equity	$ 5,827	$ 6,049

See Notes to Registrant's Financial Statements and Dynegy Inc.'s Consolidated Financial Statements

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Schedule I

DYNEGY INC.

CONDENSED STATEMENTS OF OPERATIONS OF THE REGISTRANT
(in millions)

	Year Ended December 31,		
	2003	2002	2001
Operating income (loss)	$ (2)	$ 3	$ (8)
Equity in earnings (losses) of affiliates	(594)	(2,792)	734
Interest expense	(16)	(1)	—
Other expense, net	(24)	(56)	(7)
Income (loss) from continuing operations before income taxes	(636)	(2,846)	719
Income tax benefit (expense)	183	625	(313)
Income (loss) from continuing operations	(453)	(2,221)	406
Loss on discontinued operations, net of taxes	—	(516)	—
Net income (loss)	(453)	(2,737)	406
Less: preferred stock dividends (gain)	(1,013)	330	42
Net income (loss) applicable to common stockholders	$ 560	$(3,067)	$ 364

See Notes to Registrant's Financial Statements and Dynegy Inc.'s Consolidated Financial Statements

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Schedule I

DYNEGY INC.

CONDENSED STATEMENTS OF CASH FLOWS OF THE REGISTRANT
(in millions)

	Year Ended December 31,		
	2003	2002	2001
CASH FLOWS FROM OPERATING ACTIVITIES:			
Operating cash flow, exclusive of intercompany transactions	$(466)	$ (91)	$ 174
Intercompany transactions	584	(103)	(602)
Net cash provided by (used in) operating activities	118	(194)	(428)
CASH FLOWS FROM INVESTING ACTIVITIES:			
Investments in affiliates	—	—	(1,500)
Net cash used in investing activities	—	—	(1,500)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Net proceeds from long-term borrowings	225	—	—
Payment to ChevronTexaco for Series B preferred stock restructuring	(225)	—	—
Proceeds from issuance of capital stock	6	240	604
Proceeds from issuance of convertible preferred stock	—	—	1,500
Purchase of treasury stock	—	(1)	(68)
Dividends and other distributions, net	—	(55)	(98)
Net cash provided by financing activities	6	184	1,938
Net increase (decrease) in cash and cash equivalents	124	(10)	10
Cash and cash equivalents, beginning of period	—	10	—
Cash and cash equivalents, end of period	$ 124	$ —	$ 10
SUPPLEMENTAL CASH FLOW INFORMATION			
Interest paid (net of amount capitalized)	—	1	6
Taxes paid (net of refunds)	(116)	12	79

See Notes to Registrant's Financial Statements and Dynegy Inc.'s Consolidated Financial Statements

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Schedule I

DYNEGY INC.

NOTES TO REGISTRANT'S FINANCIAL STATEMENTS

Note 1—Background and Basis of Presentation

These condensed parent company financial statements have been prepared in accordance with Rule 12-04, Schedule I of Regulation S-X, as the restricted net assets of Dynegy Inc.'s subsidiaries exceeds 25% of the consolidated net assets of Dynegy Inc. These statements should be read in conjunction with the Consolidated Statements and notes thereto of Dynegy Inc.

We are a holding company and conduct substantially all of our business operations through our subsidiaries. We began operations in 1985 and became incorporated in the state of Illinois in 1999 in anticipation of our February 2000 merger with Illinova Corporation.

Note 2—Debt

For a discussion of our debt facilities, see Note 12—Debt beginning on page F-36 of our consolidated financial statements. All of our debt obligations outstanding are due subsequent to 2008.

Note 3—Commitments and Contingencies

For a discussion of our commitments and contingencies, see Note 17—Commitments and Contingencies beginning on page F-51 of our consolidated financial statements.

For a discussion of our guarantees, see Note 12—Debt beginning on page F-36 of our consolidated financial statements and Note 17—Commitments and Contingencies—Other Commitments and Contingencies—Guarantees beginning on page F-63 of our consolidated financial statements.

We have entered into various long-term non-cancelable operating leases, such as rental agreements for office space and equipment. Minimum commitments under these leases at December 31, 2003, were as follows: 2004-$98,000; 2005-$29,000; 2006-$29,000; 2007-$29,000; and 2008-$29,000.

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Schedule II

DYNEGY INC.

VALUATION AND QUALIFYING ACCOUNTS
Years Ended December 31, 2003, 2002 and 2001

	Balance at Beginning of Period	Charged to Costs and Expenses	Charged to Other Accounts	Deductions	Balance at End of Period
			(in millions)		
2003					
Allowance for doubtful accounts	$ 151	$ 25	$ 31	$ (23)	$ 184
Allowance for risk management assets (1) (2)	244	—	—	(233)	11
Deferred tax asset valuation allowance (3)	180	—	—	(36)	144
2002					
Allowance for doubtful accounts	113	47	—	(9)	151
Allowance for risk management assets (1)	248	(4)	—	—	244
Deferred tax asset valuation allowance	—	180	—	—	180
2001					
Allowance for doubtful accounts	69	92	(2)	(46)	113
Allowance for risk management assets (1)	146	102	—	—	248

(1) Changes in price and credit reserves related to risk management assets are offset in the net mark-to-market income accounts reported in revenues.

(2) Deduction of $233 million primarily relates to the rescission of EITF Issue 98-10, which resulted in changing the accounting for certain tolling arrangements from the mark-to-market method to the accrual method. As such, the related reserves associated with the mark-to-market value were removed from the allowance for risk management assets.

(3) Decrease in our deferred tax asset valuation relates to our release of a deferred tax capital gains valuation allowance.

EX-3.3 3 dex33.htm AMENDED AND RESTATED BYLAWS

EXHIBIT 3.3

DYNEGY INC.

AMENDED AND RESTATED BYLAWS

(As of January 15, 2004)

ARTICLE I

CORPORATE OFFICES

Section 1. Illinois Registered Office. The registered office of the corporation in the State of Illinois may, but need not, be identical with the principal office in the State of Illinois, and the address of the registered office may be changed from time to time by the board of directors.

Section 2. Other Offices. The principal office of the corporation in the State of Illinois shall initially be located in the City of Decatur and County of Macon. The corporation may also have offices at such other places both within and without the State of Illinois as the board of directors may from time to time determine or the business of the corporation may require.

ARTICLE II

MEETINGS OF SHAREHOLDERS

Section 1. Times and Places of Meetings. Meetings of shareholders for any purpose may be held at such time and place, within or without the State of Illinois, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2. Annual Meetings. Annual meetings of shareholders, commencing with the year 2000, shall be held on the 1st of May if not a legal holiday, and if a legal holiday, then on the next business day following, or at such other time as may be provided in a resolution by the board of directors, for the purpose of electing directors and for the transaction of such other business as may properly be brought before the meeting. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the board of directors shall cause the election to be held at a meeting of the shareholders as soon thereafter as conveniently may be.

Section 3. Special Meetings. Special meetings of shareholders may be called by the chairman of the board, the chief executive officer, the president, the board directors, or the holders of not less than one-fifth of all the outstanding shares entitled to vote on the matter for which the meeting is called.

Section 4. Notice of Meetings. Written notice stating the place, day and hour of the meeting, and in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than sixty days before the date of the meeting, or in the case of a merger, consolidation, share exchange, dissolution or sale, lease or exchange of assets, not less than twenty nor more than sixty days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, chief executive officer, president or the secretary or other persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at the shareholder's address as it appears on the records of the corporation, with postage thereon prepaid.

Section 5. Waiver of Notice. Whenever any notice whatsoever is required to be given under the provisions of the Business Corporation Act or the articles of incorporation or these by-laws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at any meeting shall constitute waiver of notice thereof unless the person at the meeting objects to the holding of the meeting because proper notice was not given.

Section 6. Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than sixty days and, for a meeting of shareholders, not less than ten days, or in the case of a merger, consolidation, share exchange, dissolution or sale, lease or exchange of assets, not less than twenty days, immediately preceding such meeting or other action. If no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided herein, such determination shall apply to any adjournment thereof.

Section 7. Voting Lists. The officer or agent having charge of the transfer books for shares of the corporation shall make, within twenty days after the record date for a meeting of shareholders or ten days before such meeting, whichever is earlier, a complete list of the shareholders entitled to vote at such meeting, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten days prior to such meeting, shall be kept on file at the registered office of the corporation and shall be subject to inspection by any shareholder, and to copying at the shareholder's expense, at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original share ledger or transfer book, or a duplicate thereof kept in this State, shall be prima facie evidence as to who are the shareholders entitled to examine such list or share ledger or transfer book or to vote at any meeting of shareholders.

Section 8. Quorum. A majority of the outstanding shares entitled to vote on a matter, represented in person or by proxy, shall constitute a quorum for consideration of such matter at any meeting of shareholders; provided, that if less than a majority of such outstanding shares are represented at the meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice until a quorum shall attend. If a quorum is present, the affirmative vote of the majority of such shares represented at the meeting and entitled to vote on a matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by the Business Corporation Act, the articles of incorporation or these by-laws.

Section 9. Proxies. A shareholder may appoint a proxy to vote or otherwise act for that shareholder by signing a proxy appointment form and delivering it to the person so appointed. Such proxy shall be filed with the secretary of the corporation before the time of the meeting. No proxy shall be valid after eleven months from the date thereof, unless otherwise provided in the proxy. Every proxy continues in full force and effect until revoked by the person executing it prior to the vote thereon, except to the extent such proxy is irrevocable under applicable law. Such revocation may be effected by a writing delivered to the secretary of the corporation stating that the proxy is revoked, or by a subsequent proxy executed by, or by attendance at the meeting and voting in person by, the person executing the proxy. The dates contained on the forms of proxy presumptively determine the order of execution, regardless of the postmark dates on the envelopes in which they are mailed.

Section 10. Voting of Shares. Except as otherwise provided by the articles of incorporation or by resolutions of the board of directors providing for the issue of any shares of preferred or special classes in series, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders.

Section 11. Voting of Shares by Certain Holders. Shares registered in the name of another corporation, domestic or foreign, may be voted by any officer, agent, proxy or other legal representative authorized to vote such shares under the law of incorporation of such corporation. The corporation may treat the president or other person holding the position of chief executive officer of such other corporation as authorized to vote such shares, together with any other person indicated and any other holder of an office indicated by the corporate shareholder to the corporation as a person or an office authorized to vote such shares. Such persons and offices indicated shall be registered by the corporation on the transfer books for shares and included in any voting list prepared in accordance with the Business Corporation Act and these by-laws. Shares registered in the name of a deceased person, a minor ward or a person under legal disability may be voted by his administrator, executor or court-appointed guardian, either in person or by proxy, without a transfer of such shares into the name of such administrator, executor or court-appointed guardian. Shares registered in the name of a trustee may be voted by such trustee, either in person or by proxy. Shares registered in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into the receiver's name if authority so to do is contained in an appropriate order of the court by which such receiver was appointed. A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred. Shares of the corporation owned by the corporation shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares entitled to vote at any given time, but shares of the corporation held by the corporation in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares entitled to vote at any given time.

Section 12. Inspectors. The board of directors, in advance of any meeting of shareholders, may appoint one or more persons as inspectors to act at such meeting or any adjournment thereof. If inspectors of election are not so appointed, the chairman of the meeting may, or upon the request of any shareholder shall, appoint one or more persons as inspectors for such meeting. Such inspectors shall ascertain and report the number of shares represented at the meeting, based upon their determination of the validity and effect of proxies; count all votes and report the results; and do such other acts as are proper to conduct the election and voting with impartiality and fairness to all the shareholders. Each report of an inspector shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be prima facie evidence thereof.

Section 13. Voting by Ballot. Voting on any question or in any election may be by voice vote unless the presiding officer shall order that voting be by ballot.

Section 14. Organization of Meetings. At each meeting of shareholders, one of the following officers shall act as chairman and shall preside thereat, in the following order of precedence: the chairman of the board; the president; any vice president acting in place of the president as provided by these by-laws; any person designated by the affirmative vote of the holders of a majority of the shares represented at the meeting in person or by proxy and entitled to vote.

Section 15. Notice of Shareholder Business and Nominations.

(A) Annual Meetings of Shareholders.

(1) Nominations of persons for election to the board of directors of the corporation and the proposal of business to be considered by the shareholders may be made at an annual meeting of shareholders (a) pursuant to the corporation's notice of meeting, (b) by or at the direction of the board of directors, (c) as expressly provided in the corporation's articles of incorporation, or (d) by any shareholder of record of the corporation at the relevant time, provided that shareholders of common stock of the corporation (the "Common Stock Shareholders") comply with the notice procedures set forth in Section 15(A)(2)-(3) below.

(2) For nominations or other business to be properly brought before an annual meeting by a Common Stock Shareholder, such shareholder must have given timely notice thereof in writing to the secretary of the corporation and such other business must be a proper matter for shareholder action. To be timely, the Common Stock Shareholder's notice shall be delivered to the secretary of the corporation at the principal executive offices of the corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the shareholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a Common Stock Shareholder's notice as described above. Such shareholder's notice shall set forth: (a) as to each person whom the shareholder proposes to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 14a-11 thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (b) as to any other business that the shareholder proposes to bring before the meeting, a brief description of the business described to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such shareholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the shareholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such shareholder, as they appear on the corporations' book and of such beneficial owner and (ii) the class and number of shares of the corporation which are owned beneficially and of record by such shareholder and such beneficial owner.

(3) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 15 to the contrary and except with respect to the first annual meeting of the corporation, in the event that the number of directors to be elected to the board of directors of the corporation is increased and there is no public announcement naming the nominees for director or specifying the size of the increased board of directors made by the corporation at least 100 days prior to the first anniversary of the preceding year's annual meeting, a Common Stock Shareholder's notice required by this Section 15 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the secretary of the corporation at the principal executive offices of the corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the corporation.

(B) Special Meetings of Shareholders. Only such business shall be conducted at a special meeting of shareholders as shall have been brought before the meeting pursuant to a notice of meeting given pursuant to Section 4 of this Article II.

Nominations of persons for election to the board of directors may be made at a special meeting of shareholders at which directors are to be elected pursuant to the corporation's notice of meeting (1) by or at the direction of the board of directors or (2) by any shareholder of the corporation who is a shareholder of record at the time of giving of notice provided for in this Section 15, who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 15. In the event the corporation calls a special meeting of shareholders for the purpose of electing one or more directors to the board of directors, any such shareholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation's notice of meeting, if the shareholder's notice required by paragraph (A)(2) of this Section 15 shall be delivered to the secretary of the corporation at the principal executive office of the corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the board of directors to be elected at such meeting. In no event shall the public announcement of an adjournment of a special meeting commence a new time period for the giving of a shareholder's notice as described above.

(C) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Section 15 shall be eligible to serve as directors and only such business shall be conducted at a meeting of shareholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 15. Except as otherwise provided by law, the articles of incorporation of the corporation or these by-laws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in this Section 15 and, if any proposed nomination or business is not in compliance with this Section 15, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of this Section 15, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Section 15, a shareholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder, if any, with respect to the matters set forth in this Section 15. Nothing in this Section 15 shall be deemed to affect any rights of (i) shareholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) the holders of any series of preferred shares of the corporation to elect directors under specified circumstances.