

MIRANT CORP
Form 10-K
April 19, 2004

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the Fiscal Year Ended December 31, 2003

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934

For the Transition Period from _____ to _____

Mirant Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of Incorporation or Organization)

001-16107
(Commission File Number)

58-2056305
(I.R.S. Employer
Identification No.)

**1155 Perimeter Center West, Suite 100,
Atlanta, Georgia**
(Address of Principal Executive Offices)

30338
(Zip Code)

(678) 579-5000
(Registrant's Telephone Number, Including Area Code)

www.mirant.com
Web Page

Securities registered pursuant to Section 12(b) of the Act:
None

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

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Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrants' knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is an accelerated filer (as defined by Rule 12b-2 of the Act). Yes No

Aggregate market value of voting stock held by non-affiliates of the registrant was approximately \$1,013,670,210 on June 27, 2003 (based on 2.50 per share, the closing price in the daily composite list for transactions on the New York Stock Exchange for that day). As of April 14, 2004, there were 405,468,084 shares of the registrant's Common Stock, \$0.01 par value per share outstanding.

TABLE OF CONTENTS

	<u>Page</u>
PART I	
Item 1. Business	6
Item 2. Properties	27
Item 3. Legal Proceedings	29
Item 4. Submission of Matters to a Vote of Security Holders	46
PART II	
Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	46
Item 6. Selected Financial Data	47
Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations	48
Item 7A. Quantitative and Qualitative Disclosures About Market Risk	79
Item 8. Financial Statements and Supplementary Data	83
Item 9. Changes In and Disagreements with Accountants on Accounting and Financial Disclosure	84
Item 9A. Controls and Procedures	84
PART III	
Item 10. Directors and Executive Officers of the Registrant	85
Item 11. Executive Compensation	90
Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	96
Item 13. Certain Relationships and Related Transactions	97
Item 14. Principal Accountant Fees and Services	97
PART IV	
Item 15. Exhibits, Financial Statement Schedules and Reports on Form 8-K	99

DEFINITIONS

<u>TERM</u>	<u>MEANING</u>
Chapter 11	Chapter 11 of the Bankruptcy Code
Bankruptcy Code	United States Bankruptcy Code
IRS	Internal Revenue Service
MMBtu	Million British thermal unit
MW	Megawatts
MWh	Megawatt-hour
Mirant Americas Generation	Mirant Americas Generation, LLC

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TERM	MEANING
Mirant California	Mirant California, LLC
Mirant Mid-Atlantic	Mirant Mid-Atlantic, LLC
Mirant New England	Mirant New England, Inc.
Mirant New York	Mirant New York, Inc. and Mirant New York Investments, Inc., collectively
Mirant Peaker	Mirant Peaker, LLC
Mirant Potomac River	Mirant Potomac River, LLC
Mirant Texas	Mirant Texas Management, Inc. and Mirant Texas Investments, Inc., collectively
Mirant Wichita Falls	Mirant Wichita Falls, LP
Mirant Zeeland	Mirant Zeeland, LLC
Perryville	Perryville Energy Partners, LLC
TransCanada	TransCanada PipeLines Limited
West Georgia	West Georgia Generating Company, LLC

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING INFORMATION

The information presented in this Form 10-K includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 in addition to historical information. These statements involve known and unknown risks and relate to future events, our future financial performance or our projected business results. In some cases, you can identify forward-looking statements by terminology such as "may," "will," "should," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "targets," "potential" or "continue" or the negative of these terms or other comparable terminology.

Forward-looking statements are only predictions. Actual events or results may differ materially from any forward-looking statement as a result of various factors, which include:

General Factors

legislative and regulatory initiatives regarding deregulation, regulation or restructuring of the electric utility industry; changes in state, federal and other regulations (including rate and other regulations); changes in, or application of, environmental and other laws and regulations to which we and our subsidiaries and affiliates are subject;

the failure of our assets to perform as expected;

our pursuit of potential business strategies, including the disposition or utilization of assets, suspension of construction or internal restructuring;

changes in market conditions, including developments in energy and commodity supply, demand, volume and pricing or the extent and timing of the entry of additional competition in the markets of our subsidiaries and affiliates;

2

weather and other natural phenomena;

war, terrorist activities or the occurrence of a catastrophic loss;

deterioration in the financial condition of our counterparties and the resulting failure to pay amounts owed to us or to perform obligations or services due to us; and

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the disposition of the pending litigation described in this Form 10-K.

Bankruptcy-Related Factors

the actions and decisions of creditors of Mirant and of other third parties with interests in the voluntary petitions for reorganization filed on July 14, 2003, July 15, 2003, August 18, 2003, October 3, 2003 and November 18, 2003, by Mirant Corporation and substantially all of its wholly-owned and certain non-wholly-owned U.S. subsidiaries under Chapter 11 of the Bankruptcy Code and by certain of Mirant's Canadian subsidiaries under the Companies Creditors' Arrangement Act in Canada;

the effects of the Chapter 11 proceedings on our liquidity and results of operations;

the instructions, orders and decisions of the bankruptcy court and other effects of legal and administrative proceedings, settlements, investigations and claims;

the ability of Mirant to operate pursuant to the terms of the debtor-in-possession financing agreement;

the ability of Mirant to successfully reject unfavorable contracts;

the ability of Mirant to obtain and maintain normal terms with vendors and service providers and to maintain contracts that are critical to our operations; and

the duration of Chapter 11 proceedings.

The ultimate results of the forward-looking statements and the terms of any reorganization plan ultimately confirmed can affect the value of our various pre-petition liabilities, common stock and/or other securities. No assurance can be given as to what values, if any, will be ascribed in the bankruptcy proceedings to each of these constituencies. A plan of reorganization could result in holders of the liabilities and/or securities of the Company, Mirant Americas Generation and Mirant Mid-Atlantic receiving no value for their interests. Because of such possibilities, the value of these liabilities and/or securities is highly speculative. Accordingly, we urge that caution be exercised with respect to existing and future investments in any of these liabilities and/or securities.

The Company expressly disclaims any duty to update any information.

Factors that Could Affect Future Performance

In addition to the discussion of certain risks in Management's Discussion and Analysis of Financial Condition and Results of Operations and the Notes to Mirant's consolidated financial statements, other factors that could affect the Company's future performance (business, financial condition or results of operations and cash flows) are set forth below.

We may be unable to adequately reduce our operating costs or conserve our financial resources.

We may be unable to raise financing or refinance existing debt for our businesses inside or outside of the U.S. in light of the various factors discussed herein.

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Changes in power prices may impact financial results, either favorably or unfavorably. Our generation and distribution businesses are subject to changes in power prices, which may impact

3

our financial results and financial position by decreasing the amounts we receive from the sale of power and negatively impact our gross margin.

We often sell power and buy fuel on a forward basis to hedge the cash flows associated with our North America business. In order for these hedges to be effective, our portfolio of generating assets must be available to generate. Unplanned outages at our generating facilities expose us to the risk that forward obligations incurred through hedging will need to be satisfied through spot market transactions rather than utilization of our generating facilities. These spot market transactions may be entered into at prices which are disadvantageous to us relative to the prices at which our hedge transactions were undertaken. As a result, unplanned outages create the risk that expected financial results are not achieved. The potential impact of this risk varies significantly depending upon pricing and volume of hedges, timing and length of outages, and spot market prices for power and fuel.

Changes in fuel costs may impact financial results, either favorably or unfavorably. Our generation and distribution businesses are subject to changes in fuel costs, which may increase the cost of producing power and negatively impact our gross margin.

We may, at times, have an open position in the market, within established guidelines, resulting from the management of our optimization trading and legacy portfolios. To the extent open positions exist, fluctuating commodity prices can impact financial results and financial position, either favorably or unfavorably. Furthermore, the risk management procedures we have in place may not always function as designed. As a result of these and other factors, we cannot predict, with precision, the impact that risk management decisions may have on our businesses, operating results or financial position and cash flows. Although we devote a considerable amount of management efforts to mitigation of these risks, their potential impact is uncertain.

Our projects located outside of the U.S. expose us to risks related to laws and government regulations of other countries, taxes, economic conditions, fluctuations in currency rates, labor supply and relations, political conditions and policies of foreign governments. These risks may delay or reduce our realization of value from our international projects.

Some of our facilities inside and outside of the U.S. depend on only one or a few customers or suppliers. These parties, as well as other parties with whom we have contracts, may fail to perform their obligations, may seek to amend terms and conditions in our agreements, may decide not to renew existing agreements, or may terminate their existing agreements, which may result in a default on project debt or loss in revenues and may require us to institute legal proceedings to enforce our agreements.

Our costs of compliance with environmental laws are significant and the cost of compliance with new and existing environmental laws could adversely affect our profitability.

Our business in the U.S. is subject to complex government regulations and changes in these regulations or in their implementation may affect the costs of operating our facilities or our ability to operate our facilities, which may negatively impact our results of operations.

Our business inside and outside the U.S. could be materially impacted by unplanned outages due to adverse weather conditions and other natural disasters.

Our business inside and outside the U.S. could be adversely impacted by the specific needs of each generating plant to perform unplanned facility maintenance or repairs, or to install pollution control equipment or other environmental

equipment.

The costs and other effects of our bankruptcy proceedings and other settlements, audits, investigations and claims are expected to be significant and will negatively impact the financial results of the Company.

4

The effects of a worldwide depression, recession or economic downturn; prolonged economic crisis in countries, states or regions in which we conduct our business; political, economic and market instability related to or resulting from economic crisis and the related effects, including, but not limited to, destruction of property, terrorism and war could have a material adverse effect on our results of operations and financial condition.

Mirant may be unable to retain or attract personnel capable of successfully executing our business plan given the Company's bankruptcy and the challenging business climate for our sector.

Mirant may not be able to take advantage of long-term hedging opportunities and as a result may experience more volatility in earnings and cash flows as Mirant is subject to fluctuations in spot prices for energy commodities.

5

PART I

Item 1. *Business*

Overview

We are an international energy company incorporated in Delaware on April 20, 1993. Our revenues are primarily generated through the production of electricity in the U.S., the Philippines and the Caribbean. As of December 31, 2003, we owned or leased more than 17,000 MW of electric generating capacity.

We manage our business through two principal operating segments. Our North America segment consists of power generation and trading and marketing operations. In North America, we trade and market energy commodities to manage the financial performance of our power generation business and to achieve incremental returns by entering into energy contracts, primarily in regions where we own generating facilities or other physical assets. The International segment includes power generation businesses in the Philippines, Curacao and Trinidad, and integrated utilities in the Bahamas and Jamaica. In the Philippines, over 80% of our generation output is sold under long-term contracts. Our operations in the Caribbean include fully integrated electric utilities, which generate power sold to residential, commercial and industrial customers.

The annual, quarterly and current reports, and any amendments to those reports, that we file with or furnish to the SEC are available free of charge on our website at www.mirant.com as soon as reasonably practicable after they are electronically filed with or furnished to the SEC. Information contained in our website is not incorporated into this Form 10-K.

As used in this report, "we," "us," "our," the "Company" and "Mirant" refer to Mirant Corporation and its subsidiaries, unless the context requires otherwise.

Proceedings under Chapter 11 of the Bankruptcy Code

On July 14, 2003 and July 15, 2003 ("Petition Date"), Mirant and 74 of its wholly-owned subsidiaries in the U.S. (collectively, the "Original Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division ("Bankruptcy Court"). On August 18, 2003, two additional wholly-owned subsidiaries of

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Mirant, Mirant EcoElectrica Investments I, Ltd. and Puerto Rico Power Investments Ltd., commenced Chapter 11 cases under the Bankruptcy Code (the "EcoElectrica Debtors"). On October 3, 2003, four of Mirant's affiliates who jointly own directly and indirectly the Wrightsville power plant also commenced Chapter 11 cases (the "Wrightsville Debtors"). On November 18, 2003, two additional wholly-owned subsidiaries of Mirant, Mirant Americas Energy Capital, LP ("Mirant Americas Energy Capital") and Mirant Americas Energy Capital Assets, LLC, commenced Chapter 11 cases under the Bankruptcy Code (the "Energy Capital Debtors," together with the Original Debtors, the EcoElectrica Debtors, and the Wrightsville Debtors, the "Mirant Debtors"). The Chapter 11 cases of the Mirant Debtors are being jointly administered for procedural purposes only under case caption *In re Mirant Corporation et al.*, Case No. 03-46590 (DML).

Additionally, on the Petition Date, certain of Mirant's Canadian subsidiaries, Mirant Canada Energy Marketing, Ltd. and Mirant Canada Marketing Investments, Inc., filed an application for creditor protection under the Companies Creditors' Arrangement Act in Canada ("CCAA"), which, like Chapter 11, allows for reorganization under the protection of the court system. Mirant's businesses in the Philippines and the Caribbean were not included in the Chapter 11 filings.

The Mirant Debtors are continuing to operate their businesses as debtors-in-possession under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, applicable court orders, as well as other

6

applicable laws and rules. In general, as debtors-in-possession, each of the Mirant Debtors is authorized under the Bankruptcy Code to continue to operate as an ongoing business, but may not engage in transactions outside the ordinary course of business without the prior approval of the Bankruptcy Court.

The Office of the United States Trustee has established a committee of unsecured creditors for Mirant Corporation and a committee of unsecured creditors for Mirant Americas Generation (collectively, the "Creditor Committees"). The Office of the United States Trustee has also established a committee of equity securities holders of Mirant Corporation (the "Equity Committee," and collectively with the Creditor Committees, the "Statutory Committees").

On November 5, 2003, certain of the Mirant Debtors entered into a two-year debtor-in-possession credit facility for up to \$500 million (the "DIP Facility") with General Electric Capital Corporation ("GECC"). The orders entered by the Bankruptcy Court approving the DIP Facility permit up to \$300 million of borrowings, which amount may be increased up to \$500 million upon written approval of each of the Statutory Committees or further order of the Bankruptcy Court. The DIP Facility also contains an option, exercisable by Mirant or Mirant Americas Generation, to remove Mirant Americas Generation and its subsidiaries as borrowers and obligors under the DIP Facility and reduce the DIP Facility commitment to a maximum of \$200 million of borrowings. See Note 13 to our consolidated financial statements contained elsewhere in this report for further discussion of the DIP Facility.

Subject to certain exceptions in the Bankruptcy Code, the Chapter 11 filings automatically stayed the initiation or continuation of most actions against the Mirant Debtors, including most actions to collect pre-petition indebtedness or to exercise control over the property of the bankruptcy estates. One exception to this stay of litigation is actions or proceedings by a governmental agency to enforce its police or regulatory power. As a result of this stay, absent an order of the Bankruptcy Court, creditors are precluded from collecting pre-petition debts and substantially all pre-petition liabilities are subject to compromise under a plan or plans of reorganization to be developed by the Mirant Debtors later in the bankruptcy proceedings.

On August 21, 2003 and September 8, 2003, the Bankruptcy Court entered orders establishing a December 16, 2003 bar date (the "Bar Date") for filing proofs of claim against the Mirant Debtors' estates (excluding Mirant Americas Energy Capital LP and Mirant Americas Energy Capital Assets LLC to which a March 12, 2004 bar date is applicable). As of March 24, 2004, approximately 7,800 proofs of claim were filed against Mirant's Chapter 11 estates. Those claims total approximately \$242 billion. Of this amount, approximately \$227 billion represents redundant claims which are primarily similar claims filed against multiple Mirant Debtors. An additional \$2 billion represents the Company's preliminary estimate of the amount of the proofs of claim for which the Company has identified a basis for objection to the claim. The amount of the proofs of claim net of redundancies and amounts for which we have identified a basis for objection totals approximately \$13 billion. The Mirant Debtors have not fully analyzed the validity and enforceability of the submitted proofs of claim or whether such claims should ultimately be allowed in the Chapter 11 proceedings. As such, the amounts of distributions received by claimants under the plan or plans of reorganization may substantially vary from the amounts of the proofs of claim filed against the Chapter 11 estates. See "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations Critical Accounting Policies and Estimates" for additional information.

Under the Bankruptcy Code, the Mirant Debtors also have the right to assume, assume and assign, or reject certain executory contracts and unexpired leases, subject to the approval of the Bankruptcy Court and certain other conditions. Generally, the assumption of an executory

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contract or unexpired lease requires a debtor to cure certain existing defaults under the contract, including the payment of accrued but unpaid pre-petition liabilities. Rejection of an executory contract or unexpired lease is typically treated as a breach of the contract or lease, with the breach occurring as of the moment

7

immediately preceding the Chapter 11 filing. Subject to certain exceptions, this rejection relieves the debtor from performing its future obligations under that contract but entitles the counterparty to assert a pre-petition general unsecured claim for damages. Parties to executory contracts or unexpired leases rejected by a debtor may file proofs of claim against that debtor's estate for damages. Due to ongoing evaluation of contracts for assumption or rejection and the uncertain nature of many of the potential claims for damages, the Mirant Debtors cannot project the magnitude of these potential claims at this time.

The Mirant Debtors continue to evaluate their executory contracts in order to determine which contracts will be assumed, assumed and assigned, or rejected. Once the evaluation is complete with respect to each particular contract, the applicable Mirant Debtors file the appropriate motion with the Bankruptcy Court seeking approval to assume or reject the contract. The court then determines whether to grant or deny such motions. As of the date of this filing, the Mirant Debtors have identified the following material contracts to be rejected.

PEPCO Back-to-Back Agreement: On August 28, 2003, the Mirant Debtors filed a motion with the Bankruptcy Court to reject an out-of-market agreement (the "Back-to-Back Agreement") to purchase power from Potomac Electric Power Company ("PEPCO"). Under this agreement, Mirant is obligated to purchase power from PEPCO in the Pennsylvania-New Jersey-Maryland Interconnection LLC ("PJM") marketplace at prices that are significantly higher than existing market prices for power. The Mirant Debtors forecast that it would cost the Mirant Debtors that are parties to the contract with PEPCO and their stakeholders in excess of \$300 million through 2005 if the Back-to-Back Agreement were to remain in effect. These anticipated losses, as compared to what could be obtained if market rates were applied, are even greater over the entire life of the agreement, which continues until 2021. On October 9, 2003, the United States District Court for the Northern District of Texas entered an order that had the effect of transferring to that court from the Bankruptcy Court the motion filed by the Mirant Debtors seeking to reject the Back-to-Back Agreement and the proceedings in which the Bankruptcy Court had issued the preliminary injunction against the Federal Energy Regulatory Commission ("FERC").

On December 23, 2003, the federal district court in Texas denied the Mirant Debtors' motion seeking to reject the Back-to-Back Agreement. The Mirant Debtors have appealed the District Court's ruling to the United States Court of Appeals for the Fifth Circuit. See "Item 3. Legal Proceedings" for additional information regarding the PEPCO Back-to-Back Agreement.

Perryville Tolling Agreement: On August 29, 2003, the Mirant Debtors filed a motion with the Bankruptcy Court to reject the tolling agreement with Perryville, under which Mirant Americas Energy Marketing, LP ("Mirant Americas Energy Marketing") paid a fixed capacity payment and supplied the natural gas needed to fuel the Perryville generation facility in exchange for the right to own and market the facility's output. The rejection was approved by the Bankruptcy Court on September 15, 2003. Perryville filed claims in excess of \$1 billion against the Mirant Debtors as a result of the rejection. Mirant Americas Energy Marketing has filed an objection to the Perryville claims and the Mirant Debtors are investigating the nature, scope and defenses to such claims. At the time of the rejection, Mirant Americas, Inc. ("Mirant Americas") held a subordinated note receivable from Perryville in the face amount of \$100 million. Under the terms of the subordinated loan, Perryville will likely assert that its obligations to make payments to Mirant Americas are suspended until it has recovered the damages resulting from the rejection of the tolling agreement. In addition, under the subordinated note, Perryville will likely assert a right to set off obligations under the subordinated note against amounts payable by Mirant Americas based on a guaranty of the tolling agreement executed in August 2002. As a result the Mirant Debtors did not expect to receive any future repayments on this note, and the entire balance of the note of \$99 million was written off and recorded in reorganization items in the third quarter of 2003. Mirant also recorded a net gain of approximately \$6 million in the third quarter of 2003 to remove the capital lease debt obligations and related assets from its consolidated balance

8

sheet. On January 28, 2004, Perryville and its parent company Perryville Energy Holdings, LLC filed voluntary petitions for protection under Chapter 11 of the Bankruptcy Code.

TPA Settlement: On October 29, 2003, the Mirant Debtors filed a motion with the Bankruptcy Court for approval of a settlement between Mirant and PEPCO regarding two out-of-market transition power agreements (the "TPAs") under which Mirant sells power to PEPCO. Under that settlement, the per MWh prices for power delivered under the TPAs were increased by \$6.40 and the TPAs were assumed. In addition, the settlement agreement grants PEPCO an allowed pre-petition general unsecured claim related to the amendment of these agreements in the

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amount of \$105 million. On November 19, 2003, the Bankruptcy Court approved the settlement and the assumption of the amended TPAs. We recorded a liability subject to compromise for this claim on our consolidated balance sheets as of December 31, 2003. See Note 3 to our consolidated financial statements contained elsewhere in this report for additional information.

Other Matters

On November 19, 2003, the Bankruptcy Court issued an order to make effective a November 5, 2003 amendment to our Global Risk Management Policy (the "Risk Management Policy"). Under this order, the Mirant Debtors are required to conduct their commercial activities in compliance with the terms and provisions of the Risk Management Policy, which defines approved markets, energy and other commodities for the trading and marketing activities of our North America segment. It also establishes risk and authorization limits for our personnel involved in these commercial activities.

The Risk Management Policy establishes definitions of permitted asset hedging and optimization transactions and establishes the Company's risk limits for these activities. Asset management activities are designed to reduce the financial risks associated with our physical assets, while optimization activities place additional capital at risk in an attempt to generate a return. For accounting purposes contracts related to these activities are generally reflected in our financial statements at fair value and are subject to volatility as commodity prices change. See "Critical Accounting Policies and Estimates" for more information on how we record these activities in our financial statements. Optimization activities are designed to leverage the Company's proprietary knowledge in markets where it maintains a physical presence in order to earn incremental gross margin. The Risk Management Policy establishes a \$7.5 million Value at Risk ("VaR") limit for optimization activities. Mirant has not established a specific VaR limit for asset management activities, as they are risk reducing in nature. As a result of the VaR limit and other position limits established by the Risk Management Policy for optimization trading activities, our trading optimization portfolio is expected to have lower earnings risk in the future and our potential to generate earnings and cash flow associated with these activities will be lower as well.

On the Petition Date, the Bankruptcy Court granted the Mirant Debtors interim permission to implement a Counterparty Assurance Program. On August 27, 2003, the Bankruptcy Court issued a final order authorizing the Company's Counterparty Assurance Program. Mirant Americas Energy Marketing conducts a substantial portion of its business through the use of derivative contracts that may fall within the "safe-harbor" provisions set forth in Bankruptcy Code Sections 556 and 560 as well as in other sections of the Bankruptcy Code. The safe harbor provisions permit non-debtor parties to, among other things, exercise certain contractual termination rights and remedies notwithstanding the commencement of a Chapter 11 case. Although case law surrounding the scope of the Bankruptcy Code's safe harbor provisions remains unsettled, if a contract qualifies for safe harbor protection, a non-debtor party may be permitted to terminate or liquidate the contract upon a commencement of a bankruptcy proceeding. In addition, in certain circumstances, commencement of a bankruptcy proceeding may cause automatic termination or liquidation of the contract in accordance with the contractual terms. The Bankruptcy Court orders authorized immediate relief allowing Mirant Americas Energy Marketing to honor any and all obligations under existing and future trading and marketing

9

contracts (i.e., safe harbor contracts). This relief allows Mirant Americas Energy Marketing to perform all obligations arising from pre-petition trading contracts and further affirms its ability to enter into post-petition trading activities, including new trading agreements with counterparties. In addition, the orders grant counterparties included in the program an administrative expense priority with respect to Mirant Americas Energy Marketing's obligations under its pre and post-petition trading contracts, as well as the right to terminate for certain contractual defaults other than Mirant Americas Energy Marketing's petition for Chapter 11 relief.

Pursuant to the general terms of Mirant Americas Energy Marketing's derivative trading contracts, upon early termination, settlement payments are determined by the non-defaulting counterparty using mark-to-market valuation methodologies. Given the inherent uncertainties in mark-to-market valuation, Mirant may not be able to realize the net current value of derivative trading contracts that are terminated early as a result of the Chapter 11 filings, or other events of default, due to a potential increase in mark-to-market liabilities and a potential decrease in mark-to-market assets upon settlement. A number of counterparties have exercised early termination rights which will likely result in a loss of value to Mirant. Mirant recognized a loss, which is reflected in reorganization items, of \$53 million in 2003 as an estimate of losses incurred with respect to such safe harbor contracts. As of December 31, 2003, Mirant has not settled contracts related to approximately \$30 million of the loss provision. However, the ultimate impact of these early terminations is not known at this time. In addition, although the terms of most of Mirant Americas Energy Marketing's derivative contracts do not relieve the non-defaulting party of the obligation to pay settlement amounts owing, some of Mirant Americas Energy Marketing's counterparties owing settlement payments may refuse to make such payments absent litigation, further reducing the value of Mirant Americas Energy Marketing's unsettled terminated trading positions.

On July 24, 2003, the Bankruptcy Court approved an interim procedure requiring certain direct and indirect holders of claims, preferred securities and common stock to provide at least ten days advance notice of their intent to buy or sell claims against the Mirant Debtors or shares in Mirant Corporation. The Bankruptcy Court entered a final order on September 17, 2003 and such order establishes notice procedures

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applicable only to those transactions with a person or entity owning (or, because of the transaction, resulting in ownership of) an aggregate amount of claims equal to or in excess of \$250 million or such higher amount determined under the order and, with respect to shares, only those persons or entities owning (or, because of the transaction, resulting in ownership of) 4.75% or more of any class of outstanding shares. In addition, each entity or person that owns at least \$250 million, or such higher amount determined under the order, of certain claims or preferred securities must provide Mirant and the Creditor Committees with notice of ownership information. The Court's orders also provide for expedited procedures to impose sanctions for a violation of its orders, including monetary damages and, in some cases, the avoidance of any such transactions that violate the order. Upon election, a special regime allowing virtually unlimited trading of claims without having to provide notice thereof may be available to certain claimholders, although such electing claimholders may be required to sell a portion of their claims before a specific date. The emergency and final relief was sought to prevent potential trades of claims of stock that could negatively impact the availability of the Mirant Debtors' U.S. net operating loss carryforwards and other tax attributes. The U.S. federal net operating loss carryforward is approximately \$2.2 billion at December 31, 2003. Even with the relief that has been granted, Mirant cannot guarantee that it will be able to benefit from all, or any portion, of its U.S. federal net operating loss carryforwards and other tax attributes. Similarly, there are approximately \$3.6 billion of state net operating loss carryforwards. See "Critical Accounting Policies and Estimates" for further information.

On September 30, 2003, the Mirant Debtors filed a motion with the Bankruptcy Court requesting that it determine certain property tax liabilities relating to Mirant's generating facilities in the state of New York. On December 10, 2003, the Bankruptcy Court ruled that it would retain jurisdiction with

10

the New York state courts to determine such liabilities. The ruling further indicated that for any tax proceeding in the state of New York for which a trial had not commenced and continued by August 1, 2004, the Bankruptcy Court would stay the relevant state court proceedings and determine the tax liability itself. See "Item 3. Legal Proceedings" for additional information regarding New York Taxes.

At this time, it is not possible to accurately predict the effect of the Chapter 11 reorganization process on the business of the Mirant Debtors or if and when some or all of the Mirant Debtors may emerge from Chapter 11. The prospects for future results depend on the timely and successful development, confirmation and implementation of a plan of reorganization. There can be no assurance that a successful plan or plans of reorganization will be proposed by the Mirant Debtors, supported by the Mirant Debtors' creditors or confirmed by the Bankruptcy Court, or that any such plan or plans will be consummated. The rights and claims of various creditors and security holders will be determined by the applicable plans as well. Under the priority scheme established by the Bankruptcy Code, certain post-petition and pre-petition liabilities need to be satisfied before equity security holders are entitled to any distributions. The ultimate recovery to creditors and equity security holders, if any, will not be determined until confirmation of a plan or plans of reorganization. No assurance can be given as to what values, if any, will be ascribed in the bankruptcy proceedings to the interests of each of these constituencies, and it is possible that the equity interests in Mirant and the other Mirant Debtors, or other securities will be restructured in a manner that will reduce substantially or eliminate any remaining value. Whether or not a plan or plans of reorganization are approved, it is possible that the assets of any one or more of the Mirant Debtors may be liquidated.

Competitive Environment

Historically, the power generation industry was characterized by electric utility monopolies selling to a franchised customer base. In response to increasing customer demand for access to low-cost electricity and enhanced services, new regulatory initiatives were adopted, primarily to increase wholesale and retail competition and reduce costs. Recently, state and federal deregulation efforts have stalled, primarily in response to the California energy crisis and the financial troubles of many energy merchants. As a result, a hybrid market system has developed where non-franchised power producers must compete with franchised electric utilities, and regulatory power rests more at the local and state level than with federal authorities. The markets in which Mirant participates have become significantly less liquid with the failure of Enron Corporation and the ensuing reduction in trading and marketing activities at other organizations. The number of counterparties and the level of transactions in the power and related markets have decreased significantly.

The significant increase in generation capacity that followed initial deregulation efforts has resulted in overcapacity in most North American markets and has increased competition and reduced prices dramatically. The Company does not expect the significant oversupply situation to change until 2007 to 2011 for most major markets. With this increased level of competition, merchant energy providers are less likely to achieve premium pricing, and most merchant energy providers are bidding to sell power at or near short run marginal costs.

In most cases, existing markets lack sufficient mechanisms to compensate generators for installed capacity, making it more difficult to cover fixed costs. Specifically, most of the current market structures include energy price caps that come into effect when markets are tight and prices are increasing during high demand periods. However, these markets do not include a floor mechanism in the form of a capacity payment to compensate merchant generators during periods of overcapacity. Therefore, the total returns may not fairly compensate merchant generators over the long run.

The hybrid market environment discussed earlier also contributes to the current difficult market environment. The disparate commitments to deregulation and different competitive structures within

common markets coupled with the excess capacity in most markets have led to heavy price competition between generators, contributing to much of the financial problems in the merchant sector.

At the same time that power prices have experienced downward pressure, gas and power markets have converged. Gas demand is expected to grow from 23 trillion cubic feet per year in 2000 to 35 trillion cubic feet per year by 2025 (*EIA: Energy Outlook 2003*). The majority of this growth is being driven by electric generation. The competitive electric generation market favors low-cost and more efficient generation technologies such as natural gas-fired combustion turbines or combined-cycle plants to serve growing electricity demand and to replace older, less-efficient units. Additionally, natural gas continues to be the most cost-effective fuel source to meet increasingly stringent clean air requirements. Currently, 16% of the U.S. power generation is fueled by natural gas. The convergence in natural gas and power commodity markets has enabled operators of newer, advanced technology gas-fired units to dispatch ahead of older simple-cycle natural gas and oil fueled units. However, during times of overcapacity and low spark spreads, the advanced technology gas-fired units that are dispatched ahead of older simple-cycle natural gas and oil fueled units do not run enough to provide an attractive return on investment.

Further complicating the competitive nature of the merchant energy sector are technological advances in power generation, the increased role of full service providers, increased efficiency of energy markets and renewed competition from franchised utilities. It is often difficult for the Company to assess its position versus that of existing power providers and new entrants, because each company may employ widely differing strategies in their fuel supply and power sales contracts with regard to pricing, terms and conditions. Additionally, many states are considering or implementing different types of regulatory initiatives that are aimed at either increasing or decreasing competition in the power industry. Increased competition that has resulted from some of these initiatives has already contributed to a reduction in spark spreads and put pressure on electric utilities to reduce their costs, including the cost of purchased electricity. One recent trend has been the re-emergence of regulated utilities in the generation business. Increasingly, utilities are looking to build, buy or subsidize new generation. The reasons for this vary but include the ability to purchase assets at depressed prices, an interest in extending the overcapacity situation by building or subsidizing new power plants even amidst the glut currently in the market and the credit worthiness of merchant generators. This overcapacity strategy may perpetuate low spark spreads.

While low spark spreads and reduced volatility have clearly impacted the operating results of Mirant's generating plants, the Company's risk management business has also been adversely affected. In the current environment, utilities, municipals and industrial customers are less concerned with near term increases in energy prices and thus have a reduced need for sophisticated risk management products and services. Mirant's situation is exacerbated by its current credit and financial situation that often discourages counterparties from transacting with the Company for these services. The result has been a dramatic reduction in that portion of our business. In addition, less liquid market prices and the cost of posting collateral hinders Mirant's ability to hedge generation assets for long-term periods.

Proposed Business Plan

In connection with our Chapter 11 proceeding, Mirant has prepared a proposed business plan (the "Plan") that was presented to the Company's Bankruptcy Court appointed Creditor and Equity Committees on March 1, 2004. Certain highlights of the Plan are provided below. The projections underlying the Plan were not prepared to conform to the guidelines established by the American Institute of Certified Public Accountants regarding financial forecasts, and were not audited, reviewed, or compiled by our independent public accountants. It should also be noted that the following highlights are forward looking and based on certain forecasts, market assumptions and many other factors and, as such, are inherently inaccurate and should not be relied upon. Further, our proposed business plan and the assumptions utilized therein were determined prior to the finalization of our

consolidated financial statements for 2003. Consequently, our proposed plan does not reflect the effects of the impairment of long-lived assets, the reduction in TPA revenue and the effects of higher gas prices in January and February of 2004 than those assumed in the plan as discussed below. A change in these assumptions or factors could significantly affect the projections contained in the Plan. Additionally, you should carefully read the "Cautionary Statement Regarding Forward-Looking Information" section of this Form 10-K for a list of some of the items that could affect our business and actual financial results.

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The Plan projects the Company's consolidated average gross margin to be \$1.9 billion per year in 2004 and 2005, remaining on average at \$1.9 billion per year in 2006 and 2007, and growing to \$2.2 billion per year in 2008 through 2010. Reflecting the increase in gross margin, the Plan projects average operating income to increase from just under \$560 million per year in 2004 and 2005 to \$580 million per year in 2006 and 2007, and to \$800 million per year in 2008 through 2010. The gross margin and operating income per year averages for 2004 and 2005 reflect \$421 million of non-cash revenues in 2004 and \$17 million in 2005 which related to the provision release associated with the TPAs in place with PEPCO which expire by early 2005.

For North America, the Plan assumes that the major markets in which Mirant has operations will reach equilibrium in the 2007 - 2011 timeframe. This market assumption is a primary driver of the growth in gross margins as well as the growth in operating income. Both measures should also benefit from Mirant's cost cutting and efficiency initiatives currently underway. Including the non-cash revenues associated with the TPAs, the Plan estimates average gross margin per year in 2004 and 2005 in North America to be \$1.1 billion. The Plan estimates that average gross margins per year in North America will fall in 2006 after the roll-off of the TPAs, but recover to average approximately \$990 million annually in 2006 and 2007, and grow to \$1.3 billion per year on average in 2008 through 2010. The Plan projects average adjusted operating income per year for North America of \$190 million per year in 2004 and 2005, dropping to \$130 million per year in 2006 and 2007, and growing to over \$310 million per year for 2008 through 2010.

The Plan also provides for some moderate growth in its International business. The Plan projects the average gross margin for the International business to grow from \$780 million per year in 2004 and 2005 to roughly \$865 million per year in 2006 and 2007, and to \$930 million per year in 2008 through 2010. International average adjusted operating income is estimated to be \$370 million per year in 2004 and 2005, \$460 million per year in 2006 and 2007 and then \$490 million per year in the 2008 to 2010 timeframe.

As part of the Plan, the Company also provided some expectations concerning cash and cash flow. The Plan projects 2004 year-ending cash and cash equivalents to be roughly \$1.2 billion. During 2004 and 2005, the Plan projects a net decrease in cash and cash equivalents of roughly \$330 million on average per year. The primary drivers of this decrease in cash and cash equivalents for 2004 and 2005 are average annual expected capital expenditures of \$230 million, average annual cash requirements for the TPAs and PPAs of \$180 million, average annual net cash collateral needs of \$200 million (primarily used to support the Company's fuel procurement and hedging activities), average annual bankruptcy-related professional fees of \$80 million, and the investments associated with the remaining puts by the minority shareholders on the Company's Pagbilao and Sual plants in the Philippines of \$72 million.

The Plan does not take into account the positive effect on operating income expected to occur beginning in 2004 as a result of the significant impairments of long-lived assets recorded in the audited financial statements for the year ended December 31, 2003. The expected improvements would result from less depreciation and amortization in future financial periods. Further, as a result of the amendment of the TPAs, Mirant reduced its liability for the TPAs in an amount equal to the allowed pre-petition claim, which will result in a reduction in future TPA amortization recognized as revenues. Additionally, current market prices and projections of power and fuel are above those forecasted in the

Plan. Therefore, actual financial results could vary significantly from the Plan. This increase in commodity prices, taken together with the Plan's assumptions and the Company's current hedge position could produce financial results for 2004 and 2005 that differ significantly from those forecasted in the Plan.

In preparing the Plan, the Company has made many assumptions. These assumptions, along with other various factors such as those discussed in the "Cautionary Statement Regarding Forward-Looking Information" section, if changed, could significantly affect the results of operations against the Plan. Some of the major assumptions include: certain outcomes related to the litigation discussed in "Item 3. Legal Proceedings," including the PPAs associated with the Mid-Atlantic assets, the property tax dispute relating to our Mirant New York assets, and the Western Power Market litigation; regulatory rate increases in line with current expectations; and temporary or permanent shutdowns or sales of various generation plants, as well as reductions in staffing levels.

To date, the Company has made no assumptions regarding the capital structure for its debtor entities. The numbers provided in the Plan do not reflect any debt or interest payments by the debtor entities or payment of any pre-petition liabilities. The capital structure will be addressed as the company moves forward with its Bankruptcy court appointed Statutory committees to develop its plan of reorganization.

The Company expressly disclaims any duty to update any of the projections or other information discussed herein.

Change in Senior Management

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On April 15, 2004, the Company announced that it had named M. Michele Burns as the Company's executive vice president and chief financial officer. Ms. Burns' appointment is effective May 3, 2004.

Business Segments

For selected financial information about our business segments and information about geographic areas, see Note 23 to our consolidated financial statements contained elsewhere in this report. See "Item 2. Properties" for a complete asset list.

North America

Overview

The activities of our North America segment consist of the ownership and operation of electricity generation assets managed as a combined business with our energy trading and marketing activities, principally conducted through Mirant Americas Energy Marketing. In the U.S., as of December 31, 2003, we owned or leased over 14,000 MW of generation capacity in the major markets we have strategically targeted. Our total generation capacity included approximately 28% base load units, 46% intermediate units and 26% peaking units.

Our commercial operations consist of commodity trading and marketing activities and involve a variety of energy and energy-linked commodities, products, trading platforms and markets. Our commodity trading and marketing operations trade energy and energy-linked commodities, consisting primarily of electricity, gas, coal and oil. Historically, we earned a significant portion of our gross margin through an integrated risk management platform which dispatched our North America merchant generation assets, purchased fuels and sold the electricity generated to consumers either in the wholesale market or through long-term contracts. We also entered into energy contracts to achieve incremental returns where we have specific market expertise or physical asset positions ("optimization

14

trading"). Our generation capacity and commodity trading operations have been managed as a combined business.

Throughout 2003, we took steps to reduce the scale, scope and risk of our energy trading and marketing activities. This reduction to our energy trading and marketing business allowed us to focus on hedging our North America merchant generation assets by managing the price risks around our physical asset positions ("asset management") and optimization trading in markets where we have physical asset positions. See "Critical Accounting Policies and Estimates" for information on how asset management and optimization trading activities are reflected on our financial statements.

In support of this modification to our energy trading and marketing operations, we adopted an amended Risk Management Policy, which was made effective by order of the Bankruptcy Court on November 19, 2003. The revised policy outlines specific measures for managing risk associated with our asset management and optimization trading activities as approved by the Company and the Statutory Committees.

The amended Risk Management Policy also formalized the creation of a portfolio containing certain existing contracts that have been deemed to be non-strategic to the Company ("legacy portfolio"). These generally include transactions that we entered into historically that are no longer consistent with our asset management or optimization trading strategies under the amended Risk Management Policy and have been segregated so that they can be separately managed. We utilize a number of strategies to manage the risks included in the legacy portfolio, including exiting or unwinding positions where practical.

In 2003, we sold our Canadian natural gas aggregator services contracts, a significant portion of our natural gas transportation contracts and a portion of our natural gas storage contracts. Additionally, we have decided to exit the remaining trading business in Canada by June 2004.

Business Plan Review

As part of our comprehensive business planning effort we are conducting a review of each generating unit, forecasts for regional markets, sensitivity analyses on market forecasts and potential regulatory changes. The outcome of this business planning effort may result in the temporary or permanent shutdown or sale of certain generation plants, as well as reductions in our staffing levels. Currently, the assessment of our North America segment incorporates the following assumptions:

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A combination of economic and regulatory pressures is expected to keep spark spreads depressed resulting in lower revenues than industry participants previously forecasted;

Future electricity prices may not consider the capital expenditures for required environmental upgrades; and

Standard Market Design ("SMD") has not developed as quickly or along the regulatory path anticipated by competitive market participants.

Overall, we expect the current market situation, which is difficult for merchant generators, to continue for the foreseeable future.

Operational Performance Initiative

In addition to the business planning process, we have engaged a nationally recognized management consulting firm to assist with an Operational Performance Initiative ("Project OPI") which we believe may increase generating efficiency and reduce costs at certain generating units. Further, we believe we

15

will be able to achieve synergies across our fleet of generating assets through standardizing practices and leveraging our critical mass. Project OPI is targeting six areas including:

Capital management;

Fuel procurement, scheduling and consumption;

Non-fuel purchasing and supply management;

Unit commitment and dispatch strategies;

Outage planning, management and execution; and

Environmental strategy.

We expect Project OPI to be completed by the fourth quarter of 2004. We currently estimate that the cash savings, which include increased gross margin and reduced operating expenses and capital expenditures, as a result of Project OPI to be in the range of \$90 million to \$150 million annually. We may be unable to achieve these estimated cash savings. See "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" for additional information.

International

Through various subsidiaries, we own or control under operating agreements various generation, transmission and distribution operations in the Philippines and the Caribbean. A complete list of our international properties is contained in "Item 2. Properties."

Asia-Pacific

Philippines

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We have controlling interests in four plants in the Philippines. Our net ownership interest in the generating capacity of our Philippines plants was approximately 2,273 MW as of December 31, 2003. We sell electricity from most of our plants through long-term energy conversion agreements with the government-owned National Power Corporation ("NPC") for the majority of our available capacity. Under the energy conversion agreements, we accept fuel from NPC and convert that fuel to electricity. In addition to our energy conversion agreements, we have joint marketing agreements with NPC for the 218 MW and 35 MW of excess capacity from our Sual and Pagbilao plants, respectively. Currently, electricity from the excess Sual capacity is provided to select markets such as economic zones, industries and private electric distribution companies and cooperatives.

Under the energy conversion agreements, we receive both fixed capacity fees and variable energy fees. The energy conversion agreements are executed under the government's build-operate-transfer program. At the end of the term of each energy conversion agreement, the plant is required to be transferred to NPC, free from any lien or payment of compensation. The agreements end in October 2024 for Sual and August 2025 for Pagbilao. NPC acts as both the fuel supplier and the energy off-taker under the energy conversion agreements. NPC procures all of the fuel necessary for each plant, at no cost to Mirant's subsidiaries and has accepted substantially all fuel risks and fuel related obligations other than each plant's actual fuel burning efficiency. Over 90% of the revenues are expected to come from fixed capacity charges that are paid without regard to the dispatch level of the plant. Nearly all of the capacity fees are denominated in U.S. dollars. The energy fees have both U.S. dollar and Philippine Peso components that are both indexed to inflation.

The energy conversion agreements contain a provision under which NPC bears most of the financial risks for both political force majeure and change of law. The majority of NPC's obligations under the energy conversion agreements are guaranteed by the full faith and credit of the Philippine government.

16

The majority of the projects in the Philippines have been granted preferred or pioneer status that, among other things, have qualified them for income tax holiday ("ITH") incentives of three to six years. The ITH incentive for the Pagbilao plant expired in June 2002 and for the Sual plant expires in October 2005.

Deregulation and Privatization

In June 2001, the Philippine Congress approved and passed into law the Electric Power Industry Reform Act ("EPIRA"), providing the mandate and the framework to introduce competition in the Philippine electricity market. EPIRA provides that competition in the retail supply of electricity and open access to the transmission and distribution systems would occur within three years from its effective date. Prior to June 2002, concerned government agencies were to establish a wholesale electricity spot market, ensure the unbundling of transmission and distribution wheeling rates and remove existing cross-subsidies provided by industrial and commercial users to residential customers. As of March 2004, most of these changes have started but are considerably behind the schedule set by the Department of Energy.

EPIRA also provides for the privatization of the assets of NPC, including its generation and transmission assets, as well as its contracts with Independent Power Producers ("IPP"). Under EPIRA, NPC's generation assets are to be sold through transparent, competitive public bidding, while all transmission assets are to be transferred to the Transmission Company ("TRANSCO") initially a government-owned entity that will eventually be privatized. The privatization of these assets has been delayed.

EPIRA also created the Power Sector Assets and Liabilities Management Corporation ("PSALM"), which is to accept transfer of all assets and assume all outstanding obligations of NPC, including its obligations to IPPs. One of PSALM's responsibilities is to manage these IPP contracts after NPC's privatization. PSALM also is responsible for privatizing at least 70% of all the transferred generating assets and IPP contracts no later than three years from the effective date of the law. As of March 2004, the work related to the planned privatization has commenced, but is considerably behind the schedule set by the Department of Energy.

Consistent with the announced policy of the government, EPIRA contemplates continued payments of NPC's obligations under its energy conversion agreements. The energy conversion agreements of Mirant Asia-Pacific Ventures, Inc.'s subsidiaries ("Mirant Asia-Pacific") are not assignable without consent. Mirant Philippines is in continuing discussions with NPC and PSALM on a proposal to add PSALM as an additional obligor under our existing IPP contracts.

Additionally, the Republic of the Philippines issued performance undertakings (the "Undertakings") to guarantee the performance of NPC's obligations under our energy conversion agreements. EPIRA does not by its terms repeal the Undertakings but the ultimate effect of the privatization efforts on our operations, our contracts or the Undertakings cannot now be absolutely determined.

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The deregulation of the Philippine electricity industry and the privatization of NPC have been long anticipated, and EPIRA is not expected to have a material impact on the existing assets and operations of Mirant Asia-Pacific.

As required under EPIRA once certain conditions and factors have been addressed, we may complete an initial public offering of a small portion of our Philippines operations. The delayed deregulation of the Philippine energy market and the privatization of the NPC are two fundamental events that will determine the viability of an initial public offering. Elections in the Philippines are scheduled for May 2004.

17

Philippines IPP Review

Pursuant to EPIRA, a governmental inter-agency committee reviewed all IPP contracts and reported that some contracts had legal or financial issues requiring further review or action. These included several of Mirant's contracts. Subsequently, Mirant Philippines, PSALM, the Department of Energy and the Department of Justice entered into a letter of agreement establishing a general framework ("Framework Agreement") for resolving all outstanding issues raised by the committee about Mirant's IPP contracts.

In March 2003, the conditions precedent for the Sual and Pagbilao components of the Framework Agreement were satisfied and the implementing agreements relating to both became effective. Navotas I is no longer subject to the Framework Agreement as the "cooperation period" has ended. The period for meeting the conditions precedent for Navotas II was extended to September 12, 2004 for the termination of the Navotas II Build Operate and Transfer ("BOT") Project Agreement and for Mirant to acquire rights to the Navotas II plant. As a result of the Framework Agreement the original contracts for Sual and Pagbilao remain intact and are reaffirmed with no resultant material financial impact.

Caribbean

Grand Bahama Power Company ("Grand Bahama Power")

We own a 55.4% interest in Grand Bahama Power, an integrated electric utility company that generates, transmits, distributes and sells electricity on Grand Bahama Island. Grand Bahama Power has the exclusive right and obligation to supply electric power to the residential, commercial and industrial customers on Grand Bahama Island. Grand Bahama Power's rates are approved by the Grand Bahama Port Authority.

The Power Generation Company of Trinidad and Tobago ("PowerGen")

We own a 39% interest in PowerGen, a power generation company that owns and operates three plants located on the island of Trinidad. The electricity produced by PowerGen is provided to the Trinidad and Tobago Electricity Commission, the state-owned transmission and distribution monopoly, which serves approximately 347,000 customers on the islands of Trinidad and Tobago and which holds a 51% interest in PowerGen. PowerGen has a power purchase agreement for approximately 820 MW of capacity and spinning reserve with the Trinidad and Tobago Electricity Commission, which expires in 2009 and is unconditionally guaranteed by the government of Trinidad and Tobago. Under this contract, the fuel is provided by the Trinidad and Tobago Electricity Commission.

Jamaica Public Service Company Limited ("JPSCO")

We own an 80% interest in JPSCO, a fully integrated electric utility company that generates, transmits, distributes and sells electricity on the island of Jamaica. JPSCO operates under a 20-year All-Island Electric License ("License") that expires in 2021 and which provides JPSCO with the exclusive right to sell power in Jamaica. JPSCO has a generation capacity of 600 MW, and it purchases an additional 146 MW from three IPPs under long-term purchase agreements. JPSCO supplies electric power to approximately 526,000 residential, commercial and industrial customers in Jamaica. At present, the Company is regulated by the Office of Utilities and Regulation under a rate of return model with interim adjustments indexed to inflation and foreign exchange movements. Pursuant to the License, JPSCO filed a rate case on March 1, 2004 based on a price cap model to set rates for the five years beginning June 2004 with interim adjustments indexed to inflation and foreign exchange movements.

18

Curacao Utilities Company ("CUC")

We own a 25.5% interest in CUC at the Isla Refinery in Curacao, Netherlands Antilles. The 151 MW facility provides electricity, steam, desalinated water and compressed air to the refinery, and up to 50 MW of electricity to the Curacao national grid. We operate and manage the

facility through our wholly-owned subsidiary, Curacao Utility Operating Company.

Aqualectra

We own the \$40 million convertible preferred equity in Aqualectra, an integrated water and electric company in Curacao, Netherlands Antilles, owned and operated by the government. Aqualectra has electric generating capacity of 235 MW and drinking water production capability of 69,000 cubic meters per day. Aqualectra serves approximately 60,000 electricity customers and 62,000 water customers. We receive 16.75% preferred dividends on our \$40 million investment on a quarterly basis. Aqualectra has a call option and Mirant has a put option related to this investment. The options are exercisable on the earlier of privatization or December 19, 2004 and can be exercised at any time during the following three years from the beginning of this period. Aqualectra has the option (but not the obligation) to purchase from Mirant all, but not less than all, of the shares of preferred stock then held by Mirant on the terms as set forth in the agreement. Mirant has the option (but not the obligation) to require Aqualectra to purchase all, but not less than all, of the shares of preferred stock then held by Mirant on the terms as set forth in the agreement. Mirant also has an option to convert its convertible preferred equity interest in Aqualectra to common shares during the same three-year period beginning upon the date the options become exercisable.

Regulatory Environment

International Regulation

Our international operations are subject to regulation by various foreign governments and regulatory authorities. The laws and regulations that apply to each of our international projects are more fully discussed under the description of the particular project listed above.

U.S. Public Utility Regulation

The U.S. electric industry is subject to comprehensive regulation at the federal and state levels. Under the Federal Power Act, the FERC has the exclusive jurisdiction over sales of electricity at wholesale and the transmission of electricity in interstate commerce. Except for those subsidiaries that own generation or sell electricity wholly within the Electric Reliability Council of Texas ("ERCOT"), Mirant's subsidiaries that own generating facilities or sell electricity at wholesale in the U.S. are public utilities subject to the FERC's jurisdiction under the Federal Power Act and must file rates with the FERC applicable to their wholesale sales. Our subsidiaries that are public utilities under the Federal Power Act are also subject to regulation by the FERC relating to accounting and reporting requirements, as well as oversight of mergers and acquisitions, securities issuances and dispositions of facilities. The FERC has accepted filing tariffs for the sale of energy and capacity at wholesale based on market-based rates for each of those Mirant subsidiaries. Some Mirant subsidiaries also have received authority from the FERC under the Federal Power Act to sell ancillary services at market-based rates. The majority of the output of our generation facilities in the U.S. is sold at market prices under market-rate authority granted by the FERC. Certain of our facilities, however, are subject to reliability-must-run ("RMR") agreements that under some circumstances dictate the price at which electricity is sold from such facilities.

In granting authority to Mirant's subsidiaries to sell electricity at wholesale at market-based rates, the FERC has reserved the right to revoke or limit that market-based rate authority if the FERC subsequently determines that a Mirant subsidiary receiving such authority or any of its affiliates possesses excessive market power. On November 17, 2003, FERC issued orders conditioning such

market based rate authority, as well as blanket certificate authorization for sales of natural gas, on the seller's adherence to certain market behavior rules and codes of conduct, respectively. Any violation of these rules or codes could result in disgorgement of profits or revocation of market-based rate authority or blanket certificate authority. If the FERC were to revoke the market-based rate authority of Mirant's subsidiaries, those subsidiaries would have to file, and obtain the FERC's approval of, cost-based rate schedules for all or some of their sales of electricity at wholesale. If the FERC were to revoke the blanket certificate authority of Mirant's subsidiaries, they would no longer be able to make certain sales of natural gas.

State or local authorities have historically overseen and regulated the distribution and sale of retail electricity to the ultimate end user. They have also had regulatory authority with respect to siting, permitting and the construction of generating and transmission facilities. As a result, our existing generation may be subject to a variety of state and local regulations regarding maintenance and expansion of our facilities and financing capital additions depending upon whether the law of the state in which such generation is located provides for state public service commission regulation of such activities by entities that produce electricity for sale at wholesale. Outside of ERCOT, the terms and conditions of wholesale power sales by Mirant's subsidiaries owning generation or selling power at wholesale are subject exclusively to FERC regulation under the Federal Power Act and to tariff requirements of such entities as regional transmission groups and independent system operators as authorized by the FERC under the Federal Power Act. Where individual states have allowed for retail access, state and local authorities will

normally establish the bidding rules for default service to customers who choose to remain with their regulated utility suppliers.

We are not subject to the Public Utility Holding Company Act of 1935, as amended ("PUHCA"), unless we acquire the securities of a public utility company or public utility assets that are not exempt as an exempt wholesale generator, foreign utility company or qualifying facility. Currently, all of Mirant's subsidiaries owning generation in the U.S. are exempt wholesale generators under the PUHCA and all of our subsidiaries owning generation outside the U.S. are either foreign utility companies or exempt wholesale generators.

Beginning in 1996 and continuing over the last several years, the FERC has issued transmission decisions that require electric transmission services to be offered on an open-access basis unbundled from commodity sales. In December 1999, the FERC issued Order No. 2000, which provided for the development of Regional Transmission Organizations ("RTO") to control the transmission facilities within a certain region. Compliance by transmission-owning utilities has been inconsistent and in certain regions of the country the order has been met with significant political resistance on the part of state public utility commissions and state governments. In addition, in July 2002 the FERC initiated its SMD and Interconnection rule-making proceedings. The FERC's intention under the SMD proceedings was to eliminate discrimination in transmission service, to standardize electricity market design nationally, and to strongly encourage the creation of RTOs. Significant opposition to SMD emerged in 2002 and early 2003, resulting in a revised FERC SMD policy which calls for smaller steps toward improving wholesale power markets on a region by region basis. We cannot predict at this time whether the SMD will be adopted as proposed or what changes will be implemented prior to adoption.

While RTO participation by transmission-owning public utilities has been and is expected to continue to be voluntary, the majority of such public utilities outside the South and Pacific North West have either joined or indicated that they will join the proposed RTO for their respective region. Currently there are two approved RTOs, Midwest Independent System Operator, Inc. ("MISO") and the PJM. Two new RTOs have been approved by the FERC this year subject to certain conditions and may begin operations as RTOs upon satisfaction of those conditions. The new RTOs, which report to the FERC, are the New England RTO ("NE RTO") which received conditional approval on March 24, 2004, and the Southwest Power Pool ("SPP") which received conditional approval on February 9, 2004. There are approximately five other potential RTOs under development covering the majority of the U.S. In addition, large portions of the nation's transmission system are currently operated by an

20

independent entity. In the following markets in which we own and operate generation facilities, the RTO and Independent System Operators ("ISOs") in our areas of operation establish valid pricing and provide markets and thus liquidity.

Mid-Atlantic The Company's Mid-Atlantic assets sell power into the PJM market. PJM was certified by the FERC as an ISO in 1997, and as an RTO in December 2002. It is the nation's first fully functioning RTO. PJM's stated objectives are to ensure reliability of the bulk power transmission system and to facilitate an open, competitive wholesale electricity market. To achieve these objectives, PJM manages the PJM Open Access Transmission Tariff (the first power pool open access tariff approved by the FERC), which provides comparable pricing and access to the transmission system. PJM operates the PJM Interchange Energy Market, which is the region's spot market (power exchange) for wholesale electricity. PJM also provides ancillary services for its transmission customers and performs transmission planning for the region. To account for transmission congestion and losses, energy prices in PJM are determined through a locational-based marginal pricing model and dispatch is on a security constrained least cost basis. While PJM has expressed interest in expanding its geographical boundaries to the south and west, and has entered into negotiations with the MISO to establish a common and seamless market, recent MISO developments and state legislative or regulatory actions have caused this effort to slow.

Northeast The Company's New York plants participate in a market controlled by the New York Independent System Operator ("NYISO"). The NYISO was formed to replace the New York Power Pool ("NYPP") structure in order to comply with FERC Orders 888 and 889. Under the FERC-approved structure for the New York markets, the NYISO coordinates the generation and transmission system and the interfaces with neighboring market control areas. The NYISO also provides statewide transmission service in New York under a single tariff. To account for transmission congestion and losses, energy prices are determined through a locational-based marginal pricing model similar to the existing structure in the PJM market and the new structure in New England. NYISO also administers a spot market for energy and markets for installed capacity, operating reserves and regulation. In New York, the FERC approved an Automated Mitigation Procedure ("AMP"), administered by the NYISO in its day-ahead market, which caps energy bids based on cost characteristics in circumstances where the bidder is perceived to have market power. When energy bids fail the AMP test (the specific rules which are used to define market power in the day-ahead market) they are replaced by reference bids specific to that unit and this new set of bids is used to determine the day-ahead prices and schedules in that zone. We cannot provide assurance that AMP provisions will remain as written. In the event that a more restrictive AMP is imposed, our earnings could be adversely affected.

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Also in the Northeast, the Company's New England plants participate in a market administered by the Independent System Operator of New England ("ISO-NE"), under contract to New England Power Pool ("NEPOOL"). NEPOOL is the voluntary association of electric utilities and other market participants in Massachusetts, Connecticut, Maine, New Hampshire, Rhode Island and Vermont that has existed for more than 25 years. NEPOOL is the body that makes the rules that govern the ISO-NE's operation of transmission systems and administration and settlement of the wholesale electric energy, capacity and ancillary services markets for most of the New England region. In New England, price mitigation can be imposed in transmission constrained conditions if generators substantially modify their offer prices. ISO-NE implemented a new regional standard market design on March 1, 2003. The new market design replaced a single New England-wide wholesale market with eight interconnected regional markets, three in Massachusetts and five others covering each New England state. The new system is intended to let the combined energy and capacity market prices indicate where new power plants and transmission lines are most needed. On March 1, 2004, ISO-NE filed a proposed plan with the FERC to implement a locational installed capacity market by June 1, 2004. Numerous protests have been filed in opposition to the plan. We cannot predict how the FERC will rule on the filing or what

21

modifications the FERC could potentially make to the filing. Such a market is intended to supplement the energy market in providing compensation to generation plants needed to meet reliability requirements and signal the need for additional resources when necessary. As with all Northeast markets, the ISO-NE has committees of market participants collaboratively working to improve market rules. We cannot predict which rules may be changed or what the impact on our earnings could be if market rules were modified and approved by both the ISO-NE board and FERC. ISO-NE and the NE Transmission Owners have recently filed at FERC an application to be designated as an RTO which would, among other things, shift authority for proposing rules for FERC approval from NEPOOL to the RTO. We cannot provide assurance if or when the FERC will act on this application.

Mid-Continent The Company's Mid-Continent plants are located in the Midwest and Southeast markets. The Company's Midwest plants participate in a market controlled by the MISO. MISO is the nation's first voluntary non-profit RTO and was approved by the FERC on December 20, 2001, but has not yet become fully functional. MISO has stated that it intends to operate energy markets similar to PJM and has set March 31, 2004 as the filing date for the Energy Market Tariff with opening of the markets scheduled for December 1, 2004. Market features include locational marginal pricing for energy and associated financial transmission rights for market participants to manage their locational energy risk. In addition, the market plan includes both a day-ahead, financial settlement of the energy market, as well as a real-time settlement of physical supply and demand. With the ultimate implementation of its market design, it appears the MISO also will have mitigation rules similar to those in place in New York but excluding an AMP type process. The MISO and PJM are in the process of developing a joint and common wholesale energy market with a multi-stage implementation process that would result in the MISO and PJM operating under a common wholesale market. The final market structure for the MISO remains unsettled. We cannot provide assurance as to whether or when MISO will realize its stated plan or what the impact on our earnings could be.

In the Southeast there is only one active proposed RTO, GridFlorida. We currently sell electric energy and capacity from our facilities in this market under bilateral contracts that contain terms and conditions that are not standardized and that have been negotiated on an individual basis. Customers who participate in power transactions in this region include investor-owned, fully integrated utilities, municipalities and electric cooperatives.

West The Company's West region plants are located in the Western Interconnection and the ERCOT market in Texas. California accounts for roughly 40% of the energy consumption in the Western Interconnection. Approximately 75% of California's demand is served from facilities, including Mirant's facilities, under the administration of the California Independent System Operator ("CAISO"). The CAISO performs control area functions, schedules transmission assets for usage, arranges for necessary ancillary services on a day-ahead basis, and administers a real-time balancing energy market.

The majority of our assets in California are subject to RMR agreements with the CAISO. These agreements require certain of Mirant's subsidiaries, under certain conditions, to run the acquired generation assets at the request of the CAISO in order to support the reliability of the California electric transmission system. Under the RMR agreements, Mirant recovers either a portion (RMR Contract Condition 1) or all (RMR Contract Condition 2) of the annual fixed revenue requirement (the "Annual Requirement") of the generation assets through fixed charges to the CAISO. If Mirant's California generation assets subject to RMR agreements are under Condition 1, then Mirant depends on revenues from sales of the output of the units at market prices to recover the remainder of the units' fixed costs. The Annual Requirement is subject to the FERC's review and approval. See Note 17 to our consolidated financial statements contained elsewhere in this report for discussion concerning the Company's RMR litigation regarding the Annual Requirement.

Under the FERC approved CAISO "real-time" markets for energy and ancillary services, the CAISO imposes a \$250/MWh cap on prices for energy and capacity, implements an AMP similar to that in place in the NYISO, and requires owners of non-hydroelectric generation in California, such as Mirant, to offer power in the CAISO's spot markets to the extent the output is not scheduled for delivery in the hour. For the remainder of Mirant's units located outside of California, but within the Western Interconnection, there is no single entity responsible for a centralized bid-based clearing market. The primary markets in the West today are bilateral and adhere to the reliability standards of the Western Electricity Coordinating Council ("WECC"). The WECC is the regional reliability organization responsible for development and enforcement of rules to ensure the security of the bulk power electric systems in the western U.S. The purpose of these rules is to ensure system stability and reliability. The WECC region is divided into four sub-regions: California, NWP ("Northwest Power Area"), DSW ("Desert Southwest") and RMPA ("Rocky Mountain Power Area"). Although the Company is an active participant in all the developing western markets, we cannot predict when the final revisions and modifications will be complete, or when market designs will gain the necessary regional and national approvals. We therefore cannot predict if the outcomes will have a positive or negative impact on future earnings from our Western assets.

The Company's Texas plants participate in a market controlled by the ERCOT, which manages a major portion of the state's electric power grid. ERCOT oversees the transactions associated with the newly restructured electric market and protects the overall reliability of the grid. ERCOT represents a bulk electric system located totally within the state of Texas. ERCOT is the only RTO that covers both the wholesale and retail market operations. ERCOT is regulated by the Public Utility Commission of Texas ("PUCT"). Market monitoring is conducted within ERCOT by the PUCT. Mitigation measures include a \$1,000 price cap on bids for sale of energy and RMR type contracts for congested areas. To improve congestion on the local grid, the PUCT recently established a Rulemaking Proceeding on Wholesale Market Design Issues that will focus on adding a nodal congestion management mechanism, similar to PJM, and a day-ahead market. The Company believes this change to be a positive one for the wholesale market in ERCOT. The proceeding is expected to be completed and a revised market design in place by 2005. As with other evolving market structures we cannot provide assurance when the enhancements will be completed and implemented nor what the impact on our earnings will be in the ERCOT market.

Federal and State Legislation

It appears that the proposed congressional legislation to modify federal laws affecting the electric industry will not move forward in the near term. Several key provisions in the energy bill could have provided clarity and added momentum to recent efforts to improve wholesale competitive markets, including establishment of mandatory national reliability standards, creation of standardized national and regional market designs, development of consistent market transparency rules, provisions for more incentives for transmission infrastructure investments, acceleration of cost recovery for pollution control equipment, and extension of compliance deadlines for ozone non-attainment areas. However, some of the provisions in the proposed energy bill could move ahead as stand alone items. As with other bills before the Congress, we cannot predict the outcome or the impact on our business.

In certain states that deregulated the sale of electricity to retail customers, legislation or regulatory rulings had set terms and conditions for initial default service requirements. Default service in these states has been provided through either Standard Offer Service ("SOS") or through a provider of last resort. Predetermined retail rates for default service are now coming to an end. As a result, Maryland, New York, New Jersey, Massachusetts and the District of Columbia either have or will shortly review various competitive processes by which default service customers may be served in the future, including a competitive procedure that would reflect the bidding of service within the state for core customer blocks of aggregate load. Core retail customers are generally residential and small commercial users. In

New Jersey, the process is currently an open competitive procurement auction overseen by the state regulatory commission. In Maryland, individual utilities will bid blocks of load in accordance with a process approved by the state regulatory commission. New York, Massachusetts and the District of Columbia are evaluating various procurement options. Mirant sees new opportunities for the wholesale market to supply the load blocks that may be bid. The Company cannot predict the ultimate outcome of the procurement considerations that are now underway in these or other individual states.

Environmental Regulation

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Our projects, facilities and operations are subject to extensive federal, state, local and foreign laws and regulations relating to environmental protection and human health, including air quality, water quality, waste management and natural resources protection. Our compliance with these environmental laws and regulations necessitates significant capital and operating expenditures, including costs associated with monitoring, pollution control equipment and mitigation of other environmental impacts, emission fees, reporting and permitting at our various operating facilities. Our expenditures, while not prohibitive in the past, are anticipated to increase in the future along with the increase in stricter standards, greater regulation and more extensive permitting requirements. We cannot provide assurance that future compliance with these environmental requirements will not have a material adverse effect on our operations or financial condition.

The environmental laws and regulations in the U.S. illustrate the comprehensive environmental requirements that govern our operations. Our most significant environmental requirements in the U.S. arise under the federal Clean Air Act and similar state laws. Under the Clean Air Act, we are required to comply with a broad range of requirements and restrictions concerning air emissions, operating practices and pollution control equipment. Several of our facilities are located in or near metropolitan areas, such as New York City, Boston, San Francisco and Washington D.C., which are classified by the United States Environmental Protection Agency ("EPA") as not achieving federal ambient air quality standards. This regulatory classification of these areas subjects our operations to more stringent air regulation requirements, potentially including in some cases emission reductions. Also, in areas classified as severe non-attainment under the Clean Air Act, the state is required by the Clean Air Act to impose an additional air emissions fee for emissions above a baseline to be established by the state, if progress in meeting the ambient air quality standard is not achieved in a certain timeframe. For example, the areas of Virginia and Maryland outside Washington D.C. are currently classified as severe non-attainment for ozone, and the states likely will be required to begin imposing such a fee in 2006, which potentially could be a significant cost for our Mid-Atlantic plants depending on the baseline emissions level.

In the future, we anticipate increased regulation of our facilities under the Clean Air Act and applicable state laws and regulations concerning air quality. The EPA and several states in which we operate are in the process of enacting more stringent air quality regulatory requirements.

For example, the EPA recently promulgated new regulations (known as the "NOx SIP Call") which establish emission caps for nitrogen oxide ("NOx") emissions from electric generating units in most of the eastern states that will be implemented beginning May 2004. Under the rule, a plant receives an allocation of NOx emission allowances, and if a plant exceeds its allocated allowances, the plant must purchase additional, unused allowances from other regulated plants or reduce emissions, which could require the installation of emission controls. Our plants in Maryland, New York and Massachusetts are already subject to a similar state and regional NOx emission cap program, which will become a part of the EPA NOx cap program. Some of our plants in these states are required to purchase additional NOx allowances to cover their emissions and maintain compliance. The cost of these allowances is expected to increase in future years and may result in some of our plants reducing NOx emissions through additional controls, the cost of which could be significant but would be offset in part by the avoided cost of purchasing NOx allowances to operate the plant.

24

The EPA also has proposed regulations to govern mercury air emissions from coal-fired power plants. The EPA has proposed alternate regulatory approaches, which include a cap and trade program that would go into effect in January 2010 and a maximum achievable control technology standard (unit specific emission standard) that would go into effect in December 2007, with a possible one-year extension by the EPA to December 2008. The mercury regulations are likely to require significant emission reductions from coal-fired power plants. This rulemaking also proposes new regulations governing nickel air emissions from oil-fired power plants, which would either go into effect in December 2007, with a possible one-year extension by the EPA to December 2008, or go into effect January 2010.

Also, during the course of this decade, the EPA will be implementing new, more stringent ozone and particulate matter ambient air quality standards and will address regional haze visibility issues, which will result in new regulations that will likely require more emission reductions from power plants, along with other emission sources such as vehicles. To implement these air quality standards, the EPA has proposed the Interstate Air Quality Rule ("IAQR"). The IAQR would establish in the eastern U.S. a more stringent sulfur dioxide ("SO2") cap and allowance-trading program and a year round NOx cap and allowance-trading program applicable to power plants. These cap and trade programs would be implemented in two phases, with the first phase going into effect in 2010 and more stringent caps going into effect in 2015.

These future mercury and nickel regulations and the IAQR would increase compliance costs for our operations and would likely require emission reductions from some of our power plants, which would necessitate significant expenditures on emission controls or have other impacts on operations. However, these rulemakings are at a preliminary stage, and we cannot predict at this time whether the regulations will have a material adverse effect on our financial condition, cash flows and results of operations.

Also, the President has submitted Clean Air Act multi-emission reform legislation to Congress, which would promulgate a new emissions cap and trade program for NOx, SO2 and mercury emissions from power plants. This legislation would require overall reductions in these pollutants from national power plant emissions of approximately 50-75% phased in during the 2008 - 2018 timeframe, which is similar to the

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types of overall reductions likely to be required under the future EPA regulations discussed above. Other more stringent multi-emission reform legislation also has been proposed in Congress by some lawmakers. There are many political challenges to the passage of multi-emission reform legislation through Congress, and it is unclear whether any of this legislation ultimately will be enacted into law.

Various states where we do business also have other air quality laws and regulations with increasingly stringent limitations and requirements that will become applicable in future years to our plants and operations. We expect to incur additional compliance costs as a result of these additional state requirements, which could include significant expenditures on emission controls or have other impacts on our operations.

For example, the Commonwealth of Massachusetts has finalized regulations to further reduce nitrogen oxide and sulfur dioxide emissions from certain power plants and to regulate carbon dioxide emissions for the first time. These regulations, which become effective in the 2004-2008 timeframe, will apply to our oil-fired Canal plant in the state, will increase our operating costs and will likely necessitate the installation of additional emission control technology.

Also, the San Francisco Bay Area where we own power plants has increasingly more stringent NOx emission standards which will become applicable to our plants in the coming years, culminating in 2005. We will continue to apply our NOx implementation plan for these plants, which includes the installation of emission controls as well as the gradual curtailment and phasing out of one or more of our higher NOx emitting units.

25

Additionally, in 2003, the State of New York finalized air regulations that significantly reduce NOx and SO2 emissions from power plants through a state emissions cap and allowance-trading program, which will become effective during the 2004-2008 timeframe. This regulation will necessitate that we act on one, or a combination, of the following options: install emission controls at some of our units to reduce emissions, purchase additional state NOx and SO2 allowances under the regulatory program or reduce the number of hours that units operate. We expect to incur additional compliance costs as a result of these additional state requirements, which could include significant expenditures on emission controls or have other impacts on our operations.

These are illustrative but not a complete discussion of the additional federal and state air quality laws and regulations which we expect to become applicable to our plants and operations in the coming years. We will continue to evaluate these requirements and develop compliance plans that ensure we appropriately manage the costs and impacts and provide for prudent capital expenditures.

In 1999, the United States Department of Justice ("DOJ") and EPA commenced an enforcement action against the power generation industry for alleged violations of the new source review regulations promulgated under the Clean Air Act ("NSR"). This action ultimately came to encompass the vast majority of coal-fired plants, with litigation against many of the largest utilities. These enforcement actions concern maintenance, repair and replacement work ("MRR work") at power plants that the EPA alleges violated permitting and other requirements under the NSR law, which, among other things, could require the installation of emission controls at a significant cost. The power generation industry disagrees with the EPA's positions in the lawsuits. In 2003, there were two court decisions that most directly addressed the issue of whether certain MRR work triggers permitting and other NSR requirements, and the courts are split on the issue.

In addition, there were two regulatory developments concerning NSR in 2003 that will affect the EPA's application of NSR in the future and potentially the NSR enforcement action. In a new NSR rule, the EPA promulgated an exemption from NSR for MRR work that does not exceed 20% of the replacement value of a unit, which is generally consistent with power plant MRR work practices. In the rulemaking, the EPA also announced a policy of interpreting NSR in a way that seems generally consistent with reasonable industry practices. The new rule is being challenged in federal court and has been stayed pending judicial review. It is unclear exactly what effect these developments will have on the EPA's NSR enforcement action.

To date, no lawsuits or administrative actions alleging similar NSR violations have been brought by the EPA against us, our subsidiaries or any of our power plants, but in 2001 the EPA requested information concerning some of our Mid-Atlantic business unit plants covering a time period that predates our ownership and leases. See "Item 3. Legal Proceedings" for additional information.

In 2000, the State of New York issued a notice of violation to the previous owner of Mirant New York's Lovett facility alleging NSR violations associated with the operation of that plant prior to its acquisition by Mirant New York. On June 11, 2003, Mirant New York and the State of New York entered into a consent decree that releases Mirant New York from all potential liability for matters addressed in the notice of violation previously issued by the state to the prior owner and for any other potential violation of NSR or related New York air laws prior to and through the date of entry of the consent decree by the court. Under the decree, Mirant New York commits to install on Lovett's two coal-fired units by 2007 to 2008 emission control technology consisting of selective catalytic reduction technology to reduce NOx emissions, alkaline

in-duct injection technology to reduce SO₂ emissions, and a baghouse. The cost of the emission controls prescribed by the consent decree could approach \$100 million over the approximately five-year period covered by the consent decree. The consent decree allows Mirant New York to shut down a unit rather than install the prescribed emission controls on the unit. For one of the units, Mirant New York also has the option to convert the unit to operate exclusively as a gas-fired boiler and limit the hours of operation rather than install the prescribed emission controls. Mirant New York also agreed, beginning 2009, to retire annually 1,954 tons of SO₂

emission allowances allocated to the Lovett facility under the Clean Air Act Acid Rain Program, which allowances will no longer be needed by Mirant New York for compliance as a result of the sulfur dioxide emission reductions caused by the other actions required by the consent decree. Mirant New York did not admit to any liability, and the consent decree does not impose any penalty on Mirant New York for alleged past violations. The Company received Bankruptcy Court approval of the terms of the consent decree, and the decree was entered by the United States District Court for the Southern District of New York. We believe that compliance with the settlement consent decree should enable the Lovett plant to comply with the previously discussed new State of New York NO_x and SO₂ regulations. However, the state regulations take effect prior to the compliance dates of the settlement, which could result in the need to purchase NO_x allowances under the state NO_x cap and trade program for emissions above the NO_x allocation for the Lovett plant for the period prior to the settlement's 2007/2008 compliance dates for Lovett's two coal-fired units.

We cannot provide assurance that lawsuits or other administrative actions against our power plants under NSR will not be filed or taken in the future. If an action is filed against us or our power plants and we are judged to not be in compliance, this could require substantial expenditures to bring our power plants into compliance and could have a material adverse effect on our financial condition, results of operations or cash flows.

There are several other environmental laws in the U.S., in addition to air quality laws, which also affect our operations. For example, we are required under the Clean Water Act to comply with effluent and intake requirements, technological controls and operating practices. Our wastewater discharges are permitted under the Clean Water Act, and our permits under the Clean Water Act are subject to review every five years. As with air quality regulations, federal and state water regulations are expected to increase and impose additional and more stringent requirements or limitations in the future. For example, in 2004, the EPA issued a new rule that imposes more stringent standards on the cooling water intakes for power plants. We expect to incur additional compliance costs to comply with this new rule; however, we do not expect these costs to be material.

Our facilities are also subject to several waste management laws and regulations in the U.S. The Resource Conservation and Recycling Act sets forth very comprehensive requirements for handling of solid and hazardous wastes. The generation of electricity produces non-hazardous and hazardous materials, and we incur substantial costs to store and dispose of waste materials from our facilities. The EPA may develop new regulations that impose additional requirements on facilities that store or dispose of fossil fuel combustion materials, including types of coal ash. If so, we may be required to change our current waste management practices at some facilities and incur additional costs for increased waste management requirements.

Additionally, the Federal Comprehensive Environmental Response, Compensation and Liability Act, known as the Superfund, establishes a framework for dealing with the cleanup of contaminated sites. Many states have enacted state superfund statutes. We do not expect any corrective actions to require significant expenditures.

Some of our international operations are subject to comprehensive environmental regulation similar to that in the U.S., and these regulations are expected to become more stringent in the future. For example, the Philippines government enacted a comprehensive clean air act legislation which governs power plants and other sources. Provisions of the Philippines Clean Air Act affect the compliance of operating plants and their ability to serve as base load capacity for the power grid. The provisions of the Philippines Clean Air Act and past practice of the Department of Environment and Natural Resources suggest potential for increasingly stringent standards in emissions from all sources to maintain and/or improve the air quality. This may require additional controls or equipment on some of Mirant Asia-Pacific's plants in order to comply with the emission reduction goals and targets set forth in the Clean Air Act. Additionally, other countries in which we have operations, such as Trinidad and

Jamaica, are developing increased environmental regulation of many industrial activities, including increased regulation of air quality, water quality and solid waste management.

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Over the past several years, federal, state and foreign governments and international organizations have debated the issue of global climate change and policies of whether to regulate greenhouse gases ("GHGs"), one of which is carbon dioxide emitted from the combustion of fossil fuels by sources such as vehicles and power plants. Recently, the European Union and certain other developed countries ratified the Kyoto Protocol, an international treaty regulating GHGs, which makes the implementation of the treaty in certain countries more likely. The current United States Administration is opposed to the treaty, and the U.S. has not ratified and is not expected to ratify the treaty. Therefore, the U.S. would not be bound by the treaty if it goes into effect in the future in countries that have ratified it. None of the countries in which we presently own or operate power plants would have any binding obligations under the treaty, if it does go into effect in the future in the countries that have ratified it. Also, no country has presently enacted any national law or regulation governing GHGs emissions from power plants, although the Commonwealth of Massachusetts has promulgated CO2 emission standards for certain power plants, as discussed above in this section. We cannot provide assurances that such laws or regulations will not be enacted in the future in a country in which we own or operate power plants, and in such event the impact on our business would be uncertain but could be material.

We believe we are in compliance in all material respects with applicable environmental laws. While we believe our operations and facilities comply with applicable environmental laws and regulations, we cannot provide assurances that additional costs will not be incurred as a result of new interpretations or applications of existing laws and regulations.

Employees

At December 31, 2003, our corporate offices and majority owned or controlled subsidiaries employed approximately 5,200 persons. This number includes approximately 700 employees in the corporate and North America headquarters in Atlanta and approximately 4,500 employees at operating facilities. Approximately 900 of our domestic employees are subject to collective bargaining agreements with one of the following unions: International Brotherhood of Electrical Workers, Utilities Workers of America or United Steel Workers.

Approximately 1,700 of our employees in international business units belong to unions. These unions include:

Managers' Association, Union of Clerical, Advisory and Supervisory Employees, National Workers' Union and Bustamante Industrial Trade Union in Jamaica; and

Bahamas Industrial Engineers, Managerial and Supervisory Union and Commonwealth Electrical Workers Union in the Bahamas.

We currently are negotiating new labor agreements in Trinidad. We hope to reach new labor contracts with our existing unions. In August 2003, we unilaterally implemented the "Terms and Conditions of Employment" that reflect a final proposed labor agreement at our Mirant Mid-Atlantic plants in Maryland and Virginia. If we are unsuccessful in reaching new labor agreements, there is a risk that there will be a strike or some other form of adverse collective action by the unions. If a strike does occur, there is a risk that such action could disrupt the ability of the affected plants to produce and/or distribute energy. We plan to enter into negotiations at our Mirant Mid-Atlantic plants in 2004 to reach a ratified collective bargaining agreement.

To mitigate and reduce the risk of disruption as described above, we have engaged in contingency planning for continuation of our generation and/or distribution activities to the extent possible during an adverse collective action by one or more of our unions. Additionally, if our non-unionized workforce moved toward unionization, we could be materially impacted through increased employee costs, work stoppages or both.

28

Item 2. *Properties*

The following properties were owned or leased as of December 31, 2003:

Operating Plants:

<u>Power Generation Business</u>	<u>Location</u>	<u>Plant Type</u>	<u>Primary Fuel</u>	<u>Mirant's % Leasehold/Ownership Interest(1)</u>	<u>Total MW(2)</u>	<u>Net Equity Interest/Lease in Total MW(2)</u>
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NORTH AMERICA

West Region:

Mirant California	California	Peaking/Intermediate	Natural Gas	100	2,347	2,347
Apex	Nevada	Intermediate	Natural Gas	100	533	533
Coyote Springs(4)	Oregon	Intermediate	Natural Gas/Steam	50	241	120
Mirant Wichita Falls	Texas	Peaking	Natural Gas	100	77	77
Mirant Texas	Texas	Peaking/Base load	Natural Gas	100	538	538

Subtotal

3,736 3,615

Northeast Region:

Mirant New York	New York	Intermediate/Peaking/Base load	Natural Gas/Hydro/Coal/Oil	100	1,659	1,659
Mirant New England(3)	Massachusetts	Intermediate/Peaking	Natural Gas/Oil	100	2,011	1,406

Subtotal

3,670 3,065

Mid-Atlantic Region:

Mirant Peaker and Mirant Potomac River	Maryland/Virginia	Intermediate/Peaking/Base load	Natural Gas/Coal/Oil	100	1,004	1,004
Mirant Mid-Atlantic	Maryland	Intermediate/Peaking/Base load	Natural Gas/Coal/Oil	100	4,252	4,252

Subtotal

5,256 5,256

Mid-Continent Region:

Mirant Zeeland	Michigan	Peaking/Intermediate	Natural Gas	100	838	838
Wrightsville(5)	Arkansas	Peaking/Intermediate	Natural Gas	51	438	223
Sugar Creek	Indiana	Peaking	Natural Gas	100	478	478
West Georgia(4)	Georgia	Peaking	Natural Gas/Oil	100	605	605
Shady Hills(4)	Florida	Peaking	Natural Gas	100	469	469

Subtotal

2,828 2,613

North America Total

15,490 14,549

INTERNATIONAL

Asia-Pacific:

Sual(7)	Philippines	Base load	Coal	91.9	1,218	1,120
Pagbilao	Philippines	Base load	Coal	95.7	735	704
Navotas II	Philippines	Standby	Diesel	100	95	95
Mindoro	Philippines	Peaking/Intermediate/Base load	Diesel/Heavy Fuel Oil	50	7	4
Ilijan	Philippines	Base load	Natural Gas	20	1,251	250
Bulacan(6)	Philippines	Peaking/Intermediate	Diesel/Heavy Fuel Oil	100	7	7
Sangi	Philippines	Base load/Peaking/Standby	Coal/Oil	50	75	38
Carmen	Philippines	Standby	Diesel/Heavy Fuel Oil	50	37	19
Panay	Philippines	Peaking/Intermediate/Base load	Oil	50	72	36

Subtotal

3,497 2,273

Caribbean:

Grand Bahama Power	Bahamas	Peaking/Intermediate/Base load	Oil	55.4	136	75
PowerGen	Trinidad & Tobago	Intermediate/Peaking/Base load	Natural Gas	39	1,157	452
JPSCO	Jamaica	Intermediate/Base load/Peaking	Oil/Hydro	80	600	480
CUC	Netherlands Antilles	Base load/Peaking	Pitch/Refinery Gas	25.5	151	39

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Power Generation Business	Location	Plant Type	Primary Fuel	Mirant's % Leasehold/Ownership Interest(1)	Total MW(2)	Net Equity Interest/Lease in Total MW(2)
Subtotal					2,044	1,046
International Total					5,541	3,319
Total					21,031	17,868

29

Distribution Business	Location	Mirant's % Ownership Interest	Customers/end-users (in thousands)
Grand Bahama Power	Bahamas	55.4%	18
JPSCO	Jamaica	80.0	526
Visayan Electric Company Inc	Philippines	2.1	258
Total			802

Other Plants:

Power Generation Business	Location	Plant Type	Primary Fuel	Total MW
Wyandotte(8)	Michigan	Intermediate	Natural Gas	560
Bowline expansion(8)	New York	Intermediate	Natural Gas	750
Contra Costa expansion(8)	California	Intermediate	Natural Gas	580
Longview Mint Farm(8)	Washington	Intermediate	Natural Gas	298
Sunrise(9)	Panay	Base load	Oil	23
Nabas(9)	Panay	Base load	Oil	7
New Washington(9)	Panay	Base load	Oil	5

- (1) Amounts reflect Mirant's percent economic interest in the total MW.
- (2) MW amounts reflect net dependable capacity.
- (3) Total MW reflects a 1.4% ownership interest, or 9 MW, in the 614 MW Wyman plant.
- (4) Generating plant is operated by an independent third party.
- (5) Mirant expects to temporarily shutdown ("mothball") this facility in 2004.
- (6) Mirant expects to transfer the two standby units in its Bulacan plant to the Toledo and Panay joint venture during 2004.

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- (7) Mirant acquired an additional 2.94% ownership interest in the Sual project in the first quarter of 2004, bringing its ownership interest to 94.85%.
- (8) Mirant does not expect to independently complete these construction projects and will either pursue partnerships to complete, sell or abandon these projects. Abandon as used in this document means ceasing to operate the effected generation asset.
- (9) These plants are expected to be completed during the first half of 2004.

The Company also owns an oil pipeline, which is approximately 51.5 miles long and serves the Chalk Point and Morgantown generating facilities.

30

Item 3. *Legal Proceedings*

As discussed above, on the Petition Date, August 18, 2003, October 3, 2003 and November 18, 2003, the Mirant Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Additionally, certain of the Company's Canadian subsidiaries have filed an application for creditor protection under the CCAA in Canada, which, like Chapter 11, allows for reorganization. The Company's businesses in the Philippines and the Caribbean were not included in the Chapter 11 filings.

As debtors-in-possession, the Mirant Debtors are authorized under Chapter 11 to continue to operate as an ongoing business, but may not engage in transactions outside the ordinary course of business without the prior approval of the Bankruptcy Court. As of the Petition Date, most pending litigation (including some of the actions described below) is stayed, and absent further order of the Bankruptcy Court, no party, subject to certain exceptions, may take any action, again subject to certain exceptions, to recover on pre-petition claims against the Mirant Debtors. One exception to this stay of litigation is actions or proceedings by a governmental agency to enforce its police or regulatory power. The claims asserted in litigation and proceedings to which the stay applies may be fully and finally resolved in connection with the administration of the bankruptcy proceedings and, to the extent not resolved, will need to be addressed in the context of any plan or plans of reorganization. On November 19, 2003, the Bankruptcy Court entered an order staying through at least April 2004 most litigation pending against current or former officers, directors and managers of the Mirant Debtors arising out of the performance of their duties and against certain potential indemnities of the Mirant Debtors. The Bankruptcy Court took that action to avoid the risk that the continuation of such litigation would impede the Mirant Debtors' ability to reorganize or would have a negative impact upon the assets of the Mirant Debtors. At this time, it is not possible to predict the outcome of the Chapter 11 filings or their effect on the Company's business or outstanding legal proceedings.

Provision for California Contingencies: Mirant is subject to a variety of lawsuits and regulatory proceedings related to its activities in California and the western power markets and the high prices for wholesale electricity and natural gas experienced in the western markets during 2000 and 2001. As described below in *FERC Show Cause Proceeding Relating to Trading Practices*, *FERC Investigation Relating to Bidding*, *Western Power Markets Price Mitigation and Refund Proceedings*, *California Attorney General Litigation* and *California Rate Payer Litigation*, and as set forth in Note 17 to our consolidated financial statements contained elsewhere in this report, various regulatory proceedings and lawsuits have been filed or initiated by the FERC, the California attorney general and various states' rate payers with the FERC and in state and federal courts. In addition, civil and criminal investigations have been initiated by the DOJ, the General Accounting Office, the FERC and various states' attorneys general, as described below in *Western Power Markets Investigations*, relating to Mirant's operations in California and the western power markets. The Company has made a provision of approximately \$319 million for losses related to the Company's operations in California and the western power markets during 2000 and 2001.

Western Power Markets Investigations: The high prices for wholesale electricity and natural gas experienced in the western markets during 2000 and 2001 prompted several governmental entities to investigate the western power markets, including activities by Mirant and several of its wholly-owned subsidiaries. Those governmental entities include the FERC, the DOJ, the California Public Utilities Commission ("CPUC"), the California Senate, the California State Auditor, California's Electricity Oversight Board ("EOB"), the General Accounting Office of the United States Congress, the San Joaquin District Attorney and the Attorney General's offices of the States of Washington, Oregon and California. These investigations, some of which are civil and some criminal, resulted in the issuance of civil investigative demands, subpoenas, document requests, requests for admission, and interrogatories directed to several of Mirant's entities. In addition, the CPUC has had personnel onsite on a periodic basis at Mirant's California generating facilities since December 2000.

Additionally, on February 13, 2002, the FERC directed its staff to undertake a fact-finding investigation into whether any entity manipulated short-term prices in electric energy or natural gas markets in the West or otherwise exercised undue influence over wholesale prices in the West, for the period January 1, 2000 forward. On March 26, 2003, the FERC Staff issued its final report regarding its investigation. Although the staff reaffirmed the FERC's conclusion set forth in its December 15, 2000 order that significant supply shortfalls and a fatally flawed market design were the root causes of the problems that occurred in the California wholesale electricity market in 2000 and 2001, the staff also found that significant market manipulation had occurred in both the gas and electricity markets. The staff concluded that trading strategies of the type portrayed in the Enron memos released by the FERC in May 2002 violated provisions of the CAISO and the California Power Exchange Corporation ("PX") tariffs that prohibited gaming. It identified Mirant as being one of a number of entities that had engaged in one or more of those practices. The FERC Staff also found that bidding generation resources to the PX and CAISO at prices unrelated to costs constituted economic withholding and violated the antigaming provisions of the CAISO and PX tariffs. Mirant was one of the entities identified as engaging in that bidding practice.

In September 2002, the CPUC issued a report that purported to show that on days in the Fall of 2000 through the Spring of 2001 during which the CAISO had to declare a system emergency requiring interruption of interruptible load or imposition of rolling blackouts, Mirant and four other out of state owners of generation assets in California had generating capacity that either was not operated or was out of service due to an outage and that could have avoided the problem if operated. The report identified two specific days on which Mirant allegedly had capacity available that was not used or that was on outage and that if operated could have avoided the system emergency. Mirant responded to the report pointing out a number of material inaccuracies and errors that it believes cause the CPUC's conclusions with respect to Mirant to be wrong. In January 2003, the CPUC staff issued a supplemental report in which it again concluded that Mirant and the other four generators did not provide energy when it was available during the period reviewed.

On March 26, 2003, the FERC Staff issued a separate report addressing the allegations of physical withholding by Mirant and four other out of state owners of generation assets in California made by the CPUC in its report issued in September 2002. The staff concluded that the CPUC's contention that thirty-eight service interruptions could have been avoided had those five generators produced all of their available power was not supported by the evidence. The FERC Staff found that the CPUC's calculation of available power was incomplete and greatly overstated the amount of available power that was not generated. The staff also indicated, however, that the FERC was continuing to investigate whether withholding by generators had occurred during 2000 and 2001.

In November 2002, Mirant received a subpoena from the DOJ, acting through the United States Attorney's office for the Northern District of California, requesting information about its activities and those of its subsidiaries for the period since January 1, 1998. The subpoena requested information related to the California energy markets and other topics, including the reporting of inaccurate information to the trade press that publish natural gas or electricity spot price data. The subpoena was issued as part of a grand jury investigation. Mirant has continued to receive additional requests for information from the United States Attorney's office, and it intends to continue to cooperate fully with the United States Attorney's office in this investigation.

FERC Show Cause Proceeding Relating to Trading Practices: On June 25, 2003, the FERC issued a show cause order (the "Trading Practices Order") to more than fifty parties, including Mirant entities, that the FERC Staff report issued on March 26, 2003 indicated may have engaged in one or more trading strategies of the type employed by Enron Corporation and its affiliates ("Enron") that were portrayed in the Enron memos released by the FERC in May 2002. The Trading Practices Order identified certain specific trading practices that the FERC indicated could constitute gaming or anomalous market behavior in violation of the CAISO and PX tariffs. The order required the CAISO

to identify those transactions engaged in by the parties that are the subject of the order between January 1, 2000 and June 20, 2001 that potentially fall within the specified practices. Those parties, including the Mirant entities, then had to demonstrate why those transactions were not violations of the PX and CAISO tariffs. On September 30, 2003, the Company filed with the FERC a settlement agreement, dated September 25, 2003, entered into between the Company and the FERC Trial Staff, under which Mirant would pay \$332,411 to settle the show cause proceeding. In a November 14, 2003 order in a different proceeding, the FERC ruled that certain allegations of improper trading conduct with respect to the selling of ancillary services during 2000 should be resolved in the show cause proceeding. The proposed settlement entered into by the Company and the FERC Trial Staff did not resolve the allegations made against Mirant with respect to that particular practice. On December 19, 2003, Mirant filed with the FERC for its approval an amendment to the settlement agreement reached with the FERC Trial Staff under which the FERC would have an allowed claim in Mirant Americas Energy Marketing's bankruptcy proceeding for \$3.67 million in settlement of the allegations with respect to the sale of ancillary services. That settlement is subject to the approval of the FERC and the

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Bankruptcy Court. We have recorded \$3.67 million related to this claim as liabilities subject to compromise on our consolidated balance sheet as of December 31, 2003. On March 11, 2004, an administrative law judge ("ALJ") recommended that the FERC approve the settlement, finding that the settlement amounts were reasonable. The ALJ, however, suggested that approval of the settlement be conditioned on the settlement amount associated with claims of improper selling of ancillary services being treated as an administrative claim or a setoff rather than as an allowed pre-petition claim. If the settlement amount was treated as an administrative claim, these amounts would receive priority status in the payment of claims in the bankruptcy proceedings.

FERC Investigation Relating to Bidding: The FERC on June 25, 2003 issued an order (the "Bidding Order") initiating an investigation by its staff into bidding practices in the PX and CAISO markets between May 1, 2000 and October 1, 2000 of more than fifty parties, including Mirant entities. These entities were previously identified in the report issued by the FERC Staff on March 26, 2003 as having bid generation resources to the PX and CAISO at prices unrelated to costs. The Bidding Order requires those entities, including the Mirant entities, to demonstrate why bids in the PX and CAISO markets from May 1, 2000 through October 1, 2000 that were in excess of \$250 per MWh did not constitute a violation of the CAISO and PX tariffs. If the FERC finds that the Mirant entities engaged in bidding practices that violated the PX or CAISO tariffs between May 1, 2000 through October 1, 2000, the FERC could require the disgorgement of profits made as a result of those bids and could impose other non-monetary penalties. While the Company believes its bidding practices were legitimate and that it did not violate the appropriate tariffs, the standards by which the FERC will ultimately judge the Company's bidding practices are unclear. Depending on the standards applied by the FERC and if Mirant entities are found by the FERC to have violated the PX or CAISO tariffs, the amount of any disgorgement of profits required or other remedy imposed by the FERC could have a material adverse effect on the Company's consolidated financial position, results of operations or cash flows.

Western Power Markets Price Mitigation and Refund Proceedings: In July 2001, the FERC issued an order requiring hearings to determine the amount of any refunds and amounts owed for sales made to the CAISO or the PX from October 2, 2000 through June 20, 2001. Various parties have appealed these FERC orders to the United States Court of Appeals for the Ninth Circuit seeking review of a number of issues, including changing the potential refund date to include periods prior to October 2, 2000 and expanding the sales of electricity subject to potential refund to include sales made to the California Department of Water Resources ("DWR"). Any such expansion of the refund period or the types of sales of electricity potentially subject to refund could significantly increase Mirant's refund exposure in this proceeding.

On December 12, 2002, an ALJ determined the preliminary amounts currently owed to each supplier in the proceeding. The ALJ determined that the initial amounts owed to Mirant from the

33

CAISO and the PX totaled approximately \$292 million and that Mirant owed the CAISO and the PX refunds totaling approximately \$170 million. The ALJ recommended that any refunds owed by a supplier to the CAISO and the PX should be offset against any outstanding amounts owed to that supplier by the CAISO and the PX. Under this approach, Mirant would be owed net amounts totaling approximately \$122 million from the CAISO and the PX. The ALJ decision indicated that these amounts do not reflect the final mitigated market clearing prices, interest that would be applied under the FERC's regulations, offsets for emission costs or the effect of certain findings made by the ALJ in the initial decision. A December 2002 errata issued by the ALJ to his initial decision indicated that the amounts identified by the initial decision as being owed to Mirant and other sellers by the PX failed to reflect an adjustment for January 2001 that the ALJ concluded elsewhere in his initial decision should be applied. If that adjustment is applied, the amount owed Mirant by the PX, and the net amount owed Mirant by the CAISO and the PX after taking into account the proposed refunds, would increase by approximately \$37 million.

On March 3, 2003, the California Attorney General, the California Electricity Oversight Board ("EOB"), the CPUC, Pacific Gas and Electric, and Southern California Edison Company (the "California Parties") filed submittals with the FERC in the California refund proceeding alleging that owners of generating facilities in California and energy marketers, including Mirant entities, had engaged in extensive manipulation of the California wholesale electricity market during 2000 and 2001. With respect to the Mirant entities, the California Parties asserted that Mirant entities had engaged in a variety of practices alleged to be improper, including withholding power either by not operating generating facilities when they could be operated or by offering the power from such facilities at prices in excess of the Mirant entities' marginal cost and engaging in various Enron-type trading strategies. The California Parties argued that the alleged market manipulation by the generators and marketers warranted the FERC applying its mitigated market prices to require refunds beyond just transactions done through the CAISO and PX in the period from October 2, 2000 through June 20, 2001. They asserted that the FERC should expand the transactions subject to the refund proceeding to include short-term and long-term bilateral transactions entered into by the DWR that were not conducted through the CAISO and PX and should begin the refund period as of January 1, 2000 rather than October 2, 2000. Expansion of the scope of the transactions subject to refund in the manner sought by the California Parties could materially affect the amount of any refunds that Mirant might be determined to owe and any such additional refunds could negatively impact the Company's consolidated financial position, results of operations or cash flows. On March 20, 2003, Mirant filed reply comments denying that it had engaged in any conduct that violated the Federal Power Act or any tariff provision applicable to its transactions in California. Mirant stated that the purported evidence presented by the California Parties did not support the allegations that Mirant had engaged in market manipulation, had violated the Federal Power Act or had not complied with any applicable

tariff or order of the FERC.

On March 26, 2003, the FERC largely adopted the findings of the ALJ made in his December 12, 2002 order with the exception that the FERC concluded that the price of gas used in calculating the mitigated market prices used to determine refunds should not be based on published price indices. Instead, the FERC ruled that the price of gas should be based upon the price at the producing area plus transportation costs. This adjustment by the FERC to the refund methodology is expected to increase the refunds owed by Mirant and therefore to reduce the net amount that would remain owed to Mirant from the CAISO and PX after taking into account any refunds. Based solely on the staff's formula, the amount of the reduction could be as much as approximately \$110 million, which would reduce the net amount owed to Mirant by the CAISO and PX to approximately \$49 million. The FERC indicated that it would allow any generator that could demonstrate it actually paid a higher price for gas to recover the differential between that higher price and the proxy price for gas adopted by the FERC. Mirant has filed information with the FERC indicating that its actual cost of gas used to make spot sales of electricity was higher than the amounts calculated under the staff's formula, which, if

34

accepted, would decrease significantly the \$110 million and increase the resulting net amount owed to Mirant, although the amount of such potential decrease that will be accepted by the FERC and the resulting net amount owed to Mirant cannot at this time be determined. On October 16, 2003, the FERC issued an order addressing motions for rehearing filed with respect to its March 26, 2003 order, and in that October 16, 2003 order the FERC changed how certain power sales made to the CAISO were to be treated. Mirant estimates that the effect of the October 16, 2003 order will be to decrease the refunds owed by Mirant, and therefore to increase the net amounts owed to Mirant, by \$27 million. The amount owed to Mirant from either the CAISO or the PX, the amount of any refund that Mirant might be determined to owe the CAISO or the PX, and whether Mirant may have any refund obligation to the DWR may be affected materially by the ultimate resolution of the issues described above related to which gas indices should be used in calculating the mitigated market clearing prices, allegations of market manipulation, whether the refund period should include periods prior to October 2, 2000, and whether the sales of electricity potentially subject to refund should include sales made to the DWR.

In the July 25, 2001 order, the FERC also ordered that a preliminary evidentiary proceeding be held to develop a factual record on whether there have been unjust and unreasonable charges for spot market bilateral sales in the Pacific Northwest from December 25, 2000 through June 20, 2001. In the proceeding, the California parties (consisting of the California Attorney General, the CPUC and the EOB) filed to recover certain refunds from parties, including Mirant Americas Energy Marketing for bilateral sales of electricity to the DWR at the California/Oregon border, claiming that such sales took place in the Pacific Northwest. The refunds sought from Mirant Americas Energy Marketing totaled approximately \$90 million. If Mirant Americas Energy Marketing were required to refund such amounts, other subsidiaries of the Company could be required to refund amounts previously received pursuant to sales made on their behalf by Mirant Americas Energy Marketing during the refund periods. In addition, the Company's subsidiaries would be owed amounts for purchases made on their behalf from other sellers in the Pacific Northwest. In an order issued June 25, 2003, the FERC ruled that no refunds were owed and terminated the proceeding. On November 10, 2003, the FERC denied requests for rehearing filed by various parties. Various parties have appealed the FERC's decision to the United States Court of Appeals for the Ninth Circuit.

California Attorney General Litigation: On March 11, 2002, the California Attorney General filed a civil suit against Mirant and several of its wholly-owned subsidiaries. The lawsuit alleges that between 1998 and 2001 the companies effectively double-sold their capacity by selling both ancillary services and energy from the same generating units, such that if called upon, the companies would have been unable to perform their contingent obligations under the ancillary services contracts. The California Attorney General claims that this alleged behavior violated both the tariff of the CAISO and the California Unfair Competition Act. The suit seeks both restitution and penalties in unspecified amounts. Mirant removed this suit from the state court in which it was originally filed to the United States District Court for the Northern District of California. The district court denied the California Attorney General's motion seeking to have the case remanded to the state court, and the California Attorney General has appealed that ruling to the United States Court of Appeals for the Ninth Circuit. This suit has been consolidated for joint administration with the California Attorney General suits filed on April 9, 2002, and April 15, 2002. The district court on March 25, 2003 granted Mirant's motion seeking dismissal of this suit. The court ruled that the California Attorney General's claims under California's Unfair Competition Act are barred by the doctrine of preemption and the filed rate doctrine, finding that the remedies sought would interfere with the FERC's exclusive authority to set wholesale electric rates under the Federal Power Act. The California Attorney General has appealed that dismissal to the United States Court of Appeals for the Ninth Circuit. On August 13, 2003, the Bankruptcy Court issued an order granting partial relief from the stay of the claims asserted against the Mirant defendants resulting from the filing of their bankruptcy proceedings, to the extent such stay was applicable, to allow the appeal to proceed with respect to those claims.

35

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On March 20, 2002, the California Attorney General filed a complaint with the FERC against certain power marketers and their affiliates, including Mirant and several of its wholly-owned subsidiaries, alleging that market-based sales of energy made by such generators were in violation of the Federal Power Act in part because such transactions were not appropriately filed with the FERC. The complaint requests, among other things, refunds for any prior short-term sales of energy that are found not to be just and reasonable along with interest on any such refunded amounts. The FERC dismissed the California Attorney General's complaint and denied the California Attorney General's request for rehearing. The California Attorney General has appealed that dismissal to the United States Court of Appeals for the Ninth Circuit.

On April 9, 2002, the California Attorney General filed a second civil suit against Mirant and several of its wholly-owned subsidiaries. That lawsuit alleges that the companies violated the California Unfair Competition Act by failing to properly file their rates, prices, and charges with the FERC as required by the Federal Power Act, and by charging unjust and unreasonable prices in violation of the Federal Power Act. The complaint seeks unspecified penalties, costs and attorney fees. Mirant removed this suit from the state court in which it was originally filed to the United States District Court for the Northern District of California. The district court denied the California Attorney General's motion seeking to have the case remanded to the state court, and the California Attorney General has appealed that ruling to the United States Court of Appeals for the Ninth Circuit. This suit was consolidated for joint administration with the California Attorney General suits filed on March 11, 2002 and April 15, 2002. The district court on March 25, 2003 granted Mirant's motion seeking dismissal of this suit. The court ruled that the California Attorney General's claims under California's Unfair Competition Act are barred by the doctrine of preemption and the filed rate doctrine, finding that the remedies sought would interfere with the FERC's exclusive authority to set wholesale electric rates under the Federal Power Act. The California Attorney General has appealed that dismissal to the United States Court of Appeals for the Ninth Circuit. On August 13, 2003, the Bankruptcy Court issued an order granting partial relief from the stay of the claims asserted against the Mirant defendants resulting from the filing of their bankruptcy proceedings, to the extent such stay was applicable, to allow the appeal to proceed with respect to those claims.

On April 15, 2002, the California Attorney General filed a third civil lawsuit against Mirant and several of its wholly-owned subsidiaries in the United States District Court for the Northern District of California. The lawsuit alleges that Mirant's acquisition and possession of its Potrero and Delta power plants has substantially lessened, and will continue to substantially lessen, competition in violation of the Clayton Act and the California Unfair Competition Act. The lawsuit seeks equitable remedies in the form of divestiture of the plants and injunctive relief, as well as monetary damages in unspecified amounts to include disgorgement of profits, restitution, treble damages, statutory civil penalties and attorney fees. This suit was consolidated for joint administration with the California Attorney General suits filed on March 11, 2002 and April 9, 2002. On March 25, 2003, the court dismissed the California Attorney General's state law claims and his claim for damages under the Clayton Act as barred by the filed rate doctrine but allowed the California Attorney General to proceed on his claim under the Clayton Act seeking relief in the form of an order requiring Mirant to divest its California plants. On December 3, 2003, the district court stayed the suit during the pendency of the Company's bankruptcy proceedings. The California Attorney General has appealed that ruling to the United States Court of Appeals for the Ninth Circuit.

California Rate Payer Litigation: Various lawsuits are pending that assert claims under California law based on allegations that certain owners of electric generation facilities in California and energy marketers, including Mirant and several of its subsidiaries, engaged in various unlawful and anti-competitive acts that served to manipulate wholesale power markets and inflate wholesale electricity prices in California.

36

Six such suits were filed between November 27, 2000 and May 2, 2001 in various California Superior Courts. Three of these suits seek class action status, while two of the suits are brought on behalf of all citizens of California. One lawsuit alleges that, as a result of the defendants' conduct, customers paid approximately \$4 billion more for electricity than they otherwise would have and seeks an award of treble damages as well as other injunctive and equitable relief. One lawsuit also names certain of Mirant's officers individually as defendants and alleges that the state had to spend more than \$6 billion purchasing electricity and that if an injunction is not issued, the state will be required to spend more than \$150 million per day purchasing electricity. The other suits likewise seek treble damages and equitable relief. One such suit names Mirant Corporation itself as a defendant. A listing of these six cases is as follows:

Caption	Date Filed	Court of Original Filing
People of the State of California v. Dynegy, et al.	January 18, 2001	Superior Court of California San Francisco County
Gordon v. Reliant Energy, Inc., et al.	November 27, 2000	Superior Court of California San Diego County
Hendricks v. Dynegy Power Marketing, Inc., et al.	November 29, 2000	Superior Court of California San Diego County
Sweetwater Authority, et al. v. Dynegy, Inc., et al.	January 16, 2001	Superior Court of California San Diego County

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Caption	Date Filed	Court of Original Filing
Pier 23 Restaurant v. PG&E Energy Trading, et al.	January 24, 2001	Superior Court of California San Francisco County

Bustamante, et al. v. Dynegy, Inc., et al. May 2, 2001 Superior Court of California Los Angeles County

These six suits (the "Six Coordinated Suits") were coordinated for purposes of pretrial proceedings before the Superior Court for San Diego County. In the Spring of 2002, two of the defendants filed crossclaims against other market participants who were not parties to the actions. Some of those crossclaim defendants then removed the Six Coordinated Suits to the United States District Court for the Southern District of California. The plaintiffs filed a motion seeking to have the actions remanded to the California state court, and the defendants filed motions seeking to have the claims dismissed. On December 13, 2002, the United States District Court for the Southern District of California granted the plaintiffs' motion seeking to have the six cases remanded to the California state court. The defendants that filed the crossclaims have appealed that decision remanding the Six Coordinated Suits to the California state courts to the United States Court of Appeals for the Ninth Circuit, and the Ninth Circuit has stayed the district court's remand decision until the Ninth Circuit can act on that appeal. These actions are stayed with respect to the Mirant entities that are defendants by the filing of the Chapter 11 proceedings of those entities, but are proceeding with respect to the other defendants.

Eight additional rate payer lawsuits were filed between April 23, 2002 and October 18, 2002 alleging that certain owners of electric generation facilities in California, as well as certain energy marketers, including Mirant and several of its subsidiaries, engaged in various unlawful and fraudulent business acts that served to manipulate wholesale markets and inflate wholesale electricity prices in California during 1999 through 2002. Each of the complaints alleges violation of California's Unfair

37

Competition Act. One complaint also alleges violation of California's antitrust statute. Each of the plaintiffs seeks class action status for their respective case. These suits contain allegations of misconduct by the defendants, including the Mirant entities, that are similar to the allegations made in the previously filed rate payer suits, and in the suits filed by the California Attorney General on March 11, 2002, and April 15, 2002. Some of these suits also allege that contracts between the DWR and certain marketers of electricity, including a nineteen month power sales agreement entered into by Mirant Americas Energy Marketing with the DWR in May 2001 that terminated in December 2002, contain terms that were unjust and unreasonable. The actions seek, among other things, restitution, compensatory and general damages, and to enjoin the defendants from engaging in illegal conduct. The captions of each of these eight cases follow:

Caption	Date Filed	Court of Original Filing
T&E Pastorino Nursery, et al. v. Duke Energy Trading and Marketing, LLC, et al.	April 23, 2002	Superior Court of California San Mateo County
RDJ Farms, Inc., et al. v. Allegheny Energy Supply Company, LLC, et al.	May 10, 2002	Superior Court of California San Joaquin County
Century Theatres, Inc., et al. v. Allegheny Energy Supply Company, LLC, et al.	May 14, 2002	Superior Court of California San Francisco County
El Super Burrito, Inc., et al. v. Allegheny Energy Supply Company, LLC, et al.	May 15, 2002	Superior Court of California San Mateo County
Leo's Day and Night Pharmacy, et al. v. Duke Energy Trading and Marketing, LLC, et al.	May 21, 2002	Superior Court of California Alameda County
J&M Karsant Family Limited Partnership, et al. v. Duke Energy Trading and Marketing, LLC, et al.	May 21, 2002	Superior Court of California Alameda County
Bronco Don Holdings, LLP, et al. v. Duke Energy Trading and Marketing, LLC, et al.	May 24, 2002	Superior Court of California San Francisco County

Kurtz v. Duke Energy Trading et al. October 18, 2002 Superior Court of California Los Angeles County

These suits were initially filed in California state courts by the plaintiffs and removed to United States district courts. These eight cases were consolidated for purposes of pretrial proceedings with the Six Coordinated Suits described above. These actions are stayed with respect to

the Mirant entities that are defendants by the filing of the Chapter 11 proceedings of those entities, but are proceeding with respect to the other defendants. On August 28, 2003, the district court granted the motions to dismiss filed by the defendants in the Pastorino, RDJ Farms, Century Theatres, El Super Burrito, Leo's Day

and Night Pharmacy, J&M Karsant, and Bronco Don Holdings suits, finding that the plaintiffs' claims were barred by the filed rate doctrine and federal preemption. The plaintiffs have appealed that dismissal to the United States Court of Appeals for the Ninth Circuit. The plaintiff in the Kurtz suit voluntarily dismissed his case without prejudice on February 18, 2004.

On July 15, 2002, an additional rate payer lawsuit, Public Utility District No. 1 of Snohomish Co. v. Dynegy Power Marketing, et al., was filed in the United States District Court for the Central District of California against various owners of electric generation facilities in California, including Mirant and its subsidiaries, by Public Utility District No. 1 of Snohomish County, which is a municipal corporation in the state of Washington that provides electric and water utility service. The plaintiff public utility district alleges that defendants violated California's antitrust statute by conspiring to raise wholesale power prices, injuring plaintiff through higher power purchase costs. The plaintiff also alleges that defendants acted both unfairly and unlawfully in violation of California's Unfair Competition Act through various unlawful and anticompetitive acts, including the purportedly wrongful acquisition of plants, engagement in "Enron-style" trading, and withholding power from the market. The plaintiff seeks restitution, disgorgement of profits, injunctive relief, treble damages, and attorney's fees. The Snohomish suit was consolidated for purposes of pretrial proceedings with the other rate payer suits pending before the United States District Court for the Southern District of California. On January 6, 2003, the district court granted a motion to dismiss filed by the defendants. The district court concluded that the effect of the plaintiffs' claims was to challenge rates for the sale of power at wholesale that were subject to the exclusive regulation of the FERC under the Federal Power Act, and that those claims were therefore barred by the filed rate doctrine and federal preemption. The plaintiff has appealed the dismissal of the Snohomish suit to the United States Court of Appeals for the Ninth Circuit. On August 13, 2003, the Bankruptcy Court issued an order granting partial relief from the stay of the claims asserted against the Mirant defendants resulting from the filing of their bankruptcy proceedings to allow the appeal to proceed with respect to those claims as well as the claims asserted against the other defendants.

Montana Attorney General Suit: On June 30, 2003, the Montana Attorney General and Flathead Electric Cooperative, Inc. filed a suit in the First Judicial District of Montana, County of Lewis and Clark, against various owners of generating facilities and marketers of electricity and natural gas in western states, including Mirant, alleging that the defendants had engaged in unlawful and unfair business practices in 2000 and 2001 involving the sale of wholesale electricity and natural gas and had manipulated the markets for wholesale electricity and natural gas. The plaintiffs allege, among other things, that the defendants fixed prices and restricted supply into the markets operated by the PX and CAISO, gamed the power market, provided false information to trade publications to inflate natural gas price indices published by such publications, and engaged in other manipulative practices, including withholding generation, selling generation at inflated prices, submitting false load schedules in order to increase electricity scarcity, creating fictitious congestion and counterflows, and double-selling the same generation to the CAISO. The plaintiffs contend the defendants conspired with each other and acted in concert with each other in engaging in the conduct alleged. The plaintiffs assert claims for violation of Montana's Unfair Trade Practices and Consumer Protection Act and fraud. They seek treble damages, injunctive relief, and attorneys' fees. The suit was removed to the United States District Court for the District of Montana on July 23, 2003, and on December 5, 2003 the district court remanded the proceeding to the state court. This action is stayed with respect to Mirant by the filing of its Chapter 11 proceedings.

On February 12, 2004, the Montana Public Service Commission initiated an investigation of the Montana retail electricity market affected by transactions involving the western electricity grid. The purpose of the investigation is to determine whether there is evidence of unlawful manipulation of that market related to the high prices for electricity in the western wholesale markets that occurred in 2000 and 2001. The commission ordered this investigation in response to petitions filed by the Montana

Attorney General and Flathead Electric Cooperative, Inc. making allegations similar to those asserted in their suit described above. Mirant and its subsidiaries are not engaged in the generation of electricity or the sale of electricity at retail in Montana and therefore do not believe they are subject to the regulatory jurisdiction of the Montana Public Service Commission.

Shareholder Litigation: Twenty lawsuits have been filed since May 29, 2002 against Mirant and four of its officers alleging, among other things, that defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder by making material misrepresentations and omissions to the investing public regarding Mirant's business operations and future prospects during the

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period from January 19, 2001 through May 6, 2002. The suits have each been filed in the United States District Court for the Northern District of Georgia, with the exception of three suits filed in the United States District Court for the Northern District of California. The three suits filed in California have been transferred by the court to the United States District Court for the Northern District of Georgia and consolidated with the seventeen consolidated suits already pending before that court. The complaints seek unspecified damages, including compensatory damages and the recovery of reasonable attorneys' fees and costs. The captions of each of the cases follow:

Caption	Date Filed
Kornfeld v. Mirant Corp., et al.	May 29, 2002
Holzer v. Mirant Corp., et al.	May 31, 2002
Abrams v. Mirant Corp., et al.	June 3, 2002
Froelich v. Mirant Corp., et al.	June 4, 2002
Rand v. Mirant Corp., et al.	June 5, 2002
Purowitz v. Mirant Corp., et al.	June 10, 2002
Kellner v. Mirant Corp., et al.	June 14, 2002
Sved v. Mirant Corp., et al.	June 14, 2002
Teaford v. Mirant Corp., et al.	June 14, 2002
Woff v. Mirant Corp., et al.	June 14, 2002
Peruche v. Mirant Corp., et al.	June 14, 2002
Thomas v. Mirant Corp., et al.	June 18, 2002
Urgenson v. Mirant Corp., et al.	June 18, 2002
Orlofsky v. Mirant Corp., et al.	June 24, 2002
Jannett v. Mirant Corp.	June 28, 2002
Green v. Mirant Corp., et al.	July 9, 2002
Greenberg v. Mirant Corp., et al.	July 16, 2002
Law v. Mirant Corp., et al.	July 17, 2002
Russo v. Mirant Corp., et al.	July 18, 2002
Delgado v. Mirant Corp., et al.	October 4, 2002

In November 2002, the plaintiffs in the consolidated suits in the United States District Court for the Northern District of Georgia filed an amended complaint that added additional defendants and claims. The plaintiffs added as defendants Southern Company ("Southern"), the directors of Mirant immediately prior to its initial public offering of stock, and various firms that were underwriters for the initial public offering by the Company. In addition to the claims set out in the original complaint, the amended complaint asserts claims under Sections 11 and 15 of the Securities Act of 1933, alleging that the registration statement and prospectus for the initial public offering of Mirant's stock misrepresented and omitted material facts. In the amended complaint, the plaintiffs expand their claims under sections 10(b) and 20 of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder to include statements made to the investing public regarding Mirant's business operations and future prospects during the period from September 26, 2000 through September 5, 2002. The amended complaint alleges, among other things, that Mirant's stock price was artificially inflated because the Company failed to disclose in various filings, public statements, and registration statements: (1) that

40

Mirant allegedly reaped illegal profits in California by manipulating energy prices through a variety of alleged improper tactics; (2) that Mirant allegedly failed to take a timely charge to earnings through a write off of its interest in Western Power Distribution; and (3) the accounting errors and internal controls issues that were disclosed in July and November of 2002. On July 14, 2003, the district court dismissed the claims asserted by the plaintiffs based on the Company's California business activities but allowed the case to proceed on the plaintiffs' other claims. This action is stayed as to Mirant by the filing of its Chapter 11 proceeding. On November 19, 2003, the Bankruptcy Court entered an order staying this action also with respect to the other defendants through at least April 2004 to avoid the suit impeding the ability of Mirant to reorganize or having a negative effect upon Mirant's assets. The Bankruptcy Court has modified the stay to allow the plaintiffs to proceed with discovery of documentary materials from Mirant and the other defendants.

Under a master separation agreement between Mirant and Southern, Southern is entitled to be indemnified by Mirant for any losses arising out of any acts or omissions by Mirant and its subsidiaries in the conduct of the business of Mirant and its subsidiaries. The underwriting agreements between Mirant and the various firms added as defendants that were underwriters for the initial public offering by the Company also provide for Mirant to indemnify such firms against any losses arising out of any acts or omissions by Mirant and its subsidiaries.

Shareholder Derivative Litigation: Four purported shareholders' derivative suits have been filed against Mirant, its directors and certain officers of the Company. These lawsuits allege that the directors breached their fiduciary duties by allowing the Company to engage in alleged unlawful or improper practices in the California energy market during 2000 and 2001. The Company practices complained of in the purported

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derivative lawsuits largely mirror those complained of in the shareholder litigation, the rate payer litigation and the California attorney general lawsuits that have been previously disclosed by the Company. One suit also alleges that the defendant officers engaged in insider trading. The complaints seek unspecified damages on behalf of the Company, including attorneys' fees, costs and expenses and punitive damages. The captions of each of the cases follow:

Caption	Date Filed
Kester v. Correll, et al.	June 26, 2002
Pettingill v. Fuller, et al.	July 30, 2002
White v. Correll, et al.	August 9, 2002
Cichocki v. Correll, et al.	November 7, 2002

The Kester and White suits were filed in the Superior Court of Fulton County, Georgia, and were consolidated on March 13, 2003, with the name of the consolidated action being *In re Mirant Corporation Derivative Litigation*. The consolidated action has been removed by Mirant to the United States District Court for the Northern District of Georgia. The Pettingill suit was filed in the Court of the Chancery for New Castle County, Delaware, and was removed by Mirant to the United States District Court for the District of Delaware. The Cichocki suit was filed in the United States District Court for the Northern District of Georgia. These actions are stayed as to Mirant by the filing of its Chapter 11 proceeding. On November 19, 2003, the Bankruptcy Court entered an order staying these actions also with respect to the individual defendants through at least April 2004 to avoid the suit impeding the ability of Mirant to reorganize or having a negative effect upon Mirant's assets. On December 8, 2003, the court in the Cichocki suit took notice of the Bankruptcy Court's Order dated November 19, 2003 staying the litigation and administratively closed the action.

41

ERISA Litigation: On April 17, 2003, a purported class action lawsuit alleging violations of the Employee Retirement Income Security Act ("ERISA") was filed in the United States District Court for the Northern District of Georgia entitled *James Brown v. Mirant Corporation, et al.*, Civil Action No. 1:03-CV-1027 (the "ERISA Litigation"). The ERISA Litigation names as defendants Mirant Corporation, certain of its current and former officers and directors, and Southern Company. The plaintiff, who seeks to represent a putative class of participants and beneficiaries of Mirant's 401(k) plans (the "Plans"), alleges that defendants breached their duties under ERISA by, among other things, (1) concealing information from the Plans' participants and beneficiaries; (2) failing to ensure that the Plans' assets were invested prudently; (3) failing to monitor the Plans' fiduciaries; and (4) failing to engage independent fiduciaries to make judgments about the Plans' investments. The plaintiff seeks unspecified damages, injunctive relief, attorneys' fees and costs. The factual allegations underlying this lawsuit are substantially similar to those described above in *California Attorney General Litigation*, *California Rate Payer Litigation*, and *Shareholder Litigation*.

On June 3, 2003, a second purported class action lawsuit alleging violations of ERISA was filed in the United States District Court for the Northern District of Georgia entitled *Greg Waller, Sr. v. Mirant Corporation, et al.* The Waller suit names as defendants Mirant Corporation, certain of its current and former officers and directors, and Southern Company. The Waller suit is substantially similar to the previously filed Brown suit with respect to the claims asserted, the factual allegations made, and the relief sought. On September 2, 2003, the district court issued an order consolidating the Brown and Waller suits. On September 23, 2003, the plaintiffs filed an amended and consolidated complaint. The amended and consolidated complaint asserted similar factual allegations as the previously filed lawsuits. The consolidated action is stayed as to Mirant by the filing of its Chapter 11 proceeding. On November 19, 2003, the Bankruptcy Court entered an order staying this action also with respect to the other defendants through at least April 2004 to avoid the suit impeding the ability of Mirant to reorganize or having a negative effect upon Mirant's assets. By agreement, however, the suit has been allowed to proceed through the filing of, and ruling by the district court upon, motions to dismiss. On January 9, 2004, T. Rowe Price answered the amended and consolidated complaint. All other defendants filed motions on that date seeking dismissal of the plaintiffs' claims for failure to state a claim upon which relief can be granted. On February 19, 2004, the plaintiffs dismissed their claims against Southern Company without prejudice.

Mirant Americas Generation Bondholder Suit: On June 10, 2003, certain holders of senior Mirant Americas Generation notes maturing after 2006 filed a complaint in the Court of Chancery of the State of Delaware, *California Public Employees' Retirement System, et al. v. Mirant Corporation, et al.*, that named as defendants Mirant, Mirant Americas, Mirant Americas Generation, certain past and present Mirant directors, and certain past and present Mirant Americas Generation managers. Among other claims, the plaintiffs assert that a restructuring plan pursued by the Company prior to its filing a petition for reorganization under Chapter 11 of the Bankruptcy Code was in breach of fiduciary duties allegedly owed to them by Mirant, Mirant Americas, and Mirant Americas Generation's managers. In addition, plaintiffs challenge certain dividends and distributions allegedly made by Mirant Americas Generation. Plaintiffs seek damages in excess of one billion dollars. Mirant removed this suit to the United States District Court for the District of Delaware. This action is stayed with respect to the Mirant entities that are defendants by the filing of the Chapter 11 proceedings of those entities. On November 19, 2003, the Bankruptcy Court entered an order staying this action also with respect to the individual defendants through at least April 2004 to avoid the suit impeding the ability of the Mirant Debtors to reorganize or having a negative effect upon the assets of the Mirant Debtors. The committee representing unsecured creditors of Mirant Americas Generation filed a motion in Mirant's bankruptcy proceedings seeking to pursue claims against Mirant, Mirant Americas, certain past

and present Mirant directors, and certain past and present Mirant Americas Generation managers similar to those asserted in this suit. The Bankruptcy Court has not authorized any such litigation at this time. The Bankruptcy Court has noted that while the committee had standing to assert claims on behalf of

the estate of Mirant Americas Generation, no such claims could be filed without the Bankruptcy Court's approval and no motions seeking such approval could be filed at least through April 2004.

Mirant Americas Generation Securities Class Action: On June 11, 2003, a purported class action lawsuit alleging violations of Sections 11 and 15 of the Securities Act of 1933 was filed in the Superior Court of Fulton County, Georgia entitled *Wisniak v. Mirant Americas Generation, LLC, et al.* The lawsuit names as defendants Mirant Americas Generation and certain current and former officers and managers of Mirant Americas Generation. The plaintiff seeks to represent a putative class of all persons who purchased debt securities of Mirant Americas Generation pursuant to or traceable to an exchange offer completed by Mirant Americas Generation in May 2002 in which \$750 million of bonds registered under the Securities Act were exchanged for \$750 million of previously issued senior notes of Mirant Americas Generation. The plaintiff alleges, among other things, that Mirant Americas Generation's restatement in April 2003 of prior financial statements rendered the registration statement filed for the May 2002 exchange offer materially false. The complaint seeks damages, interest and attorneys' fees. The defendants have removed the suit to the United States District Court for the Northern District of Georgia. This action is stayed as to Mirant Americas Generation by the filing of its Chapter 11 proceeding. On November 19, 2003, the Bankruptcy Court entered an order staying these actions also with respect to the individual defendants through at least April 2004 to avoid the suit impeding the ability of Mirant Americas Generation to reorganize or having a negative effect upon its assets. On December 8, 2003, the court took notice of the Bankruptcy Court's Order dated November 19, 2003 staying the litigation and administratively closed the action. On December 16, 2003, the plaintiff dismissed Mirant Americas Generation as a defendant, without prejudice.

PEPCO Back-to-Back Agreement: In connection with Mirant's acquisition of the Mirant Mid-Atlantic assets from PEPCO in 2000, PEPCO granted Mirant certain rights to purchase from PEPCO all power it received under long-term power purchase agreements with Ohio Edison Company and Panda-Brandywine L.P. ("Panda") that expire in 2005 and 2021, respectively. Mirant and PEPCO entered into a contractual arrangement (the "Back-to-Back Agreement") with respect to PEPCO's agreements with Panda and Ohio Edison under which (1) PEPCO agreed to resell to Mirant all "capacity, energy, ancillary services and other benefits" to which it is entitled under those agreements; and (2) Mirant agreed to pay PEPCO each month all amounts due from PEPCO to Panda or Ohio Edison for the immediately preceding month associated with such capacity, energy, ancillary services and other benefits. On August 28, 2003, the Mirant Debtors filed a motion with the Bankruptcy Court to reject the Back-to-Back Agreement. Under this agreement, Mirant is obligated to purchase power from PEPCO in the PJM marketplace at prices that are significantly higher than existing market prices for power. The Mirant Debtors forecast that it would cost the Mirant Debtors in excess of \$300 million through 2005 if the Back-to-Back Agreement were to remain in effect. These anticipated losses, as compared to what could be obtained if market rates were applied, are even greater over the entire life of the agreement, which continues until 2021.

In their August 28, 2003 motion to reject the Back-to-Back Agreement, the Mirant Debtors also requested that the Bankruptcy Court enjoin the FERC from compelling the Mirant Debtors to perform under the Back-to-Back Agreement. On August 28, 2003, the Bankruptcy Court entered a TRO against PEPCO and the FERC. On September 8, 2003, the Office of the People's Counsel for the District of Columbia filed a complaint with the FERC seeking an order holding that the terms of the Back-to-Back Agreement may not be modified or terminated without the approval of the FERC. Also on September 8, 2003, the Public Service Commission of Maryland and the Maryland Office of People's Counsel filed a petition with the FERC seeking an order declaring that Mirant must continue to perform pursuant to the Back-to-Back Agreement with PEPCO. These filings by the Office of the People's Counsel for the District of Columbia, the Public Service Commission of Maryland and the Maryland Office of People's Counsel were withdrawn in February 2004. On September 17, 2003, the Bankruptcy Court entered an order extending the TRO and enjoining the FERC from issuing the

orders requested by such administrative petitions filed with the FERC. On September 25, 2003, the Bankruptcy Court converted the TRO to a preliminary injunction. On October 9, 2003, the United States District Court for the Northern District of Texas entered an order that had the effect of transferring to that court from the Bankruptcy Court the motion filed by Mirant seeking to reject the Back-to-Back Agreement and the proceedings in which the Bankruptcy Court had issued the preliminary injunction against the FERC.

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On December 23, 2003, the federal district court in Texas denied the Mirant Debtors' motion seeking to reject the Back-to-Back Agreement. The court ruled that the Federal Power Act preempts the Bankruptcy Code and that a bankruptcy court cannot affect a matter within the FERC's jurisdiction, including the rejection of a wholesale power purchase agreement regulated by the FERC. In its December 23, 2003 order, the district court also vacated the injunction granted by the Bankruptcy Court that restrained the FERC from acting with respect to the Back-to-Back Agreement. The Mirant Debtors have appealed that decision to the United States Court of Appeals for the Fifth Circuit, and the Mirant Debtors requested that the Court of Appeals stay the district court's ruling while the appeal proceeded so that the injunctive relief that had been granted to the Mirant Debtors by the Bankruptcy Court would remain in effect while the appeal was pending. On January 27, 2004, the Court of Appeals denied the Mirant Debtors' request for a stay of the district court's order. With the injunctions removed, the FERC could now act to require the Mirant Debtors to perform any contract subject to the FERC's jurisdiction until the FERC authorizes them to do otherwise. Under the district court's ruling, the Mirant Debtors could have to obtain the FERC's approval to reject the Back-to-Back Agreement and any other contract subject to the FERC's jurisdiction that the Mirant Debtors wish to reject because of its cost. If the FERC takes action adverse to the Mirant Debtors, appeals of any such FERC ruling would likely occur in an appellate court other than the Fifth Circuit, which could cause the Fifth Circuit to be unable to grant complete relief to the Mirant Debtors in their pending appeal.

Mirant also entered into an agreement with PEPCO that provided that the price paid by Mirant for its December 2000 acquisition of PEPCO assets would be adjusted if by March 19, 2005 a binding court order has been entered finding that the Back-to-Back Agreement violates PEPCO's power purchase agreement with Panda ("Panda PPA") as a prohibited assignment, transfer or delegation of the Panda PPA or because it effects a prohibited delegation or transfer of rights, duties or obligations under the Panda PPA that is not severable from the rest of the Back-to-Back Agreement. If a court order is entered that triggers the purchase price adjustment, the amount of the adjustment is to be negotiated in good faith by the parties or determined by binding arbitration so as to compensate PEPCO for the termination of the benefit of the Back-to-Back Agreement while also holding Mirant economically indifferent from such court order. Panda initiated legal proceedings in 2000 asserting that the Back-to-Back Agreement violated provisions in the Panda PPA prohibiting PEPCO from assigning the Panda PPA or delegating its duties under the Panda PPA to a third party without Panda's prior written consent. On June 10, 2003, the Maryland Court of Appeals, Maryland's highest court, ruled that the assignment of certain rights and delegation of certain duties by PEPCO to Mirant did violate the non-assignment provision of the Panda PPA and was unenforceable. The court, however, left open the issues whether the provisions found to violate the Panda PPA could be severed and the rest of the Back-to-Back Agreement enforced and whether Panda's refusal to consent to the assignment of the Panda PPA by PEPCO to Mirant was unreasonable and violated the Panda PPA. If the June 10, 2003 decision by the Maryland Court of Appeals or a subsequent decision addressing the Back-to-Back Agreement is determined to have triggered the adjustment to the purchase price paid by Mirant to PEPCO, such adjustment would not be expected to have a material adverse effect on the Company's financial position or results of operations.

Environmental Matters: In January 2001, the EPA issued a request for information to Mirant concerning the air permitting and air emission control implications under the NSR of past repair and maintenance activities at the Company's Potomac River plant in Virginia and Chalk Point, Dickerson

and Morgantown plants in Maryland. The requested information concerns the period of operations that predates the Company's ownership of the plants. Mirant has responded fully to this request. Under the sales agreement with PEPCO for those plants, PEPCO is responsible for fines and penalties arising from any violation associated with historical operations prior to the Company's acquisition of the plants. If a violation is determined to have occurred at any of the plants, the Company may be responsible for the cost of purchasing and installing emission control equipment, the cost of which may be material. If such violation is determined to have occurred after Mirant acquired the plants or, if occurring prior to the acquisition, is determined to constitute a continuing violation, Mirant would also be subject to fines and penalties by the state or federal government for the period subsequent to its acquisition of the plants, the cost of which may be material.

On September 10, 2003, the Virginia Department of Environmental Quality issued a Notice of Violation ("NOV") to Mirant Potomac River, LLC ("Mirant Potomac") alleging that it violated its Virginia Stationary Source Permit to Operate by emitting nitrogen oxide in excess of the "cap" established by the permit for the 2003 summer ozone season. Mirant Potomac has responded to the NOV, asserting that the cap is unenforceable, that it can comply through the purchase of emissions credits and raising other equitable defenses. Virginia's civil enforcement statute provides for injunctive relief and penalties, but no civil suit has as yet been filed. On January 22, 2004, the EPA issued a Notice of Violation to Mirant Potomac alleging the same violation of Mirant Potomac's Virginia Stationary Source Permit to Operate as set out in the NOV issued by the Virginia Department of Environmental Quality.

The Company cannot provide assurance that lawsuits or other administrative actions against its power plants will not be filed or taken in the future. If an action is filed against the Company or its power plants and it is determined to not be in compliance, such a determination could require substantial expenditures to bring the Company's power plants into compliance, which could have a material adverse effect on Mirant's financial condition, results of operations or cash flows.

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Department of Justice Inquiries: In 2002 the Company was contacted by the DOJ regarding the Company's disclosure of accounting issues, energy trading matters and allegations contained in the amended complaint discussed above in *Shareholder Litigation* that Mirant improperly destroyed certain electronic records related to its activities in California. The Company has been asked to provide copies of the same documents requested by the SEC in their informal inquiry, and the Company intends to cooperate fully. The DOJ has advised Mirant that it does not intend to take further action with respect to the allegations of improper destruction of electronic records.

In November 2002, Mirant received a subpoena from the DOJ, acting through the United States Attorney's office for the Northern District of California, requesting information about its activities and those of its subsidiaries for the period since January 1, 1998. The subpoena requested information related to the California energy markets and other topics, including the reporting of inaccurate information to the trade press that publish natural gas or electricity spot price data. The subpoena was issued as part of a grand jury investigation. Mirant has continued to receive additional requests for information from the United States Attorney's office, and it intends to continue to cooperate fully with the United States Attorney's office in this investigation.

Securities and Exchange Commission ("SEC") Investigation: In August 2002, Mirant received a notice from the Division of Enforcement of the SEC that it was conducting an investigation of Mirant. The Division of Enforcement has asked for information and documents relating to various topics such as accounting issues (including the issues announced on July 30, 2002 and August 14, 2002), energy trading matters (including round trip trades), Mirant's accounting for transactions involving special purpose entities, and information related to shareholder litigation. In late June 2003, the Division of Enforcement advised Mirant that its investigation of Mirant had become a formal investigation in February 2003. Mirant intends to continue to cooperate fully with the SEC.

45

Commodity Futures Trading Commission Inquiries: In August 2002, the Commodity Futures Trading Commission ("CFTC") asked the Company for information about certain buy and sell transactions occurring during 2001. The Company provided information regarding such trades to the CFTC, none of which it considers to be wash trades. The CFTC subsequently requested additional information, including information about all trades conducted on the same day with the same counterparty that were potentially offsetting during the period from January 1, 1999 through June 17, 2002, which information the Company provided. In March 2003, the Company received a subpoena from the CFTC requesting a variety of documents and information related to the Company's trading of electricity and natural gas and its reporting of transactional information to energy industry publications that prepare price indices for electricity and natural gas in the period from January 1, 1999 through the date of the subpoena. Among the documents requested were any documents previously produced to the FERC, the SEC, the DOJ, any state's Attorney General and any federal or state grand jury. The Company has continued to receive additional requests for information from the CFTC, and it intends to continue to cooperate fully with the CFTC. In a submission to the United States District Court for the Southern District of Texas on July 16, 2003 in a proceeding not involving the Company, the CFTC identified Mirant as one of nineteen parties being investigated for potential inaccurate gas price reporting in violation of the Commodity Exchange Act. The filing made by the CFTC indicated that it had uncovered evidence showing that eighteen of the nineteen companies may have inaccurately reported gas prices to the trade publications. Mirant understands that it is one of those eighteen companies. During reviews in connection with the CFTC investigation, Mirant has become aware that some of its employees reported information to energy industry publications that was inaccurate. Based on the information that Mirant is aware of at this time, however, Mirant does not believe that any of its employees participated in manipulation or attempted manipulation of energy price indices. Because this investigation is ongoing and the data is voluminous, Mirant cannot predict what the outcome will be.

Department of Labor Inquiries: On August 21, 2003, the Company received a notice from the Department of Labor (the "DOL") that it was commencing an investigation pursuant to which it was undertaking to review various documents and records relating to the Mirant Services Employee Savings Plan and the Mirant Services Bargaining Unit Employee Savings Plan. The DOL also has interviewed Mirant personnel regarding those plans. The Company will continue to cooperate fully with the DOL.

New York Tax Proceedings: Mirant's subsidiaries that own generating plants in New York are the petitioners in forty-one proceedings ("Tax Certiorari Proceedings") initially brought in various New York state courts challenging the assessed value of those generating plants determined by their respective local taxing authorities. Mirant Bowline Energy, LLC ("Mirant Bowline") has challenged the assessed value of the Bowline generating facility and the resulting local tax assessments paid for tax years 1995 through 2003. Mirant Bowline succeeded to rights held by Orange & Rockland Utilities, Inc. for the tax years prior to its acquisition of the Bowline Plant in 1999 under the its agreement with Orange & Rockland for the purchase of that plant. Mirant Lovett, LLC ("Mirant Lovett") has initiated proceedings challenging the assessed value of the Lovett facility for each of the years 2000 through 2003. Mirant NY-Gen, LLC ("Mirant NY-Gen" and collectively with Mirant Bowline and Mirant Lovett, the "New York Debtors") has proceedings pending with respect to the combustion turbine and hydroelectric facilities it owns for each of the years 2000 through 2003. If the Tax Certiorari Proceedings result in a reduction of the assessed value of the generating facility at issue in each proceeding, the Mirant entity owning the facility would be entitled to a refund with interest of any excess taxes paid for those tax years. Following the initiation of the bankruptcy proceedings, the New York Debtors removed the Tax Certiorari Proceedings to the United States District Court for the Southern District of New York, which referred the cases to the United States Bankruptcy

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Court for the Southern District of New York ("New York Bankruptcy Court"). The New York Debtors filed motions pursuant to 42 U.S.C. § 1412 and Rule 7087 of the Federal Rules of Bankruptcy Procedure for a transfer of venue of the Tax Certiorari Proceedings to the Bankruptcy Court. Certain of the taxing

46

authorities involved in the Tax Certiorari Proceedings objected to the transfer motions and filed motions to have the New York Bankruptcy Court abstain or remand the Tax Certiorari Proceedings to their originating state courts. On December 4, 2003, the New York Bankruptcy Court issued an oral ruling remanding the Tax Certiorari Proceedings to the New York state courts in which they were originally filed.

On September 30, 2003, the Mirant Debtors filed a motion (the "Tax Determination Motion") with the Bankruptcy Court requesting that it determine what the property tax liability should have been for the Bowline generating facility in each of the years 1995 through 2003. The Tax Determination Motion similarly sought to have the Bankruptcy Court determine what the property tax liability should have been for (a) the generating facility acquired by Mirant Lovett concurrently with Mirant Bowline's acquisition of the Bowline Facility in each of the years 2000 through 2003, and (b) certain generating facilities concurrently acquired by Mirant NY-Gen at the time Mirant Bowline acquired the Bowline facility in each of the years 2000 through 2003. The bases for the relief requested in the Tax Determination Motion on behalf of each of the New York Debtors were that the assessed values of generating facilities located in New York made by the relevant taxing authorities had no justifiable basis and were (and are) far in excess of their actual value. The local taxing authorities have opposed the Tax Determination Motion, arguing that the Bankruptcy Court either lacks jurisdiction over the matters addressed by the Tax Determination Motion or should abstain from addressing those issues so that they can be addressed by the state courts in which the Tax Certiorari Proceedings described in the preceding paragraph were originally filed. On December 10, 2003, the Bankruptcy Court ruled that it would retain joint jurisdiction with the New York state courts over the issues raised by the Tax Certiorari Proceedings and the Tax Determination Motion. The ruling further indicated that for any of the Tax Certiorari Proceedings in which a trial on the merits had not commenced in the New York state court before which that proceeding was pending by August 1, 2004, the Bankruptcy Court would stay that state court proceeding and address itself the tax matters at issue in that proceeding. Certain of the taxing authorities have moved for leave to appeal the Bankruptcy Court's December 10, 2003 order on an interlocutory basis to the United States District Court for the Northern District of Texas.

Collectively, the New York Debtors have not paid approximately \$62 million assessed by local taxing authorities on the generating facilities for 2003 which fell due on September 30, 2003 and January 30, 2004 in order to preserve their respective rights to offset the overpayments of taxes made in earlier years against the sums payable on account of current taxes. The failure to pay the taxes due on September 30, 2003 and January 30, 2004 could subject the New York Debtors to additional penalties and interest. In the Tax Determination Motion, the Mirant Debtors requested that the Bankruptcy Court permit each of the New York Debtors to apply any previous tax overpayments made on account of their generating facilities as determined by the Bankruptcy Court as requested in the Tax Determination Motion to any post-petition tax liabilities owing to the relevant local taxing authority for current tax liabilities and be entitled to a refund of any remaining overpayments. The Tax Determination Motion also requests the Bankruptcy Court to rule that any interest or penalties that may otherwise be imposed on the New York Debtors by the relevant taxing authorities for failure to timely pay taxes be disallowed or determined to be zero. On February 11, the County of Rockland, New York, filed a motion with the Bankruptcy Court requesting that it order the New York Debtors to pay all unpaid post-petition ad valorem taxes for 2003 assessed by the taxing authorities located in Rockland County and all prospective post-petition ad valorem taxes. On March 10, 2003, the Bankruptcy Court denied that motion. The various taxing authorities may seek to lift the bankruptcy stay (which arises automatically upon the filing of a bankruptcy petition and prevents creditors exercising remedies against a debtor) such that they may seek to foreclose their liens against the various generating facilities due to the failure of the applicable entities to pay their current property taxes. In the event that the motion to lift the stay were granted, each of the New York Debtors has the option to pay the unpaid taxes it owes and avoid the result of facing foreclosure of tax liens against its generating facilities.

47

Item 4. *Submission of Matters to a Vote of Security Holders*

None.

PART II

Item 5. *Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities*

Common Stock

Mirant's common stock and its trust preferred securities are presently being quoted, and have been quoted since July 16, 2003, on the Pink Sheets Electronic Quotation Service ("Pink Sheets") maintained by the National Quotation Bureau, Inc. Certain restrictions in trading are imposed under a Bankruptcy Court order described in "Item 1. Business." The new ticker symbols MIRKQ and MIRPQ have been assigned to our common stock and trust preferred securities, respectively, by the over-the-counter bulletin board. As of April 14, 2004, Mirant had 146,737 holders of record. Prior to July 15, 2003, our common stock and trust preferred securities were listed under, and traded on, the New York Stock Exchange ("NYSE"). As a result of Mirant's filing on July 14, 2003 of its voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code, on July 15, 2003, our common stock and trust preferred securities were suspended from trading by the NYSE and, thereafter, delisted from the exchange. The following table sets forth (1) the high and low sales prices for Mirant's common stock as reported on the NYSE for the first quarter of 2002 through the second quarter of 2003, and (2) the quarterly high and low bid quotations for our common stock as reported on the Pink Sheets for the third and fourth quarter of 2003. These quotations reflect inter-dealer prices, without retail markup, markdown or commissions, and may not necessarily represent actual transactions.

	<u>Market</u>	<u>High</u>	<u>Low</u>
2002			
First Quarter	NYSE	\$ 16.49	\$ 7.50
Second Quarter	NYSE	\$ 14.67	\$ 6.50
Third Quarter	NYSE	\$ 7.02	\$ 1.90
Fourth Quarter	NYSE	\$ 3.50	\$ 1.06
2003			
First Quarter	NYSE	\$ 2.90	\$ 1.13
Second Quarter	NYSE	\$ 3.90	\$ 1.48
Third Quarter	Pink Sheets	\$ 0.75	\$ 0.19
Fourth Quarter	Pink Sheets	\$ 0.63	\$ 0.26

Dividends

We will retain any future earnings to fund our operations and meet our cash and liquidity needs. Therefore, we do not anticipate paying any cash dividends on our common stock in the foreseeable future. The rights and claims of Mirant's various creditors will be determined by the plan of reorganization filed by Mirant. No assurance can be given as to the value, if any, that will be ascribed in the bankruptcy proceeding to each of these constituencies, and it is possible that Mirant's equity or other securities will be restructured in a manner that will reduce substantially or eliminate any remaining value. Accordingly, we urge that caution be exercised with respect to existing and future investments in Mirant securities.

Item 6. Selected Financial Data

The following discussion should be read in conjunction with Mirant's consolidated financial statements and the notes thereto, which are included elsewhere in this report. The following table presents our selected consolidated financial information, which is derived from our consolidated financial statements. The financial information for the periods prior to our separation from Southern on April 2, 2001 does not necessarily reflect what our financial position and results of operations would have been had we operated as a separate, stand-alone entity during those periods.

The following selected financial information should also be read considering that from January 1, 1999 until August 10, 2000, the date of our acquisition of Vastar Resources Inc.'s ("Vastar") 40% interest in Mirant Americas Energy Marketing, we accounted for this joint venture under the equity method of accounting. Effective August 10, 2000, Mirant Americas Energy Marketing became a wholly-owned consolidated subsidiary.

<u>Years Ended December 31,</u>				
<u>2003</u>	<u>2002</u>	<u>2001</u>	<u>2000</u>	<u>1999</u>

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Years Ended December 31,

(In millions except per share data)

Statement of Operations Data:

Operating revenues	\$ 5,171	\$ 4,705	\$ 7,208	\$ 3,951	\$ 2,265
(Loss) income from continuing operations	(3,786)	(2,354)	465	299	362
(Loss) income from discontinued operations	(20)	(84)	(56)	31	10
Net (loss) income	(3,835)	(2,438)	409	330	372
Earnings (loss) per share:					
From continuing operations	\$ (9.35)	\$ (5.85)	\$ 1.36	\$ 1.03	\$ 1.33
From discontinued operations	(0.05)	(0.21)	(0.16)	0.11	0.04
From cumulative effect of changes in accounting principles	(0.07)				
Net (loss) income	\$ (9.47)	\$ (6.06)	\$ 1.20	\$ 1.14	\$ 1.37

As of December 31,

	2003	2002	2001	2000	1999
Balance Sheet Data:					
Total assets	\$ 12,131	\$ 19,423	\$ 22,043	\$ 24,136	\$ 13,863
Total long-term debt	1,538	8,822	8,435	5,596	4,954
Liabilities subject to compromise	9,084				
Subsidiary obligated mandatorily redeemable preferred securities				950	
Company obligated mandatorily redeemable securities of a subsidiary holding solely parent company debentures		345	345	345	
Stockholders' (deficit) equity	(823)	2,955	5,258	4,164	3,155
	49				

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

Executive Summary

In 2003, Mirant experienced a number of challenges, including changes in market conditions, the loss of trading liquidity, opposition to our restructuring proposals and legal uncertainties. We attempted to restructure our debt in 2003. We were not successful in this objective and, as a result, on the Petition Date, August 18, 2003, October 3, 2003 and November 18, 2003, Mirant Corporation and most of its North American wholly-owned and non-wholly-owned affiliates filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Additionally, on the Petition Date, certain of our Canadian subsidiaries filed an application for creditor protection under the CCAA in Canada, which, like Chapter 11, allows for reorganization under the protection of the court system. Our businesses in the Philippines and the Caribbean were not included in the Chapter 11 filings.

In general, it is our current view that the U.S. electricity markets have excess generation capacity. Additionally, generation capacity is expected to exceed combined demand levels and reserve generation targets through 2007 to 2011 for most major markets. This market situation has the potential to result in downward pressure on electricity prices and more importantly, is expected to narrow fuel to electricity conversion spreads. In this environment, customers typically transact over shorter durations and rely more heavily on spot markets to meet their energy needs, thus making it more difficult to sell our power for longer-term durations and at prices that provide a reasonable return mostly notably on our gas-fired units. The current market environment and its expected continuation require us to continue to critically review the future operations of each of our U.S. generating assets. See "Item 1. Business" for more information.

Our financial performance in 2003 was adversely impacted by generation overcapacity and narrowed spark spreads as discussed above. Additionally, we were adversely impacted by relatively mild weather, reduced credit and diminished trading opportunities in the marketplace due to fewer counterparties and our bankruptcy filing. The most significant factors that affected our results of operations during 2003 included

the following:

In 2003, we recorded impairment losses of \$2,067 million to recognize the impairment of all of the goodwill associated with our North America segment and \$1,566 million to recognize an impairment of our North America long-lived assets and certain indefinite lived intangible assets. See "Results of Operations" for further detail.

Gross margin in our North America segment was lower as a result of narrower conversion spreads, lower trading volumes and fewer counterparties participating in the market or willing to do business with us. Additionally, losses related to our Northeast generation assets, negatively impacted our gross margin. In addition, the termination of our contract with the DWR and the conversion of the majority of our California units to lower-priced RMR Condition 2 contracts, although preferable to current market prices, contributed to the decrease in gross margin compared to 2002.

For the year ended December 31, 2003, our operating cash flow was significantly lower than the same period in 2002 due to our posting of additional cash collateral to counterparties of \$130 million to support various energy contract positions as of December 31, 2003. Additionally, our credit status negatively impacted our operating cash flow through unfavorable working capital demands related to accelerated payment requirements by vendors while receiving cash from customers under normal payment terms.

In 2003, we completed the following sales: substantially all our investment in Birchwood Power Partners, L. P. ("Birchwood"); our Neenah generating facility; Mirant Americas Energy Capital investments; certain of our Canadian operations; and our Tanguisson power plant in Guam. The assets we divested of were considered no longer desirable given our current business plan. The

50

sales provided \$398 million in net cash received and resulted in a net gain of approximately \$113 million.

Bankruptcy Considerations

Through the bankruptcy process, we intend to restructure the Company and establish a capital structure that is consistent with the effects of overcapacity and resulting lower margins in the competitive power generation business and the resulting reduced cash flows. While in bankruptcy, we expect our financial results to be volatile as asset impairments, asset dispositions, restructuring activities, contract terminations and rejections, and claims assessments will significantly impact our consolidated financial statements. As a result, our historical financial performance is likely not indicative of our financial performance post-bankruptcy.

In addition, upon emergence from Chapter 11, the amounts reported in subsequent consolidated financial statements may materially change relative to historical consolidated financial statements as a result of revisions to our operating plans set forth in the plan of reorganization and, if required, the impact of revaluing our assets and liabilities by applying fresh start accounting in accordance with Statement of Position 90-7, "Financial Reporting by Entities in Reorganization under the Bankruptcy Code."

We expect our time in bankruptcy to follow three general phases stabilization, valuation and distribution. These phases are described below:

Stabilization During this phase, we focused on stabilizing our business operations and adjusting to the changes caused by bankruptcy. These activities included securing debtor-in-possession financing, establishing working relationships with our various committees and their advisors and performing a comprehensive contract rejection review process. We have made significant progress in this phase but are continuing our stabilization efforts in 2004.

Valuation In this phase, we will assess the business and prepare a business plan, evaluate claims made against the Mirant Debtors and prepare a plan of reorganization. We are in the early stages of this phase now and will likely be in this phase for most of 2004.

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Distribution In this phase, our plan of reorganization will be approved by the Statutory Committees and will determine how the claims of various creditors and equity holders will be satisfied. This is the final phase and should result in our emergence from bankruptcy. However, we cannot predict at this time when or if we will emerge from bankruptcy. It is possible that the assets of any one or more of the Mirant Debtors may be sold.

Upon filing for bankruptcy, our focus largely centered on preserving the value of our businesses. We developed, and the Bankruptcy Court approved, our Counterparty Assurance Program that allowed our business activities to continue to function. The program also preserved a significant portion of the existing business at the time of the filing. See "Item 1. Business" for additional information regarding our Counterparty Assurance Program.

We also established a systematic contract review process to determine which contracts we should assume and which contracts we should reject in the bankruptcy process. As of December 31, 2003, we have been successful in receiving the Bankruptcy Court's approval to reject several contracts and have successfully renegotiated the TPAs with PEPCO to provide better pricing over their remaining contractual terms. We have been unsuccessful in obtaining approval to reject the PEPCO Back-to-Back Agreement. See "Item 1. Business" for additional information regarding the contract rejections.

As part of the bankruptcy process, claims are filed with the Bankruptcy Court related to amounts that claimants believe the Mirant Debtors owe them. These claims, except for claims by certain governmental agencies, were required to be filed with the Court by December 16, 2003 (March 12,

51

2004 for claims against the Chapter 11 estates of Mirant Americas Energy Capital and Mirant Americas Energy Capital Assets). In the absence of a specific Bankruptcy Court order providing otherwise, all governmental agencies were required to file claims with the Bankruptcy Court by January 12, 2004 (May 17, 2004 for claims against the Chapter 11 estates of Mirant Americas Energy Capital and Mirant Americas Energy Capital Assets). See "Critical Accounting Policies and Estimates" for additional information.

Business Review and Market Environment

Over the past several months, we have critically reviewed each of our generating assets to determine whether such assets are profitable and generate cash. Given our current view of the market, certain of our U.S. generating assets will need to overcome several hurdles to remain operational. The following is a summary of our key strategic initiatives.

In the Northeast region, certain power plants that are adversely impacted by overcapacity in the region and significant environmental capital expenditure requirements may be permanently shutdown or temporarily shutdown ("mothballed") if current conditions persist or the Company is unsuccessful reaching an agreement on a regulatory solution. Another significant issue in the Northeast region is our New York property tax disputes at most of our New York power plants. See "Item 3. Legal Proceedings" for additional information. At our current tax rates, our New York power plants are forecasted to have negative operating cash flows. Without substantial tax relief, we will likely sell, permanently shutdown or abandon these plants. In addition, our New York power plants face a challenging operating environment due to poor supply/demand fundamentals and marginal cost bidding by our competitors.

In the Mid-Atlantic region, our financial results since 2001 include significant non-cash revenue from the amortization of the then fair values of the TPA liabilities assumed as part of our acquisition of generation assets from PEPCO. This non-cash revenue comprised approximately 34%, 30% and 19% of the gross margin of our North America segment for the years ended December 31, 2003, 2002 and 2001, respectively. The TPAs expire in June 2004 and January 2005. The expiration of the TPAs will free up committed capacity, allowing us to pursue structured load deals or other contract sales opportunities. If we are unable to replace the TPA load, we will be subject to greater price risk and to earnings and cash flow volatility when the TPAs expire. Additionally, under our Back-to-Back Agreement with PEPCO, we are obligated to purchase power from PEPCO at prices that are significantly higher than existing market prices. We attempted to reject the PEPCO Back-to-Back Agreement following our bankruptcy filing. On December 23, 2003, the federal district court in Texas denied our motion to reject the contract. We have appealed that decision. Given the material nature of the contract, we believe we may not be able to emerge from bankruptcy until this matter is resolved. See "Item 3. Legal Proceedings" for additional information regarding the PEPCO Back-to-Back Agreement.

In the West region, litigation related to our RMR contract in California represents a significant contingency that could result in sale or other disposition of some or all of our RMR units. See Note 17 to our consolidated financial statements contained elsewhere in this report for additional information. In addition, the magnitude of environmental capital expenditure requirements may require us to shut down certain power plants. We are pursuing contracts with third parties at our generating facilities in Nevada and Oregon and currently have approximately 325 MW

under long-term contract through 2008.

In the Mid-Continent region, we are working to either extend our current contracts or enter new contracts after their expiration between May 2004 and March 2007 at our generating facilities in Florida and Georgia. We are also working to open new channels to realize value from our plants in Michigan and Indiana through contracts with other utilities. Currently, we have 306 MW under long-term contracts expiring in 2006.

52

Our current business plan reflects our intentions to permanently or temporarily shutdown generating plants with a total capacity of 1,592 MW over the next five years. Additionally, we do not expect to independently complete our four suspended construction projects that consist of 2,188 MWs of generating capacity and will either pursue partnerships to complete, sell or abandon those projects. During 2004, we expect to mothball the Wrightsville generating facility, in which we have a 51% ownership interest.

In response to the current market conditions, we plan to enhance the performance of our U.S. generation assets and further reduce overhead costs. To achieve these objectives, we have embarked on two separate initiatives the first focused on increasing cash flows from our plants and the second focused on reducing overhead costs through process redesign and resizing support levels. Our plan assumes significant savings will be generated from those initiatives.

Our severance charges were approximately \$38 million in 2003. We expect that as we continue to restructure the Company, we will have additional reductions in workforce and severance charges.

Throughout 2003, we narrowed the scope of our energy trading and marketing activities. In 2004, we will focus our asset management activities on limiting open price and commodity exposures designed to lower gross margin at risk. In essence, we are focusing on managing cash flow and the volatility of cash flow within our U.S. generation portfolio. We discuss our amended Risk Management Policy in "Item 1. Business" and our accounting for these activities in "Critical Accounting Policies and Estimates."

We plan to continue our optimization trading. Beginning in November 2003, our optimization trading activities employed a significantly reduced Value at Risk ("VaR") as compared to previous years and we have eliminated several commodities and strategies that can be used in this area. This change in operational scope reflects our current view of market liquidity and available credit terms to us while in bankruptcy.

Mirant also has significant assets in the Philippines and the Caribbean. In contrast to the cyclical commodity markets of North America, Mirant's international operations include integrated utilities and generating companies with long-term contracts in cooperation with local governments which provide more stable earnings and cash flow than our North America business. Our core initiatives for our international businesses include the following:

continue to perform on our NPC contracts in the Philippines;

manage regulatory, political and customer relationships;

obtain rate increases at JPSCO in 2004, which will set our rates in Jamaica for the next five years;

reduce the system electricity losses at JPSCO as part of our continuous improvement efforts;

add additional generation capacity in the Caribbean; and

expand our energy supply business in the Philippines from available, but unused generation capacity.

Key Factors to Emerge from Bankruptcy

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We will devote much of our efforts in 2004 to activities that directly relate to restructuring the Company, streamlining work processes and preparing to emerge from bankruptcy. Some of the key issues that need to be addressed to facilitate our emergence from bankruptcy are summarized below.

Pending Litigation. We have several outstanding legal matters that we would like to resolve while under bankruptcy protection. Two of the more significant issues relate to New York property tax

53

disputes at certain of our New York power plants and the California RMR related litigation. Without sufficient tax relief, we may not be able to continue to operate our New York power plants resulting in their sale, permanent shutdown or abandonment. See "Item 3. Legal Proceedings" for additional information. The California RMR litigation represents a significant contingent liability that until it is resolved, creates significant uncertainty regarding post-bankruptcy liabilities and available cash flow from our California assets. See Note 17 to our consolidated financial statements contained elsewhere in this report for additional information regarding the California RMR litigation.

Resolution of Contracts Subject to FERC Jurisdiction. We attempted to reject the PEPCO Back-to-Back Agreement following our bankruptcy filing. Under this contract Mirant purchases power from PEPCO at prices that are significantly higher than market. On December 23, 2003, the federal district court in Texas denied our motion to reject the contract and ruled that the Bankruptcy Court cannot affect any contracts under the jurisdiction of the FERC. We have appealed that decision. We do not know the timeframe required for a resolution of this appeal. Given the material nature of the contract, we believe we may not be able to emerge from bankruptcy until this matter is resolved. See "Item 1. Proceedings under Chapter 11 of the Bankruptcy Code."

Resolution of Intercreditor Issues. The Mirant Debtors have a committee of unsecured creditors for Mirant Corporation and a committee of unsecured creditors for Mirant Americas Generation. A number of issues between the creditor committees must be resolved before we can emerge from bankruptcy. See "Item 1. Proceedings under Chapter 11 of the Bankruptcy Code."

Evaluation of Mid-Atlantic Operating Leases. We lease our Dickerson and Morgantown baseload units. Given the significance of this generation capacity to our operations in the U.S., the characterization of these leases as financings or executory contracts are a critical issue to be resolved in the bankruptcy process. See Note 18 to the consolidated financial statements contained elsewhere in this report for further discussion of these leases.

Determination of Capital Structure. Our operations in the U.S. are adversely affected by our current credit rating. Certain customers in the marketplace will no longer do business with us, and our ability to secure bilateral contracts has been hampered. In addition, we have a significant amount of capital employed in our businesses, in the form of cash collateral posted with counterparties to support current commodity positions. Unless we are able to achieve a capital structure to support a more favorable credit rating, we will continue to face a very high cost of capital.

Other Key Factors Employee Turnover

We have experienced an increased level of employee turnover. We are addressing employee turnover by using temporary labor and hiring new employees, but institutional knowledge and efficiency have been adversely impacted. We are implementing a Key Employee Retention Plan for 2004-2005. Employee retention company-wide is a key focus area in 2004.

Critical Accounting Policies and Estimates

The accounting policies described below are considered critical to obtaining an understanding of our consolidated financial statements because their application requires significant estimates and judgments by management in preparing our consolidated financial statements. Management's estimates and judgments are inherently uncertain and may differ significantly from actual results achieved. We believe that the following critical accounting policies and the underlying estimates and judgments

54

involve a higher degree of complexity than others do. We discussed the selection of and application of these accounting policies with the Audit Committee of the Board of Directors.

Accounting for Commodity Trading and Marketing Activities

Our North America businesses use derivatives and other contracts to hedge our power generation assets and to engage in optimization trading activities. We use a variety of derivative contracts, such as futures, swaps and option contracts, in the management of our business. Such derivative contracts have varying terms and durations, or tenors, which range from a few days to a number of years, depending on the instrument.

We reclassified certain derivatives or energy contracts into the following categories: optimization trading, asset management and legacy. All of these activities are reflected in our financial statements at fair value, with changes in fair value recognized currently in earnings except for a limited number of transactions that are considered normal purchases or normal sales and therefore qualify for use of accrual accounting. Certain derivative transactions are entered into under master netting agreements that provide us with legal right of offset in the event of default by the counterparty and are, therefore, reported net in our consolidated balance sheets.

The fair value amounts contained within our consolidated financial statements are estimates based largely on quoted market prices or, if no active market exists, quantitative pricing models. We estimate the fair value of certain derivative contracts using our pricing models based on contracts with similar terms and risks. Our modeling techniques assume market correlation and volatility, such as using the prices of one delivery point to calculate the price of the contract's delivery point. The nominal value of the transaction is also discounted using a London InterBank Offered Rate ("LIBOR") based forward interest rate curve. In addition, the fair value of our derivative contracts reflects the risk that the counterparties to these contracts may default on their obligations. The degree of complexity of our pricing models increases for longer duration contracts, contracts with multiple pricing features and off-hub delivery points. The amounts recorded as revenue change as estimates are revised to reflect actual results and changes in market conditions or other factors, many of which are beyond our control.

Non-derivative energy-related contracts such as transportation contracts, storage contracts and tolling agreements, are required to be accounted for as executory contracts using the accrual method of accounting and not at fair value. As a result of the consensus on EITF Issue 02-03, all non-derivative energy trading contracts as of January 1, 2003 that existed on October 25, 2002 have been adjusted to historical cost resulting in a cumulative effect adjustment of \$26 million, net of taxes, which was recorded in the first quarter of 2003. Certain of these contracts were reclassified from price risk management liabilities to transition power agreements and other obligations on our consolidated balance sheets.

Because we use derivatives, our financial statements including gross margin, operating income, balance sheet ratios and cash flow are, at times, volatile and subject to fluctuations in value due to changes in commodity prices. The largest of our derivative instruments is the PEPSCO Back-to-Back Agreement related to our purchase power contracts. The change in fair value of the two largest contracts over the last three years is shown below. We expect continued changes in fair value over the terms of the contracts, the longest of which extends to 2021.

Contract	Expiration	Increase/(Decrease) to Gross Margin		
		2003	2002	2001
		(in millions)		
Ohio Edison	December 2005	\$ 114	\$ 83	\$ (153)
Panda Brandywine	October 2021	63	(51)	(46)
Total		\$ 177	\$ 32	\$ (199)

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Our consolidated financial statements include, as liabilities subject to compromise, the pre-petition liabilities recorded on our consolidated balance sheet at the time of our bankruptcy filing with the exception of the settlements approved by the Bankruptcy Court prior to December 31, 2003. In addition, we also reflect as liabilities subject to compromise the probable claim amount relating to liabilities for rejected contracts, litigation, accounts payable-trade, debt and other. The probable claims estimate included in our December 31, 2003 consolidated financial statements is approximately \$100 million. These probable claims require management to estimate the likely claim amount that will be allowed by the Bankruptcy Court prior to the Bankruptcy Court's ruling on the individual claims. These estimates are based on assumptions of future commodity prices, reviews of claimants' supporting material and assessments by management and outside experts. We expect that our estimates, although based on the best available information, will change, as the claims are resolved in the Bankruptcy Court.

As of December 31, 2003, we had approximately 7,500 proofs of claim filed in our Chapter 11 cases totaling approximately \$227 billion. Our preliminary analysis determined that approximately \$215 billion of the total represents redundant claims, which are primarily duplicate claims filed against multiple Mirant Debtors. The amount of the proofs of claim submitted net of redundancies approximates \$12 billion. This amount plus \$2 billion of liabilities recorded on the consolidated balance sheet for which claims have not been filed represents the estimate of current claims exposure against the Mirant Debtors which excludes damage claims related to rejection of certain contracts. Of the \$14 billion, we have approximately \$9 billion recorded as liabilities subject to compromise on our consolidated balance sheet as of December 31, 2003.

In addition, numerous claims were filed with no dollar amount indicated or with no range listed on the proofs of claim. We cannot accurately estimate the additional exposure that may be allowed by the Bankruptcy Court related to these claims or as a result of the amendment of other previously filed claims. Our analysis of claims focused on claims not reflected on our consolidated balance sheet and claims that had different amounts than what our records indicated. The remaining claims of approximately \$5 billion as of December 31, 2003 consisted of the following categories (in millions).

Description	Claim Amount as of December 31, 2003
Contract rejections	\$ 1,749
Litigation	1,372
Accounts payable-trade	624
Debt	434
Other	818
Total	\$ 4,997

As of March 24, 2004, we had approximately 7,800 proofs of claim filed in our Chapter 11 cases totaling approximately \$242 billion, of which approximately \$227 billion represents redundant claims. An additional \$2 billion represents the Company's preliminary estimate of the amount of the proofs of claim for which the Company has identified a basis for objection to the claim. The amount of the proofs of claim net of redundancies and amounts for which we have identified a basis for objection totals approximately \$13 billion. This amount plus \$2 billion of liabilities recorded on the consolidated balance sheet for which claims have not been filed represents the estimate of current claims exposure against the Mirant Debtors as of March 24, 2004.

Our estimates may be materially different than the amounts ultimately allowed in the Chapter 11 proceedings. The following is a summary of the procedures we performed to calculate the probable claim amount for each type of claim.

56

Contract Rejections: We recorded an estimated damage claim amount for those contracts that we have successfully rejected through the Bankruptcy Court process. We calculated the estimated claim amount as the fair value of the rejected contract based on what we believe a willing third party would pay to Mirant to step into the contract. For certain contracts, these estimates involve long-range commodity price assumptions that are difficult to predict. We estimated the fair value of these contracts using the same procedures used to value our price risk management assets and liabilities in the normal course of business. In this category, we estimated that our incremental liability subject to compromise is approximately \$66 million, which is net of \$99 million of notes receivable that we wrote off due to us from one of the claimants.

Litigation: We assessed our legal exposures through discussions with applicable legal counsel and analysis of case law and legal precedents. We recorded our best estimate of a loss when the loss was considered probable, or the low end of our range if no estimate was better than another estimate within a range of estimates. For matters that are not probable and/or estimable, we have recorded no liability. As of December 31, 2003, we recorded no incremental liabilities subject to compromise related to claims involving litigation.

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Accounts Payable-Trade: For all invoiced claims for services performed but not reflected in our pre-petition accounts payable on our consolidated balance sheet, we recorded a liability subject to compromise equal to the claim amount. For claims related to services that we cannot verify were performed or claims related to alleged damages resulting from our bankruptcy proceedings, we have not recorded any liability. As of December 31, 2003, we have recorded approximately \$18 million of incremental liabilities subject to compromise related to claims within this category.

Debt: We compared estimated damage claim amounts for our debt and accrued interest obligations to our records. We accrued additional administrative and interest expenses for properly supported claims of approximately \$16 million as liabilities subject to compromise on our accompanying consolidated balance sheets as of December 31, 2003.

Other: Other claims include claims filed across multiple categories such as taxes and employee claims. We did not believe that any of these claims met the probable criteria for accrual at December 31, 2003 and as a result, we recorded no incremental liabilities subject to compromise related to claims within this category.

Income Taxes

At December 31, 2003, we had a valuation allowance of approximately \$2.1 billion primarily related to our U.S. net deferred tax assets. In assessing the recoverability of our deferred tax assets, we consider whether it is likely that some portion or all of the deferred tax assets will be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences will be deductible. While in bankruptcy, we expect to continue to record valuation allowances for net operating losses from our U.S. businesses. We will not be able to forecast future taxable income while in bankruptcy given the uncertainty surrounding the ultimate settlement of our liabilities subject to compromise.

As of December 31, 2003, we have approximately \$2.2 billion of U.S. federal net operating loss ("NOL") carryforwards for financial reporting purposes. Similarly, there are approximately \$3.6 billion of state net operating loss carryforwards. The ultimate utilization of our NOLs will depend on several factors, such as the amount of our debt that is cancelled through the bankruptcy proceedings and the financial plan contained in the plan of reorganization. If a portion of our debt is cancelled in bankruptcy, the amount of the cancelled debt reduces tax attributes such as our NOLs which, depending on our tax elections, could reduce or fully utilize the available NOLs. The plan of reorganization will indicate if NOLs are expected to exist post-bankruptcy, the projected timeframe for utilizing the available NOLs and the degree to which they are expected to be utilized.

57

We are under audit by several governmental entities for multiple years. Considerable judgment is required to determine the tax treatment of a particular item that involves interpretations of complex tax laws. A tax liability is recorded for certain tax filing positions where our inability to sustain the tax return position is probable and estimable. Such liabilities are based on judgment and it can take many years between the time when a liability is recorded and when the related filing position is no longer subject to question. Management periodically reviews these matters and adjusts the liabilities recorded as appropriate.

Long-Lived Assets

We evaluate our long-lived assets (property, plant and equipment) and definite-lived intangibles for impairment whenever indicators of impairment exist or when we commit to sell the asset. The accounting standards require that if the sum of the undiscounted expected future cash flows from a long-lived asset or definite-lived intangible is less than the carrying value of that asset, an asset impairment charge must be recognized. The amount of an impairment charge is calculated as the excess of the asset's carrying value over its fair value, which generally represents the discounted future cash flows from that asset or in the case of assets we expect to sell, at fair value less costs to sell. In 2002, we recorded impairment charges of \$610 million as described in Note 7 to our consolidated financial statements contained elsewhere in this report. In the second quarter of 2003 an analysis of North America's long-lived assets was performed as a result of certain triggering events as described in Note 8 to our consolidated financial statements contained elsewhere in this report. The analysis indicated no impairment was present. In the fourth quarter of 2003, it became apparent that we will not be able to fully recover the carrying value of certain of our long-lived assets and certain identifiable intangibles related to our North America long-lived assets. As a result, we recorded impairment charges in 2003 of \$1,567 million as described in Note 7 to our consolidated financial statements contained elsewhere in this report. Further, we determined that no events have occurred in 2003 that would require a review of our international long-lived assets for impairment. The key assumptions, sensitivities and conclusions from our North America analysis are summarized below.

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The 10-year business plans for each of our U.S. generating plants provide the foundation for determining the nominal future cash flows. Since the economic useful life of our plants is longer than 10 years, such business plans were extrapolated over the plants' expected economic useful lives. The assumption regarding the economic useful lives of our plants is discussed in detail below.

The gross margin amounts in the business plans are the most difficult area to estimate and were determined by our internal forecasting model. This model is a production cost model that uses a variety of inputs, including: capacity factors; heat, emissions and outage rates; variable operation and maintenance assumptions; projected fuel prices; hydro capacity and energy; hourly temperature and humidity data; transfer capabilities to neighboring regions; and new unit construction and unit retirement assumptions. The model uses these inputs to calculate the estimated power and fuel prices and how our plants will perform given the forecasted scenarios. Since forecasting plant gross margin is the most significant model output and also the most difficult to predict over a long period of time, we benchmarked our market views against third party data and engaged a third party appraisal firm to review our model assumptions and results.

Our forecasting model assumes overcapacity in most major markets. We assume that under current market and regulatory conditions, market equilibrium does not occur until 2007 in some of our major markets and as late as 2011 in others.

The 10-year business plans include estimated cash savings from the OPI initiative that are more fully discussed in "Item 1. Business." The total amount of the cash savings assumed ranges from \$90 million to \$150 million each year of the plan.

58

The economic useful lives for our plants were based on industry analysis performed by the third party appraisal firm and the implications of our business plan regarding specific plants. The analysis involved specific review of simple cycle, combined cycle and coal-fired units similar to the facilities we have in our portfolio. The review also considered historical data, other industry sources and the professional experience of the third party appraisal firm. The capital expenditure program planned for each facility is also a major determinant in a plant's economic useful life. Shorter economic useful lives were used for plants where management has determined that early shutdown was the most appropriate course of action. Except for when our financial plan indicated shorter economic useful lives were warranted, the economic useful lives used in our analysis are consistent with prior years.

In cases where an impairment was indicated, we discounted the cash flows using rates ranging from 9% to 10% depending on the age of the plant and whether the plant's output has been sold under forward contracts. We used discount rates closer to 9% for generation plants that are newer or have a larger portion of the plant's power sold under forward contracts. We used discount rates closer to 10% for generation plants that are older or have a smaller portion of the plant's power sold under forward contracts.

Suspended construction projects have no associated business plans as management has determined that completion of these projects to be highly unlikely. The fair value of a suspended project was based on estimates of what we believe a third party would pay for the asset in today's market. Certain suspended projects were grouped with operating plants for purposes of testing recoverability while others were analyzed on a stand-alone basis. This determination was based on whether the suspended project would be considered to have its own independent cash flows (if completed) or if the suspended project would be required to be operated in conjunction with other operating plants if the suspended project was to be completed.

Our impairment analysis included multiple cash flow scenarios at several of the plants that reflect alternative outcomes. We weighted the scenarios, when applicable, based on management's assessment of the probability of their outcomes. Alternative scenarios included:

A percentage adjustment applied to Mirant's forecast model based on a comparison to average forward market price curves.

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Changes in projected property tax relief related to our Northeast generation assets.

Varied economic useful lives for our Northeast and West generating assets where continued operation will be affected by current or future discussions with local regulatory agencies.

The Company's methodology and resultant impairment calculations were reviewed by an independent third party appraisal firm knowledgeable in the industry and with extensive experience in the valuation of power plants. Refinements in the Company's methodology were made in connection with such independent review and recorded by the Company.

The impairment charge of \$1,567 million relates to our generating assets in the Northeast, Mid-Continent and West regions and suspended construction projects, as follows (in millions):

Northeast generation assets	\$	265
Mid-Continent		245
West generation assets		694
Suspended construction projects		362
International		1
		<hr/>
Total long-lived asset impairment losses	\$	1,567
		<hr/>

59

Goodwill and Indefinite-lived Intangible Assets

We evaluate our goodwill and indefinite-lived intangible assets for impairment at least annually and periodically if indicators of impairment are present. An impairment occurs when the fair value of a reporting unit is less than its carrying value including goodwill (Step I). For this test our reporting units are North America, Asia and Caribbean. The amount of the impairment charge, if an impairment exists, is calculated as the difference between the implied fair value of the reporting unit goodwill and its carrying value (Step II). We are required to test for goodwill each year at October 31 and whenever contrary evidence exists as to the recoverability of goodwill.

The accounting estimates related to determining the fair value of goodwill requires management to make assumptions about future revenues, operating costs and forward commodity prices over the life of the assets. Our assumptions about future revenues, costs and forward prices require significant judgment because such factors have fluctuated in the past and will continue to do so in the future.

As a result of two credit rating downgrades, opposition to Mirant's restructuring proposals, material unfavorable variances to our prior business plan through the second quarter of 2003 and a lawsuit filed against our restructuring proposal by Mirant Americas Generation bondholders, we assessed our North America goodwill for impairment at June 30, 2003. Additionally, we considered our bankruptcy filing on July 14, 2003, as an event, which confirmed our conclusion that a significant adverse change in our business climate in North America had occurred and was continuing. As a result of the foregoing factors, we performed a goodwill impairment assessment.

In performing our impairment analysis, we determined the fair value of our North America reporting unit using discounted cash flow techniques and assumptions as to business prospects using the best information available. The results of our analysis indicated that goodwill was impaired related to our North America reporting unit. Accordingly, in the second quarter of 2003, we recorded an impairment charge of approximately \$2.1 billion, representing the entire balance of goodwill attributable to our North America reporting unit.

The critical assumptions used in our North America impairment analysis included the following: assumptions as to the future electricity and fuel prices; future levels of gross domestic product growth; levels of supply and demand; and estimates of our weighted average cost of capital.

The above assumptions were critical to our determination of the fair value of the goodwill and other intangible assets of the Company. The combined subjectivity and sensitivity of our assumptions and estimates used in our goodwill impairment analysis could result in a reasonable person concluding differently on those critical assumptions and estimates possibly resulting in an impairment charge being required for a lesser amount. However, based on our analysis, our North America reporting unit failed the Step I impairment test by a significant amount as the carrying value exceeded the fair value by approximately \$1.6 billion.

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We performed our annual test for goodwill impairment effective October 31, 2003 for our Asia and Caribbean reporting units. The test was based upon the business plan completed in early 2004. The results of those tests indicated that the goodwill balance, which totals approximately \$587 million at December 31, 2003 is realizable based on the future business plans for those businesses. We engaged a third party appraisal firm to review our model assumptions and results.

In our Caribbean reporting unit, the fair value of the reporting unit exceeded the carrying value including goodwill at October 31, 2003 by \$221 million. The cost of capital rate significantly impacts the fair value of our projected future cash flows in the Caribbean. We used a cost of capital of 11% in determining the present value of our projected future cash flows. The sensitivity of the fair value of our projected future cash flows is such that a 100 basis point change in the cost of capital rate would change the discounted value of our projected future cash flows by approximately \$44 million which would still not indicate an impairment.

60

In Asia, our power plant ownership transfers to the NPC between 2024 and 2025. The contractual ownership transfer will impact our annual goodwill analysis resulting in a portion of the remaining goodwill balance being written off periodically at some point in the future until the time of ownership transfer. We cannot predict when, or if, in the future an impairment will incur.

In our Asia reporting unit, the fair value of the reporting unit exceeded the carrying value including goodwill at October 31, 2003 by approximately \$100 million. The critical assumptions used in our Asia analysis are as follows:

Mirant's Sual and Pagbilao projects operate under long-term BOT agreements with capacity committed to NPC of 1,000 MW and 700 MW, respectively. The agreements for the Sual and Pagbilao projects end at the end of October 2024 and August 2025, respectively. At the end of the agreements, the plants are required to be transferred to NPC free from any lien or payment of compensation. Over 90% of the revenues are expected to come from fixed capacity charges that are paid without regard to dispatch level of the plant. Capital recovery fees, infrastructure fees and service fees, which comprise most of the fixed capacity charges, are denominated in U.S. dollars. The fixed operating fees, energy fees and other incidental fees have both U.S. dollar and Philippine peso components that are both indexed to inflation rates.

Mirant holds a 20% minority interest in Ilijan, a 1,251 MW gas-fired combined cycle power plant in the Philippines. Ilijan operates under a 20-year energy conversion agreement for 1,200 MW with NPC.

The Asia forecasted cash flow data assumes the Pagbilao and Sual minority shareholders exercise the put options requiring Mirant Asia-Pacific to purchase the minority shareholders' interest in the Pagbilao and Sual projects in 2004 and 2005.

The forecasted cash flows were impacted by complex assumptions related to U.S. and local country taxes.

The cost of capital rate significantly impacts the fair value of our projected future cash flows. We used a cost of capital of 14% in determining the present value of our projected future cash flows. The sensitivity of the fair value of our projected future cash flows is such that a 100 basis point change in the cost of capital rate would change the discounted value of our projected future cash flows by approximately \$87 million.

Pension and Other Post-Retirement Benefits

We have various defined benefit plans. We use several statistical methods and other factors to calculate the expenses and liabilities related to these plans. These factors include our assumptions about the discount rate, expected return on plan assets and rate of future compensation increases. In addition, assumptions related to mortality rates and other factors are made by our actuarial consultants to estimate our projected benefit obligation. The actuarial estimates may differ significantly from actual results. See Note 15 to our consolidated financial statements contained elsewhere in this report for additional information concerning our employee benefit plan obligations, assumptions and expenses.

Litigation

We are currently involved in certain legal proceedings. These legal proceedings are discussed in "Item 3. Legal Proceedings" and Note 17 to our consolidated financial statements contained elsewhere in this report. We estimate the range of liability through discussions with applicable legal counsel and analysis of case law and legal precedents. We record our best estimate of a loss when the loss is considered probable, or the low end of our range if no estimate is better than another estimate within a range of estimates. As additional information becomes available, we reassess the potential liability related to our pending litigation and revise our estimates. Revisions in our estimates of the potential

liability could materially impact our results of operations, and the ultimate resolution may be materially different from the estimates that we make.

Financial Condition

Liquidity and Capital Resources

The matters described in this section relate to future events or expectations and may be significantly affected by the Chapter 11 filings. The Chapter 11 filings will involve, or may result in, various restrictions on the Company's activities, limitations on financing, the need to obtain Bankruptcy Court approval for various matters and uncertainty as to relationships with vendors, suppliers, customers and others with whom the Company may conduct or seek to conduct business.

During the pendency of the Chapter 11 proceedings, Mirant and certain of its subsidiaries, including Mirant Americas Generation and Mirant Mid-Atlantic, are participating in an intercompany cash management program approved by the Bankruptcy Court pursuant to which cash balances at Mirant and the participating subsidiaries are transferred to central concentration accounts and, if necessary, lent to Mirant or any participating subsidiary to fund working capital and other needs, subject to the intercompany borrowing limits approved by the Bankruptcy Court. All intercompany transfers by such Mirant entities will be recorded as intercompany loans on a junior superpriority administrative basis and are secured by junior liens on the assets of the relevant borrowing group. Upon entering into the debtor-in-possession credit facility described below, the cash balances of the participating Mirant Debtors became subject to security interests in favor of the debtor-in-possession lenders and, upon certain conditions, such cash balances are swept into concentration accounts controlled by the debtor-in-possession lenders.

As of December 31, 2003, the intercompany borrowing limits (exclusive of any intercompany transfers of goods and/or services for value incurred in the ordinary course of business and consistent with prior practice) are as follows:

\$100 million (plus existing intercompany loan from Mirant Americas Energy Marketing) for Mirant and its direct and indirect Debtor subsidiaries other than Mirant Americas Energy Marketing, Mirant Americas Generation and its direct and indirect subsidiaries and West Georgia;

\$100 million for Mirant Americas Energy Marketing;

\$150 million for Mirant Americas Generation and its direct and indirect Debtor subsidiaries other than Mirant Mid-Atlantic and its direct and indirect Debtor subsidiaries; and

\$200 million for Mirant Mid-Atlantic and its direct and indirect Debtor subsidiaries.

On November 5, 2003, certain of the Mirant Debtors entered into a two-year debtor-in-possession credit facility for up to \$500 million (the "DIP Facility") with General Electric Capital Corporation ("GECC"). The orders entered by the Bankruptcy Court approving the DIP Facility permit up to \$300 million of borrowings, which amount may be increased up to \$500 million upon written approval of each of the Statutory Committees or further order of the Bankruptcy Court. The DIP Facility also contains an option, exercisable by Mirant or Mirant Americas Generation, to remove Mirant Americas Generation and its subsidiaries as borrowers and obligors under the DIP Facility and reduce the DIP Facility commitment to a maximum of \$200 million of borrowings. Pursuant to the DIP Facility, the DIP Borrowers are subject to a number of affirmative, reporting, restrictive and financial covenants. The covenant descriptions below are summaries of the respective provisions.

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Affirmative Covenants. Each DIP Borrower has agreed to certain affirmative covenants, subject to specified exceptions and qualifications, including:

- (i) to, and to cause its domestic subsidiaries to, do all things necessary to preserve and keep in full force and effect its corporate existence and its material rights and franchises, and preserve and protect all of its material assets and properties used or useful in the conduct of its business, and keep the same in good repair and working order;
- (ii) to pay and discharge or cause to be paid and discharged promptly all material charges payable by it, except when a nonpayment is permitted or a payment is prohibited by the Bankruptcy Court or the Bankruptcy Code;
- (iii) to, and to cause each of its domestic subsidiaries to, keep adequate books and records with respect to its business activities in which proper entries, reflecting all financial transactions, are made in accordance with GAAP;
- (iv) to, and to cause each of its domestic subsidiaries to, maintain insurance described in form and amounts as is customary for companies of the same or similar size in the same or similar businesses as that of the DIP Borrowers and as commercially reasonably available and with insurers reasonably acceptable to the agent;
- (v) to, and to cause each of its domestic subsidiaries to, comply with all federal, state, local and foreign laws and regulations applicable to it, including those relating to ERISA, labor laws, and environmental laws, except to the extent that the failure to comply, individually or in the aggregate, could not reasonably be expected to have a material adverse effect;
- (vi) except as could not reasonably be expected to have a material adverse effect, to maintain the status of the specified power generators as "exempt wholesale generators" under PUHCA and the authority of the specified power generators to sell at wholesale electric capacity and energy at market-based rates; and
- (vii) to, and to cause each of its subsidiaries to, and to cause each person within its control to conduct its operations and keep and maintain its real property in compliance with all environmental laws and environmental permits other than noncompliance that could not reasonably be expected to have a material adverse effect, and to implement any and all investigation, remediation, removal and response actions that the DIP Borrower determines (in its good faith reasonable judgment) are appropriate or necessary to maintain the value and marketability of the real property for its current use or to otherwise comply with environmental laws and environmental permits pertaining to the release of any hazardous material.

Reporting Requirements. Under the DIP Facility, the DIP Borrowers have agreed to provide certain reports and notifications, subject to exceptions and qualifications specified in the DIP Facility, including:

- (i) On a weekly basis, an updated cash flow forecast prepared by the Company, as of the last day of the immediately preceding week;
- (ii) On a monthly and quarterly basis, financial information, certified by management, regarding Mirant and its subsidiaries, consisting of (a) consolidated unaudited balance sheets as of the close of such month/quarter and the related statements of income (loss) and cash flows, in each case, for that month/quarter and the portion of the year ending as of the close of such month/quarter and unaudited statements of income (loss) and cash flows for such month/quarter, setting forth specified comparative information, and (b) unaudited consolidating statements of income (loss) as of the close of such month/quarter and for the portion of the year ending as of the close of such month/quarter and gross margin statements as of the close

of such month/quarter and for that portion of the year ending as of the close of such month/quarter, all the foregoing prepared in accordance with GAAP. For the months ended January 31, 2004 and February 29, 2004, the delivery date has been extended to April 30, 2004. In addition, the Company has agreed to deliver quarterly a management discussion and analysis for the Company that includes a comparison to projections for that quarter, where available, and a comparison of performance for that quarter to the corresponding period in the prior year;

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- (iii) On a quarterly basis, (a) a summary of the outstanding balance of all intercompany notes as of the last day of such quarter (not to include intercompany notes solely between non-US subsidiaries), and (b) an operating report in respect of each power generation facility setting forth for the quarter, (i) the equivalent availability factor, (ii) the capacity factor, (iii) megawatt hours generated, (iv) average heat rates, (v) equivalent forced outage rates, and (vi) such additional items as the agent may reasonably request and that are readily available;
- (iv) As soon as available, but not later than the end of each year (for 2004, the delivery date was extended to March 1, 2004), an annual operating plan for the Company and its subsidiaries, on a consolidated basis;
- (v) On an annual basis, within ninety (90) days after the end of each year (for the 2003 fiscal year, the delivery date has been extended to April 30, 2004), (a) a summary of the outstanding balance of all intercompany notes as of the last day of such year, (b) audited financial statements for the Company on a consolidated basis, prepared in accordance with GAAP and certified without qualification or exception (other than as to going-concern), by an independent certified public accounting firm of national standing or otherwise acceptable to agent and (c) unaudited consolidating statements of income and gross margin;
- (vi) Promptly upon learning thereof, but in any event within five (5) days thereafter, notice of the occurrence of any material adverse development with respect to any previously disclosed litigation or of any litigation commenced or threatened against the Company and its subsidiaries that meets specified thresholds; and
- (vii) Within three business days after an executive officer of any DIP Borrower has actual knowledge of any event that triggers the imposition of a "reserve" against the borrowing base under the DIP Facility, the Company shall provide a written, detailed description of such event, action or omission.

Restrictive Covenants. Under the DIP Facility, the DIP Borrowers are subject to certain restrictions on their activities, including their ability to:

- (i) merge or amalgamate with, consolidate with, acquire all or substantially all of the assets or stock of, or otherwise combine with or acquire, any person;
- (ii) make, or permit any of their domestic subsidiaries to make, or permit to exist any investment in, or make, accrue or permit to exist any loans or advances of money to, any person;
- (iii) create, incur, assume or permit to exist, or permit any of their domestic subsidiaries to create, incur, assume or permit to exist, any indebtedness, except for specified exceptions, including indebtedness incurred after the Petition Date secured by permitted purchase money liens and capital lease obligations, indebtedness under the DIP Facility, unfunded pension fund and other employee benefit plan obligations and liabilities to the extent they are permitted to remain unfunded under applicable law, indebtedness of the DIP Borrowers incurred prior to the Petition Date, certain indebtedness by and among the DIP Borrowers and their respective domestic subsidiaries, and other indebtedness of the DIP Borrowers and their respective

domestic subsidiaries in an aggregate amount not to exceed at any time outstanding \$10 million;

- (iv) enter into any transaction with any affiliate thereof (other than a transaction among the DIP Borrowers and their domestic subsidiaries) except in the ordinary course of and pursuant to the reasonable requirements of the DIP Borrower's or its domestic subsidiary's business and upon fair and reasonable terms that are not materially less favorable to the DIP Borrower or its domestic subsidiary than would be obtained in a comparable arm's length transaction;
- (v)

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enter into any lending or borrowing transaction with employees, except to the extent not prohibited by the Bankruptcy Code, loans or advances to its respective employees in the ordinary course of business consistent in all material respects with past practices for travel and entertainment expenses, relocation costs and similar purposes;

- (vi) other than as due under existing agreements, pay to any officer, director or employee any employment wages, salary, bonus or other compensation of any type or character that is not consistent in all material respects with past practices other than retention, performance and severance payments which, if required, have been approved by the Bankruptcy Court and which have been approved by Agent (provided that consent shall not be required for the making of any retention, performance or severance payment so long as borrowing availability under the DIP Facility is more than \$250 million);
- (vii) make any changes in any of its business objectives, purposes or operations that could reasonably be expected to have or result in a material adverse effect on the business and operations of the DIP Borrowers;
- (viii) except for exceptions specified in the DIP Facility, create, incur, assume or permit to exist any guaranteed indebtedness;
- (ix) create, incur, assume or permit to exist, or permit any of their domestic subsidiaries to create, incur, assume or permit to exist, any lien on or with respect to its assets except for specified permitted liens, including certain permitted property tax liens, liens in existence on the Petition Date, liens created after the Petition Date by conditional sale or other title retention agreements or in connection with purchase money indebtedness with respect to assets acquired by any DIP Borrower or any domestic subsidiary thereof in the ordinary course of business, liens with respect to letters of credit, cash and cash equivalents to secure permitted energy marketing and trading activities, liens granted in connection with permitted energy marketing and trading activities in favor of a customer or trading counterparty pursuant to a netting agreement or similar arrangement entered into in the ordinary course of business, and liens on assets, other than specified collateral, not in excess of \$5 million;
- (x) sell, transfer, lease, convey, assign or otherwise dispose of any of its properties or other assets, subject to exceptions specified in the DIP Facility, which exceptions include, the sale of inventory in the ordinary course of business consistent with past practice, the disposition in the ordinary course of obsolete property, certain leases or subleases of real property that do not interfere in any material respect in the business of any DIP Borrower, so long as no default or event of default has occurred and is continuing, and any disposition of assets for total consideration not exceeding \$300 million in the aggregate in deemed collateral release value and \$600 million in the aggregate of gross proceeds (provided, that the consideration shall not be less than the fair market value and not less than ninety percent (90%) of the consideration for each such asset sold shall be payable in cash); and
- (xi) incur obligations in connection with energy trading and marketing activities with a maximum Value at Risk in excess of \$60 million at any time outstanding, subject to grace periods specified in the DIP Facility.

65

Financial Covenants. The DIP Borrowers have agreed to certain financial covenants under the DIP Facility.

Capital Expenditures. During the respective quarters, the DIP Borrowers have agreed not to make capital expenditures (other than certain non-budgeted capital expenditures) in excess of the aggregate amounts set forth opposite each of such periods:

For the Fiscal Quarter Ended:	Maximum Amount:
December 31, 2003	\$ 77,073,000
March 31, 2004	\$ 74,374,000
June 30, 2004	\$ 68,809,000
September 30, 2004	\$ 38,802,000
December 31, 2004	\$ 35,606,000
March 31, 2005	\$ 76,168,000

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For the Fiscal Quarter Ended:	Maximum Amount:
June 30, 2005	\$ 82,442,000
September 30, 2005	\$ 74,724,000

However, if the amount of capital expenditures (not including non-budgeted capital expenditures) actually made by the DIP Borrowers and their domestic subsidiaries during any such period is less than the amount that is permitted to be made during such period, then the unused portion thereof may be carried forward to subsequent periods.

Springing Financial Covenant. Beginning with the month in which availability under the DIP Facility is at any time less than or equal to \$50 million, the DIP Borrowers and their subsidiaries, on a consolidated basis, shall be required to meet a minimum fixed charge coverage ratio of at least 1.0 or have unrestricted cash of at least \$500 million.

Minimum Liquidity. Under the DIP Facility, the DIP Borrowers and their domestic subsidiaries are required to maintain liquidity of not less than \$50 million at all times.

66

Total Cash, Cash Equivalents and DIP Facility Availability

The table below sets forth total cash, cash equivalents and availability under the DIP Facility and other credit facilities of Mirant Corporation and its subsidiaries as of April 2, 2004 and December 31, 2003 and 2002, respectively (in millions):

	April 2, 2004	December 31, 2003	December 31, 2002
Cash and Cash Equivalents:			
Debtors:			
Mirant Corporation	\$ 399	\$ 467	\$ 862
Mirant Americas Generation(1)	117	115	208
Mirant Mid-Atlantic(1)	279	209	44
Mirant Americas Energy Marketing	25	161	33
Other subsidiaries	184	163	69
	<u>1,004</u>	<u>1,115</u>	<u>1,216</u>
Total debtors cash and cash equivalents	1,004	1,115	1,216
Non-debtors	511	512	490
	<u>1,515</u>	<u>1,627</u>	<u>1,706</u>
Total cash and cash equivalents	1,515	1,627	1,706
Less: Cash required for operating, working capital or other purposes or restricted by the subsidiaries' debt agreements	388*	392*	367*
	<u>1,127</u>	<u>1,235</u>	<u>1,339</u>
Total available cash and cash equivalents	1,127	1,235	1,339
Available under pre-petition credit facilities			51
Available under DIP Facility	274	279	
	<u>1,401</u>	<u>1,514</u>	<u>1,390</u>
Total cash, cash equivalents and credit facilities availability	\$ 1,401	\$ 1,514	\$ 1,390

*

Amounts designated as "Cash required for operating working capital or other purposes or restricted by the subsidiaries' debt agreements" are estimated amounts. In addition, as of April 2, 2004 and December 31, 2003, such amounts include approximately \$87 million and \$92 million, respectively, held by certain Canadian subsidiaries that are subject to protection under the CCAA in Canada.

- (1) Since filing for protection under Chapter 11, none of the debtors have made dividends or capital contributions. As discussed above, Mirant and certain of its subsidiaries, including Mirant Americas Generation and Mirant Mid-Atlantic, are participating in an intercompany cash management program approved by the Bankruptcy Court.

For the year ending December 31, 2004, we forecast a decrease of cash of approximately \$342 million. In 2004, we expect to generate cash from operations of approximately \$3 million. This forecast includes the assumption that we will post approximately \$187 million of additional net cash collateral in 2004. This collateral is expected to be required to support new contracts we expect to enter into relating to our North America generation asset portfolio. A significant portion of these contracts are expected to replace the TPAs expiring in 2004 that currently hedge our Mid-Atlantic generation facilities. These new contracts would be expected to reduce the potential risk associated with the portion of the generation portfolio they are used to economically hedge. In addition, our 2004 forecast assumes continued payments under the power purchase agreements ("PPAs") and the payment of approximately \$105 million of bankruptcy related professional fees. Our 2004 forecast also assumes the non-payment of interest of approximately \$500 million on pre-petition unsecured debt.

We expect to use cash in investing activities of approximately \$193 million. This forecast includes the assumption that we will incur capital expenditures of approximately \$204 million.

67

We expect to use cash in financing activities of approximately \$152 million. This forecast includes the assumption that we will repay long-term debt related to our Philippine operations of approximately \$160 million and incur approximately \$15 million in new net debt in our International operations.

This forecast excludes certain potential increases in cash resulting from actions taken in connection with the bankruptcy proceedings, including the benefit realized by the rejection or re-negotiation of additional pre-petition contracts. We anticipate that our total cash and cash equivalents, together with our debtor-in-possession financing, will be sufficient to fund our operations during the bankruptcy proceedings.

As discussed in "Item 1. Business," we are subject to extensive environmental regulations. Based on expected requirements and technological advances, we estimate environmental expenditures to be approximately \$374 million over the next five years.

Debt Obligations, Off-Balance Sheet Arrangements and Contractual Obligations

We are in the process of evaluating the Mirant Debtors' executory contracts in order to determine which contracts will be assumed, assumed and assigned, or rejected. See "Item 1. Proceedings under Chapter 11 of the Bankruptcy Code." The table presented below does not include contracts that we have successfully rejected through the Bankruptcy Court process.

Our debt obligations, off-balance sheet arrangements and contractual obligations as of December 31, 2003 are as follows (in millions):

	Debt Obligations, Off-Balance Sheet Arrangements and Contractual Obligations by Year						
	Total	2004	2005	2006	2007	2008	More than 5 years
Long-term debt not included in liabilities subject to compromise	\$ 1,538	\$ 256	\$ 206	\$ 379	\$ 137	\$ 81	\$ 479
Operating leases	2,959	146	154	141	147	156	2,215
Purchase commitments:							
Long-term service agreements	702	27	32	38	41	50	514
Fuel and transportation commitments	687	216	191	131	134	4	11
Construction related commitments	290	35	128	104	23		
Power purchase agreements	1,258	212	212	52	52	52	678
Other purchase commitments	28	28					
Total excluding pre-petition debt	7,462	\$ 920	\$ 923	\$ 845	\$ 534	\$ 343	\$ 3,897

**Debt Obligations, Off-Balance Sheet Arrangements and
Contractual Obligations by Year**

Liabilities subject to compromise	9,084
<hr style="border: 1px solid black;"/>	
Total debt obligations, off-balance sheet arrangements and contractual obligations	\$ 16,546
<hr style="border: 1px solid black;"/>	

Long-term debt not included in liabilities subject to compromise included in current portion of long-term debt and long-term debt on the consolidated balance sheets and are discussed in Note 13 to our consolidated financial statements contained elsewhere in this report.

Operating leases are off-balance sheet arrangements and are discussed in Note 18 to our consolidated financial statements contained elsewhere in this report. These amounts primarily relate to our minimum lease payments associated with our lease of the Morgantown and Dickerson baseload units.

Other purchase commitments represent the open purchase orders less invoices received related to open purchase orders for general procurement products and services purchased in the ordinary course of business.

68

Long-term service agreements are discussed in Note 18 to our consolidated financial statements contained elsewhere in this report. These amounts represent our total estimated commitments under our long-term service agreements associated with turbines installed or in storage and are based on scheduled payments under pre-petition agreements.

As part of the Chapter 11 process, Mirant renegotiated its long-term service agreements related to its combustion turbine generation facilities. The new agreements provide more favorable terms, including reduced pricing and increased flexibility to modify terms based upon market conditions. Mirant estimates that these new agreements will result in net savings of approximately \$330 million over the life of these agreements. The new agreements will be effective as of January 1, 2004.

Fuel and transportation commitments are discussed in Note 18 to our consolidated financial statements contained elsewhere in this report. These amounts relate primarily to long-term coal agreements and other fuel purchase and transportation agreements. The table above does not include certain contracts, which are accounted for as derivatives. The fair value of these contracts are included in price risk management assets or price risk management liabilities on our consolidated balance sheets.

Construction related commitments are discussed in Note 18 to our consolidated financial statements contained elsewhere in this report. These amounts relate primarily to contracts for construction activities at our generation facilities.

PPAs are discussed in Note 19 to our consolidated financial statements contained elsewhere in this report. These amounts represent the estimated commitments under the PPAs that Mirant assumed in the asset purchase and sale agreement for the PEPCO generating assets. The estimated commitment is based on the total remaining MW commitment at contractual prices. These contracts are accounted for as derivatives. The fair value of these agreements as of December 31, 2003 is included in liabilities subject to compromise on our consolidated balance sheets. As discussed in Note 2 to our consolidated financial statements contained elsewhere in this report, the Mirant Debtors' motion to reject the Back-to-Back Agreement related to the PPAs was denied by the federal district court in Texas.

Liabilities subject to compromise represent liabilities incurred prior to the Petition Date. As discussed in Note 12 to our consolidated financial statements contained elsewhere in this report, the amounts of liabilities subject to compromise represent our estimate of known or potential pre-petition claims that we expect will be resolved in the bankruptcy process. Adjustments to the liabilities subject to compromise may result from negotiations with the respective creditors, actions of the Bankruptcy Court, rejection of executory contracts, and the determination as to the value of any such claim or the value of the respective obligor.

Cash Flows

In 2003, our net cash provided by operating activities was \$21 million compared to cash provided by operating activities of \$578 million in 2002. This decrease of \$557 million was primarily due to favorable changes in working capital in 2002 compared with unfavorable changes in

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working capital in 2003. In 2002, our cash from operating activities benefited from our receipt of income tax refunds of \$254 million. In addition, \$510 million of the decrease in cash from operating activities related to cash collateral and is summarized as follows for the years ended December 31, 2003 and 2002 (in millions):

	2003	2002	Decrease
Cash collateral posted with counterparties	\$ (130)	\$ 262	\$ (392)
Cash collateral received from counterparties	(131)	(13)	(118)
	\$ (261)	\$ 249	\$ (510)

We often issue letters of credit as collateral for counterparties; however, during much of 2003 we were unable to issue new or extend existing letters of credit. Although total collateral, defined as cash

69

collateral plus letters of credit, decreased during 2003, we posted additional cash collateral with counterparties of \$130 million primarily related to energy contract positions. In 2002, we had \$262 million of cash collateral returned to us by our counterparties. The large amount of collateral returned to us was due in part to the significant cash collateral we posted with counterparties in December 2001 due to our credit rating downgrade that month.

Net cash from operating activities was also impacted by a decrease in gross margin of \$236 million, excluding the impact of non-cash revenue associated with the amortization of transition power agreements and other obligations, offset by changes in our net price risk management assets and liabilities. In 2003, approximately \$126 million of cash from operations related to the change in our net price risk management assets and liabilities. Most of this change was a result of \$149 million of contracts, primarily power and natural gas that we liquidated in the second quarter of 2003.

Due to the collateral activity described above and the seasonality of power and fuel prices, our cash flow from operations is often volatile. During the first six months of 2003, our net cash used in operations was \$426 million. Our operating cash flow in the second half of 2003 increased due to the non-payment of interest and other liabilities as a result of the bankruptcy filings. As a result, cash provided by operating activities was \$447 million for the last six months of 2003, compared to \$222 million for the last six months of 2002.

Net cash used in investing activities was \$88 million in 2003 compared to \$874 million of cash provided by investing activities in 2002. In 2002, cash generated from sales of assets and minority-owned investments in the amount of \$2.7 billion related primarily to our Bewag investment and was offset in part by capital expenditures of \$1.5 billion. Capital expenditures in 2003 were \$493 million, which includes \$124 million related to the cancellation of turbine contracts in Europe. In 2003, we received \$398 million in proceeds from the sale of assets and minority-owned investments, of which \$380 million was related to the Mirant Debtors. Sales of assets in 2003 included the sale of substantially all our investment in Birchwood, our Neenah generating facility, Mirant Americas Energy Capital investments and certain Canadian operations. In addition, we received approximately \$16 million in proceeds related to the sale of our Tanguisson power plant in Guam.

Net cash used in financing activities was \$18 million in 2003. We used \$300 million for the repayment of long-term debt in 2003, which included \$163 million related to our Mirant Asia-Pacific credit facilities at Sual and Pagbilao, \$49 million related to our short-term debt at JPSCO and \$29 million related to the repayment of our domestic turbine lease facility. These repayments were offset by additional borrowings related to draws on letters of credit in the amount of \$271 million in 2003. In 2002, net cash used in financing activities was \$548 million, primarily to reduce long-term debt. In 2002, we repaid \$3.1 billion of long-term debt, offset by proceeds from the issuance of long-term debt of \$2.6 billion. The debt repayments in 2002 included approximately \$551 million in debt related to Bewag and approximately \$165 million under the Sual and Pagbilao facilities. In addition, we repaid approximately \$792 million under our Mirant Asia-Pacific facility that matured in January 2002, approximately \$254 million under the new Mirant Asia-Pacific facility upon the sale of Shajiao C in December 2002 and \$200 million under Mirant Americas Generation credit facilities. Proceeds from the issuance of long-term debt included approximately \$248 million related to our new Mirant Asia-Pacific credit facility, approximately \$427 million related to draws under our Mirant Americas Generation revolving credit facilities, approximately \$400 million related to draws under our Mirant Corporation revolving credit facilities and the sale of \$370 million in convertible senior notes. In addition, we exercised the term-out provision in our Mirant Corporation revolving credit facility, which resulted in long-term debt repayments and new proceeds from the issuance of long-term debt in the amount of \$1.1 billion.

70

Results of Operations

The following table includes the consolidated statements of operations for Mirant for the years ended 2003, 2002 and 2001 (in millions):

	Year Ended December 31,		
	2003	2002	2001
Operating Revenues:			
Generation	\$ 4,649	\$ 3,879	\$ 6,170
Integrated utilities and distribution	523	485	475
Net trading revenue	(1)	341	563
Total operating revenues	5,171	4,705	7,208
Cost of fuel, electricity and other products	3,190	2,488	4,244
Gross margin	1,981	2,217	2,964
Operating Expenses:			
Operations and maintenance	1,092	1,212	1,486
Depreciation and amortization	350	287	372
Goodwill impairment losses	2,067	697	
Long-lived asset impairment losses	1,567	610	82
Other impairment losses and restructuring charges	57	363	
Gain on sales of assets, net	(46)	(41)	(2)
Total operating expenses	5,087	3,128	1,938
Operating (loss) income	(3,106)	(911)	1,026
Other (Expense) Income, net:			
Interest expense	(379)	(495)	(614)
Interest rate hedging losses	(110)		
Gain on sales of investments, net	67	329	
Equity in income of affiliates	33	168	217
Impairment losses on minority owned affiliates		(467)	(3)
Interest income	24	38	118
Other, net	48	10	40
Total other expense, net	(317)	(417)	(242)
(Loss) Income From Continuing Operations Before Reorganization Items and Income Taxes	(3,423)	(1,328)	784
Reorganization Items, net	295		
Provision for Income Taxes	126	948	256
Minority Interest	(58)	78	63
(Loss) Income from Continuing Operations	(3,786)	(2,354)	465
Loss from Discontinued Operations, net of tax	(20)	(84)	(56)
(Loss) Income Before Cumulative Effect of Changes in Accounting Principles	(3,806)	(2,438)	409
Cumulative Effect of Changes in Accounting Principles, net of tax	(29)		
Net (Loss) Income	\$ (3,835)	\$ (2,438)	\$ 409

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The following discussion of our performance is organized by reportable operating segment, which is consistent with the way we manage our business. Beginning January 1, 2004, we have changed our allocation methodology related to our Corporate overhead expenses. As a result, substantially all of the operating expenses reflected in our Corporate segment's statement of operations in 2003 will be included in our North America and International segments in 2004 and future years.

71

North America

Our North America segment consists primarily of power generation (approximately 14,000 MW of generating capacity) and energy trading and marketing activities managed as a combined business.

The following table summarizes the operations of our North America segment for the years ended 2003, 2002 and 2001 (in millions):

	Year Ended December 31,		
	2003	2002	2001
Operating Revenues:			
Generation	\$ 4,147	\$ 3,354	\$ 5,673
Net trading revenues	(1)	341	564
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Total operating revenues	4,146	3,695	6,237
Cost of fuel, electricity and other products	2,910	2,260	4,031
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Gross margin	1,236	1,435	2,206
Operating Expenses:			
Operations and maintenance	708	773	1,042
Depreciation and amortization	210	154	206
Goodwill impairment losses	2,067		
Long-lived asset impairment losses	1,566	509	
Other impairment losses and restructuring charges	19	270	
Gain on sales of assets, net	(38)	(5)	
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