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June 14, 2010



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Rachel D. Campbell
 Director
 Office of Proceedings
 Surface Transportation Board
 395 E Street, SW
 Washington, DC 20423

Re: NRG Power Marketing LLC v. CSX Transportation, Inc., STB Docket No. 42122

Dear Ms. Campbell:

Enclosed for filing in the above-referenced matter is Defendant CSX Transportation Inc.'s ("CSXT's") Reply to Complainant NRG Power Marketing, LLC's Petition for Injunctive Relief. The filing includes:

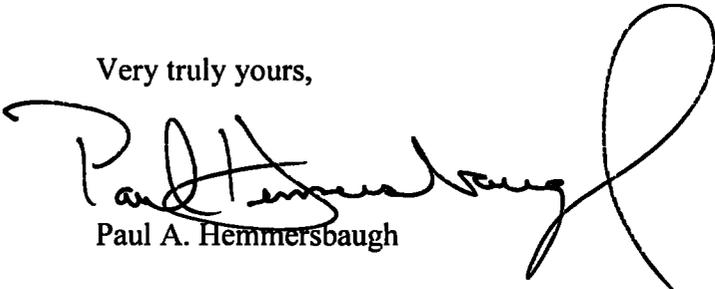
- 1) An original and ten copies of the Highly Confidential version of CSXT's Reply. Material that is designated Highly Confidential pursuant to the Board's June 4, 2010 Protective Order is marked with braces (e.g., "{ }"). An electronic copy of the Highly Confidential Version has also been submitted on disk.
- 2) An original and ten copies of the Public version of CSXT's Reply. Material that is designated Highly Confidential pursuant to the Board's June 4, 2010 Protective Order is redacted. An electronic copy of the Public Version has also been submitted on disk.

Please stamp one copy of each version of CSXT's Reply to indicate it has been received and filed, and return the stamped copies with our messenger, for our files. Thank you for your assistance in this matter.

If you have questions, please contact the undersigned.

Rachel D. Campbell
Page 2

Very truly yours,



Paul A. Hemmersbaugh

Enclosures

cc: Karyn A. Booth

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BEFORE THE
SURFACE TRANSPORTATION BOARD

227277

NRG POWER MARKETING LLC)
)
Complainant,)
)
)
)
v.)
)
)
CSX TRANSPORTATION, INC.)
)
Defendant.)



Docket No. NOR 42122

ENTERED
Office of Proceedings

JUN 14 2010

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**REPLY OF CSX TRANSPORTATION, INC. TO NRG'S PETITION FOR
INJUNCTIVE RELIEF**

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Dated: June 14, 2010

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Defendant CSX Transportation, Inc. (“CSXT”) hereby submits its Reply to Complainant’s Petition for Injunctive Relief (“Petition”). The Petition claims that the challenged rates would cause it irreparable harm, and seeks to enjoin CSXT from collecting its lawfully established rate. NRG¹ seeks this unprecedented pre-adjudication rate suspension before it has established that the Board has jurisdiction over those rates, and despite Congress’ clear, final elimination in ICCTA of the Board’s authority to suspend rates. Further, NRG has failed to establish any of the essential elements necessary to grant the extraordinary remedy of a preliminary injunction. The Petition should be denied.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Petition fails to demonstrate either of the two most important elements necessary to obtain a preliminary injunction: It does not show that NRG has a strong likelihood of prevailing on the merits, and it does not demonstrate that NRG will suffer irreparable harm caused by the challenged rates. NRG could easily absorb the additional costs of the two challenged rates without resorting to reducing power generation { }, and it does not claim otherwise. Nor could it. NRG is a large corporation with operations in several regions of the United States and in Europe, Latin America, and the Pacific Rim; \$8.95 billion in annual revenues; and **\$2.304 billion** in cash on hand as of the end of 2009. *See* NRG 2009 Annual Report at 3 (attached as Ex. 1). According to NRG, it will refuse to ship coal under CSXT’s rates, and instead will choose to cut back production at the two plants. As a result of this self-inflicted harm from reducing production, NRG says it would incur a total “gross margin loss” from foregone electricity sales totaling approximately { } in 2010 and 2011. *See, e.g.*, Verified Statement of Mauricio Gutierrez (“V.S. Gutierrez”) ¶ 6; Petition at 17. Even under NRG’s dubious “gross margin” measure of damages, the entirety of its inflated alleged damages would be

¹ Consistent with Complainant’s convention, CSXT will use the term “NRG” to refer to both NRG Energy, Inc. and its wholly owned subsidiary NRG Power Marketing, LLC. *See* Petition at 1 n.1.

Below, CSXT demonstrates that NRG has failed to establish any of the essential prerequisites to its request for extraordinary injunctive relief. *First*, it has failed to carry its burden of showing that CSXT has market dominance over the movements subject to the challenged rates, and therefore has failed to show that the Board has jurisdiction, an essential prerequisite to the Board taking any action in this case. *Second*, NRG's simplistic R/VC ratios comparison (the only argument it offers in support of its prediction of success on the merits) is irrelevant to a SAC analysis and wholly inadequate to show it has a strong likelihood of success on the merits of its rate challenge. *Third*, NRG has not proven it faces a threat of irreparable harm – let alone made the required showing that it definitely will suffer irreparable harm – if the challenged rates remain in effect during the pendency of this case. What NRG essentially has alleged is that if CSXT's rates are not suspended during the pendency of this case, NRG will refuse to pay those rates and { } as a result. This is NRG's right as owner of those plants, but the potential harm it alleges would result from its own discretionary refusal to pay CSXT's rates while it challenges the rates. *Fourth*, CSXT would be harmed by the injunction because if the Board ultimately finds the challenged rates to be reasonable or that the maximum reasonable rates exceed the level of the rates requested by NRG's Petition, the Board may lack the power to award reparations to CSXT. *Fifth*, the potential injury to the public interest alleged by NRG – like its claim of harm to itself – is entirely avoidable and within NRG's control.

In short, NRG faces no irreparable harm if the Board does not impose an unprecedented injunction suspending CSXT's lawful rates. Rather, NRG could very readily pay the amount of the challenged rates during the pendency of this case – and continue to generate and sell power at whatever level the market allows – and recover any lost profits in the form of reparations at the end of the case. NRG's Petition is essentially an attempt to avoid standard costs of rate litigation by forcing CSXT to

bear them instead.³ If NRG proves on the merits that the challenged rates are not reasonable, it will be entitled to a rate prescription, and reparations (with interest) for the full amount of any overpayment. NRG is a large and profitable corporation with a robust cash position, and it can readily afford to pay this standard cost of the rate litigation that it elected to commence. The Board should not countenance NRG's use of threats and claims of potential indirect harms to attempt to enlist the Board's aid to force Defendant CSXT to underwrite those costs. In the event the Board determines it has jurisdiction over this case, it should deny the Petition.

BACKGROUND

NRG is a diversified power generation and sales company and member of the Fortune 500, with operations in 11 states, Europe, Latin America, and the Pacific Rim, and assets of over \$23 billion. *See* "NRG Energy, Inc. Reports Record Full Year 2009 and Fourth Quarter Results" at 9 (attached as Ex. 3). It has approximately 24,370 megawatts in U.S. power generation assets – thus the 530 MW Dunkirk Plant and the 380 MW Huntley Plant represent 2.1% and 1.5 %, respectively, of NRG's generating capacity. NRG 2009 Annual Report at 4 (Ex. 1). Indeed, the two plants together represent less than 23% of NRG's generating capacity in New York State alone, which otherwise consists primarily of oil-

³ NRG briefly indicates it would be willing to "compensate CSXT" if the rate ceiling NRG seeks to impose during the pendency of this case is ultimately found to be lower than the maximum reasonable rate established by a SAC analysis. *See* Petition at 22. NRG does not provide any real explanation of how it would implement this proposal. Regardless, such an approach would not only deprive CSXT of its statutory right to establish rail transportation rates, it also may be otherwise unlawful. Moreover, if the Board were to grant this sort of petition, there is a substantial risk that every complainant who files a rail rate case will request such an injunction. *See Seminole Elec. v. CSX Transp.*, STB Docket No. 42110 Decision at 3 (Dec. 18, 2008) (recent STB decision denying similar request for injunction suspending challenged rate during pendency of rate case, noting that if such requests were granted, the process of considering interim rate suspensions to address indirect injury claims could "spiral[] out of control."). Not only would this create a significant new litigation burden on the Board and defendants in rate cases, it would also serve as a strong incentive for shipper complainants to use the filing of rate cases as an expedient to obtain *de facto* rate suspensions. Such a development would thwart the Board's sound policy of encouraging parties to resolve their disputes short of formal litigation (including mediation).

and natural gas-fueled facilities, and less than 13 percent of its 7,020 MW generating capacity in the Northeast Region. *Id.*; see NRG 2008 10-K at 16 (attached as Ex. 5).

NRG's financial condition and cash flow would be envied by most companies. As NRG itself stated in its last two annual reports, its financial position is characterized by "Steady Growth. Strong Cash Flow. High Liquidity." NRG 2008 Annual Report at 3 (Ex. 4); NRG 2009 Annual Report at 3 (Ex. 1). In 2009 NRG had operating revenues of \$8.952 billion and net income of \$942 million. *Id.* At the end of 2009 it had \$2.304 billion in cash and cash equivalents, a total of \$3.794 billion in total liquidity, and over \$23 billion in total assets. See *id.*; "NRG Energy, Inc. Reports Record Full Year 2009 and Fourth Quarter Results" at 9 (Ex. 3). And even in today's difficult economic climate, after more than two years of severe recession, NRG's current market capitalization is \$5.86 billion.⁴ Given NRG's robust performance, large cash position, and liquidity, its claim that the increases embodied in the challenged rail rates will cause NRG irreparable harm are not remotely credible.

The issue plants are the Huntley and Dunkirk stations, coal-fired electric power generating stations located in, and selling power to, Western New York State.⁵ The plants began operations in the 1940s and early 1950s, and the generating units they are currently using came into service between 1958 and 1960. See NRG 2008 10-K at 28-29 (attached as Ex. 5). The Dunkirk plant is located at a port on Lake Erie, and the Huntley plant is located at a port just off the Erie Canal. See Verified Statement of Virginia Farrow ("V.S. Farrow") ¶¶ 14-16. Both plants are thus water-served, and both have received substantial volumes of coal (including PRB coal) via Great Lakes ships over a number of years through 2005. See *id.* at ¶¶ 5-6 (725,000 tons transported to the plants by water in 2004), Table; see Verified

⁴ See <http://finance.yahoo.com/q?s=NRG> (as reported at market close Friday June 11, 2010).

⁵ CSXT generally does not contest the factual background recited in Section II.A to II.B of NRG's Petition. CSXT notes that there are additional facts and circumstances relevant to the history recounted in those sections, but the limited facts they provide appear to be generally accurate.

Statement of Henry Rupert (“V.S. Rupert”) at ¶ 2 (plants received similar substantial volumes of coal by water for 15 years from 1990 to 2004).

The two plants are “merchant” power plants that sell wholesale electricity in a market administered by the New York Independent System Operator (“NYISO”). See Petition at 7-8. The issue plants do not have retail customers, but rather bid to supply wholesale power to the grid, through NYISO.⁶ Under this system, wholesale power generators such as NRG may offer a price at which units will dispatch power. This bid process is apparently conducted at least daily, and possibly more frequently. NYISO then determines the dispatch order of the bidding generators according to their offer price, from lowest to highest until customer demand is met. *Id.* at 8. The total volume of power purchased from bidding merchant power plants varies with demand. NYISO pays for power based upon the bid price a generator submits, and does not concern itself with a bidder’s actual costs. Verified Statement of Bradley Kranz (“V.S. Kranz”) ¶ 5. Thus, the price at which a generator such as NRG offers to supply power is wholly in its discretion and control, and need not be closely tied to any particular measure or category of costs.

Over the last several years, the Huntley and Dunkirk plants have transitioned to burning lower sulfur coal transported from the Powder River Basin (“PRB”) in Wyoming. Beginning in 2004, the Union Pacific Railroad Company (“UP”) and CSXT have transported coal from the PRB to the two issue plants under a series of joint line contracts. V.S. Rupert at ¶ 3. UP moves the coal from the PRB origin to interchange with CSXT in Chicago, and CSXT moves the traffic from Chicago to the issue plants on Lake Erie in western New York. *Id.* From 2006 to 2009, UP/CSXT transported roughly 1.5

⁶ It is important to understand that NRG’s current suspension of generation and { } do not pose a risk that retail power consumers will face a shortage of power to meet their demand. Wholesale energy merchant NRG does not allege otherwise. Rather, the risk NRG alleges is that other wholesale power plants may be selected to supply the power Western New York consumers demand, as a result of higher prices bid by the Huntley and Dunkirk plants.

million tons of coal per year to the Huntley plant, and roughly 2 million tons per year to the Dunkirk plant. Each of the plants consumed approximately the same volumes of coal transported to the plant.

See V.S. Farrow ¶ 1.

Beginning in April 2009, UP, CSXT, and NRG engaged in contract negotiations, seeking to reach agreement on a new joint contract to replace the contemporary contract, which was scheduled to expire in March 2010. *See* V.S. Rupert at ¶ 6. At the outset of the negotiations, CSXT sought

}, and UP sought {

}. *See id.* During the course of the negotiations, NRG's negotiators advised

the rail carriers that, {

}

{

} In 2010, natural

gas prices have generally ranged between \$4 and \$4.75/MBTU.⁷

{

} Also looming for all coal-fired plants is the prospect of regulation of “greenhouse gases,” including carbon dioxide emissions. EPA has nearly completed rulemakings directed at regulating such gases under existing law,⁸ and Congress is presently considering bills that would impose wide-ranging new carbon limits and requirements.

{

⁷ See U.S. EIA Weekly Natural Gas Update <http://www.eia.doe.gov/oog/info/ngw/ngupdate.asp> (visited June 10, 2010).

⁸ See “Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule,” 70 Fed. Reg. 31,514 (June 3, 2010)

}

{

}

The parties were unable to reach agreement on a new joint contract. *See id.* at ¶ 11. In February 2010, UP and NRG entered a separate contract for the UP segment of the movement. *See id.* According to NRG, UP's base rate under its proportional contract is { }. *See* V.S. Farrow ¶ 6. This means that NRG agreed to a { } *increase* in UP's rates for its segment of the movement, at a time when demand, prices, and revenues for the Huntley and Dunkirk plants are down, and the plants' costs of generation have increased substantially relative to alternative generation sources such as natural gas.

{

}

In early March 2010, CSXT made another offer to NRG, which would result in a mere { } percent increase over CSXT's base rate division – and { } in CSXT's overall division – in the expiring joint contract. *See id.* at ¶ 12. NRG refused the offer, telling CSXT that at the offered rate, { }.

*Id.*⁹ On or about March 11, 2010, NRG requested that CSXT provide a common carrier tariff rate for the movements from Chicago to Huntley and Dunkirk. *See id.* In response to NRG's request, CSXT provided common carrier rates to NRG on March 25, 2010. After establishing the two requested common carrier rates, CSXT continued to attempt to negotiate a private contract with NRG for the movements. The joint transportation contract (UP-CSXT-NRG) expired on March 31, 2010. *See id.*

CSXT made two additional offers to NRG after it established common carrier rates and the joint contract expired. {

} *See id.* at ¶ 13. NRG rejected both of

these offers. At no time during the parties' rate negotiations did NRG advise CSXT that it believed regulatory suspension of CSXT's rates was appropriate. *See id.*

⁹ The rate CSXT offered in early March is lower than the rate suspension level NRG seeks in the Petition. Yet, based on the estimates it submitted in support of the Petition, NRG indicates that at the higher rates it requests the Board to impose by injunction, NRG would move approximately { } of coal in the remainder of 2010, and approximately { } of coal in 2011. This is further evidence that CSXT's rates are not the determinative factor in the volume of power generated by the Huntley and Dunkirk plants, and that NRG has considerable latitude in how much power it decides to generate at those plants at a given transportation rate level.

On May 18, 2010, NRG filed a SAC Complaint challenging CSXT's common carrier rates for transportation of coal from Chicago to NRG's Huntley Station and Dunkirk Station. Notably, the Complaint does not allege that either of the challenged rates threatened NRG with irreparable harm, and did not seek to enjoin or suspend the challenged rates. *See* Complaint, STB Docket No. 42122 (May 18, 2010). On May 25, 2010, NRG filed this Pctition, seeking to enjoin CSXT from charging those rates during the pendency of this case.

Policy Considerations and NRG's Harm Allegations

NRG is not able to seek regulatory intervention in the marketplace to mitigate the effects of reduced demand, falling costs of alternative power generating sources (including newly abundant natural gas at low prices and low-cost hydroelectric power offered in the market by Canadian producers), costs of maintenance and repair of two aging plants, the costs of pollution abatement equipment required to comply with a consent decree, increased rail transportation rates to which it voluntarily agreed in a new contract with UP, or the several other factors that together have rendered those facilities non-competitive in the merchant energy market. CSXT's rail rates are the sole significant economic factors from which NRG is able to seek relief through regulatory intervention.

NRG is apparently attempting to use the Board's rate reasonableness process to offset the negative effects of other market factors on the plants' competitiveness and profitability. The fact that a regulatory challenge to CSXT's rail rates is available, however, is not a good or sufficient reason to attempt to balance the books of the Huntley and Dunkirk facilities through premature reduction of CSXT's rates. Nor should the Board allow the weak competitive position of those facilities – due largely to factors other than the challenged rates – to be used as a basis for unprecedented injunctive relief.

This is the third consecutive Eastern SAC case in which the complainant has sought a preliminary injunction suspending the defendant carrier's rates during the pendency of the case. If,

contrary to carriers' statutory rights and well-established precedent, the Board issues an injunction and imposes the rate cap sought here, there is every likelihood that such injunction motions will become routine features of rail rate cases. If Complainants believe they have a reasonable chance to obtain rate suspensions, and thereby avoid paying the lawfully established rate during the pendency of a rate case, many may view litigating a preliminary injunction petition as a very attractive option. In the event that such injunction motions become a common tactic, the parties and the Board routinely will be required to expend considerable additional time and resources on injunction litigation, before the actual substantive rate case has really commenced. Perceived availability of interim rate reductions from the Board may cause more shippers to file rate cases they otherwise would not file, and could make privately negotiated rate agreements more difficult to achieve. Undoubtedly, increased use of preliminary injunction petitions would make the already expensive SAC case process more expensive for all parties concerned, including the Board. More generally, the unintended consequences of granting the Petition could be serious and substantial.

Importantly, and contrary to NRG's claims, the rates NRG seeks to suspend do not threaten it with irreparable harm. Few equitable principles are better established than the rule that economic injury does not constitute "irreparable harm" that is required for the extraordinary remedy of a preliminary injunction. *See, e.g., Seminole Electric v. CSXT*, Decision at 4 ("a monetary or economic loss by itself does not constitute irreparable harm."). In the Petition, the harm NRG alleges is not only entirely economic, it is also quite small in relation to NRG's financial strength and wherewithal. And, at the conclusion of this rate case, NRG is entitled to recover any and all amounts by which the Board may determine it was overcharged, plus interest. Thus, the only economic injury properly recoverable in a rail rate case before the Board – the amount, if any, by which the Complainant's payments for the issue transportation are found to have exceeded a maximum reasonable level – is wholly recoverable in

reparations awarded in the same Board decision that determines the maximum reasonable rate. NRG faces no imminent irreparable harm as a result of CSXT's lawfully established common carrier rates, and injunctive relief is not appropriate.

Perhaps recognizing the implausibility of a claim that NRG would be irreparably injured by paying the challenged rates during the rate case, the Petition asserts that the two destination power plants – older, inefficient facilities in a competitive merchant market – operate in competitive markets and may not bear the additional costs of CSXT's increased transportation rates without {

}. See Petition at 15-19. However, even if NRG were to claim that it would definitely shut down the plants permanently as a direct result of the challenged rates – which NRG does not allege – that showing would not establish the irreparable harm to NRG necessary to grant it a preliminary injunction.

Conspicuously, NRG does not represent that if the Board grants the Petition, NRG will *not* { }. In fact, NRG claims that the requested relief would only reduce earnings losses at the two facilities that are caused by “multiple economic factors.” Verified Statement of J. Andrew Murphy (“V.S. Murphy”) at ¶ 2. So NRG does not even allege the relief it seeks will remedy or avoid the potential harm, only that the challenged rates may aggravate the potential for such harm. See Petition at 5.¹⁰

The Petition selectively focuses on only one of the numerous economic factors { }, namely the cost increase embodied in the challenged common carrier rates. It barely mentions – and makes no attempt to quantify – myriad other significant costs and factors affecting those facilities' profitability, such as the relative cost of coal and other power generation fuels (*e.g.*, natural gas); costs of electricity and other process inputs; maintenance and repair costs for the

¹⁰ The only other harm that NRG alleges it may suffer is potential lost profits, a purely economic “harm” that is not ground for preliminary equitable relief.

aging plants; the capital costs of recent modifications to and retrofitting of those plants in order to switch to western coal; costs of pollution abatement equipment necessary to meet new regulatory requirements and obligations under litigation settlements; and any of numerous other costs and factors unrelated to CSXT's rates. Moreover, while the Petition mentions the rate increase NRG agreed to with Union Pacific for its portion of the movement, it ignores the impact that { } had on the profitability of power generated at the issue plants.

Further, the "profitability" measure that NRG relies upon to make its "irreparable" harm arguments only includes one cost – the delivered cost of coal – and ignores all other costs and factors. *See* Petition at 16-17; V.S. Gutierrez ¶¶ 5-7 & n. 1 ("gross margin" defined as revenue from power sales less delivered cost of fuel, ignoring all other costs). Contrary to NRG's suggestion, this crabbed measure sheds very little light on any effect the challenged rates may have on the overall economic viability of the issue plants. By definition, this narrow, artificial formula guarantees that, at any given revenue level, *any* transportation rate increase will result in lower "gross profits."¹¹ Thus, NRG's argument rests on the truism that, in the simple formula "Revenue minus X = gross margin" – where revenue is held constant and the only variable is the delivered cost of fuel represented by X – an increase in delivered cost of fuel ("X") will result in lower gross margin.¹² The question framed by NRG is essentially whether, holding everything else constant, an increase in transportation rates will reduce the profits generated by the plants. Indeed, NRG concedes that "the only variable that changes in [its gross

¹¹ Although NRG does not expressly state its assumption concerning coal prices, it appears that, for purposes of the "gross margin" comparison, it is assuming that coal prices are held constant.

¹² Significantly, NRG nowhere states that higher CSXT rates would cause it to lose money on power sold from the issue plants, eliminate net earnings at those plants, or make operation of the plants unprofitable, only that the challenged rates would *reduce* the profitability of sales of power from those plants. Although the Petition is vague on this point, it appears that NRG has set a particular rate of return below which it is not willing to generate power from those plants. *See, e.g.* V.S. Murphy. This is NRG's prerogative, of course, but in that event it would be the imposition of such profit "hurdle," not the challenged rates, that could result in { }.

as unprecedented and unnecessary; inconsistent with federal statutes and fundamental policy vesting the ratemaking initiative with the rail carrier; and unsupported by the meager record in this case.

I. ICCTA ABOLISHED PRE-ADJUDICATION RATE SUSPENSION AUTHORITY, AND NRG OFFERS NO JUSTIFICATION FOR AN UNPRECEDENTED RATE SUSPENSION IN THIS CASE.

Historically, the ICC had broad powers to suspend a rail common carrier rate before the rate went into effect. Beginning with the Staggers Act, however, Congress progressively curtailed the ICC's power to suspend a common carrier rate prior to a full on-the-merits determination of whether the rate in question was unreasonable. *See, e.g.*, 49 U.S.C. § 10707(c) (1994) (now repealed). Ultimately, Congress repealed the ICC's former power to suspend rates, in a key provision of ICCTA. As the Board has summarized,

In [ICCTA], Congress further facilitated railroads' rate-making initiative by repealing the rate suspension procedures under which rate adjustments were sometimes prohibited from taking effect without first being investigated.

Arizona Public Service Co. v. BNSF, STB Doc. No. 42077, Slip Op at 7 (served Oct. 14, 2003) (the "*Lee Ranch*" case). Simply stated, the Board does not have the power to suspend common carrier rates that was once exercised by the ICC. NRG's request for an injunction, however, is the same thing under a different name. What NRG is seeking is an order prohibiting CSXT from collecting a lawfully established common carrier rate at the very outset of the case, prior to (i) the submission of any market dominance evidence necessary to establish that the Board has jurisdiction to consider this case, or (ii) Stand-Alone Cost ("SAC") evidence required to determine whether the challenged rate is unreasonable under governing standards. As the Board recognized in *Lee Ranch*, this is the power that Congress withdrew in ICCTA in all but the most exceptional circumstances.

In an entirely separate and distinct provision, ICCTA authorized a limited residual power to issue injunctions in emergency situations in which such relief was essential to prevent imminent irreparable harm. *See* 49 U.S.C. § 721(b)(4). This emergency power was intended primarily to allow the Board to

prevent irreparable harm in the context of *exemption* proceedings, and NRG presents no evidence or argument that Congress intended this provision to authorize the Board to override carriers' statutory ratemaking initiative by suspending common carrier rates before any determination that those rates at issue exceed a reasonable level.

Consistent with the statute and congressional intent, the STB has exercised the extraordinary emergency injunction authority extremely sparingly. CSXT is aware of only four cases in which the Board has adjudicated a request to suspend a rate prior to issuing a SAC decision on the merits. In three of the four cases, the Board denied the requested injunction. The fourth case was *sui generis*, and involved the reopening of a case the Board had decided after a full SAC presentation, and extraordinary facts and circumstances far different from those presented by this case (including the fact that defendant carrier's consent to the rate suspension). Moreover, as the Board explained in *Lee Ranch*, it will consider granting injunction relief only where the party seeking that relief satisfies all of the requirements for emergency injunctive relief, including a showing that the requesting party "will be irreparably harmed in the absence of the requested relief." *Lee Ranch*, STB Docket No. 42077 Decision at 4-5 (emphasis added).¹⁴ And, the Board has never enjoined a rate prior to a rate reasonableness determination on the merits.

In a *Simplified Guidelines* case, the complainant invoked Section 721(b)(4) and sought to enjoin application of the challenged common carrier rate. See *B.P. Amoco Chem. Co. v. Norfolk So. Ry. Co.*, STB Docket No. 42093 (served June 6, 2005). The Board denied the injunction request because the complainant had failed to show that it would suffer irreparable injury in the absence of an injunction. See *id.*, slip op. at 3 (explaining that, if the Board found the challenged rate unreasonable at the end of

¹⁴ NRG has not met its burden of demonstrating that it will be irreparably harmed absent an injunction. See II.B *infra*. This failure alone compels denial of the Petition.

the case, it would “order reparations to BP reflecting the difference between the challenged rate and the maximum reasonable rate along with interest”).

In another case, a coal supplier sought an injunction based on allegations of a “gross . . . disparity” between a carrier’s rail transportation rates from two mine origins that competed to supply coal to the same utility.¹⁵ *See Lee Ranch*, STB Docket No. 42077 (“*Lee Ranch*”). The Board denied the injunction because the movant had failed to show it faced harm that was “both imminent and irreparable.” *Id.*, slip op. at 3-4. The Board further found that granting the requested rate suspension injunction was inconsistent with its limited rate regulatory function, and that issuing injunctions to address indirect effects of rail rates could “spiral[] out of control.” *Id.* at 5.¹⁶ As the Board found, the only way to control such a process would be to deny railroads “the pricing initiative” guaranteed to them by statute (*see id.* (citing 49 U.S.C. § 10701(c)),¹⁷ which is precisely the right that the Petition seeks to deny CSXT.

In the third case, which is most closely analogous to the present case, the complainant sought an injunction prohibiting the defendant carrier from collecting the challenged rates during the pendency of

¹⁵ The disparity was itself the consequence of the only time the Board has enjoined collection of a rate during the pendency of a rate case. The Board enjoined BNSF from collecting a new rate during the pendency of a reopened rate case, which resulted in a disparity between the Board-limited rate from one mine and the common carrier rate from a competing mine to the same power plant. *See Lee Ranch*, slip op. at 1-3 (served Oct. 14, 2003). This collateral injury illustrates one of the potential unintended consequences of issuing an extraordinary injunction like that sought in this case.

¹⁶ A decision by NRG to {
} would be just such an
indirect effect.

¹⁷ The sole instance in which the Board enjoined a carrier from collecting a new rate was a unique case involving the re-opening of a rate case several years after a full adjudication on the merits. *See Arizona Public Service Co. v. Atchison, T. & S.F. Ry Co.*, 2 S.T.B. 367 (1997). In that case, the parties consented to the effective maintenance of the rate prescription during the pendency of the reopening, due to the unique circumstances and posture of the case. *See id.* In the present unexceptional circumstances, CSXT emphatically does not consent to the suspension of its lawfully established rates during the pendency of this proceeding.

a SAC case. *Seminole Elec. v. CSXT*, STB Docket No. 42110 (Dec. 18, 2008). Complainant Seminole alleged, *inter alia*, that if it absorbed increased rail rates during the pendency of the case, it would be forced to borrow money at an interest rate that was higher than the interest rate paid on reparations. *See id.* at 4. The Board found that the injury Seminole alleged it would sustain was solely a monetary loss, and a “monetary or economic loss by itself does not constitute irreparable harm.” *Id.* Because SECI failed to establish one of the four essential factors required for injunctive relief (that it would suffer irreparable harm in the absence of an injunction), the Board denied the injunction without even considering the other three factors. *Id.* at 4-5.

The NRG Petition seeks to nullify CSXT’s right to establish, maintain, and collect lawful rates, using the extraordinary power Congress granted to the Board in order to protect and advance the statutory rights and policies established by ICCTA, including Section 10701(c). It would be truly perverse if a party were allowed to employ that extraordinary power to subvert a carrier’s exercise of a core statutory right guaranteed by ICCTA. This would turn a shield designed to protect ICCTA rights into a sword wielded to deny them. Because Congress could not have intended the Board to use its equitable power to vitiate a core statutory right, the Board should deny the Petition without further consideration. In any event, CSXT demonstrates below that if the Board were to apply the four-part test for preliminary injunctive relief, it would reach the same conclusion: the Petition – and the unprecedented rate suspension it seeks – must be denied.

II. NRG HAS NOT ESTABLISHED ANY OF THE ESSENTIAL ELEMENTS FOR A PRELIMINARY INJUNCTION.

In order to obtain a preliminary injunction, a petitioner must demonstrate each of the following essential elements: (i) it has a strong likelihood of success on the merits of its challenge; (ii) it “will suffer irreparable harm in the absence of a stay”; (iii) other interested parties will not be substantially

harm; and (iv) the public interest supports the injunction.¹⁸ *NYS&W Railway Corp. – Discontinuance – In Broome and Chenango Counties, NY*, STB Docket No. AB 286 (Sub-No. 5X) (Sept. 30, 2008) (emphasis added); see *Railroad Salvage and Restoration, Inc. and G.F. Weidman International, Inc. – Petition for Investigation and for Emergency Relief Under 49 U.S.C. § 721(b)(4)*, STB Dkt. No. 42107 (served June 30, 2008). As the Supreme Court has emphasized, a “preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Muzarek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original); see *B.P. Amoco Chemical Co. v. Norfolk Southern Ry. Co.*, STB Docket No. 42093 (June 6, 2005) (party seeking injunction must satisfy “the burden of persuasion on all of the elements required for [such] extraordinary relief.”). NRG has failed to satisfy its burden on any of those elements, and the injunction must be denied.

A. NRG Has Not Shown A Strong Likelihood Of Success On The Merits.¹⁹

NRG has not shown that it has a strong likelihood of success on the merits of its SAC challenge to CSXT’s rate. In fact, NRG does not even *attempt* to show that a SAC analysis will find the challenged rates exceed a maximum reasonable level. Instead, NRG relies entirely upon untested

¹⁸ A mere threat or possibility of irreparable harm is not sufficient to support a preliminary injunction. As numerous Board decisions and the D.C. Circuit standard they adopt make clear, in order to obtain a preliminary injunction, a petitioner must show that it “will be irreparably injured if [preliminary] relief is withheld,” not that it merely faces a threat of such harm in the absence of an injunction. See, e.g., *CSXT v. Williams*, 406 F.3d 667, 670 (D.C. Cir. 2005) (emphasis added); *Railroad Salvage and Restoration*, STB Docket No. 42107 (June 30, 2008) (case relied upon by NRG for preliminary injunction standard requires movant to demonstrate it “will suffer irreparable harm”) (emphasis added).

¹⁹ While NRG Power Marketing LLC is the nominal complainant in this case, it is a wholly-owned subsidiary of NRG Energy, Inc., and both NRG Power Marketing and its witnesses treat the two entities as indistinguishable for purposes of this case. See Pet. at 1 n.1; V.S. Kranz at ¶ 1; V.S. Evans at ¶ 2; V.S. Gutierrez at ¶ 2; V.S. Farrow at ¶ 2; V.S. Murphy at ¶ 2. Moreover, in its annual reports and public filings, NRG Energy Inc. holds itself out as owner and operator of the Huntley and Dunkirk plants. Thus there is no question that NRG Energy, Inc. is the real party in interest in this case.

allegations of its litigation consultant concerning revenue-to-variable cost ratios, which have no relevance to a SAC analysis.

1. NRG Has Not Established that The Board Has Jurisdiction Over the CSXT Rates in Question.

The Board does not have jurisdiction over CSXT's rates until it determines, based on actual evidence presented after adequate discovery, that CSXT has market dominance over the movements in question. *See* 49 U.S.C. § 10704(a)(1). NRG alleged in its Complaint that CSXT has market dominance over the two movements covered by the Complaint, and CSXT's Answer denied those allegations. Discovery has not commenced in this case, and NRG has not produced a single document to CSXT. While the Petition offers a consultant's allegations regarding R/VC ratios he claims are generated by the rates NRG seeks to suspend, at this very early juncture those allegations are entirely untested. Therefore those allegations are not sufficient to allow a finding of quantitative market dominance.

More important, given the competitive transportation options, there is very substantial doubt that NRG can show that CSXT has qualitative market dominance over the movements in question. The following discussion demonstrates, at a minimum, that NRG has not met its burden of proving CSXT has market dominance over movements under the challenged rates. NRG admits that "[b]oth the Dunkirk and Huntley Stations are located on waterways." V.S. Farrow at ¶ 13. NRG witness Farrow acknowledges that in 2004 the plant received over 725,000 tons of coal by water. *See id.* NRG claims nevertheless that "vessel transportation is not a feasible option at either Station." *Id.* NRG argues that the plants cannot receive coal by water for two primary reasons. First, NRG states that the two plants do not have sufficient inventory capacity to store coal for use during winter months when lake transportation is restricted. *Id.* at ¶¶ 14-15. Second, NRG claims that the channel depth at Dunkirk and the need for vessels delivering to Huntley to be small enough to navigate the Black Rock Lock would prevent fully loaded coal vessels from accessing either plant. *Id.* Neither claim withstands scrutiny.

In the first instance, a single NRG employee's unsupported opinion that recently completed dredging of the Dunkirk Harbor would not allow coal ships to deliver coal (*id.* at ¶ 15), is dubious and lacks credibility given that the express *purpose* of the dredging project was *to allow the Dunkirk plant to take coal deliveries by water*. See, e.g., "Congressman Higgins Announces Army Corps Work in the Dunkirk Harbor," at http://www.house.gov/apps/list/press/ny27_higgins/111109DunkirkHarbor.shtml (Nov. 11, 2009) (attached as Ex. 6) (press statement of congressman explaining that the late 2009 federal dredging project "will allow NRG to receive coal by vessel, reducing the need for rail freight" to the Dunkirk plant); "Congressman Higgins & Mayor Frey Announce \$376,000 for Dunkirk Harbor," at http://www.house.gov/apps/list/press/ny27_higgins/April2009DunkirkHarbor.shtml (April 20, 2009) (attached as Ex. 7) (press release announcing project notes the "dredging will provide NRG with the option to bring in their coal by [Great Lakes] freighter").

Moreover, even if NRG were correct that inventory limitations at the plants would preclude it from using water delivery for 100% of the plants' coal needs, it is settled law that a barge option can constitute effective market competition to a rail movement even if the barge option is occasionally unavailable. See *E.I. du Pont de Nemours & Co. v. CSX Transp., Inc.*, STB Docket No. 42100, at 5 (served June 30, 2008) ("We also reject DuPont's argument that it becomes a captive shipper when its ability to use barge is temporarily hindered due to occasional water-level changes, damaged locks or other physical conditions. These are the sorts of transitory and short-term problems that this agency has long held are insufficient to establish the absence of effective competition.").²⁰

²⁰ See also *Aluminum Ass'n v. Akron, Canton & Youngstown R.R. Co.*, 367 I.C.C. 475, 484 (1983) (finding effective competition where motor carriage accounted for 1/3 of nationwide aluminum movements); *Consolidated Paper v. Chicago and Northwestern Transp.*, 7 I.C.C.2d 330, 337-38 (1991) (finding effective competition where motor carriage accounted for 55% of issue movement). The Board's decision in *DuPont* relied on both *Aluminum Association* and *Consolidated Paper*. See *DuPont* at 4 n.9.

Regardless, each of NRG's claimed obstacles to water delivery (if they can ultimately be substantiated) could be solved with the same solution – an off-plant storage site where coal can be unloaded from large vessels, stored until needed, and transloaded to smaller vessels for delivery to the Plant. *See* Verified Statement of Edward Hogan (“V.S. Hogan”) at ¶ 4. This solution, which is fully explained in the Verified Statement of Edward Hogan, would eliminate any concerns about the ability of larger vessels to access the Plants (coal would be delivered to the plants with smaller vessels), and also would eliminate inventory concerns, because sufficient inventory could be stored at the transloading site.²¹ *Id.*

While Mr. Hogan's analysis is necessarily preliminary at this stage of the proceedings, it indicates that water transportation options are cost-competitive with rail service.²² *Id.* at ¶¶ 7-14. In the face of Mr. Hogan's expert analysis of NRG's intermodal transportation options, NRG certainly has not proven that it will likely be able to demonstrate market dominance. And, again, the fact that NRG acknowledges that it has actually taken coal by water in recent years speaks volumes about NRG's failure to prove Board jurisdiction at this very preliminary stage.

Thus, NRG has not met its threshold burden of proving CSXT has market dominance over the movements in question. An adequately supported finding of market dominance is necessary to establish that the Board has jurisdiction over the challenged rates. The Board, like every other federal agency and court, must first determine that it has jurisdiction over the matter in question before it takes action

²¹ As Mr. Hogan explains in his verified statement, while some Great Lakes locks typically do close for a period during the winter, such closure would not interfere with water transportation from the transload site. *See* V.S. Hogan at ¶ 5.

²² The Complaint does not allege NRG has moved any traffic under the challenged rates. NRG alleges in its Petition that one coal train has moved – by mistake under the challenged tariff, to the Huntley Station. Thus, NRG's pleadings admit that it has moved coal traffic between Chicago and Dunkirk under the challenged rate. Because CSXT has neither “charged” nor “collected” the challenged rate for the Chicago to Dunkirk movement, the Board would still lack jurisdiction over that rate even if NRG could establish that CSXT would have market dominance over that movement. *See* 49 U.S.C. § 10704(a)(1).

affecting that matter. At this very early stage, there can be no real question that the very thin evidence presented by NRG (consisting of a few conclusory allegations by a single NRG employee, which are contradicted by CSXT's expert witness) is insufficient to prove that CSXT has market dominance over the issue traffic.²³ If the Board were to order that CSXT reduce its lawfully established rates before it properly determines it has jurisdiction over those rates, that order likely would be null and void. *See, e.g., Western Coal Traffic League v. United States*, 694 F.2d 378, 382 (5th Cir. 1982) (even prior to ICCTA's elimination of rate suspension authority, ICC could suspend rates *only* if carrier shown to have market dominance over the movement(s) subject to the rates). Unless and until NRG is able to establish that CSXT has market dominance, the Board lacks jurisdiction or authority to determine the reasonableness of the rates in question in a full proceeding on the merits, let alone to suspend CSXT's lawfully established rates without an on-the-merits determination of whether they are reasonable.

2. R/VC Ratios and Comparisons are Not Relevant to a SAC Analysis.

Even if NRG were to establish that the Board has jurisdiction over the challenged rates, its arguments would be wholly inadequate to show it has a strong likelihood of prevailing on the merits of its claim. NRG's sole merits argument is that the issue movements' alleged R/VC ratios are higher than the R/VC ratios at which the Board prescribed rates in recent Western cases. *See* Petition at 13, Verified Statement of Thomas Crowley ("V.S. Crowley") at 6-7. This contention is unavailing for several reasons.

First, R/VC ratios are irrelevant to a Stand Alone Cost ("SAC") analysis. The primary function of R/VC ratios in a SAC case is to assist in determining whether the Board has jurisdiction over the

²³ Even if CSXT had presented no contrary evidence, the conclusory allegations submitted with the Petition would be wholly inadequate to support a finding that "there is an absence of effective competition . . . for the transportation to which [the challenged] rate applies." *See* 49 U.S.C. § 10707(a). This is particularly so in light of NRG's admission that: (1) both plants have water access; and (2) the plants have received large quantities of coal by water in recent years.

challenge, and to enforce the jurisdictional floor on any rate prescribed by the Board. The ratios have no relevance whatsoever to the SAC methodology. Indeed, R/VC ratio comparisons have been resoundingly rejected as a proxy for CMP (including SAC) analysis and results. *See Burlington Northern Railroad Company v. ICC*, 985 F.2d 589 (D.C. Cir. 1992) (rejecting ICC’s R/VC comparison approach as having no relation to CMP, and having “no evident connection to any of the goals that the [ICC] said CMP/SAC was designed to achieve.”). Moreover, demand-based differential pricing principles at the heart of modern railroad economics and CMP require that some rates generate substantially higher R/VC ratios than others.²⁴ Because R/VC ratios have no relevance to a SAC analysis, NRG’s suggestion that comparison of the R/VC ratios its consultant estimated with R/VC ratios generated by selected Western SAC case rate prescriptions proves nothing about NRG’s likelihood of success on the merits here.²⁵ Moreover, four of the five Western decisions NRG relies upon did not use the new “MMM” methodology for determining which movements’ rates are reduced, and by how much, in the event that the Board finds SARR revenues exceed costs. As the Board knows, even if a SAC analysis shows SARR revenues exceed costs, whether the issue traffic is entitled to a rate reduction (and the amount of any such reduction) is dependent on the traffic group selected by the complainant and the margins generated by that traffic relative to those generated by the issue traffic. Such evaluations are impossible, and their results unknowable, until the complainant selects its traffic

²⁴ Because of customers’ varying demand elasticities for different movements, differential pricing necessarily means carrier’s rates will generate significant variations in R/VC ratios. In SAC cases in which the Board has found the challenged rates below a maximum reasonable level, R/VC ratios for movements in the same SARR have varied substantially. *See, e.g., Duke v. CSXT*, STB Dkt. No. 42070 (Oct. 20, 2004). This is not evidence that the higher R/VC movements are subject to unreasonable rates, but only that carriers are engaged in differential pricing, as required by sound railroad economics, policy, and the *Coal Rate Guidelines*.

²⁵ Once a SAC analysis is complete, R/VC ratios for all SARR movements have relevance to the distribution of any resulting excess of SARR revenues over costs, under the newly established “Maximum Mark-up Methodology.” R/VC ratios of the issue traffic alone, however, have nothing to do with the core SAC analysis.

group. More generally, SAC analysis is complicated and involves myriad variables – results depend on the interaction of those variables in the circumstances of each peculiar case and cannot be predicted using a single rough formula such as R/VC ratios.

Second, the SAC results that NRG selected for comparison are not suitable comparators. All of those cases concerned rail movements in the plains of the Western United States, where topography, rail operations, and other relevant conditions are substantially different from those in the East, where NRG would construct and operate its SARR. Further, two of the cases offer no evidence of an actual SAC result because the defendant carrier decided to avoid the cost of a SAC proceeding by simply stipulating to a rate at the 180 % R/VC threshold. See *Oklahoma City Gas & Elec. Co. v. Union Pac. R.R. Co.*, Docket No. 42111, at 1 (served July 24, 2009); *Kansas City Power & Light Co. v. Union Pac. R.R. Co.*, Docket No. 42095, at 1 (served May 19, 2008). Moreover, the three remaining cases primarily involved coal unit train service, which bears little resemblance to the complex and geographically dispersed mix of merchandise, coal, and other traffic that very likely will be involved in this case.

In addition, R/VC ratios of rates held reasonable by the Board in recent Eastern SAC cases have exceeded the R/VC ratios for the issue movements estimated by NRG's litigation consultant.²⁶ For example, in the one Eastern SAC case in recent years in which the challenged rates were initially found unreasonable (which therefore included R/VC ratios) the R/VC ratios calculated by the Board for the 28 issue movements were primarily in the range of 350 to 400 percent, and some exceeded 470 percent.

See *Carolina Power & Light Co. v. Norfolk Southern Ry. Co.*, 7 S.T.B. 235, 342-44 (2003). On

²⁶ NRG's consultant entirely ignores recent Western cases in which the Board found the challenged rates did not exceed a maximum reasonable level, such as *Otter Tail Power Co. v. BNSF Ry. Co.*, STB Docket No. 42071 (served Jan. 27, 2006) and *AEP Texas North v. BNSF Ry. Co.*, STB Docket No. 41191 (served May 15, 2009). Moreover, because the Board does not publish R/VC ratios in cases in which rates are found not to exceed a maximum reasonable level, CSXT is not able to disclose those ratios here. But the Board may review the R/VC ratios generated by rates held reasonable in prior Eastern cases (e.g. in *Duke Energy v. CSXT*).

reconsideration, the Board determined the challenged rates – most generating R/VCs well above 350 percent – were reasonable. *See Carolina Power & Light Co. v. Norfolk Southern Ry. Co.*, 7 S.T.B. 862, 880-81 (2004). Even if R/VC ratios in prior SAC cases were relevant to SAC analysis in this case – which they are not – the East is not the West, and NRG is comparing apples and oranges.

Third, NRG's simplistic comparison of selected R/VCs from Western cases ignores the significant differences between that case and this case. Because there is relatively little coal traffic on the route traversed by the issue movements, NRG would very likely be required to select substantial volumes of merchandise and general freight traffic, as well as intermodal traffic for its stand-alone railroad. As the Board knows from the pending *Seminole Electric* case, introduction of substantial volumes of general freight traffic in particular introduces operational complexities and costs far beyond those involved in a SARR composed primarily of cycling unit trains. Moreover, NRG's R/VC comparisons neglect the substantial additional complexity and handling costs involved in moving traffic through the congested and complex Chicago area, and the operationally difficult and inefficient unloading facilities at Huntley and Dunkirk. *See V.S. Rupert* at ¶ 14. The handling costs at the destinations alone are substantial, largely because these old former Conrail destinations were designed for relatively small trains, not the huge unit trains loaded on loop tracks in the PRB. *See id.* At Huntley, for example, 125-car coal trains must be unloaded in 25-car cuts, which requires breaking up the trains in a nearby yard, and shuttling the cars to another yard for staging. *Id.* This process requires a switching locomotive and up to 48 hours to complete. The inefficient unloading process at the two plants is also costly, as it requires multiple crews and shifts to accomplish. *See V.S. Rupert* ¶ 14.

Another significant difference between the cases relied upon by NRG for its R/VC comparison and the issue movements is that SARR real estate costs would be much higher here than in the open

plains of the West.²⁷ Real estate costs are far higher in the more densely populated route traversed by the issue traffic, and the major metropolitan areas traversed by the SARR (likely including, at a minimum, Chicago, Cleveland, and Buffalo) in particular would make SARR real estate costs much higher than in most prior (Eastern or Western) cases.

Moreover, if NRG *were* able to establish the requisite strong likelihood of success on the merits – which the Petition has failed to do – that showing would preclude it from demonstrating it will suffer irreparable harm in the absence of an injunction. If NRG prevails in its rate challenge, it will be entitled to a rate prescription and full reparations, with interest, of any excess payments it made during the pendency of this case. Thus, NRG would have suffered no harm, let alone irreparable harm.

In sum, NRG's proffered R/VC comparisons have neither relevance nor probative value with respect to the question of its likelihood of prevailing in the present SAC case. And, it is beyond serious dispute that they do not satisfy NRG's heavy burden of proving a *strong likelihood* of success on the merits. NRG's failure to carry its burden on this essential element alone compels denial of the Petition. *See Arkansas Dairy Coop. Ass'n v. U.S. Dep't of Agriculture*, 573 F.3d 815, 832 (D.C. Cir. 2009) (if petitioner fails to establish essential "likelihood of success on the merits" factor, court (or agency) may deny preliminary injunction without considering other three factors); *Apotex v. Food and Drug Admin.*, 449 F.3d 1249, 1253 (D.C. Cir. 2006) (denying injunction after finding failure to demonstrate likelihood of success, expressly declining to consider irreparable harm or other two factors).

²⁷ Recognizing the differences between SAC cases in the East and in the West, NRG briefly asserts that this case is "more akin to Western rate reasonableness cases than to Eastern cases." Petition at 13. NRG offers no witness testimony or other evidentiary support for this conclusory assertion. To state the obvious this case is not only more than "akin to" an Eastern case, it is an Eastern case. As the Board knows, the differences between railroading in the East and in the West are not limited to topography. Moreover, while NRG correctly notes that the issue moves do not traverse the mountains of Central Appalachia involved in some prior Eastern cases, those movements travel over far more costly real estate than was involved in those cases. And, at this very early juncture, neither the parties nor the Board know whether the traffic NRG will select for its SARR will include Appalachian or other origins that would require the SARR to traverse more mountainous terrain.

B. NRG Has Not Shown That The Economic Harm it Alleges is Threatened By the Challenged Rate Increases Would Be Irreparable Harm.

Even if NRG could demonstrate a strong likelihood of success on the merits (which it cannot), it also must prove irreparable harm. *Sampson v. Gen. Servs. Admin.*, 415 U.S. 61, 88 (1974) (“the basis of injunctive relief . . . has always been irreparable harm [to the movant] and inadequacy of legal remedies”). The critical element is that the harm must be irreparable – harm that can be remedied by ordinary legal remedies is by definition not irreparable. NRG’s claimed harm – reduced gross margin { } – does not constitute irreparable harm for multiple reasons.

1. Mere Economic Harm is Not Irreparable Harm

First, NRG’s alleged harm is wholly economic. “[T]he Board has consistently held in the past [that] monetary or economic loss by itself does not constitute irreparable harm.” *Edwin Kessler – Pet. for Injunctive Relief*, STB Finance Docket No. 35206 (June 12, 2009).²⁸ The Board’s rule follows the rule in the D.C. Circuit that “recoverable economic losses are not considered irreparable.” *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1295 (D.C. Cir. 2009); *Virginia Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958) (“The key word in this consideration is irreparable”; mere economic harm can be remedied); *see Sampson*, 415 U.S. at 90 (“the temporary loss of income, ultimately to be recovered, does not usually constitute irreparable injury”). This rule accords with common sense – an economic injury that can be compensated with later damages is not irreparable.

²⁸ *See, e.g., Seminole Elec. Cooperative v. CSX Transp., Inc.*, STB Docket No. 42110 (Dec. 22, 2008) (“A monetary or economic loss by itself does not constitute irreparable harm.”); *Delaware and Hudson Co. – Lease and Trackage Rights – Springfield Terminal Ry. Co.*, ICC Fin. Docket No. 36095 (Sub-No. 4), at 3 (served Nov. 2, 1995) (“economic loss by itself does not constitute irreparable harm.”).

The proposition that economic damages are not irreparable is particularly true for a major company like NRG. NRG has a market capitalization of \$5.86 billion.²⁹ In the most recent full reporting year (2009), a period of recession and depressed economic activity, NRG had sales of almost \$9 billion, and net income of \$942 million. *See* NRG 2009 Annual Report at 3 (Ex. 1). For the first quarter of 2010, NRG reported EBITDA of approximately \$601 million. *See* “NRG Energy, Inc. Reports Record First Quarter Results” at 1 (Ex. 2). NRG’s very substantial resources, robust profits, and available cash demonstrate that it can readily absorb CSXT’s rates to two of NRG’s many plants while it challenges those rates before the Board.

While there is a narrow exception to the general rule that economic injury does not constitute irreparable harm, that exception is limited to situations where an economic injury is so large that it “threatens the very existence of the movant’s business.” *Wis. Gas Co.*, 758 F.2d at 674. Evidence short of showing that a party will go out of business absent the requested injunction is not sufficient to establish this exception. *See id.*, 758 F.2d at 674-76; *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738 (D.C. Cir. 1995) (movant’s failure to demonstrate it would go into bankruptcy absent injunction compelled denial of preliminary injunction). Understandably, NRG does not attempt to show that it will go out of business if it does not obtain an injunction. NRG’s claim thus does not fit within the narrow exception to the rule that economic injury does not constitute irreparable harm.

2. NRG’s Alleged “Gross Margin Losses” Are Not Irreparable Harm.

NRG attempts to circumvent this rule by inventing a new, nebulous form of damages. According to NRG, its damage should not be measured by any excess of the challenged rates over a maximum reasonable level, but rather in loss of “gross margin” that NRG alleges it may experience at Huntley and Dunkirk. Because these so-called “gross margin losses” are not cognizable reparations in a

²⁹ *See* <http://finance.yahoo.com/q?s=NRG> (as reported at market close Friday June 11, 2010).

rate case, goes NRG's argument, they are "irreparable." And NRG goes on to argue that these "gross margin losses" { }

NRG does not identify a single case holding that "gross margin losses" are a form of irreparable harm, and CSXT is aware of none. In fact, the Board's refusals to issue rate injunctions in prior cases are founded in part on the conclusion that suspending rail rates in response to allegations that those rates may have negative indirect effects (such as gross margin loss) was not only inconsistent with carriers' statutory rate initiative, but had no apparent limits. In *Lee Ranch*, the Board found that granting the requested rate suspension injunction was inconsistent with its limited rate regulatory function, and that issuing injunctions to address indirect effects of rail rates could "spiral[] out of control." *Lee Ranch*, STB Docket No. 42077, slip op at 5. Even assuming *arguendo* that the Board would have authority to consider indirect "damage" to a shipper in a rate reasonableness complaint case by some measure other than the increase in the rate itself, the appropriate measure would not be "gross margin" – a measure that by NRG's own admission excludes all costs other than the delivered cost of fuel – but rather some measure that more closely reflected any impact of the increased rate on overall profitability. NRG's decision to base its argument on "gross margin loss" and not net margin or net earnings or some other overall profitability metric raises significant questions about what effect such gross margin losses actually have on its bottom line. The Petition and its supporting statements do not claimed that projected gross margin losses would cause the plants to operate at a loss (or, put differently, that either plant would operate at a profit absent the gross margin losses).³⁰

But setting aside the question of whether "gross margin" is a meaningful or permissible measure of damages purportedly resulting from the challenged rates, the fundamental problem with

³⁰ Indeed, NRG admits that other economic factors are affecting the plants' profitability. See V.S. Murphy at ¶ 3 ("In 2010, EBITDA . . . at both Huntley and Dunkirk will be reduced due to multiple economic factors."); *id.* ({})).

NRG's argument is that its "gross margin losses" are not directly caused by CSXT's rates, but rather are entirely dependent on NRG's own choices. NRG asserts that it cannot set prices for its electric output that account for the full cost of CSXT's rates and other cost factors while remaining competitive with other generators seeking to supply power to the market administered by NYISO. But it is NRG that decides what price to offer for the power generated by its plants, how to set those prices, and whether those prices will reflect the full CSXT tariff rate, the rates NRG claims it has a "substantial likelihood" of obtaining in this litigation, or some other rate level. If NRG truly believes that it will likely succeed on the merits (a conclusion that the Petition asks the Board to make) – surely NRG should be willing to set bids based on a rate that it believes the Board will prescribe, confident that it will get the difference back with interest at the end of the case. NRG cannot manufacture irreparable harm by refusing to act in a way that would eliminate that harm. *See* 11A WRIGHT, MILLER, & KANE FEDERAL PRACTICE AND PROCEDURE § 2948.1 ("Not surprisingly, a party may not satisfy the irreparable harm requirement if the harm complained of is self-inflicted.").³¹

Importantly, NRG does not say that it cannot set its electric prices to account for the rate it believes will be prescribed – just that it is choosing not to. *See* V.S. Murphy at ¶ 5 ("NRG cannot simply ignore the price that CSXT is charging for transporting the coal now and over the coming year or more and incur negative EBITDA by assuming that the Board will prescribe a lower price some time in the future.").³² NRG's refusal to take any actions that might incur "negative EBITDA" as to these two

³¹ NRG asserts that its plants are "unique" because they are merchant energy plants that cannot automatically pass cost increases on to a captive base of rate payers. That situation is not "unique" – it is the normal economic condition of almost all railroad customers except regulated electric utilities. To hold that NRG is entitled to a rate suspension because it does not have a captive base of customers would be to make rate suspension the rule in cases that might be brought by the vast majority of shippers – not an exception used, if ever, in the rarest, most truly extraordinary circumstances.

³² *See also* V.S. Kranz at ¶ 9 ("NRG will not bid the Huntley and Dunkirk Stations at a sustained and significant loss based on NRG's belief that the litigation outcome in the rate reasonableness case against CSXT would end favorably."); V.S. Gutierrez at ¶ 8 ("NRG cannot simply ignore the price that CSXT is

plants is no justification for asking the Board to take the extraordinary measure of rate suspension. It bears repeating that the EBITDA of NRG as a whole – the only EBITDA measure that ultimately affects NRG and its shareholders – was over \$2.6 billion in 2009. See “NRG Energy, Inc. Reports Record Full Year 2009 and Fourth Quarter Results” at 1 (Ex. 2). Paying the rates at issue in this case will not come close to affecting NRG’s bottom line earnings.

3. NRG’s Allegation that { } Is Not Irreparable Harm.

NRG also contends that its decision to incur gross margin losses rather than pay CSXT’s rates may cause it to choose to { } and that {“ } NRG will suffer irreparable harm without any injunction” Petition at 18. This is wrong for multiple reasons. In the first place, NRG is the party that will decide whether to { }. This is not a case of a small company that {

} if it truly believes it is likely to succeed on the merits.

Moreover, NRG has not even alleged that { } if CSXT’s rates are not enjoined. Instead, NRG asserts that {

} V.S. Murphy at ¶ 3. However, claims that a movant *may* or even “will likely” suffer injury are not sufficient to satisfy the irreparable injury requirement.

Wisconsin Gas Co. v. F.E.R.C., 758 F.2d 669, 674 (D.C. Cir. 1985).³³ As the D.C. Circuit has explained:

charging to transport the coal and sell electricity based on an assumption that the Board will prescribe a lower price some time in the future.”).

³³NRG has not alleged that the injunction would ensure that NRG will *not* { }. Thus, NRG has not shown that issuance of the injunction will *prevent* the “irreparable” harm it alleges

Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will *in fact* occur. The movant must provide proof that the harm . . . is certain to occur in the near future. Further, the movant must show that the alleged harm will directly result from the action which the movant seeks to enjoin.

Wis. Gas Co., 758 F.2d at 674 (emphasis in original). Under the standard *Holiday Tours* analysis applied by the Board, the question is “[h]as the petitioner shown that without such relief, it will be irreparably injured?” *Washington Metro. Area Transit Ass’n v. Holiday Tours*, 559 F.2d 841, 843 (D.C. Cir. 1977) (emphasis added). “Injunctive relief will not be granted against something merely feared as liable to occur at some indefinite time.” *Wisconsin Gas*, 758 F.2d at 674 (quoting *Connecticut v. Massachusetts*, 282 U.S. 660, 674 (1931)); see *APS v. BNSF*, STB Dkt. No. 42072, Decision at 3-4 (served Oct. 14, 2003) (to satisfy irreparable harm requirement, movant must show harm is “both imminent and irreparable”). As a result, NRG’s claims that it might { } plainly do not suffice as “proof that the harm . . . is certain to occur in the near future. *Wis. Gas Co.*, 758 F.2d at 674.

Finally, NRG has not demonstrated that NRG itself will suffer irreparable harm due to CSXT’s common carrier rates to two marginal power plants.³⁴ As previously demonstrated, because lost profits or { } are economic injuries, only evidence showing that a party will go out of business absent the requested injunction may establish the required irreparable harm. See *supra* at 29-30; *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738 (D.C. Cir. 1995). Indeed, it is nearly inconceivable that {

} could constitute irreparable harm to NRG. The Petition confuses the

{ } or preserve the status quo ante until a determination on the merits, which are the primary purposes of a preliminary injunction.

³⁴ The Petition does assert on at least one occasion that, if NRG { }, it will suffer irreparable harm { }. But it does not allege that paying the rates during the pendency of this case will necessarily cause NRG to take that action.

separate and distinct concepts of {
} (which may cause economic
harm but is not irreparable harm). *See* Petition at 12. NRG has cited no case for the proposition that the
standard for irreparable economic harm can be met by showing {

} This is not the law, for very good reason. Such an exception would swallow the “economic
harm is not irreparable harm rule” and encourage litigants to {

}

Even if the { } were enough to establish
irreparable harm – which it is not – NRG has not presented enough information { } to
allow a meaningful evaluation of its claims of irreparable injury. About the only conclusion the Board
might reasonably draw from the vague, hedged, and qualified statements NRG has submitted is that the
two facilities face a variety of economic challenges, most of which have nothing to do with CSXT’s
rates.³⁵

In sum, NRG has presented no evidence that remotely approaches satisfaction of its burden to
prove that the rate increases it seeks to enjoin would directly cause NRG immediate, great and certain
irreparable harm. To the contrary, the economic “injuries” NRG alleges can be readily absorbed by a
company of NRG’s size and financial wherewithal, and, if NRG were to prevail on the merits, those
temporary financial injuries would be easily remedied through the award of reparations.

³⁵ For example, NRG witness Evans explains that the Huntley and Dunkirk stations are only competitive with natural gas plants if they have a “delivered cost of coal [that is] significantly less than the delivered cost of natural gas.” V.S. Evans at ¶ 4. Mr. Evans explains that “natural gas stations are generally more efficient and have less emission costs than the Huntley and Dunkirk units.” *Id.* It plainly is not the Board’s role to interfere in the marketplace to aid businesses with competitive problems wholly apart from rail transportation costs.

C. NRG Has Not Satisfied the Remaining Two Requirements for a Preliminary Injunction.

Because NRG has failed to satisfy its burden on the two primary requirements for granting a preliminary injunction, the Board should deny NRG's Petition without further consideration. As NRG acknowledges, a "showing of irreparable harm" is an indispensable precondition to granting equitable relief. Petition at 9-10. In the absence of a showing that the petitioner will suffer irreparable harm if an injunction is not issued, the injunction request should be denied, "even if the other three factors support granting relief." *See id.* Thus, NRG's failure to show it will suffer irreparable harm, alone, compels denial of the Petition. Below, CSXT demonstrates that NRG also has not satisfied the two other essential elements, lack of harm to other parties (namely CSXT) if the injunction is granted; and that the public interest favors the issuance of the requested injunction.

1. CSXT Would Be Harmed if the Requested Injunction Were Issued.

At bottom, the Petition seeks to shift the economic burden of financing NRG's rail transportation costs to CSXT during the pendency of NRG's challenge to CSXT's common carrier rates. CSXT would be harmed to the exact extent of the relief sought by NRG. The costs that NRG would bear in the absence of an injunction would be borne by CSXT if the Board were to issue an injunction suspending CSXT's lawfully established rate. *See Davenport*, 166 F.3d at 367 (denying a preliminary injunction when the balance of harms was equal to both parties); *Serono Labs., Inc. v. Shalala*, 158 F.3d 1313, 1326 (D.C. Cir. 1998) (denying a preliminary injunction when the "balance of harms result[ed] roughly in a draw"). If the Board were to grant the requested relief, CSXT would suffer monetary injury in precisely the amount of the costs that NRG would avoid.³⁶ The critical difference is that Congress has

³⁶ Importantly, this element of the test does *not* require that the nonmoving party would be *irreparably* harmed by an injunction. Rather, it requires the Petitioner to show that "an injunction will not substantially harm other parties." *Estate of Coll-Monge v. Inner Peace Movement*, 524 F.3d 1341, 1349 (D.C. Cir. 2008).

weighed the competing interests of shippers and carriers and struck the balance in favor of the carriers' rulemaking initiative. *See* 49 U.S.C. § 10701(c).

The Board has stated that the balance should usually be struck in favor of carriers' right to establish rail rates: "[o]rdinarily, where there is a dispute about the appropriate rate, the equities favor allowing the carrier's rate to control pending [the Board's] resolution of the dispute." *Arizona Pub. Serv. Co. v. Burlington N. & Santa Fe Ry. Co.*, STB Docket No. 42077, 2003 WL 21055725, at *5 (served May 12, 2003). By statute, rail carriers have the right to establish and maintain any lawful rate, unless and until the Board finds such a rate exceeds a maximum reasonable level. *See* 49 U.S.C. § 10701(c). The extraordinary relief sought by NRG would deprive CSXT of that statutory right based *solely* on the allegations of its Complaint and Petition, before any discovery; before the Board has found it even has jurisdiction over the case; before any SAC evidence has been filed; and long before the Board makes a rate reasonableness determination on the merits. The bare allegations of the Complaint and the general, untested allegations of the statements submitted in support of the Petition are wholly inadequate to deny CSXT its express statutory right to establish any lawful rate, and charge and collect that rate during the pendency of a rate reasonableness challenge. Denial of this important statutory right would constitute an indisputable harm to CSXT. NRG offers no argument or evidence to the contrary.

2. **NRG Has Not Shown that The Public Interest Favors an Injunction.**

Granting a preliminary injunction would not be in the public interest because it would prevent CSXT's exercise of the ratemaking right guaranteed by statute. As discussed above, a rail common carrier such as CSXT has the statutory right to establish rail transportation rates in the first instance. *See* 49 U.S.C. § 10701(c). Section 10701 embodies Congress' determination that it is in the public interest that rail carriers have the right to establish, charge, and collect the rate it finds appropriate for common carrier service, unless and until the Board finds that rate exceeds a maximum reasonable level. Here, NRG seeks the Board's extraordinary intervention to deny CSXT its statutory right to establish the rates

it will charge to fulfill its common carrier obligation, merely because NRG does not wish to absorb the increase embodied in the challenged rates during the pendency of this case.

Moreover, NRG's one-paragraph argument that an injunction is in the public interest – essentially that in the absence of an injunction { } – neglects to mention at least two critical factors discussed above. *First*, the plants' marginal status, which would continue regardless of how the Petition is decided, is attributable to a combination of market and regulatory forces largely outside of the control of CSXT or NRG. CSXT does not determine demand for electricity in Western New York. Nor does CSXT have any influence over prices of electricity generated by non-coal sources of power. CSXT does not determine environmental laws or regulations for the United States or the State of New York. Indeed, NRG does not claim that { } would be avoided if the Board suspends CSXT's rates, it merely reiterates its assertion that { }. Petition at 22-23; *see id.* at 5 (NRG asserts that the potential that it would { }).

Second, whether NRG is willing to absorb CSXT's rates and seek to sell power at the price determined by other market forces is entirely within NRG's discretion. The price that NRG bids to NYISO for sale of power from the Huntley and Dunkirk plants is likewise within its discretion and control. If it wishes to do so, NRG could readily quote prices to the market that disregard some portion of CSXT's rates during the pendency of this rate case. At the end of the case, if NRG prevailed, it would recover, with interest, any rates that CSXT charged in excess of the reasonable maximum level. What NRG is really conveying is that would rather { } than do what complainants do in every SAC case – pay the challenged rate unless and until the complainant proves it is unreasonable.

NRG has failed to prove it is likely to prevail on the merits of this complex case, or that it will suffer irreparable harm in the absence of the unprecedented relief it seeks. Neither the fact that NRG wishes to avoid paying CSXT's rates during this case, nor its vague claims that it may {

} if their costs further increase, is sufficient to overcome Congress' authoritative determination that the public interest is best advanced by investing rail common carriers with a ratemaking initiative. The public interest, like the other three essential factors, militates against granting the Petition.

D. If The Board Were To Grant NRG's Request for a Rate Suspension, NRG Must Post Adequate Security.

For the foregoing reasons, the Board should not grant NRG's request for a rate suspension. If the Board were to agree to suspend CSXT's rates, however, it should require NRG to post an adequate security for the differential between the tariff rate and the rate imposed by the Board. Parties obtaining preliminary injunctions are often required to post a security to cover potential costs and damages to parties restrained by injunctions in the event that an injunction proves to have been improvidently granted. *See Fed. R. Civ. Proc. 65(c)* ("no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant . . . for the payment of costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained"); *DSE, Inc. v. United States*, 169 F.3d 21, 33 (D.C. Cir. 1999).³⁷ Here, it is appropriate for the Board to require NRG to post a bond sufficient to cover CSXT's potential costs and damages from the extraordinary suspension of its ratemaking initiative – *i.e.*, the difference between the tariff rates and Board-imposed rate. A surety bond or other appropriate security is particularly appropriate here in light of the real

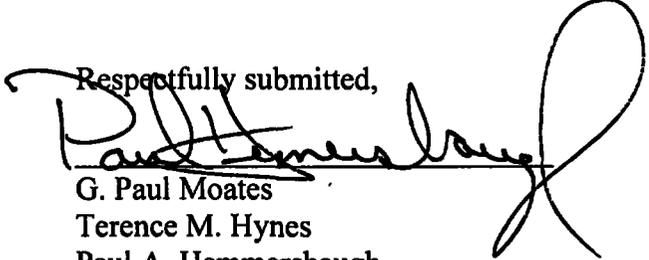
³⁷ *See also* 11A WRIGHT, MILLER & KANE, FEDERAL PRACTICE & PROCEDURE § 2954 ("[T]he rule is phrased in mandatory terms and the conclusion seems inescapable that once the court decides to grant equitable relief under Rule 65 it must require security from the applicant.").

possibility that the Board may determine it lacks authority to award reparations to CSXT if the level of the enjoined rate is below the maximum reasonable rate.

CONCLUSION

NRG has not satisfied any of the essential requirements for issuance of the extraordinary injunctive relief it seeks, and no such relief is appropriate. Accordingly, the Board should deny the Petition for Injunctive Relief.

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Respectfully submitted,


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Dated: June 14, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of June, 2010, I caused a copy of the foregoing Reply of CSX Transportation, Inc. to NRG Power Marketing LLC's Petition for Injunctive Relief to be served on the following parties by hand or more expeditious method of delivery:

**Karyn A. Booth
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Washington, DC 20036**


Eva Mozena Brandon

BEFORE THE
SURFACE TRANSPORTATION BOARD

_____)	
NRG POWER MARKETING LLC)	
)	
	<i>Complainant,</i>)	
)	
	v.)	Docket No. NOR 42122
)	
)	
CSX TRANSPORTATION, INC.)	
)	
	<i>Defendant.</i>)	
_____)	

VERIFIED STATEMENT OF HENRY T. RUPERT

1. My name is Henry T. Rupert. I am employed by CSXT as Assistant Vice President, Utility North and Export Coal Marketing. My responsibilities include sales and marketing for CSXT transportation services in the northern half of CSXT’s system and for CSXT transportation services for export coal. I have been primarily responsible for CSXT’s relationship with NRG Power Marketing, LLC (“NRG”) since 1999 and I was personally involved in CSXT’s recent negotiations with NRG for a new contract. I am submitting this Verified Statement in support of CSXT’s Reply to NRG’s Petition for Injunctive Relief. Below I discuss the commercial relationship between CSXT and NRG, recent negotiations between the parties, and NRG’s representations in those negotiations about the competitive factors affecting the plants.

The Commercial Relationship Between CSXT and NRG

2. While NRG has many power generating facilities in the United States, the plants at issue here are its Huntley and Dunkirk stations, both of which are coal-fired electric power generating stations located in, and selling power to Western New York State. CSXT and NRG

have enjoyed a good commercial relationship since NRG acquired the two plants a decade ago. The Dunkirk plant is located at a port on Lake Erie, and the Huntley plant (known as the “River Station”) is located on the Niagara River, just off the Erie Canal. *See, e.g.,* V.S. Farrow ¶¶ 14-16. Both plants are thus water-served, and both have received substantial volumes of coal (including PRB coal) via Great Lakes ships over a number of years through 2005. NRG indicates that the two plants received approximately 725,000 tons of coal by water in 2004. Based on my knowledge and recollection, and publicly available information, I believe that volume is roughly consistent with the annual volumes of coal that the two plants typically received via waterborne transportation from 1990 through 2004.

3. Starting in or about 2003, the Huntley and Dunkirk plants transitioned to burning lower sulfur coal transported from the Powder River Basin (“PRB”) in Wyoming. CSXT worked closely with NRG to assist in modifying its facilities to allow them to receive large PRB coal trains. CSXT also made significant changes in its operations in Chicago and at the destination plants in order to accommodate the movement of PRB coal to the NRG plants. Beginning in 2004, the Union Pacific Railroad Company (“UP”) and CSXT have transported coal from the PRB to the two issue plants under a series of joint line contracts, the last of which expired in March 2010. UP moves the coal from the PRB origin to interchange with CSXT in Chicago, and CSXT moves the traffic from Chicago to Huntley and Dunkirk.

4. Since it acquired the lines serving Huntley and Dunkirk in 1999, CSXT has always considered waterborne transportation of coal to those plants as a viable and competitive alternative to CSXT rail transportation service to those plants. That and other competitive options have limited the rates CSXT has offered and received for transportation of coal to the two plants.

5. Since 2001, CSXT’s coal deliveries to the two plants have varied between roughly 1.5 million and 3.7 million tons annually, as illustrated in more detail in the following table.

CSXT deliveries to NRG's Huntley and Dunkirk Plants 2001 through 2009 (in Tons)

<u>Fiscal Year</u>	<u>DUNKIRK</u>	<u>HUNTLEY</u>	<u>Total</u>
2001	1,437,000	1,661,000	3,099,000
2002	879,000	607,000	1,486,000
2003	1,131,000	1,460,000	2,591,000
2004	1,253,000	1,456,000	2,709,000
2005	1,682,000	1,242,000	2,924,000
2006	1,836,000	1,820,000	3,656,000
2007	1,994,000	1,737,000	3,731,000
2008	2,200,000	1,482,000	3,683,000
2009	1,639,000	1,031,000	2,671,000

Recent Contract Negotiations and NRG’s Representations of Challenges Facing the Plants

6. Beginning in April 2009, UP, CSXT, and NRG engaged in contract negotiations, seeking to enter a new joint line contract to replace the contract expiring in March 2010. At the outset of the negotiations, {

}

7. {

8. {

}

9. {

}

10. {

}

11. The parties were unable to reach agreement on a new joint contract. In February 2010, UP and NRG entered a separate contract for the UP segment of the movement.

12. On or about March 5, 2010, CSXT made a proportional rate offer to NRG, which would result in a {

} . NRG refused the offer, telling CSXT that at the offered rate, NRG's modeling indicated that {

} . On or about March 11, 2010, NRG requested that CSXT provide a common carrier tariff rate for the movements from Chicago to Huntley and Dunkirk. In response to NRG's request, CSXT provided common carrier rates to NRG on March 25, 2010. After establishing the two requested common carrier rates, CSXT continued to attempt to negotiate a private contract with NRG for the movements. The joint transportation contract expired on March 31, 2010.

13. CSXT made two additional offers to NRG after it established common carrier rates and the joint contract expired. Each of those offers would have resulted in {

} .

Nonetheless, NRG rejected both of these offers. At no time during the parties' rate negotiations did NRG advise CSXT that, if the parties were unable to agree on a contract rate, NRG would seek an injunction or request that the STB cap or "suspend" CSXT's common carrier rates at a

lower level. Nor did NRG tell CSXT that it believed such a rate injunction or rate ceiling would be warranted during the pendency of any rate case NRG might file to challenge CSXT's rail rates.

Rail Transportation and Delivery of Coal to the Plants Poses Substantial Complexities

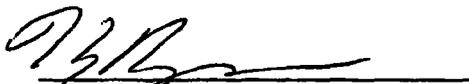
14. NRG suggests that the Board might use revenue-to-variable cost ("R/VC") ratios from past rate reasonableness cases in the western United States to try to predict what R/VC might be prescribed here if NRG should prevail. However, NRG ignores the fact that its traffic involves substantial additional complexity and costs in comparison to many western unit train coal movements, such as the handling costs involved in moving traffic through the congested and complex Chicago area, over a congested and capacity-constrained line, and to the operationally awkward, difficult, and inefficient unloading facilities at Huntley and Dunkirk. Handling costs at the destinations alone are substantial, largely because these old former Conrail destinations were designed for relatively small trains, not the huge unit trains loaded on loop tracks in the PRB. The plants' unloading designs make them among the least efficient major western coal receivers on the entire CSXT system. At Huntley, for example, NRG unloads coal in cuts of approximately 25 cars because of physical limitations of its unloading operation. This requires that 125-car PRB trains be dismantled in CSXT's Kenmore Yard, and then shuttled to a staging yard in preparation for unloading. This process requires, among other things, a separate local switching engine and substantial time (typically 30 to 48 hours). Although NRG's rail contracts required it to unload trains within 24 hours of their receipt at the plants, NRG has never consistently unloaded trains within that time period. At least equally important, the unloading process at the facility requires multiple crews and shifts to accomplish.

VERIFICATION

I, Henry Rupert, declare under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this statement.

Executed on this 11 day of June, 2010.


Henry Rupert

BEFORE THE
SURFACE TRANSPORTATION BOARD

_____)	
NRG POWER MARKETING LLC)	
	<i>Complainant,</i>)	
)	
	v.)	Docket No. NOR 42122
)	
CSX TRANSPORTATION, INC.)	
	<i>Defendant.</i>)	
_____)	

VERIFIED STATEMENT OF EDWARD J. HOGAN

1. My name is Edward J. Hogan. I am Vice President Operations of Port City Marine Services, based in Muskegon, Michigan. I am a career Marine Operations Manager with over thirty years experience in all areas of marine transportation involving ships, tugs and barges. I began my career as a tankerman, bargeman and conveyorman on lake vessels, eventually became a vessel master operating tugs, and more recently have served as the senior operations manager for several marine transportation companies. At Port City Marine Services, a subsidiary of Sand Products, Inc., I have responsibilities for the day to day operations of a Great Lakes freighter and a large tug/barge unit. I have previously served as Vice President of Operations for Wisconsin & Michigan Steamship Co., where I was responsible for day to day management of a fleet of three self-unloading Great Lakes ships. Previous to that I worked for fifteen years for Hannah Marine Corporation, where I rose to become Executive Vice President / Vice President of Operations with responsibility for day to day operations of the Hannah Marine fleet. In short, I have devoted much of my professional career to Great Lakes shipping, and I am

very familiar with both the logistics of Lakes transportation and the potential for waterborne transportation to offer a competitive option for bulk shippers with access to the Lakes.

Water Transportation of Coal to the Huntley and Dunkirk Plants Is Feasible

2. I submit this verified statement to respond to the assertion of NRG that while “[b]oth the Dunkirk and Huntley Stations are located on waterways . . . vessel transportation is not a feasible option at either Station.” (Farrow V.S. at ¶ 13). On the contrary, my professional opinion is that vessel transportation is a very viable and economically competitive option for both plants. My analysis at this early stage of the case is necessarily preliminary, and partially based on assumptions that would have to be further investigated or confirmed for purposes of a more thorough, final analysis. My current analysis strongly suggests that coal could be moved via water from Chicago to both plants efficiently and at costs that make water transportation an effective competitive alternative to rail transportation of coal from Chicago to the two plants on Lake Erie.

3. While NRG admits that the Dunkirk and Huntley Stations are located on waterways, it argues that the plants cannot receive coal by water for two primary reasons. First, NRG states that the two plants do not have sufficient inventory capacity to store coal for use during winter months when water transportation is restricted. (*Id.* at ¶¶ 14-15). Second, NRG suggests that logistical challenges at the docks – specifically an allegedly shallow channel depth at Dunkirk and the need for vessels delivering to Huntley to be small enough to navigate the Black Rock Lock – would prevent access by fully loaded 15,000 ton coal vessels. (*Id.*) At this early juncture, I have not had an opportunity to conduct sufficient analysis to express a fully informed opinion on those claims, but I am skeptical about their validity. For present purposes, however, the important point is that even assuming that NRG is correct about each point, these obstacles can easily be overcome by proper logistics planning, as I demonstrate below.

4. Each of the potential logistical obstacles identified by NRG could be addressed and resolved using the same solution – use of an off-property storage site where coal can be unloaded from large vessels, stored until needed, and transloaded to smaller vessels for delivery to the Plant. This solution would alleviate any concerns about the ability of larger vessels to navigate the channel depth at the Dunkirk Plant or to access the Huntley Plant through the Black Rock Lock.

5. Locating the storage site near the plants (such as at Buffalo) would also prevent inventory shortages at the plants during the winter months. NRG’s claim that “[t]he Great Lakes are closed every winter by the Coast Guard, generally from mid-November through March” is not accurate. (Farrow V.S. at ¶ 14). In the first place, weather-related closures of the Lakes by the Coast Guard typically only occur between mid-December and February (*i.e.*, for 2 ½ months, not 4 ½ months as NRG claims). More importantly, even between mid-December and February the Coast Guard does not close the *entire* Great Lakes System – what are typically closed are the locks connecting the Lakes, and the lower Lakes remain open for shipping (weather permitting) all winter. Therefore, most winters waterborne movements between Buffalo and the plants should be able to move freely, even when the locks and the upper Lakes may be closed due to winter weather. As a result, NRG could build up its stockpile at the offsite storage site during non-winter months, and it could use coal stored at that site to replenish the plants by barge during the winter.

6. NRG’s claims that the ports at Huntley and Dunkirk were “closed” by the Coast Guard misapprehend the Coast Guard letters they cite. First, it is not the entire ports that were closed, but merely the NRG docks. Second, the docks were not closed because they could not handle commercial traffic, but rather because NRG requested that they be declared officially

“closed,” apparently in order to obtain a waiver of federal regulatory requirement that it prepare a security plan. (See Exhibits 1 and 2 to Farrow V.S.). This security “closure” is not a serious impediment to waterborne transportation to the ports serving the plants. If NRG wished to resume operations at the docks, it would simply need to notify the Coast Guard of its decision and prepare an adequate security plan. Security plans for both docks could be prepared by third parties at a relatively modest cost. My inquiry with one company that specializes in developing U.S. Coast Guard approved security plans suggests that the cost of developing plans for both plant docks would be approximately \$25,000.

Water Transportation of Coal to the Huntley and Dunkirk Plants Is Cost-Effective

7. Below is a potential plan for waterborne transportation of coal from Chicago to the two NRG plants at issue. I emphasize that this is just one potential alternative mode of waterborne transportation. A number of other viable options may exist. Particularly in today’s economic environment, many marine transportation companies will aggressively pursue opportunities for new business and may present other options to make water transportation to NRG even more affordable and feasible. I further emphasize the plan described below is only preliminary, and I have prepared it on a short timetable at counsel’s request. In the event that waterborne transportation is an issue at future stages of this litigation, I reserve the right to revise this analysis or to propose an alternative plan should it be appropriate in light of further study, analysis, or changed conditions.

8. In brief, the proposed plan is as follows:

- a. Coal is transloaded at Chicago to a self-unloading Great Lakes vessel;
- b. The Great Lakes vessel transports coal to a nearby transfer site (initially assumed to be Buffalo);
- c. From the Buffalo transfer site, coal is delivered to Huntley via towboat and hopper barges; and

- d. From the Buffalo transfer site, coal is delivered to Dunkirk via a self-unloading tug/barge unit.

Below, I discuss these steps in more detail.

9. First, unit trains of Powder River Basin coal arriving from Chicago could be transferred to a Great Lakes freighter rather than to a CSXT train. For example, the KCBX terminal at Chicago has the facilities and the capacity to accommodate transloading of unit coal trains to Great Lakes vessel. My preliminary investigations suggest that coal could be transloaded from trains to vessels at KCBX for { } and it may be possible that a lower price could be obtained in exchange for a contract with volume guarantees.

10. Second, a Great Lakes self-unloading vessel would transport NRG-bound coal from the KCBX terminal to Buffalo. { }

11. The next step is unloading at Buffalo. Setting up the Buffalo transfer site would require some capital costs and equipment mobilization, including excavators and conveyor systems for reloading coal. I preliminarily estimate the cost of setting up the Buffalo dock operation to be approximately \$4,240,000. Spread against a potential annual volume of 3.5 million tons, this expense is minimal – approximately \$0.32 per ton if the costs are spread over five years (assuming 6% interest). I preliminarily estimate that labor and throughput charges at the Buffalo site would amount to approximately \$3.68 per ton.

12. To transport coal from the Buffalo storage site to Huntley, NRG could use hopper barges capable of carrying 1800 tons of coal. These hopper barges (and a towboat) are capable of navigating the Black Rock Lock and delivering to the dock at Huntley. I estimate that a towboat operating Monday through Friday in two 12-hour shifts could shuttle four barges per day into Huntley, totaling 7200 tons per day. Based on my preliminary investigations, it appears

the shuttle rate would be approximately \$1.25 per ton. The purchase price of a towboat and six suitable barges would be approximately \$3.5 million – \$1.5 million for the towboat and approximately \$300,000 each for the barges. This would translate into a capital cost of \$0.46 per ton, assuming purchase of the equipment at 6% over 5 years with annual tonnage of 1.5 million. If further analysis justifies any changes in these preliminary assumptions (for example, lower tonnage, more barges, or another tow), such changes to the per-ton capital cost would likely have a relatively small effect on the bottom line per-ton cost.

13. To transport coal from Buffalo to Dunkirk, one option would be a self-unloading tug/barge unit. Such a unit would have a draft that could easily navigate the channel depth in Dunkirk Harbor and access the Dunkirk Plant. While this vessel is ideal to service Dunkirk, it cannot service Huntley as it is too wide for the Black Rock Lock. I have identified one such unit that is currently for sale for \$7,000,000. The transportation rate for such a unit would be approximately \$2.10 per ton, and the capital costs for transporting 2.0 million tons annually would amount to about \$0.81 per ton.

14. The costs of this transportation option – which I emphasize are preliminary estimates and may change with further analysis – suggest that water transportation is a cost-effective option for both plants. Total cost per ton for water transportation from Chicago to Huntley would be { }, and the total cost per ton from Chicago to Dunkirk { }. The cost breakdown is shown in the table below:

	Huntley	Dunkirk
Rail to water transfer at Chicago	{ }	{ }
Lake vessel transportation to Buffalo	{ }	{ }
Buffalo capital costs and equipment mobilization	{ }	{ }
Buffalo labor and throughput	{ }	{ }
Capital costs for Buffalo to plant	{ }	{ }
Transit costs for Buffalo to plant	{ }	{ }
Total	{ }	{ }

VERIFICATION

I, Edward J. Hogan, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

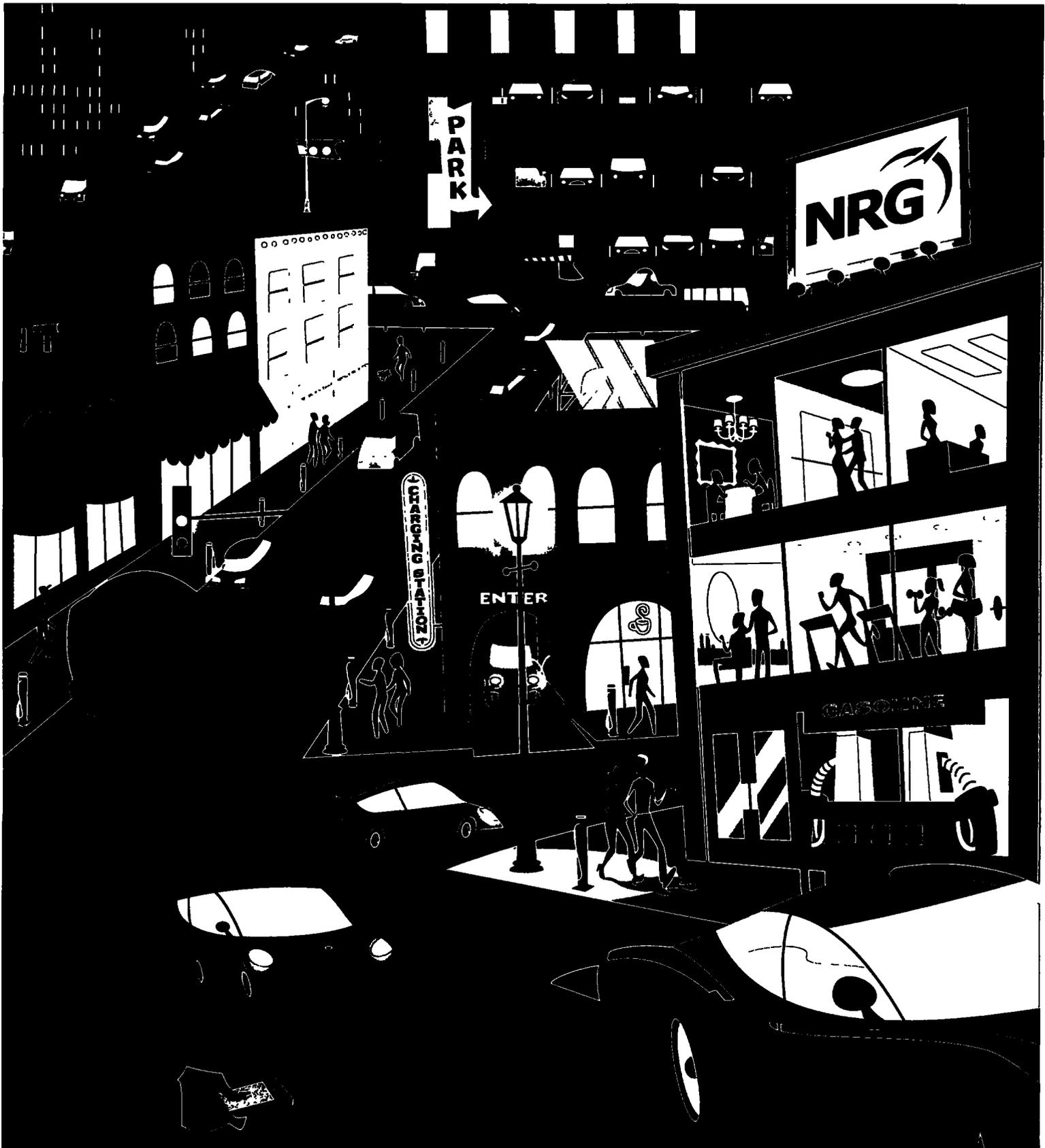
Executed on this th day of June, 2010.


Edward J. Hogan

EXHIBITS

- Exhibit 1:** NRG 2009 Annual Report
- Exhibit 2:** News Release, “NRG Energy, Inc. Reports Record First Quarter 2010 Results”
- Exhibit 3:** News Release, “NRG Energy, Inc. Reports Record Full Year 2009 and Fourth Quarter Results”
- Exhibit 4:** NRG 2008 Annual Report
- Exhibit 5:** Excerpts from NRG 2008 10-K
- Exhibit 6:** Press Release, “Congressman Higgins Announces Army Corps Work in the Dunkirk Harbor” (Nov. 11, 2009)
- Exhibit 7:** Press Release, “Congressman Higgins & Mayor Frey Announce \$376,000 for Dunkirk Harbor” (April 20, 2009)

EXHIBIT 1



NRG 2009 YEAR IN REVIEW

MOVING CLEAN ENERGY FORWARD

WE ARE MOVING CLEAN ENERGY FORWARD

At NRG, we have a clear vision of our Company's, and our country's, clean energy future. We are working tirelessly to make renewable power more prevalent and traditional power sources cleaner. It's why we are laying the foundation for a new electric vehicle on American streets that supports a cleaner environment, increases energy independence and strengthens our national security. Join us as we move clean energy forward.



NRG

A Fortune 500 company and member of the S&P 500, NRG Energy, Inc. is a wholesale energy provider. We own and operate one of the largest and most diverse power generation fleets, and sell energy, capacity and related products throughout the United States. Headquartered in Princeton, NJ, NRG's power plants supply nearly 24,000 megawatts of generation capacity nationwide—enough to support more than 20 million homes. The Company's fleet includes nuclear, wind, solar, coal, natural gas and oil powered generating facilities. NRG's retail business, Reliant Energy, serves more than 1.6 million residential, commercial and industrial customers in Texas.

STEADY GROWTH. STRONG CASH FLOW. HIGH LIQUIDITY.

FIVE YEARS OPERATING REVENUE

2009	\$ 8.952 BILLION
2008	\$ 6.885 BILLION
2007	\$ 5.989 BILLION
2006	\$ 5.585 BILLION
2005	\$ 2.400 BILLION

FIVE YEARS CASH AND CASH EQUIVALENTS (excluding restricted cash)

2009	\$ 2,304 MILLION
2008	\$ 1,494 MILLION
2007	\$ 1,132 MILLION
2006	\$ 777 MILLION
2005	\$ 486 MILLION

FIVE YEARS NET INCOME

2009	\$ 942 MILLION
2008	\$ 1,225 MILLION
2007	\$ 573 MILLION
2006	\$ 617 MILLION
2005	\$ 84 MILLION

FIVE YEARS LIQUIDITY (excluding collateral)

2009	\$ 3,794 MILLION
2008	\$ 3,354 MILLION
2007	\$ 2,715 MILLION
2006	\$ 2,227 MILLION
2005	\$ 758 MILLION

FIVE YEARS CASH FROM OPERATIONS (CFO)

2009	\$ 2,106 MILLION
2008	\$ 1,479 MILLION
2007	\$ 1,517 MILLION
2006	\$ 408 MILLION
2005	\$ 68 MILLION



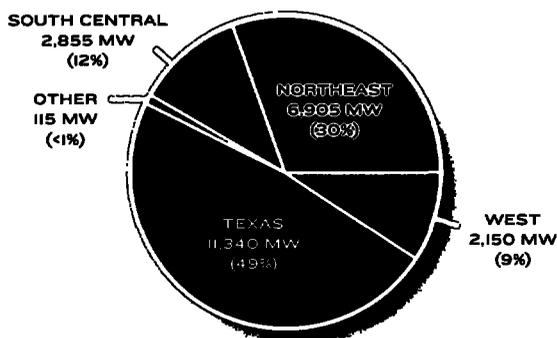
000

- S** Safety
- T** Teamwork
- R** Respect for Individuals, our Community and the Environment
- I** Integrity
- V** Value Creation
- E** Exemplary Leadership

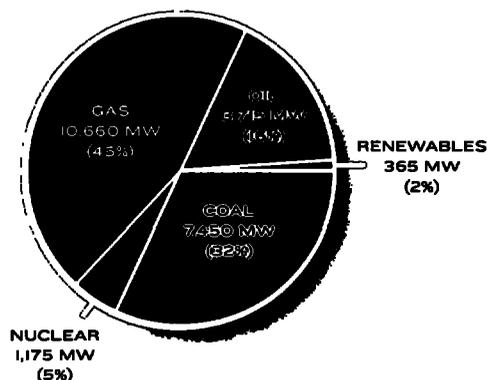


A DIVERSIFIED GENERATION PORTFOLIO

GEOGRAPHIC DISTRIBUTION OF NRG'S U.S. NET GENERATING CAPACITY



DIVERSE PORTFOLIO OF U.S. NET POWER GENERATION, BY FUEL TYPE (%)



U S POWER GENERATION ASSETS AS OF MARCH 31, 2010

TEXAS	LOCATION	% OWNERSHIP	NRG OWNED (NET MW)	PRIMARY FUEL
Cedar Bayou	Chambers County, TX	100 00	1,495	Natural Gas
Cedar Bayou 4	Chambers County, TX	50 00	260	Natural Gas
Elbow Creek	Howard County, TX	100 00	120	Wind
Greens Bayou	Houston, TX	100 00	760	Natural Gas
Langford	Christoval, TX	100 00	150	Wind
Limestone	Limestone County, TX	100 00	1,690	Coal
San Jacinto	LaPorte, TX	100 00	160	Natural Gas
Sherbino	Pecos County, TX	50 00	75	Wind
South Texas Project	Bay City, TX	44 00	1,175	Nuclear
SR Bertron	Deer Park, TX	100 00	765	Natural Gas
TH Wharton	Houston, TX	100 00	1,025	Natural Gas
WA Parish (coal)	Fort Bend County, TX	100 00	2,490	Coal
WA Parish (natural gas)	Fort Bend County, TX	100 00	1,175	Natural Gas
NORTHEAST	LOCATION	% OWNERSHIP	NRG OWNED (NET MW)	PRIMARY FUEL
Arthur Kill	Staten Island, NY	100 00	865	Natural Gas
Astoria Gas Turbines	Queens, NY	100 00	550	Natural Gas
Conemaugh	New Florence, PA	3 70	65	Coal
Connecticut Remote Turbines	Various CT (4 sites)	100 00	145	Oil
Devon	Milford, CT	100 00	135	Natural Gas
Dunkirk	Dunkirk, NY	100 00	530	Coal
Huntley	Tonawanda, NY	100 00	380	Coal
Indian River	Millsboro, DE	100 00	740	Coal
Keystone	Shelocta, PA	3 70	65	Coal
Middletown	Middletown, CT	100 00	770	Oil
Montville	Uncasville, CT	100 00	500	Oil
Norwalk Harbor	South Norwalk, CT	100 00	340	Oil
Oswego	Oswego, NY	100 00	1,635	Oil
Somerset	Somerset, MA	100 00	15	Oil
Vienna	Vienna, MD	100 00	170	Oil
SOUTH CENTRAL	LOCATION	% OWNERSHIP	NRG OWNED (NET MW)	PRIMARY FUEL
Bayou Cove	Jennings, LA	100 00	300	Natural Gas
Big Cajun I	New Roads, LA	100 00	430	Natural Gas
Big Cajun II	New Roads, LA	85 80	1,495	Coal
Sterlington	Sterlington, LA	100 00	175	Natural Gas
Rockford I	Rockford, IL	100 00	300	Natural Gas
Rockford II	Rockford, IL	100 00	155	Natural Gas
WESTERN	LOCATION	% OWNERSHIP	NRG OWNED (NET MW)	PRIMARY FUEL
Blythe	Blythe, CA	100 00	20	Solar
El Segundo	El Segundo, CA	100 00	670	Natural Gas
Encina (Cabrillo I)	Carlsbad, CA	100 00	965	Natural Gas
Long Beach	Long Beach, CA	100 00	260	Natural Gas
Saguaro	Henderson, NV	50 00	45	Natural Gas
San Diego Turbines (Cabrillo II)	San Diego, CA (3 sites)	100 00	190	Natural Gas
OTHER NORTH AMERICA	LOCATION	% OWNERSHIP	NRG OWNED (NET MW)	PRIMARY FUEL
Dover Energy	Dover, DE	100 00	103	Natural Gas
Paxton Creek	Paxton Creek, PA	100 00	12	Natural Gas
Total North America Net MW:			23,365 approximately	
Total Generation Net MW:			24,370 approximately	



LEADING THE CHARGE

DEAR FELLOW STOCKHOLDERS:

Like a car driver poised at the starting gate of an off-road rally, we faced an uncertain path before us at the beginning of 2009. We had to steer a course never before traveled, trying to avoid hazards that seemed to beckon at every turn and buffeted by crosswinds that threatened to send us off course. When we crossed that once-distant finish line and looked back at how far we came, our sense of gratification was made that much more powerful by the realization that, not only were we equal to the task, we grew immensely wiser and stronger as a result of the journey. We emerged energized and eager to take on what comes next.

The events of last year challenged us to defend the fundamental value of our Company with great vigor. In the process we developed a deeper appreciation both for the great promise the future holds and NRG's tremendous potential to grow and help create the clean energy economy America desires.

The theme of this year's report, *Moving Clean Energy Forward*, is a succinct portrayal of where NRG is heading. It's a clear strategy driven by the moral imperative to be a leader as our society begins the transition to the post-carbon economic era. Within this seismic societal change lies great opportunity for NRG. By acting as a catalyst to the creation of a sustainable economic order; by acting to enhance our national energy security by substantially reducing our dependence on foreign oil; by creating clean-power jobs driving America's high-tech future, we expect to do well for our shareholders as we do good for our customers and the world we share with them.

The financial and economic challenges of the past couple of years have created a very conducive environment for forward thinking: I believe NRG is well-positioned to seize first-mover advantage and grow into the nation's foremost provider of clean energy both as a primary and secondary energy source. This means safe, affordable nuclear and clean coal power, supported by wind and solar and fast-start, high-efficiency, gas-fueled generation connected to our factories, our homes and our cars via a smart grid technology.

I am reminded of the advice the great Wayne Gretzky reported receiving from his father: "Skate to where the puck is going, not to where it's been." Through increased cooperation and coordination between government and business, America's shift to a clean energy future is gaining momentum. By paddling hard now to catch the forefront of this wave, we believe we are establishing strong positions in essential businesses that will deliver long-term, sustainable growth to shareholders. The time for this ambitious expansion is now. If we wait for this wave to be upon us, we will miss it. We will not let that happen. We will not watch the opportunity pass us by.



We believe a transition to electric vehicles is inevitable if EVs can provide a cheaper, cleaner, more convenient and more fun alternative to conventional gasoline-powered vehicles. If we can demonstrate these features, a transition to EVs is inevitable. That transition holds the promise of increasing our national energy security, reducing our massive energy payments to foreign sources and improving the air quality in our congested urban areas. We believe it is inevitable that such a transition will receive full and bipartisan support from our public policymakers.

For us, the electric car is the cornerstone of the 21st century power industry, it will increase demand, level out daily consumption, and ultimately serve as our primary source of distributed electricity storage. By aligning new, emissions-free power generation plants, like baseload nuclear and clean coal plants, plus renewables to fuel a fleet of electric vehicles, we can offer the virtuous zero-carbon lifestyle more and more Americans crave.

As a power generator, we can profit from the so-called "park spread," the difference between the price of gasoline put through an internal combustion engine, expressed in cents per mile driven, and the price of natural gas sold in the form of electricity and converted into miles driven by an electric vehicle. The increase in electricity demand as a result of electric vehicles will push up demand in off-peak hours and low-demand valleys during the day, smoothing the load curve and benefiting baseload generators like ourselves. In 2010 and 2011, our objective is to build out an electric vehicle transportation ecosystem in Houston. Building on our consumer interface through Reliant, we will work closely with electric car providers like Nissan Motor Co., which will introduce its all-electric LEAF later this year across the country at an affordable price point. The LEAF leads an expanded range of electric car choices available to American consumers, including Aptera, Chevy Volt, CODA, Fisker and Tesla. The faster these vehicles are embraced by the American public, the more quickly the electric vehicle infrastructure will be built out and product offerings will be expanded.

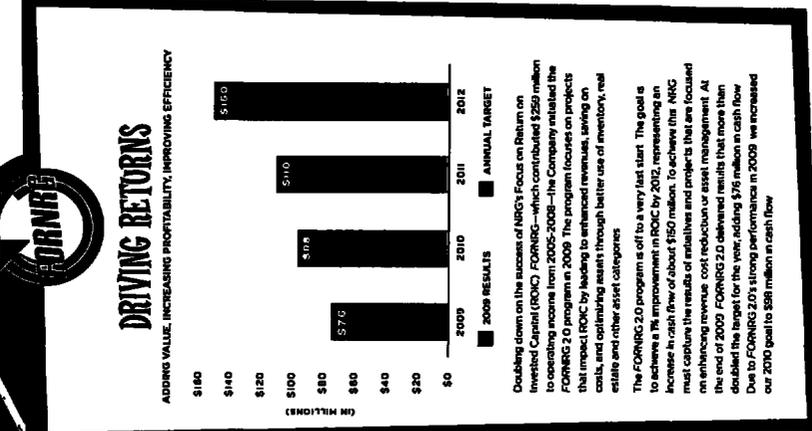
WIND AT OUR BACKS



NRG expanded the scope of its renewable energy portfolio through the purchase of Bluewater Wind, an important component of NRG's strategy of developing a regional renewables portfolio to match clean energy projects to an area's unique geographic characteristics. One of the best wind resources in the country is located just 10 miles off the Eastern Seaboard, near major population centers and is the Northeast's main indigenous renewable resource. NRG Bluewater Wind has a 225 megawatt power purchase agreement with Delmarva Power & Light and is pursuing offshore wind development projects in other parts of the region to give NRG first-mover advantage in this blossoming renewables market.

The introduction of the electric vehicle is transformational not only in the commercialization of a form of emissions-free transportation, but also in its fundamental requirement that the parallel energy systems of this country—the national electrical grid and road transportation—be bridged. That "bridge" will be the electric outlet in your garage, thus not only reducing dramatically your refueling costs but virtually eliminating the inconvenience of service station visits. Indeed, your garage will be the service station of the future. Our partnership in the national Electrification Coalition, a group of businesses seeking to promote the deployment of

the electric car, provides a great road map to our electric car future: its approach is to create a foothold strategy whereby a concerted effort would be made to build electric vehicle critical mass in select first-adopter cities, and from there, expand into surrounding regions and nearby cities. The Coalition is pushing for the rollout of the electric vehicle ecosystem as soon as possible, with one million vehicles in target cities over the next few years. Much work remains to be done, but the benefits of the electric vehicle, not only to NRG, but to America's energy security, national wealth and environment, are clear.



Doubling down on the success of NRG's Focus on Return on Invested Capital (ROIC), FORTNRG—which contributed \$59 million to operating income from 2005-2008—the Company initiated the FORTNRG 2.0 program in 2009. The program focuses on projects that impact ROIC by leading to enhanced revenues, saving on costs, and optimizing assets through better use of inventory, real estate and other asset categories.

The FORTNRG 2.0 program is off to a very fast start. The goal is to achieve a 7% improvement in ROIC by 2012, representing an increase in cash flow of about \$50 million. To achieve this, NRG must capture the results of initiatives and projects that are focused on enhancing revenue, cost reduction or asset management. At the end of 2009, FORTNRG 2.0 delivered results that more than doubled the target for the year, adding \$76 million in cash flow. Due to FORTNRG 2.0's strong performance in 2009, we increased our 2010 goal to \$98 million in cash flow.

LIGHTING THE WAY WITH NRG SOLAR

Our NRG solar initiative already is showing strong results through the purchase of California's largest contracted solar photovoltaic project—the 20 megawatt Blythe power plant east of Los Angeles. Electricity generated from Blythe is being sold under a 20-year power purchase agreement. Additionally, we are focused on developing large-scale solar thermal projects in California and the U.S. Southwest. The combination of photovoltaic and solar thermal projects gives NRG the platform to lead the industry in the commercial implementation of solar technologies.



DRIVING RESULTS IN A MARKET ENVIRONMENT SHAPED BY WASHINGTON

Let me close by commenting on the political environment in which your Company operates. While we used to call ourselves an "unregulated" power company to distinguish ourselves from rate-based utilities, the label is, and always was, a misnomer because our business operations always have been heavily regulated with respect to health, safety, and environmental protection. We have worked hard to establish a record of compliance, improvement and even innovation in these fundamental areas in respect of which the owners in NRG should be proud.

But over the past six years, the road to opportunity in our industry has increasingly passed through Washington. Whether we speak of the nuclear renaissance, as catalyzed by the Energy Policy Act of 2005, the explosive growth of wind and other non-wind renewables as incented by federal tax credits and partially funded by the economic stimulus package, or the yet-to-be legislated inducements to the creation of electric car ecosystems, Washington is "driving the bus" for the energy sector in a way unparalleled in the history of the American energy industry.

As a Company which is striving to capture first-mover advantage in these areas, it is important for us to have a voice in how that bus is driven. As a result, over the past six years, I have spent an ever-increasing amount of time in Washington and in the state capitals where we do business. And during that time, I have sought out discussions with any elected official, of either party, interested in a constructive dialogue on national energy policy.

I am concerned that the debate on national energy policy, rather than the regional give-and-take that it has traditionally been in Washington, is sliding into the raw of unthinking partisanship that has swallowed so many other pressing national issues over the previous months and years. This is a worrisome trend because we are counting on the fact, insofar as national energy policy is concerned, that our public policy makers would rather make a difference than score a political point.

For our part, we will continue to try to make a difference—in nuclear, in renewables and in electric car ecosystems. For my part, as your CEO, I believe in the business opportunities that abound in the new energy trends that currently are gathering force to engulf the world economy.

As an American, I believe in American greatness and that our dependence on foreign oil is the Achilles' heel to sustaining our greatness as a nation.

As a father of five, I believe it is my responsibility to pass on to my children a world that is cleaner, safer and healthier than the world we inherited from our predecessors.

As a rational, thinking person, I believe that none of the foregoing objectives are in conflict with each other—indeed, they are mutually enhancing—and working together we can make a point by making a difference.

Where NRG now stands—independent, forward-leaning, with an everyday focus on driving performance and value to stockholders from traditional wholesale power generation to distributed clean energy solutions—is a testament to the outstanding work by our leadership team and all our employees. Sincere thanks also goes to our Board.

of Directors, who remain committed to NRG's growth program and are an invaluable source of strength and strategic guidance.

To my fellow stockholders, thank you for your staunch support amid the tumult of last year. All of us at NRG value your commitment to our ambitious clean energy growth strategy. Together, we move forward.

Sincerely yours,

David Crane
President & Chief Executive Officer
March 31, 2010



econrg

Examining ways to meet the challenges of climate change, clean air and protecting our natural resources at our plants and in our communities

Developing, financing, constructing and operating new, highly efficient and environmentally responsible capacity over the next decade

repowering NRG

RECHARGING

We are advancing our clean energy portfolio and meeting our nation's power requirements by making our assets more efficient, reducing our emissions intensity and driving returns to our stockholders

Top initiatives include

- A partnership with the U.S. Department of Energy (DOE) to build a post-combustion carbon-capture and sequestration demonstration project at the WA Parish plant southwest of Houston. NRG has been selected by the DOE to receive up to \$154 million. The project, scheduled to begin operating in 2013, will be among the first of its kind and marks a new era of partnerships between the federal government and private industry to develop advanced coal technologies for commercial deployment. Using the latest carbon capture and storage technology, the project will capture as much as 90% of incoming carbon dioxide or about 400,000 tons of greenhouse gas, annually. That sequestered carbon will then be compressed and used to help produce more petroleum from a nearby site, through a technique known as enhanced oilfield recovery.

- Producing 40 megawatts (MW) of clean, renewable power at the Montville Station in Connecticut—enough power for 23,000 homes—by using wood biomass as the primary fuel source for unit 5, which currently uses natural gas and oil. NRG will reconfigure the unit 5 boiler to produce power by using locally grown timber, supporting construction and forestry jobs and improving the plant's emissions profile. The project is expected to begin using biomass to produce renewable energy by mid-2011.

- Through GenConn, a partnership with The United Illuminating Company, NRG is bringing a total of 400 MW of fast-start, natural gas generation to two of its Connecticut plants—Devon and Middletown. GenConn will install 200 MW at each site which, combined, is enough to power more than 320,000 homes. These new, efficient peaking units—which can be turned on and operational within 30 minutes—typically operate during extreme weather conditions and periods of high energy demand. They will provide reliable, cost effective clean power and increase operational flexibility in a market where it is difficult to import electricity. Each project is supporting 135 construction jobs over two years, and will help moderate electricity costs and reduce emissions. Construction at both facilities already is under way. Devon is expected to be completed in June 2010 and Middletown in June 2011.

- Expanding clean power production with a new unit at the Cedar Bayou Generating Station in Texas. Adding combined-cycle gas technology to the facility added 550 megawatts of efficient, low-emissions generation—enough power for more than 440,000 homes in the transmission-constrained, rapidly expanding Houston metropolitan area. Cedar Bayou unit 4's efficient fast-start capability allows it to begin providing power to the grid within 30 minutes of start-up. The unit, built in less than two years, uses best available control technology to reduce air emissions.

ECONRG

ECONRG represents a concerted ongoing initiative by the Company to meet the challenges of climate change and promote a healthy environment. NRG is committed to making our power generation fleet cleaner and more efficient to meet future energy production and environmental sustainability goals in all the communities we serve.

We continue to invest in zero- and low-carbon sources of energy and operate our commercial-scale assets according to the highest standards of safety, reliability and environmental responsibility. We also are retrofitting existing power plants with technology that reduces emissions and engaging in and supporting volunteer activities that protect and preserve the environment while encouraging changes in the daily lives of our employees that will reduce personal environmental impact.

Additionally, we are strong advocates for comprehensive, federal energy and climate legislation that puts a price on carbon via a flexible, market-based mechanism and which mandates carbon reductions be measurable, verifiable and reported accurately.

We also encourage local and state governments to support clean energy technologies and assist with siting and supporting the infrastructure development necessary for new technologies to take root, such as approvals for offshore wind development in the Northeast and solar development in the Southwest.

We have pledged to operate our generation fleet in the most sustainable and efficient manner possible, and will continue to deliver on that promise. Between 2000 and 2008, NRG reduced carbon dioxide-equivalent greenhouse gas emissions by 22% by replacing older facilities with new high efficiency units. As an example, NRG since 1999 has lowered fossil fuel emissions by nearly 90% at its plants in Connecticut.

The Company's goal is to reduce fleetwide CO₂ emissions intensity to a level equivalent to a natural gas plant, which emits about half the CO₂ of a coal plant, in the 2021-2024 timeframe, with further improvements thereafter.

KEY PARTNERSHIPS

- Membership in the U.S. Climate Action Partnership, a broad group of businesses and leading environmental organizations calling on the federal government to enact broad legislation requiring significant reductions in greenhouse gases. The Partnership's Blueprint for Legislative Action is a strong policy statement and lays a foundation to achieve effective climate legislation.
- Membership in the We Can Lead Coalition, a partnership of 150 businesses across many economic sectors in 30 states calling for comprehensive climate and energy legislation.
- Founding partnership in the Electrification Coalition, a national group of businesses dedicated to reducing America's dependence on oil through the electrification of transportation.





PLANTING THE SEEDS OF SUSTAINABILITY



DEEP ROOTS IN CONNECTICUT
 To celebrate 10 years of operations in Connecticut, NRG, together with the Girl Scouts of America and the Connecticut Urban Forestry Council, donated 5,000 trees for planting throughout the state. The new trees will help sequester carbon dioxide for cleaner air, shade community streets and sidewalks and provide valuable food, protection and safety for birds and small mammals. In addition to the Connecticut donation, NRG employees planted more than 1,200 trees in 13 locations across the country in 2009 as part of the Company's environmental initiatives to protect natural habitats and be a strong environmental steward to better the communities where we live and work. In all, NRG employees completed 311 environmental volunteer projects in 2009, including recycling programs, trash pickup and reductions in power usage across NRG facilities.

IT IS AN HONOR, MR. PRESIDENT

NRG received the White House Coastal America Partnership Award the only environmental award of its kind given by the President of the United States for the Company's restoration work at North Deer Island off Galveston, Texas. NRG was the sole private-sector company to receive this honor.

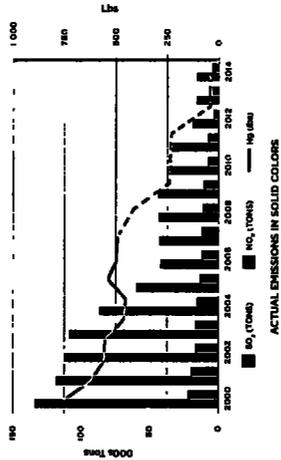
The North Deer Island shoreline restoration project was one of the many stewardship projects carried out at NRG plants that sought to stabilize nearly two miles of coastline that was once eroding rapidly threatening one of the most important colonial waterbird rookeries on the upper Texas coast. NRG's partnership with federal, state and local governments resulted in the long term protection of nesting and foraging sites for flocks of thousands of birds encompassing 19 species, including the recovery of the Brown Pelican in Galveston Bay. Our relief work contributed to the Brown Pelican being removed from the endangered species list.



CLEANER NRG

At NRG we have invested hundreds of millions of dollars since 2000 to reduce dramatically air emissions such as nitrogen oxides (NOx), sulfur dioxide (SO₂) and mercury (Hg). NRG has reduced CO₂-equivalent greenhouse gas emissions by 25% from 2000 to 2009. We will spend nearly \$200 million through 2015 on deeper emissions reductions at our facilities.

The Company also is exploring ways to reduce carbon emissions at existing plants by using biomass as a fuel, as well as investing in zero-emissions clean energy such as nuclear, wind and solar power. As generation from these sources comes online, that energy will offset or displace electricity from fossil fuels.





NRG Global Giving

POSITIVE CHANGE
IN OUR COMMUNITIES

BRIGHTENING FUTURES IN TRENTON



With Trenton YouthBolt as the director, NRG Community, working closely with the staff of Trenton, New Jersey, Youth in a Matter of Different Shades, supported the...

Community Community (they) had a great time. Just when the excitement was at its peak, the excitement was only getting started. For the first time in the history of the YouthBolt method...

located in the heart of Trenton, YouthBolt was founded 15 years ago as an alternative school for the 21-year-olds who had dropped out of school. The school was founded to help these students through the process. YouthBolt's management structure included academic, vocational, leadership and life skills, learning everything from how to manage finances to how to turn a profit to a career.

The newly formed Trenton YouthBolt was supported by NRG, NRG Community, NRG Community of the East, and the community of the Trenton area. The staff and power of youth, parents and their community as they present...

YouthBolt has been an exciting addition to the community of Trenton. The school has been an exciting addition to the community of Trenton. The school has been an exciting addition to the community of Trenton. The school has been an exciting addition to the community of Trenton.

Today, Trenton YouthBolt supports the construction of a new school building in Trenton, New Jersey, which will be a state-of-the-art facility. The school will be a state-of-the-art facility. The school will be a state-of-the-art facility. The school will be a state-of-the-art facility.

Community completed their two-year YouthBolt program and is preparing for college. YouthBolt will continue to support the community of Trenton.

BIOMASS AT BIG CAJUN

Big Cajun is a 20-acre site in Louisiana, 20 miles east of Baton Rouge, Louisiana. The site is a 20-acre site in Louisiana, 20 miles east of Baton Rouge, Louisiana. The site is a 20-acre site in Louisiana, 20 miles east of Baton Rouge, Louisiana. The site is a 20-acre site in Louisiana, 20 miles east of Baton Rouge, Louisiana.

The success of the Big Cajun project is a result of the support and investment of NRG. The success of the Big Cajun project is a result of the support and investment of NRG. The success of the Big Cajun project is a result of the support and investment of NRG. The success of the Big Cajun project is a result of the support and investment of NRG.



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REMEMBERING OUR WOUNDED WARRIORS

As you think back on the past year, you'll find that 2010 was a year of significant change for the company. We've seen a lot of growth, both in our business and in our community. It's been a year of challenges, but also of triumphs. We've overcome many obstacles and achieved many milestones. We've grown our business and strengthened our relationships with our customers and partners. We've also made significant contributions to our community and the world. We've supported our employees and their families, and we've worked to make a positive impact on the lives of others. We've been fortunate to have a great team of people who have worked hard to make 2010 a successful year for us. We look forward to continuing our growth and making a positive impact on the world in the years to come.

As we look back on the past year, we are proud of the accomplishments of our employees and the support of our customers. We have achieved many milestones and grown our business significantly. We have also made significant contributions to our community and the world. We have supported our employees and their families, and we have worked to make a positive impact on the lives of others. We have been fortunate to have a great team of people who have worked hard to make 2010 a successful year for us. We look forward to continuing our growth and making a positive impact on the world in the years to come.

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A PROMISE TO THE NEXT GENERATION

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PROVIDING OPPORTUNITIES IN CHAUTAQUA COUNTY

As we look back on the past year, we are proud of the accomplishments of our employees and the support of our customers. We have achieved many milestones and grown our business significantly. We have also made significant contributions to our community and the world. We have supported our employees and their families, and we have worked to make a positive impact on the lives of others. We have been fortunate to have a great team of people who have worked hard to make 2010 a successful year for us. We look forward to continuing our growth and making a positive impact on the world in the years to come.

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FIGHTING HUNGER TAKES TO THE ROAD

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HELP FOR HAITI

In the wake of Haiti's tragic earthquake, NRG employees answered the call for help, personally donating \$82,000 to support relief and recovery efforts. NRG triple-matched the employee contributions, adding \$246,000. And then we added an additional \$100,000 pledge enabling our Company to gift nearly \$430,000 to the American Red Cross, Mercy Corps and UNICEF, as well as the Clinton Global Initiative—which specifically will help rebuild shattered schools throughout Haiti.





BOARD OF DIRECTORS (as of March 31, 2010)

Front (left to right): William Hantke, Anne Schaumburg, David Crane, Howard Cosgrove and Herbert Tate

Back (left to right) Thomas Weidemeyer, Lawrence Coben, Paul Hobby, Stephen Cropper, Kirbyjon Caldwell, John Chlebowski, Walter Young, Kathleen McGinty and Gerald Luterman

David Crane
President and
Chief Executive Officer

Howard E. Cosgrove
Nonexecutive Chairman
of the Board

Nuclear Oversight
Committee (Chair)

Kirbyjon Caldwell
Governance and Nominating
Committee
Compensation Committee
Nuclear Oversight Committee

John F. Chlebowski, Jr.
Compensation Committee
Nuclear Oversight Committee

Lawrence S. Coben
Governance and Nominating
Committee (Chair)
Nuclear Oversight Committee

Stephen L. Cropper
Commercial Operations
Oversight Committee
Governance and Nominating
Committee
Nuclear Oversight Committee

William E. Hantke
Audit Committee (Chair)
Nuclear Oversight Committee

Paul W. Hobby
Commercial Operations
Oversight Committee (Chair)
Nuclear Oversight Committee
Nuclear Oversight Subcommittee

Gerald Luterman
Finance Committee
Nuclear Oversight Committee

Kathleen A. McGinty
Commercial Operations
Oversight Committee
Nuclear Oversight Committee
Nuclear Oversight Subcommittee

Anne C. Schaumburg
Audit Committee
Finance Committee (Chair)
Nuclear Oversight Committee

Herbert H. Tate
Nuclear Oversight Committee
Nuclear Oversight
Subcommittee (Chair)

Thomas H. Weidemeyer
Compensation Committee (Chair)
Nuclear Oversight Committee

Walter R. Young
Audit Committee
Finance Committee
Nuclear Oversight Committee

* David Crane is also a Director and Nuclear Oversight Committee member.

** Howard Cosgrove serves as an "alternate" Committee member, as required

EXECUTIVE OFFICERS

David Crane

President and Chief Executive Officer

Christian Schade

Executive Vice President and
Chief Financial Officer

John Ragan

Executive Vice President and
Chief Operating Officer

Denise Wilson

Executive Vice President and
Chief Administrative Officer

Jonathan Baliff

Executive Vice President, Strategy

Mauricio Gutierrez

Executive Vice President,
Commercial Operations

Kevin Howell

Executive Vice President and
Regional President, Texas

Drew Murphy

Executive Vice President and
Regional President, Northeast

Jeff Baudier

Senior Vice President and
Regional President, South Central

Michael Bramnick

Senior Vice President and
General Counsel

Steve Hoffmann

Senior Vice President and
Regional President, West

Jim Ingoldsby

Senior Vice President and
Chief Accounting Officer

STOCKHOLDER INFORMATION

Stock Transfer Agent and Registrar

BNY Mellon Shareowner Services
480 Washington Boulevard
Jersey City, NJ 07310-1900

Stockholder Inquiries

NRG Energy
c/o BNY Mellon Shareowner Services
P.O. Box 358015
Pittsburgh, PA 15252-8015
1 800 851 9677
www.bnymellon.com/shareowner/isd

Stock Listing

NRG's common stock is listed on the New York Stock
Exchange under the ticker symbol NRG.

Financial Information

NRG's Annual Report, Proxy Statement, Form 10-K and
other SEC filings are available at www.nrgenergy.com
under the Investors section.





NRG Energy, Inc.

211 Carnegie Center
Princeton, NJ 08540-6213
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www.nrgenergy.com



EXHIBIT 2



FOR IMMEDIATE RELEASE

NRG Energy, Inc. Reports Record First Quarter Results

First Quarter 2010 Financial Highlights

- \$601 million of adjusted EBITDA, excluding mark-to-market (MtM) impacts – up 26% from 2009
- \$242 million early settlement of NRG Common Stock Finance I (CSF I) facility
- \$237 million paydown on Term Loan B debt
- \$2,200 million 2010 EBITDA outlook reaffirmed

Moving Clean Energy Forward

- Agreement with The Tokyo Electric Power Company (TEPCO), announced earlier today, to invest in Nuclear Innovation North America's (NINA) STP 3&4 nuclear project
- \$154 million United States Department of Energy (DOE) grant for large scale post-combustion carbon capture project at WA Parish
- Pending acquisition of 101 megawatt (MW) South Trent wind farm in Texas
- 10-year contract awarded for biomass use at Dunkirk Generating Station in New York
- 680 MW of solar and offshore wind development projects now under power purchase agreements and in active development

PRINCETON, NJ; May 10, 2010—NRG Energy, Inc. (NYSE: NRG) today reported net income of \$58 million, or \$0.22 per diluted common share for the first quarter of 2010, compared to \$198 million, or \$0.70 per diluted common share, for the first quarter of 2009. Income before taxes was \$123 million in the first quarter of 2010 compared to \$496 million generated in the first quarter of 2009. The \$373 million decline in income before taxes is largely the result of a \$456 million decrease in unrealized mark-to-market (MtM) derivative gains on economic hedges partly offset by contributions from Reliant Energy which NRG acquired on May 1, 2009.

Adjusted EBITDA, excluding MtM impacts, was \$601 million for the first quarter of 2010, \$124 million higher than the first quarter of 2009 EBITDA of \$477 million. Reliant Energy contributed \$190 million of EBITDA for the quarter, offsetting a \$48 million decline in the Texas wholesale business. The net \$142 million gain in EBITDA in the first quarter of 2010 compared to 2009 in Texas illustrates the complementary benefits of owning both generation and retail businesses in the state. Going forward, NRG is well positioned to continue to manage commodity price risk, minimize collateral requirements and reduce commercial transaction costs. The \$18 million decline in wholesale EBITDA outside of Texas was driven by lower average hedged prices in the Northeast region and lower contributions from the international assets due to the sale of MIBRAG in June 2009, which was partially offset by a \$23 million gain from the sale of Padoma in January 2010.

“In a weak commodity price environment, our record financial performance reflects the strength of our hedging program and continued operational excellence across our generation and retail businesses. While retaining our focus on delivering stellar financial results for the quarter, we also made significant progress in our renewables development program and, importantly, on our industry-leading STP nuclear development project as demonstrated by today’s announcement of TEPCO’s proposed investment,” commented David Crane, NRG President and Chief Executive

Officer. “In addition, we concluded our search for a Chief Financial Officer during the quarter with the appointment of Christian Schade who brings a proven track record of creating shareholder value at highly entrepreneurial and fast-growing companies.”

Regional Segment Review of Results

Table 1: Income (Loss) before Income Taxes

(\$ in millions) Segment	Three Months Ended	
	3/31/10	3/31/09
Reliant Energy ⁽¹⁾	(188) ⁽²⁾	-
Texas	375	378
Northeast	52	211
South Central	(4)	1
West	6	(3)
International	10	14
Thermal	4	4
Corporate ⁽³⁾	(132)	(109)
Total	123	496
Less: MtM forward position accruals ⁽⁴⁾	(111)	345
Add: Prior period MtM reversals ⁽⁵⁾	(50)	17
Less: Hedge ineffectiveness ⁽⁶⁾	(2)	4
Total, net of MtM impacts	186	164

⁽¹⁾ Reliant Energy acquired May 1, 2009

⁽²⁾ Income (Loss) before Income Taxes for Reliant energy was \$187 million before including \$375 million of unrealized MtM losses due to changes in the forward value of purchased electricity and gas resulting in a \$188 million Loss before Income Taxes.

⁽³⁾ Includes interest expense of \$137 million and \$82 million for the first quarter of 2010 and 2009, respectively

⁽⁴⁾ Represents net MtM gains/(losses) on economic hedges that do not qualify for hedge accounting treatment.

⁽⁵⁾ Represents the reversal of previously recognized MtM gains/(losses) on economic hedges that do not qualify for hedge accounting treatment.

⁽⁶⁾ Represents ineffectiveness gains/(losses) due to a change in correlation, predominately between natural gas and power prices, on economic hedges that qualify for hedge accounting treatment.

MtM Impacts of Hedging Activities

The Company, in the normal course of business, enters into contracts to lock in forward prices for a significant portion of its expected power generation and to fulfill Reliant Energy’s supply requirements. Although these transactions are predominantly economic hedges of our generation portfolio and load requirements, a portion of these forward sales and purchases are not afforded hedge accounting treatment, in accordance with ASC 815, and the MtM change in value of these transactions is recorded to current period earnings. Included in the \$123 million of income before taxes in the first quarter of 2010 was a \$63 million forward net MtM loss on our economic hedges resulting from falling commodity prices and the combined wholesale and retail portfolio during the quarter. Excluding this impact, income before taxes, net of MtM impacts was \$186 million. In the first quarter of 2009, there were \$332 million net MtM gains on our economic hedges included in the \$496 million of income before taxes. The net MtM gains on our wholesale portfolio were largely caused by decreasing power and natural gas prices. Excluding this impact, income before taxes, net of MtM impacts was \$164 million for the first quarter of 2009.

Table 2: Adjusted EBITDA, net of MtM impacts

(\$ in millions) Segment	Three Months Ended	
	3/31/10	3/31/09
Reliant Energy	190	-
Texas	272	320
Northeast	76	106
South Central	26	29
West	10	1
International	12	23
Thermal	8	7
Corporate	7	(9)
Adjusted EBITDA, net of MtM⁽¹⁾	601	477

⁽¹⁾ Excludes net domestic forward MtM gains/(losses), reversal of prior period net MtM gains/(losses), and hedge ineffectiveness gains/(losses) on economic hedges as shown in Table 1 above. Detailed adjustments by region are shown in Appendix A.

Reliant Energy: First quarter adjusted EBITDA, net of MtM impacts, totaled \$190 million principally as a result of colder than normal weather which led to increased customer usage. Reliant's financial performance for the quarter also benefited from a reduction in bad debt expense and improved customer retention. Total Retail revenues were \$1,245 million on 11 TWh sold to both Mass and C&I customers while cost of sales, net of MtM, totaled \$952 million, resulting in a Retail gross margin of \$293 million. Other operating expenses incurred during the quarter totaled \$103 million and included \$49 million of selling, general and administrative expenses; \$29 million of expenses associated with the call center and billing, credit, and collections; \$16 million of gross receipts tax; and \$9 million of bad debt expense.

Texas: Adjusted EBITDA, net of MtM impacts for the first quarter of 2010 for the Texas wholesale generation business decreased by \$48 million to \$272 million compared to the first quarter of 2009. Increased gas fleet generation of 94% was more than offset by lower margins from the baseload fleet resulting from lower hedged prices, a decline in nuclear generation, and higher fuel costs at WA Parish and Limestone, which drove an overall \$37 million quarter over quarter decline in energy margins. Also, maintenance spending at South Texas Project (STP) was higher in the first quarter of 2010 versus 2009 by \$9 million, largely due to the plant beginning preparations for its Unit 2 refueling and maintenance outage in April 2010.

Northeast: First quarter 2010 adjusted EBITDA, net of MtM impacts was \$76 million, a decrease of \$30 million from the first quarter of 2009. Net energy margins were unfavorable \$38 million due to lower hedged prices. Due to the plan to retire Indian River unit 3 in 2014, the region incurred termination fees of \$7 million related to the cancellation of environmental capital expenditures, as well as a \$7 million write-off of construction in progress for the unit in the first quarter. This quarter's results were positively impacted by an increase in capacity revenue of \$8 million due to higher prices in New York and PJM in 2010.

South Central: Adjusted EBITDA, net of MtM impacts for the first quarter decreased by \$3 million to \$26 million. During the quarter the region experienced an 8% sales increase to its contract customers due to the colder than normal weather driving contract revenue higher by \$11 million. However, this gain was offset by a decline in merchant margins due to the expiration of a merchant capacity agreement and a 20% decline in merchant megawatt-hours sold. The increased load requirements resulted in lower merchant sales which are generally at higher prices.

Liquidity and Capital Resources

Table 3: Corporate Liquidity
(\$ in millions)

	March 31, 2010	December 31, 2009
Cash and cash equivalents	\$1,813	\$2,304
Funds deposited by counterparties	509	177
Restricted cash	7	2
Total Cash	\$2,329	\$2,483
Letter of credit availability	426	583
Revolver availability	964	905
Total Liquidity	\$3,719	\$3,971
Less: Funds deposited as collateral by hedge counterparties	(509)	(177)
Total Current Liquidity	\$3,210	\$3,794

For the three months ended March 31, 2010, total liquidity, excluding collateral received, decreased by \$584 million primarily due to lower cash and cash equivalent balances of \$491 million and lower availability of the Synthetic Letter of Credit Facility of \$157 million, partially offset by a \$59 million increase in the Revolving Credit Facility. The change in cash and cash equivalents is primarily due to \$114 million of cash flow from operations offset by \$185 million of capital expenditures, \$237 million in repayments to the Term Loan B facility, and \$190 million of debt reduction as a result of the early settlement of the CSF I facility. This amount excludes \$52 million of accrued interest bringing the total settlement of the CSF I facility to \$242 million.

TEPCO Partners in STP 3&4

TEPCO, one of the world's largest operators of nuclear plants, will invest \$155 million—through its U.S.-based subsidiary—for a 10% share of NINA Investments Holdings' interest in the STP expansion, STP units 3&4, once a conditional commitment for U.S. Department of Energy loan guarantee is secured for the project. NINA Investments Holdings is a wholly owned subsidiary of NINA. This \$155 million includes a \$30 million option payment to NINA Investments Holdings, enabling TEPCO to buy an additional 10% share of the company for an additional \$125 million within approximately one year.

With this initial transaction, TEPCO would hold a 9.2375% interest in STP 3&4, bringing NINA's share to 83.1375%, and leaving CPS Energy's share at 7.625%. TEPCO would also be responsible for 10% of all STP expansion capital costs and up to 20% of these costs if the company exercises its option to increase its ownership to 20% of NINA Investments Holdings' interest in the STP expansion. TEPCO would then own approximately 18% of the project itself, or roughly 500 megawatts of emission-free generation—enough to power about 400,000 households.

Post-Combustion Carbon Capture Project selected by DOE

On March 9, 2010, NRG's 60 MW post-combustion carbon capture demonstration project was selected by the DOE to receive up to \$154 million from the American Recovery and Reinvestment Act. Scheduled to start operation in 2013, the project will be located at the WA Parish facility.

Letter of Intent to Acquire South Trent wind farm

On March 4, 2010, NRG signed a binding letter of intent to purchase the South Trent wind farm near Sweetwater, Texas. The 101 MW operating wind farm consists of 44 turbines and has a 20-year power purchase agreement with AEP Energy Partners, Inc. The proposed acquisition must be approved by the Public Utility Commission of Texas and is expected to close in the second quarter of this year.

Biomass use at Dunkirk moves forward

In April, NRG received a 10-year contract from the New York State Energy Research and Development Authority (NYSERDA) for power generated using renewable biomass fuel at the Dunkirk Generating Station in western New York. The project will produce up to 15 MWs of the station's output and is expected to be online by the end of 2011.

Outlook for 2010

NRG is reaffirming its 2010 adjusted EBITDA guidance of \$2,200 million, and adjusting cash flow from operations guidance to \$1,300 million as a result of collateral postings in the first quarter. Free cash flow improved by \$112 million to \$462 million reflecting the expected proceeds from the agreement with TEPCO to invest in NINA discussed in the announcement earlier today.

Table 4: 2010 Reconciliation of Adjusted EBITDA Guidance (\$ in millions)

(\$ in millions)	5/10/2010	2/23/2010
Wholesale	1,700	1,700
Retail	500	500
Updated adjusted EBITDA, excluding MtM adjustments guidance	2,200	2,200
Interest payments	(636)	(628)
Income tax	(75)	(75)
Collateral/Working capital/other changes	(189)	(72)
Cash flow from operations	1,300	1,425
Maintenance capital expenditures	(247)	(241)
Preferred dividends	(9)	(9)
Free cash flow – recurring operations	1,044	1,175
Environmental capital expenditures, net	(188)	(227)
Repowering investments, excl NINA	(92)	(78)
Free Cash Flow, before NINA	764	870
NINA Gross CapEx	(634)	(684)
Minority investor contributions	228	50
Project Financing	104	114
Total, Net of project funding	(302)	(520)
Free cash flow	462	350

Earnings Conference Call

On May 10, 2010, NRG will host a conference call at 9:00 a.m. eastern to discuss these results. To access the live webcast of the conference call and accompanying presentation materials, log on to NRG's website at <http://www.nrgenergy.com> and clicking on "Investors." The webcast will also be archived on the site.

About NRG

NRG Energy, Inc., a Fortune 500 company, owns and operates one of the country's largest and most diverse power generation portfolios. Headquartered in Princeton, NJ, the Company's power plants provide more than 24,000 megawatts of generation capacity – enough to supply more than 20 million homes. NRG's retail business, Reliant Energy, serves 1.6 million residential, business, and commercial and industrial customers in Texas. A past recipient of the energy industry's highest honors – Platts Industry Leadership and Energy Company of the Year awards – NRG is a member of the U.S. Climate Action Partnership (USCAP), a group of business and environmental organizations calling for mandatory legislation to reduce greenhouse gas emissions. More information is available at www.nrgenergy.com.

Safe Harbor Disclosure

This news release contains 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. Such forward-looking statements are subject to certain risks, uncertainties and assumptions and include our adjusted EBITDA, cash flow from operations and free cash flow guidance, expected earnings, future growth, financial performance, environmental capital expenditures, and nuclear and other clean energy development, and typically can be identified by the use of words such as “will,” “expect,” “estimate,” “anticipate,” “forecast,” “plan,” “believe” and similar terms. Although NRG believes that its expectations are reasonable, it can give no assurance that these expectations will prove to have been correct, and actual results may vary materially. Factors that could cause actual results to differ materially from those contemplated above include, among others, general economic conditions, hazards customary in the power industry, weather conditions, successful partnering relationships, government loan guarantees competition in wholesale power markets, the volatility of energy and fuel prices, failure of customers to perform under contracts, changes in the wholesale power markets, changes in government regulation of markets and of environmental emissions, the condition of capital markets generally, our ability to access capital markets, unanticipated outages at our generation facilities, adverse results in current and future litigation, the inability to implement value enhancing improvements to plant operations and companywide processes, our ability to achieve the expected benefits and timing of development projects, and the 2010 Capital Allocation Plan.

NRG undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. The adjusted EBITDA guidance and adjusted cash flow from operations, and free cash flows are estimates as of today’s date, May 10, 2010 and are based on assumptions believed to be reasonable as of this date. NRG expressly disclaims any current intention to update such guidance. The foregoing review of factors that could cause NRG’s actual results to differ materially from those contemplated in the forward-looking statements included in this news release should be considered in connection with information regarding risks and uncertainties that may affect NRG’s future results included in NRG’s filings with the Securities and Exchange Commission at www.sec.gov.

#

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NRG ENERGY, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

(In millions, except for per share amounts)	Three months ended March 31,	
	2010	2009
Operating Revenues		
Total operating revenues	\$ 2,215	\$ 1,658
Operating Costs and Expenses		
Cost of operations	1,639	766
Depreciation and amortization	202	169
Selling, general and administrative	130	95
Development costs	9	13
Total operating costs and expenses	1,980	1,043
Gain on sale of assets	23	—
Operating Income	258	615
Other Income/(Expense)		
Equity in earnings of unconsolidated affiliates	14	22
Other income/(loss), net	4	(3)
Interest expense	(153)	(138)
Total other expense	(135)	(119)
Income Before Income Taxes	123	496
Income tax expense	65	298
Net Income attributable to NRG Energy, Inc.	58	198
Dividends for preferred shares	2	14
Income Available for NRG Energy, Inc. Common Stockholders	\$ 56	\$ 184
Earnings per share attributable to NRG Energy, Inc. Common Stockholders		
Weighted average number of common shares outstanding — basic	254	237
Net Income per Weighted Average Common Share — basic	\$ 0.22	\$ 0.78
Weighted average number of common shares outstanding — diluted	257	275
Net Income per Weighted Average Common Share — diluted	\$ 0.22	\$ 0.70

NRG ENERGY, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(Unaudited)

(In millions, except shares)	March 31, 2010 (unaudited)	December 31, 2009
ASSETS		
Current Assets		
Cash and cash equivalents	\$ 1,813	\$ 2,304
Funds deposited by counterparties	509	177
Restricted cash	7	2
Accounts receivable — trade, less allowance for doubtful accounts of \$21 and \$29, respectively	700	876
Inventory	549	541
Derivative instruments valuation	2,724	1,636
Cash collateral paid in support of energy risk management activities	533	361
Prepayments and other current assets	307	311
Total current assets	7,142	6,208
Property, plant and equipment, net of accumulated depreciation of \$3,236 and \$3,052, respectively	11,627	11,564
Other Assets		
Equity investments in affiliates	421	409
Note receivable — affiliate and capital leases, less current portion	476	504
Goodwill	1,713	1,718
Intangible assets, net of accumulated amortization of \$758 and \$648, respectively	1,686	1,777
Nuclear decommissioning trust fund	382	367
Derivative instruments valuation	975	683
Other non-current assets	156	148
Total other assets	5,809	5,606
Total Assets	\$ 24,578	\$ 23,378
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities		
Current portion of long-term debt and capital leases	\$ 152	\$ 571
Accounts payable	595	697
Derivative instruments valuation	2,354	1,473
Deferred income taxes	174	197
Cash collateral received in support of energy risk management activities	509	177
Accrued expenses and other current liabilities	588	647
Total current liabilities	4,372	3,762
Other Liabilities		
Long-term debt and capital leases	7,846	7,847
Nuclear decommissioning reserve	304	300
Nuclear decommissioning trust liability	262	255
Deferred income taxes	1,925	1,783
Derivative instruments valuation	439	387
Out-of-market contracts	277	294
Other non-current liabilities	885	806
Total non-current liabilities	11,938	11,672
Total Liabilities	16,310	15,434
3.625% convertible perpetual preferred stock (at liquidation value, net of issuance costs)	247	247
Commitments and Contingencies		
Stockholders' Equity		
Preferred stock (at liquidation value, net of issuance costs)	—	149
Common stock	3	3
Additional paid-in capital	5,274	4,948
Retained earnings	3,388	3,332
Less treasury stock, at cost — 48,411,606 and 41,866,451 shares, respectively	(1,323)	(1,163)
Accumulated other comprehensive income	667	416
Noncontrolling interest	12	12
Total Stockholders' Equity	8,021	7,697
Total Liabilities and Stockholders' Equity	\$ 24,578	\$ 23,378

NRG ENERGY, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

<i>(In millions)</i>		
Three months ended March 31,	2010	2009
Cash Flows from Operating Activities		
Net income	\$ 58	\$ 198
Adjustments to reconcile net income to net cash provided by operating activities:		
Distributions and equity in earnings of unconsolidated affiliates	(5)	(22)
Depreciation and amortization	202	169
Provision for bad debts	9	—
Amortization of nuclear fuel	10	10
Amortization of financing costs and debt discount/premiums	8	9
Amortization of intangibles and out-of-market contracts	—	(34)
Changes in deferred income taxes and liability for unrecognized tax benefits	74	299
Changes in nuclear decommissioning trust liability	11	6
Changes in derivatives	24	(304)
Changes in collateral deposits supporting energy risk management activities	(172)	312
Gain on sale of assets	(21)	(1)
Gain on sale of emission allowances	—	(7)
Amortization of unearned equity compensation	6	7
Changes in option premiums collected	92	(270)
Cash used by changes in other working capital	(182)	(233)
Net Cash Provided by Operating Activities	114	139
Cash Flows from Investing Activities		
Capital expenditures	(185)	(233)
Increase in restricted cash, net	(5)	(1)
Decrease in notes receivable	7	3
Purchases of emission allowances	(34)	(35)
Proceeds from sale of emission allowances	9	8
Investments in nuclear decommissioning trust fund securities	(78)	(83)
Proceeds from sales of nuclear decommissioning trust fund securities	67	78
Proceeds from sale of assets	30	4
Other	(5)	—
Net Cash Used by Investing Activities	(194)	(259)
Cash Flows from Financing Activities		
Payment of dividends to preferred stockholders	(2)	(14)
Net receipt from acquired derivatives that include financing elements	13	40
Proceeds from issuance of long-term debt	10	—
Proceeds from issuance of common stock, net of issuance costs	2	—
Payment of deferred debt issuance costs	(2)	(1)
Payments for short and long-term debt	(429)	(209)
Net Cash Used by Financing Activities	(408)	(184)
Effect of exchange rate changes on cash and cash equivalents	(3)	(2)
Net Decrease in Cash and Cash Equivalents	(491)	(306)
Cash and Cash Equivalents at Beginning of Period	2,304	1,494
Cash and Cash Equivalents at End of Period	\$ 1,813	\$ 1,188

Appendix Table A-1: First Quarter 2010 Regional EBITDA Reconciliation

The following table summarizes the calculation of adjusted EBITDA and provides a reconciliation to net income/(loss)

(dollars in millions)	Reliant Energy	Texas	Northeast	South Central	West	International	Thermal	Corporate	Total
Net Income (Loss) attributable to NRG Energy, Inc	(188)	375	52	(4)	6	8	4	(195)	58
Plus:									
Income Tax	-	-	-	-	-	2	-	63	65
Interest Expense	1	(13)	13	10	-	2	1	130	144
Amortization of Finance Costs	-	-	-	-	-	-	-	6	6
Amortization of Debt (Discount)/Premium)	-	-	-	2	-	-	-	1	3
Depreciation Expense	30	117	32	16	3	-	2	2	202
ARO Accretion Expense	-	1	(4)	-	1	-	-	-	(2)
Amortization of Power Contracts	69	(2)	-	(5)	-	-	-	-	62
Amortization of Fuel Contracts	(10)	(2)	-	-	-	-	-	-	(12)
Amortization of Emission Allowances	-	12	-	-	-	-	-	-	12
EBITDA	(98)	488	93	19	10	12	7	7	538
Less: MtM forward position accruals	(375)	238	38	(12)	-	-	-	-	(111)
Add. Prior period MtM reversals	(87)	22	19	(5)	-	-	1	-	(50)
Less: Hedge Ineffectiveness	-	-	(2)	-	-	-	-	-	(2)
Adjusted EBITDA, excluding MtM	190	272	76	26	10	12	8	7	601

Appendix Table A-2: First Quarter 2009 Regional EBITDA Reconciliation

The following table summarizes the calculation of adjusted EBITDA and provides a reconciliation to net income/(loss)

(dollars in millions)	Texas	Northeast	South Central	West	International	Thermal	Corporate	Total
Net Income (Loss) attributable to NRG Energy, Inc	217	211	1	(3)	12	4	(244)	198
Plus:								
Income Tax	161	-	-	-	2	-	135	298
Interest Expense	29	13	12	-	-	2	71	127
Amortization of Finance Costs	-	-	-	-	-	-	6	6
Amortization of Debt (Discount)/Premium	-	-	-	-	-	-	4	4
Depreciation Expense	117	29	17	2	-	2	2	169
ARO Accretion Expense	1	-	-	1	-	-	-	2
Amortization of Power Contracts	(15)	-	(6)	-	-	-	-	(21)
Amortization of Fuel Contracts	-	-	-	-	-	-	-	-
Amortization of Emission Allowances	9	-	-	-	-	-	-	9
EBITDA	519	253	24	-	14	8	(26)	792
Exelon Defense Costs	-	-	-	-	-	-	5	5
Reliant retail transaction and integration costs	-	-	-	-	-	-	12	12
Adjusted EBITDA	519	253	24	-	14	8	(9)	809
Less: MtM forward position accruals	205	153	(5)	(1)	(9)	2	-	345
Add: Prior period MtM reversals	9	7	-	-	-	1	-	17
Less: Hedge Ineffectiveness	3	1	-	-	-	-	-	4
Adjusted EBITDA, excluding MtM	320	106	29	1	23	7	(9)	477

EBITDA, adjusted EBITDA and adjusted EBITDA, net of MtM impacts are non GAAP financial measures. These measurements are not recognized in accordance with GAAP and should not be viewed as an alternative to GAAP measures of performance. The presentation of adjusted EBITDA and adjusted EBITDA, net of MtM impacts should not be construed as an inference that NRG's future results will be unaffected by unusual or non-recurring items.

EBITDA represents net income before interest, taxes, depreciation and amortization. EBITDA is presented because NRG considers it an important supplemental measure of its performance and believes debt-holders frequently use EBITDA to analyze operating performance and debt service capacity. EBITDA has limitations as an analytical tool, and you should not consider it in isolation, or as a substitute for analysis of our operating results as reported under GAAP. Some of these limitations are:

- EBITDA does not reflect cash expenditures, or future requirements for capital expenditures, or contractual commitments;
- EBITDA does not reflect changes in, or cash requirements for, working capital needs;
- EBITDA does not reflect the significant interest expense, or the cash requirements necessary to service interest or principal payments, on debts or the cash income tax payments;
- Although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and EBITDA does not reflect any cash requirements for such replacements; and
- Other companies in this industry may calculate EBITDA differently than NRG does, limiting its usefulness as a comparative measure.

Because of these limitations, EBITDA should not be considered as a measure of discretionary cash available to use to invest in the growth of NRG's business. NRG compensates for these limitations by relying primarily on our GAAP results and using EBITDA and adjusted EBITDA only supplementally. See the statements of cash flow included in the financial statements that are a part of this news release.

Adjusted EBITDA is presented as a further supplemental measure of operating performance. Adjusted EBITDA represents EBITDA adjusted for reorganization, restructuring, impairment and corporate relocation charges, discontinued operations, write downs and gains or losses on the sales of equity method investments; Exelon defense costs, and Texas retail acquisition and integration costs; and factors which we do not consider indicative of future operating performance. The reader is encouraged to evaluate each adjustment and the reasons NRG considers it appropriate for supplemental analysis. As an analytical tool, adjusted EBITDA is subject to all of the limitations applicable to EBITDA. In addition, in evaluating adjusted EBITDA, the reader should be aware that in the future NRG may incur expenses similar to the adjustments in this news release.

Free cash flow is cash flow from operations less capital expenditures, preferred stock dividends and repowering capital expenditures net of project funding and is used by NRG predominantly as a forecasting tool to estimate cash available for debt reduction and other capital allocation alternatives. The reader is encouraged to evaluate each of these adjustments and the reasons NRG considers them appropriate for supplemental analysis. Because we have mandatory debt service requirements (and other non-discretionary expenditures) investors should not rely on adjusted cash flow from operating activities or free cash flow as a measure of cash available for discretionary expenditures.

EXHIBIT 3



FOR IMMEDIATE RELEASE

**NRG Energy, Inc. Reports Record Full Year 2009 and
Fourth Quarter Results**

Full-Year 2009 Financial Highlights

- \$2,618 million of adjusted EBITDA, net of MtM impacts – up 14% from 2008
- \$1,862 million of adjusted cash from operating activities – up 26% from 2008
- \$941 million of net income and \$3.44 per diluted common share
- \$500 million of common stock (19.3 million shares) repurchased during the year

Fourth Quarter Financial Highlights

- \$489 million of adjusted EBITDA, net of MtM impacts
- \$33 million of net income and \$0.11 per diluted common share
- \$3,794 million of liquidity as of December 31, 2009, including \$2,304 million in cash
- \$181 million payment of NRG Common Stock Finance II (CSF II) facility
- \$200 million pre-payment of debt on the Term Loan B Facility

Announcing 2010 Capital Allocation Plan and Updating 2010 Guidance:

- Launching 2010 Capital Allocation Plan with \$180 million share buy back, in line with commitment of 3% of market capitalization
- Reaffirming 2010 EBITDA guidance of \$2,200 million and increasing cash flow from operations guidance by \$75 million to \$1,425 million

PRINCETON, NJ; February 23, 2010—NRG Energy, Inc. (NYSE: NRG) for the year end December 31, 2009, reported net income of \$941 million, or \$3.44 per diluted common share, compared to \$1,225 million, or \$4.43 per diluted common share, for the full year 2008. Income from continuing operations before income taxes was \$97 million lower in 2009 than in 2008 as contributions from the wholesale business declined in 2009, primarily due to a decrease of \$776 million of pre-tax mark-to-market gains and \$199 million lower contract amortization revenue. 2009 results benefited from the Reliant Energy acquisition as the segment generated \$966 million of pre-tax income during the eight months ended December 31, 2009. Non-recurring operating expenses during 2009 included \$31 million of Exelon defense costs and \$54 million of transaction and integration costs associated with the Company's acquisition of Reliant Energy.

For the quarter ended December 31, 2009, the Company reported net income of \$33 million, or \$0.11 per diluted common share, compared to \$271 million, or \$0.97 per diluted common share, for the fourth quarter last year. The current quarter's income from continuing operations before income taxes of \$147 million benefited from Reliant Energy's contribution of \$159 million in pre-tax income, which included \$274 million of pre-tax mark-to-market gains on economic hedges. Fourth quarter 2008 net income was \$481 million, which benefited from \$360 million of pre-tax net mark-to-market gains on economic hedges. Included in the current quarter's results is a \$12 million pre-tax charge associated with the planned cancellation of the pollution control equipment project at Indian River unit 3.

Plant operational performance was strong during the fourth quarter 2009 as the Company's coal assets realized an overall 90% equivalent availability factor and increased production due to improved market conditions compared to earlier in the year. Highlighting this quarter's plant performance was the Limestone facility, which ran without incident during the quarter. For 2009, NRG's coal plants performed above the industry's top quartile level for safety and availability and posted the second best year for operating performance in the Company's history. During 2009 the Huntley generating station in Western New York led NRG's coal assets with a 93% equivalent availability factor.

"2009 was a record year for NRG both in terms of EBITDA and cash flow, which, given the prevailing economic conditions, is a testament to the robustness of our business plan and the skill and dedication of our people," commented David Crane, NRG President and Chief Executive Officer. "With our strong liquidity and hedge position, we are well situated to pursue the many growth opportunities that will make NRG a leader in the development of the 21st century new energy economy."

Regional Segment Review of Results

Table 1: Income (Loss) from Continuing Operations before Income Taxes

(\$ in millions) Segment	Three Months Ended		Twelve Months Ended	
	12/31/09	12/31/08	12/31/09	12/31/08
Reliant Energy	(115)	-	172	-
Texas	156	175	865	1,217
Northeast	32	45	294	307
South Central	(1)	(8)	(12)	50
West	8	13	40	51
International	10	10	159	82
Thermal	4	1	10	12
Corporate ⁽¹⁾	(183)	(115)	(597)	(426)
Total, net of MtM Impacts	(89)	121	931	1,293
Add: MtM forward position accruals ⁽²⁾	35	365	105	536
Less: Prior period MtM reversals ⁽³⁾	(173)	6	(588)	38
Add: Hedge ineffectiveness ⁽⁴⁾	28	1	45	(25)
Total	147	481	1,669	1,766

⁽¹⁾ Includes interest expense of \$138 million and \$98 million for the fourth quarter of 2009 and 2008, and \$479 million and \$364 million for the 12 months ended December 31, 2009 and 2008, respectively; and Exelon defense and Reliant Energy's Integration costs of \$13 million and \$8 million for the fourth quarter of 2009 and 2008, respectively, and \$85 million and \$8 million for the 12 months ended December 31, 2009 and December 31, 2008 respectively.

⁽²⁾ Represents net MtM gains/(losses) on economic hedges that do not qualify for hedge accounting treatment.

⁽³⁾ Represents the reversal of MtM gains/(losses) previously recognized on economic hedges that do not qualify for hedge accounting treatment.

⁽⁴⁾ Represents ineffectiveness gains/(losses) due to a change in correlation, predominately between natural gas and power prices, on economic hedges that qualify for hedge accounting treatment.

MtM Impacts of Hedging Activities

The Company, in the normal course of business, enters into contracts to lock in forward prices for a significant portion of its expected power generation and to fulfill Reliant Energy's supply requirements. Although these transactions are predominantly economic hedges of our generation portfolio and load requirements, a portion of these forward sales and purchases are not afforded hedge accounting treatment and the MtM change in value of these transactions is recorded to current period earnings. During the fourth quarter of 2009, the Company recorded a \$236 million forward net MtM gain on our economic hedges driven by \$274 million of gains in our Retail segment. In the fourth quarter of 2008, there were \$360 million net MtM gains on our economic hedges caused by decreasing power and natural gas prices, including \$365 million of unrealized gains on open positions related to economic hedges. For the full year 2009, the Company recognized \$738 million of MtM gains with \$656 million of these gains associated with the reversal of positions acquired as part of the Reliant Energy acquisition. Our wholesale business recorded MtM gains during the full year 2008 of \$473 million as a result of falling power and natural gas prices, of which \$536 million were associated with unrealized gains on open positions related to economic hedges on the wholesale portfolio.

Table 2: Adjusted EBITDA, net of MtM impacts

(\$ in millions) Segment	Three Months Ended		Twelve Months Ended	
	12/31/09	12/31/08	12/31/09	12/31/08
Reliant Energy	104	-	642	-
Texas	264	270	1,329	1,543
Northeast	77	92	468	475
South Central	25	17	81	145
West	11	17	53	68
International	12	10	59	82
Thermal	8	4	25	28
Corporate	(12)	(7)	(39)	(50)
Adjusted EBITDA, net of MtM⁽¹⁾	489	403	2,618	2,291

⁽¹⁾ Excludes net domestic forward MtM gains/(losses), reversal of prior period net MtM gains/(losses), and hedge ineffectiveness gains/(losses) on economic hedges as shown in Table 1 above. Detailed adjustments by region are shown in Appendix A.

Reliant Energy: During the fourth quarter, Reliant Energy's adjusted EBITDA, net of MtM impacts was \$104 million excluding the \$89 million loss associated with the termination of forward positions related to the credit sleeve unwind. The quarter's margins benefited from colder than normal weather in December in Texas which led to increased customer usage. Total sales to both Commercial and Industrial (C&I) and Mass customers were 12 TWh.

2009 full year adjusted EBITDA, net of MtM impacts for Reliant Energy totaled \$642 million as warmer than normal weather during the summer combined with low supply costs drove strong margins in the Mass business. This was partially offset by a decrease in customer count during the eight months ended December 31, 2009. Total Retail revenues were \$4,440 million on 38 TWh sold to both C&I and Mass customers. Retail cost of sales totaled \$3,442 million, resulting in a Retail gross margin of \$998 million, excluding the \$89 million loss relating to the credit sleeve unwind. Other operating expenses incurred during the year totaled \$356 million and included \$98 million of expenses associated with the call center and billing, credit, and collections; \$142 million of selling, general and administrative expense; \$55 million of gross receipts tax; and \$61 million of bad debt expense.

Texas: Adjusted EBITDA, net of MtM impacts for the fourth quarter of 2009 decreased by \$6 million to \$264 million compared to the fourth quarter of 2008. Lower development costs of \$2 million were offset by a \$6 million increase in O&M and property tax expenses due to the addition of Cedar Bayou 4 and a full quarter of Elbow Creek operations, and \$2 million lower economic gross margin.

Annual adjusted EBITDA, net of MtM impacts decreased by \$214 million from 2008 to 2009 to \$1,329 million. Average power prices decreased substantially in the Houston zone in 2009 due to lower natural gas prices and heat rates. By comparison, heat rates during 2008 increased from congestion between zones in ERCOT during May and June resulting in very high power prices which benefited our gas-fueled plants. An increase in generation from the gas fleet, mostly due to Cedar Bayou unit 4 which started operations in June of 2009, plus a full year of wind generation from Elbow Creek only partially offset a decline in generation from our coal units at WA Parish and Limestone which were backed down more frequently in 2009 as a result of economic conditions. The combined impact of lower power prices and generation, offset by a decline in fuel costs driven by the lower price of natural gas, resulted in a \$174 million decline in energy margins from 2008 to 2009. In addition, emissions sales and ancillary services declined by a combined \$17 million largely due to sales of Carbon Financial Instruments in 2008. Operationally, maintenance costs increased at the region's coal facilities by \$20 million due to increased planned maintenance outages.

Northeast: For the fourth quarter, adjusted EBITDA, net of MtM impacts was \$77 million, down \$15 million compared to the fourth quarter of 2008. Net energy margins were down \$8 million impacted by lower power prices and decreased generation. Emissions expense was \$8 million higher due to RGGI compliance costs while operating expenses were flat, including the write-off of \$12 million due to the planned cancellation of an air pollution control project at Indian River unit 3.

Annual adjusted EBITDA, net of MtM impacts decreased \$7 million over the prior year to \$468 million. Despite a 31% decrease in generation across the fleet, energy margins increased \$63 million as a result of higher hedged prices in 2009 compared to 2008. Offsetting favorable energy margins in 2009 were increased emissions expenses of \$22 million due to RGGI compliance, \$20 million lower emissions credits sales, and \$14 million higher property tax expenses due to lower Empire Zone tax benefits.

South Central: Adjusted EBITDA, net of MtM impacts for the fourth quarter increased by \$8 million to \$25 million. This was largely driven by increased merchant sale volumes, which led to higher merchant energy margins of \$21 million during the quarter. Contracted energy margins decreased \$7 million driven by a 12% decrease in load resulting from the expiration of a contract with a regional utility. Operating expenses were greater by \$4 million mainly attributable to higher maintenance expenses from an increased length and scope of planned outage work.

On a full year basis, adjusted EBITDA, net of MtM impacts declined \$64 million to \$81 million from \$145 million in 2008. Contributing to the decline in adjusted EBITDA was a 45% lower average realized merchant price of \$53 per MWh, which more than offset a sales volume increase of 46% compared to 2008. Also contributing to the comparatively lower results were reduced load requirements, driven by the expiration of a contract with a regional utility, and increased length of scheduled outages. Finally, 2008 results included unrealized gains related to forward energy sales that were delivered in 2009.

Liquidity and Capital Resources

Table 3: Corporate Liquidity

(\$ in millions)	December 31, 2009	December 31, 2008
Cash and cash equivalents	\$2,304	\$1,494
Funds deposited by counterparties	177	754
Restricted cash	2	16
Total Cash	\$2,483	\$2,264
Letter of credit availability	583	860
Revolver availability	905	1,000
Total Liquidity	\$3,971	\$4,124
Less: Funds deposited as collateral by hedge counterparties	(177)	(760)
Total Current Liquidity	\$3,794	\$3,364

For the year ended December 31, 2009 total liquidity, excluding counterparty collateral received, was \$3,794 million, a \$430 million increase compared to \$3,364 million at the end of 2008. The increase of \$810 million in cash and cash equivalents was driven by \$1,862 million of adjusted cash flow from operations, a \$700 million bond issuance on June 5, 2009, and \$284 million in proceeds from the sale of MIBRAG. These sources of cash were offset by \$734 million of capital expenditures, \$500 million of share repurchases, \$360 million for the acquisition of Reliant Energy, and repayments of \$429 million to the Term Loan B Facility and \$181 million settlement of the CSF II facility. During 2009, net letters of credit issued from the Synthetic Letter of Credit Facility increased by \$277 million primarily as a result of the Reliant Energy acquisition and unwind of the credit sleeve. The Company issued letters of credit in the amount of \$95 million from the Revolving Credit Facility of which \$59 million supports the tax exempt bonds issued by Dunkirk Power LLC to help fund environmental capital expenditures at the facility.

Expansion at South Texas Project Update

On February 17, 2010, an agreement in principle was announced among CPS Energy, NRG and its subsidiary Nuclear Innovation in North America (NINA), whereby NINA would acquire control of the STP 3 & 4 project, with an increase in ownership to 92.375% from 50% as part of a settlement of the litigation between the parties. That agreement in principle remains subject to documentation and the attendant risk that one or more significant issues might arise during documentation that could derail the business agreement between the parties.

2009 Share Repurchase Plan

For the year, the Company purchased 19,305,500 shares at a volume weighted average cost of \$25.88 per share. During the fourth quarter of 2009, the Company purchased 10,386,400 of its common shares in open market transactions at a volume weighted average cost of \$24.05 per share, for a total of \$250 million. Since beginning share repurchases in December 2004, the Company has returned an aggregate of \$2.4 billion of capital to its common shareholders at a weighted average cost of \$23.92 per share.

2010 Capital Allocation Plan

NRG's Board of Directors approved \$180 million of share repurchases for 2010, in line with our commitment of 3% of our market capitalization. This is within the capacity projected to be available under our restricted payment basket. Further, as part of the 2010 Capital Allocation Plan, the Company will invest \$241 million in maintenance capital expenditures, \$227 million in net environmental expenditures in its existing assets and \$598 million, net, in projects under *Repowering* NRG. In addition to scheduled debt amortization payments, in the first quarter of 2010, the Company expects to offer its first-lien lenders 50% of the "2009 Excess Cash Flow" as defined in the Company's Credit Agreement less the \$200 million pre-payment made in December of 2009. This amount is currently anticipated to result in an additional payment of approximately \$230 million resulting in a total of approximately \$430 million of debt reduction payments to the Term Loan B facility.

Outlook for 2010

NRG is reaffirming its 2010 adjusted EBITDA guidance of \$2,200 million and increasing cash flow from operations guidance by \$75 million to \$1,425 million due to reduced federal and state income tax payments. The Company's environmental capital expenditures are expected to drop significantly as a result of the planned cancellation of the installation of the air quality control systems on unit 3 at Indian River. The \$494 million increase in Repowering Investments, net is due to additional investment associated with STP 3&4 stemming from NINA's proposed increased ownership in the project. The Repowering Investments, net increase includes an \$80 million payment to CPS Energy, a \$50 million payment from Toshiba, and a \$134 million draw on the long lead time facility. This does not include the anticipated proceeds from equity sell downs.

Table 5: 2010 Reconciliation of Adjusted EBITDA Guidance (\$ in millions)

	02/23/2010	10/29/2009
Wholesale	1,700	1,700
Retail	500	500
Updated adjusted EBITDA guidance, excluding MtM adjustment	2,200	2,200
Interest payments	(628)	(628)
Income tax	(75)	(150)
Collateral payments /working capital/other changes	(72)	(72)
Cash flow from operations	1,425	1,350
Maintenance capital expenditures	(241)	(262)
Preferred dividends	(9)	(9)
Free cash flow before environmental and growth capital	1,175	1,079
Environmental capital expenditures, net	(227)	(281)
Repowering investments, net	(598)	(104)
Free cash flow	350	694

Earnings Conference Call

On February 23, 2010, NRG will host a conference call at 9:00 a.m. eastern to discuss these results. Investors, the news media and others may access the live webcast of the conference call and accompanying presentation materials by logging on to NRG's website at <http://www.nrgenergy.com> and clicking on "Investors." The webcast will be archived on the site for those unable to listen in real time.

About NRG

NRG Energy, Inc., a Fortune 500 company, owns and operates one of the country's largest and most diverse power generation portfolios. Headquartered in Princeton, NJ, the Company's power plants provide more than 24,000 megawatts of generation capacity – enough to supply more than 20 million homes. NRG's retail business, Reliant Energy, serves more than 1.6 million residential, business, and commercial and industrial customers in Texas. A past recipient of the energy industry's highest honors – Platts Industry Leadership and Energy Company of the Year awards – NRG is a member of the U.S. Climate Action Partnership (USCAP), a group of business and environmental organizations calling for mandatory legislation to reduce greenhouse gas emissions. More information is available at www.nrgenergy.com.

Safe Harbor Disclosure

This news release contains 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. Such forward-looking statements are subject to certain risks, uncertainties and assumptions and include our adjusted EBITDA, cash flow from operations and free cash flow guidance, the 2010 Capital Allocation Plan, expected earnings, future growth, financial performance, environmental capital expenditures, and nuclear development, and typically can be identified by the use of words such as “will,” “expect,” “estimate,” “anticipate,” “forecast,” “plan,” “believe” and similar terms. Although NRG believes that its expectations are reasonable, it can give no assurance that these expectations will prove to have been correct, and actual results may vary materially. Factors that could cause actual results to differ materially from those contemplated above include, among others, general economic conditions, hazards customary in the power industry, weather conditions, successful partnering relationships, loan guarantees competition in wholesale power markets, the volatility of energy and fuel prices, failure of customers to perform under contracts, changes in the wholesale power markets, changes in government regulation of markets and of environmental emissions, the condition of capital markets generally, our ability to access capital markets, unanticipated outages at our generation facilities, adverse results in current and future litigation, the inability to implement value enhancing improvements to plant operations and companywide processes, our ability to achieve the expected benefits and timing of development projects, and the 2010 Capital Allocation Plan, and share repurchase under the Capital Allocation Plan may be made from time to time subject to market conditions and other factors, including as permitted by United States securities laws.

NRG undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. The adjusted EBITDA guidance and adjusted cash flow from operations, and free cash flows are estimates as of today's date, February 23, 2010 and are based on assumptions believed to be reasonable as of this date. NRG expressly disclaims any current intention to update such guidance. The foregoing review of factors that could cause NRG's actual results to differ materially from those contemplated in the forward-looking statements included in this news release should be considered in connection with information regarding risks and uncertainties that may affect NRG's future results included in NRG's filings with the Securities and Exchange Commission at www.sec.gov.

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NRG ENERGY, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS

(In millions except per share amounts)	Three months ended December 31,		Twelve months ended December 31,	
	2009	2008	2009	2008
Operating Revenues				
Total operating revenues.....	\$ 2,141	\$ 1,655	\$ 8,952	\$ 6,885
Operating Costs and Expenses				
Cost of operations.....	1,422	786	5,323	3,598
Depreciation and amortization.....	224	171	818	649
Selling, general and administrative.....	159	86	550	319
Acquisition-related transaction and integration costs.....	8	—	54	—
Development costs.....	14	17	48	46
Total operating costs and expenses.....	1,827	1,060	6,793	4,612
Operating Income.....	314	595	2,159	2,273
Other Income/(Expense)				
Equity in earnings of unconsolidated affiliates.....	8	24	41	59
Gains on sales of equity method investments.....	—	—	128	—
Other income/(loss), net.....	4	3	(5)	17
Refinancing expenses.....	(20)	—	(20)	—
Interest expense.....	(159)	(141)	(634)	(583)
Total other expenses.....	(167)	(114)	(490)	(507)
Income From Continuing Operations Before Income Taxes.....	147	481	1,669	1,766
Income tax expense.....	114	210	728	713
Income From Continuing Operations.....	33	271	941	1,053
Income from discontinued operations, net of income taxes.....	—	—	—	172
Net Income.....	33	271	941	1,225
Less: Net loss attributable to noncontrolling interest.....	—	—	(1)	—
Net Income attributable to NRG Energy, Inc.	33	271	942	1,225
Dividends for preferred shares.....	6	14	33	55
Income Available for Common Stockholders.....	\$ 27	\$ 257	\$ 909	\$ 1,170
Earnings per share attributable to NRG Energy, Inc. Common Stockholders.....				
Weighted average number of common shares outstanding — basic.....	242	233	246	235
Income from continuing operations per weighted average common share — basic.....	\$ 0.11	\$ 1.10	\$ 3.70	\$ 4.25
Income from discontinued operations per weighted average common share — basic.....	—	—	—	0.73
Net Income per Weighted Average Common Share — Basic.....	\$ 0.11	\$ 1.10	\$ 3.70	\$ 4.98
Weighted average number of common shares outstanding — diluted.....	244	276	271	275
Income from continuing operations per weighted average common share — diluted.....	\$ 0.11	\$ 0.97	\$ 3.44	\$ 3.80
Income from discontinued operations per weighted average common share — diluted.....	—	—	—	0.63
Net Income per Weighted Average Common Share — Diluted.....	\$ 0.11	\$ 0.97	\$ 3.44	\$ 4.43
Amounts Attributable to NRG Energy, Inc.:				
Income from continuing operations, net of income taxes.....	\$ 33	\$ 271	942	1,053
Income from discontinued operations, net of income taxes.....	—	—	—	172
Net Income.....	\$ 33	\$ 271	\$ 942	\$ 1,225

NRG ENERGY, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

As of December 31,
2009 2008
(In millions)

ASSETS

Current Assets		
Cash and cash equivalents.....	\$ 2,304	\$ 1,494
Funds deposited by counterparties.....	177	754
Restricted cash.....	2	16
Accounts receivable — trade, less allowance for doubtful accounts of \$29 and \$3.....	876	464
Current portion of note receivable— affiliate and capital leases.....	32	68
Inventory.....	541	455
Derivative instruments valuation.....	1,636	4,600
Cash collateral paid in support of energy risk management activities.....	361	494
Prepayments and other current assets.....	<u>279</u>	<u>147</u>
Total current assets.....	<u>6,208</u>	<u>8,492</u>
Property, Plant and Equipment		
In service.....	14,083	13,084
Under construction.....	<u>533</u>	<u>804</u>
Total property, plant and equipment.....	14,616	13,888
Less accumulated depreciation.....	<u>(3,052)</u>	<u>(2,343)</u>
Net property, plant and equipment.....	<u>11,564</u>	<u>11,545</u>
Other Assets		
Equity investments in affiliates.....	409	490
Note receivable — affiliate and capital leases, less current portion.....	504	435
Goodwill.....	1,718	1,718
Intangible assets, net of accumulated amortization of \$648 and \$335.....	1,777	815
Nuclear decommissioning trust fund.....	367	303
Derivative instruments valuation.....	683	885
Other non-current assets.....	<u>148</u>	<u>125</u>
Total other assets.....	<u>5,606</u>	<u>4,771</u>
Total Assets.....	<u>\$ 23,378</u>	<u>\$ 24,808</u>

As of December 31,
2009 2008
(In millions)

LIABILITIES AND STOCKHOLDERS' EQUITY

Current Liabilities		
Current portion of long-term debt and capital leases	\$ 571	\$ 464
Accounts payable — trade	693	447
Accounts payable — affiliates	4	4
Derivative instruments valuation	1,473	3,981
Deferred income taxes	197	201
Cash collateral received in support of energy risk management activities	177	760
Accrued interest expense	207	178
Other accrued expenses	298	215
Other current liabilities	142	331
Total current liabilities	<u>3,762</u>	<u>6,581</u>
Other Liabilities		
Long-term debt and capital leases	7,847	7,697
Nuclear decommissioning reserve	300	284
Nuclear decommissioning trust liability	255	218
Postretirement and other benefit obligations	287	277
Deferred income taxes	1,783	1,190
Derivative instruments valuation	387	508
Out-of-market contracts	294	291
Other non-current liabilities	519	392
Total non-current liabilities	<u>11,672</u>	<u>10,857</u>
Total Liabilities	<u>15,434</u>	<u>17,438</u>
3.625% convertible perpetual preferred stock; \$0.01 par value; 250,000 shares issued and outstanding (at liquidation value of \$250, net of issuance costs)	247	247
Commitments and Contingencies		
Stockholders' Equity		
4% convertible perpetual preferred stock; \$0.01 par value; 154,057 shares issued and outstanding at December 31, 2009 (at liquidation value of \$154, net of issuance costs) and 420,000 shares issued and outstanding at December 31, 2008 (at liquidation value of \$420, net of issuance costs)	149	406
5.75% convertible perpetual preferred stock; \$0.01 par value, 1,841,680 shares issued and outstanding at December 31, 2008 (at liquidation value of \$460, net of issuance costs)	—	447
Common stock; \$0.01 par value; 500,000,000 shares authorized; 295,861,759 and 263,599,200 shares issued and 253,995,308 and 234,356,717 shares outstanding at December 31, 2009 and 2008	3	3
Additional paid-in-capital	4,948	4,350
Retained earnings	3,332	2,423
Less treasury stock, at cost - 41,866,451 and 29,242,483 shares at December 31, 2009 and 2008	(1,163)	(823)
Accumulated other comprehensive income	416	310
Noncontrolling interest	12	7
Total Stockholders' Equity	<u>7,697</u>	<u>7,123</u>
Total Liabilities and Stockholders' Equity	<u>\$ 23,378</u>	<u>\$ 24,808</u>

NRG ENERGY, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS

	<u>Year Ended</u> <u>December 31,</u>	
	2009	2008
	(In millions)	
Cash Flows from Operating Activities		
Net income.....	\$ 941	\$ 1,225
Adjustments to reconcile net income to net cash provided by operating activities:		
Distributions and equity in earnings of unconsolidated affiliates	(41)	(44)
Depreciation and amortization	818	649
Provision for bad debts.....	61	—
Amortization of nuclear fuel.....	36	39
Amortization of financing costs and debt discount/premiums	44	37
Amortization of intangibles and out-of-market contracts.....	153	(270)
Amortization of unearned equity compensation	26	26
Loss/(gain) on disposals and sales of assets	17	25
Impairment charges and asset write downs.....	—	23
Changes in derivatives.....	(225)	(484)
Changes in deferred income taxes and liability for unrecognized tax benefits.....	689	762
Gain on sales of equity method investments	(128)	—
Gain on sale of discontinued operations	—	(273)
Gain on sale of emission allowances.....	(4)	(51)
Gain recognized on settlement of pre-existing relationship	(31)	—
Changes in nuclear decommissioning trust liability	26	34
Changes in collateral deposits supporting energy risk management activities.....	127	(417)
Cash provided/(used) by changes in other working capital, net of acquisition and disposition effects		
Accounts receivable, net	88	1
Inventory.....	(83)	(5)
Prepayments and other current assets.....	26	(7)
Accounts payable	(176)	(31)
Option premiums collected.....	(282)	268
Accrued expenses and other current liabilities.....	48	(6)
Other assets and liabilities	(24)	(22)
Net Cash Provided by Operating Activities	2,106	1,479
Cash Flows from Investing Activities		
Acquisition of businesses, net of cash acquired	(427)	—
Capital expenditures	(734)	(899)
Increase in restricted cash, net	14	13
(Increase)/decrease in notes receivable	(22)	10
Decrease in trust fund balances	—	—
Purchases of emission allowances	(78)	(8)
Proceeds from sale of emission allowances	40	75
Investments in nuclear decommissioning trust fund securities.....	(305)	(616)
Proceeds from sales of nuclear decommissioning trust fund securities.....	279	582
Proceeds from sale of assets, net	6	14
Proceeds from sale of equity method investment.....	284	—
Equity investment in unconsolidated affiliate.....	(6)	(84)
Purchases of securities	—	—
Proceeds from sale of discontinued operations and assets, net of cash divested	—	241
Other	(5)	—
Net Cash Used by Investing Activities	(954)	(672)
Cash Flows from Financing Activities		
Payment of dividends to preferred stockholders.....	(33)	(55)
Net payments to settle acquired derivatives that include financing elements.....	(79)	(43)
Payment for treasury stock.....	(500)	(185)
Installment proceeds from sale of noncontrolling interest in subsidiary	50	50
Payment to settle CSF I CAGR.....	—	(45)
Proceeds from issuance of common stock, net of issuance costs.....	2	9
Proceeds from issuance of long-term debt	892	20
Payment of deferred debt issuance costs.....	(31)	(4)
Payments for short and long-term debt.....	(644)	(234)
Net Cash Used by Financing Activities	(343)	(487)
Change in cash from discontinued operations.....	—	43
Effect of exchange rate changes on cash and cash equivalents.....	1	(1)
Net Increase in Cash and Cash Equivalents	810	362
Cash and Cash Equivalents at Beginning of Period.....	1,494	1,132
Cash and Cash Equivalents at End of Period	\$ 2,304	\$ 1,494

Appendix Table A-1: Fourth Quarter 2009 Regional EBITDA Reconciliation

The following table summarizes the calculation of adjusted EBITDA and provides a reconciliation to net income/(loss)

(dollars in millions)	Reliant Energy	Texas	Northeast	South Central	West	International	Thermal	Corporate	Total
Net Income (Loss) attributable to NRG Energy, Inc	159	162	(12)	1	8	7	2	(294)	33
Plus:									
Income Tax	-	-	-	-	-	3	-	111	114
Interest Expense	5	(12)	14	10	-	2	1	149	169
Amortization of Finance Costs	-	-	-	-	-	-	-	6	6
Amortization of Debt (Discount)/Premium	-	-	-	2	-	-	-	2	4
Depreciation Expense	52	119	30	17	2	-	3	1	224
ARO Accretion Expense	-	-	1	-	1	-	-	-	2
Amortization of Power Contracts	98	(8)	-	(3)	-	-	-	-	87
Amortization of Fuel Contracts	(25)	4	-	-	-	-	-	-	(21)
Amortization of Emission Allowances	-	9	-	-	-	-	-	-	9
EBITDA	289	274	33	27	11	12	6	(25)	627
Early termination of CSRA	89	(4)	-	-	-	-	-	-	85
Exelon Defense Costs	-	-	-	-	-	-	-	-	-
Reliant Energy Transaction and Integration Costs	-	-	-	-	-	-	-	13	13
Adjusted EBITDA	378	270	33	27	11	12	6	(12)	725
Less: MtM forward position accruals	67	(2)	(32)	2	1	-	(1)	-	35
Add: Prior period MtM reversals	(207)	21	11	-	1	-	1	-	(173)
Less: Hedge Ineffectiveness	-	29	(1)	-	-	-	-	-	28
Adjusted EBITDA, excluding MtM	104	264	77	25	11	12	8	(12)	489

Appendix Table A-2: Fourth Quarter 2008 Regional EBITDA Reconciliation

The following table summarizes the calculation of adjusted EBITDA and provides a reconciliation to net income/(loss)

(dollars in millions)	Texas	Northeast	South Central	West	International	Thermal	Corporate	Total
Net Income (Loss) attributable to NRG Energy, Inc	285	80	(8)	13	6	5	(110)	271
Plus								
Income Tax	211	-	-	-	4	-	(5)	210
Interest Expense	13	14	13	1	-	1	90	132
Amortization of Finance Costs	-	-	-	-	-	-	5	5
Amortization of Debt (Discount)/Premium	-	-	-	-	-	-	4	4
Depreciation Expense	117	32	17	2	-	2	1	171
ARO Accretion Expense	1	1	-	1	-	-	-	3
Amortization of Power Contracts	(40)	-	(5)	-	-	-	-	(45)
Amortization of Fuel Contracts	(6)	-	-	-	-	-	-	(6)
Amortization of Emission Allowances	10	-	-	-	-	-	-	10
EBITDA	591	127	17	17	10	8	(15)	755
Exelon Defense Costs	-	-	-	-	-	-	8	8
Adjusted EBITDA	591	127	17	17	10	8	(7)	763
Less: MtM forward position accruals	322	39	-	-	-	4	-	365
Add: Prior period MtM reversals	4	2	-	-	-	-	-	6
Less: Hedge Ineffectiveness	3	(2)	-	-	-	-	-	1
Adjusted EBITDA, excluding MtM	270	92	17	17	10	4	(7)	403

Appendix Table A-3: Year-to-date December 31, 2009 Regional EBITDA Reconciliation

The following table summarizes the calculation of adjusted EBITDA and provides a reconciliation to net income/(loss)

(dollars in millions)	Reliant Energy	Texas	Northeast	South Central	West	International	Thermal	Corporate	Total
Net Income (Loss) attributable to NRG Energy, Inc	966	673	291	(41)	40	150	8	(1,145)	942
Plus:									
Income Tax	-	171	-	-	-	9	-	548	728
Interest Expense	34	4	54	42	2	8	5	460	609
Amortization of Finance Costs	1	-	-	-	-	-	-	30	31
Amortization of Debt (Discount)/Premium	-	-	-	6	-	-	-	8	14
Depreciation Expense	137	472	118	67	8	-	10	6	818
ARO Accretion Expense	-	3	2	-	3	-	-	-	8
Amortization of Power Contracts	258	(57)	-	(22)	-	-	-	-	179
Amortization of Fuel Contracts	(49)	7	-	-	-	-	-	-	(42)
Amortization of Emission Allowances	-	38	-	-	-	-	-	-	38
EBITDA	1,347	1,311	465	52	53	167	23	(93)	3,325
Early Termination of CSRA	89	(4)	-	-	-	-	-	-	85
Exelon Defense Costs	-	-	-	-	-	-	-	31	31
Reliant Energy Transaction and Integration Expenses	-	-	-	-	-	-	-	54	54
Currency Loss on MIBRAG Sale Proceeds	-	-	-	-	-	20	-	-	20
Settlement of Pre-Existing Contract with Reliant Energy	-	-	-	-	-	-	-	(31)	(31)
Gain on Sale of Equity Method Investments	-	-	-	-	-	(128)	-	-	(128)
Adjusted EBITDA	1,436	1,307	465	52	53	59	23	(39)	3,356
Less: MtM forward position accruals	138	(43)	38	(29)	-	-	1	-	105
Add: Prior period MtM reversals	(656)	26	39	-	-	-	3	-	(588)
Less: Hedge Ineffectiveness	-	47	(2)	-	-	-	-	-	45
Adjusted EBITDA, excluding MtM	642	1,329	468	81	53	59	25	(39)	2,618

Appendix Table A-4: Year-to-date December 31, 2008 Regional EBITDA Reconciliation

The following table summarizes the calculation of adjusted EBITDA and provides a reconciliation to net income/(loss)

(dollars in millions)	Texas	Northeast	South Central	West	International	Thermal	Corporate	Total
Net Income (Loss) attributable to NRG Energy, Inc	911	390	50	51	235	16	(428)	1,225
Plus:								
Income Tax	692	-	-	-	19	-	2	713
Interest Expense	100	56	51	6	-	6	333	552
Amortization of Finance Costs	-	-	-	-	-	-	22	22
Amortization of Debt (Discount)/Premium	-	-	-	-	-	-	9	9
Depreciation Expense	451	109	67	8	-	10	4	649
ARO Accretion Expense	3	3	-	3	-	-	-	9
Amortization of Power Contracts	(255)	-	(23)	-	-	-	-	(278)
Amortization of Fuel Contracts	(13)	-	-	-	-	-	-	(13)
Amortization of Emission Allowances	40	-	-	-	-	-	-	40
EBITDA	1,929	558	145	68	254	32	(58)	2,928
Exelon Defense Costs	-	-	-	-	-	-	8	8
(Income)/loss from Discontinued Operations	-	-	-	-	(172)	-	-	(172)
Adjusted EBITDA	1,929	558	145	68	82	32	(50)	2,764
Less: MtM forward position accruals	436	96	-	-	-	4	-	536
Add: Prior period MtM reversals	25	13	-	-	-	-	-	38
Less: Hedge Ineffectiveness	(25)	-	-	-	-	-	-	(25)
Adjusted EBITDA, excluding MtM	1,543	475	145	68	82	28	(50)	2,291

Appendix Table A-5: Full Year 2009 Adjusted Cash Flow from Operating Activities Reconciliation

The following table summarizes the calculation of adjusted Cash Flow from Operations and provides a reconciliation to Cash from Operations

(dollars in millions)	Year ended December 31, 2009
Cash Flow from Operating Activities	2,106
Less: Cash receipts from termination of hedges associated with CSRA unwind	(165)
Less: Reclassifying of payment of Financing Element of Acquired Derivatives	(79)
<hr/>	
Adjusted Cash Flow from Operating Activities	1,862

EBITDA, adjusted EBITDA and adjusted EBITDA, net of MtM impacts are non GAAP financial measures. These measurements are not recognized in accordance with GAAP and should not be viewed as an alternative to GAAP measures of performance. The presentation of adjusted EBITDA and adjusted EBITDA, net of MtM impacts should not be construed as an inference that NRG's future results will be unaffected by unusual or non-recurring items.

EBITDA represents net income before interest, taxes, depreciation and amortization. EBITDA is presented because NRG considers it an important supplemental measure of its performance and believes debt-holders frequently use EBITDA to analyze operating performance and debt service capacity. EBITDA has limitations as an analytical tool, and you should not consider it in isolation, or as a substitute for analysis of our operating results as reported under GAAP. Some of these limitations are:

- EBITDA does not reflect cash expenditures, or future requirements for capital expenditures, or contractual commitments;
- EBITDA does not reflect changes in, or cash requirements for, working capital needs;
- EBITDA does not reflect the significant interest expense, or the cash requirements necessary to service interest or principal payments, on debts or the cash income tax payments;
- Although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and EBITDA does not reflect any cash requirements for such replacements; and
- Other companies in this industry may calculate EBITDA differently than NRG does, limiting its usefulness as a comparative measure.

Because of these limitations, EBITDA should not be considered as a measure of discretionary cash available to use to invest in the growth of NRG's business. NRG compensates for these limitations by relying primarily on our GAAP results and using EBITDA and adjusted EBITDA only supplementally. See the statements of cash flow included in the financial statements that are a part of this news release.

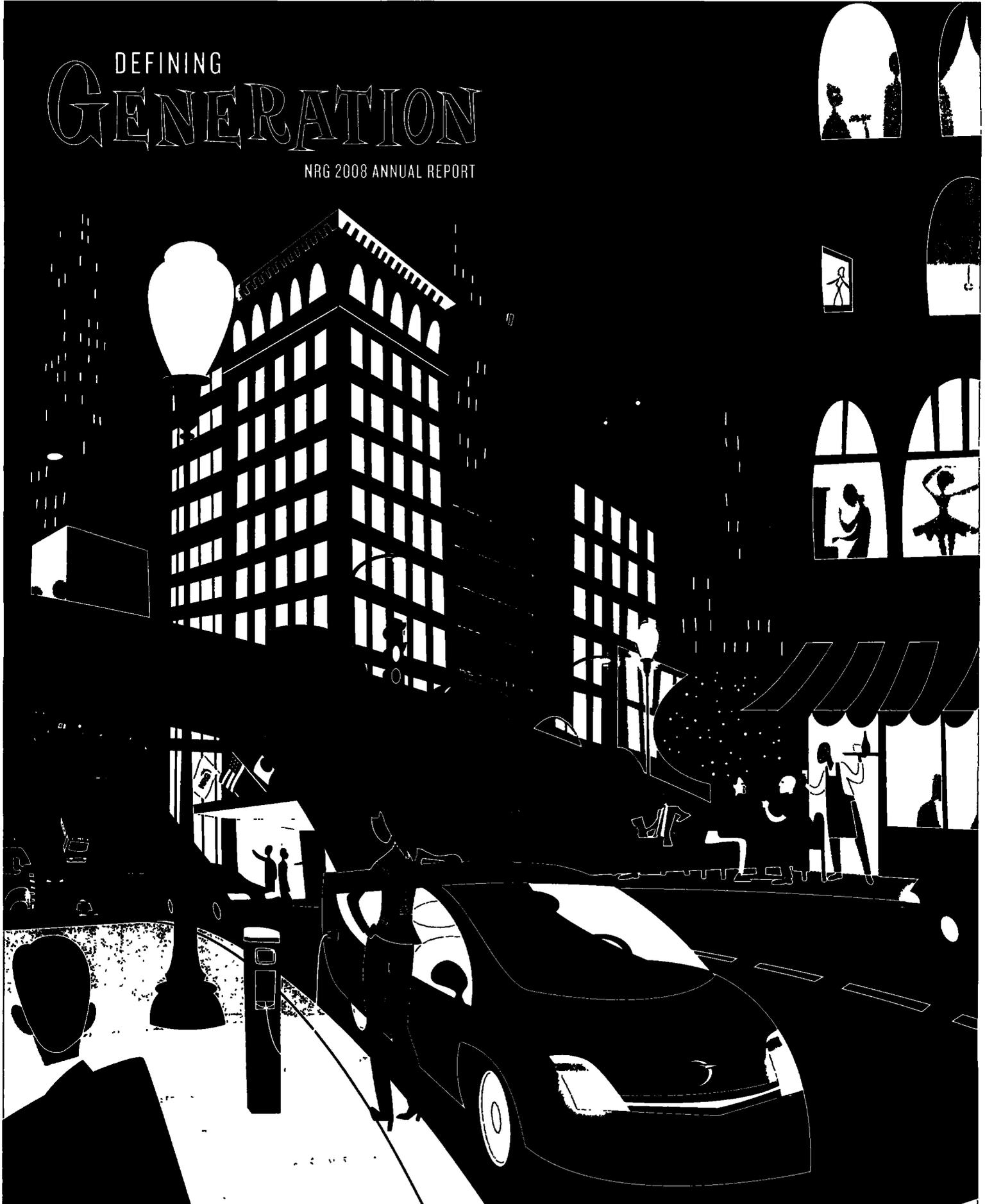
Adjusted EBITDA is presented as a further supplemental measure of operating performance. Adjusted EBITDA represents EBITDA adjusted for reorganization, restructuring, impairment and corporate relocation charges, discontinued operations, write downs and gains or losses on the sales of equity method investments; Exelon defense costs, and Texas retail acquisition and integration costs; and factors which we do not consider indicative of future operating performance. The reader is encouraged to evaluate each adjustment and the reasons NRG considers it appropriate for supplemental analysis. As an analytical tool, adjusted EBITDA is subject to all of the limitations applicable to EBITDA. In addition, in evaluating adjusted EBITDA, the reader should be aware that in the future NRG may incur expenses similar to the adjustments in this news release.

Adjusted cash flow from operating activities is a non-GAAP measure NRG provides to show cash from operations exclusive of the nonrecurring benefit from net cash proceeds from the termination of positions associated with unwind of the Merrill Lynch credit sleeve in October 2009. In addition, NRG provides a reclassification of net payments of derivative contracts acquired in business combinations from financing to operating cash flow. The Company provides the reader with this alternative view of operating cash flow because the cash settlement of these derivative contracts materially impact operating revenues and cost of sales, while GAAP requires NRG to treat them as if there was a financing activity associated with the contracts as of the acquisition dates. Free cash flow is cash flow from operations less capital expenditures, preferred stock dividends and repowering capital expenditures net of project funding and is used by NRG predominantly as a forecasting tool to estimate cash available for debt reduction and other capital allocation alternatives. The reader is encouraged to evaluate each of these adjustments and the reasons NRG considers them appropriate for supplemental analysis. Because we have mandatory debt service requirements (and other non-discretionary expenditures) investors should not rely on adjusted cash flow from operating activities or free cash flow as a measure of cash available for discretionary expenditures. In addition, in evaluating adjusted cash flow or free cash flow, the reader should be aware that in the future NRG may incur expenses similar to the adjustment in this news release.

EXHIBIT 4

DEFINING GENERATION

NRG 2008 ANNUAL REPORT





WE ARE DEFINING GENERATION FOR THE NEXT DEFINING GENERATION.

NRG has always been about powering the things people do and the places they go, without fail. But we are also about anticipating and acting to meet the demands of the future generation, responsibly. For us, this means laying a foundation today for a whole new approach to power generation.

So, in this dynamic and uncertain environment, NRG is driving future change while delivering current results. We are defining the best ways to deliver more dependable, safer and cleaner sources of American power generation. And we are proving that it can be done effectively and profitably.

NRG AT A GLANCE

NRG Energy, Inc. is a wholesale power generation company. We own and operate power generation facilities and sell energy, capacity and related products throughout the United States. We maintain a diverse portfolio of electric-generation facilities in a wide range of geographies, fuel types and dispatch levels. We seek to maximize NRG's operating income in three ways by: 1) efficiently procuring and managing fuel supplies, 2) safely and effectively operating and maintaining our assets and 3) profitably selling energy, capacity and ancillary services into attractive spot, intermediate and long-term markets.

MISSION, VISION & VALUES

OUR MISSION

To provide reliable wholesale electricity, safely and responsibly, and in a manner that supports our civic and environmental commitment to the communities we serve

OUR VISION

To be a regionally focused, multi-fuel, carbon-diversified, scale generator of power, with assets across the merit order in each of our core markets, and to efficiently procure, transport and trade all of the commodities involved in our business.

OUR VALUES

- S** Safety
- T** Teamwork
- R** Respect for Individuals, our Community and the Environment
- I** Integrity
- V** Value Creation
- E** Exemplary Leadership

STEADY GROWTH. STRONG CASH FLOW. HIGH LIQUIDITY.

(Numbers exclude collateral deposits)

FIVE YEARS OPERATING REVENUE

2008	\$ 6.885 BILLION
2007	\$ 5.989 BILLION
2006	\$ 5.585 BILLION
2005	\$ 2.406 BILLION
2004	\$ 2.080 BILLION

FIVE YEARS NET INCOME

2008	\$ 1,188 MILLION
2007	\$ 586 MILLION
2006	\$ 621 MILLION
2005	\$ 84 MILLION
2004	\$ 186 MILLION

FIVE YEARS CASH FROM OPERATIONS (CFO)

2008	\$ 1,434 BILLION
2007	\$ 1,517 BILLION
2006	\$ 408 MILLION
2005	\$ 68 MILLION
2004	\$ 645 MILLION

FIVE YEARS CASH AND CASH EQUIVALENTS

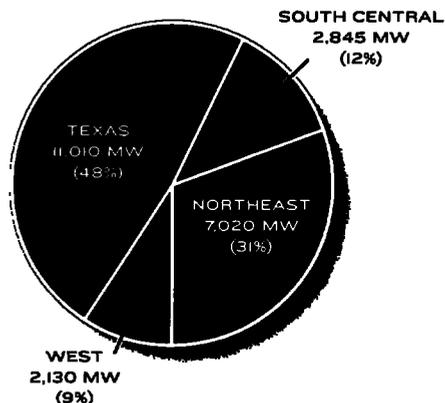
2008	\$ 1,494 MILLION
2007	\$ 1,132 MILLION
2006	\$ 777 MILLION
2005	\$ 486 MILLION
2004	\$ 1,055 MILLION

FIVE YEARS LIQUIDITY

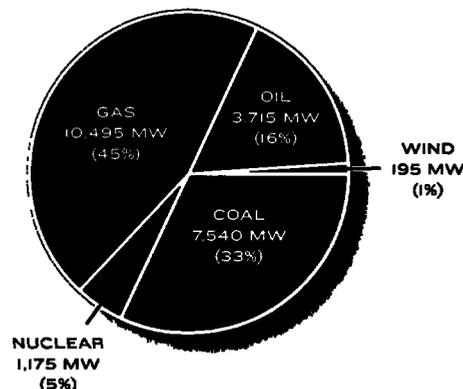
2008	\$ 3,364 MILLION
2007	\$ 2,715 MILLION
2006	\$ 2,227 MILLION
2005	\$ 758 MILLION
2004	\$ 1,609 MILLION

DEFINING. DEVELOPING. DELIVERING. POWERFUL RESULTS.

GEOGRAPHIC DISTRIBUTION OF NRG'S U.S. NET GENERATING CAPACITY

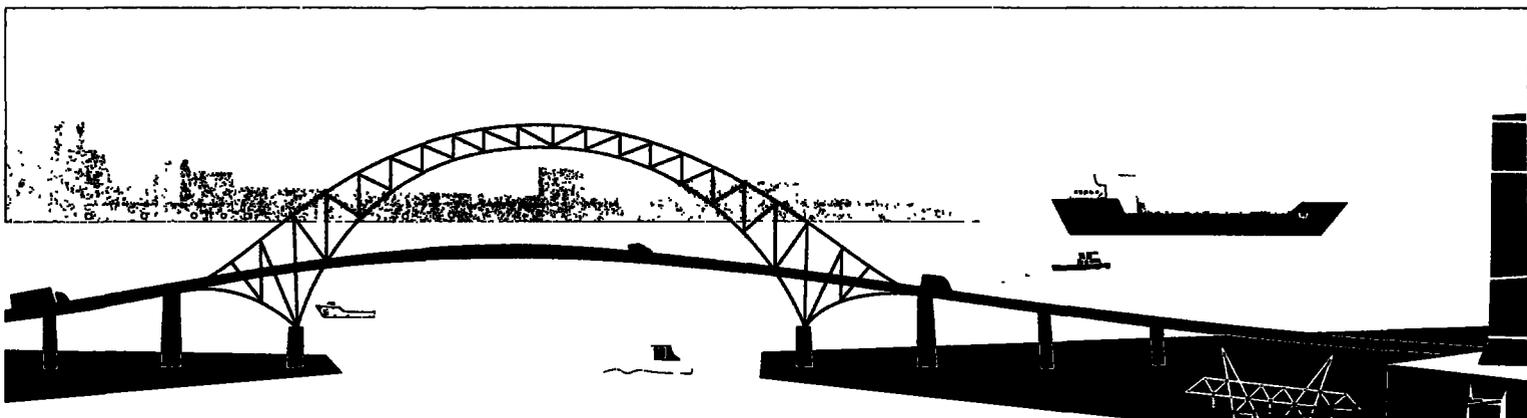


DIVERSE PORTFOLIO OF U.S. NET POWER GENERATION, BY FUEL TYPE (%)



U.S. POWER GENERATION ASSETS AS OF FEBRUARY 28, 2009

TEXAS	NET MW	LOCATION	PRIMARY FUEL
Cedar Bayou	1,495	Baytown, TX	Natural Gas
Greens Bayou	760	Houston, TX	Natural Gas
Elbow Creek	120	Howard County, TX	Wind
Limestone	1,690	Jewett, TX	Coal
San Jacinto	165	La Porte, TX	Natural Gas
SR Bertron	840	Deer Park, TX	Natural Gas
Sherbino	75	Pecos County, TX	Wind
South Texas Project (STP)	1,175	Bay City, TX	Nuclear
TH Wharton	1,025	Houston, TX	Natural Gas
WA Parish (Coal)	2,475	Thompsons, TX	Coal
WA Parish (Natural Gas)	1,190	Thompsons, TX	Natural Gas
NORTHEAST	NET MW	LOCATION	PRIMARY FUEL
Arthur Kill	865	Staten Island, NY	Natural Gas
Astoria Gas Turbines	550	Queens, NY	Natural Gas
Conemaugh	65	New Florence, PA	Coal
Connecticut Remote Turbines	145	Connecticut (four sites)	Oil
Devon	140	Milford, CT	Natural Gas
Dunkirk	530	Dunkirk, NY	Coal
Huntley	380	Tonawanda, NY	Coal
Indian River	740	Millsboro, DE	Coal
Keystone	65	Shelocta, PA	Coal
Middletown	770	Middletown, CT	Oil
Montville	500	Uncasville, CT	Oil
Norwalk Harbor	340	South Norwalk, CT	Oil
Oswego	1,635	Oswego, NY	Oil
Somerset	125	Somerset, MA	Coal
Vienna	170	Vienna, MD	Oil
SOUTH CENTRAL	NET MW	LOCATION	PRIMARY FUEL
Bayou Cove	300	Jennings, LA	Natural Gas
Big Cajun I	430	New Roads, LA	Natural Gas
Big Cajun II	1,490	New Roads, LA	Coal
Rockford I	300	Rockford, IL	Natural Gas
Rockford II	150	Rockford, IL	Natural Gas
Sterlington	175	Sterlington, LA	Natural Gas
WEST	NET MW	LOCATION	PRIMARY FUEL
Encina (Cabrillo I)	965	Carlsbad, CA	Natural Gas
El Segundo	670	El Segundo, CA	Natural Gas
Long Beach	260	Long Beach, CA	Natural Gas
Saguaro	45	Henderson NV	Natural Gas
San Diego Turbines (Cabrillo II)	190	San Diego, CA (3 Sites)	Natural Gas
OTHER NORTH AMERICA	NET MW	LOCATION	PRIMARY FUEL
Dover Cogeneration	104	Dover DE	Coal
Paxton Creek Cogeneration	12	Harrisburg, PA	Natural Gas
Total North America Net MW:	23,120	approximately	
Total Generation Net MW.	24,200	approximately	



DAVID CRANE
PRESIDENT & CEO

SUCCESS BY DESIGN

DEAR FELLOW STOCKHOLDERS:

Sometime between last summer and fall, we were plunged, seemingly overnight, into what appears to be a deep and possibly drawn out recession. Our nation's financial system—indeed, the global financial system—has been seriously destabilized by worthless securities resulting in an unwillingness by banks to extend credit. This has slowed overall business activity to a crawl; consumers have cut back on their spending, unemployment is on the rise and the market value of the most basic and important individual asset—the family home—has been deteriorating for more than a year.

These difficult conditions continue to dominate our headlines, with little to no focus on the fact that in these modern times, we are blessed with a marvelously diverse and multi-layered economy. In spite of the fog that has engulfed many sectors of the economy, some parts of our economy and companies within them are shining through the gloom as they continue to survive and position themselves to grow.

NRG is one of those bright spots.

DELIVERING RECORD RETURNS

In the face of one of the toughest business environments in memory, coupled with major hurricanes that hit two of our core business regions, NRG in 2008 delivered a record year of financial results, including:

- \$1.0 billion in net income from continuing operations;
- \$2.3 billion in full-year adjusted EBITDA, excluding mark-to-market adjustments;
- \$1.4 billion in cash flow from operations (excluding collateral deposits);
- \$3.4 billion in total liquidity, an increase of more than \$649 million (excluding collateral deposits);
- \$270 million in common stock purchases as part of our 2008 Capital Allocation Plan;
- \$234 million in debt repayment.

Operating revenue for the year totaled \$6.89 billion, up 15%, driven by solid performance in all of our regions, particularly Texas, South Central and the West. In those three regions, income from operations on a year-over-year basis increased 74%, 75% and 49%, respectively.



DEPENDABILITY AND SAFETY

Our strong financial performance is attributable to a variety of factors, key among them, our fleet's excellent operational and commercial performance, our highly effective fuel, transportation and energy hedging program and a disciplined strategy for increasing our return on invested capital (ROIC).

Safety is a key performance indicator for our plants. Indeed, in many ways, safety is the master key to our performance. Operating our facilities safely is not only absolutely imperative to supporting our workforce, it also improves availability and lowers costs. Our OSHA Recordable Incident Rate (per 100 full-time employees) improved 49% in just one year, from 1.63 in 2007 to 0.84 in 2008, approaching top decile performance in our industry.

The South Texas Project (STP), which has earned more honors than any other U.S. nuclear power plant, received the B. Ralph Sylvia Best of the Best Award for an unprecedented third time. This top industry award honors STP employees for successfully improving safety and lowering operational costs by applying risk management to the power plant's technical specifications program. STP established an American nuclear power industry record with the conclusion of its 2008 fall outage, completing four consecutive breaker-to-breaker production runs by repeatedly operating both its units continuously between refuelings. No other nuclear power plant has accomplished this in the five decades since the first commercial reactor in the United States began operations in 1958.

Operationally, we have also had an exceptional year. Our equivalent availability factor for our coal baseload generation portfolio reached a full-year 91.1% average,

approaching top decile performance and up from the 87.6% we achieved in 2007. The full-year availability for our 2,700 megawatt STP nuclear facility (net 1,175 megawatts to NRG), was 100% (excluding planned outages). Indeed, in the past four years, STP's track record of avoiding unplanned outages for its two units has allowed us to produce more power than any of the other 32 two-reactor plants in the nation.

In support of these strong operations, NRG has also distinguished itself in the competitive power sector through its disciplined commercial execution on its highly effective and opportunistic hedging program. This strategy protects our Company and our stockholders from the often volatile movements in transportation costs, and the sharp swings that fluctuations in the price of our input fuels have on the price of electricity we sell. During the first half of 2008, while fuel and electricity prices were raging, NRG secured a substantial amount of additional baseload hedges. Moving quickly to lock in margins paid dividends almost immediately as commodity prices plummeted in the second half of 2008.

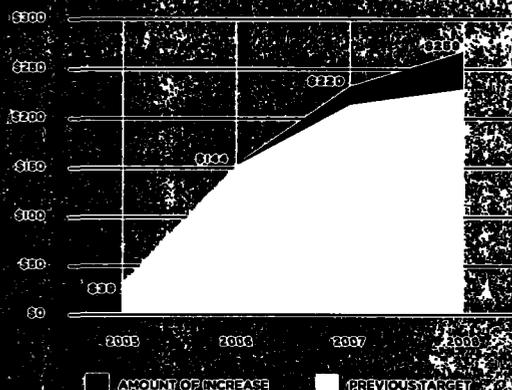
The extreme volatility in 2008 presented both opportunity and risk. Our hedging program played a significant role not only in helping us smooth out the price fluctuations in our primary input costs—fuels and transportation on baseload and peaking capacity—but also in helping us ensure stable and desirable gross margins. This means the "spread" between the costs of fuel and the revenue from the power our plants generate is locked for a large portion of our generating capacity in the near to medium term.

During the year we added nearly 48 million MWhrs of power and power-equivalent hedges dating through



DELIBERATE FOCUS ON RETURNS

ADDING VALUE, INCREASING PROFITABILITY, IMPROVING EFFICIENCY



NRG's Focus on Return on Invested Capital (FORNRG) reached a key milestone this year, contributing \$259 million in bottom line results—a full year ahead of schedule—since the program launch four years ago. This success was underscored by fleetwide improvements that included reducing the number of forced outages, sharing best practices, conducting better inspections and identifying issues early.

On the back of this successful result, we launched FORNRG 2.0 in 2009. Our goal is to increase our ROIC by a million basis points over the next four years. This equates to approximately \$150 million per annum in higher free cash flow (FCF).

FORNRG 2.0 builds on the foundation of our first program. We will continue to pursue cost savings and revenue enhancement opportunities, plus asset optimization to better manage investment capital such as inventory, real estate and other asset categories. And while the first FORNRG considered projects that contributed to our gross profit and pre-tax income, the new program will define projects that benefit two key financial metrics: ROIC and FCF. Our initial efforts will be to move all our baseload plant performance to the top decile in our industry.

2013. We also added coal hedges for the forward five-year period, locking in a significant portion of our expected gross margin for our baseload generating capacity.

Finally, in 2008, we closed out the fourth year of our project to improve return on invested capital, called FORNRG, which stands for Focus on ROIC at NRG. FORNRG has been a steady source of growth in overall profitability, both in terms of additional revenue and from money-saving initiatives. In 2008, we implemented operating improvements that brought our total margin contributions since 2005 to \$259 million—a full year ahead of schedule. The drive to improve how we operate at every level of the Company has produced insights that will benefit NRG for years to come—besides having helped create a record-setting year in 2008.

DECARBONIZING OUR GENERATION

Reducing carbon emissions is not a catch phrase for us at NRG. We are absolutely convinced that global warming is the transcendent issue of our time and that history will judge our generation by how we respond to this impending crisis. Ours is a defining generation.

That is why we are working hard to bring leadership—and commercial success—to the U.S. by delivering a new generation of power technologies. There will be more on this later in the report.

But first, I want to be clear. We also believe that this commitment to the environment, approached wisely, can support our continued profitability as a Company. As part of this, and thanks to our strong financial results in 2008, we comfortably invested \$188 million toward environmental spending at our existing facilities, and another \$182 million toward maintenance.

A key to our decarbonization push is our *Repowering* NRG program, which continued in 2008 with a half dozen critical projects and \$645 million in capital expenditures. NRG is building the fleet for the future through technology retrofits at existing plants and new nuclear and renewable electric generation. We completed two significant Texas wind projects and are on track with our partner, Optim Energy, LLC, to complete the Cedar Bayou combined cycle gas turbine project in time to meet summer 2009 peak demand. In Connecticut, with our partner, The United Illuminating Company, we won a multi-year power sale



DEMONSTRATING RENEWABLE TECHNOLOGIES

NRG made its first venture into solar power when we announced our agreement with eSolar, a leading provider of modular, scalable solar thermal power technology to develop up to 500 megawatts of solar generation in California and the Southwest.

The first unit of zero carbon solar capacity, anticipated as early as 2011, will be one of the first commercial-scale solar thermal power tower plants in America. This solar generating facility will employ eSolar's concentrating solar power technology, which is based on mass-manufactured components and designed for rapid construction and scalability.

NRG will develop these plants and the electricity generated—which at peaking capacity can power over 400,000 homes—will be sold under power purchase agreements with local utilities seeking competitively priced, renewable solar power.

This is NRG's first venture into solar power. Adding these development opportunities continues to demonstrate our leadership in defining cost competitive, dependable and environmentally responsible energy generation for this and future generations. Do not expect it to be our last.



eSolar photo

contract for new peaking generation at Devon and Middletown; we also added clean, reliable power at Cos Cob (read more about these projects on page 9 of this report). Finally, in early 2009, we announced a partnership with eSolar, Inc. to construct carbon-free solar generation in California and the Southwest (see above).

RepoweringNRG supports NRG's overall mission by improving the efficiency of our plants and repowering with lower emitting fuels, but it also has a larger and strategically important purpose. Two years ago we at NRG began in earnest to respond to our country's carbon emission addiction. *RepoweringNRG* is a multi-billion dollar answer to that addiction. The proposed investment will equip our generating fleet to develop and deploy innovative and efficient low- and no-carbon emerging technologies. Two years later, a solid portfolio of *RepoweringNRG* projects are already well underway. In very tangible ways, this program represents our efforts to define the new power generation mix of the 21st century.

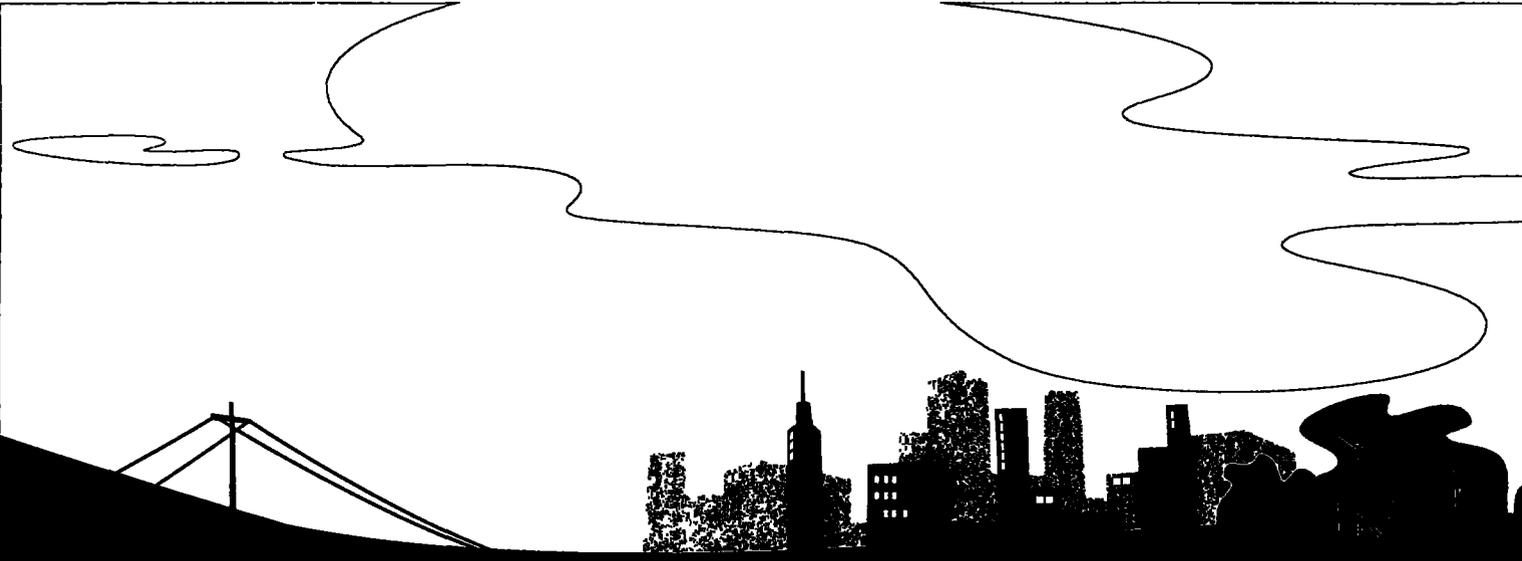
Instead of waiting for Congress to impose a cost on carbon emissions—as many of our competitors are doing—we have pushed forward aggressively with

our low-carbon development program in anticipation of climate change legislation. We firmly believe that Congress should—and will—act, and we have become vocal advocates of legislation that harnesses both promising clean electricity technology and “cap-and-trade” based regulation for carbon emissions. We believe that these mandates should be structured to guide carbon prices to levels that will avoid an economically destructive “dash to gas” while providing companies the means and opportunities to demonstrate and deploy clean generation technologies.

As we continue to define a new approach to power generation, we believe we are well positioned to be a “first mover” in many of the major advances in the way power is generated and distributed in the coming years.

DEVELOPING OUR SUCCESS PLAN

NRG enters 2009 with a strong balance sheet, more liquidity than ever, strong profit-building programs and processes, outstanding efficiency and plant performance and—because of general marketplace conditions and the change of Administration—more opportunity for value-enhancing growth than ever in our history.



That said, current economic conditions dictate that we proceed watchfully with our traditional prudence. In 2009 we plan to invest \$511 million in maintenance and environmental capital expenditures in our existing assets. We recognize that the time will come when the economy will recover, bringing an even more immediate need for extra capacity. NRG wants to be in a position to capitalize on that demand.

Our ultimate objective is to be the competitive power sector's premier portfolio developer, owner and operator: leveraging our assets by maintaining a generation fleet in the industry's top decile for safety and performance, executing projects on time and on budget, maximizing our return on invested capital and ensuring environmental leadership while also identifying and influencing key legislative trends affecting our business. When you factor in our development capabilities and our strong commercial operations and risk management strategies, it becomes clear why NRG is able to deliver exceptional performance and record results in such a difficult economic climate.

As the theme of this year's report states: defining generation for the next defining generation. Definitively.

That's NRG.

DEDICATED TO MORE THAN JUST THE JOB

On a personal note, I am extremely proud of our Company's unwavering commitment to the communities in which we live and work, specifically through our econrg and NRG Global Giving programs.

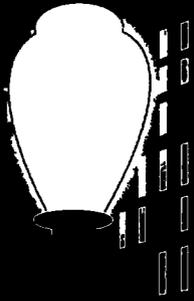
While other companies are finding themselves in the unfortunate position of cutting back on their outreach and donations, NRG is upholding our commitments to the people and towns we serve.

None of 2008's outstanding results would have been possible without our talented employees and leadership team. In spite of an uncertain environment and an unsolicited takeover attempt, our employees maintain their focus on the daily tasks at hand, responding to challenges that range from hurricanes to everyday operational issues. I also want to thank our Board of Directors, who throughout the year has offered sound guidance, management support and strategic focus. And thank you, our stockholders, for your faith and support in these challenging and uncertain times.

Sincerely yours,



David Crane
President & Chief Executive Officer
February 28, 2009



RECORD YEAR IN 2008

- \$1.0 billion in net income from continuing operations
- \$2.3 billion in full-year adjusted EBITDA, excluding mark-to-market movements
- \$3.4 billion in total liquidity, excluding collateral deposits

DECISIVE WIN: FINANCIAL HIGHLIGHTS

YEAR ENDED DECEMBER 31, 2008

\$ MILLIONS EXCEPT PER SHARE DATA

INCOME STATEMENT

	2008	2007	2006	2005	2004
OPERATING REVENUES	6,885	5,989	5,585	2,400	2,080
NET INCOME FROM CONTINUING OPERATIONS	1,016	569	543	68	157
NET INCOME	1,188	586	621	84	186

CASH FLOW

CASH FLOW FROM OPERATIONS	1,434	1,517	408	68	645
CAPITAL EXPENDITURES	1,015	481	221	106	119
CASH AND CASH EQUIVALENTS	1,494	1,132	777	486	1,055

COMMON SHARE DATA

NET EARNINGS PER SHARE — BASIC	4.82	2.21	2.21	0.38	0.93
NET EARNINGS PER SHARE — DILUTED	4.29	2.01	2.04	0.38	0.93
BOOK VALUE PER SHARE	26.69	19.48	19.48	11.31	13.14

WEIGHTED AVERAGE COMMON:

SHARES OUTSTANDING — BASIC	235	240	258	169	199
SHARES OUTSTANDING — DILUTED	275	288	301	171	201

CAPITALIZATION

TOTAL DEBT, INCLUDING CAPITAL LEASES	8,168	8,361	8,726	2,456	3,220
COMMON EQUITY	6,256	4,612	4,766	1,825	2,286
PREFERRED EQUITY	1,100	1,139	1,139	652	406
TOTAL CAPITAL	15,524	14,112	14,631	4,933	5,912

RATIOS

TOTAL DEBT/TOTAL CAPITAL	53%	59%	60%	50%	54%
EARNINGS/FIXED CHARGES	3.62	2.28	2.38	1.57	1.93
RETURN ON EQUITY	16.71%	10.65%	10.98%	3.77%	1.91%

DEPEND ON US: FOR VALUE, GROWTH AND DISCIPLINE

CHAIRMAN LETTER



DEAR FELLOW STOCKHOLDERS:

This has been an extraordinary year for NRG: record earnings, record liquidity and robust cash flow, with across-the-board improvements in operating, safety and environmental measures. Our achievements were the results of the continued efforts of NRG's talented management team and dedicated employees, all of whom were focused on executing our long-term growth strategy and ultimately delivering maximum value to you.

While these results are extremely gratifying, the tenor of our year changed on October 19 with Exelon Corporation's unsolicited takeover bid. Due to the time lag inherent in the printing process of this report, we encourage our stockholders to reference more timely communications regarding that situation. However, as this letter goes to print your Board and NRG management have evaluated Exelon's offer very carefully and have hired financial and legal advisors to provide us with a third-party assessment. In concurrence with our advisors' opinions, your Board has determined unanimously that Exelon's offer to exchange 0.485 of its shares for each share of NRG stock grossly undervalues NRG.

We believe your Board is highly qualified to evaluate this offer impartially. We are a truly independent Board: all of our members are non-management with the exception of NRG President and CEO, David Crane, and each member was chosen after a comprehensive recruitment and approval process undertaken entirely independent of NRG management influence. Your Board brings to its task broad expertise in energy, finance, operating and legal issues. Every NRG director was uniquely selected for his or her individual areas of knowledge, producing a well-rounded and thoughtful board.

As part of this approach, in 2008 we welcomed Kathleen McGinty, an individual with a deep knowledge in regulatory affairs, clean energy and the power generation sector. McGinty is the former Secretary of the Pennsylvania Department of Environmental Protection, where she oversaw all environmental policy, regulatory and enforcement activities and also spearheaded key legislative

initiatives in environment and energy. Previously, McGinty spent six years in the Clinton Administration as chair of the White House Council on Environmental Quality and earlier served as a senior environmental advisor to Vice President Al Gore.

The NRG Board has overseen and evaluated NRG's most significant decisions over the past five years, including the acquisition of the remaining 50% interest in our Southern California generation facilities, and the Texas Genco transaction, a truly transformative event for our Company. In fact, your Board has been central to all capital structure decisions, and we further sharpened that oversight in 2008 by creating the Finance Committee to further ensure the efficient evaluation of capital allocation plans, our *Repowering* NRG program and our development engineering, procurement and construction program. This Board has been tested and has succeeded in its responsibilities by never wavering in our commitment to the NRG stockholder.

NRG is an extremely well-run, profitable and growing Company whose industry-leading hedging program insulates us from the recent contraction in the market and secures profitability for the difficult period ahead. Though the trading price of our common stock shares does not currently reflect the fundamental value of NRG—due to significant market dislocations—we believe that with economic recovery, more rational markets will prevail and our share price should recover to levels that more accurately reflect a fairer value of our Company. In the meantime, we appreciate the ongoing support we receive from our stockholders. We can assure you that your Board and NRG management will continue to execute on our strategy to maximize stockholder return.

Sincerely yours,

A handwritten signature in cursive script that reads "Howard Cosgrove". The signature is written in dark ink on a white background.

Howard Cosgrove
Chairman of the Board
February 28, 2009



Determining ways to meet the challenges of climate change, clean air and protecting our natural resources at our plants and in our communities

Developing, financing, constructing and operating new, highly efficient and environmentally responsible capacity over the next decade

DEMONSTRATING RESPONSIBILITY

We understand that climate change is among our generation's preeminent and defining challenges, and that the electricity sector contributes to the problem. But we also realize that we can play a major role in solving that problem. In our view, the solution starts with effective national climate legislation. As a member of the U.S. Climate Action Partnership (USCAP), we joined other member companies in January 2009 to unveil USCAP's *Blueprint for Legislative Action*, which lays out a pragmatic but aggressive policy program to slow, stop and reverse the growth of greenhouse gas emissions over the shortest time reasonably achievable. The *Blueprint* is a guide for the development of legislation that can become law in the 111th Congress, and we have pledged as a Company to support it and to work with Congress, the Administration and other stakeholders to pass comprehensive and effective climate change legislation.

As an industry, we must address the cost and the risk of continued dependence on fossil fuels. It's time to harness the best of American capitalism, dynamism and creativity to confront climate change and define solutions now. And for those in our industry who do not shift toward cleaner, more efficient energy generation—they risk being left behind.

Our commitment to these issues is a key reason we are vigorously exploring a wide array of alternative fuels and new technologies to generate electricity more efficiently and responsibly. We cannot overstate

repowering NRG

that we see ours as the defining generation that will define new power generation in America. Many of our efforts in this area fall under our two internal initiatives, econrg and RepoweringNRG.

ECONRG

This multi-pronged strategy meets the challenge of reducing the carbon dioxide and other greenhouse gases (GHG) that contribute to climate change. The program is driving investments in new, highly efficient generating facilities and technologies that employ no- and low-GHG technologies. As part of econrg, we have also assumed an active role at the national level to urge lawmakers to enact laws and regulations that:

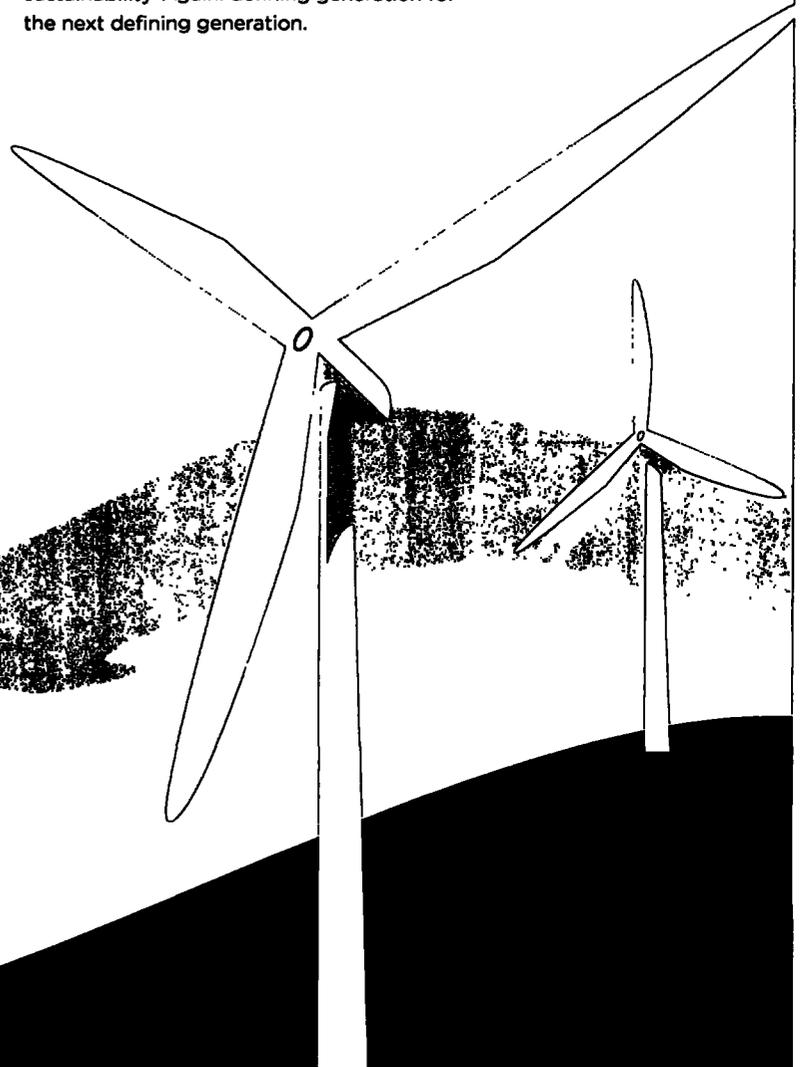
- Put a price on carbon—initially moderate, increasing later—to help drive the rapid development and deployment of low- and no-carbon technologies;
- Use moderate initial allowance allocations to support emitting companies' ability to make the needed early investment in these technologies;
- Use revenues from allowance auctions to leverage aggressive private sector investment in the most promising emerging technologies (carbon capture and sequestration, nuclear, solar, plug-in hybrids, etc.);
- Create onshore, heavy industry jobs to manufacture these technologies with the right mix of incentives, price signals and regulatory certainty.

REPOWERING NRG

NRG is moving forward prudently and proactively with our *Repowering NRG* program. Recent initiatives include:

- Through a partnership between NRG and Toshiba, NINA (Nuclear Innovation North America LLC); we are developing a 2,700 megawatt, two-unit expansion of the South Texas Project plant, with San Antonio's CPS Energy. The project uses Nuclear Regulatory Commission-certified and proven Advanced Boiling Water Reactor (ABWR) technology. The two new units will power approximately two million households and avoid 15.8 million tons of CO₂ per year from being released into the atmosphere. Page 10 of this report further details this nuclear renaissance.
- Working with Optim Energy, NRG has made significant progress on our new combined cycle gas turbine project at the Cedar Bayou plant in Chambers County, Texas. By adding 550 megawatts (gross capacity) of efficient, clean gas-fueled capacity to the Texas grid this spring—enough to power nearly a half-million homes—Cedar Bayou will help meet the state's ever-increasing demand for energy caused by continued growth in population, industry and business.
- Through its partnership with United Illuminating, known as GenConn, NRG will add approximately 400 megawatts of efficient, clean-fueled peaking capacity at NRG's existing sites in Middletown and Milford, Connecticut. These units will provide clean power during extreme weather periods when energy demand is high and air quality is threatened. Also in mid-2008, NRG added 40 megawatts of capacity that uses ultra low-sulfur fuel at our Cos Cob site in Fairfield County, expanding the plant's total output to 100 megawatts, while reducing overall emissions from the site.
- NRG also plans to repower 30 megawatts at the Montville Generating Station in Uncasville, Connecticut, using biomass—a renewable source of energy. This will be the first repowered plant of its kind in the state.

- Through our Padoma Wind Power subsidiary, NRG brought Elbow Creek (120 megawatts capacity) online, and partnered with BP Wind Energy North America Inc. on the Sherbino I installation (150 megawatts capacity, 75 megawatts net to NRG).
- In early 2009, NRG announced a new venture with eSolar to develop enough 100% clean solar generation to power over 400,000 homes in California and the Southwest. The first of these plants will be online as early as 2011.
- Finally, looking farther out, NRG is actively pursuing commercially viable demonstration projects in plasma gasification, a promising technology which extracts energy from a variety of fuel sources and helps enhance energy sustainability. Again: defining generation for the next defining generation.



DECARBONIZING NEW GENERATION

NUCLEAR INNOVATION NORTH AMERICA

On September 24, 2007, NRG and San Antonio's CPS Energy broke a 30-year drought in the permitting of new nuclear power generation when we filed a combined operating license application with the Nuclear Regulatory Commission for a new 2,700 megawatt advanced technology nuclear plant at South Texas Project (STP) near Bay City, Texas.

NRG then partnered with Toshiba Corporation to form Nuclear Innovation North America (NINA), to develop new nuclear expansion projects using Advanced Boiling Water Reactor (ABWR) technology—the only advanced nuclear technology certified by the Nuclear Regulatory Commission that has also been fully engineered, having been built on time and on budget four times in Japan.

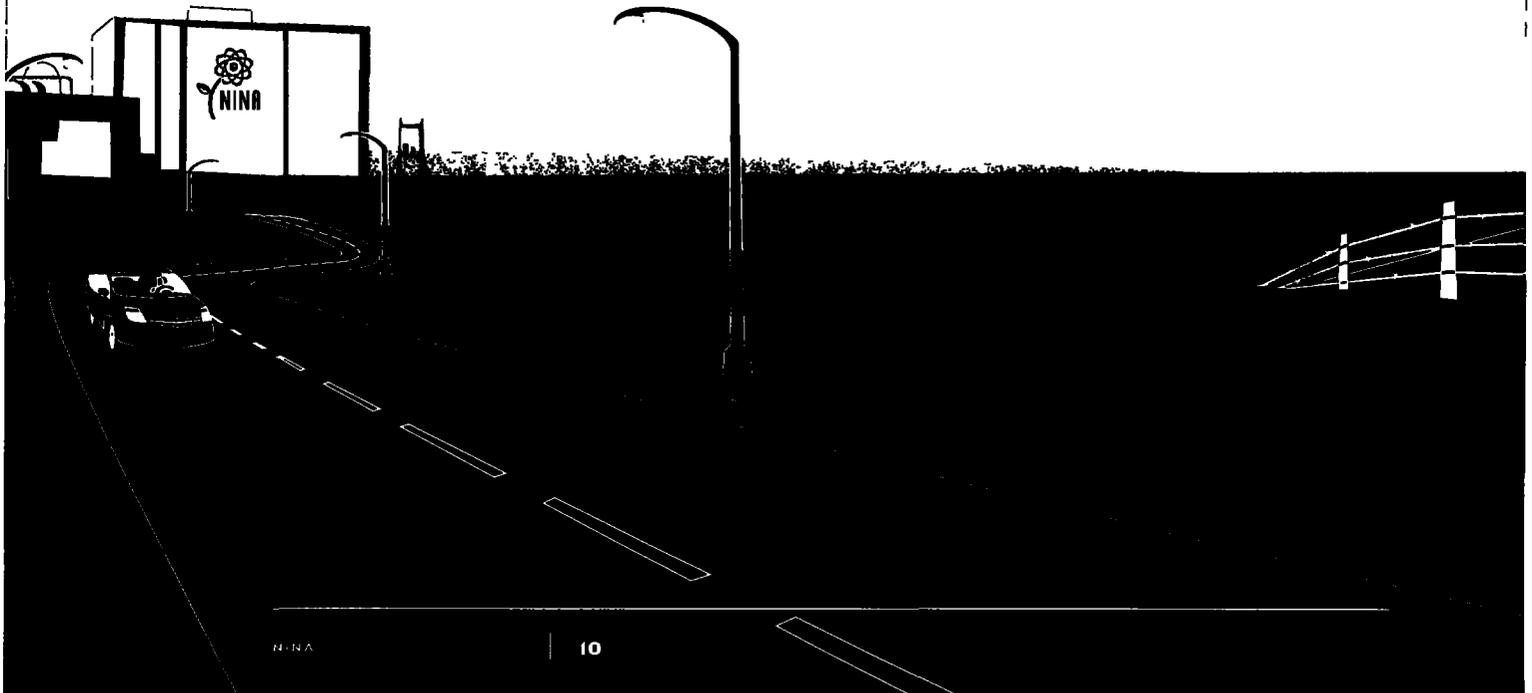
NINA's STP 3&4 project is the first American nuclear facility commissioned in more than a generation, marking a new day in commercial nuclear generation.

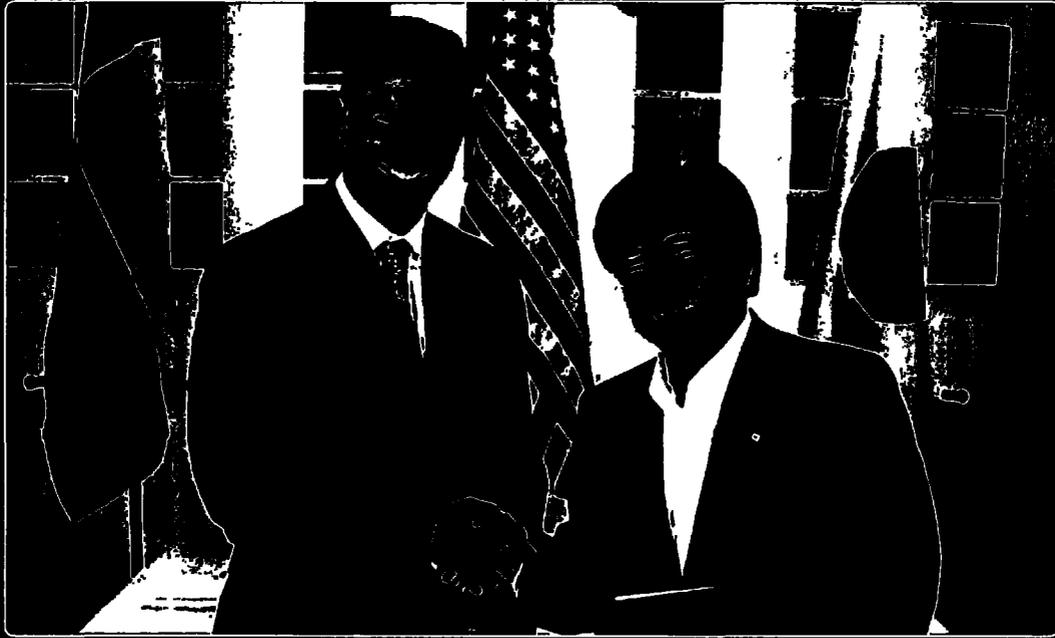
This new technology represents significantly improved design and construction over earlier facilities. Its operators will receive the most thorough training available and will operate under our industry's well-developed, zero-tolerance safety culture.

Toshiba has committed \$300 million to NINA over six years and is a 12% equity owner in the joint venture. Half of this investment will support the development of the new ABWR units at STP, and the other half will focus on up to two new, two-unit ABWR designated projects to help accelerate development and deployment of additional ABWR projects in North America with other potential partners.

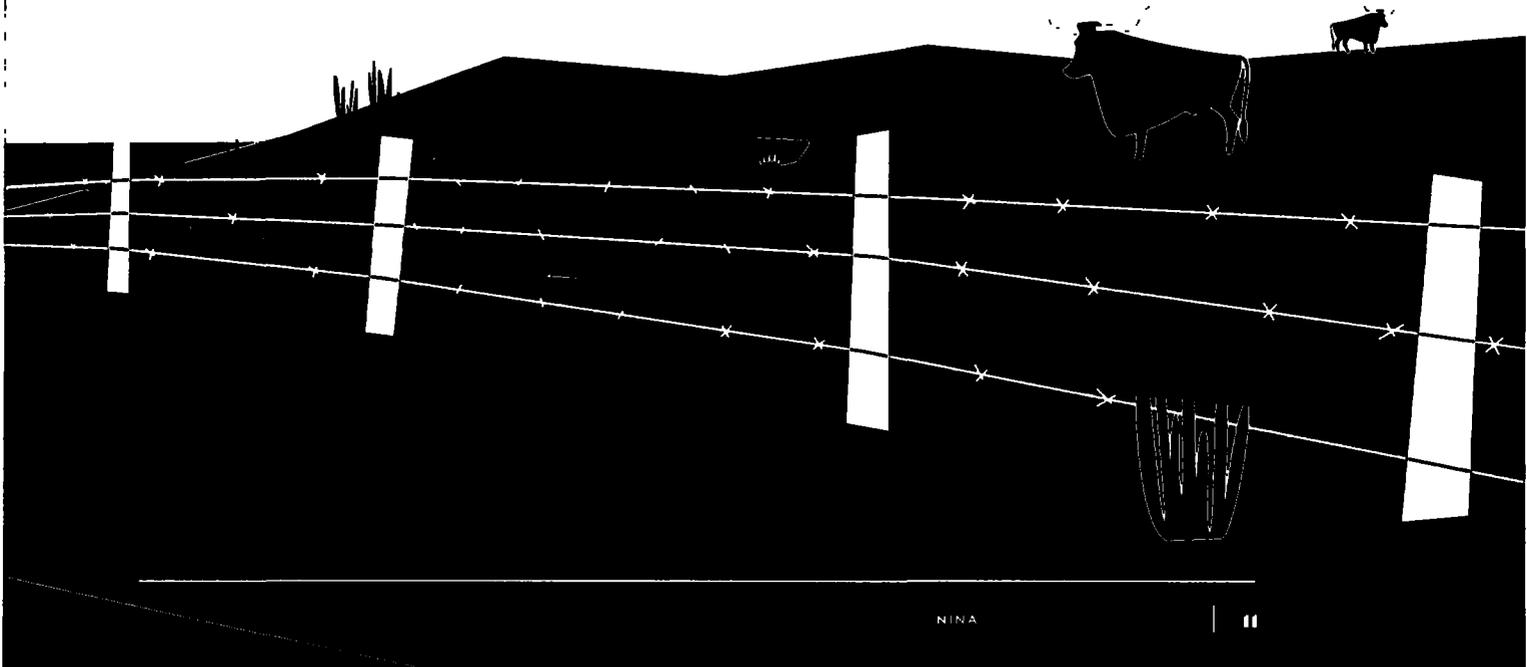
Toshiba, as part of the design team for the ABWR and a prime contractor on two of the units built in Japan, will serve as the prime contractor on the STP expansion. NINA signed the Engineering, Procurement and Construction agreement with Toshiba in early 2009, bringing certainty on cost and schedule to the STP project.

STP 3&4 represents a huge step toward a fundamental change in how our nation meets its energy requirements and how the industry proceeds on nuclear development. At the same time, this project holds out the promise of an all-new approach to our stewardship of the global environment. New advanced nuclear is a defining factor of the future for affordable, reliable and zero-carbon baseload generation—not only in Texas but throughout the United States





NRC's David Crane and Yasuhiro Igarashi, President & CEO, Toshiba Power Systems Company, shake on NINA's completed negotiations for the Engineering, Procurement and Construction agreement with Toshiba America Nuclear Energy, Inc. to build the SIM expansion. Using proven AEBWR technology, two new units will provide zero-carbon electricity to roughly two million homes in Texas.



DEMONSTRATING OUR
COMMITMENT TO
THE ENVIRONMENT



NRG is making investments in our plants and communities today to preserve the environment for years to come. We are also helping develop and deploy new, efficient and environmentally responsible commercial-scale technologies.



MEETING THE MERCURY CHALLENGE FOR COAL PLANTS

NRG Limestone Electric Generating Station in Jewett, TX is the home of an ambitious project to test a new "Smart" approach to removing trace mercury from air emissions at coal-fueled power plants.

This is a collaborative project among NRG, NeuCo, Inc. and the National Energy Technology Laboratory, a unit of the U.S. Department of Energy. Its mission is to demonstrate the viability of measuring, optimizing and controlling various forms of mercury and other emissions.

The Limestone team is integrating state-of-the-art sensing devices, advanced controls and optimization technologies throughout the plant. The goal is to create the right conditions for the most efficient generation, enhanced mercury removal and reduced nitrogen oxides (NO_x) emissions. If the project proves successful, the technology's modular design and flexible architecture could be retrofitted or built into other coal-fueled plants.



NATURE CONSERVANCY AWARD

This fall, NRG received the 2008 Corporate Conservation Leadership Award from the Nature Conservancy of Texas. The Nature Conservancy praised NRG's commitment to the environment including growing the majority of plants used in Galveston Bay for wetlands restoration and widely promoting volunteerism for conservation projects among our employees.



ECONRG AWARD

By demonstrating its commitment to preserving the environment and confronting climate change, NRG El Segundo Station stood out from its peers and earned the 2008 econrg Environmental Stewardship Award. We congratulate El Segundo for completing numerous econrg projects last year. Among them:

- Adding fuel-efficient vehicles to the fleet;
- Organizing Beauty and the Beach, a volunteer clean-up of the beach neighboring the power plant;
- Developing an educational program on electricity conservation, including using compact fluorescent lights to replace less efficient incandescent bulbs.



UPGRADING TECHNOLOGIES TO DOWNGRADE EMISSIONS

NRG in 2008 completed installation of an Activated Carbon Injection (ACI) system and mercury monitoring and removal technologies that cut mercury emissions by nearly 80% on all units of our 740 megawatt Indian River generating Station in Millsboro, DE. Indian River can power up to 600,000 homes and, along with three other NRG coal-fueled power plants, is among the first in the nation with continuous emissions monitors for mercury. These monitors provide important information for design and operation at other NRG plants as well as further reductions at Indian River.

NRG also reduced Indian River's NO_x emissions by approximately 25% in 2008 by installing selective non-catalytic reduction (SNCR) technology on units 1 & 2 and by making enhancements to existing SNCRs on units 3 & 4 to control NO_x year-round. Greater reductions are expected in 2009 and each year through 2012.

ACI and NO_x control technologies represent new milestones in our efforts to produce environmentally responsible, dependable energy in Delaware. NRG will continue to lead in this arena in 2009 with reductions of sulfur dioxide (SO₂), NO_x and mercury at our Huntley and Dunkirk stations in New York State.



DEDICATED TO HOPE

HOMEFRONT

"This just cannot happen." That was Connie Mercer's reaction when she looked in the eyes of a teenage mother and her child at the homeless shelter she founded. It wasn't the mother's tender age that broke Mercer's heart; it was that she recognized this woman as a homeless child she had once helped at the same shelter.

Mercer founded HomeFront 19 years ago to stop the cycle of poverty and homelessness in the Trenton, New Jersey region. Knowing that at-risk children are central to breaking the cycle, and also knowing kids have the least supervision and learning opportunities during summers, HomeFront launched a summer camp program some years ago. But by early 2007, with donations waning, and the needs overwhelming the staff, the camps were barely surviving.

"Our summer program had been held together with chewing gum and bailing wire and a lot of people with a lot of good energy, but not much training," says Mercer.

Now, after a \$150,000 grant from NRG, Mercer has been able to hire a professionally trained camp staff and onsite therapists and teachers to meet the complex needs of homeless and at-risk children. The camps are stronger than ever.

"It is wonderful to have the resources to make sure these kids who are living in chaos have somewhere enriching, fun and safe to go every day," says Mercer, who thanked NRG for its support.



HUNGRY FOR CHANGE

Hearing the news reports has been bad enough, but seeing the faces behind the plunging economy has been worse—and in 2008, Dennis Mical saw more of them than ever at the Trenton Area Soup Kitchen (TASK), where he is Executive Director. Spotting an elderly couple who were once frequent volunteers come through the line was particularly telling.

"These are the most trying times I've ever experienced in my 21 years with the food bank," says Phyllis Stoolmacher, Director of Mercer Street Friends Food Bank.

As this new wave of hunger has washed food shelves bare, NRG has responded in force. For the third consecutive year, NRG was the sponsor of New Jersey's Check-Out Hunger* Campaign, the largest source of funding for the state's network of food banks. This is good news for Mercer Street Friends, because this money is used to purchase fresh and pantry foods for vital community organizations like TASK.

NRG employees also raised \$125,000 to fight hunger at our annual charity picnic and auction, spent hours volunteering at local food banks throughout the year and contributed thousands of dollars within our own communities. After Hurricane Ike left food banks scrambling to feed displaced residents, NRG Texas and NRG Global Giving contributed \$200,000 to hunger relief in southeast Texas.

SNACK^{AND} FRIENDS

The afternoon yoga session at East 86th Street is not your typical Manhattan yoga class. This session is at SNACK (Special Needs Activity Center for Kids), where most of the youth group is affected by Autism Spectrum Disorders, and yoga is just one part of their time together. They also do crafts, play games and learn to take turns. For many of these kids, the fact that they are doing anything other than a self-soothing, repetitive activity is a huge accomplishment.

Grateful parents like Elizabeth Glass can thank SNACK founder Jackie Ceonzo for this one-of-its-kind program. After finding nowhere for her non-verbal, autistic son, Joey, to play outside of school, Ceonzo launched SNACK in 2003. What started with six children once a week grew to 150 special-needs kids and five programs running six days per week.

Before long, children were lined up on waiting lists for the after-school and weekend socialization program called SNACKtivities. However, to expand would have required raising fees, and some families already could not afford the program. To make it possible, NRG provided \$100,000 over the past two years, helping increase the number of children served and also funding scholarships for families in need.

"When we found out that (our daughter) Ruby received a SNACK scholarship, we felt like we won the lottery!" said Bridget and



David Rouse. "She is supported by phenomenal staff that understand her unique sensory needs."

Last May, NRG received the SNACK & Friends 2008 Visionary Award, and Ceonzo's own gratitude. "Thanks to NRG's support, we can continue to expand our efforts and bring fun, friends and hope into these families' lives."

Ask Ruby Rouse's mom, who says, "Ruby runs into SNACK with a big smile, and doesn't look back."

REBUILDING TOGETHER HOUSTON

Any time dozens of volunteers descend upon a home with paint brushes and work gloves in hand, the effect is usually heartening. When that home has not seen much TLC for years, and the owner is elderly or disabled, it can be truly transcendent.

NRG Texas employees experienced a taste of this in 2008 as they renovated three Houston homes that had fallen into disrepair. The efforts were part of Rebuilding Together Houston, an organization that provides free home repairs to low- and fixed-income recipients.

In addition to providing hands-on support, NRG Texas and its employee charitable fund donated \$110,000 to Rebuilding Together Houston.

NRG volunteers, led by Mike Brown from NRG Maintenance Services, spent one to three weekends renovating each home. The crews of 40-50 included NRG plant and office workers, experienced tradesmen, as well as family and friends. NRG Texas plans to renovate more homes in 2009.

For one homeowner, whose health had kept her homebound for years, NRG's efforts meant she could see some much-needed work completed. Another woman found it hard to grasp that so many people had come to help her. The impact of this type of repair work extends well beyond physical improvements; it helps rebuild lives as well.



EXTREME MAKEOVER SCIENCE EDITION



The science lab in Anahuae High School was constructed in 1951. Two years ago, when Nikki Fitzgerald began teaching AP biology, aquatic science and special education biology in this rural Texas school, it was clear that her enthusiastic students were at a significant disadvantage. The school's science equipment was antiquated, the lab ill-equipped and in disrepair and students had to share textbooks.

Nikki's dad, an NRG Cedar Bayou employee, came to the rescue. He rallied nearby Cedar Bayou plant personnel to volunteer as guest teachers and initiated an "extreme classroom makeover."

They removed outdated lab tables, installed new flooring, painted, cleaned and modernized the classroom, even building a custom stand for a 100-gallon aquarium. NRG donated funds for new microscopes, the school's Rocket Club and additional lab equipment.

Thanks to NRG's support, says Fitzgerald, "My students can fully explore their love for science and hopefully some will turn it into a career."

TEACH FOR AMERICA

Point Coupee Parish, home to NRG Big Cajun II and the state's first public schools, is called "The Cradle of Public Education in Louisiana," yet it faces challenges in delivering the level of education the students want and deserve.

But last fall, hope moved into nine Point Coupee classrooms in the form of Teach For America teachers. These top graduates from around the country have committed two years to teaching in struggling schools. Their presence has been made possible, in part, by NRG's two-year \$150,000 donation, which Teach For America—South Louisiana is using to recruit, select, train and support teachers.

NRG also connected Teach For America with the local community and schools, laying the groundwork for this new team of teachers to be welcomed into the parish. The teachers are now making a difference in the classrooms and in their students' lives. One teacher, Andy Sears, told his third graders to call his cell phone with any homework questions, and, with the help of his hometown of St. Louis, contributed 300 books to the classroom. When Hurricane Gustav destroyed many students' homes, Sears again recruited help from home. Even he was shocked when a semi-trailer of donations arrived a few weeks later.

"NRG's contribution has really reframed the way corporations in Louisiana see us," says Michael Tipton, Executive Director of Teach For America—South Louisiana. "It makes a pretty compelling case for supporting education. We're excited to see NRG having that foresight."



Teach For America photo

BOARD OF DIRECTORS



Front: William Hantke, Anne Schaumburg, David Crane and Howard Cosgrove and Herbert Tate

Back: Lawrence Coben, Paul Hobby, Kathleen McGinty, Stephen Cropper, Walter Young, John Chlebowski and Thomas Weidemeyer

Howard E. Cosgrove
Nonexecutive Chairman
of the Board

Nuclear Oversight Committee
Nuclear Oversight Subcommittee

John F. Chlebowski, Jr.

Compensation Committee
Finance Committee
Nuclear Oversight Committee

Lawrence S. Coben

Finance Committee
Governance and Nominating
Committee (Chair)
Nuclear Oversight Committee

Stephen L. Cropper

Commercial Operations
Oversight Committee
Governance and Nominating
Committee
Nuclear Oversight Committee

William E. Hantke

Audit Committee (Chair)
Commercial Operations
Oversight Committee
Nuclear Oversight Committee

Paul W. Hobby

Commercial Operations
Oversight Committee (Chair)
Nuclear Oversight Committee
Nuclear Oversight Subcommittee

Kathleen A. McGinty

Governance and Nominating
Committee
Nuclear Oversight Committee

Anne C. Schaumburg

Audit Committee
Finance Committee (Chair)
Nuclear Oversight Committee

Herbert H. Tate

Nuclear Oversight Committee
Nuclear Oversight
Subcommittee (Chair)

Thomas H. Weidemeyer

Compensation Committee (Chair)
Governance and Nominating
Committee
Nuclear Oversight Committee

Walter R. Young

Audit Committee
Compensation Committee
Nuclear Oversight Committee

* David Crane is also a Director and a member of the Nuclear Oversight Committee.

EXECUTIVE OFFICERS

David Crane

President and Chief Executive Officer

Robert Flexon

Executive Vice President and
Chief Financial Officer

John Ragan

Executive Vice President and
Chief Operating Officer

Denise Wilson

Executive Vice President and
Chief Administrative Officer

Jonathan Baliff

Executive Vice President, Strategy

Mauricio Gutierrez

Executive Vice President,
Commercial Operations

Kevin Howell

Executive Vice President and
Regional President, Texas

Michael Liebelson

Executive Vice President and
Chief Development Officer

Drew Murphy

Executive Vice President and
Regional President, Northeast

Jeff Baudier

Senior Vice President and
Regional President, South Central

Michael Bramnick

Senior Vice President and
General Counsel

Steve Hoffmann

Senior Vice President and
Regional President, West

Jim Ingoldsby

Vice President and
Chief Accounting Officer

STOCKHOLDER INFORMATION

Stock Transfer Agent and Registrar

BNY Mellon Shareowner Services
480 Washington Boulevard
Jersey City, NJ 07310-1900

Stockholder Inquiries

NRG Energy
c/o BNY Mellon Shareowner Services
P.O. Box 358015
Pittsburgh, PA 15252-8015
1.800.851.9677
www.bnymellon.com/shareowner/isd

Stock Listing

NRG's common stock is listed on the New York Stock
Exchange under the ticker symbol NRG.

Financial Information

NRG's Annual Report, Proxy Statement, Form 10-K and
other SEC filings are available at www.nrgenergy.com
under the Investors section.

EXHIBIT 5

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, 2008.

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

For the Transition period from _____ to _____.

Commission file No. 001-15891

NRG Energy, Inc.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

41-1724239

(I.R.S. Employer
Identification No.)

**211 Carnegie Center
Princeton, New Jersey**
(Address of principal executive offices)

08540
(Zip Code)

(609) 524-4500

(Registrant's telephone number, including area code:)

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of Each Class</u>	<u>Name of Exchange on Which Registered</u>
Common Stock, par value \$0.01	New York Stock Exchange
5.75% Mandatory Convertible Preferred Stock	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, par value \$0.01 per share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports 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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of the registrant's 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 a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of the last business day of the most recently completed second fiscal quarter, the aggregate market value of the common stock of the registrant held by non-affiliates was approximately \$10,001,849,139 based on the closing sale price of \$42.90 as reported on the New York Stock Exchange.

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Section 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes No

Indicate the number of shares outstanding of each of the registrant's classes of common stock as of the latest practicable date.

<u>Class</u>	<u>Outstanding at February 9, 2009</u>
Common Stock, par value \$0.01 per share	236,232,031

Documents Incorporated by Reference:

Portions of the Proxy Statement for the 2009 Annual Meeting of Stockholders

NRC	United States Nuclear Regulatory Commission
NSR	New Source Review
NYISO	New York Independent System Operator
NYSDEC	New York Department of Environmental Conservation
OCI	Other Comprehensive Income
OTC	Ozone Transport Commission
Padoma	Padoma Wind Power LLC
Phase II 316(b) Rule	A section of the Clean Water Act regulating cooling water intake structures
PJM	PJM Interconnection, LLC
PJM market	The wholesale and retail electric market operated by PJM primarily in all or parts of Delaware, the District of Columbia, Illinois, Maryland, New Jersey, Ohio, Pennsylvania, Virginia and West Virginia
PMI	NRG Power Marketing, LLC, a wholly-owned subsidiary of NRG which procures transportation and fuel for the Company's generation facilities, sells the power from these facilities, and manages all commodity trading and hedging for NRG
Powder River Basin, or PRB, Coal	Coal produced in northeastern Wyoming and southeastern Montana, which has low sulfur content
PPA	Power Purchase Agreement
PPM	Parts per Million
PSD	Prevention of Significant Deterioration
PUCT	Public Utility Commission of Texas
PUHCA of 2005	Public Utility Holding Company Act of 2005
PURPA	Public Utility Regulatory Policy Act of 2005
Repowering	Technologies utilized to replace, rebuild, or redevelop major portions of an existing electrical generating facility, not only to achieve a substantial emissions reduction, but also to increase facility capacity, and improve system efficiency
<i>Repowering</i> NRG	NRG's program designed to develop, finance, construct and operate new, highly efficient, environmentally responsible capacity over the next decade
Revolving Credit Facility	NRG's \$1 billion senior secured credit facility which matures on February 2, 2011
RGGI	Regional Greenhouse Gas Initiative
RMR	Reliability Must-Run
ROIC	Return on invested capital
RPM	Reliability Pricing Model — term for capacity market in PJM market
RTO	Regional Transmission Organization, also referred to as an Independent System Operators, or ISO

PART I

Item 1 — Business

General

NRG Energy, Inc., or NRG or the Company, is a wholesale power generation company with a significant presence in major competitive power markets in the United States. NRG is engaged in the ownership, development, construction and operation of power generation facilities, the transacting in and trading of fuel and transportation services, and the trading of energy, capacity and related products in the regional markets in the US and select international markets where its generating assets are located.

As of December 31, 2008, NRG had a total global portfolio of 189 active operating fossil fuel and nuclear generation units, at 48 power generation plants, with an aggregate generation capacity of approximately 24,005 MW, and approximately 550 MW under construction which includes partners' interests of 275 MW. In addition, NRG has ownership interests in two wind farms representing an aggregate generation capacity of 270 MW, which includes partner interests of 75 MW. Within the US, NRG has one of the largest and most diversified power generation portfolios in terms of geography, fuel-type and dispatch levels, with approximately 22,925 MW of fossil fuel and nuclear generation capacity in 177 active generating units at 43 plants and ownership interests in two wind farms representing 195 MW of wind generation capacity. These power generation facilities are primarily located in Texas (approximately 11,010 MW, including the 195 MW from the two wind farms), the Northeast (approximately 7,020 MW), South Central (approximately 2,845 MW), and West (approximately 2,130 MW) regions of the US, and approximately 115 MW of additional generation capacity from the Company's thermal assets.

NRG's principal domestic power plants consist of a mix of natural gas-, coal-, oil-fired, nuclear and wind facilities, representing approximately 45%, 33%, 16%, 5% and 1% of the Company's total domestic generation capacity, respectively. In addition, 15% of NRG's domestic generating facilities have dual or multiple fuel capacity, which allows plants to dispatch with the lowest cost fuel option.

NRG's domestic generation facilities consist of intermittent, baseload, intermediate and peaking power generation facilities, the ranking of which is referred to as Merit Order, and include thermal energy production plants. The sale of capacity and power from baseload generation facilities accounts for the majority of the Company's revenues and provides a stable source of cash flow. In addition, NRG's generation portfolio provides the Company with opportunities to capture additional revenues by selling power during periods of peak demand, offering capacity or similar products to retail electric providers and others, and providing ancillary services to support system reliability.

NRG's Business Strategy

NRG's business strategy is designed to enhance the Company's position as a leading wholesale power generation company in the US. NRG will continue to utilize its asset base as a platform for growth and development and as a source of cash flow generation which can be used for the return of capital to debt and equity holders. The Company's strategy is focused on: (i) top decile operating performance of its existing operating assets and enhanced operating performance of the Company's commercial operations and hedging program; (ii) repowering of power generation assets at existing sites and development of new power generation projects; and (iii) investment in energy-related new businesses and new technologies where such investments create low to no carbon. This strategy is supported by the Company's five major initiatives (*FORNRG*, *RepoweringNRG*, *econrg*, *Future NRG* and *NRG Global Giving*) which are designed to enhance the Company's competitive advantages in these strategic areas and allow the Company to surmount the challenges faced by the power industry in the coming years. This strategy is being implemented by focusing on the following principles:

Operational Performance — The Company is focused on increasing value from its existing assets. Through the *FORNRG* initiative, NRG will continue to focus on extracting value from its portfolio by improving plant performance, reducing costs and harnessing the Company's advantages of scale in the procurement of fuels and other commodities, parts and services, and in doing so improving the Company's return on invested capital, or ROIC. *FORNRG* is a companywide effort designed to increase ROIC through operational performance improvements to the Company's asset fleet, along with a range of initiatives at plants and at corporate offices to reduce costs, or in some cases, monetize or reduce excess working capital and other assets. The *FORNRG* accomplishments include both recurring and one-time improvements measured from a prior base year. For plant operations, the program measures cumulative current year benefits using current gross margins multiplied by the change in baseline levels of certain key performance indicators. The plant performance benefits include both positive and negative results for plant reliability, capacity, heat rate and station service.

In addition to the *FORNRG* initiative, the Company seeks to maximize profitability and manage cash flow volatility through the Company's commercial operations strategy. The Company will continue to execute asset-based risk management, hedging, marketing and trading strategies within well-defined risk and liquidity guidelines in order to manage the value of the Company's physical and contractual assets. The Company's marketing and hedging philosophy is centered on generating stable returns from its portfolio of baseload power generation assets while preserving an ability to capitalize on strong spot market conditions and to capture the extrinsic value of the Company's intermediate and peaking facilities and portions of its baseload fleet. NRG believes that it can successfully execute this strategy by leveraging its (i) expertise in marketing power and ancillary services, (ii) its knowledge of markets, (iii) its balanced financial structure and (iv) its diverse portfolio of power generation assets.

Finally, NRG remains focused on cash flow and maintaining appropriate levels of liquidity, debt and equity in order to ensure continued access to capital for investment, to enhance risk-adjusted returns and to provide flexibility in executing NRG's business strategy during business downturns, including a regular return of capital to its shareholders. NRG will continue to focus on maintaining operational and financial controls designed to ensure that the Company's financial position remains strong.

Development — NRG is favorably positioned to pursue growth opportunities through expansion of its existing generating capacity and development of new generating capacity at its existing facilities. NRG intends to invest in its existing assets through plant improvements, repowerings, brownfield development and site expansions to meet anticipated requirements for additional capacity in NRG's core markets. Through the *Repowering* NRG initiative, NRG will continue to develop, construct and operate new and enhanced power generation facilities at its existing sites, with an emphasis on new baseload capacity that is supported by long-term power sales agreements and financed with limited or non-recourse project financing. *Repowering* NRG is a comprehensive portfolio redevelopment program designed to develop, construct and operate new multi-fuel, multi-technology, highly efficient and environmentally responsible generation capacity over the next decade. Through this initiative, the Company anticipates retiring certain existing units and adding new generation to meet growing demand in the Company's core markets, with an emphasis on new capacity that is expected to be supported by long-term hedging programs, including Power Purchase Agreements, or PPAs, and financed with limited or non-recourse project financing. NRG expects that these efforts will provide one or more of the following benefits: improved heat rates; lower delivered costs; expanded electricity production capability; an improved ability to dispatch economically across the regional general portfolio; increased technological and fuel diversity; and reduced environmental impacts, including facilities that either have near zero greenhouse gas, or GHG, emissions or can be equipped to capture and sequester GHG emissions.

New Businesses and New Technology — NRG is focused on the development and investment in energy-related new businesses and new technologies where the benefits of such investments represent significant commercial opportunities and create a comparative advantage for the Company, including low or no GHG emitting energy generating sources, such as nuclear, wind, solar thermal, photovoltaic, "clean" coal and gas, and the employment of post-combustion carbon capture technologies. In 2008, the Company began to increase its focus on ways to invest in or support the development of new energy-related businesses and technologies that could advance its multi-fuel, multi-technology growth strategy and look for new ways to reduce carbon emissions from its overall fleet, and we expect to continue to do so in the future. Furthermore, the Company intends to capitalize on the high growth opportunities presented by government-mandated renewable portfolio standards, tax incentives and loan

guaranties for renewable energy projects and new technologies and expected future carbon regulation. A primary focus of this strategy is supported by the econrg initiative whereby NRG is pursuing investments in new generating facilities and technologies that will be highly efficient and will employ no and low carbon technologies to limit CO₂ emissions and other air emissions. econrg represents NRG's commitment to environmentally responsible power generation by addressing the challenges of climate change, clean air and water, and conservation of our natural resources while taking advantage of business opportunities that may inure to NRG as a result of our demonstration and deployment of "green" technologies. Within NRG, econrg builds upon a foundation in environmental compliance and embraces environmental initiatives for the benefit of our communities, employees and shareholders, such as encouraging investment in new environmental technologies, pursuing activities that preserve and protect the environment and encouraging changes in the daily lives of the Company's employees.

Company-Wide Initiatives — In addition, the Company's overall strategy is also supported by **Future NRG** and **NRG Global Giving** initiatives. Future NRG is the Company's workforce planning and development initiative and represents NRG's strong commitment to planning for future staffing requirements to meet the on-going needs of the Company's current operations in addition to the Company's *Repowering* NRG initiatives. Future NRG encompasses analyzing the demographics, skill set and size of the Company's workforce in addition to the organizational structure with a focus on succession planning, training, development, staffing and recruiting needs. Included under the Future NRG umbrella is NRG University, which provides leadership, managerial, supervisory and technical training programs and individual skill development courses. NRG Global Giving is designed to enhance respect for the community, which is one of NRG's core values. Our Global Giving Program invests NRG's resources to strengthen the communities where we do business and seeks to make community investments in four focus areas: community and economic development, education, environment and human welfare.

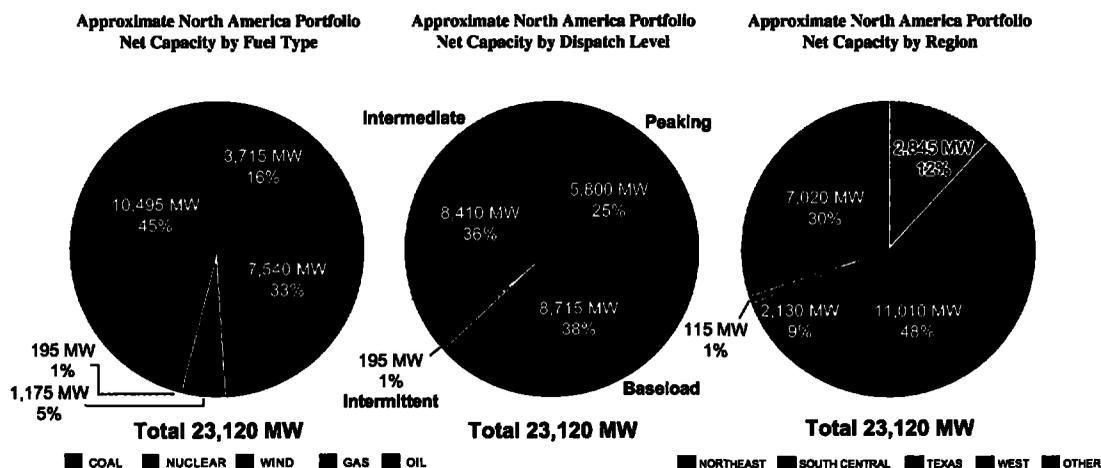
Finally, NRG will continue to pursue selective acquisitions, joint ventures and divestitures to enhance its asset mix and competitive position in the Company's core markets. NRG intends to concentrate on opportunities that present attractive risk-adjusted returns. NRG will also opportunistically pursue other strategic transactions, including mergers, acquisitions or divestitures.

Competition and Competitive Strengths

Competition — Wholesale power generation is a capital-intensive, commodity-driven business with numerous industry participants. NRG competes on the basis of the location of its plants and ownership of multiple plants in various regions, which increases the stability and reliability of its energy supply. Wholesale power generation is basically a local business that is currently highly fragmented relative to other commodity industries and diverse in terms of industry structure. As such, there is a wide variation in terms of the capabilities, resources, nature and identity of the companies NRG competes with depending on the market.

Scale and diversity of assets — NRG has one of the largest and most diversified power generation portfolios in the US, with approximately 22,925 MW of fossil fuel and nuclear generation capacity in 177 active generating units at 43 plants and ownership interests in two wind farms representing 195 MW of wind generation capacity, as of December 31, 2008. The Company's power generation assets are diversified by fuel-type, dispatch level and region, which help mitigate the risks associated with fuel price volatility and market demand cycles. NRG's US baseload facilities, which consist of approximately 8,715 MW of generation capacity measured as of December 31, 2008, provide the Company with a significant source of stable cash flow, while its intermediate and peaking facilities, with approximately 14,210 MW of generation capacity as of December 31, 2008, provide NRG with opportunities to capture the significant upside potential that can arise from time to time during periods of high demand. In addition, approximately 15% of the Company's domestic generation facilities have dual or multiple fuel capability, which allows most of these plants to dispatch with the lowest cost fuel option. In 2008, NRG completed the construction of the Sherbino (150 MW including partner's interests of 75 MW) and Elbow Creek (120 MW) wind farms which provide electricity to the Company's core region.

The following chart demonstrates the diversification of NRG's domestic power generation assets as of December 31, 2008:



Reliability of future cash flows — NRG has hedged a significant portion of its expected baseload generation capacity with decreasing hedged levels through 2014. NRG also has cooperative load contract obligations in South Central region which expire over various dates through 2026. The Company has the capacity and intent to enter into additional hedges when market conditions are favorable. In addition, as of December 31, 2008, the Company had purchased fuel forward under fixed price contracts, with contractually-specified price escalators, for approximately 51% of its expected baseload coal generation output from 2009 to 2014. The hedge percentage is reflective of the current agreement of the Jewett mine in which NRG has the contractual ability to adjust volumes in future years. These forward positions provide a stable and reliable source of future cash flow for NRG's investors, while preserving a portion of its generation portfolio for opportunistic sales to take advantage of market dynamics.

Favorable cost dynamics for baseload power plants — In 2008, approximately 91% of the Company's domestic generation output was from plants fueled by coal or nuclear fuel. In many of the competitive markets where NRG operates, the price of power is typically set by the marginal costs of natural gas-fired and oil-fired power plants that currently have substantially higher variable costs than solid fuel baseload power plants. As a result of NRG's lower marginal cost for baseload coal and nuclear generation assets, the Company expects the baseload assets in the Electric Reliability Council of Texas, or ERCOT, to generate power majority of the time they are available.

Locational advantages — Many of NRG's generation assets are located within densely populated areas that are characterized by significant constraints on the transmission of power from generators outside the particular region. Consequently, these assets are able to benefit from the higher prices that prevail for energy in these markets during periods of transmission constraints. NRG has generation assets located within New York City, southwestern Connecticut, Houston and the Los Angeles and San Diego load basins; all areas, which experience from time-to-time and to varying degrees of constraints on the transmission of electricity. This gives the Company the opportunity to capture additional revenues by offering capacity to retail electric providers and others, selling power at prevailing market prices during periods of peak demand and providing ancillary services in support of system reliability. Also, these facilities are often ideally situated for repowering or the addition of new capacity, because their location and existing infrastructure give them significant advantages over developed sites in their regions that do not have process infrastructure.

Performance Metrics

The following table contains a summary of NRG's operating revenues by segment for the year ended December 31, 2008 as discussed in Item 15—Note 17, *Segment Reporting*, to the Consolidated Financial Statements.

<u>Region</u>	<u>Energy</u>	<u>Capacity</u>	<u>Risk</u>	<u>Contract</u>	<u>Thermal</u>	<u>Other</u>	<u>Total</u>
	<u>Revenues</u>	<u>Revenues</u>	<u>Management</u>	<u>Amortization</u>	<u>Revenues</u>	<u>Revenues</u>	<u>Operating</u>
			<u>Activities</u>				<u>Revenues</u>
				(In millions)			
Texas	\$ 2,870	\$ 493	\$ 318	\$ 255	\$ —	\$ 90	\$ 4,026
Northeast	1,064	415	85	—	—	66	1,630
South Central	478	233	10	23	—	2	746
West	39	125	—	—	—	7	171
International	56	86	—	—	—	16	158
Thermal	12	7	5	—	114	16	154
Corporate and Eliminations	—	—	—	—	—	—	—
Total	\$ 4,519	\$ 1,359	\$ 418	\$ 278	\$ 114	\$ 197	\$ 6,885

In understanding NRG's business, the Company believes that certain performance metrics are particularly important. These are industry statistics defined by the North American Electric Reliability Council, or NERC, and are more fully described below:

Annual Equivalent Availability Factor, or EAF — Measures the percentage of maximum generation available over time as the fraction of net maximum generation that could be provided over a defined period of time after all types of outages and deratings, including seasonal deratings, are taken into account.

Gross heat rate — The gross heat rate for the Company's fossil-fired power plants represents the average amount of fuel in a BTU required to generate one kWh of electricity divided by the generator output.

Net Capacity Factor — The net amount of electricity that a generating unit produces over a period of time divided by the net amount of electricity it could have produced if it had run at full power over that time period. The net amount of electricity produced is the total amount of electricity generated minus the amount of electricity used during generation.

The tables below present the North American power generation performance metrics for the Company's power plants discussed above for the years ended December 31, 2008 and 2007:

Year Ended December 31, 2008					
Region	Net Owned Capacity (MW)	Net Generation (MWh)	Annual Equivalent Availability Factor	Average Net Heat Rate Btu/kWh	Net Capacity Factor
(In thousands of MWh)					
Texas ^(a)	11,010	46,937	88.1%	10,300	49.6%
Northeast ^(b)	7,020	13,349	88.8	10,800	19.9
South Central	2,845	11,148	93.4	10,300	47.6
West	2,130	1,532	91.5%	11,800	10.2%
Year Ended December 31, 2007					
Region	Net Owned Capacity (MW)	Net Generation (MWh)	Annual Equivalent Availability Factor	Average Net Heat Rate Btu/kWh	Net Capacity Factor
(In thousands of MWh)					
Texas	10,805	47,779	87.6%	10,300	50.7%
Northeast ^(b)	6,980	14,163	83.6	10,900	21.2
South Central	2,850	10,930	89.0	10,200	46.1
West	2,130	1,246	89.9%	11,200	9.3%

(a) Net generation (MWh) does not include Sherbino, which is accounted for under the equity method.

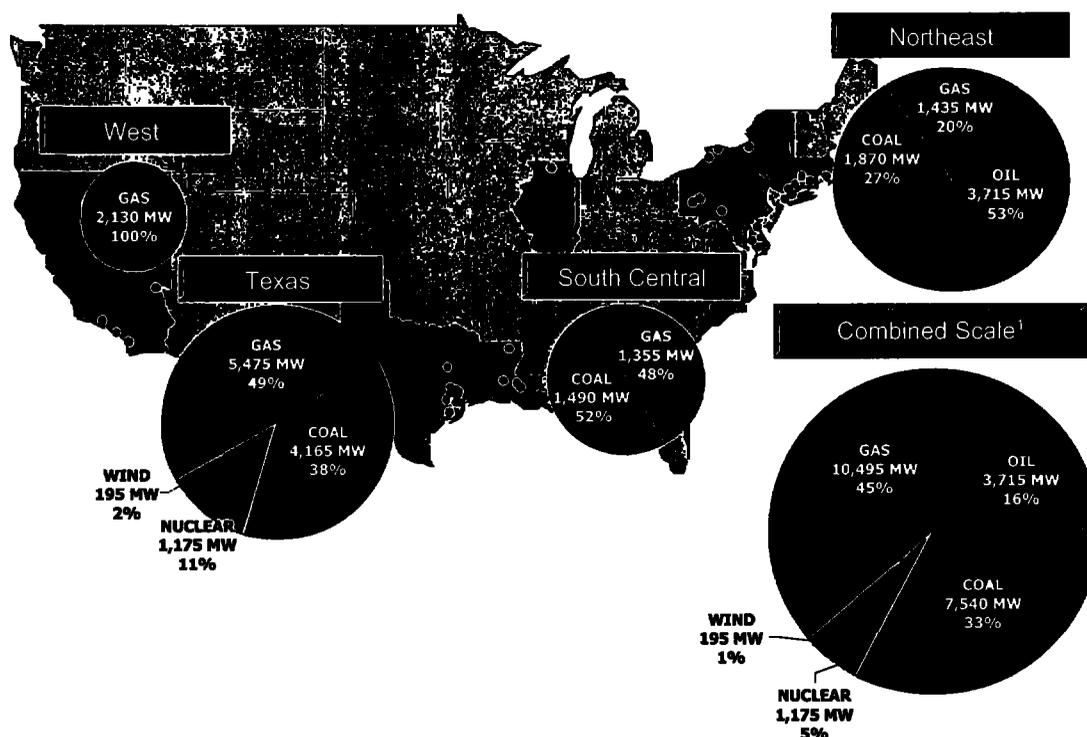
(b) Factor data and heat rate do not include the Keystone and Conemaugh facilities.

Employees

As of December 31, 2008, NRG had 3,526 employees, approximately 1,663 of whom were covered by US bargaining agreements. During 2008, the Company did not experience any labor stoppages or labor disputes at any of its facilities.

Generation Asset Overview

NRG has a significant power generation presence in major competitive power markets of the US as set forth in the map below:



(1) Includes 115 MW as part of NRG's Thermal assets. For combined scale, approximately 3,450 MW is dual-fuel capable. Reflects only domestic generation capacity as of December 31, 2008.

As of December 31, 2008, the Company's power generation assets consisted of approximately 10,495 MW of gas-fired; 7,540 MW of coal-fired; 3,715 MW of oil-fired; 1,175 MW of nuclear; and 195 MW of wind generating capacity in the US. In addition, NRG also owns approximately 115 MW of thermal capacity domestically as well as 1,080 MW of power generation capacity overseas. The Company's US power generation portfolio by dispatch level is comprised of approximately 38% baseload, 36% intermediate, 25% peaking and 1% intermittent units.

The following is a discussion of NRG's generation assets by segment for the year ended December 31, 2008.

Texas Region — As of December 31, 2008, NRG's generation assets in the Texas region consisted of approximately 5,340 MW of baseload generation assets, approximately 195 MW of intermittent wind generation assets, excluding partner interests of 75 MW, in addition to approximately 5,475 MW of intermediate and peaking natural gas-fired assets. NRG realizes a substantial portion of its revenue and cash flow from the sale of power from the Company's three baseload power plants located in the ERCOT market that use solid fuel: W.A. Parish which uses coal, Limestone which use lignite and coal, and an undivided 44% interest in two nuclear generating units at South Texas Project, or STP. In 2008, NRG announced the completion of the construction of two wind farms, Sherbino Wind Farm and Elbow Creek Wind Farm, which are also located in the ERCOT market. Power plants are generally dispatched in order of lowest operating cost and as of May 2008 approximately 64% of the net generation capacity in the ERCOT market was natural gas-fired. In the current natural gas price environment, NRG's three solid fuel baseload facilities and two wind farms have significantly lower operating costs than gas plants. NRG expects these three solid-fuel facilities to operate the majority of the time when available, subject to planned and forced outages.

Northeast Region — As of December 31, 2008, NRG generation assets in the Northeast region of the US consisted of approximately 7,020 MW generation capacity from the Company's power plants within the control areas of the New York Independent System Operator, or NYISO, the Independent System Operator — New England, or ISO-NE, and the PJM Interconnection LLC, or PJM. Certain of these assets are located in transmission constrained areas, including approximately 1,415 MW of in-city New York City generation capacity and approximately 575 MW of southwest Connecticut generation capacity. As of December 31, 2008, NRG's generation assets in the Northeast region consisted of approximately 1,870 MW of baseload generation assets and approximately 5,150 MW of intermediate and peaking assets.

South Central Region — As of December 31, 2008, NRG generation assets in the South Central region of the US consisted of approximately 2,845 MW of generation capacity, making NRG the third largest generator in the Southeastern Electric Reliability Council/Entergy, or SERC-Entergy, region. The Company's generation assets in Louisiana consist of its primary asset, Big Cajun II, a coal-fired plant located near Baton Rouge, Louisiana which has approximately 1,490 MW of baseload capacity and 905 MW of intermediate and peaking assets. A significant portion of the region's generation capacity has been sold to eleven cooperatives within the region through 2026. From time to time, the Company may contract for intermediate generation capacity to support its load obligations. In addition, the region also operates 450 MW of peaking generation in Rockford, Illinois under the PJM region.

West Region — As of December 31, 2008, NRG generation assets in the West region of the US consisted of approximately 2,130 MW of generation capacity, primarily located in the California Independent System Operator, or CAISO, control area. The Company's generation assets in the West region are predominately intermediate and peaking duty natural gas-fired plants located in southern California. In addition, the region owns 50% interest in a 90 MW baseload, gas-fired plant located in Nevada.

International Region — As of December 31, 2008, NRG had net ownership in approximately 1,080 MW of power generating capacity in Australia and Germany. In addition to traditional power generation facilities, NRG also owns equity interests in certain coal mines in Germany.

Thermal — NRG owns thermal and chilled water businesses that generate approximately 1,020 MW thermal equivalents. In addition, NRG's thermal segment owns certain power plants with approximately 115 MW of power generating capacity located in Delaware and Pennsylvania.

Commercial Operations Overview

NRG seeks to maximize profitability and manage cash flow volatility through the marketing, trading and sale of energy, capacity and ancillary services into spot, intermediate and long-term markets and through the active management and trading of emissions allowances, fuel supplies and transportation-related services. The Company's principal objectives are the realization of the full market value of its asset base, including the capture of its extrinsic value, the management and mitigation of commodity market risk and the reduction of cash flow volatility over time.

NRG enters into power sales and hedging arrangements via a wide range of products and contracts, including power purchase agreements, fuel supply contracts, capacity auctions, natural gas swap agreements and other financial instruments. The PPAs that NRG enters into require the Company to deliver MWh of power to its counterparties. In addition, because changes in power prices in the markets where NRG operates are generally correlated to changes in natural gas prices, NRG uses hedging strategies which may include power and natural gas forward sales contracts to manage the commodity price risk primarily associated with the Company's base load generation assets. The objective of these hedging strategies is to stabilize the cash flow generated by NRG's portfolio of assets.

The following table summarizes NRG's US baseload capacity and the corresponding revenues and average natural gas prices resulting from baseload hedge agreements extending beyond December 31, 2008 and through 2014:

	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>Annual Average for 2009-2014</u>
	(Dollars in millions unless otherwise stated)						
Net Baseload Capacity (MW)	8,701	8,539	8,459	8,432	8,432	8,432	8,499
Forecasted Baseload Capacity (MW)	7,497	7,229	7,164	7,232	7,324	7,395	7,307
Total Baseload Sales (MW) ^(a)	7,156	5,686	4,825	3,272	1,988	789	3,953
Percentage Baseload Capacity Sold Forward ^(b)	95%	79%	67%	45%	27%	11%	54%
Total Forward Hedged Revenues ^{(c)(d)}	\$3,851	\$2,905	\$2,200	\$1,670	\$ 958	\$ 368	\$1,992
Weighted Average Hedged Price (\$ per MWh) ^(c)	\$ 61	\$ 58	\$ 52	\$ 58	\$ 55	\$ 53	\$ 58
Weighted Average Hedged Price (\$ per MWh) excluding South Central region ^(d)	\$ 65	\$ 62	\$ 54	\$ 65	\$ 66	\$ —	\$ 62
Average Equivalent Natural Gas Price (\$ per MMBtu)	\$ 8.06	\$ 7.92	\$ 7.09	\$ 7.85	\$ 7.43	\$ 7.24	\$ 7.72
Average Equivalent Natural Gas Price (\$ per MMBtu) excluding South Central region	\$ 8.37	\$ 8.16	\$ 7.27	\$ 8.60	\$ 8.86	\$ —	\$ 8.13

(a) Includes amounts under power sales contracts and natural gas hedges. The forward natural gas quantities are reflected in equivalent MWh based on forward market implied heat rate as of December 31, 2008 and then combined with power sales to arrive at equivalent MWh hedged which is then divided by 8,760 hours (8,784 hours in 2012) to arrive at MW hedged.

(b) Percentage hedged is based on total MW sold as power and natural gas converted using the method as described in (a) above divided by the forecasted baseload capacity.

(c) Represents all North American baseload sales, including energy revenue and demand charge.

(d) The South Central region's weighted average hedged prices ranges from \$43/MWh — \$53/MWh due to legacy cooperative load contracts entered into at prices significantly below current market levels. These prices include a fixed capacity charge and an estimated energy charge.

Fuel Supply and Transportation

NRG's fuel requirements consist primarily of nuclear fuel and various forms of fossil fuel including oil, natural gas and coal, including lignite. The prices of oil, natural gas and coal are subject to macro- and micro-economic forces that can change dramatically in both the short- and long-term. The Company obtains its oil, natural gas and coal from multiple suppliers and transportation sources. Although availability is generally not an issue, localized shortages, transportation availability and supplier financial stability issues can and do occur. The preceding factors related to the sources and availability of raw materials are fairly uniform across the Company's business segments.

Coal — The Company is largely hedged for its domestic coal consumption over the next few years. Coal hedging is dynamic and is based on forecasted generation and market volatility. As of December 31, 2008, NRG had purchased forward contracts to provide fuel for approximately 51% of the Company's requirements from 2009 through 2014. NRG arranges for the purchase, transportation and delivery of coal for the Company's baseload coal plants via a variety of coal purchase agreements, rail/barge transportation agreements and rail car lease arrangements. The Company purchased approximately 35 million tons of coal in 2008, of which 94% is Power River Basin coal and lignite. The Company is one of the largest coal purchasers in the US.

The following table shows the percentage of the Company's coal and lignite requirements from 2009 through 2014 that have been purchased forward:

	<u>Percentage of Company's Requirement^(a)</u>
2009.....	104%
2010.....	69%
2011.....	55%
2012.....	47%
2013.....	18%
2014.....	12%

(a) The hedge percentages reflect the current plan for the Jewett mine. NRG has the contractual ability to change volumes and may do so in the future.

As of December 31, 2008, NRG had approximately 6,349 privately leased or owned rail cars in the Company's transportation fleet. NRG has entered into rail transportation agreements with varying tenures that provide for substantially all of the Company's rail transportation requirements up to the next ten years.

Natural Gas — NRG operates a fleet of natural gas plants in the Texas, Northeast, South Central and West regions which are primarily comprised of peaking assets that run in times of high power demand. Due to the uncertainty of their dispatch, the fuel needs are managed on a spot basis as it is not prudent to forward purchase fixed price natural gas for units that may not run. The Company contracts for natural gas storage services as well as natural gas transportation services to ensure delivery of natural gas when needed.

Nuclear Fuel — STP's owners satisfy STP's fuel supply requirements by (i) acquiring uranium concentrates and contracting for conversion of the uranium concentrates into uranium hexafluoride, (ii) contracting for enrichment of uranium hexafluoride, and (iii) contracting for fabrication of nuclear fuel assemblies. NRG is party to a number of long-term forward purchase contracts with many of the world's largest suppliers covering STP requirements for uranium and conversion services for the next five years, and with substantial portions of STP's requirements procured thereafter. NRG is party to long-term contracts to procure STP's requirements for enrichment services and fuel fabrication for the life of the operating license.

Seasonality and Price Volatility

Annual and quarterly operating results can be significantly affected by weather and energy commodity price volatility. Significant other events, such as the demand for natural gas, interruptions in fuel supply infrastructure and relative levels of hydroelectric capacity can increase seasonal fuel and power price volatility. NRG derives a majority of its annual revenues in the months of May through October, when demand for electricity is at its highest in the Company's core domestic markets. Further, power price volatility is generally higher in the summer months, traditionally NRG's most important season. The Company's second most important season is the winter months of December through March when volatility and price spikes in underlying delivered fuel prices have tended to drive seasonal electricity prices. The preceding factors related to seasonality and price volatility are fairly uniform across the Company's business segments.

Operations Overview

NRG provides support services to the Company's generation facilities to ensure that high-level performance goals are developed, best practices are shared and resources are appropriately balanced and allocated to maximize results for the Company. NRG sets performance goals for equivalent forced outage rates, or EFOR, availability, procurement costs, operating costs, safety and environmental compliance.

Support services include safety, security, and systems. These services also include operations planning and the development and dissemination of consistent policies and practices relating to plant operations.

To support *Repowering* NRG environmental capital expenditures and all major capital expenditure projects initiatives, the Company organized its project execution process into one centralized group consisting of Engineering, Procurement and Construction, or EPC. This group combines regional engineering functions with development project engineering, project management, procurement and construction functions to provide a consistent approach to the major capital projects. This has enabled NRG to leverage both the procurement of major equipment as well as outside engineering resources through standardized work processes and work packaging. This process has led to identifying commonality in major equipment that can be procured from Original Equipment Manufacturers, or OEMs, as well as design processes. As a result, NRG achieves cost savings by minimizing the number of outside engineering and construction resources, which provide detailed design and construction services required to complete projects, in addition to and by ensuring a consistent engineering and construction approach across all projects.

FORNRG Update

In 2007, the Company announced the acceleration and planned conclusion of the *FORNRG 1.0* program by bringing forward the previously announced 2009 target of \$250 million to 2008. Improvements in reliability throughout the baseload fleet were the drivers of the year-to-date program performance. In 2008, the Company achieved \$259 million of implemented *FORNRG 1.0* improvements which exceeded the established \$250 million goal. The *FORNRG 1.0* program was measured from a 2004 baseline, with the exception of the Texas region where benefits were measured using 2005 as the base year.

Beginning in January 2009, the Company transitioned to *FORNRG 2.0* to target an incremental 100 basis point improvement to the Company's ROIC by 2012. The initial targets for *FORNRG 2.0* were based upon improvements in the Company's ROIC as measured by increased cash flow. The economic goals of *FORNRG 2.0* will focus on: (i) revenue enhancement, (ii) cost savings, and (iii) asset optimization, including reducing excess working capital and other assets. The *FORNRG 2.0* program will measure its progress towards the *FORNRG 2.0* goals by using the Company's 2008 financial results as a baseline, while plant performance calculations will be based upon the average full-year plant key performance indicators for years the 2006-2008.

Environmental Capital Expenditures

Based on current rules, technology and plans, NRG has estimated that environmental capital expenditures to be incurred from 2009 through 2013 to meet NRG's environmental commitments will be approximately \$1.2 billion. These capital expenditures, in general, are related to installation of particulate, SO₂, NO_x, and mercury controls to comply with federal and state air quality rules and consent orders, as well as installation of "Best Technology Available" under the Phase II 316(b) rule. NRG continues to explore cost effective alternatives that can achieve desired results. While this estimate reflects schedules and controls to meet anticipated reduction requirements, the full impact on the scope and timing of environmental retrofits cannot be determined until issuance of final rules by the United States Environmental Protection Agency, or USEPA.

The following table summarizes the estimated environmental capital expenditures for the referenced periods by region:

	<u>Texas</u>	<u>Northeast</u>	<u>South Central</u>	<u>Total</u>
	(In millions)			
2009	\$ —	\$ 256	\$ —	\$ 256
2010	8	213	57	278
2011	17	175	116	308
2012	29	67	114	210
2013	<u>21</u>	<u>3</u>	<u>74</u>	<u>98</u>
Total	<u>\$ 75</u>	<u>\$ 714</u>	<u>\$ 361</u>	<u>\$ 1,150</u>

NRG's current contracts with the Company's rural electrical customers in the South Central region allow for recovery of a significant portion of the capital costs, along with a capital return incurred by complying with new laws, including interest over the asset life of the required expenditures. Actual recoveries will depend, among other things, on the duration of the contracts.

Carbon Update

There is a marked shift towards federal action to address climate change under the Obama administration, which has made clear its intention to make climate change policy a priority for the US through legislation, regulation, and global leadership. President Obama reiterated this commitment in his inaugural address. Congressman Waxman, who sees aggressive action on climate change as a major priority, was elected chair of the House Energy and Commerce Committee and announced that a climate change bill would be delivered out of committee before Memorial Day.

The fossil-fuel based electric generators contribute to GHG emissions. In 2008, in the course of producing approximately 80 million MWh of electricity, NRG's power plants emitted approximately 68 million tonnes of CO₂, of which approximately 61 million tonnes were emitted in the US, approximately 4 million tonnes in Germany, and approximately 3 million tonnes in Australia.

The Company has a multifold strategy with respect to climate change and related GHG regulation. First, the Company is seeking to shape public policy as it emerges at various levels of government in order to ensure that such legislation is fair and effective in reducing GHG emissions. To ensure such effectiveness, NRG believes it is particularly important that legislation effectively support the development, demonstration and deployment of low and no CO₂ power generation technologies, and that it sets out a transitional allocation approach that buffers initial net compliance costs while transitioning to a full auction. The Company is carrying out its efforts to influence public policy on its own and as part of various collective efforts. For example in January 2009, NRG joined with other members of the United States Climate Action Partnership, or USCAP, to issue the "Blueprint for Legislative Action," a detailed framework for legislation to slow, stop and reverse the growth of GHG emissions to achieve an 80% reduction from 2005 levels by 2050.

Second, the Company is actively pursuing investments in new generating facilities and technologies that will be highly efficient and will employ technologies to minimize CO₂ emissions and other air emissions through its *Repowering* NRG program. The Company anticipates that these investments will result in significant long-term GHG intensity reductions in its generating portfolio. The most notable of these projects in terms of the potential impact on the GHG intensity of the Company's portfolio is the 2,700 MW STP units 3 and 4 nuclear project in Texas. NRG has formed Nuclear Innovation North America, or NINA, a joint venture with the Toshiba American Nuclear Energy Corporation, to facilitate the development of STP 3 and 4 as well as additional nuclear projects. Further, in 2008, NRG's subsidiary, Padoma Wind Power, LLC, or Padoma, brought 270 MW of wind generating capacity on-line in west Texas at two facilities: (i) the 150 MW Sherbino I Wind Farm LLC, or Sherbino, a 50/50 joint venture with a subsidiary of BP Alternative Energy North America Inc., or BP, and (ii) the wholly-owned, 120 MW Elbow Creek Wind Power LLC facility. The Company is actively developing low and no GHG emitting wind, solar, biomass and natural gas projects. The extent to which these projects, and the remaining coal projects under development, impact the Company's overall climate change exposure will depend on the Company's ability to complete development of these projects, the nature and geographic reach of any GHG regulation which goes into effect and the extent to which the climate change risk associated with our development projects is allocated between the Company and any offtakers under power purchase agreements or similar arrangements.

Third, the Company is seeking to demonstrate through its econrg program the large scale viability of post-combustion CO₂ capture technologies. NRG is exploring a variety of technologies, including one or more scaled up demonstrations at a Company facility in Texas. The captured CO₂ would be sequestered through use for enhanced oil recovery or otherwise in suitable geological formations.

Fourth, the Company is preparing for the commercial operations activities which will be required as part of any climate change regulatory scheme that is implemented, including managing a portfolio of GHG offsets and CO₂ allowances. For example, the Company is a member of the Chicago Climate Exchange, a CO₂ emissions reduction, registry and trading system, and has been active in both RGGI auctions to date.

Fifth, and finally, the Company has for the past year, and will going forward, factor into its capital investment decision making process assumptions regarding the costs of complying with anticipated climate change regulations. As a result, all decisions with respect to acquisitions, repowerings, project development and further investment in

our existing facilities will be made on the assumption that there will be a cost associated with GHG emissions in the future.

Nuclear Innovation North America

In March 2008, NRG formed NINA, an NRG subsidiary focused on marketing, siting, developing, financing and investing in new advanced design nuclear projects in select markets across North America, including the planned STP units 3 and 4 that NRG is developing on a 50/50 basis with City of San Antonio's agent City Public Service Board of San Antonio, or CPS Energy, at the STP nuclear power station site. NRG's rights to develop STP units 3 and 4 have been contributed to special purpose subsidiaries of NINA. NINA will focus only on the development of new projects and will not be involved in the operations of the existing STP units 1 and 2.

Toshiba American Nuclear Energy Corporation, or TANE, a wholly owned subsidiary of Toshiba Corporation, will serve as the prime contractor on NINA's projects and is a minority shareholder with NRG in the NINA venture. TANE is currently prime contractor of the STP units 3 and 4 project and is providing licensing support and leading all engineering and scheduling activities, which ultimately will lead to responsibility for constructing the project. TANE received a 12% equity ownership in NINA in exchange for \$300 million invested in NINA in six annual installments of \$50 million, the first of which was received in 2008 and the last three of which are subject to certain conditions. Half of this investment will be to fund development activities related to STP units 3 and 4. The other half will be targeted towards developing and deploying additional Advanced Boiling Water Reactor, or ABWR, projects in North America with other potential partners. TANE is also extending pre-negotiated EPC terms to NINA for two additional two-unit nuclear projects similar to the terms being offered for the STP unit 3 and 4 development.

NINA intends to use the Nuclear Regulatory Commission, or NRC, certified ABWR design, with only a limited number of changes to enhance safety and construction schedules. On November 30, 2007, the NRC accepted the Company's Combined Construction and Operating License Application, or COLA, which was filed September 24, 2007, together with San Antonio's CPS Energy and South Texas Project Nuclear Operating Company, or STPNOC, to build and operate two new nuclear units at the STP nuclear power station site. On September 30, 2008, NINA filed a revision to the COLA to list Toshiba as the primary vendor. NINA received the combined license review schedule from the NRC on February 11, 2009. Issuing the schedule marks the continuation of NRC's review of the STP expansion application as amended on September 2008. The Company expects to achieve commercial operation for Unit 3 in 2015 and commercial operation for Unit 4 approximately 12 months thereafter. The total rated capacity of the new units, STP units 3 and 4, is expected to equal or exceed 2,700 MW.

In October 2007, NRG and the City of San Antonio, acting through CPS Energy, entered into an interim agreement whereby the parties agreed to be equal partners in the development of the two new units, and, in the event either party chooses at any time not to proceed, gives the other party the right to proceed with the project on its own.

RepoweringNRG Update

NRG has a comprehensive portfolio redevelopment program, referred to as *RepoweringNRG*, which involves the development, construction and operation of new multi-fuel, multi-technology generation capacity at NRG's existing domestic sites to meet the growing demand in the Company's core markets. Through this initiative, the Company anticipates retiring certain existing units and adding new generation, with an emphasis on new baseload capacity that is expected to be supported by long-term PPAs and financed with limited or non-recourse project financing. NRG continues to expect that these repowering investments will provide one or more of the following benefits: improved heat rates; lower delivered costs; expanded electricity production capability; an improved ability to dispatch economically across the Merit Order; increased technological and fuel diversity; and reduced environmental impacts. The Company anticipates that the *RepoweringNRG* program will also result in indirect benefits, including the continuation of operations and retention of key personnel at its existing facilities.

A critical aspect of the *RepoweringNRG* program is the extent to which the Company is actively pursuing investments in new generating facilities that will be highly efficient and will employ no and/or low carbon technologies to limit CO₂ emissions and other air emissions. The Company anticipates that these investments will result in long-term GHG intensity reductions in its generating portfolio.

The Company expects that the overall capital expenditures in connection with the program will be substantial. The Company plans to mitigate the capital cost of the program through equity partnerships and public-private partnerships, as well as through the reimbursement of development fees for certain projects. To further mitigate the investment risks, NRG anticipates entering into long-term PPAs and EPC contracts. In addition, the proposed increase in generation capacity and capital costs resulting from *Repowering* NRG could change as proposed projects are included or removed from the program due to a number of factors, including successfully obtaining required permits, long-term PPAs, availability of financing on favorable terms, and achieving targeted project returns. The projects that have been identified as part of the *Repowering* NRG program are also subject to change as NRG refines the program to take into account the success rate for completion of projects, changes in the targeted minimum return thresholds, and evolving market dynamics.

Currently, NRG has various projects in certain stages of development that includes a new biomass project at Montville Generating Station and the repowering of Big Cajun I and El Segundo sites. As a result of permitting delays related to the on-going Natural Resource Defense Council claims, the El Segundo project is unlikely to reach its original completion date of June 1, 2011.

The following is a summary of repowering projects that have either been completed or are under construction. In addition, NRG continues to participate in active bids in response to requests for proposals in markets in which it operates, particularly in the West and Northeast regions.

Plants Completed and Operating

Cos Cob — On June 26, 2008, NRG announced the completion of the repowering of its Cos Cob generating station in Fairfield County, Connecticut which added 40 MW of power to the site. The Company funded and developed this project which added two new gas turbine units, between the existing three units, bringing total site output to 100 MW. All five units were retrofitted to use water injection technology for NO_x, resulting in a 50% net station reduction in NO_x. The site also converted to burn ultra-low sulfur distilled oil resulting in a 97% reduction in SO₂ emissions.

Sherbino Wind Farm — On October 22, 2008, NRG and its 50/50 joint venture partner, BP, announced the completion of its Sherbino project in Pecos County, Texas. The wind farm was developed by NRG's subsidiary Padoma together with BP. Padoma managed the construction, which began in late 2007. BP will operate and dispatch the facility. Sherbino is a 150 MW wind farm consisting of 50 Vestas wind turbine generators, each capable of generating up to 3 MW of power. Since NRG has a 50 percent ownership, Sherbino will provide the Company a net capacity of 75 MW.

Elbow Creek Wind Farm — On December 29, 2008, NRG, through Padoma, announced the completion of its Elbow Creek project, a wholly-owned 120 MW wind farm in Howard County near Big Spring, Texas. The Company funded and developed this wind farm which consists of 53 Siemens wind turbine generators, each capable of generating up to 2.3 MW of power.

Plants under Construction

Cedar Bayou Generating Station — In August 2007, NRG Cedar Bayou Development Company LLC, or NRG Cedar Bayou, a subsidiary of NRG Energy, Inc., and EnergyCo Cedar Bayou 4, LLC, or EnergyCo Cedar Bayou, a subsidiary of Optim Energy, LLC, formally EnergyCo, LLC, which is a joint venture between PNM Resources Inc. and a subsidiary of Cascade Investment, LLC, agreed to jointly develop, construct, operate and own, on a 50/50 undivided interest basis, a new 550 MW combined cycle natural gas turbine generating plant at NRG's Cedar Bayou Generating Station in Chambers County, Texas. On July 26, 2007, the Texas Commission on Environmental Air Quality, or TCEQ, granted an air permit required for construction and operation of the new plant, and on August 1, 2007, NRG Cedar Bayou and EnergyCo Cedar Bayou entered into an EPC agreement with Zachry Construction Corporation. NRG provides construction management services and will also provide various ongoing services related to plant operations and maintenance, and use of existing NRG facilities in return for a fixed fee plus reimbursement of the Company's costs. NRG will also provide plant operations and maintenance services and access to certain existing infrastructure at the site on a cost reimbursement basis plus a fixed fee. The construction of the project is on schedule and the plant is expected to begin commercial operations in mid-2009.

GenConn Energy LLC — In a procurement process conducted by the Department of Public Utility Control, or DPUC, and finalized in 2008, GenConn Energy LLC, or GenConn, a 50/50 joint venture of NRG and The United Illuminating Company, secured contracts in 2008 with Connecticut Light & Power, or CL&P, for the construction and operation of two 200 MW peaking facilities, at NRG's Devon and Middletown sites in Connecticut. The contracts, which are structured as contracts for differences for the full output of the new power plants, have a 30-year term and call for commercial operation of the Devon project by June 1, 2010 and the Middletown project by June 1, 2011. GenConn has secured all state permits required for the projects and has entered into contracts for engineering and for the procurement of the 8 GE LM6000 combustion turbines required for the projects. GenConn expects to close on financing for the projects in the first half of 2009.

Regional Business Descriptions

NRG is organized into business units, with each of the Company's core regions operating as a separate business segment as discussed below.

TEXAS

NRG's largest business segment is located in Texas and is comprised of investments in generation facilities located in the physical control areas of the ERCOT market. These assets were acquired on February 2, 2006, as part of the acquisition of Texas Genco LLC, or Texas Genco.

Operating Strategy

The Company's business in Texas is comprised of four sets of assets: a nuclear plant, solid-fuel baseload plants, gas-fired plants located in and around Houston, and wind farms. NRG's operating strategy to maximize value and opportunity across these assets is to (i) ensure the availability of the baseload plants to fulfill their commercial obligations under long-term forward sales contracts already in place, (ii) manage the natural gas assets for profitability while ensuring the reliability and flexibility of power supply to the Houston market, (iii) take advantage of the skill sets and market or regulatory knowledge to grow the business through incremental capacity uprates and repowering development of solid-fuel baseload and gas-fired units, and (iv) play a leading role in the development of the ERCOT market by active membership and participation in market and regulatory issues.

NRG's strategy is to sell forward a majority of its solid-fuel baseload capacity in the ERCOT market under long-term contracts or to enter into hedges by using natural gas as a proxy for power prices. Accordingly, the Company's primary focus will be to keep these solid-fuel baseload units running efficiently. With respect to gas-fired assets, NRG will continue contracting forward a significant portion of gas-fired capacity one to two years out while holding a portion for back-up in case there is an operational issue with one of the baseload units and to provide upside for expanding heat rates. For the gas-fired capacity sold forward, the Company will offer a range of products specific to customers needs. For the gas-fired capacity that NRG will continue to sell commercially into the market, the Company will focus on making this capacity available to the market whenever it is economical to run.

The generation performance by fuel-type for the recent three-year period is as shown below:

	Net Generation		
	2008	2007	2006
	(In thousands of MWh)		
Coal	32,825	32,648	31,371
Gas	4,647	5,407	7,983
Nuclear ^(a)	9,456	9,724	9,385
Wind	9	—	—
Total	<u>46,937</u>	<u>47,779</u>	<u>48,739</u>

(a) MWh information reflects the undivided interest in total MWh generated by STP.

Generation Facilities

As of December 31, 2008, NRG's generation facilities in Texas consisted of approximately 11,010 MW of generation capacity. The following table describes NRG's electric power generation plants and generation capacity as of December 31, 2008:

<u>Plant</u>	<u>Location</u>	<u>% Owned</u>	<u>Net Generation Capacity (MW)^(c)</u>	<u>Primary Fuel-type</u>
Solid Fuel Baseload Units:				
W. A. Parish ^(a)	Thompsons, TX	100.0	2,475	Coal
Limestone	Jewett, TX	100.0	1,690	Lignite/Coal
South Texas Project ^(b)	Bay City, TX	44.0	<u>1,175</u>	Nuclear
Total Solid Fuel Baseload			5,340	
Intermittent Units:				
Elbow Creek	Howard County, TX	100.0	120	Wind
Sherbino	Pecos County, TX	50.0	<u>75</u>	Wind
Total Intermittent Baseload			195	
Operating Natural Gas-Fired Units:				
Cedar Bayou	Baytown, TX	100.0	1,495	Natural Gas
T. H. Wharton	Houston, TX	100.0	1,025	Natural Gas
W. A. Parish ^(a)	Thompsons, TX	100.0	1,190	Natural Gas
S. R. Bertron	Deer Park, TX	100.0	840	Natural Gas
Greens Bayou	Houston, TX	100.0	760	Natural Gas
San Jacinto	LaPorte, TX	100.0	<u>165</u>	Natural Gas
Total Operating Natural Gas-Fired			<u>5,475</u>	
Total Operating Capacity			<u>11,010</u>	

(a) W. A. Parish has nine units, four of which are baseload coal-fired units and five of which are natural gas-fired units.

(b) Generation capacity figure consists of the Company's 44.0% undivided interest in the two units at STP.

(c) Actual capacity can vary depending on factors including weather conditions, operational conditions and other factors. The ERCOT requires periodic demonstration of capability, and the capacity may vary individually and in the aggregate from time to time. Excludes 2,200 MW of mothballed capacity available for redevelopment.

The following is a description of NRG's most significant revenue generating plants in the Texas region:

W.A. Parish — NRG's W.A. Parish plant is one of the largest fossil-fired plants in the US based on total MWs of generation capacity. This plant's power generation units include four coal-fired steam generation units with an aggregate generation capacity of 2,475 MW as of December 31, 2008. Two of these units are 645 MW and 650 MW steam units that were placed in commercial service in December 1977 and December 1978, respectively. The other two units are 570 MW and 610 MW steam units that were placed in commercial service in June 1980 and December 1982, respectively. Each of the four coal-fired units have low-NO_x burners and Selective Catalytic Reductions, or SCRs, installed to reduce NO_x emissions and baghouses to reduce particulates. In addition, W.A. Parish Unit 8 has a scrubber installed to reduce SO₂ emissions.

Limestone — NRG's Limestone plant is a lignite and coal-fired plant located approximately 140 miles northwest of Houston. This plant includes two steam generation units with an aggregate generation capacity of 1,690 MW as of December 31, 2008. The first unit is an 830 MW steam unit that was placed in commercial service in December 1985. The second unit is an 860 MW steam unit that was placed in commercial service in December 1986. Limestone burns lignite from an adjacent mine, but also burns low sulfur coal and petroleum coke. This serves to lower average fuel costs by eliminating fuel transportation costs, which can represent up to two-thirds of

delivered fuel costs for plants of this type. Both units have installed low-NO_x burners to reduce NO_x emissions and scrubbers to reduce SO₂ emissions.

NRG owns the mining equipment and facilities and a portion of the lignite reserves located at the adjacent mine. Mining operations are conducted by Texas Westmoreland Coal Co., a single purpose, wholly-owned subsidiary of Westmoreland Coal Company and the owner of a substantial portion of the remaining lignite reserves. The contract, entered into August 1999, ended on December 31, 2007. Effective January 1, 2008, NRG entered into an agreement with Texas Westmoreland Coal Co. to continue to supply lignite from the same surface mine adjacent to the facility for a nominal term of ten years with an option for future year supply purchases. This is a “cost-plus” arrangement under which NRG will pay all of Westmoreland’s agreed upon production costs, capital expenditures, and a per ton mark up. The annual volume demand is determined by NRG. The agreement ensures lignite supply to NRG and confirms NRG’s responsibility for the final reclamation at the mine.

South Texas Project Electric Generating Station — STP is one of the newest and largest nuclear-powered generation plants in the US based on total megawatts of generation capacity. This plant is located approximately 90 miles south of downtown Houston, near Bay City, Texas and consists of two generation units each representing approximately 1,335 MW of generation capacity. STP’s two generation units commenced operations in August 1988 and June 1989, respectively. For the year ended December 31, 2008, STP had a zero percent forced outage rate and a 98% net capacity factor.

STP is currently owned as a tenancy in common between NRG and two other co-owners. NRG owns a 44%, or approximately 1,175 MW, interest in STP, the City of San Antonio owns a 40% interest and the City of Austin owns the remaining 16% interest. Each co-owner retains its undivided ownership interest in the two nuclear-fueled generation units and the electrical output from those units. Except for certain plant shutdown and decommissioning costs and NRC licensing liabilities, NRG is severally liable, but not jointly liable, for the expenses and liabilities of STP. The four original co-owners of STP organized STPNOC to operate and maintain STP. STPNOC is managed by a board of directors composed of one director appointed by each of the three co-owners, along with the chief executive officer of STPNOC. STPNOC is the NRC-licensed operator of STP. No single owner controls STPNOC and most significant commercial as well as asset investment decisions for the existing units must be approved by two or more owners who collectively control more than 60% of the interests.

The two STP generation units operate under licenses granted by the NRC that expire in 2027 and 2028, respectively. These licenses may be extended for additional 20-year terms if the project satisfies NRC requirements. Adequate provisions exist for long-term on-site storage of spent nuclear fuel throughout the remaining life of the existing STP plant licenses.

Market Framework

The ERCOT market is one of the nation’s largest and historically fastest growing power markets. It represents approximately 85% of the demand for power in Texas and covers the entire state, with the exception of the far west (El Paso), a large part of the Texas Panhandle and two small areas in the eastern part of the state. For the past ten years, peak hourly demand in the ERCOT market grew at a compound annual rate of 2.2%, compared to a compound annual rate of growth of 1.9% in the US for the same period. For 2008, hourly demand ranged from a low of 19,665 MW to a high of 62,190 MW. The ERCOT market has limited interconnections compared to other markets in the US — currently limited to 1,106 MW of generation capacity, and wholesale transactions within the ERCOT market are not subject to regulation by the Federal Energy Regulatory Commission, or FERC. Any wholesale producer of power that qualifies as a power generation company under the Texas electric restructuring law and that accesses the ERCOT electric power grid is allowed to sell power in the ERCOT market at unregulated rates.

The ERCOT market has experienced significant construction of new generation plants, with over 36,000 MW of new generation capacity added to the market since 1999. As of December 31, 2008, installed generation capacity of approximately 83,000 MW existed in the ERCOT market, including 5,000 MW of generation that has suspended operations, or been “mothballed”. Natural gas-fired generation represents approximately 53,000 MW, or 64%. Approximately 22,400 MW, or 27%, was lower marginal cost generation capacity such as coal, lignite and nuclear plants. NRG’s coal and nuclear fuel baseload plants represent approximately 5,340 MW net, or 24%, of the total

solid fuel baseload net generation capacity in the ERCOT market. Additionally, NRG commenced commercial operations of the Sherbino Wind Farm and Elbow Creek Wind Farm which represents approximately 195 MW generation capacity for the Company. Both Sherbino and Elbow Creek Wind Farms are located in the physical control areas of the ERCOT market.

The ERCOT market has established a target equilibrium reserve margin level of approximately 12.5%. The reserve margin for 2008 was 14% forecast to increase to 16% for 2009 per ERCOT's latest Capacity Demand and Reserve Report. There are currently plans being considered by the Public Utility Commission of Texas, or PUCT, to build a significant amount of transmission from west Texas and continuing across the state to enable wind generation to reach load. The ultimate impact on the reserve margin and wholesale dynamics from these plans are unknown.

In the ERCOT market, buyers and sellers enter into bilateral wholesale capacity, power and ancillary services contracts or may participate in the centralized ancillary services market, including balancing energy, which the ERCOT administers. Published in August 2008, the "2007 State of the Market Report for the ERCOT Wholesale Electricity Markets" from the Independent Market Monitor indicated that natural gas prices were the primary driver of the trends in electricity prices from 2003 to 2007. As a result of NRG's lower marginal cost for baseload coal and nuclear generation assets, the Company expects these ERCOT assets to generate power nearly 100% of the time they are available.

The ERCOT market is currently divided into four regions or congestion zones, namely: North, Houston, South and West, which reflect transmission constraints that are commercially significant and which have limits as to the amount of power that can flow across zones. NRG's W.A. Parish plant, STP, and all its natural gas-fired plants are located in the Houston zone. NRG's Limestone plant is located in the North zone while the Sherbino and Elbow Creek wind farms are located in the West Zone.

The ERCOT market operates under the reliability standards set by the North American Electric Reliability Council. The PUCT has primary jurisdiction over the ERCOT market to ensure the adequacy and reliability of power supply across Texas's main interconnected power transmission grid. The ERCOT is responsible for facilitating reliable operations of the bulk electric power supply system in the ERCOT market. Its responsibilities include ensuring that power production and delivery are accurately accounted for among the generation resources and wholesale buyers and sellers. Unlike power pools with independent operators in other regions of the country, the ERCOT market is not a centrally dispatched power pool and the ERCOT does not procure power on behalf of its members other than to maintain the reliable operations of the transmission system. The ERCOT also serves as an agent for procuring ancillary services for those who elect not to provide their own ancillary services.

Power sales or purchases from one location to another may be constrained by the power transfer capability between locations. Under the current ERCOT protocol, the commercially significant constraints and the transfer capabilities along these paths are reassessed every year and congestion costs are directly assigned to those parties causing the congestion. This has the potential to increase power generators' exposure to the congestion costs associated with transferring power between zones.

The PUCT has adopted a rule directing the ERCOT to develop and implement a wholesale market design that, among other things, includes a day-ahead energy market and replaces the existing zonal wholesale market design with a nodal market design that is based on locational marginal prices for power. See also *Regional Regulatory Developments — Texas Region*. One of the stated purposes of the proposed market restructuring is to reduce local (intra-zonal) transmission congestion costs. The market redesign project is now proposed to take effect in December 2010. NRG expects that implementation of any new market design will require modifications to its existing procedures and systems. Although NRG does not expect the Company's competitive position in the ERCOT market to be materially adversely affected by the proposed market restructuring, the Company does not know for certain how the planned market restructuring will affect its revenues, and some of NRG's plants in the ERCOT may experience adverse pricing effects due to their location on the transmission grid.

NORTHEAST

NRG's second largest asset base is located in the Northeast region of the US and is comprised of investments in generation facilities primarily located in the physical control areas of NYISO, the ISO-NE and PJM.

Operating Strategy

The Northeast region's strategy is focused on optimizing the value of NRG's broad and varied generation portfolio in the three interconnected and actively traded competitive markets: the NYISO, the ISO-NE and the PJM. In the Northeast markets, load-serving entities generally lack their own generation capacity, with much of the generation base aging and the current ownership of the generation highly disaggregated. Thus, commodity prices are more volatile on an as-delivered basis than in other NRG regions due to the distance and occasional physical constraints that impact the delivery of fuel into the region. In this environment, NRG seeks both to enhance its ability to be the low cost wholesale generator capable of delivering wholesale power to load centers within the region from multiple locations using multiple fuel sources, and to be properly compensated for delivering such wholesale power and related services.

The generation performance by fuel-type for the recent three-year period is as shown below:

	<u>Net Generation</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
	<u>(In thousands of MWh)</u>		
Coal	11,506	11,527	11,042
Oil	349	1,169	1,217
Gas	<u>1,494</u>	<u>1,467</u>	<u>1,050</u>
Total	<u>13,349</u>	<u>14,163</u>	<u>13,309</u>

NRG's Northeast region assets are located in or near load centers and inside chronic transmission constraints such as New York City, southwestern Connecticut and the Delmarva Peninsula. Assets in these areas tend to attract higher capacity revenues and higher energy revenues and thus present opportunities for repowering these sites. The Company has benefited from the introduction of capacity market reforms in both the New England Power Pool, or NEPOOL, and PJM. The Locational Forward Reserve Markets, or LFRM, in the NEPOOL, became effective October 1, 2006, and the transition capacity payments were effective December 1, 2006. In all five LFRM auctions to date, the market has cleared at the administratively set price of \$14/kw month reflecting the shortage of peaking generation especially in the Connecticut zone. The LFRM and interim capacity payments serve as a prelude to the full implementation of the Forward Capacity Market, or FCM, which begins June 1, 2010. PJM's Reliability Pricing Model, or RPM, became effective June 1, 2007, and the Company has participated in auctions providing capacity price certainty through May 2012.

RMR Agreements — Several of the Northeast region's Connecticut assets are located in transmission-constrained load pockets and have been designated as required to be available to ISO-NE to ensure reliability. These assets are subject to Reliability-Must-Run, or RMR, agreements, which are contracts under which NRG agrees to maintain its facilities to be available to run when needed, and are paid to provide these capability services based on the Company's costs. During 2008, Middletown, Montville and Norwalk Power (units 1 and 2) were covered by RMR agreements. Unless terminated earlier, these agreements will terminate on June 1, 2010, which coincides with the commencement of the FCM in NEPOOL.

Generation Facilities

As of December 31, 2008, NRG's generation facilities in the Northeast region consisted of approximately 7,020 MW of generation capacity, including assets located in transmission constrained areas, such as New York City — 1,415 MW, and Southwest Connecticut — 575 MW.

The Northeast region power generation assets are summarized in the table below:

<u>Plant</u>	<u>Location</u>	<u>% Owned</u>	<u>Net Generation Capacity (MW)</u>	<u>Primary Fuel-type</u>
Oswego	Oswego, NY	100.0	1,635	Oil
Arthur Kill	Staten Island, NY	100.0	865	Natural Gas
Middletown	Middletown, CT	100.0	770	Oil
Indian River	Millsboro, DE	100.0	740	Coal
Astoria Gas Turbines	Queens, NY	100.0	550	Natural Gas
Huntley	Tonawanda, NY	100.0	380	Coal
Dunkirk	Dunkirk, NY	100.0	530	Coal
Montville	Uncasville, CT	100.0	500	Oil
Norwalk Harbor	So. Norwalk, CT	100.0	340	Oil
Devon	Milford, CT	100.0	140	Natural Gas
Vienna	Vienna, MD	100.0	170	Oil
Somerset Power ^(a)	Somerset, MA	100.0	125	Coal
Connecticut Remote Turbines	Four locations in CT	100.0	145	Oil/Natural Gas
Conemaugh	New Florence, PA	3.7	65	Coal
Keystone	Shelocta, PA	3.7	65	Coal
Total Northeast Region			<u>7,020</u>	

(a) Somerset had previously entered into an agreement with the Massachusetts Department of Environmental Protection, or MADEP, to retire or repower the remaining coal-fired unit at Somerset by the end of 2009. In connection with a repowering proposal approved by the MADEP, the date for the shut-down of the unit was extended to September 30, 2010.

The following is a description of NRG's most significant revenue generating plants in the Northeast region:

Arthur Kill — NRG's Arthur Kill plant is a natural gas-fired power plant consisting of three units and is located on the west side of Staten Island, New York. The plant produces an aggregate generation capacity of 865 MW from two intermediate load units (Units 20 and 30) and one peak load unit (Unit GT-1). Unit 20 produces an aggregate generation capacity of 350 MW and was installed in 1959. Unit 30 produces an aggregate generation capacity of 505 MW and was installed in 1969. Both Unit 20 and Unit 30 were converted from coal-fired to natural gas-fired facilities in the early 1990s. Unit GT-1 produces an aggregate generation capacity of 10 MW and is activated when Consolidated Edison issues a maximum generation alarm on hot days and during thunderstorms.

Astoria Gas Turbine — Located in Astoria, Queens, New York, the NRG Astoria Gas Turbine facility occupies approximately 15 acres within the greater Astoria Generating complex which includes several competing generating facilities. NRG's Astoria Gas Turbine facility has an aggregate generation capacity of approximately 550 MW from 19 operational combustion turbine generators classified into three types of turbines. The first group consists of 12 gas-fired Pratt & Whitney GG-4 Twin Packs in Buildings 2, 3 and 4, which have a net generation capacity of 145 MW per building. The second group consists of Westinghouse Industrial Combustion Turbines #191A in Buildings 5, 7 and 8 that fire on liquid distillate with a net generation capacity of approximately 12 MW per building. The third group consists of Westinghouse Industrial Gas Turbines #251GG located in Buildings 10, 11, 12 and 13 and fired on liquid distillate with a net generation capacity of 20 MW per building. The Astoria units also supply Black Start Service to the NYISO. The site also contains tankage for distillate fuel with a capacity of 86,000 barrels.

Dunkirk — The Dunkirk plant is a coal-fired plant located on Lake Erie in Dunkirk, New York. This plant produces an aggregate generation capacity of 530 MW from four baseload units. Units 1 and 2 produce up to 75 MW each and were put in service in 1950, and Units 3 and 4 produce approximately 190 MW each and were put in service in 1959 and 1960, respectively. In a settlement agreement reached with the New York Department of Environmental Conservation, or NYSDEC, in January 2005, NRG committed to reducing SO₂ emissions from

Dunkirk and Huntley stations by 86.8% below baseline emissions of 107,144 by 2013 and NO_x emissions by 80.9% below baseline emission of 17,005 by 2012. In order to comply with the NYSDEC settlement agreement, as well as with various federal and state emissions standards, the Company is in the process of installing back-end control facilities at Dunkirk that are anticipated to be completed in the fall 2009.

Huntley — The Huntley plant is a coal-fired plant consisting of six units and is located in Tonawanda, New York, approximately three miles north of Buffalo. The plant has a net generation capacity of 380 MW from two baseload units (Units 67 and 68). Units 67 and 68 generate a net capacity of approximately 190 MW each, and were put in service in 1957 and 1958, respectively. Units 63 and 64 are inactive and were officially retired in May 2006. To comply with the January 2005 NYSDEC settlement agreement referenced above, NRG retired Units 65 and 66 effective June 3, 2007, and as of January 2009, has completed Huntley's back-end control facilities.

Indian River — The Indian River Power plant is a coal-fired plant located in southern Delaware on a 1,170 acre site. The plant consists of four coal-fired electric steam units (units 1 through 4) and one 15 MW combustion turbine, bringing total plant capacity to approximately 740 MW. Units 1 and 2 are each 80 MW of capacity and were placed in service in 1957 and 1959, respectively. Unit 3 is 155 MW of capacity and was placed in service in 1970, while Unit 4 is 410 MW of capacity and was placed in service in 1980. Units 1, 2, 3 and 4 are equipped with selective non-catalytic reduction systems, for the reduction of NO_x emissions. All four units are equipped with electrostatic precipitators to remove fly ash from the flue gases as well as low NO_x burners with over fired air to control NO_x emissions and activated carbon injection systems to control mercury. Units 1, 2 and 3 are fueled with eastern bituminous coal, while Unit 4 is fueled with low sulfur compliance coal. Pursuant to a consent order dated September 25, 2007, between NRG and the Delaware Department of Natural Resources and Environmental Control, or DNREC, NRG agreed to operate the units in a manner that would limit the emissions of NO_x, SO₂ and mercury. Further, the Company agreed to mothball unit 2 by May 1, 2010, and unit 1 by May 1, 2011, and has notified PJM of the plan to mothball these units. In the absence of the appropriate control technology installed at this facility, Units 3 and 4 totaling approximately 565 MW, could not operate beyond December 31, 2011, per terms of the consent order.

Market Framework

Although each of the three Northeast Independent Systems Operators, or ISOs, and their respective energy markets are functionally, administratively and operationally independent, they all follow, to a certain extent, similar market designs. Each ISO dispatches power plants to meet system energy and reliability needs, and settles physical power deliveries at Locational Marginal Prices, or LMPs, which reflect the value of energy at a specific location at the specific time it is delivered. This value is determined by an ISO-administered auction process, which evaluates and selects the least costly supplier offers or bids to create a reliable and least-cost dispatch. The ISO-sponsored LMP energy markets consist of two separate and characteristically distinct settlement time frames. The first is a financially firm, day-ahead unit commitment market. The second is a financially settled, real-time dispatch and balancing market. Prices paid in these LMP energy markets, however, are affected by, among other things, market mitigation measures, which can result in lower prices associated with certain generating units that are mitigated because they are deemed to have locational market power.

SOUTH CENTRAL

As of December 31, 2008, NRG owned approximately 2,845 MW of generating capacity in the South Central region of the US. The region lacks a regional transmission organization or ISO and, therefore, remains a bilateral market, which is not able to take advantage of the large scale economic dispatch of an ISO-administered energy market. NRG operates the LaGen Control Area which encompasses the generating facilities and the Company's cooperative load. As a result, the LaGen control area is capable of providing control area services, in addition to wholesale power, that allows NRG to provide full requirement services to load-serving entities, thus making the LaGen Control Area a competitive alternative to the integrated utilities operating in the region.

Operating Strategy

The South Central region maximizes its strategic position as a significant coal-fired generator in a market that is highly dependent on natural gas for power generation. South Central also has long-term full service contracts with eleven rural cooperatives serving load across Louisiana and makes incremental wholesale energy sales when its coal-fired capacity exceeds the cooperative contract requirements. The South Central region works to expand its customer base within and beyond Louisiana and works within the confines of the Entergy Transmission System to obtain paths for incremental sales as well as secure transmission service for long-term sales or expansions.

The generation performance by fuel-type for the recent three-year period is as shown below:

	<u>Net Generation</u>		
	<u>2008</u>	<u>2007</u>	<u>2006</u>
	(In thousands of MWh)		
Coal	10,912	10,812	10,968
Gas	<u>236</u>	<u>118</u>	<u>68</u>
Total	<u>11,148</u>	<u>10,930</u>	<u>11,036</u>

Generation Facilities

NRG's generating assets in the South Central region consist primarily of its net ownership of power generation facilities in New Roads, Louisiana, which is referred to as Big Cajun II, and also includes the Sterlington, Rockford, Bayou Cove and Big Cajun peaking facilities.

NRG's power generation assets in the South Central region as of December 31, 2008, are summarized in the table below:

<u>Plant</u>	<u>Location</u>	<u>% Owned</u>	<u>Net Generation Capacity (MW)</u>	<u>Primary Fuel type</u>
Big Cajun II ^(a)	New Roads, LA	86.0	1,490	Coal
Bayou Cove	Jennings, LA	100.0	300	Natural Gas
Big Cajun I — (Peakers) Units 3 and 4	Jarreau, LA	100.0	210	Natural Gas
Big Cajun I — Units 1 and 2	Jarreau, LA	100.0	220	Natural Gas/Oil
Rockford I	Rockford, IL	100.0	300	Natural Gas
Rockford II	Rockford, IL	100.0	150	Natural Gas
Sterlington	Sterlington, LA	100.0	<u>175</u>	Natural Gas
Total South Central			<u>2,845</u>	

(a) NRG owns 100% of Units 1 & 2; 58% of Unit 3

Big Cajun II — NRG's Big Cajun II plant is a coal-fired, sub-critical baseload plant located along the banks of the Mississippi River, near Baton Rouge, Louisiana. This plant includes three coal-fired generation units (Units 1, 2 and 3) with an aggregate generation capacity of 1,730 MW. The plant uses coal supplied from the Powder River Basin and was commissioned between 1981 and 1983. NRG owns 100% of Units 1 and 2 and a 58% undivided interest in Unit 3 for an aggregate owned capacity of 1,490 MW of the plant. All three units have been upgraded with advanced low-NOx burners and overfire air systems.

Market Framework

NRG's assets in the South Central region are located within the franchise territories of vertically integrated utilities, primarily Entergy Corp., or Entergy. In the South Central region, all power sales and purchases are consummated bilaterally between individual counterparties. Transacting counterparties are required to procure transmission service from the relevant transmission owners at their FERC-approved tariff rates.

As of December 31, 2008, NRG had long-term all-requirements contracts with eleven Louisiana distribution cooperatives with initial terms ranging from five to twenty-five years. The South Central region has seven contracts in the region that expire in 2025, with the remaining four contracts expiring between 2009 and 2014. In addition, NRG also has certain long-term contracts with the Municipal Energy Authority of Mississippi, South Mississippi Electric Power Association, Southwestern Electric Power Company and CLECO, which collectively comprised an additional 10% of the region's contract load requirement.

During limited peak demand periods, the load requirements of these contract customers exceed the baseload capacity of NRG's coal-fired Big Cajun II plant. During such peak demand periods, NRG either employs its owned or leased gas-fired assets or purchases power from external sources, frequently at higher prices than can be recovered under the Company's contracts. As the load of the region's customers grows and until certain of these load obligations expire, the Company can expect this imbalance to worsen, unless NRG is successful in renegotiating the terms of these long-term contracts or purchasing other low-cost generation to meet demand. NRG has to date successfully prevented the addition of large industrial or municipal loads at below-market contract rates. Also, to minimize this risk during the peak summer and winter seasons, the Company has been successful in entering into structured agreements to reduce or eliminate the need for spot market purchases.

WEST

NRG's portfolio in the West region currently consists of the Long Beach Generating Station, the El Segundo Generating Station, the Encina Generating Station and Cabrillo II, which consists of 12 combustion turbines located in San Diego County. In addition, NRG owns a 50% interest in the Saguaro power plant located in Nevada.

Operating Strategy

NRG's West region strategy is focused on maximizing the cash flow and value associated with its generating plants and the development of repowering projects that leverage off of existing assets and sites, as well as the preservation and ultimate realization of the commercial value of the underlying real estate. There are three principal components to this strategy: (1) capturing the value of the portfolio's generation assets through a combination of forward contracts and market sales of capacity, energy, and ancillary services; (2) leveraging existing site control and emission allowances to permit new, more efficient generating units at existing sites; and (3) optimizing the value of the region's coastal property for other purposes.

The Company's Encina Generating Station has sold all energy and capacity, 965 MW, in the aggregate, to a load-serving entity through 2009, on a tolling basis, and recovers its operating costs plus a capacity payment. The tolling agreement includes the sale of station's Resource Adequacy, or RA, capacity and consequently the RMR contract with the CAISO on the Encina units was terminated effective December 31, 2007. For calendar year 2008, the El Segundo station has entered into a combination of tolling and RA contracts with multiple load-serving entities and power marketers. The RA contracts covered 387 MW of the available 670 MW and the tolls covered 670 MWs during all available months. For calendar year 2009, El Segundo station entered into approximately 548 MWs RA contracts and is placing the capacity in the market through a portfolio of forward contracts. Cabrillo II sold 28 MW of RA capacity for calendar year 2008, 188 MW of RA capacity for calendar year 2009, and for the

period January 1, 2010 through November 30, 2013, 88 MW. The Cabrillo II RMR agreement was terminated on December 31 2008. Units with RA contracts also sell into energy and ancillary services markets consistent with unit availability.

The Saguaro power plant is located in Henderson, Nevada, and is contracted to Nevada Power and two steam hosts. The Saguaro plant is contracted to Nevada Power through 2022, one steam host, referred to as Olin (formerly known as Pioneer), whose contract was extended in 2007 for an additional two years, and a steam off-taker, Ocean Spray, whose contract runs through 2015. Saguaro Power Company, LP, the project company, procures fuel in the open market. NRG manages its share of any fuel price risk through NRG's commodity price risk strategy.

Generation Facilities

NRG's power generation assets in the West region as of December 31, 2008 are summarized in the table below:

<u>Plant</u>	<u>Location</u>	<u>% Owned</u>	<u>Net Generation Capacity (MW)</u>	<u>Primary Fuel-type</u>
Encina	Carlsbad, CA	100.0	965	Natural Gas
El Segundo.	El Segundo, CA	100.0	670	Natural Gas
Long Beach	Long Beach, CA	100.0	260	Natural Gas
Cabrillo II	San Diego, CA	100.0	190	Natural Gas
Saguaro	Henderson, NV	50.0	45	Natural Gas
Total West Region			<u>2,130</u>	

The following are descriptions of the Company's most significant revenue generating plants in the West region:

Encina — The Encina Station is located in Carlsbad, California and has a combined generating capacity of 965 MW from five fossil-fuel steam-electric generating units and one combustion turbine. The five fossil-fuel steam-electric units provide intermediate load services and use natural gas. Also located at the Encina Station is a combustion turbine that provides peaking and black-start services of 15 MW. Units 1, 2 and 3 each have a generation capacity of approximately 107 MW and were installed in 1954, 1956 and 1958, respectively. Units 4 and 5 have a generation capacity of approximately 300 MW and 330 MW respectively, and were installed in 1973 and 1978. The combustion turbine was installed in 1966. Low NOx burner modifications and SCR equipment have been installed on all the steam units.

El Segundo — The El Segundo plant is located in El Segundo, California and produces an aggregate generation capacity of 670 MW from two gas-fired intermediate load units (Units 3 and 4). These units, which have a generation capacity of 335 MW each, were installed in 1964 and 1965, respectively. SCR equipment has been installed on Units 3 and 4.

Long Beach — On August 1, 2007, the Company successfully completed and commissioned the repowering of 260 MW of gas-fired generating capacity at its Long Beach Generating Station. Generation from Long Beach provides needed support for the summer peak and during transmission contingencies to load serving entities and the California Independent System Operator. This project is backed by a 10-year PPA executed with SCE in November 2006 and effective through July 31, 2017. The new generation consists of refurbished gas turbines with SCR equipment.

Cabrillo II — Cabrillo II consists of 12 combustion turbines located on 4 sites throughout San Diego County with an aggregate generating capacity of approximately 190 MW. The combustion turbines were installed between 1968 and 1972 and are operated under a license agreement with SDG&E through 2013. The combustion turbines provide peaking services and serve a reliability function for the CAISO.

Market Framework

Except for the Saguaro facility, NRG's generation assets in the West region operate within the balancing authority of CAISO. CAISO's current market allows NRG's CAISO assets to serve multiple load serving entities, or LSEs, and operates a zonal balancing market and congestion clearing mechanism. CAISO also has a locational capacity requirement, which requires LSEs to procure a significant portion of load from defined local reliability areas. All of NRG's CAISO assets are in the Los Angeles or San Diego local reliability areas. It is expected that on April 1, 2009, CAISO's new market, known as Market Redesign and Technology Upgrade, or MRTU, will become operational. MRTU will establish a day-ahead market for energy and ancillary services and will settle prices locationally. NRG's CAISO assets are all peaking and intermediate in nature and are well positioned to capitalize on the higher locational prices that may result from LMPs in location constrained areas and will continue to satisfy local distribution company capacity requirements. Longer term, NRG's California portfolio's locational advantage may be impacted by new transmission, which may affect load pocket procurement requirements. So far, however, the impacts of increasing demand and need for flexible cycling capability combined with delays in the online date of new transmission have muted the impact of this long-term threat.

California's resource mix will be significantly shaped in the years ahead by California's renewable portfolio standard and its greenhouse gas reduction rules promulgated pursuant to Assembly Bill 32 — California Global Warming Solutions Act of 2006, or AB32. In particular, the state's renewable portfolio standard is currently targeted at 20% for 2010 and has been set for 33% by 2020 via Executive Order. While the target requires ratification via legislation, the goal has been widely supported and is expected to create greater demand for low emission resources. The intermittent and remote nature of most renewable resources will still leave a strong demand for flexible load pocket resources. NRG's California portfolio may also be impacted by any mechanism, such as cap-and-trade, that places a price on incremental carbon emissions. NRG's expectation is that the emission costs will be reflected in the market price of power and that the net cost to our existing portfolio of intermediate and peaking resources will be manageable.

California's investor-owned utilities are sponsoring competitive solicitations for new fossil and renewable generating capacity. NRG has submitted offers for new generation capacity to be constructed at the El Segundo and Encina sites. The new projects are in the process of obtaining necessary permits by the California Energy Commission and their respective regional air districts, and are supported by air emissions credits that have been banked after the retirement of older generating units. While neither project will be constructed without a long-term off-take agreement with a credit worthy counter-party, both projects have cost and location advantages that enhance their competitive prospects.

INTERNATIONAL

As of December 31, 2008, NRG, through certain foreign subsidiaries, had investments in power generation projects located in Australia and Germany with approximately 1,080 MW of generation capacity. In addition, NRG owns interests in coal mines located in Germany. The Company's strategy is to maximize its return on investment and concentrate on contract management; monitoring of its facility operators to ensure safe, profitable and sustainable operations; management of cash flow and finances; and growth of its businesses through investments in projects related to current businesses.

NRG's international power generation assets as of December 31, 2008, are summarized in the table below:

<u>Plant</u>	<u>Location</u>	<u>% Owned</u>	<u>Net Generation Capacity (MW)</u>	<u>Primary Fuel-type</u>
Gladstone	Australia	37.5	605	Coal
Schkopau	Germany	41.9	400	Lignite
MIBRAG	Germany	50.0	<u>75</u>	Lignite
Total International			<u>1,080</u>	

Australia — The Gladstone power station is owned by an unincorporated joint venture. As a member of the venture, the Company owns an undivided 37.5% interest in assets of the power station and a 37.5% interest in its output. A wholly owned subsidiary, NRG Gladstone Operating Services, serves as the station's sole operator. Because NRG is neither the majority owner nor the joint venture manager, NRG does not have unilateral control over the operation, maintenance, and management of this asset. Gladstone station's output is fully contracted through 2029 to Boyne Smelter Limited and Stanwell Corporation Limited. Boyne Smelter is owned by a consortium whose members include all the members of the Gladstone joint venture other than NRG. Its business is to refine alumina into aluminum. Stanwell is a state owned corporation that generates power, purchases power from other generators such as Gladstone, trades power in the Australian National Electricity Market, and delivers power to retail customers.

On June 8, 2006, NRG announced the sale of the Company's 37.5% interest in the joint venture and its 100% interest in NRG Gladstone Operating Services to Transfield Services Infrastructure B.V, or Transfield Services, of Australia. On October 9, 2008, Transfield Services terminated the Gladstone sale and purchase agreement at no cost or expense to the parties, other than transaction costs which are immaterial as to NRG, because of its inability to achieve necessary third party consents. Subsequent negotiations over a plan to reorganize the Gladstone project to facilitate NRG's exit stalled due to a precipitous decline in aluminum prices and asset prices in the second half of 2008. With aluminum demand predicted by some to show little or no growth in 2009 and asset prices showing no signs of recovery, NRG's stay in Australia may be extended. Fortunately, the long term off-take agreements will insulate the Gladstone project from the effects of the recession. The Company will aggressively pursue other options to preserve, protect and enhance the value of this investment.

Germany — NRG's interests in Germany include a 50% equity interest in Mitteldeutsche Braunkohlengesellschaft mbH, or MIBRAG, which mines approximately 19 million metric tonnes of lignite per year and owns 150 MW of electric generation capacity, and a 41.9% interest in Schkopau, a 900 MW generating plant fueled with lignite from MIBRAG. NRG does not have direct operational control of either of these facilities.

Approximately 82% of MIBRAG's revenues is generated from lignite sales. MIBRAG's generation capacity comprises three plants, 33% of their output is used to power MIBRAG's mining operations and the balance is sold, either under a contract or at spot, primarily to EnviaM, the local distribution utility. NRG, through its wholly-owned subsidiary Saale Energie GmbH, or SEG, owns 400 MW of the Schkopau plant's electric capacity which is sold under a long-term contract to Vattenfall Europe Generation, AG.

Brazil — On April 28, 2008, NRG completed the sale of its 100% interest in Tosli Acquisition B.V., or Tosli, which held all NRG's 99.2% voting equity interest in a 156 MW hydroelectric power plant through Itiquira Energetica S.A., or ITISA, to Brookfield Renewable Power Inc. (previously Brookfield Power Inc.), a wholly-owned subsidiary of Brookfield Asset Management Inc. In addition, the purchase price adjustment contingency under the sale agreement was resolved on August 7, 2008. In connection with the sale, NRG received \$300 million of cash proceeds from Brookfield, and removed \$163 million of assets, including \$59 million of cash, \$122 million of liabilities, including \$63 million of debt, and \$15 million in foreign currency translation adjustment from its 2008 consolidated balance sheet. As discussed in Item 15 — Note 3, *Discontinued Operations Business Acquisitions and Dispositions*, to the Consolidated Financial Statements, the activities of Tosli and ITISA has been classified as discontinued operations.

THERMAL

Through its wholly-owned subsidiary, NRG Thermal LLC, or NRG Thermal, the Company owns thermal and chilled water businesses that have a steam and chilled water capacity of approximately 1,020 megawatts thermal equivalent, or MWt. As of December 31, 2008, NRG Thermal provided steam heating to approximately 505 customers and chilled water to 100 customers in five cities in the US. The Company's thermal businesses in Pittsburgh, Harrisburg and San Francisco are regulated by their respective state Public Utility Commission. The other thermal businesses are subject to contract terms with their customers. In addition, NRG Thermal owns and operates a thermal project that serves an industrial customer with high-pressure steam. NRG Thermal also owns an 88 MW combustion turbine peaking generation facility and a 15 MW coal-fired cogeneration facility in Dover,

Delaware as well as a 12 MW gas-fired project in Harrisburg, Pennsylvania. Approximately 39% of NRG Thermal's revenues are derived from its district heating and chilled water business in Minneapolis, Minnesota.

Regulatory Matters

As operators of power plants and participants in wholesale energy markets, certain NRG entities are subject to regulation by various federal and state government agencies. These include the CFTC, FERC, NRC, PUCT and other public utility commissions in certain states where NRG's generating or thermal assets are located. In addition, NRG is subject to the market rules, procedures, and protocols of the various ISO markets in which it participates. NRG must also comply with the mandatory reliability requirements imposed by the North American Electric Reliability Corporation, or NERC, and the regional reliability councils in the regions where the Company operates.

The operations of, and wholesale electric sales from, NRG's Texas region are not subject to rate regulation by the FERC, as they are deemed to operate solely within the ERCOT market and not in interstate commerce. As discussed below, these operations are subject to regulation by PUCT, as well as to regulation by the NRC with respect to the Company's ownership interest in STP.

Commodities Futures Trading Commission, or CFTC

The CFTC, among other things, has regulatory oversight authority over the trading of electricity and gas commodities, including financial products and derivatives, under the Commodity Exchange Act, or CEA. Specifically, under existing statutory authority, CFTC has the authority to commence enforcement actions and seek injunctive relief against any person, whenever that person appears to be engaged in the communication of false or misleading or knowingly inaccurate reports concerning market information or conditions that affected or tended to affect the price of natural gas, a commodity in interstate commerce, or actions intended to or attempting to manipulate commodity markets. The CFTC also has the authority to seek civil monetary penalties, as well as the ability to make referrals to the Department of Justice for criminal prosecution, in connection with any conduct that violates the CEA. Proposals are pending in Congress to expand CFTC oversight of the over-the-counter markets and bilateral financial transactions.

Federal Energy Regulatory Commission

The FERC, among other things, regulates the transmission and the wholesale sale of electricity in interstate commerce under the authority of the Federal Power Act, or FPA. In addition, under existing regulations, the FERC determines whether an entity owning a generation facility is an Exempt Wholesale Generator, or EWG, as defined in the Public Utility Holding Company Act of 2005, or PUHCA of 2005. The FERC also determines whether a generation facility meets the ownership and technical criteria of a Qualifying Facility, or QF, under Public Utility Regulatory Policies Act of 1978, or PURPA. Each of NRG's US generating facilities has either been determined by the FERC to qualify as a QF, or the subsidiary owning the facility has been determined to be a EWG.

Federal Power Act — The FPA gives the FERC exclusive rate-making jurisdiction over the wholesale sale of electricity and transmission of electricity in interstate commerce. Under the FPA, the FERC, with certain exceptions, regulates the owners of facilities used for the wholesale sale of electricity or transmission in interstate commerce as public utilities. The FPA also gives the FERC jurisdiction to review certain transactions and numerous other activities of public utilities. NRG's QFs are currently exempt from the FERC's rate regulation under Sections 205 and 206 of the FPA to the extent that sales are made pursuant to a state regulatory authority's implementation of PURPA.

Public utilities under the FPA are required to obtain the FERC's acceptance, pursuant to Section 205 of the FPA, of their rate schedules for the wholesale sale of electricity. All of NRG's non-QF generating and power marketing companies in the US make sales of electricity pursuant to market-based rates authorized by the FERC. The FERC's orders that grant NRG's generating and power marketing companies market-based rate authority reserve the right to revoke or revise that authority if the FERC subsequently determines that NRG can exercise market power, create barriers to entry, or engage in abusive affiliate transactions. In addition, NRG's market-based sales are subject to certain market behavior rules and, if any of its generating or power marketing companies were deemed to have violated any one of those rules, they would be subject to potential disgorgement of profits associated

EXHIBIT 6

27
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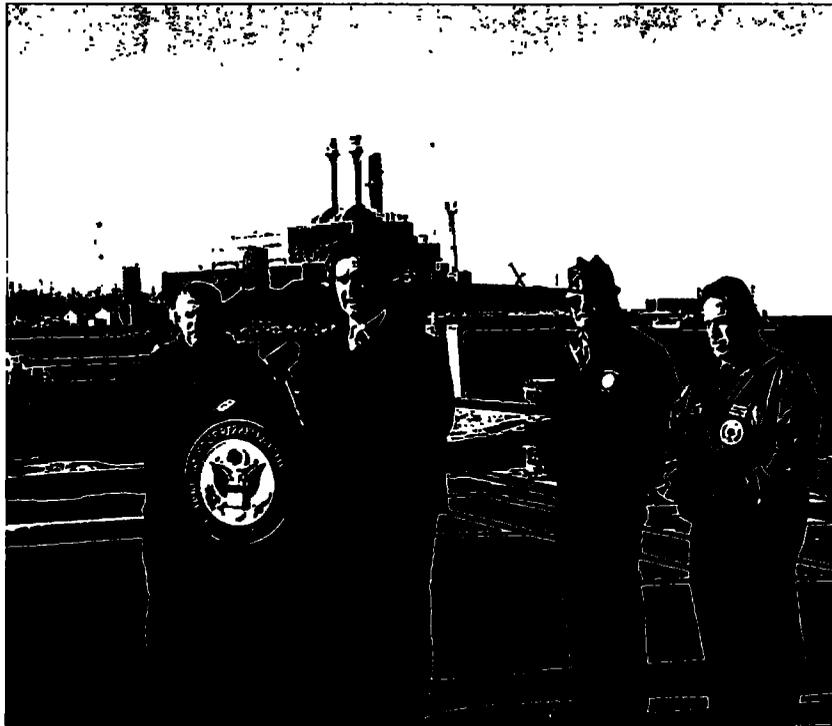
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November 11, 2009

Congressman Higgins Announces Army Corps Work in the Dunkirk Harbor

\$1.196 Million in Federal Funds Support Channel Project



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Congressman Brian Higgins (NY-27) announced that the U.S. Army Corps of Engineers is in town conducting work in the Dunkirk Harbor. The project is funded with \$820,000 through the Recovery Act and \$376,000 secured by Congressman Higgins in the House Energy and Water bill.

Work is ongoing along both the recreational and commercial channels. The Army Corps estimates that without this work, continued shoaling, limiting commercial and recreational use, would have cost the local economy approximately \$2.159 million per year in lost revenue.

"The developing Dunkirk Harbor draws tourism dollars to the region and supports local business and jobs here," said Congressman Higgins, a member of the Congressional Great Lakes Caucus. "This dredge work literally clears the way for new economic opportunities for the Dunkirk region."

Clearing the commercial channel will allow NRG to receive coal by vessel, reducing the need for rail freight which creates an obstruction to Route 5. The Harbor is also a popular spot for recreational boating and sport fishing.

In April members of Congressman Higgins staff and Mayor Frey's staff met with representatives from the Army Corps of Engineers to review the details of the project.

Last August the Army Corps issued a notice warning vessel operators to use caution when navigating in the area due to reduced depths in the Harbor. Failure to dredge would result in continued reduced channel dimensions resulting in light loading and increased transportation costs. The current sediment backlog within the harbor is extensive. The area was last dredged by the U.S. Army Corps of Engineers in 2004. Regular maintenance calls for dredging every two years.

EXHIBIT 7

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April 20, 2009

Congressman Higgins & Mayor Frey Announce \$376,000 for Dunkirk Harbor

Funding Will Provide Easier Water Access to Dunkirk



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Congressman Brian Higgins (NY-27) and City of Dunkirk Mayor Richard Frey announced \$376,000 in federal funding for dredging efforts in Dunkirk Harbor. The funding, secured by Congressman Higgins through the House Energy and Water bill at the request of Mayor Frey, will allow for smoother sailing of recreational and commercial vessels navigating the waters.

"This funding will support work by the Army Corps of Engineers to clear the way for the efficient flow of tourism traffic and commercial goods along this important corridor," said Congressman Higgins, a member of the Congressional Great Lakes Caucus.

"The Dunkirk Small Boat Harbor is the cornerstone of our summer recreational economy from our multiple world class fishing tournaments to the countless charter businesses, this funding secured by Congressman Higgins will assist these ventures and the City's waterfront revitalization as a whole. This particular funding illustrates just how well Congressman Higgins knows the needs and challenges of our community and continues to be a great friend of the City of Dunkirk" said Mayor Frey.

The area was last dredged by the U.S. Army Corps of Engineers in 2004. Regular maintenance calls for dredging every two years. The current sediment backlog within the harbor is extensive.

Last August the Army Corps issued a notice warning vessel operators to use caution when navigating in the area due to reduced depths in the Harbor. Failure to dredge would result in continued reduced channel

dimensions resulting in light loading and increased transportation costs. The Army Corps estimates that further shoaling, limiting commercial use of the Harbor could cost approximately \$4.3 million a year in lost revenue.

In addition to improving conditions for general public and commercial use, dredging will provide NRG with the option to bring in their coal by freighter.

In the summer of 2006 Mayor Frey and Congressman Higgins worked to have a new Customs and Border Protection Videophone installed at the Dunkirk Pier which makes it easier for Canadian and other international travelers to visit Dunkirk via water. Last May the City celebrated the grand opening of the Dunkirk Boardwalk Market, a waterfront multi-tenant retail establishment. This year the City in conjunction with SUNY Fredonia will open a new small business incubator, which also received funding through Congressman Higgins. Most recently the Dunkirk Local Development Corporation approved a loan to provide assistance for a proposed indoor water park at the Clarion Hotel in the City.

"This builds on the positive momentum we see in the City under the leadership of Mayor Frey and creates another infrastructure investment from which to attract visitors and new business to the region," added Higgins.

According to the Environmental Protection Agency, more than 30 million people live in the Great Lakes basin. The Great Lakes represent the largest surface source of fresh water on the planet.