

Edgar Filing: ABLE ENERGY INC - Form 10-Q

ABLE ENERGY INC  
Form 10-Q  
November 22, 2004

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2004

OR

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 001-15035

ABLE ENERGY, INC.

(Exact name of registrant as specified in its charter)

DELAWARE  
(State or other jurisdiction of  
incorporation or organization)

22-3520840  
(I.R.S. employer  
identification No.)

198 GREEN POND ROAD  
ROCKAWAY, NJ  
(Address of principal executive offices)

07866  
(Zip code)

Registrant's telephone number, including area code: (973) 625-1012

NOT APPLICABLE

(Former name, former address and former fiscal year,  
if changed since last report)

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

APPLICABLE ONLY TO ISSUERS INVOLVED IN BANKRUPTCY  
PROCEEDINGS DURING THE PRECEDING FIVE YEARS

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

APPLICABLE ONLY TO CORPORATE ISSUERS

As of November 22, 2004, 2,013,250 shares, \$.001 Par value per share, of  
Able Energy, Inc. were issued and outstanding.

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

Transitional Small Disclosure Business Format (check one): Yes [ ] No [X]

### TABLE OF CONTENTS

	PAGE
PART I - FINANCIAL INFORMATION	
ITEM 1 - FINANCIAL STATEMENTS (UNAUDITED)	
Consolidated Balance Sheets as of June 30, 2004 and September 30, 2004	3-4
Consolidated Statements of Operations for the three months ended September 30, 2004 and September 30, 2003	5
Consolidated Statement of Stockholders' Equity three months ended September 30, 2004	6
Consolidated Statements of Cash Flows for the three months ended September 30, 2004 and 2003	7-8
Notes to Unaudited Financial Statements	9-31

### ABLE ENERGY, INC. AND SUBSIDIARIES CONSOLIDATED BALANCE SHEETS

	ASSETS	SEPTEMBER 30, 2004 UNAUDITED -----
CURRENT ASSETS:		
Cash		\$ 2,025,718
Accounts Receivable (Less Allowance for Doubtful Accounts of \$192,222 and \$192,222 as of September 30, and June 30, 2004, respectively.		2,716,421
Inventory		738,685
Notes Receivable - Current Portion		54,502
Other Receivable - Non-Compete - Current Portion		225,000
Miscellaneous Receivables		59,094
Prepaid Expenses		443,318
Deferred Costs - Insurance Claims		425,236
Prepaid Expense - Income Taxes		-
Deferred Income Tax		54,923
Due From Officer		75,365
TOTAL CURRENT ASSETS		6,818,262 -----
PROPERTY AND EQUIPMENT:		
Land		479,346
Buildings		946,046

Edgar Filing: ABLE ENERGY INC - Form 10-Q

Trucks	3,305,024
Fuel Tanks	694,114
Machinery and Equipment	1,000,729
Leasehold Improvements	413,540
Cylinders	183,773
Office Furniture and Equipment	202,819
Website Development Costs	2,343,487
	-----
	9,568,878
Less: Accumulated Depreciation and Amortization	5,103,877
	-----
NET PROPERTY AND EQUIPMENT	4,465,001
	-----
OTHER ASSETS:	
Deferred Income Taxes	45,091
Deposits	102,918
Other Receivable - Non-Compete - Less Current Portion	675,000
Notes Receivable - Less Current Portion	672,277
Customer List, Less Accumulated Amortization of (\$188,122) September 30 and June 30, 2004	422,728
Covenant Not to Compete, Less Accumulated Amortization of \$100,000 and \$96,667 at September 30 and June 30, 2004, respectively	-
Development Costs - Franchising	16,084
Deferred Closing Costs - Financing	101,547
	-----
TOTAL OTHER ASSETS	2,035,645
	-----
TOTAL ASSETS	\$13,318,908
	=====

See Accompanying Notes

3

ABLE ENERGY, INC. AND SUBSIDIARIES  
CONSOLIDATED BALANCE SHEETS (CONT'D)

LIABILITIES & STOCKHOLDERS' EQUITY

	SEPTEMBER 30, 2004 UNAUDITED -----
CURRENT LIABILITIES:	
Accounts Payable	\$ 2,015,492
Note Payable - Bank	699,236
Current Portion of Long-Term Debt	368,615
Accrued Expenses	296,733
Accrued Taxes	67,502
Deferred Income	-
Customer Pre-Purchase Payments	2,524,153

Edgar Filing: ABLE ENERGY INC - Form 10-Q

Customer Credit Balances	1,089,706
	-----
TOTAL CURRENT LIABILITIES	7,061,437
DEFERRED INCOME	79,679
DEFERRED INCOME TAXES	93,436
LONG TERM DEBT: less current portion	3,559,204
	-----
TOTAL LIABILITIES	10,793,756
	-----
STOCKHOLDERS' EQUITY:	
Preferred Stock	
Authorized 10,000,000 Shares Par Value \$.001 per share	
Issued - None	
Common Stock	
Authorized 10,000,000 Par Value \$.001 per share Issued	
and Outstanding Shares 2,013,250 (September 30) and	
2,013,250 (June 30)	2,014
Paid in Surplus	5,711,224
Retained Earnings (Deficit)	(3,188,086)
	-----
TOTAL STOCKHOLDERS' EQUITY	2,525,152
	-----
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	\$13,318,908
	=====

See Accompanying Notes

4

ABLE ENERGY, INC. AND SUBSIDIARIES  
CONSOLIDATED STATEMENT OF OPERATIONS

(UNAUDITED)

	THREE MONTHS SEPTEMBER 30,	
	2004	2003
	----	----
NET SALES	\$ 8,221,845	\$ 6,504,64
COST OF SALES	7,609,858	5,618,06
	-----	-----
GROSS PROFIT	611,987	886,57
	-----	-----
EXPENSES		
Selling, General and Administrative Expenses	1,104,700	1,570,99
Depreciation and Amortization Expense	297,591	270,68
	-----	-----
Total Expenses	1,402,291	1,841,67
	-----	-----

Edgar Filing: ABLE ENERGY INC - Form 10-Q

LOSS FROM OPERATIONS	(790,304)	(955,10)
OTHER INCOME (EXPENSES):		
Interest and Other Income	50,876	25,22
Interest Expense	(77,824)	(262,07
Loss on Sale of Assets	(31,437)	
Legal Fees Relating to Other Expense	(21,950)	(130,20
Total Other Income (Expense)	(80,335)	(367,04
LOSS FROM CONTINUING OPERATIONS BEFORE PROVISION FOR INCOME TAXES	(870,639)	(1,322,15
PROVISION FOR INCOME TAXES	2,260	17,76
NET LOSS FROM CONTINUING OPERATIONS	(872,899)	(1,339,91
DISCONTINUED OPERATIONS	-	(171,37
(LOSS) FROM DISCONTINUED OPERATIONS	-	(171,37
NET (LOSS)	\$ (872,899)	\$ (1,511,29
BASIC EARNINGS (LOSS) PER COMMON SHARE		
(Loss) from Continuing Operations	\$ (.43)	\$ (.6
(Loss) from Discontinued Operations	\$ -	\$ (.0
DILUTED EARNINGS (LOSS) PER COMMON SHARE		
(Loss) from Continuing Operations	\$ (.43)	\$ (.6
(Loss) from Discontinued Operations	\$ -	\$ (.0
WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING	2,013,250	2,013,25
WEIGHTED AVERAGE NUMBER OF COMMON SHARES OUTSTANDING, ASSUMING DILUTION	2,013,250	2,013,25

See Accompanying Notes

Edgar Filing: ABLE ENERGY INC - Form 10-Q

THREE MONTHS ENDED SEPTEMBER 30, 2004

(UNAUDITED)

	COMMON STOCK .001 PAR VALUE		ADDITIONAL PAID-IN SURPLUS	RETAINED EARNINGS
	SHARES	AMOUNT		
Balance - July 1, 2004	2,013,250	\$ 2,014	\$5,711,224	\$ (2,315,187)
Net Loss				(872,899)
Balance - September 30, 2004	2,013,250	\$ 2,014	\$5,711,224	\$ (3,188,086)
	=====	=====	=====	=====

See Accompanying Notes

6

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

	THREE MONTHS ENDED SEP	
	2004	
	----	
CASH FLOWS FROM OPERATING ACTIVITIES OF CONTINUING OPERATIONS		
Net (Loss)	\$ (872,889)	\$
(Loss) from Discontinued Operations	-	
INCOME (LOSS) - CONTINUING OPERATIONS	\$ (872,899)	\$
Adjustments to Reconcile Net Income to Net Cash used by Operating Activities:		
Depreciation and Amortization	297,591	
Loss on Disposal of Equipment	31,437	
(Increase) Decrease in:		
Accounts Receivable	(279,867)	
Inventory	(179,360)	
Prepaid Expenses	(133,176)	
Prepaid Income Taxes	2,063	

Edgar Filing: ABLE ENERGY INC - Form 10-Q

Deposits	34,097
Deferred Income Tax - Asset	-
Insurance Claim Receivable	-
Deferred Costs - Insurance Claims	(689)
Increase (Decrease) in:	
Accounts Payable	312,487
Accrued Expenses	14,517
Customer Advance Payments	1,028,247
Customer Credit Balance	390,807
Deferred Income Taxes	2,260
Deferred Closing Costs	1,813
Deferred Income	(2,333)
	-----
NET CASH (USED) PROVIDED BY OPERATING ACTIVITIES CONTINUING OPERATIONS	646,995
	-----
CASH FLOW FROM INVESTING ACTIVITIES	
Purchase of Property and Equipment	(226,926)
Web Site Development Costs	(12,693)
Cash Received on Sale of Property	226,499
Disposition of Equipment	10,687
Payment on Notes Receivable - Sale of Equipment	367
Receivable - Officer	468
Miscellaneous Receivables	68,328
	-----
NET CASH (USED) PROVIDED BY INVESTING ACTIVITIES CONTINUING OPERATIONS	66,730
	-----

See Accompanying Notes

7

ABLE ENERGY, INC. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF CASH FLOWS (CONT'D)

	THREE MONTHS ENDED SEP	SEP
	2004	2003
	----	----
CASH FLOWS FROM OPERATING ACTIVITIES OF CONTINUING OPERATIONS		
Net (Loss)	\$ (872,889)	\$
CASH FLOW FROM FINANCING ACTIVITIES		
(Decrease) Increase in Notes Payable - Bank	\$ -	\$
Note Payable - Other	-	-
Note Payable - Officer	-	-
Decrease in Long-Term Debt	(77,496)	
Increase in Long-Term Debt	79,641	
	-----	
NET CASH (USED) PROVIDED BY FINANCING ACTIVITIES CONTINUING OPERATIONS	2,145	

Edgar Filing: ABLE ENERGY INC - Form 10-Q

DISCONTINUED OPERATIONS:		
Net Cash (Used) Provided by Discontinued Operations		----- -
		-----
NET CASH (USED) PROVIDED BY DISCONTINUED OPERATIONS		----- -
		-----
NET (DECREASE) INCREASE IN CASH		715,870
Cash - Beginning of Year		1,309,848
		-----
Cash - End of Year		\$ 2,025,718
		=====
		-----
The Company had Interest Cash Expenditures of:	\$	62,611
The Company had Tax Cash Expenditures of:	\$	4,749

See Accompanying Notes

8

ABLE ENERGY, INC. AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

JUNE 30, 2004 AND SEPTEMBER 30, 2004

NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

PRINCIPLES OF CONSOLIDATION

The consolidated financial statements include the accounts of Able Energy, Inc. and its subsidiaries. All material inter-company balances and transactions were eliminated in consolidation.

MAJORITY OWNERSHIP

The Company is the majority owner, owning 70.6% of the issued shares of a subsidiary, PriceEnergy.Com, Inc. in which their capital investment is \$25,000. The subsidiary has established a E-Commerce Operating System for the sale of products through a network of suppliers originally on the East Coast of the United States. The Web Site became active in October 2000 (See Notes 8 and 13)

MINORITY INTEREST

The minority interest in PriceEnergy.Com, Inc. is a deficit and, in accordance with Accounting Research Bulletin No. 51, subsidiary losses should not be charged against the minority interest to the extent of reducing it to a negative amount. As such, the losses have been charged against the Company, the majority owner. The loss for three months ended September 30, 2004 is \$201,768 (See Notes 8 and 13).

The consolidated interim financial statements included herein have been prepared by the Company, without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting



## Edgar Filing: ABLE ENERGY INC - Form 10-Q

principles have been condensed or omitted pursuant to such rules and regulations, although the Company believes that the disclosures are adequate to make the information presented not misleading.

These statements reflect all adjustments, consisting of normal recurring adjustments which, in the opinion of management, are necessary for fair presentation of the information contained therein. It is suggested that these consolidated financial statements be read in conjunction with the financial statements and notes thereto included in the Company's annual report for the year ended June 30, 2004. The Company follows the same accounting policies in preparation of interim reports.

9

### ABLE ENERGY, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

#### NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)

Results of operations for the interim periods are not indicative of annual results.

##### NATURE OF OPERATIONS

Able Oil Company, Able Melbourne and Able Energy New York, Inc. are full service oil companies that market and distribute home heating oil, diesel fuel and kerosene to residential and commercial customers operating in the northern New Jersey, Melbourne, Florida, and Warrensburg, New York respectively. Able Energy New York, Inc. also installs propane tanks which it owns and sells propane for heating and cooking, along with other residential and commercial uses in the Warrensburg, New York area.

The Company's operations are subject to seasonal fluctuations with a majority of the Company's business occurring in the late fall and winter months. Approximately 70% of the Company's revenues are earned and received from October through March, and the overwhelming majority of such revenues are derived from the sale of HVAC products and services and home heating fuel. However, the seasonality of the Company's business is offset, in part, by the increase in revenues from the sale of diesel and gasoline fuels during the spring and summer months due to the increased use of automobiles and construction apparatus.

##### INVENTORIES

Inventories are valued at the lower of cost (first in, first out method) or market.

##### ALLOWANCE FOR DOUBTFUL ACCOUNTS

The Company provides a specific allowance for accounts in excess of \$3,000 due over 90 days. A general allowance of 10% is provided for the balance due over 90 days.

##### PROPERTY AND EQUIPMENT

Property and equipment are stated at cost less accumulated depreciation. Depreciation is provided by using the straight-line method based upon the estimated useful lives of the assets (5 to 40 years). Depreciation expense from continuing operations for the three months ended September

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

30, 2004 and 2003 amounted to \$174,963 and \$149,337, respectively.

For income tax basis, depreciation is calculated by a combination of the straight-line and modified accelerated cost recovery systems established by the Tax Reform Act of 1986.

10

### ABLE ENERGY, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

#### NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)

##### PROPERTY AND EQUIPMENT (CONT'D)

Expenditures for maintenance and repairs are charged to expense as incurred whereas expenditures for renewals and betterments are capitalized.

The cost and related accumulated depreciation of assets sold or otherwise disposed of during the period are removed from the accounts. Any gain or loss is reflected in the year of disposal.

##### E-COMMERCE OPERATING SYSTEM DEVELOPMENT COSTS

Costs of \$2,343,487 incurred in the developmental stage and thereafter for computer hardware and software have been capitalized in accordance with accounting pronouncement SOP98-1. The costs are included in Property and Equipment and will be amortized on a straight line basis during the estimated useful life, 5 years. Operations commenced in October 2000. Amortization for the three months ended September 30, 2004 and 2003 amounted to \$116,997 and \$114,053, respectively.

##### INTANGIBLE ASSETS

Intangibles are stated at cost and amortized as follows: Customer Lists of \$571,000 related to the Connell's Fuel Oil Company acquisition on October 28, 1996, by Able Oil Company are being amortized over a straight-line period of 15 years. The current period amortization also includes a customer list of \$39,850 and Covenant Not To Compete of \$100,000 relating to the acquisition from B & B Fuels on August 27, 1999, is being amortized over a straight-line period of 10 and 5 years, respectively. The amortization for the three months ended September 30, 2004 and 2003 are \$3,333 and \$5,000, respectively.

In July 2001, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets" ("SFAS 142"). SFAS 142 requires goodwill and other intangible assets to be tested for impairment under certain circumstances, and written off when impaired, rather than being amortized as previous standards required, as such, effective July 1, 2001, the Customer List will no longer be amortized for financial statement purposes.

For income tax basis, the Customer Lists and the Covenant Not To Compete are being amortized over a straight-line method of 15 years as per the Tax Reform Act of 1993.

##### USE OF ESTIMATES

The preparation of financial statements in conformity with generally

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Although these estimates are based on management's knowledge of current events and actions it may undertake in the future, they may ultimately differ from actual results.

11

### ABLE ENERGY, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

#### NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)

##### INCOME TAXES

Effective January 1, 1997, all the subsidiaries, which were S-Corporations, terminated their S-Corporation elections. The subsidiaries are filing a consolidated tax return with Able Energy, Inc.

Effective January 1, 1997, the Company has elected to provide for income taxes based on the provisions of Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Standards ("SFAS") No. 109, "Accounting for Income Taxes", which requires recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements and tax returns in different years. Under this method, deferred income tax assets and liabilities are determined based on the difference between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse.

##### CONCENTRATIONS OF CREDIT RISK

The Company performs on-going credit evaluations of its customers' financial conditions and requires no collateral from its customers.

Financial instruments which potentially subject the Company to concentrations of credit risk consists of checking and savings accounts with several financial institutions in excess of insured limits. The excess above insured limits is \$1,462,454. The Company does not anticipate non-performance by the financial institutions.

##### CASH

For the purpose of the statement of cash flows, cash is defined as balances held in corporate checking accounts and money market accounts.

##### ADVERTISING EXPENSE

Advertising costs are expensed at the time the advertisement appears in various publications and other media. The expense was \$92,929 and \$228,562 for the three months ended September 30, 2004 and 2003, respectively.

##### FAIR VALUE OF FINANCIAL INSTRUMENTS

Carrying amounts of certain of the Company's financial instruments, including cash and cash equivalents, accrued compensation, and other accrued liabilities, approximate fair value because of their short maturities.

12

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

### ABLE ENERGY, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

#### NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)

##### REVENUE RECOGNITION

Sales of fuel and heating equipment are recognized at the time of delivery to the customer, and sales of equipment are recognized at the time of installation. Revenue from repairs and maintenance service is recognized upon completion of the service. Payments received from customers for heating equipment service contracts are deferred and amortized into income over the term of the respective service contracts, on a straight line basis, which generally do not exceed one year.

##### COMPUTATION OF NET INCOME (LOSS) PER SHARE

Basic net income (loss) per share is computed using the weighted-average number of common shares outstanding during the period. Diluted net income per share is computed using the weighted-average number of common and dilutive potential common shares outstanding during the period. Diluted net loss per share is computed using the weighted-average number of common shares and excludes dilutive potential common shares outstanding, as their effect is antidilutive. Dilutive potential common shares primarily consist of employee stock options.

##### IMPAIRMENT OF LONG-LIVED ASSETS

Long-lived assets to be held and used are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Measurement of an impairment loss for long-lived assets that management expects to hold and use is based on the fair value of the asset. Long-lived assets to be disposed of are reported at the lower of carrying amount or fair value less costs to sell.

##### GOODWILL AND INTANGIBLE ASSETS

In June 2001, FASB approved two new pronouncements: SFAS No. 141, "Business Combinations", and SFAS No. 142, "Goodwill and Other Intangible Assets". SFAS No. 141 applies to all business combinations with a closing date after June 30, 2001. This Statement eliminates the pooling-of-interests method of accounting and further clarifies the criteria for recognition of intangible assets separately from goodwill.

13

### ABLE ENERGY, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

#### NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)

SFAS No. 142 eliminates the amortization of goodwill and indefinite-lived intangible assets and initiates an annual review for impairment. Identifiable intangible assets with a determinable useful

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

life will continue to be amortized. The amortization provisions apply to goodwill and other intangible assets acquired after June 30, 2001. Goodwill and other intangible assets acquired prior to June 30, 2001 will be affected upon adoption. The Company has adopted SFAS No. 142 effective July 1, 2001, which will require the Company to cease amortization of its remaining net customer lists balance and to perform an impairment test of its existing customer lists and any other intangible assets based on a fair value concept.

The Company has reviewed the provisions of these Statements. Based upon an assessment of the customer lists, there has been no impairment. As of June 30, 2001, the Company has net unamortized customer lists of \$422,728.

### RECENT ACCOUNTING PRONOUNCEMENTS

In December 2003, the FASB issued FASB Interpretation ("FIN") No. 46-R, "Consolidation of Variable Interest Entities". FIN No. 46-R, which modifies certain provisions and effective dates of FIN No. 46, sets forth criteria to be used in determining whether an investment in a variable interest entity should be consolidated, and is based on the general premise that companies that control another entity through interests other than voting interests should consolidate the controlled entity. The provisions of FIN No. 46 became effective for the Company during the third quarter of Fiscal 2004. The adoption of this new standard did not have any impact on the Company's financial position, results of operations or cash flows.

SFAS No. 148, "Accounting for Stock-Based Compensation - Transition and Disclosure (an amendment of FASB Statement No. 123)." In December 2002, the FASB issued SFAS No. 148, which amends SFAS No. 123, "Accounting for Stock-Based Compensation," and provides alternative methods of transition for a voluntary change to the fair value-based method of accounting for stock-based employee compensation; SFAS No. 148 also amends the disclosure requirements of SFAS No. 123 and APB Opinion No. 28, "Interim Financial Reporting," to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. The provisions of SFAS No. 148 are effective for financial statements for periods ending after December 15, 2002. The Company will adopt SFAS No. 148 effective July 1, 2003. It currently has no effect on the Company.

14

### ABLE ENERGY, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

#### NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONT'D)

##### RECENT ACCOUNTING PRONOUNCEMENTS (CONT'D)

##### Debt Extinguishments

In April 2002, the FASB issued SFAS No. 145, "Rescission of FASB Statements Nos. 4, 44 and 64, Amendment of FASB Statement No. 13, and technical Corrections." Among other things, this statement rescinds SFAS

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

No. 4, "Reporting Gains and Losses from Extinguishment of Debt" (SFAS No. 4), which required all gains and losses from extinguishment of debt to be aggregated and, if material, classified as an extraordinary item, net of the related income tax effect. As a result, the criteria in Accounting Principles Board Opinion No. 30, "reporting the Results of Operations - Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions," which requires gains and losses on extinguishment of debts to be classified as income or loss from continuing operations, will now be applied. We adopted the provisions of this statement as of July 1, 2002, as it was effective for years beginning after June 15, 2002.

In December, 2003, the Financial Accounting Standards Board ("FASB") issued a revision to SFAS No. 132, "Employers' Disclosures about Pensions and Other Post retirement Benefits." This revised statement requires additional annual disclosures regarding types of pension plan assets, investment strategy, future plan contributions, expected benefit payments and other items. The statement also requires quarterly disclosure of the components of net periodic benefit cost and plan contributions. This currently has no effect on the Company.

In May 2003, the FASB issued SFAS No. 150, "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity". This statement affects the classification, measurement and disclosure requirements of certain freestanding financial instruments including mandatorily redeemable shares. This currently has no effect on the Company's operations.

### Asset Retirement Obligations

Effective January 1, 2003, the Company has adopted SFAS No. 143, "Accounting for Asset Retirement Obligations" (SFAS No. 143). This statement provides the accounting for the cost of legal obligations associated with the retirement of long-lived assets. SFAS No. 143 requires that companies recognize the fair value of a liability for asset retirement obligations in the period in which the obligations are incurred and capitalize that amount as part of the book value of the long-lived asset. SFAS No. 143 also precludes companies from accruing removal costs that exceed gross salvage in their depreciation rates and accumulated depreciation balances if there is no legal obligation to remove the long-lived assets. The adoption had no current effect on the financial records.

15

### ABLE ENERGY, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

#### NOTE 2 NOTES RECEIVABLE

- A. The Company has a Receivable from Able Montgomery, Inc. and Andrew W. Schmidt related to the sale of Able Montgomery, Inc. to Schmidt, and truck financed by Able Energy, Inc. No payments of principal or interest had been received for more than one year. A new note was drawn dated June 15, 2000 for \$170,000, including the prior balance, plus accrued interest. The Note bears interest at 9.5% per annum and payments

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

commence October 1, 2000. The payments will be monthly in varying amount each year with a final payment of \$55,981.07 due September 1, 2010. No payments were received in the year ended December 31, 2000. In February 2001, two (2) payments were received in the amount \$2,691.66, interest only. In September 2001, \$15,124.97 was received covering payments from December 2000 through October 2001, representing interest of \$14,804.13 and principal of \$320.84. Payments were received in November and December 2002, representing December 2001 and January 2002, a total of \$3,333.34; interest of \$2,678.88, and principal of \$654.46. No payments have been received in more than 21 months.

The note is secured by a pledge and security agreement and stock purchase agreement (Stock of Able Montgomery, Inc.), dated December 31, 1998, and the assets of Andrew W. Schmidt with the note dated June 15, 2000. The income on the sale of the company in December 1998 and the accrued interest on the drawing of the new note are shown as deferred income in the amount of \$79,679.18 to be realized on collection of the notes.

Management has informed us they are in negotiations with Andrew Schmidt. The amount due will be paid to bring the note current, plus interest, or the Company will foreclose and take the stock of Able Montgomery, Inc. and assume the operations of the Company as a distributor of #2 oil. Andrew Schmidt and the Company are finalizing an agreement on a method of payment. Management has stated that the value of the collateral will cover the amount due.

Maturities of the Note Receivable are as follows:

For the 12 Months Ending September 30 -----	Principal Amount -----
2005	\$ 34,624
2006	12,811
2007	14,082
2008	15,480
2009	17,016
Balance	74,688
Total	----- \$ 168,701 =====

ABLE ENERGY, INC. AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

NOTE 2 NOTES RECEIVABLE (CONT'D)

B. Able Oil Company has three (3) Notes Receivable for the sale of oil delivery trucks to independent drivers who also deliver oil for the Company. Two notes bear interest at the rate of 12% per annum and one Note 9% annum. One note began December 1998, one began February 1999 and one began January 2004. The notes are payable eight (8) months per year September through April, the oil delivery season.

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

Maturities of these Notes Receivable are as follows:

For the 12 Months Ending September 30 -----	Principal Amount -----
2005	\$ 19,877
2006	14,835
2007	6,843
2008	5,922
2009	6,287
2010	4,313
-----	-----
TOTAL	\$ 58,077
	=====

### NOTE 3 INVENTORIES

ITEMS	SEPTEMBER 30, 2004 ----	JUNE 30, 2004 ----
Heating Oil	\$ 379,687	\$ 232,364
Diesel Fuel	19,663	19,998
Kerosene	12,547	4,906
Propane	34,692	13,461
Parts, Supplies and Equipment	292,096	288,596
	-----	-----
TOTAL	\$ 738,685	\$ 559,325
	=====	=====

### NOTE 4 NOTES PAYABLE BANK

1. On September 22, 2003, the Company closed a new loan facility with UPS Capital Business Credit. The facility is a \$4,300,000 term loan, payable over fifteen (15) years with interest at the prime rate, plus 1.75%, and a line of credit of \$700,000 with interest at prime plus 1.00%. The payments on the term loan, due the first of each month, include principal, interest of \$35,900.04, and real estate tax escrow of \$2,576.63, totaling \$38,476.67. Real estate tax escrow of \$7,745.03 was paid at closing. September 30, 2003 was the first payment and included nine (9) days of interest plus principal totaling \$20,382.02. Any payment received more than five (5) days after the due date is subject to a late charge of 5% of such payment. Upon the occurrence of an event of default, the loan shall bear interest at five percentage points (5%) above the rate otherwise in effect under the loan.

17

### ABLE ENERGY, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

### NOTE 4 NOTES PAYABLE BANK (CONT'D)

On March 3, 2004, the Company repaid \$1,100,000 of the term loan principal balance. The monthly payments of principal and interest were reduced to \$26,672.65, commencing with the payment due April 1, 2004 which was paid by the Company in March 2004. All other terms of the loan



## Edgar Filing: ABLE ENERGY INC - Form 10-Q

will remain the same (See Note 20).

The collateral will be as follows for the term loan:

1. A first mortgage on properties located at 344 Route 46, Rockaway, NJ and 38 Diller Avenue, Newton, NJ
2. A first security interest in equipment and fleet vehicles
3. A first security interest in the customer list

### TERMS AND COLLATERAL RELATED TO THE REVOLVING LINE OF CREDIT

Interest is payable monthly on the first day of each month, in arrears. This loan shall be paid down annually for a minimum of thirty (30) days at the borrower's discretion, but prior to renewal. The maturity is annually renewing from the closing date. This part of the loan is secured by a first priority lien on accounts receivable and inventory.

The Revolving Line of Credit advances 75% on accounts receivable less than 90 days outstanding, plus 50% of inventory up to a maximum of \$700,000. The outstanding balance at September 30, 2004 is \$699,236. The eligible accounts receivable were \$2,261,000 and the collateral of accounts receivable were approximately \$2,900,000.

The loan facility is guaranteed by Able Energy, Inc. Officers loans are subordinated to the lender and will remain standstill until all debt due to the lender is paid in full.

The Agreement contains certain financial covenants as enumerated in the Agreement

The Company paid the following loans on September 22, 2003:

Fleet Bank	\$ 1,340,644	(including interest and fees of
KMA Associates	750,000	
Jeff Will		505,000 (including interest of
Estate of Birdsal	657,895	(including interest of \$7,895)
Long-term Debt	1,084,866	
	-----	
Total Refinance	4,338,405	
Other Fees and Costs Paid at Closing	123,198	
	-----	
Total	\$ 4,461,603	
	=====	

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

The loan advanced was \$4,300,000, the balance of \$161,603 was paid by the Company.

The balance of the term loan at September 30, is	\$3,042,036
Included in current portion of long-term debt	146,387
	-----
Included in long-term debt - less current portion	\$2,895,649
	=====

- B. On October 22, 2001, the Company and its subsidiaries, either as Borrower or Guarantor, entered into a loan and security Agreement with Fleet National Bank. The bank provided the following credit facility.

The Agreement had an expiration date of November 30, 2002. Fleet Bank did not renew the credit facility upon expiration of the Agreement on November 30, 2002. Effective December 1, 2002, the bank is charging an additional annual interest of 4% as the Note is in default. The total current interest rate charged was 8.25% per annum. The Company and Lender entered into a Forbearance Agreement, where the Lender is willing to forbear until May 31, 2003 from exercising its rights and remedies. The Lender will receive a forbearance fee of \$50,000 at May 31, 2003, reduced by \$2,500 for each week prior to May 31, 2003, that the credit facility and all charges are paid in full, with a minimum forbearance fee of \$15,000. The interest charged is at 8.25% per annum. The principal amount outstanding was \$1,270,000. The loan and the \$50,000 forbearance fee were not paid at May 31, 2003. The Note payable plus forbearance fee, accrued interest and other costs were paid in full on September 22, 2003, in the amount of \$1,340,644 (See Note 4 A). The bank released all the collateral securing the Company debt.

### NOTE 5 NOTES PAYABLE

- A. The Company has borrowed \$500,000 from an unrelated individual. The Note was dated June 26, 2001 with interest at 12% per annum. The lender has granted the Company several extensions. The Note may be prepaid in whole or part from time-to-time without penalty.

No principal payments have been made on the Note. At the maturity date, a final payment of the unpaid principal and interest shall be due and payable. In connection with this Note, the Company has issued the lender warrants to purchase 40,000 shares of its common stock at \$4 per share. The warrants vest immediately and must be exercised no later than June 26, 2004. At June 30, 2004, the warrants expired. The Note was paid in full on September 22, 2003 (See Note 4 A). The same individual loaned the Company \$300,000 on February 12, 2004, to be paid \$100,000 per month plus interest, at 6% per annum on March, April and May 15, 2004. The balance at June 30, and September 30, 2004 was \$- 0 -.

### ABLE ENERGY, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

### NOTE 5 NOTES PAYABLE (CONT'D)

2. The Company has borrowed \$335,000 from an unrelated Company. The

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

mortgage and Note are dated April 16, 2003. The loan is to Able Energy New York, Inc., a wholly owned subsidiary. The loan is collateralized by a mortgage on property in Lake George, New York owned by the subsidiary and a second mortgage on property in Bolton, New York, owned by the Company's CEO who is also a guarantor on the loan. Payments of interest only on the outstanding principal balance at a rate of 14% per annum, are payable monthly. The first payment was paid June 1, 2003. The entire amount, both principal and accrued interest shall be due and payable on May 1, 2004. The loan was paid in full on March 11, 2004

### NOTE 6 LONG-TERM DEBT

Mortgage note payable dated, August 27, 1999, related to the purchase of B & B Fuels facility and equipment. The total Note is \$145,000. The Note is payable in the monthly amount of principal and interest of \$1,721.18 with and interest rate of 7.5% per annum. The initial payment was made on September 27, 1999, and continues monthly until August 27, 2009 which is the final payment. The Note is secured by a mortgage made by Able Energy New York, Inc. on property at 2 and 4 Green Terrace and 4 Horican Avenue, Town of Warrensburg, Warren County, New York. The balance due on this Note at September 30, 2004 and June 30, 2004 was \$84,711 and \$88,242, respectively.

### NOTE 7 INCOME TAXES

Effective January 1, 1997, the Company adopted Statement of Financial Accounting Standards No. 109, Accounting for Income Taxes.

The differences between the statutory Federal Income Tax and Income Taxes Continuing Operation is accounted for as follows:

	2004	
	AMOUNT	PERCENT OF PRETAX INCOME
Statutory Federal Income Tax	\$ 1,582	15.0%
State Income Tax	678	6.5
	-----	
Income Taxes	\$ 2,260	21.5%
	=====	====
Income Taxes consists of:		
Current	\$ -	
Deferred	2,260	
	-----	
TOTAL	\$ 2,260	
	=====	

Edgar Filing: ABLE ENERGY INC - Form 10-Q

2003

	AMOUNT	PERCENT OF PRETAX INCOME
Statutory Federal Income Tax	\$12,436	15.0%
State Income Tax	5,329	6.5
	-----	-----
Income Taxes	\$17,765	21.5%
	=====	=====
Income Taxes consist of:		
Current	\$ -	
Deferred	17,765	
	-----	
TOTAL	\$17,765	
	=====	

(Note X)

The State of New Jersey has suspended the use of carryforward losses for the years 2002 and 2003. As such, state income taxes of \$45,091 have been shown as a deferred asset and as income taxes payable for the year ended June 30, 2003. New Jersey carryforward is treated separately by the Company. Able Oil Company has a New Jersey Operating Loss of \$501,010 which could not be utilized in the current year ended June 30, 2003. Under current New Jersey law, the carryforward will be available after 2003, the Company's fiscal year ending June 30, 2005.

The types of temporary differences between the tax bases of assets and liabilities and their financial reporting amounts that give rise to a significant portion of the deferred tax liability and deferred tax asset and their approximate tax effects are as follows at:

SEPTEMBER 30, 2004

	TEMPORARY DIFFERENCE	TAX EFFECT
Depreciation and Amortization	\$ (349,558)	\$ (93,436)
Allowance for Doubtful Accounts	192,222	50,888
Gain on Sale of Subsidiary	18,766	4,035
New Jersey Net Operating Loss Carryforward (See Note X, Prior Page)	501,010	45,091

JUNE 30, 2004

	TEMPORARY DIFFERENCE	TAX EFFECT
Depreciation and Amortization	\$ (339,045)	\$ (91,176)
Allowance for Doubtful Accounts	192,222	50,888
Gain on Sale of Subsidiary	18,766	4,035
New Jersey Net Operating Loss Carryforward (See Note X, prior page)	501,010	45,091

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

### ABLE ENERGY, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

#### NOTE 7 INCOME TAXES (CONT'D)

Able Energy, Inc., et al, open years are June 30, 2001, 2002, 2003 and 2004. The Company has a net operating loss carryforward of approximately \$2,302,315. The net operating loss expires between June 30, 2019 and 2021. Able Energy, Inc and PriceEnergy.Com, inc. have a New Jersey net operating loss carryforward of approximately \$489,374 and \$2,217,251, respectively, which can be utilized up to 50% of the income in the year ended June 30, 2005.

These carryforward losses are available to offset future taxable income, if any. The Company's utilization of this carryforward against future taxable income is subject to the Company having profitable operations or sale of Company assets which create taxable income. At this time, the Company believes that a full valuation allowance should be provided. The component of the deferred tax asset as of September 30, 2004 are as follows:

Net Operating Loss Carryforward - Tax Effect	\$782,787
Valuation Allowance	(782,787)
	-----
Net Deferred Tax based upon Net Operating Loss Carryforward	\$ - 0 -
	=====

#### NOTE 8 NOTE RECEIVABLE - SUBSIDIARY

The Company has a Note Receivable from PriceEnergy.Com, Inc. for advances made in the development of the business, including hardware and software costs. All of PriceEnergy.Com, Inc.'s assets are pledged as collateral to Able Energy, Inc. The amount of the note is \$1,350,000 dated November 1, 2000 with interest at 8% per annum payable quarterly. Principal payments to begin two years after the date of the Note, November 1, 2002. Through September 30, 2004, no principal has been paid. No interest was accrued for the three months ended September 30, 2004 and the year ended June 30, 2004 as the note is non performing. Unpaid accrued interest due through September 30, 2004 is \$234,000. The Note, accrued interest and interest expense have been eliminated in the consolidated financial statements (See Notes 1 and 13). Able Oil Company has a Note Receivable originally dated September 30, 2002 in the amount of \$1,510,372.73 from PriceEnergy.Com, Inc. The Note has been updated for transactions through September 30, 2004, resulting in a balance of \$2,070,082 with interest at 8% per annum, to be paid quarterly. Principal payments to begin one year after date of Note, October 1, 2003, and continue monthly thereafter. The Note is the result of the transference of the unpaid accounts receivable which resulted from the sale of heating oil through PriceEnergy.Com, Inc. Able Oil Company has a second position as collateral in all of the assets of PriceEnergy.Com, Inc. to Able Energy, Inc. No interest has been recorded for the year ended June 30, 2004, or for the three months ended September 30, 2004. Any payments will go to pay principal. The note receivable accrued interest and interest income have been eliminated in consolidation against the amounts on PriceEnergy.Com, Inc.

# Edgar Filing: ABLE ENERGY INC - Form 10-Q

## ABLE ENERGY, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

NOTE 9 PROFIT SHARING PLAN

Effective January 1, 1997, Able Oil Company established a Qualified Profit Sharing Plan under Internal Revenue Code Section 401-K. The Company matches 25% of qualified employee contributions. The expense was \$6,017 (2004) and \$6,215 (2003), for the three months ended September 30.

NOTE 10 COMMITMENTS AND CONTINGENCIES

Able Oil Company is under contract to purchase #2 oil as follows:

COMPANY	PERIOD	TOTAL GALLONS	GALLONS OPEN COMMITMENT AT 9/30/04	OPEN D COMMITME 9/30/
Petrocom	11/1/04-3/31/05	126,000	126,000	
Conectiv Energy	10/1/04 - 4/30/05	336,000	336,000	
		-----	-----	
Total		462,000	462,000	
		=====	=====	

The Company is subject to laws and regulations relating to the protection of the environment. While it is not possible to quantify with certainty the potential impact of actions regarding environmental matters, in the opinion of management, compliance with the present environmental protection laws will not have a material adverse effect on the financial condition, competitive position, or capital expenditures of the Company.

In accordance with the agreement on the purchase of the property on Route 46, Rockaway, New Jersey by Able Energy Terminal, LLC, the purchaser shall commence after the closing, the investigation and remediation of the property and any hazardous substances emanating from the property in order to obtain a No Further Action letter from the New Jersey Department of Environmental Protection (NJDEP). The purchaser will also pursue recovery of all costs and damages related thereto in the lawsuit by the seller against a former tenant on the purchased property. Purchaser will assume all responsibility and direction for the lawsuit, subject to the sharing of any recoveries from the lawsuit with the seller, 50-50.

The seller by reduction of its mortgage will pay costs related to the above up to \$250,000. A settlement has been achieved by the Company with regard to the lawsuit. The settlement provides for a lump sum payment of \$397,500 from the defendants to the Company. In return, the defendants received a release from the Estate (the Seller) and a release and indemnification from the Company. The defendants provided a release to Able Energy and the Estate. Pursuant to the original agreement, the

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

Estate receives 50% of the settlement amount, net of attorney fees.

23

### ABLE ENERGY, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

#### NOTE 10 COMMITMENTS AND CONTINGENCIES (CONT'D)

This has been amended by an agreement dated November 5, 2001. The entire settlement, net of attorney fees, was collected and placed in an attorney's escrow account for payment of all investigation and remediation costs. Able Energy Terminal, LLC has incurred costs of \$102,956 to September 30, 2004 which are included in Prepaid Expenses and must be presented to the attorney for reimbursement. Per management, the New Jersey Department of Environmental Protection (NJDEP) must issue an approval for treated water run-off. When approval is received, reimbursement can be made upon approval of the attorney and the Estate.

The costs of the cleanup pursuant to the Agreement of Sale must be shared equally (50/50) by the seller and purchaser up to Seller's cap of \$250,000. Seller's contribution to the cleanup is in the form of a reduction to the Note and not by direct payments. The note has been paid in full. As such, any payment by the Estate must be direct payments. Payments will begin when and if costs exceed \$397,500. In the opinion of management, the Company will not sustain costs in this matter which will have a material adverse effect on its financial condition.

Following an explosion and fire that occurred at the Able Energy Facility in Newton, NJ on March 14, 2003, and through the subsequent clean up efforts, Able Energy has cooperated fully with all local, state and federal agencies in their investigations into the cause of this accident.

On April 2, 2003, Able Energy received a Notice Of Violation from the New Jersey Department of Community Affairs ("DCA") citing a total of 13 violations to the New Jersey Administrative Code, Liquefied Petroleum Gas. Twelve of the violations were assessed a penalty of \$500 each. One of the violations, regarding the liquid transfer from one truck to another truck, was assessed a penalty of \$408,000, a second notice was received on April 29, 2003, for an alleged violation on April 12, 2003, and a fine of \$5,500 was assessed for a total of \$419,500. This amount is included in accrued expenses at June 30, 2003. (See below)

Based upon initial review, the company disagrees with many of the findings of the report and disputes many of the allegations. The company has contested the DCA Notice of Violation and the assessed penalties. Counsel and the DCA have had several meetings and hearings were held in the Office of Administrative Law. The Company and DCA have settled the penalties of \$419,500 for \$25,000, resulting in Other Income of \$394,500 in the year ended June 30, 2004. The \$25,000 was paid March 10, 2004.

The Sussex County, New Jersey, Prosecutor's Office is conducting and investigation as a result of the March 14, 2003 explosion and fire. No determination has been made with respect to its investigation.

# Edgar Filing: ABLE ENERGY INC - Form 10-Q

24

## ABLE ENERGY, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

### NOTE 10 COMMITMENTS AND CONTINGENCIES (CONT'D)

A lawsuit (known as Hicks vs. Able Energy, Inc.) has been filed against the Company by property owners who allegedly suffered property damages as a result of the March 14, 2003 explosion and fire. The Company's insurance carrier is defending as related to compensatory damages. Legal counsel is defending on the punitive damage claim. A hearing was held on March 11, 2004 on an application on certain matters by the Plaintiffs, which were denied. The Court presently has before it a motion by Plaintiffs for Class Action Certification. Per legal counsel, whether this matter is certified a Class Action will greatly influence the Company's potential exposure. Legal counsel is guardedly optimistic that Class Action will be denied.

After the March 14, 2003, fire and explosion, the town of Newton changed its zoning requirements and made fuel oil and propane distribution prohibited uses. The Company is appealing a denial of a request for building permits to reconstruct damaged and destroyed buildings and sought a Non-Conforming Use Certificate to permit the fuel oil distribution use only. On August 20, 2004, the Superior Court of New Jersey ruled that the Company may continue to use the site as a non-conforming use, but stayed its decision subject to Newton's appellate rights.

As a result of the March 14, 2003 explosion and fire, various claims for property damage have been submitted to the Company's insurance carrier. These claims are presently being handled and, in many cases, settled by the insurance carrier's adjuster. There were approximately 200 claims being handled and adjusted with reserves for losses established as deemed appropriate by the insurance carrier. The majority of these claims have been settled.

Two lawsuits have been filed by homeowners in Newton, New Jersey who allegedly suffered property damages as a result of the March 14, 2003 explosion and fire. The Company's insurance carrier is defending as related to the property damage claims.

The Company in the normal course of business has been involved in law suits. Current suits are being defended by the insurance carrier and should be covered by insurance.

### NOTE 11 OPERATING LEASE

Able Energy Terminal, LLC, has acquired the following lease on the property it purchased on Route 46 in Rockaway, New Jersey.

The lease with Able Oil Company, a wholly owned subsidiary of Able Energy, Inc., had an expiration date of July 31, 2004 and has been extended on the same terms. The lease provides for a monthly payment of \$1,200 plus a one cent per gallon through put, as per a monthly rack meter reading.



Edgar Filing: ABLE ENERGY INC - Form 10-Q

25

ABLE ENERGY, INC. AND SUBSIDIARIES  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

NOTE 11 OPERATING LEASE (CONT'D)

Estimated future rents are \$14,400 per year, plus the one cent per gallon through put charges per the monthly rack meter readings.

The Company leased 9,800 square feet in the Rockaway Business Centre on Green Pond Road in Rockaway, New Jersey. The facility will be used as a call center and will combine the administrative operations in New Jersey in one facility. The lease has a term of five (5) years from August 1, 2000 through July 31, 2005.

The rent for the first year is \$7,145.83 per month and the second through fifth year is \$7,431.67 per month, plus 20.5% of the building's annual operational costs and it's portion of utilities. The current monthly rent, including Common Area Charges, is \$9,799.04 per month.

The lease does not contain any option for renewal. The total rent expense was \$34,122 and \$32,537 for the three months ended September 30, 2004 and 2003, respectively. The estimated future rents for Greenpond Road, Rockaway, New Jersey are as follows:

YEAR ENDED JUNE 30,	
2005	\$88,181
July 2005	9,799
	-----
TOTAL	\$97,980
	=====

The following summarizes the month to month operating leases for the other subsidiaries:

Able Oil Melbourne	\$500.00, per month
	Total rent expense, \$6,000
Able Energy New York	\$500.00, per month
	Total rent expense, \$6,000

NOTE 12 FRANCHISING

The Company sells franchises permitting the operation of a franchised business specializing in residential and commercial sales of fuel oil, diesel fuel, gasoline, propane and related services. The Company will provide training, advertising and use of Able credit for the purchase of product, among other things, as specified in the Agreement. The franchisee has an option to sell the business back to the Company after two (2) years of operations for a price calculated per the Agreement.

26

ABLE ENERGY, INC. AND SUBSIDIARIES  
 NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

JUNE 30, 2004 AND SEPTEMBER 30, 2004

### NOTE 12 FRANCHISING (CONT'D)

The Company signed its first franchise agreement in September 2000. On June 29, 2001, PriceEnergy.Com Franchising, LLC, a subsidiary, signed its first franchise agreement. The franchisee will operate a B-franchised business, using the proprietary marks and a license from PriceEnergy.Com, Inc. and will establish the presence of the franchisee's company on the PriceEnergy Internet Website. The franchisee will have the exclusive territory of Fairfield County, Connecticut as designated in the agreement. No new franchise agreements have been signed.

### NOTE 13 RELATED PARTY TRANSACTIONS

\$44,690 is due from the major Shareholder/Officer of the Company. This amount bears interest at a rate of 6% between the Shareholder and the Company. This Shareholder has loaned the Company a total of \$380,000 as of June 30, 2003, as evidenced by a Demand Note with interest at 6% per annum, which can be paid all or in part at any time without penalty. The Shareholder was repaid \$135,000 on March 3, 2004 (See Note 20). The balance of the Note was paid in March 2004. Interest expense was paid in the amount of \$13,033. In relation to the payment of this Note and other transactions, the Shareholder has a liability to the Company of \$31,143, at June 30, 2004 and \$30,675 at September 30, 2004.

The following officers of this Company own stock in the subsidiary, PriceEnergy.Com, Inc., which they incorporated in November 1999.

Chief Executive Officer	23.5%
President	3.6%
Chief Operating Officer	2.3%

No capital contributions have been made by these officers (See Notes 1 and 8).

### NOTE 14 EARNINGS PER SHARE

The shares used in the computation of the Company's basic and diluted Earnings Per Common Share are as follows:

	SEPT. 30, 2004 ----	SEPT. 30, 2003 ----
Weighted Average of Common Shares Outstanding Used in Basic Earnings Per Share	2,013,250	2,013,250
Dilutive Effect of:		
Employee Stock Options	-	
Stock Warrants	-	-
	-----	-----
Weighted Average Common Shares Outstanding Used in Diluted Earnings Per Share	2,013,250 =====	2,013,250 =====

# Edgar Filing: ABLE ENERGY INC - Form 10-Q

## ABLE ENERGY, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

### NOTE 14 EARNINGS PER SHARE (CONT'D)

Weighted average common shares outstanding, assuming dilution, includes the incremental shares that would be issued upon the assumed exercise of stock options, and stock warrants. For the current period, September 30, 2004, approximately 249,000 of the company's stock options and stock warrants were excluded from the calculation of diluted earnings per share because their inclusion would have been anti-diluted, 389,000 (2003). These options and warrants could be dilutive in the future. The numerator for the calculation of both basic and diluted earnings per share is the earnings or loss available for common stockholders. The above table shows the denominator for basic and diluted earnings per share.

### NOTE 15 STOCK OPTION PLANS

The Company has stock option plans under which stock options may be issued to officers, key employees, and non-employee directors to purchase shares of the Company's authorized but unissued common stock. The Company also has a stock option plan under which stock options may be granted to employees and officers.

Options granted currently expire no later than 3 to 5 years from the grant and have vesting periods from none to 25% at grant and 25% each anniversary.

	NUMBER OF SHARES	OUTSTANDING OPTIONS EXERCISE PRICE	TERM
	-----	-----	----
January 6, 2000			
Grants	56,000	\$5.00	5 years
Exercises	0		
December 21, 2000			
Grants	60,000	\$1.80	5 years
Exercises	0		
Grants	23,000	\$2.25	5 years
Exercises	0		
October 22, 2002			
Grants	50,000	\$3.00	5 years
Exercises	0		

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

#### NOTE 16 STOCK WARRANTS

The Company has issued stock warrants as follows:

60,000 Common Stock Purchase Warrants at \$4.81 per share, effective August 31, 2000, and expiring August 31, 2005, to Andrew Alexander Wise & Company in connection with an investment banking advisory agreement with the Company, dated July 1, 2000.

The 60,000 warrants to purchase shares of common stock were outstanding during the third quarter of 2004 and were not included in the computation of diluted EPS as the warrants' were all higher than the average stock price of \$2.09 and would have been anti-diluted (See Note 14). These warrants have not been registered under the Securities Act of 1933.

#### NOTE 17 COMPENSATED ABSENCES

There has been no liability accrued for compensated absences; as in accordance with Company policy, all compensated absences, accrued vacation and sick payment must be used by December 31st. At September 30, 2004, any amount for accrual of the above is not material and has not been computed.

#### NOTE 18 INSURANCE CLAIM

The Company suffered a loss on March 14, 2003 of a building, trucks, leasehold improvements, product inventory and equipment as well as cost of cleanup and restoration. The Company has filed insurance claims. The insurance adjusters are in the process of finalizing the amounts to be paid to the Company. The estimated costs not reimbursed are \$425,236 and is currently shown as deferred costs insurance claims on the balance sheet. Management anticipates the insurance recovery will cover the company costs. A claim for business interruption still has to be filed and a pollution claim is also pending.

The following is a summary of insurance claims filed:

Building (commercial property)	\$349,526	
Paid by March 31, 2004	349,526	\$ -
	-----	-----
Contents	\$337,617	
Paid by June 30, 2004	337,617	-
	-----	
Vehicles	\$302,674	
Paid by June 30, 2004	247,409	55,265
	-----	-----
Total		\$ 55,265
		=====

The above open amounts were submitted as claims but do not represent a settlement with the insurance carriers.

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

### ABLE ENERGY, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

#### NOTE 19 BUSINESS SEGMENT INFORMATION

The Company does not have separate operating financial segments. The financial information is evaluated on a company wide basis. As such, no segment reporting is prepared for internal use.

#### NOTE 20 SALE OF SUBSIDIARY

On March 1, 2004, the Company sold its subsidiary , Able Propane, LLC. The Sale was a sale of inventory and equipment (the operating assets of the subsidiary). The total price of the sale was \$4,400,000. Of that, \$3,000,000 was received in cash and was used as a reduction of long-term debt in the amount of \$1,284,737. There was also payment of \$135,000 of Officer Loan and \$325,000 of Legal Fees. The Company had a cash increase of \$1,255,268.

The Company received a Note receivable for \$500,000, principal balance of this Note payable in full on the fourth anniversary of the closing, March 1, 2008. The Note bears interest at 6% per annum (\$30,000 per year), payable quarterly within 45 days of the closing of each fiscal quarter.

The Company also has signed a non-competition agreement and will receive a total payment of \$900,000, payable in \$225,000 installments due one, two, three and four years from the date of closing.

#### NOTE 21 DISCONTINUED OPERATIONS

On March 1, 2004, the Company sold the operating assets of its subsidiary, Able Propane, LLC (see Note 20), and discontinued the sale of propane fuel in the State of New Jersey.

Following the sale, the results of Able Propane, LLC were reported in the Company's Consolidated Statements of Income and Cash Flows, separately, as discontinued operations. In accordance with Generally Accepted Accounting Principals (GAAP), the Consolidated Statement of Financial Position has not been restated. Able Propane, LLC represented the primary vehicle by which the Company engaged in the sale of propane fuel.

30

### ABLE ENERGY, INC. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONT'D)

JUNE 30, 2004 AND SEPTEMBER 30, 2004

#### NOTE 21 DISCONTINUED OPERATIONS (CONT'D)

Summarized financial information for discontinued operations for the three months September 30, 2003, as follows:

# Edgar Filing: ABLE ENERGY INC - Form 10-Q

2003

TOTAL REVENUES	\$ 345,572 =====
Income (Loss) from Discontinued Operations	\$ (171,374) =====

Able Propane, LLC is treated as a Partnership for tax purposes and pays no income tax. As such, there is no provision for income taxes. Able Propane, LLC has no assets or liabilities at June 30, 2004. The assets and liabilities after the sale and collection of accounts receivables and payment of accounts payables, which were transferred to the Company were immaterial to the total assets and liabilities of the Company.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Statements in this Quarterly Report on Form 10-QSB concerning the Company's outlook or future economic performance, anticipated profitability, gross billings, expenses or other financial items, and statements concerning assumptions made or exceptions to any future events, conditions, performance or other matters are "forward looking statements," as that term is defined under the Federal Securities Laws. Forward-looking statements are subject to risks, uncertainties, and other factors that would cause actual results to differ materially from those stated in such statements. Such risks, and uncertainties and factors include, but are not limited to: (i) changes in external competitive market factors or trends in the Company's results of operation; (ii) unanticipated working capital or other cash requirements and (iii) changes in the Company's business strategy or an inability to execute its competitive factors that may prevent the Company from competing successfully in the marketplace.

### REVENUE RECOGNITION

Sales of fuel and heating equipment are recognized at the time of delivery to the customer, and sales of equipment are recognized at the time of installation. Revenue from repairs and maintenance service is recognized upon completion of the service. Payments received from customers for heating equipment service contracts are deferred and amortized into income over the term of the respective service contracts, on a straight-line basis, which generally do not exceed one year.

### RESULTS OF OPERATIONS

Three Months Ended September 30, 2004,  
Compared to the Three Months Ended September 30, 2003

The Company reported revenues of \$8,221,845 for the quarter ended September 30, 2004, which was an increase of \$1,717,205 from the prior year's revenues of \$6,504,640 for the same period. This increase can be attributed primarily to significantly higher prices paid for the commodities (primarily #2 home heating oil) purchased during the period. Gallons for the period showed a decline due to market conditions and the fact that the Company's Newton, New Jersey facility is currently inoperative due to the March 14, 2003 accident at that site.

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

Gross profit margin, as a percentage of revenues, for the three months ended September 30, 2004, decreased by 6.19% from \$886,576 to \$611,987. The decrease in margin was the result of the dramatically rising product costs during the months of July, August and September. Retail pricing was adjusted appropriately to cover most of the increases in the Company's traditional heating oil segment, Able Oil Co. while increasing volumes moving through the Company's PriceEnergy subsidiary moved gross profit margins down as this subsidiary begins greater volumes with its BJ's Heating Oil Advantage program with BJ's wholesale Club.

Selling, General, and Administrative expenses, as a percent of sales, decreased by 10.71% from 24.15% in the quarter ending September 30, 2003 to 13.44% during the same period in 2004. The Company attributes this decrease to lower costs for insurance charges, utilities, credit card processing fees, bad debt expense, and professional fees. Management will continue to aggressively manage expenditures against last year's actual using the new budget and the comprehensive financial reporting software known as Great Plains, which was implemented in July of this year.

Operating loss for the quarter ended September 30, 2004 was \$(790,304) as compared to the Company's loss of \$(955,103) for the quarter ended September 30, 2003. This operating loss for the quarter was directly related to the volatile market pricing and increased costs related to the explosion and fire in Newton, New Jersey on March 14, 2003, and increased operating costs for retail delivery in to the Sussex County Area.

Net loss for the quarter ended September 30, 2004 was \$(872,899) as compared to the same period for the previous quarter's loss of \$(1,339,916). This net loss for this quarter (which covers the non-heating related months of July August and September) was related to lower volumes due to the warm temperatures.

### OPERATIONAL EFFICIENCIES

The Company has redefined its organizational chart and associated position descriptions (by assigning duties as required to best suit the organization's growth), which will enhance the Company's personnel utilization. The Company believes that it will continue to increase the utilization of existing personnel and equipment, thus continuing to reduce expenses as a percent of sales, and increasing profitability, within its current business configuration.

Furthermore, the Company has completed implementation of a new fuels management system called "Sunrise" which it purchased from Versyss in Providence, Rhode Island. This operating system, which is built on ".NET" (dot-net) technology, is a Microsoft(R) Windows-based application that is easier to build, deploy, and integrate with other networked systems. Sunrise is a unique new industry operating software, which allows developers, and systems administrators to more easily build and maintain the system with improvements toward performance, security, and reliability. Sunrise will permit Able Energy to increase corporate profitability, while simultaneously providing exceptional customer service. This new operating system also affords the necessary flexibility to handle multiple payment plans, can maintain the security of confidential account information, has easily customizable fields, and the capability to e-mail invoices and statements to the customer base. This operating system along with the new financial software, Great Plains, will serve to further streamline operations and information processing.

Management appreciates the importance of properly managing all aspects of expense control, and as such, has enlisted the support of an outside consultant to assist in the integration and implementation of its new comprehensive operating budget and related reporting structure which now interfaces with the new Sunrise operating system. The Company believes that these changes will

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

enable management to quickly respond to changing trends in sales and expenses. The Company believes that its new budget structure is effective as the period ending September 30, 2004 shows a year-to-year decrease in SG&A of \$466,292 or 10.71%. The combination of the new operating system and the detailed budget and reporting program now provides all levels of management with real time results not previously available.

In Able Oil Company, the Company's largest subsidiary, the margin as expressed in cents per gallon of product sold at retail, is higher for the first quarter even though it appears as though gross margin dollars are decreasing. Gross margin as a percentage of sales is lower due to the significantly higher commodity costs during this quarter. The Company's margin strategy is to use the PriceEnergy subsidiary to handle highly discounted non-service related home heating oil sales previously sold through the Able Oil subsidiary. This change will permit Able Oil Co. to grow its automatic delivery customer base using its moniker of "Full Service at Discount Prices", while the PriceEnergy entity will cater to those customers looking for the lowest possible retail price either "on-line" or over the phone. The Company believes that this further segmentation of its customer base will be successful in increasing overall profitability while enhancing customer appeal. The Company has identified several customer segments that prefer varying levels of service. By better aligning the Company's product offerings to match the desires of these customer segments, the Company believes that it will be able to capture a larger market share.

The new system known as "Flat Rate Pricing", provides the Company's sales and service personnel with a "package approach" to selling service, and provides the customer with an easy to understand invoice. This policy is consistent with the Company's customer segmentation strategy, permitting different retail prices for different customer segments, based upon their choice of service level desired. This system will interface with the Company's automated dispatch communications program that was introduced last year. Flat rate pricing has now been fully rolled out and has proven so far to be successful in streamlining the service billing process while maintaining clarity for the customer..

### WARRENSBURG, NEW YORK OPERATIONAL ENHANCEMENTS

The Company is in the process of making operational changes to its Warrensburg, New York business, which will permit the consolidation of all daily operations on to one modern facility located in the newly developed Warrensburg Industrial Park. The Company's current propane gas storage operations on its Lake George property have been moved to the new site and the Lake George property has been sold with proceeds of the sale having been allocated to provide funding for the new operations at the industrial park. When completed, the new fuel depot and sales office will house the local sales and administrative support personnel as well as operations and fuel storage for #2 heating oil, kerosene, propane gas, and diesel fuel. When a new modular office and tank farm is completed on the new property, the Company will terminate its leased office space and fuel operations on Horicon Avenue and have all operations combined in the new location with the ability to grow the business more effectively as well as handle a greater volume of all products.

### RECENTLY IMPLEMENTED TECHNOLOGICAL PROCEDURES

The Company has established goals, which will be accomplished through the implementation of some modern technologies that are currently being installed into the Company's existing infrastructure.

The Company has introduced additional customer service technology to its Rockaway call and administrative center during the past year. Able Energy management believes that the improvements to its existing telephone hardware and in-house management, the Company's call center environment will be provided with the ability to respond to changing call patterns, both higher and lower, without



## Edgar Filing: ABLE ENERGY INC - Form 10-Q

the expense of clerical over-staffing to meet unrealized needs. New telephony software will once again provide the customer with the option of placing a fuel order via a voice- activated technology. This will enable customers who simply wish to refill their fuel tank, the opportunity to quickly place an order 24 hours a day without the help of a live customer service representative.

The Company is now beginning full implementation of the recently announced automated dispatch technology, which provides management with the ability to communicate with service technicians instantaneously. This system also is now performing billing functions at the customer's location as well as documenting payment data instantaneously. Additionally, management will soon be aware of the status of every on-duty worker and be able to obtain real time reporting for stand-by, en route, and service work time. This system enables the Company to maximize scheduling opportunities and eliminate service technician down time.

### PRICEENERGY OPERATING SUBSIDIARY

The company's operating subsidiary, PriceEnergy with its modern order-processing platform is now in full operation. This revolutionary proprietary technology is fully automated and allows for the removal of the inefficiencies associated with traditional heating oil companies within this industry. PriceEnergy generated over 4.4 million gallons in new business this past year, which were delivered by PriceEnergy's dealer network. Gallons sales this year have continued to strengthen over the same period last year. In December of 2002, PriceEnergy began sales of Home Heating Oil in the initial BJ's Wholesale Club. Gallons sold through this new venue have been increasing with each week. The Company is excited about this new sales opportunity with its new "Channel Partner", BJ's. The Company believes that this is the first of many prime retail opportunities to utilize the PriceEnergy operating platform to open new markets for the sales of heating oil and diesel fuel. The Company is also focusing its efforts now on strengthening the operating margins for this subsidiary as well as eliminating some of the operating costs.

### EXPLOSION AND FIRE

On March 14, 2003, Able Energy experienced an explosion and fire at its Newton, New Jersey facility which resulted in the destruction of an office building on the site, as well as damage to 18 company vehicles and neighboring properties. Fortunately, due to the immediate response by employees at the site, a quick evacuation of all personnel occurred prior to the explosion, preventing any serious injuries.

The results of the company's investigation indicated that the explosion was an accident that occurred as a result of a combination of human error, mechanical malfunction, as well as the failure to follow prescribed state standards for propane delivery truck loading. On April 3, 2003, Able Energy received a Notice of Violation from the New Jersey Department of Community Affairs. The dollar amount of the original assessed penalty was appealed with the State of New Jersey and the ultimate fine totaling \$25,000 was paid in March of 2004

The March 2003 accident, which affected our Newton fuel depot, has left this facility still in an "out of service" condition. We are currently working diligently to get this location back in service, at least on a limited basis, before the end of the current fiscal year. The ability to use this location will greatly improve our service level to the Sussex County delivery area. The Newton Board of Adjustment originally denied the Company's application to repair and rebuild the facility on the grounds that the zoning laws covering the Newton, New Jersey property had been changed immediately following the accident. The Company appealed the Board's decision in August of 2004, and was granted immediate permission to make some building repairs and restore power to the

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

underground cathodic protection system. The Company is currently effectuating these repairs and will continue to move the legal process forward in order to regain use of the facility. Recently, in early November 2004, The Town of Newton appealed the court's August 2004 decision to allow Able any use of its property.

### LIQUIDITY AND CAPITAL RESOURCES

For the three months ended September 30, 2004, compared to the three months ended September 30, 2003, the Company's cash position increased by \$1,582,948 from \$442,770 to \$2,025,718. In the year ended June 30, 2004, the Company closed a credit facility on September 22, 2003, with UPS Business Capital Credit and obtained a term loan of \$4.3 million to consolidate a large portion of its existing debt and has also obtained a working capital line of credit of \$700,000. This new debt restructuring will, in future years, save in excess of \$200,000 per year in interest payments and eliminate previous administrative efforts in the managing of over two-dozen individual leases and loans. The Company also sold the operating assets of a subsidiary, which yielded cash of \$1,255,000 and reduced debt in excess of \$1.4 million. The Company also had increased collections of customer advance payments. In the quarter ended September 30, 2004, the Company generated funds from an increase in customer advance payments and from the sale of property by its New York subsidiary yielding cash of \$226,499. The cash will assist the Company with a new facility under construction in Warrensburg, New York and to grow while strengthening its infrastructure.

### SEASONALITY

The Company's operations are subject to seasonal fluctuations, with a majority of the Company's business occurring in the late fall and winter months. Approximately 70% of the Company's revenues are earned and received from October through March; most of such revenues are derived from the sale of home heating products, primarily #2 home heating fuel oil. However, the seasonality of the Company's business is offset, in part, by an increase in revenues from the sale of HVAC products and services, diesel and gasoline fuels during the spring and summer months due to the increased use of automobiles and construction apparatus.

From May through September, Able Oil can experience considerable reduction of retail heating oil sales. Similarly, Able Energy's New York propane operations can experience up to an 80% decrease in heating related propane sales during the months of April to September, this is offset somewhat by increased sales of propane gas used for pool heating, heating of domestic hot water in homes and fuel for outdoor cooking equipment.

Over 90% of Able Melbourne's revenues are derived from the sale of diesel fuel for construction vehicles, and commercial and recreational sea-going vessels during Florida's fishing season, which begins in April and ends in November. Only a small percentage of Able Melbourne's revenues are derived from the sale of home heating fuel. Most of these sales occur from December through March, Florida's cooler months.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not Applicable.

### ITEM 4. CONTROLS AND PROCEDURES

As of September 30, 2004, an evaluation was performed under the supervision and with the participation of the Company's management, including the Principal Executive Officer and the Principal Accounting Officer, of the effectiveness of

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

the design and operation of the Company's disclosure controls and procedures. Based on that evaluation, the Company's management, including the Principal Executive Officer and the Principal Accounting Officer, concluded that the Company's disclosure controls and procedures were effective as of September 30, 2004. There have been no significant changes in the Company's internal controls or in other factors that could significantly affect internal controls subsequent to September 30, 2004.

### PART II

#### OTHER INFORMATION

##### ITEM 1. LEGAL PROCEEDINGS

In accordance with the purchase of the property on Route 46, Rockaway, New Jersey by Able Energy Terminal, LLC, the Company intends to pursue recovery of all costs and damages related to a lawsuit by the seller against a former tenant of the property, based on environmental cleanup costs on the property. Purchaser will assume all responsibility and direction for the lawsuit, subject to the sharing of half of any recoveries from the lawsuit with the seller. The seller by reduction of its mortgage will pay costs related to the above up to \$250,000. In December of 2000, the Company reached an agreement with the former tenants whereby the former tenants agreed to pay Able Energy, Inc. the sum of \$397,500 in order to pay for the environmental cleanup costs on the Company's Route 46 property.

The Sussex County, New Jersey, Prosecutor's Office is conducting and investigation as a result of the March 14, 2003 explosion and fire. No determination has been made with respect to its investigation.

A lawsuit (known as Karen Hicks vs. Able Energy, Inc.) has been filed against the Company by property owners who allegedly suffered property damages as a result of the March 14, 2003 explosion and fire. The Company's insurance carrier is defending as related to compensatory damages. Legal counsel is defending on the punitive damage claim. A hearing was held on March 11, 2004 on an application on certain matters by the Plaintiffs, which were denied. The Court presently has before it a motion by Plaintiffs for Class Action Certification. Per legal counsel, whether this matter is certified a Class Action will greatly influence the Company's potential exposure. Legal counsel is guardedly optimistic that Class Action will be denied.

After the March 14, 2003, fire and explosion, the town of Newton changed its zoning requirements and made fuel oil and propane distribution prohibited uses. The Company is appealing a denial of a request for building permits to reconstruct damaged and destroyed buildings and sought a Non-Conforming Use Certificate to permit the fuel oil distribution use only. On August 20, 2004, the Superior Court of New Jersey ruled that the Company may continue to use the site as a non-conforming use, but stayed its decision subject to Newton's appellate rights. On November 3, 2004, the Town of Newton Zoning Board of Adjustment entered a filing to appeal the August 20, 2004 Final Judgement of Judge B. Theodore Bozonelis of the Superior Court of New Jersey Appellate Division.

As a result of the March 14, 2003 explosion and fire, various claims for property damage have been submitted to the Company's insurance carrier. These claims are presently being handled and, in many cases, settled by the insurance carrier's adjuster. There were approximately 200 claims being handled and adjusted with reserves for losses established as deemed appropriate by the insurance carrier. The majority of these claims have been settled.

## Edgar Filing: ABLE ENERGY INC - Form 10-Q

In addition, the following lawsuits were also filed against the Company by property owners who allegedly suffered property damage as a result of the March 14, 2003 explosion and fire: (A) Merriam Gateway v. Able Energy, Inc. which was filed on November 17, 2003 in the Superior Court of New Jersey Law Division, County of Sussex in which the plaintiff seeks unspecified compensatory and punitive damages; (B) Courtright v. Able Energy, Inc. which was filed on April 6, 2003 in the Superior Court of New Jersey Law Division, County of Sussex in which the plaintiff seeks unspecified compensatory and punitive damages; and (C) Marius and Jennifer Scholz v. Able Energy, Inc. which was filed on June 23, 2004 in the Superior Court of New Jersey Law Division, County of Sussex in which the plaintiff seeks unspecified compensatory and punitive damages.

The Company in the normal course of business has been involved in lawsuits. Current suits are being defended by the insurance carrier and should be covered by insurance.

The Company is not currently involved in any legal proceeding that could have a material adverse effect on the results of operations or the financial condition of the Company. From time to time, the Company may become a party to litigation incidental to its business. There can be no assurance that any future legal proceedings will not have a material adverse affect on the Company.

### ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

### ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

### ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

### ITEM 5. OTHER INFORMATION

None.

### ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

#### (a) Exhibits

31.1 Certification by Chief Executive Officer pursuant to Sarbanes-Oxley Section 302

31.2 Certification by Chief Financial Officer pursuant to Sarbanes-Oxley Section 302

32.1 Certification by Chief Executive Officer pursuant to 18 U.S.C. Section 1350

32.2 Certification by Chief Financial Officer pursuant to 18 U.S.C. Section 1350

#### (b) Reports on Form 8-K

DATE OF REPORT	ITEM REPORTED ON
October 28, 2004	Able Energy, Inc. invoked the exemption available to

Edgar Filing: ABLE ENERGY INC - Form 10-Q

"controlled companies" pursuant to NASD Rule 4350(c)(5). Rule 4350(c)(5) exempts a "controlled company" from the independent directors requirements of NASD Rule 4350(c). A "controlled company" is a company of which more than 50% of the voting power is held by an individual, a group or another company. Rule 4350(c)(5) requires that a controlled company relying on this exemption disclose that it is a controlled company and the basis for such determination.

SIGNATURES

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on this 22nd day of November 2004.

ABLE ENERGY, INC.

/S/ TIMOTHY HARRINGTON

-----  
TIMOTHY HARRINGTON, CHIEF  
EXECUTIVE OFFICER, SECRETARY, AND  
CHAIRMAN

/S/ CHRISTOPHER P. WESTAD

-----  
CHRISTOPHER P. WESTAD, PRESIDENT,  
CHIEF FINANCIAL OFFICER, AND DIRECTOR